

Approved 10/17/12

**City of Boston Conservation Commission
Public Hearing Meeting Minutes**
Boston City Hall, Hearing Room 801
Boston, Massachusetts, 02201

August 15, 2012

Commissioners Present: Charles Button – Chairman, Antonia Pollak, John Lewis, Vivien Li, John Sullivan, Stephen Kunian

Commissioners Not Present: Jeanne McHallam

Staff Present: Chris Busch, Executive Director

6:00 PM

Request for Determination of Applicability from the Emerald Necklace Conservancy for the installation of a shed, associated with improvements to the Kelleher Rose Garden fountain in the Back Bay Fens, 125 The Fenway, Muddy River (Bordering Land Subject to Flooding).

Owner: Boston Parks and Recreation Department

Representatives: Barbara Thissell, Barbara J. Thissell, P.E. Inc; Mary Hicke, Emerald Necklace Conservancy

Documents: Request for Determination of Applicability, plan set

Ms. Thissell related the history of the project. In 2011, the Commission issued a negative determination of applicability for restoration to the subject fountain, approved work without a NOI. Mechanical equipment now needs to be placed in a shed rather than underground as previously planned. Looking to remove existing shed & concrete pad and replace with new concrete pad and larger shed, and to upgrade electric line.

Mr. Button and Mr. Sullivan are dues paying members of the Emerald Necklace Conservancy.

The applicant reported that the approximate cost of project is \$300,000, and maintenance responsibility has yet to be determined. The project will take two months to complete, and will be completed by May 2013. The shed will be in the same location; however the new footprint will be 12' X14', rather than the old shed's 10'X12' footprint. The shed is located within the existing hedges and will be painted dark green to further obscure it from view. It will be all wood with an asphalt shingle roof.

No draft project conditions were prepared by Mr. Busch. Standard conditions related to erosion and sediment control will be drafted.

- **Motion made by S. Kunian and seconded by V. Li for a Negative Determination of Applicability with conditions (5/0/1, 6:10pm)**

6:15 PM

Request for Determination of Applicability from RIT Trust as to whether a proposed development site is subject to the jurisdiction of the Massachusetts Wetlands Protection Act, 991 Morrissey Boulevard, Dorchester.

Owner: RIT Trust c/o Tim Johnson, Architect

Representatives: Tim Johnson, Architect; Steve Erikson

Documents:

Mr. Busch met with proponents earlier this year at the site, had previously had a wetlands scientist determine whether or not there were wetlands on the site. The site does not qualify as a Bordering Vegetated Wetland, but the drainage basin is relatively large, so he suggested that the applicant file an RDA to determine whether or not the property is an Isolated Land Subject to Flooding. An engineer ran the HydroCad calculations and the area did not meet the definition for an ILSF. Mr. Johnson described the proposed project as a 2 family, 2

½ story structure on a concrete slab. A site visit did not confirm the presence of any amphibious species, and there is no connection to a constant water source.

Mr. Sullivan had some technical questions regarding the numbers utilized in the calculations regarding the contributing area of the basin. He asked the engineer to re-run the numbers. He also asked how fill would be handled on the site. The applicant has not done the grading plan for the proposed basin, but there will be minimum cutting and filling and all water will be directed to a drainage basin. The structure will be connected to existing in-street water and sewer infrastructure.

Ms. Pollak asked for clarification regarding the contours of the property. Mr. Button inquired about continuing the hearing until more information regarding stormwater is available. The applicant maintained that the purview of the commission is to determine whether the property constitutes an ISLF, not to determine how the stormwater will be managed. Ms. Li suggested that the person who completed the environmental calculations be present at a future hearing. Mr. Busch wanted to ensure that the engineer is working with the same maps that are available to the Boston Water and Sewer Commission.

- **Motion made by V. Li and seconded by T. Pollak to continue the hearing to the September 19, 2012 meeting (6/0/0, 6:20pm)**

6:30 PM

Notice of Intent from Shipyard Quarters Marina DEP No. 006-1312 for repairs to existing mooring piles, at 1 Pier 8, 13th Street, Charlestown, Boston Inner Harbor (Land Under Ocean).

Owner: Martin Oliner

Representatives: Ronald Bourne, Bourne Consulting Engineering; Seth Lattrell, Bourne Consulting Engineering

Documents: NOI & accompanying photos

Ms. Li noted that Bourne Consulting is a dues paying member of her employer, the Boston Harbor Association.

