

Approved 5/1/2013

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

April 4, 2012

Commissioners Present: Charles Button- Chairman, John Lewis, Antonia Pollak, Jeanne McHallam, Vivien Li

Commissioners Not Present: Stephen Kunian, John Sullivan

Staff Present: Chris Busch, Executive Director

6:05 PM

Request to amend Order of Conditions DEP File No. 006-1244 from Boston Boat Basin LLC, to replace existing floats and remove and install existing and new piles at 87 Commercial Wharf, North End, Boston Inner Harbor (Land Under Ocean, Fish Run). *Continued from the March 7, 2012 Public Hearing*

Representatives: Charles Lagasse, Boston Boat Basin, LLC;

C. Busch noted that this matter was continued due to issues related to a proposed Harborwalk on the south side of Commercial Wharf. A meeting with DEP waterways was requested by letter. Mr. Busch spoke with Dan Lynch, who reported that the letter is being taken under advisement. Mr. Busch also sent a letter to and left a voicemail for Doug Freeman, the person responsible for building the Harborwalk at this site, to apprise him of the meeting and an on-site visit.

A. Pollak referred to the site visit, and noted that seeing the location of and connections to the Harborwalk was helpful. She does not understand why the cantilevered option cannot be implemented. Mr. Lagasse replied that it cannot be done because the Condo Association doesn't own the land.

V. Li referenced an agreement that Mr. Lagasse discovered during the process of due diligence that covered the Harborwalk location. He claims the agreement was never signed. Ms. Li noted that Mr. Lagasse does not have to build or maintain the Harborwalk, just allow for it. She suggested they wait for Jaime Fay to weigh in. For the record, Fort Point Associates is a dues paying member of Ms. Li's employer, The Boston Harbor Association.

Mr. Fay believes it is incorrect to say that there is a requirement that the Harborwalk be located on Boston Yacht Haven's property. There is no easement on this property's title.

Ms. Li asked the proponent to explain the situation with Mr. Freeman. There is a requirement for Mr. Freeman's two development entities to provide money, to secure permits, and to actually construct the Harborwalk. This includes securing agreements with the Commercial Wharf Condo Association, Boston Yacht Haven, and Joe's American Bar and Grill. The latter two agreements were never secured.

Ms. Li conveyed that this is the opportunity to get those agreements. She explained that whenever there is work on a property through which the proposed Harborwalk runs, the Commission conditions the project to include the Harborwalk.

Mr. Fay insisted that the DEP is the appropriate agency to deal with issues of public access because they have the authority to require it, and the Harborwalk plan was originated by that agency. Ongoing discussions with DEP could result in a resolution to this issue.

Mr. Busch spoke with Ben Lynch earlier this week, who affirmed that these and other issues related to Commercial Wharf were being discussed at higher levels of the agency. No timeframe for decision making was indicated.

Mr. Fay asked that the Commission recognize DEP's important role in this situation and their ability to resolve it.

Joe Cullen, a resident of Commercial Wharf, thanked the Commission for visiting the site. Previous owners of Commercial Wharf would not permit the driving of piles in the water on the south side of the property to support a Harborwalk. He asked Mr. Lagasse if he would allow piles to be driven on his property to support the Harborwalk. Although Commercial Wharf can live with an 8 foot Harborwalk, 12 feet would be preferable. He wants to know if Mr. Lagasse will cooperate or not.

Cheryl Delgreco, a resident of Commercial Wharf, claimed that Jamie Fay brokered an agreement in 2006 which included a signed contract with Seacoast Construction and Doug Freeman to build the Harborwalk.

Mr. Cullen is familiar with the original 1997 Boston Zoning Board of Appeals licensing of the west end of Commercial Wharf. He read a portion of the license regarding publicly accessible slips. He believes the wharf is intended to be publicly accessible and Mr. Lagasse's plan prevents that. Ms. Li wondered if there was any regulation that supersedes the ZBA decision. Mr. Cullen believes that public use of the slips on Mr. Lagasse's property must be maintained. He believes the limitation of 120 feet on the slip length was meant to discourage mega yachts from utilizing the wharf, yet Mr. Lagasse is trying to encourage such use to make more money. The change to allow 300 foot slips on the end of Commercial Wharf will diminish public access and block water views.

