

APPROVED 11/7/12

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

July 11, 2012

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

Commissioners Not Present: Jeanne McHallam

Staff Present: Chris Busch, Volunteer Executive Secretary

6:00 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 June 6, 2012 Public Hearing*

Owner: Charles Lagasse, Boston Boat Basin LLC

Representative: Jamie Fay, Fort Point Associates

Documents: Documents and photos submitted with amendment application

Ms. Li noted that Fort Point Associates is a dues paying member of her employer The Boston Harbor Association.

Continued to allow for meetings at the DEP Waterways Office. Mr. Busch was not aware of the results of these meetings, which were attended by V. Li and S. Kunian. Ms. Li described to the Deputy Commissioner of DEP other projects near and on Commercial Wharf where public access had been required by the Conservation Commission.

Mr. Fay has been in discussions with DEP regarding alternatives, but no final plan has been developed.

Mr. Button suggested allowing public access between shoreline and car parking. The applicant reported that old and sunken floats had been cleaned up.

Ms. Li requested information regarding a collision involving a mechanical failure of a Boston Best Cruises Ferry at Commercial Wharf. The boat has been removed for repair and the Coast Guard is ensuring that the company is operating in a safe manner. Ms. Li requested a Coast Guard report for this incident.

Ms. Li requested a continuance. The applicant believed that it would take about two years for Requests for Determination for parking & access and privatization of wharf space without a license. Mr. Kunian was under a different impression. Ms. Li asserted that it is unusual for people at the top levels of DEP to be involved in this type of project. Mr. Fay offered to come back if necessary, but explained that if the Commission was not going to approve the project, the applicant needed to know in order to be able to make alternate plans to run his business. The request was simply to reconfigure finger floats, but the Harborwalk issue has caused a very extended review period.

Ms. Pollak articulated that a deadline of 60 days for amicable resolution should be set. She expressed her concern about access to Boston Harbor.

Attendee expressed dismay about preventing applicant from improving the site and concern about requiring a wooden cantilevered walkway in light of expected sea level rise and increased storm surges. He explained that Commercial Wharf Condo Association could accommodate the Harborwalk on land if it so chose. He doesn't understand why this specific project consisting of marina improvements is being held hostage because the condo is not providing the requested access.

- **Motion made by S. Kunian and seconded by T. Pollak to continue the application to the September 19, 2012 public hearing (5/0/0).**

6:15 PM

Notice of Intent from United States Navy for in-water and landside borings to advance engineering design for repairs to the existing berth and pier for the U.S.S. Constitution, at 93 Chelsea Street, Charlestown Navy Yard, Boston Inner Harbor (Land Under Ocean, Land Subject to Coastal Storm Flowage). *Continued from the June 20, 2012 Public Hearing Due to Lack of Quorum*

Mr. Busch presented a letter from the proponent dated July 2, 2010 citing that the continuance would create a hardship and requested administrative approval for limited borings only, which was granted on June 25, 2012. An NOI for the full work will be filed in the coming months.

Ms. Li stated that The National Park Service and CDR are dues paying members of her employer, The Boston Harbor Association.

6:30 PM

Notice of Intent **DEP File No. 006-1313** from the Boston Parks and Recreation Department for improvements to the Mother's Rest Playground, involving resurfacing, replacement of play structures and fencing, at 35 The Fenway, Muddy River (Bordering Land Subject to Flooding, 100-foot Buffer Zone). *Continued from the June 20, 2012 Public Hearing Due to Lack of Quorum*

Owner: Boston Parks and Recreation Department

Representative: Margaret Dyson & Lauren Bryant, BPRD; Denis Chagnon, CBA Landscape Architects, LLC

Documents: Photos and plans submitted with original NOI

T. Pollak recused herself from this deliberation as well as the next two agenda items.

The proponent described the existing conditions and proposed project. Most of the existing and proposed playground is in the floodplain. Building up of a portion of the land will result in a negligible (260 cf) loss of water storage. The proponent read and understands the proposed Order of Conditions and had no questions.

Ms. Li inquired about the schedule. The project will go to bid in September, and construction is to begin in the Fall.