Mr. Bourne described the project as limited to the replacement and repair of existing mooring piles through a process of cutting the tops off the existing 72 piles and driving new piles down the centers of the old ones. No other activity is proposed.

Ms. Li brought up reported maintenance issues such as overflowing trash. Mr. Bourne replied that Mr. Asher Hertzberg, the Marina's representative who could not be at tonight's meeting, could speak to that issue. Mr. Bourne himself is strictly the engineer for the proposed project and has no other involvement with Shipyard Quarters.

Dick Mulligan of the BRA spoke regarding the Mayor and DEP's recent involvement in addressing the deteriorating condition of the Marina. Harborwalk from Pier 6 and Pier 8, owned by Mr. Oliner, is in terrible condition and has been cited by ISD numerous times. He cited old, curling, rotted, missing, falling deck in this area, and is looking for the Commission to issue an order to make immediate repairs to the Harborwalk. The owner has appealed DEP's enforcement order, and Mr. Mulligan is looking for another way to move forward and remediating the situation.

Ms. Li asserted that the owner or his attorney should be in attendance at this public hearing. Ms. Pollak confirmed with Mr. Mulligan that the BRA had conveyed this property, previously under foreclosure, to the current owner. She wondered if there are any conditions pertaining to maintenance of the Harborwalk and the Marina in the disposition agreement. Mr. Mulligan responded in the affirmative: However, BRA has no enforcement authority. ISD has taken the property owner to the Housing Court, where it was thrown out due to contrived confusion regarding ownership of the property. Mr. Mulligan has been dealing with this property owner for over twenty years.

Mr. Kunian pointed out that the Order of Conditions issued previously requires the maintenance of the Harborwalk, and if that condition is not met the Commission could issue a violation. Mr. Kunian stated that he didn't think delaying issuance of an OOC for two weeks, so that the issues outside the scope of the proposed project could be addressed, would cause any hazardous conditions. Mr. Busch reported that the

compliance schedule for the Unilateral Administrative Order issued by DEP on July 5, 2012 (which is under appeal) requires repairs to be completed within 45 days. Mr. Kunian would like more information regarding existing OOCs and property ownership details so that the Commission could issue a notice of violation issued to the owner's attorney.

Mr. Button requested an appropriate motion to either delay issuing an OOC for the pile project or to issue an OOC with conditions that the Harborwalk also be repaired. Ms. Pollak would like to see the work begin. Mr. Kunian requested that Mr. Busch send him a copy of the old OOC from when work on the Harborwalk was approved.

Ms. Li wants to ensure that any work to the Harborwalk be done to the standard expected by the Commission, and wants to know the financial ability of the owner to complete the work in a satisfactory manner. Mr. Bourne could not speak to that issue, but noted that the owner has been pricing materials and speaking with contractors. Bourne Construction will not likely be the construction manager on this project. The owner will likely hire a local marine contractor. Mr. Kunian would like to make the OOC subject to a pre-construction meeting with the contractor, who will be responsible for the quality of the work. Mr. Lewis expressed concern that such a condition would create problems for everyone. Pre-construction interviews are a standard condition. Mr. Kunian moved to issue an Order of Conditions subject to a pre-construction meeting with the contractor, owner and Commission Staff, specifying that the contractor, in addition to the owner, is responsible for the quality of the work. Mr. Busch asked if draft condition number 30 sufficiently addresses the issue. Mr. Kunian replied that it was not sufficient, and would like it expanded. Mr. Mulligan interjected that the contractor will only do what he is financially capable of doing. Mr. Bourne noted that based on a survey by BTT one or two years ago, all the piles are not in the same condition. The application is to replace all piles, but replacement may be phased due to condition.

Ms. Li suggested a condition that the owner and/or a representative return to the commission in four weeks to provide an update on repairs to the Harborwalk.

Mr. Busch suggested that any motion should be attached to the interest of prevention of pollution, which is related to the Wetlands Protection Act, whereas safety is not.

Lois Siegelman, president of the Friends of the Charlestown Navy Yard (FCNY), noted that there were many issues with the entire Marina. She observed that there were curling and sinking finger floats (some of which drifted out into the harbor) that the owners removed and the rotting shellfish with which they were covered was returned to the harbor. "The whole place is about to drift out to sea." She likened the situation to necrotizing fasciitis: the fingers are the first to go, and the longer we wait, the worse the situation will get. She is also concerned about the houseboats (including Bed & Breakfast), the Harbor walk, the pilings, etc. Ms. Siegelman appealed to the Commission to bring Mr. Oliner to a hearing.

