

APPROVED May 15, 2013

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

May 1, 2013

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

Commissioners Not Present: Jeanne McHallam

Staff Present: Stephanie Krueel, Executive Secretary

6:05 PM Local Wetlands Ordinance (LWO) Presentation, Brian Swett, City of Boston Chief of Environmental & Energy Services and Carl Spector, Executive Director, Air Pollution Control Commission.

B. Swett described why Boston needs a Local Wetlands Ordinance. He discussed sea level rise and the Mayor's desire to address the impacts of climate change on the relationship between the natural and built environment. He noted that today's astronomical high tides already inundate Long Wharf and Central Wharf, demonstrating that climate change already affects Boston.

S. Krueel reviewed the resource areas, values and functions that are not currently protected by the Massachusetts Wetland Protection Act, and discussed some of the items that could be included in a LWO. She reviewed next steps and invited the public to comment.

V. Li asked if the process would include evaluating best practices, and if the Commission would brief City Council on the issues. Mr. Swett confirmed that best practices locally and nationally would be evaluated, and Council would be briefed when the Commission endorses the Guiding Principles for Boston's Local Wetland Ordinance.

6:30 PM Notice of Intent from the City of Boston, Property and Construction Management Department for site and drainage improvements for the Boston Fire Department Fire Alarm Headquarters Building at 59 Fenway, Fenway, Muddy River (Bordering Vegetated Wetland, Bordering Land Subject to Flooding, Riverfront Area) *Continued from April 17, 2013*

Representatives: Scott Dupree, Public Facilities Department; Simon Alexandrovich, Amman & Whitney

A. Pollak recused herself from the deliberation.

S. Dupre explained that the plans had been revised to extend the drainage swale, as per the requirements of the Boston Water & Sewer Commission. The applicant also removed fertilizing as part of the maintenance program to protect the resource area from pollution.

S. Krueel confirmed that staff had received a letter from Matt Tuttle at BWSC expressing his approval of the revised plan.

S. Kunian asked if the plan had been reviewed by the Army Corps since they are currently doing work on the Muddy River. This project is upstream of the current work. The next phase of the Army Corps' work will take drainage at the project location into account.

V. Li confirmed with J. Sullivan that BWSC is satisfied with the revised plan.

- **Motion made by J. Lewis and seconded by V. Li to issue the Order of Conditions as written (5/0/1 Pollak 6:35PM)**
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General Business

The Commission reviewed past meeting minutes.

- **Motion made by S. Kunian and seconded by A. Pollak to accept the minutes of the April 4, 2012 meeting as amended (6/0/0 6:40PM)**

- **Motion made by S. Kunian and seconded by A. Pollak to accept the minutes of the March 21, 2012 meeting as amended (6/0/0 6:43PM)**
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6:45 PM Request for Determination of Applicability from TEC Associates for confirmation of the wetland boundary along the Massachusetts Bay Commuter Railroad Right-of-Way for the Boston Line and Grand Junction I.T. for the purposes of vegetation management activities. *Continued from April 17, 2013*

Representatives: Wayne Duffett, TEC Associates; Richard Bannanov (?), (unintelligible) Extension Service

W. Duffett explained that the Massachusetts Bay Commuter Railroad took over operation at former CSX lines including the Boston Line and the Grand Junction Industrial Track (I.T.). In order to transfer the Vegetation Management Plan from CSX to MBRCR, the wetland boundaries must be confirmed by the Commission. Mr. Duffett described the locations where the VMP applies, which are crossings of the Muddy and Charles Rivers.

V. Li confirmed that the new owner would continue to comply with the Commission's requirements.

R. Bannanov explained that the spraying, setbacks, etc. is all regulated by the state. The spray materials required for use in the sensitive areas are used in the non-sensitive areas as well for ease and consistency. The areas that need to be confirmed in this RDA are no-spray zones.

A. Pollak asked if there are on-site signs to mark sensitive areas and no-spray zones. Mr. Duffett replied that there are color-coded plates on the track. He noted that the operator -not the spraying program- would change.