- **Motion made by J. Lewis and seconded by S. Kunian to issue the Order of Conditions as written (4/0/2).**

6:45 PM

Notice of Intent **DEP File No. 006-1307** from the Boston Parks and Recreation Department for the reconstruction of approximately 250 linear feet of boardwalk adjacent to Wards Pond, Perkins Street, Jamaica Plain (Bordering Vegetated Wetland, 100-foot Buffer Zone)

Owner: Boston Parks and Recreation Department

Representative: Margaret Dyson & Lauren Bryant, BPRD; Dwight Dunk, CDM Smith; Denis Chagnon, CBA Landscape Architects

Documents: Photos and plans submitted with original NOI

C. Button recused himself from the deliberations for this and the following agenda items.

Ms. Li noted that CDM Smith is a dues paying member of her employer The Boston Harbor Association.

- **Motion made by J. Lewis and seconded by S. Kunian to appoint V. Li as Acting Chair for both the 6:45 and 7:00 public hearings.**

The applicant described the project. The wetlands boundary has been reaffirmed for this project. The boardwalk currently passes through the wetland. Existing decking and structural members will be removed and replaced with recycled composite plastic lumber, with minimal cutting on site. Foundations will remain. Staging and cutting areas are identified, and materials will be carried in my hand to minimize impact to the resource. The applicant has reviewed the proposed Order of Conditions and there were no questions.

- **Motion made by S. Kunian and seconded by J. Sullivan to issue the Order of Conditions as written (4/0/2).**
-

7:00 PM

Notice of Intent **DEP File No. 006-1306** from the Emerald Necklace Conservancy for slope stabilization measures involving repairs to two areas of bank erosion at the Pine Bank Promontory, at Chestnut Street and Perkins Street, Jamaica Plain, Jamaica Pond (100-foot Buffer Zone to Inland Bank).

Owner: Boston Department of Parks and Recreation
Representative: Margaret Dyson, BPRD; Barbara J. Thissell, P.E.
Documents: Photos and plans submitted with original NOI

The applicant described existing conditions and the proposed remediation project. Native plants are specified to prevent erosion, deter foot traffic, and maintain drainage paths. Construction details involve installation of a biodegradable mat, placement of a temporary wood slat fence at the top and bottom of the slope, and establishment of a limit of work area. Construction is proposed to begin in the Fall and will last a few weeks, plus a plant establishment period.

Mr. Sullivan asked about the destination of runoff that enters the catch basin. The applicant assumes that it collects in a pipe (shown in a photograph). Mr. Sullivan expressed concern that a lot of work is being planned without certainty that the pipe is functional. Ms. Dyson noted that the same amount of runoff will be entering the catch basin (which is currently functional) after the project; however if the pipe is not functional the applicant will fix it. A discussion regarding catch basin details and erosion followed.

Mr. Busch noted that on his site visit he saw sediment and debris collected on the bottom of the slope. The applicant confirmed that its removal is part of the project. The applicant has reviewed the proposed Order of Conditions and there were no questions.

- **Motion made by S. Kunian and J. Lewis to issue the Order of Conditions as written (4/0/2).**
-

7:15 PM

Notice of Intent **DEP File No. 006-1308** from Duffield Engineering and Consulting, submitted per the requirements of an Enforcement Order issued to 479 Meridian Street LLC, to conduct marine salvage work, and install site erosion and sediment controls, site stabilization measures and stormwater drainage controls, at 479 Meridian Street, East Boston, Chelsea Creek (Land Subject to Coastal Storm Flowage, Coastal Bank, Tidal Flat, Land Under Ocean, Riverfront Area, 100-foot Buffer Zone). *Continued from the June 6, 2012 Public Hearing*

Owner: Frank Minichiello
Representative: Richard "Chip" Nysten, Attorney; Tom Duffield, Duffield Engineering
Documents: Photos and plans submitted with original NOI

(Mr. Button returned to his role as Chair)

Mr. Nysten and Mr. Duffield described existing conditions and the proposed project, which consists of cleanup and stormwater remediation only. Stormwater is to be handled in an on-site catch basin, and additional runoff on adjacent Nay Street will be accommodated with a new connection to the BWSC system. Stormwater BMPs will be utilized during construction. The stone seawall has been stabilized.