Mr. Kunian suggested Ms. Siegelman bring her complaints to ISD. Mr. Busch noted that ISD may not have jurisdiction in this area, and suggested that Coast Guard may be the proper agency. Mr. Mulligan has tried to have both ISD and the Coast Guard issue violations. The City does not have a clear way to address live-aboards. Ms. Pollak suggested that the Harbormaster be notified if raw sewage is being discharged into the harbor.

Paul Sullivan of the Charlestown Waterfront Coalition addressed the relationship between piers 6 and 8 (same owner). Mr. Mulligan explained that pier 6 is a bottom anchored, not pile supported, marina. The Commission maintained that pier 6 is a separate issue. Mr. Kunian asked if the Commission has any jurisdiction over the live aboards. Mr. Busch replied that the Commission only has jurisdiction over activities that affect resources areas.

Debra Lee Stevens of FCNY articulated that contractors are required by law to do what they say they are going to do. She is concerned for public safety on the Harborwalk. She wants the Commission to force the owner to make the necessary repairs.

[Barbara Branson] requested clarification regarding the motion. She also noted that it is very difficult to hear in the public hearing room, which has frustrated her on several occasions.

Mr. Busch indicated that he was in possession of a letter dated August 7th from the Charlestown Neighborhood Coordinator in the Mayor's office of Neighborhood Services requesting the Commission to issue a continuance on the work. Mr. Busch also summarized a letter from FCNY, which outlines concerns with the dilapidated condition of the Marina.

- **Motion made by V. Li and seconded by T. Pollak to issue an Order of Conditions with the conditions that the applicant return to the Commission on September 19, 2012 to provide an update on the maintenance of the Harborwalk and other waterside facilities in the interest of prevention of pollution. (5/0/0, 6:45pm)**

6:45 PM

Update from the Massachusetts Department of Transportation on Order of Conditions DEP File No. 006-0647, issued for the construction of a water transportation docking facility adjacent to 500 Atlantic Avenue and Atlantic Wharf, Boston, Fort Point Channel. Continued from the July 11, 2012 Public Hearing

Representatives: Rick McCullough, Director of Environmental Engineering, District 6, MassDOT:

Ron Killian, DOT, listed individuals representing organizations on abutting properties who met to discuss their water transportation needs. MassDOT is looking to support a full range of transportation modes in the Fort Point Channel. Process will take several more months, and there is still no certainty regarding the proposed docking facility.

Ms. Li expressed her extreme disappointment in the lack of progress on the issue, particularly since it is a required mitigation issue. She was expecting good news from the applicant and was exasperated at the report. Any time in the future that MassDOT comes before the Commission she expects the Secretary and his number two to be present. Mr. Kunian was not in agreement because it is not a realistic expectation.

Ms. Li asserted that the property owners need this terminal to be ADA compliant. Mr. Kunian pointed out that bringing the facility into ADA compliance is different from bringing ferry service to this location. Ms. Li noted that privately owned ferries are already servicing this location, and the adjacent property owners were counting on MassDOT to build a compliant docking facility. Mr. Kunian suggests sending a letter to the Secretary of the DOT expressing the Commission's disappointment in not following through with the mitigation process, noting that it builds lack of confidence in the Department, which may affect other projects when they come before the Commission in the future. Ms. Pollak confirmed that the project was part of both Federal and State approvals and suggested that a letter be sent to the permitting agencies stating that the Commission anticipates that they will be fulfilling this obligation. [Multiple discussions regarding proper parties to send & receive letters.] Ms. Li wants to only work with higher ranking individuals. Ms. Pollak confirmed with the applicant that there could be a legislative solution to this problem. Ms. Li expressed her frustration about the length of the process (10 years) and the lack of forthcoming information.

Mr. Button requested that Chris draft the appropriate letters. He responded that since he now officially works for the BRA, he can't guarantee that he would be able to accomplish this. He also noted that letters addressing all of these issues have previously been sent. He asked the Commission for more specifics.

Ms. Pollak offered two points: 1) Federal & state regulatory agencies who received permits for this project stating this is an outstanding condition under the conditions of their Chapter 91 specific to the Central Artery Project, and the Commission wants to see the facility built. 2) The Secretary needs to send a senior official to the Commission in three months to report on a plan to accommodate the facility. [Discussion]

- **A motion was made and seconded to adjourn the meeting (7:31pm).**

Respectfully submitted,

Stephanie Krueel
Executive Secretary