Ms. Li expressed that the Commission is especially sensitive to spraying issues because of Boston's high population density and potential human exposure.

Mr. Duffett replied that he is not familiar with CSX's operations, and that this RDA is only to confirm the boundaries of the wetlands.

Ms. Li asked Carl Spector, the Director of the Air Pollution Control Commission, who happened to be in the audience, if the Commission should be concerned about air pollution in this case. He indicated that there were no air pollution issues.

S. Kunian remarked that he could not find the yellow no-spray zone indicated on the map. S. Krueel pointed out the areas in question to the Commissioners. Ms. Li asked if maps at a larger scale could be provided so that the Commission could more easily see the areas in question. Mr. Duffett replied that the uniform USGS maps are the only ones available. Mr. Button clarified that the Commission was asking for additional information. Mr. Duffett maintained that he could not deviate from the regulations and provide the Commission was the information they were requesting.

Ms. Pollak informed the proponent that the Muddy River dredging project is currently underway. She suggested that he visit the Army Corps' website to coordinate with ongoing work. Mr. Duffett refused to contact the Corps because he is not required by the regulations to do so. His required notifications are through the newspaper and directly to four city departments.

- **Motion made by S. Kunian to deny the requested permit. Motion not seconded.**

Marilyn Wellons suggested, as a courtesy to the Commission, that the proponent submit the additional information.

Ms. Li expressed that she was concerned about the tone of the meeting. She explained that the Commission is trying to ask for information that would be helpful as part of the TEC's transition in taking over maintenance operations at this location.

Mr. Bannanov explained that there is so much detail and minutia in these types of applications that everyone involved statewide is unwilling to deviate from the regulations.

Mr. Kunian stated that this is unreasonable and unnecessary. The Commission is only requiring clarification of existing information, not for the regulations to be changed.

Ms. Pollak reiterated that the maps are unclear and that the Commission cannot vote on something with which they are uncomfortable.

Mr. Duffett reiterated the need to keep the process uniform, and that different documents cannot be submitted to different towns.

Ms. Pollak countered that yes, the applicant can in fact submit additional, more useful information.

Ms. Li remarked that this process should have been straightforward, and noted that it was not a good start to a relationship.

Ms. Pollak suggested that a motion be made to continue the hearing.

Mr. Kunian suggested that Mr. Duffett talk to his employer about submitting the requested documents.

Mr. Duffett remarked that these are the same maps the Conservation Commission has approved in the past under a different operator. Mr. Bannov agreed that these maps had been approved since the 1980's. He asked the Commission if they could just enlarge the maps on their own copier.

Ms. Li pointed out that there is recently additional attention from the public on the Muddy River issues; therefore the Commission needs more specific information for its public files in the case that a member of the public requests such information.

- **Motion made by A. Pollak and seconded by V. Li to continue this item to the May 15, 2013 meeting to allow the applicant to submit the requested information. (6/0/0 7:15PM)**

7:00 PM Notice of Intent for **DEP File No. 006-1341** from the Boston Children's Museum for Construction of a Pile Supported Pulpit and Floating Dock at 308 Congress Street, Fort Point Channel (Land Under Ocean) *Continued from April 17, 2013*

Representatives: Marisa Lava & Michele Rankin, Boston Children's Museum; Andrew Nilson, Childs Engineering Corp.

S. Kunian recused himself from the deliberation.

V. Li stated that the Boston Children's Museum and Childs Engineering are dues paying member of her employer, The Boston Harbor Association.

M. Lava explained that Constitution Marina had donated the existing dock last year, and the system, which includes float guides, does not support their desired programming, which includes site seeing cruises, due to the fluctuating water level. The new system would utilize pile-supported floats. Ms. Lava requested a continuance until BCM solidifies a partnership with an operator, which involves overcoming the challenges of the bridge operations. To fulfill their Chapter 91 requirements, the Museum will rent a dock for this season.