Ms. Pollak inquired as to whether the applicant had met with the surrounding community on this matter. The applicant had had conversations with neighbors prior to receiving the Enforcement Order, which prompted him to make changes to the remediation plan (adding drainage to immediate abutters). ISD had issued a violation to the new owner because the current land use is not allowed in the MER zoning district. In 2002 the previous owner had gotten approval for the preexisting non-conforming use. The applicant went before the ZBA on July 10, 2012 to address the issue and was denied without prejudice because he had failed to hold a community meeting. The applicant is on the community group's agenda for their next meeting, which is at the end of

September. The applicant plans to talk to BWSC after he meets with the community. He hopes to connect Nay Street with the existing stormwater facilities in Meridian Street.

Mr. Busch noted that he had not visited the site since the Environmental Strike Team visited in May, 2012. He probed the applicant as to the current condition of the property. The applicant reported that the marine salvage and recycling activities are still occurring. He is trying to address issues with all applicable departments. No cease and desist orders have been issued. All barges have been removed as per violations issued to the previous owner. The applicant further described the marine salvage operations, including material removal activities (trucking).

Ms. Pollak expressed concern that the community was not aware of what was in fact permitted at the site. She suggested a continuance to allow for community input and support. The proponent submitted a Salvage and Repair Protocol to the Commission. The applicant underscored the fact that there are no new activities at the site, and affirms that they will comply with the Order of Conditions.

Mr. Sullivan raised issues regarding the applicant's ability to meet city standards regarding drainage and a stormwater management plan. The applicant described current catch basin management practices, and plans to meet with BSWC to finalize plans. The applicant has reviewed the proposed Order of Conditions and there were no questions.

Mr. Busch asked about anticipated work on the seawall, since he had seen degradation between March and May 2012, and then new plans reference an access ramp in the middle of the seawall. It looks as if vessels had broken the seawall. Mr. Duffield inspected the wall and it looked as if the seawall and the hay bales and silt fence currently in place were adequate. Mr. Busch requested an engineer's report on plans for the seawall.

Ms. Li suggested that the applicant touch base with the Mayor's Department of Neighborhood Services, and the applicant replied that he had spoken to a representative a number of times to answer questions.

Mr. Kunian requested that Neighborhood Services and the community be specifically invited to the October ConCom meeting. Mr. Button replied that the required public notice and abutter notifications should be sufficient. He also noted some information missing from the NOI form.

- **Motion made by V. Li and seconded by T. Pollak to continue the hearing to the October 17th meeting (6/0/0).**

7:30 PM

Notice of Intent **DEP File No. 006-1309** from the Massachusetts Department of Transportation for the reconstruction and rehabilitation of the Longfellow Bridge, involving the replacement of the bridge deck, deck framing, and sections of spandrel columns and arch rib girders; repainting of steel structures; the cleaning and repointing of granite piers; replacement of a pedestrian bridge; landscaping improvements; and installation of stormwater management infrastructure, Storrow Drive and Route 3, Charles River (Land Under Waterways, 100-foot Buffer Zone to Inland Bank).

Owner: Massachusetts Department of Conservation and Recreation
 Representative: Michael O'Dell and Alex Myers, MassDOT; Meredith de Carbonell, Jacobs Engineering;
 Documents: Photos and plans submitted with original NOI

Ms. Li noted that DCR and Jacobs Engineering are dues paying members of her employer The Boston Harbor Association.

Mr. Busch noted that work on the bridge to date has been covered by another filing. The applicant gave an update on that work and described the current proposed project and its timeline. Construction is anticipated to begin Spring 2013 and be complete by the end of 2016. The pedestrian bridge is part of this overall project. Temporary impacts will require silt barriers and a coffer dam around a pier. Everything will be returned to its preexisting condition. About 900 square feet of resource will be impacted. The applicant has been working with the Department of Marine Fisheries and will adhere to TOY restrictions. The proposal includes upgrading the stormwater system to comply with Massachusetts stormwater regulations. Currently stormwater runoff from the bridge drains directly into the Charles River. The project addresses phosphorus removal by including a closed

drainage system on the bridge to capture & pipe surface water to a catch basin. Since infiltration is not possible on the site, the catch basin will drain to a subsurface gravel wetland, which will be landscaped in a manner suitable for parkland. Taking the first inch of runoff off the bridge will produce a 61% phosphorus removal rate. The total maximum daily load (TMDL)¹ for this location requires a 65% removal rate: There is not enough space to reach that goal in this redevelopment project due to very tight site constraints. Interpretive signs regarding the basin and bridge history will be installed. The location is currently a surface parking lot. Combined with removal of this lot, realignment of the abutting wall will change the configuration of Storrow Drive approach ramps so that a net reduction of impervious surface will be achieved. It will also create a contiguous piece of parkland that is not bordered by roads on all sides, and the opportunity to rehabilitate the pedestrian bridge, which will increase access to this parkland. Proposed landscaping will be consistent with DCR's master plan for the area. The design-build (best value) contractors selected for this project will be required to return to the Commission for approval, although no significant changes in the plans are expected.

