

APPROVED 11/7/12

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

October 17, 2012

Commissioners Present: Stephen Kunian – Acting Chairman, Antonia Pollak, John Lewis, Vivien Li, Jeanne McHallam

Commissioners Not Present: Charles Button, John Sullivan

Staff Present: Stephanie Krueel, Executive Secretary

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- **Motion made by V. Li and seconded by T. Pollak to appoint Stephen Kunian as acting Chair in Charles Button's absence (4/0/1)**
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6:00 PM

Update on Order of Conditions for **DEP File No. 006-1311** from FPCHotel LLC issued for the construction of a six-story 135-room hotel, 66 Sleeper Street, South Boston, Fort Point Channel.

The applicant requested a continuance to allow the plan for Parcel E to first be vetted by abutters.

Jamy Madeja, attorney for The Barking Crab, relayed to the Commission that her client is aware of plan to create open space on Old Sleeper street and is working with the applicant to do so. She assured the Commission that the applicant would return if an amended OOC is needed.

- **Motion made by V. Li and seconded by T. Pollak to continue this item to the December 12, 2012 public meeting at the applicant's request (5/0/0 6:10 pm).**
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6:15 PM

Update on Order of Conditions for **DEP File No. 006-1285** from the Massachusetts Department of Conservation and Recreation issued for pier and seawall repairs and the installation of new floats, gangways and ramps at Georges Island, Boston Harbor.

The applicant requested a continuance until after a meeting is held with the BRA to be able to supply info on the Lovejoy component, including water transportation.

- **Motion made by V. Li and seconded by T. Pollak to continue this item to the November 7, 2012 public meeting at the applicant's request (5/0/0 6:15 pm).**
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6:30 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 July 11, 2012 Public Hearing*

Owner: Frank Minichiello

Representative: Richard "Chip" Nysten, Attorney

Documents: Photos and plans submitted with original NOI

Chip Nysten, the applicant's attorney, presented the project, and noted that he had requested a continuance from the July meeting in order to meet with the East Boston Civic Association (EBCA) on September 26, 2012. 479 Meridian Street has a new owner who is cleaning up the site. There is currently no drainage system.

Ms. Li asked about debris cleanup and wanted to ensure that there would be no marine debris and no navigational hazards. Mr. Nysten responded that there is a trailer on site and a log will be kept. The applicant is working with BWSC and will be submitting an application to tie into the Meridian Street storm drain within one week. The property is presently a marine salvage facility, and the specific activities were described. There is no on-site storage. The Commission asked questions about the contents and origins of the vessels.

Ms. Kruei conducted a site visit on 10/12/12 and provided photos to the Commission. She noted that affected resources would be listed on the OOC as Designated Port Area (Chelsea Creek), Riverfront Area (25 ft), Bordering Land Subject to Flooding, and 100 ft Buffer Zone to Inland Bank. Ms. Kruei indicated that this remedial stormwater project is subject to Mass DEP Stormwater Management Standards and site controls along the seawall to prevent pollution and turbidity should be addressed.

Mr. Nylen responded that he thought the NOI adequately addressed stormwater issues. He noted that the EBCA was concerned about drainage on Nay Street and was happy about the cleanup and proposed stormwater improvements.

- **Motion made by V. Li and seconded by T. Pollak to issue an Order of Conditions with the added condition that the property owner maintain on-site a daily inspection log that would be available to the Commission (5/5/0 6:50pm).**

6:45 PM

Update on Order of Conditions **DEP File No. 006-1312** from Shipyard Quarter's Marina issued for repair of existing piers, 1 Pier 8, 13th Street, Charlestown, Boston Inner Harbor. *Continued from the September 19, 2012 Public Hearing*

Owner: Martin Oliner, Trustee of Shipyard Marine Trust

Representative: Asher Herzberg

Documents: Background materials & photos submitted to the Commission by members of the public including Larry Stevens as an individual and Lois Siegelman of the Friends of the Charlestown Navy Yard.

Mr. Kunian asked about the proposed pile repairs. Mr. Herzberg explained that he is working with contractors to find out costs, timing and procedures. He found out that no additional permits were needed from DEP to complete the work in the existing OOC. He is currently soliciting quotes from contractors, but is having trouble securing workers.

Ms. Pollak drew attention to Mr. Peter Meade, Director of the Boston Redevelopment Authority, who was in attendance.

Mr. Kunian confirmed with the applicant that he in fact has responsibility for maintenance of both the Marina and the Harborwalk.

