

**City of Boston Conservation Commission  
Local Wetlands Ordinance  
Listening Session #3**

**Protecting Additional Functions, Values, and Resource Areas**

June 19, 2013  
Boston City Hall, Hearing Room 801  
Boston, Massachusetts, 02201

Presenter: Mike Howard, Epsilon Associates, LWO Steering Committee Member

Mr. Howard discussed the makeup and purpose of the steering committee, and noted that the three Commissioners who sit on the committee- Charlie Button, Vivien Li, and John Sullivan- were in attendance. The remaining members are Lealdon Langley of the DEP, Julia Knisel of CZM, and Myrna Putziger of The Fallon Company. He then gave a presentation covering the following:

- The purpose and process for creating a Local Wetlands Ordinance;
- The definition of functions and values, and how they are currently protected;
- Additional functions and values that could be protected by a Local Wetlands Ordinance, including:
  - Climate Change & Sea Level Rise (future conditions not considered in WPA)
  - Recreation
  - Aesthetics
  - Historical Values
  - Plant Species
- The definition of resource areas and when Conservation Commission jurisdiction is triggered;
- Resource areas currently protected by the Wetlands Protection Act;
- Additional resource areas that could be protected by a Local Wetlands Ordinance, including:
  - Vernal Pools
  - Isolated Vegetated Wetlands
  - Intermittent Streams
- Definition of Buffer Zones and an explanation of why and how they need to be protected.

Jane Wolff, a Boston resident, who is writing a graduate thesis on Sea Level Rise, asked for clarification on the purpose of pointing out what is not covered by the WPA. She noted that we should be thinking about what we would do if a Hurricane or large storm hit this September or October, not only for wetland resource areas but for everything. Mr. Howard replied that the tonight's topics are meant to be for discussion to see what makes sense for the City of Boston to protect further. Clearly SLR and Climate Change are at the top of the list of things to be addressed. He mentioned the Sea Level Rise listening session and suggested Ms. Wolff follow up with Stephanie Kruel. The purpose of the LWO is to build on the State WPA to ensure Boston has adequate wetland resource protection.

John Sullivan asked if any other municipality included aesthetics as an interest, and wondered how the Commission would regulate the subjective notion of what is aesthetically pleasing. Mr. Howard replied that several communities, including Chatham, do include aesthetics as an interest, and it is very subjective, and inherently challenging to tie the interest to a resource area, and to develop reasonable performance standards governing work.

Charlie Button brought up as an example (although not related to wetland resources) the National Park system, which considers aesthetics when establishing parks. Toni Pollak noted that there are view corridor mandates within the Historic Preservation regulations. She suggested that for wetlands aesthetics could be tied to pedestrian, rather than visual, access to aesthetically important areas. Mr. Howard affirmed that connecting the interest to a resource area in such a way would justify using it as a criteria for protection. He also noted that historic and aesthetic values are not as often protected in local bylaws and ordinances.

Chris Busch explained that other municipalities treat historic and aesthetic interests as “soft interests,” where a Commission could not deny a permit based solely on those interests, but rather use them to support other interests.

Chip Nylén of Lynch Desimone & Nylén (representing NAIOP) stated that he wrote the bylaws for his hometown of Ipswich. His experience in practicing law has been that neighbors use aesthetic and historic values to bolster their personal distaste for projects. Boston is already rich in protecting historic interests through other vehicles. The problem with aesthetics is that it is so discretionary and so subjective that all Commissioners will have a different view. He suggests avoiding this pathway if possible. Ipswich did not include aesthetic and historic values in their ordinance. That town has a lot of ACECs that warranted further protection. He urged that sensible performance standards be established that aren't strict with setback distances, and that include a provision for waivers wherein the proponent can show that the resource is being protected even if a design standards can't be met. Ipswich also utilized a peer review process in its bylaw. He acknowledged that although Boston has professional staff, it can be worthwhile to have the ability to allow peer review of a project. Mr. Nylén also believes the LWO should address restoration, which can be a good value to preserve in an urban area. Finally he suggested focusing on cumulative impacts when establishing the performance standards for each resource area. He suggested providing flexibility in the standards. He suggested that for Climate Change and Sea Level Rise, the applicant would have to show how the project would account for those impacts. He looks forward to participating in the development of the regulations.

Mr. Howard affirmed that the majority of the topics Mr. Nylén discussed are being addressed in the Ordinance, particularly allowing flexibility within the performance standards.

Mr. Button informed the audience that they should email Stephanie Krueel with any further comments.

John Lewis noted that protecting these values is of extreme economic importance because of the quality of life in Boston isn't very good, tourism and other industries will suffer. One of the problems that exists throughout Massachusetts is that government enforcement of environmental protection isn't always sufficient, and that it falls to the NGOs to do more of the enforcement, which sometimes works.

Mr. Howard reminded the group that the last listening session will be held on July 10<sup>th</sup>.

The meeting was adjourned at 7:35PM.

Respectfully submitted,

*Stephanie Krueel*

Executive Secretary