Ms. Pollak noted that the meeting with DEP is intended to clarify the obligations of the property owner with regard to state permits. Until these issues are clarified, the Commission cannot really respond to Mr. Cullen's question.

Mr. Kunian requested a copy of the ZBA decision, and wants to ensure that Mr. Lagasse's activities comply with it.

The proponent reiterated that he is only seeking permission to reconfigure floats at the end of the pier, not an increase in the number of floats.

Mr. Kunian asked if any money for the Harborwalk has been placed in escrow. The proponent is not aware of such an account.

Mr. Fay noted that DEP has already weighed in on the float reconfiguration proposal and the Chapter 91 license modification has been granted. Ms. Li asked if DEP was aware of the ZBA decision.

Mr. Fay confirmed that DEP did not require a Harborwalk as part of their approval. The previous decision requiring a Harborwalk is not related in any way to the float reconfiguration.

Ms. Li noted that the Harborwalk is in place due to this body's consistency in requiring easements and construction.

Mr. Lagasse has only been involved with this property for two years. He noted that in that time Mr. Freeman converted 11 condo units without a Chapter 91 license permitting it. Someone has benefitted economically from these conversions, which were approved by the Condominium Association. A total of 32 units have been converted in this way. Mr. Lagasse doesn't understand why he is obliged to provide land for an amenity that should have been provided by an entity that is engaging in activities without proper licensing. He has not benefitted from the continued privatization of the Wharf, and only wants to reconfigure the floats for his licensed marina. He also noted that another entity received a permit from the Commission in exchange for building a Harborwalk on the land, not on the water.

Mr. Kunian interjected that provision of the Harborwalk has minimal impact on Mr. Lagasse's property and business. Mr. Button noted that that is an opinion rather than a fact, and Mr. Lagasse agreed. He reiterated that those who have benefited from privatization of the waterfront are looking to him to give them something. Mr. Kunian responded that the Commission is looking for the Harborwalk, not the Commercial Wharf Condo Association.

Mr. Cullen clarified that the conversion was not approved by the Condo Association, which was not in any way involved, nor was it required to be.

Mr. Kunian exclaimed that this is irrelevant. What is relevant to the Commission is what is in the best interest of the public. He noted that the Commission has separate jurisdiction from DEP, and does not know if Ben Lynch has seen the ZBA decision. Although it is unfortunate that Mr. Lagasse is caught in the middle, and that it is not his fault, Mr. Kunian is only concerned about the benefit to the public by having a Harborwalk. He suggested continuing the hearing until after the meeting with Mr. Lynch is held.

Dick Mulligan, a slip owner at Boston Yacht Haven for the past 10 years, asserted that if a facility of public accommodation could be converted to a facility of private tenancy, mitigation in the form of creation of a Harborwalk should not fall to a third party. If the Commercial Wharf Condo Association's desire for public access is sincere, a Harborwalk could be built around the entire perimeter of the pier by moving the parking. Boston Back Bay Restaurant Group spent \$500K in legal fees fighting the Condo Association, which is continually trying to privatize the wharf. It seems like the Commission is coming down pretty hard on Mr. Lagasse who is just trying to do the right thing by improving a legitimate water dependent use.

Mr. Kunian said that he has never cared for the manner in which Commercial Wharf has dealt with these issues. He believes that installation of the Harborwalk at Boston Yacht Haven would increase accessibility and security. He reiterated that he does not see the negative impact that it would have on Mr. Lagasse.

Mr. Cullen noted that Commercial Wharf has been directed by the Court to provide 215 rights to park on a parking lot with only 150 physical spaces. One third of the management time on Commercial Wharf is spent managing the parking lot. Mr. Kunian wondered how Commercial Wharf could be made to give up parking spaces.

Mr. Mulligan reiterated that Commercial Wharf is insincere in their claim that they want the public out on the Wharf and their refusal to install the Harborwalk is part of their long-time effort to prevent a marina from thriving at this location.