Ms. Li noted the lack of progress since the 8/15/12 hearing and wondered when work would commence. Mr. Herzberg replied that he expected work to begin in November and be complete by mid-December. He expected by next week proposals from dock manufacturers to replace docks in stages. He described the Marina as having normal operations and as being in good working order, although it might not be aesthetically pleasing. He noted that Mr. Oliner had developed a lot of the property in the area and is not a villain. He underscored that Parris Landing did not honor their contract to maintain the Harborwalk.

Mr. Kunian asserted that a year seems too long to negotiate contracts for this work. Ms. Li challenged the idea that the applicant can't find bidders: Due to the current economy, it is generally easier to engage contractors.

Ms. Pollak revisited the notion that the role of the Commission is to protect resources, and the Marina has been falling into the Harbor for a long time. She asked Mr. Herzberg if he was empowered to have the situation remedied as soon as possible, and if he could provide a schedule to do so at this hearing. Mr. Herzberg questioned the current presence of debris. Mr. Kunian affirmed the deplorable condition of the Marina. He requested that Mr. Herzberg schedule repairs to the pilings to be completed within 60-75 days, and wanted to know when the applicant would submit such a repair plan. Mr. Herzberg explained that the failing railing on the Harborwalk would be repaired within one week. An additional railing has been installed to temporarily block the sagging area. Mr. Kunian pointed out that from the pictures it looked like much more work needed to be done. He requested that the applicant return to the Commission in 60 days to provide a comprehensive report.

- **Motion made by Kunian to schedule an Enforcement Order Hearing in 60 days. Not seconded.**

Ms. Li expressed her concern about public safety and potential weather-related dangers and hoped repairs would begin sooner rather than later.

Ms. Pollak requested that the public and the BRA weigh in. Mr. Meade of the BRA asserted that the property owner was not operating in good faith and suggested that a concrete date for the schedule be determined and

that the owners should be fined every day until then. He declared that aesthetics were not the issue, but rather public safety and harbor conservation were most important. He urged action on the part of the Commission.

Mr. Kunian remarked that an Enforcement Hearing must be held before fines could be issued. Mr. Meade found it strange that the applicant would have trouble securing contractors to do the work. Ms. Pollak confirmed with Mr. Meade that the BRA has no interest in or control of the property. Ms. Li emphasized that the BRA Director's presence signified the importance of this matter, and that no sitting BRA director had ever attended a Conservation Commission hearing during her tenure. Mr. Kunian provided Mr. Herzberg with materials including photos of the property that the public had furnished to illustrate the current condition of the property.

City Councilman Salvatore Lamattina recapped the situation, including that on July 3, 2012 Mass DEP had given Mr. Oliner 45 days to correct the situation: However Mr. Oliner denied owning the property. Mr. Lamattina reiterated that there were safety hazards that needed to be repaired. He maintained that the applicant was not being a good neighbor. He urged the Commission not to give the applicant an additional 60 days to remedy the situation, and asked where the plan was that was due today. Mr. Kunian responded that he preferred to err on the side of caution for legal reasons, and would consider issuing an Enforcement Order in 30 days to Mr. Oliner both individually and as a Trustee. Ms. Li added that DEP had issued a Unilateral Administrative Order. Ms. Pollak suggested issuing an Enforcement Order in two weeks at the next hearing unless an authentic schedule is provided prior to or at that meeting.

Danielle Fitzgerald of the Mayor's Office of Neighborhood Services branded the applicant's excuses as "malarkey." She commended the Commission for addressing the issue.

Dick Mulligan of the BRA disclosed that the BRA had spent \$40,000 over two winters to remove snow from Mr. Oliner's property for the sake of public safety. In response, Mr. Kunian asked Mr. Mulligan to send a bill for BRA services to Mr. Herzberg. Mr. Mulligan noted that the applicant met with DEP on October 16, 2012. He also presented a map depicting the properties under Mr. Oliner's ownership.

Barbara Mackey requested a specific scope of services from the applicant along with a schedule.

Mr. Herzberg described the work currently being done and downplayed the public safety issue.