The applicant is working with the Coast Guard to obtain permits for navigable waters, and the Army Corps of Engineers will receive notification of the project. The applicant conducted an informational meeting with the Cambridge Conservation Commission on July 9, 2012, and a formal hearing will be held on July 23, 2012. Three or four comments have been received from the public.

Mr. Kunian inquired about access under the bridge during work and air quality control during cleaning operations. Mr. Button noted that detailed plans regarding these issues are included in the NOI. The applicant described those controls.

Ms. Pollak asked about specifics of work sequencing & location. The applicant spoke to how staging would affect wetland resources, and noted that the design-build contractor would develop those scenarios. They confirmed that debris would be prevented from entering the waterway.

Ms. Li inquired about vegetation and tree removal. The applicant discussed their tree removal plan and coordination with DCR. The pedestrian bridge has been designed to avoid as many mature trees as possible. Ms. Li brought up the goal of a 3:1 ratio for tree replacement as part of the Mayor's plan to plant 100,000 trees city-wide. The applicant is working with DCR to plant trees on-site according to their plan for the Esplanade. MassDOT has a backlog of trees that have been gifted to DCR for which there is no space. Ms. Pollak feels certain that DCR, which is a partner in this effort, will plant the appropriate amount of trees somewhere.

An attendee returned the discussion to phosphorous loads and asked the applicant how it has been measured. The applicant noted that many studies identify phosphorus in runoff as the issue. Studies, models and the regulatory framework are guiding the nutrient removal plan, not direct testing.

Ms. Li asked about staffing for the project.

A Cambridge resident discussed the phosphorous problem at this location on the Charles River. He asked the applicant to shoot for a 70% reduction to take into account the engineering margin and suggested methods to achieve this. He was also concerned that the proposed catch basin is not sized properly for the amount of runoff and sediment. The representative from Jacobs Engineering described the runoff path and containment measures.

Kate Bowditch from the Charles River Watershed Association (CRWA) provided a comment letter. In summary, CRWA has been extremely involved in the project and supports the proposed stormwater management design. The organization urges the Commission to require in the OOC full compliance with TMDL requirements. She expressed uncertainty as to who is responsible for the outfall at the subject property.

The applicant had several questions/comments regarding the draft Order of Conditions. Condition #45, dictates a stormwater facility maintenance schedule; however the applicant submitted an Operations and Maintenance Plan in the NOI indicating an annual cleaning plan. Condition #48 is not applicable since snow is not plowed into the Charles (which would be a violation of the Clean Water Act), nor are materials stockpiled. The

¹ A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can accept and still meet the state's Water Quality Standards for public health and healthy ecosystems.

applicant was not able to identify to where snow was removed. Condition #49 requires oil separators in catch basins: The gravel wetland will serve as the oil separator. Mr. Sullivan noted that large spills need to be contained, but small spills could be accommodated by the planned wetland. The applicant confirmed that condition #51, regarding equipment storage, does not prevent construction vehicle staging on the bridge. Condition #54 references a 2:1 tree replacement, and the proposal is consistent with DCR and CRWA plans. The applicant requests that the landscaping plan be accepted in lieu of this condition. The Commission agreed that that seems like a reasonable request.

Mr. Busch asked that submission of a final plan set is added to the OOC. The applicant noted that the submission of staging plans will satisfy many of the conditions.

Ms. Pollak asked what sort of treatment MBTA applies on Rail Line for snow. The applicant discussed snow trains and a heated 3rd rail. No chemicals are applied.

Ms. Li summarized the public comments requesting a 65% TMDL. The requirement for the sub-basin is 64%, and the project achieves 61%. Ms. Bowditch reiterated her belief that a 64% or 65% reduction could be achieved with minor tweaks to the plan. The applicant feels that incremental improvements above the proposal are not feasible without significant plan changes. Every effort was made to comply with the TMDL and improve water quality. The applicant noted that activities involving planting of vegetation are not credited toward TMDL reductions in the regulations, and asked if the Commission would be comfortable in allowing them to use such BMPs to reach the goal. The Commission expressed comfort with that proposal. The engineer noted that for a redevelopment project Stormwater Management Standards must be met to the maximum extent practicable and must improve existing conditions, and asks that the Commission maintain that standard for this project. The Commission again requested that the applicant meet the 65% goal utilizing, perhaps, vacuum sweeping.