Mr. Lagasse noted that parking is not a permitted use under a Chapter 91 license. DEP does not allow private parking on filled tidelands. They will make the decision if the boardwalk is on land or cantilevered.

Mr. Button asked what the course of action should be at this point.

Ms. Delgreco clarified that individual unit owners are not involved in or in support of Mr. Freeman's activities. There is one area of parking under review in the DEP RDA process that is unrelated to the location of the Harborwalk.

Mr. Fay has also submitted an RDA to DEP concerning the 32 units converted to facilities of private tenancy.

Mr. Button affirmed that this is the right thing to do to get to the right answer.

Ms. Pollak reiterated that the issue for the Commission is that the mitigation that is being provided is the erection of a Harborwalk, and the question is how it is going to be paid for and where it is going to go. As evidenced by the activities of Joe's Bar and Grill, the Harborwalk was intended to be erected at the subject property, yet Mr. Lagasse claims he was not a party to that decision.

Ms. Li, who is not a lawyer, does not understand the role played by the ZBA decision. She requested a meeting with the City's corporation counsel for clarification. Mr. Kunian explained that whatever is being done now, that is, the Commission's decision, needs to be consistent with ZBA's decision. Mr. Kunian strongly recommends that the applicant review ZBA's decision and ensure compliance.

Mr. Fay offered to defer for another month.

Mr. Kunian suggested approving the amended Order of Conditions subject to DEP's decision.

- **Motion made by S. Kunian and seconded by A. Pollak to continue this matter for one month to May 2, 2012 (5/0/0 6:50 PM)**
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6:50 PM

Notice of Intent for **DEP File No. 006-1301** from the Massachusetts Port Authority for drainage improvements as part of the rehabilitation of Runway 15R-33L and a portion of Taxiway C, involving replacement of deteriorated asphalt pavement, installation of trench drains and drainage pads at catch basin locations, Logan International Airport, East Boston (Land Subject to Coastal Storm Flowage, 100-foot Buffer Zone to Coastal Bank).

Representatives: Jim Stolecki, Massport

J. Stolecki described the project, including lighting improvements. 110 linear feet will be trenched in the Buffer Zone to accommodate a perforated drain and crushed stone to be connected to catch basins.

C. Button asked if the trench was going to be infiltrating with the catch basins intended for overflow. Mr. Stolecki confirmed that they will be connected to the basin, but there will be some infiltration. There will be no increase in paved surfaces. Mr. Button asked the proponent to provide stamped drawings to the staff, and recommended that any filter fabric be installed starting in the middle and overlap at the top to prevent lateral movement and settling.

J. Lewis asked if this was near the deicing area. Mr. Stolecki replied that there is a grass area in between the runways and the trench/catch basin. The planes are deiced at the gates, so very little deicer from the aircraft would impact the drainage on the airfield. Some of the deicing materials applied to the runways does run off during heavy rain. Logan has a very extensive stormwater sampling program, which analyzes deicing substance. Work will be done in mid-July. Mr. Stolecki and the project manager have both reviewed the conditions and do not have comments.

Mr. Lewis asked about the no-wake regulations. Mr. Stolecki reported that the commuter boats are some of the worst offenders. Signage on the lighting pier poses some maintenance challenges.

- **Motion made by J. Lewis and seconded by A. Pollak to issue the Order of Conditions (5/0/0 7:00 PM)**
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6:30 PM

Notice of Intent for **DEP File No. 006-1300** from Boston Harbor Industrial Development LLC for an environmental mitigation project involving the removal of derelict barges and timber debris from intertidal and subtidal areas off of Condor Street, East Boston, Boston Inner Harbor (Land Under Ocean, Coastal Beach).

Representatives: Les Smith, Epsilon Associates; Brendan Campbell, Jay Cashman Associates; Roy Okurowski, Coastal Engineering Co.

