

**City of Boston Conservation Commission  
Local Wetlands Ordinance  
Listening Session #4**

**Impacts of the LWO and Recommended Guiding Principles**

July 10, 2013  
Boston City Hall, Hearing Room 801  
Boston, Massachusetts, 02201

Stephanie Kruel read a letter from NAIOP Commercial Real Estate Development Association dated July 10, 2013 into the record. Ms. Kruel then presented information on the guiding principles and impacts of a local wetlands ordinance (LWO). She began by describing the need and process for creating a LWO. The draft recommended guiding principles are:

1. Protect against the effects of sea level rise
2. Protect recreational values and plant habitat functions
3. Protect vernal pools and isolated vegetated wetlands
4. Create performance standards for buffer zones
5. Improve enforcement by using the City's existing ticketing process for violations

Expected impacts of the ordinance include:

- Improved protection of existing resources and protection of more resource areas:
  - Will help to maintain biodiversity
  - Will help to retain floodwaters
  - Will help prevent water pollution & flood damage
- Will require proponents to consider potential flooding as the sea level rises:
  - Will result in more storm-resilient projects
  - Will reduce the burden to the public by reducing pollution & storm damage
- Will allow better oversight of sensitive areas
  - Require filing by property owners not required to do so in the past
  - Increase the work load for ConCom & staff

Vivien Li suggested emphasizing the benefits of the ordinance. She noted that earlier in this evening's hearing a number of proponents voluntarily described how the impacts of climate change are being accounted for in their projects. Many consultants who regularly present to the ConCom include sections in their applications regarding responses to climate change as well. People are becoming much more aware of these impacts, and Superstorm Sandy really brought the issue to the forefront for a lot of people.

Ms. Kruel stated that she wanted to convey all impacts of the ordinance, both beneficial and challenging, to the public.

John Sullivan asked how the City plans to inform those who have never previously been required to file an application with the ConCom that they will now be required to do so. Is this the City's or the ConCom's responsibility?

Ms. Kruel responded that the ConCom and Environment Department Staff will create a plan to educate the public.

Chip Nysten of NAIOP explained that in his town, individuals are notified of LWO jurisdiction when they seek a building permit. The Inspectional Services Division will need to direct applicants to the ConCom process. Mr. Sullivan underscored the potential difficulty in getting ISD to follow such a procedure. Ms. Kruel explained that she has been working with Bryan Glascock, the Commissioner of ISD, to improve the current system of verifying that buildings in the current Special Flood Hazard Zoning District meet the building code requirements for structures that are in FEMA floodplains. GIS overlays of the new jurisdictional areas will be utilized to flag properties in ISD's permitting system. ISD will not be able to issue building permits until any other dependent permits, such as those under the LWO, are obtained.

Charlie Button confirmed that something as fundamental as changing the application form will ensure the process works. Ms. Li noted that when the new Mayor takes office, new forms will have to be printed soon. She also noted that in a recent forum for Mayoral candidates, the first question asked was on climate change. The candidates were very knowledgeable about the issues and understand which organizations are involved. They demonstrated their awareness by discussing Superstorm Sandy.

Mr. Button noted that he expects more public participation in this process when the Ordinance goes to City Council, and during the formulation of the LWO regulations. Mr. Nylen pointed out that once there is something in writing to which to respond, the public will become more engaged.

Ms. Krueel explained that the LWO will be piggybacking on the FEMA coastal remapping project, wherein FEMA will be doing public outreach to get feedback on their preliminary flood risk maps. In August, the City will be reviewing the first risk map. Soon after, the maps will be available for public review. People will be more aware of flood maps than usual as the Ordinance and Regulations are being formed. Mr. Sullivan noted that the mortgage companies will also be spreading the word as they require flood insurance in 1% chance flood areas.

Ms. Li noted that hurricane season is not yet upon us, and Boston could be hit by bad storm this year, yet again increasing the public's awareness of flood issues.

Mr. Sullivan requested that the LWO be first on the agenda at the August 7, 2013 public hearing.

Kate Bowditch from the Charles River Watershed Association shared comments that she believed were more relevant to the regulations-creation stage of the process. She urged the Commission to examine how climate change affects stormwater runoff throughout the watershed, including inland areas. The LWO should recognize the impact of increased storm intensity and greater rainfall on all resource areas. Flooding is not just related to sea level rise.

Mr. Button noted that with increased precipitation, communities on the North Shore that are now experiencing water use restrictions because of low stream and/or groundwater levels could help themselves by constructing dams to capture the increased runoff.

Ms. Li asked if Ms. Bowditch or Mr. Nylen had come across other communities with LWOs that address climate change. Mr. Nylen replied that many communities have stormwater ordinances, but Boston is ahead of the curve on specifically addressing sea level rise. He is not aware of any other Commissions that are directing their efforts to address sea level rise. Ms. Bowditch is aware of other communities that, through their stormwater ordinances, require different or larger stormwater protection facilities. Sometimes the wetlands bylaws tie directly to the stormwater ordinances.

Mr. Button noted that in Downtown Boston the design criterion is the 25 year storm. In residential areas it is the 10 year storm. He does not believe that 150 years of data is sufficient to account for the weather over the past 12,000 years since the last ice age. We need to use more recent modeling techniques, rather than those developed in the 1970s, to more accurately model storms. Ms. Bowditch noted that Massachusetts is one of the farthest behind in adopting modern modeling techniques, without even taking into account the changes caused by climate change.

Ms. Bowditch shared with staff a report by the Johnson Foundation published this month titled "Catalyzing the Transformation of U.S. Water Infrastructure." Some of the recommendations in this report may be applicable to the LWO. The report encourages the use of green infrastructure for stormwater management purposes. She suggested that the ordinance encourage such systems to be utilized for flood protection, to improve water quality, and to provide wildlife habitat. Also, in areas that fall into the ConCom's jurisdiction where water discharges into the Charles River, there is a TMDL that must be complied with. Mr. Button replied that the Commission stresses during hearings that applicants must comply with all TMDLs.

Mr. Nylen reminded the Commission that the purpose of the bylaws is to regulate areas that the Wetland Protection Act does not, and he feels that based on these principles, that is just what the Commission is correctly doing. It also seems like the performance standards will be flexible, which he had suggested.

Mr. Button affirmed that the Commission is not interested in making regulations for the sake of making regulations, but rather that important issues are being addressed. He does not want the Commission to get to the point where they might be making arbitrary judgments by trying to regulate, for example, aesthetics.

Ms. Krueel explained that this process was based on going through the Massachusetts Association of Conservation Commissioners (MACC) model ordinance and deciding what was applicable to Boston.

Ms. Bowditch asked if the Ordinance establishes a size threshold for isolated vegetated wetlands. Ms. Krueel replied that she anticipated that that would be addressed in the regulations. Mr. Nylén shared that in Ipswich the size limit is 5,000 sf, and some municipalities establish a 1,500 threshold. He suggested the steering committee look at establishing a size for IVW in the definition contained in the LWO. Ms. Bowditch confirmed that Brookline also defines IVW with a size in their bylaw.

Mr. Nylén noted that he and Ms. Bowditch have sat on Conservation Commissions, so they understand the Boston ConCom's point of view.

Mr. Nylén inquired about the Commissioners' terms. Everyone is currently a holdover.

- **Motion made by V. Li to adjourn the meeting (4/0/0 9:15 PM).**

Respectfully submitted,

*Stephanie Krueel*

Executive Secretary