- **Motion made by V. Li and seconded by A. Pollak to continue this item to the June 5, 2013 meeting at the proponent's request (5/0/1 Kunian 7:18PM)**

7:15 PM Notice of Intent for **DEP File No. 006-1343** from Boston Gas Company d/b/a National Grid for Parking Lot Improvements at the Commercial Point Facility, 220 Victory Road, Dorchester, Mouth of the Neponset River (Coastal Beaches, Coastal Banks, LSCSF) *Continued from April 17, 2013*

Representatives: Andreas Kendall, Mason & Associates; Bill Maher, Nitsch Engineering

V. Li stated that National Grid and Nitsch Engineering are dues paying member of her employer, The Boston Harbor Association.

A. Kendall described the project. National Grid is planning to pave an existing gravel employee parking lot and add a drainage system consisting of a sediment forebay and bioretention basin. The parking lot footprint will remain the same, however the drainage system will impact the Coastal Bank and Coastal Beach.

A. Pollak asked if the number of parking spaces would increase. B. Maher stated that it would just make the parking lot safer and more organized, and not increase the number of spaces. In fact, it could decrease the number of vehicles since some areas would no longer be used for parking.

Ms. Li asked how many employees use the lot, and noted that it is in an Areas of Critical Environmental Concern (ACEC); it is very bare; it does not look like Sea Level Rise (SLR) was addressed; and does not appear to be environmentally sustainable.

C. Button noted that the post-construction maintenance schedule looks good. He noted that the amount of stormwater would increase, and the project would be encroaching further on wetland areas to install the forebay. Permitting encroachment in an ACEC is very unusual. Also, stormwater attenuation is not necessary in this location as the runoff goes directly into the ocean.

Ms. Kendall reiterated that snow and gravel is pushed to the edges of the lot in the winter, and this project was an attempt to end that practice. The quality of the land beyond the fence is very poor. The reason of the encroachment is to allow a drainage system of the size needed to address water quality.

Mr. Maher noted that the system is about 15 feet wide.

Ms. Pollak referred to figure 2 of the submission, and noted that the project seemed to be adding a significant number of parking spaces. There are 50 spaces in the new configuration.

Ms. Kendall replied that the footprint is not increasing, but the increased efficiency due to striping will allow an increase in parking. The lot will serve the needs of the existing employees.

A. Kunian suggested that the project be redesigned.

Mr. Button suggested that in lieu of a swale outside of the parking lot footprint, you could create a basin within the footprint covered by a grate for parking.

J. Sullivan asked S. Krueel what the regulations are regarding work in ACECs. She agreed to check the wording of the regulations. Mr. Sullivan pointed out that this project would prevent the public from ever using the boat ramp.

Ms. Kendall explained that the ACEC goal is to enhance water quality, which this project will do.

Ms. Li noted that there are no benefits to the public, and this project seems to be going in the wrong direction.

Mr. Button asked the proponent if she would consider looking at alternatives, such as moving the swale, changing the pitch of the lot, installing a grate system, etc.

Ms. Kendall agreed to look at alternatives.

Mr. Sullivan asked Mr. Maher if the plans utilized the Boston Base. He wondered what would happen to the bioretention basin during a rain storm at high tide. The outlet is at 9'3", and the area experiences 9' high tides all the time. Mr. Maher noted that the 100 year flood elevation is 11'.

The proponent agreed to a continuation.

- **Motion made by S. Kunian and seconded by V. Li to continue this item to the May 15, 2013 meeting to allow the applicant to revise the project plans. (6/0/0 7:40PM)**

7:30 PM Request for Determination of Applicability from The Fallon Company for Temporary Construction Operations within the buffer zone on Parcel C in Fan Pier, 22 Liberty Drive, South Boston Seaport District, Boston Harbor

Representatives: John Schmid, Nitsch Engineering; Michael Fallon, The Fallon Company

V. Li stated that The Fallon Company and Nitsch Engineering are dues paying member of her employer, The Boston Harbor Association.

J. Schmid described the project. Staging for construction of a new 14-story condominium building would occur in the buffer zone.

Ms. Li inquired about the construction period and length of time the buffer zone would be used for storage. She also asked the timing for the planned park to come on line.