C. Busch explained that this project is mitigation for impacts associated with a previously permitted project in the Reserved Channel along Pappas Way involving rip rap stone supports. This mitigation was reviewed and approved by the Army Corp of Engineers as well as the Division of Marine Fisheries. Work will be occurring on the Commission-held Condor Street Overlook Urban Wild, which is all Land Under Ocean and land subject to inundation. The mitigation ratio is 1:1.

The proponent described the East Boston project location and staging plans. A barge-based excavator will pick the debris off the Harbor floor, move it to the barge, bring it to the Nay Street location and move it by truck to an approved disposal facility.

J. Lewis asked if any timber sawing would take place on site. The timbers will be tested for hazardous materials, but will not be cut. Mr. Lewis noted that 15 years ago the Commission approved the exact same project on the exact same site, but it was never completed.

A. Pollak confirmed that the proponent has read the Order of Conditions. The proponent asked that condition #39 be changed to reflect the proper access tide. Mr. Busch will provide a sample MOU. The proponent's water quality certification has been issued. Commission approval, Chapter 91 issuance, and CZM approval are the only remaining approvals needed.

- **Motion made by A. Pollak and seconded by J. McHallam to issue the Order of Conditions (5/0/0 7:10 PM)**

7:10 PM

Request for Determination of Applicability from Boston Seaport Boat Charters for the temporary placement of spudded steel floats and wooden pontoon floats for the berthing of vessels, at Border Street, East Boston, Boston Inner Harbor.

Representatives: Capt. Alan Circeo & Capt. John Circeo, Boston Seaport Charters

Mr. Busch described the situation as a quasi-permanent structure. The only impact on resource areas is where the spud piles interact with Land Under Ocean. He asked the proponent for an update on working with the property owners to locate the facility.

The proponent explained that the facility is currently located at the Bank of America Pavilion and has been since 1993. The target location has a Chapter 91 license and welcomes the activity. The contractor will move all existing structures to the new location.

A. Pollak asked for an explanation as to why this facility is temporary. Mr. Busch replied that since spuds are not permanent it is a mobile facility. The lease with Mr. Lombardi, the property owner, is being developed. The site contains a section of Harborwalk.

J. Lewis noted that the proposed marina use has been sought after in this general location for a long time.

Mr. Button clarified that "temporary" means that the facility is mobile, but it is in fact a long-term installation.

Ms. Pollak asked why there isn't a more permanent solution. The proponent explained that a permanent structure is cost prohibitive and does not allow for relocation when necessary. He has been in business since 1976 and occasionally needs to move his business when an area changes and is no longer suitable (or welcoming). Ms. Pollak supports the proposal but would like to change the wording of the DOA from "temporary" to "movable" to reflect the more permanent nature of the operation.

The proponent has read the conditions and has no comments.

- **Motion made by A. Pollak and seconded by J. Lewis to issue the Conditional Negative Determination of Applicability as amended (5/0/0 7:15 PM)**

7:15 PM

Enforcement Order issued to Albert J. Todesca Jr. for the filling and alteration of wetland resource areas and associated 100-foot Buffer Zone without a valid Order of Conditions, Willet Street, West Roxbury.

Continued from the February 15, 2012 Public Hearing

Representatives: Albert J. Todesca Jr.

Mr. Busch met with Mr. Todesca at the property on April 3, 2012 to assess progress. Significant improvements have been made, including the removal of most of the fill and construction debris and re-grading. Only minor work remains, and it can be taken care of in a matter of days to one week. The property looks better than it has in years. The property is being prepared for the development of houses, and it will be transferred. A. Todesca detailed the remaining work. Mr. Busch will conduct a final site inspection in the near future and report back to the Commission. There is no formal process for the closure of an Enforcement Order. Typically Mr. Busch drafts a letter stating that work has been completed and the property is in a stable, compliant condition. He will provide an update to the Commission.

- **Motion made by A. Pollak and seconded by V. Li to request that staff provide an update on the status of the property subject to the Enforcement Order (5/0/0 7:25 PM)**
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- **Motion made by A. Pollak and seconded by everyone to adjourn the meeting (5/0/0 7:25 PM)**

Respectfully submitted,

Stephanie Krnel

Executive Secretary