- **Motion made by S. Kunian and seconded by T. Pollak to issue the Order of Conditions with the following additional conditions: A final plan set must be submitted to the Commission; A goal of 65% TMDL phosphate reduction to the maximum extent possible shall be set (6/0/0).**

7:45 PM

Notice of Intent **DEP File No. 006-1310** from the Massachusetts Department of Transportation for a Vegetation Management Plan, submitted per the requirements of an Enforcement Order, for the cutting of vegetation at four locations along I-93, Southeast Expressway, from the Neponset River to Playstead Road, Dorchester (100-foot Buffer Zone). *Continued from the June 20, 2012 Public Hearing*

Owner: MassDOT

Representative: Brian [Jillian] MassDOT Environmental Services; Dave Belanger, MassDOT District 6 Highway Division; Matt Creighton and Linda Smith, BSC Group

Documents: Photos and plans submitted with original NOI

Ms. Li noted that BSC Group is a dues paying member of her employer The Boston Harbor Association.

Mr. Busch alerted the Commission to a revised copy of the VMP in their binders that addresses maintenance around culvert stormwater infrastructure (page 5 middle paragraph). Mr. Button noted that the Commission had previously requested that those doing the actual maintenance work be present at this meeting. Ms. Li noted that vegetation was removed without obtaining an Order of Conditions, and given MassDOT's awareness of the VMP she is surprised that the work was done. The proponent apologized for the misstep, and explained that he had been unfamiliar with the issues in his new role at MassDOT. Mr. [Jillian] explained that MassDOT is catching up on deferred maintenance, and the VMP has been created to address the area that was inadvertently cut, as well as three other areas in their jurisdiction (illustrated in the back of the report).

The applicant described the existing conditions and proposed project. He described how the revised VMP differed from the original VMP.

Ms. Pollak asked if there was going to be any slope cutting. The applicant confirmed that there was not. A discussion of various outfalls followed. The applicant indicated that the entire slope area should have been grass, but additional vegetation including several invasive trees had taken root and needed to be removed. The applicant has been asked by the Boston Police Department to remove the vegetation to help eliminate

homeless encampments and criminal activity. People also use the area to cut through to the beach and improved site lines are needed. Ms. Pollak encouraged the applicant to look at other ways to improve site lines besides eliminating tree coverage.

Ms. Li talked about the Mayor's Climate Action Plan and the desire to plant more trees. Any tree removal should be offset with new trees. She is also concerned with application of herbicides. Mr. Busch explained that there is an exemption for application of herbicides under 310 CMR. The Department of Agricultural Resources handles this issue. There are no conditions placed on this by the Commission. The applicant is carefully following guidelines that are consistent with the VMP.

Ms. Li suggested adding a condition that encourages replacement of removed trees. The applicant offered to provide an annual update to the Commission regarding tree planting activities. The applicant read the order of conditions and requested that in #33 the date be changed to reflect the revised VMP, and that #35 be clarified so that it is clear that the VMP applies to the four areas specified. The applicant pointed out an inconsistency between the text (which indicates 20 ft wide pavement) and the photo captions (which indicate 25 ft wide pavement).

- **Motion made by V. Li and seconded by S. Kunian to issue Order of Conditions as amended (6/0/0).**
-

8:00 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 April 18, 2012 Public Hearing*

Owner: MassDOT

Representative: Ron Killian, MassDOT

Documents: Photos and plans submitted with original NOI

Mr. Busch explained that the hearing was continued to allow for a meeting between MassDOT, abutters, BRA, DEP and others on June 19, 2012. Mr. Killian reported that all are in favor of constructing a water transportation docking facility. A series of interim meetings have been held since then. The Secretary's office has asked that

- **Motion made by V. Li and seconded by J. Lewis to continue the hearing to the August 1, 2012 meeting.**
- **Motion made by V. Li and seconded by several commissioners to adjourn the meeting (5/0/0 8:57 pm).**

Respectfully submitted,



Stephanie Kruel
Executive Secretary