The 24 month construction period is planned to begin July 1, 2013. The Fallon Company will honor its commitment regarding park timing. Park plans are currently being reviewed by the BRA.

J. Sullivan asked what would be stored at the site. It has not yet been determined. The proponent will provide final erosion control and construction staging plans to staff, and will honor all conditions of the OOC.

Ms. Li asked about the schedule for new office buildings coming online. It is possible that two buildings could be under construction at the same time. She confirmed with Mr. Schmid that the Harborwalk would be open and accessible at all times, and the proponent would notify the Commission of any unexpected temporary closures.

Mr. Sullivan asked if a slurry wall would be constructed and if so if it would be accessed from the buffer area. The proponent confirmed that a sheet wall would be used rather than a slurry wall.

Ms. Li asked if other locations had been considered for staging. The proponent was not able to identify another suitable location.

M. Fallon noted that the NPDES application would be filed with the BWSC in mid-June.

The following amendments were proposed:

- All equipment and unconsolidated materials must be removed from the buffer area in advance of significant rainfall that will exceed the volume of a 2-year storm event.
- The Applicant and contractor shall maintain unobstructed waterside public access along the Harborwalk at the subject site for the duration of the construction period. If unforeseen construction issues require temporary closure of the Harborwalk, the Applicant shall inform the Commission prior to closing the Harborwalk and shall indicate and minimize the expected closure period.
 - **Motion made by V. Li and seconded by A. Pollak to issue a Negative Determination of Applicability with conditions as amended. (6/0/0 7:50PM)**

7:45 PM Updates and General Business

- Update on **DEP File No. 006-0738** Miller's River monitoring- Ron Killian
Representatives: Ron Killian, MassDOT; Mel Higgins, Weston & Sampson; Karl Haglund, Mass DCR

R. Killian described the multi-year wetland monitoring project, completed in 2011. The requirements for restoration were exceeded. An addition 600 square feet of vegetation under the loop ramps failed to become established. Vegetation was planted twice, both with poor results due to the lack of precipitation and low levels of sunlight. For the second planting, plugs of a variety of wet- and dry-tolerant species were used. Due to the fluctuations in water level, the first two rows of plants failed. Row 3 had a 30-50% success rate; row 4 had a 10-50% success rate, and rows 5 and 6 failed. The proponent expects the existing vegetation to remain and spread, and pioneer species will establish themselves.

A. Pollak asked what plan B is. Mr. Killian responded that this was actually plan C- nothing else can be done, and we have to let nature take its course. The problems with homeless living under the cantilevered parkway should lessen as park use increases. The Spring clean-up has been scheduled, the silt fence will be removed, and maintenance will be turned over to DCR. MassDOT no longer has an obligation to continue monitoring. The 5 year obligation was completed in 2011.

V. Li requested an update on the Atlantic Avenue Water Transportation Facility. Mr. Killian replied that revised plans would be complete within the next couple of weeks, and an abutters meeting would be held in May or June. The bid package will be sent out in June/July. The facility will be installed in 2014.

- COC for **DEP File No. 006-1310** Southeast Expressway Vegetation Maintenance
 - R. Killan described the violation and mitigation response. Debris pickup is scheduled for May/June with mowing in May. The cleanup cannot be done sooner because scheduling it at the same time as the cutting saves time and money by requiring one crew and a one-time lane closure with police detail. The goal is to clean up debris two times per year.
 - **Motion made by V. Li and seconded by S. Kunian to issue the Certificate of Compliance with the condition that debris cleanup activities occur more frequently to avoid polluting adjacent waterways. (6/0/0 8:15PM)**
 - Emergency Certification- Fan Pier Marina, Replacement of damaged temporary piles
 - S. Krueel issued an EC on April 24, 2013.
 - M. Fallon reported that temporary piles would be driven once the docks are fixed. The final marina configuration will be more involved. An NOI will be submitted following the milestone plan. The new Marina will be constructed along with Building D.
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- **Motion made by V. Li and seconded by A. Pollak to adjourn (6/0/0 8:20PM)**

Respectfully submitted,

Stephanie Krueel

Executive Secretary