Doug Pope, the President of the Board of Trustees for Parris Landing discussed the issue of the condominium's supposed responsibility for maintenance of the Harborwalk from Constellation Wharf north 1,200 feet (Parris Landing is responsible for maintaining, and does maintain, the portion of the Harborwalk from the edge of the Flagship property to the driveway of the Constellation Wharf property). He explained that the original license agreement refers to a condition to maintain the northern portion of the Harborwalk, which was to be part of the purchase and sale agreement: However, during the disposition process between the Trustee of Shipyard Quarters Realty Trust (Mr. Oliner) and Carlyle CQ Boston L.P. (the developer), that condition was not agreed to by the developer. In 2008 the Parris Landing Trustees had taken on responsibilities including plowing, lighting replacement, decking replacement, and general maintenance of the northern portion of the Harborwalk (for which the board has invoices as proof of maintenance) because they thought they were obligated to do so. When Parris Landing finally received a copy of the Purchase and Sale Agreement in February 2010, they discovered the discrepancy and discontinued maintenance of the northern portion of the Harborwalk the following Autumn. Mr. Pope expressed that the Board of Trustees for Parris Landing understands the current issues and thanked the Commission for its actions.

Lois Siegelman of Friends of the Charlestown Navy Yard distributed a packet of photos to the board. She also described shells and bird excrement amassing on piles as a public health hazard.

Mary Beth Borré, a Constellation Wharf resident, urged the shortest possible timeframe to require very specific actions or Mr. Oliner would not respond.

Paul Sullivan of 104 First Ave responded to Mr. Herzberg's assertion that many people walk on the subject portion of the Harborwalk by noting the existence of even more people who would not walk there due to safety hazards.

Larry Stevens, another local resident, submitted photos of the poor conditions in order to serve as a reference for the board across time periods.

Ms. Li informed the applicant that he must have professional plans including engineers' stamps and maps to address all of the Harborwalk comprehensively. The applicant has had since August 2012 to address the issues and has yet to provide any plans.

The Commission directed staff to send to the applicant and Mr. Oliner as Trustee of Shipyard Marina Trust a registered letter containing the decision of the Commission, to be reviewed by Mr. Kunian and Mr. Button.

Ms. Kruel, Mr. Button and Chris Busch of the BRA conducted a site visit on 10/2/12 and photos were provided to the Commission.

- **Motion made by T. Pollak and seconded by V. Li to schedule an Enforcement Order hearing on November 7, 2012 to be executed against Mr. Oliner as a Trustee of Shipyard Marina Trust if a detailed plan, stamped by an engineer, is not provided at that meeting (5/0/0 7:45pm).**

7:00 PM

Notice of Intent **DEP File No. 006-1317** from the Boston Water and Sewer Commission for drainage works improvements in the Goldsmith Brook Conduit, including rehabilitation of a 54" brick storm drain with a cured-in-place liner, and in the Bussey Brook Conduit, including repairs to the outlet headwall and installation of inlet trash racks, at 125 Arborway St, VFW Parkway, and 1200 Centre St in Jamaica Plain and Roslindale (Land Under Waterbodies and Waterways).

Owner: City of Boston and Hebrew Rehabilitation Center
 Representative: Ron Agostinelli and Tom Daly, BWSC
 Documents: Photos and plans submitted with original NOI

Ms. Li stated that the Boston Water and Sewer Commission is a dues-paying member of her employer, The Boston Harbor Association.

Mr. Agostinelli described the project as repairing the existing pipe by installing a cast-in-place concrete liner. He noted that a bypass pump with a 2 ½ inch hose emptying into a temporary stilling basin would be utilized during the length of the work (about one week) at the Goldsmith Creek outfall. This portion of the project is estimated to cost between \$150,000 and \$200,000. Ms. Pollak announced that she would abstain from a vote on this application because the outlet is located on Parks Department property, which is leased to Harvard University.

Mr. Daly, who designed the Bussey Creek portion of the project, explained that the inlet was located within an Urban Wild, and work is intended to deal with the erosion problems. Work at this location will include replacing the gate, fixing the headwall, creating a low velocity approach, installing a trash rack, and some excavation. Work would be scheduled during dry weather. Work on the outfall at the Hebrew Rehabilitation Center will include repairing the headwall, providing new catch basins and installing a safety railing. The Bussey Creek portion of the project will take approximately one month to complete at a cost of approximately \$125,000. The work will likely be scheduled for Summer 2013. The abutters were all contacted and no response was received.

Ms. Kruel conducted a site visits on 10/11/12 and 10/15/12 and provided photos to the Commission.

- **Motion made by J. McHallam and seconded by V. Li to issue the Order of Conditions as written (4/0/1 8:05pm).**

7:15 PM

Request for Determination of Applicability from Boston Gas Company for the proposed installation of 800 feet of gas pipe within the pavement of Beverly Street and parking area associated with the Massachusetts State Police building at 200 Beverly Street, Boston, located at the mouth of the Charles River and adjacent to Boston Harbor (Buffer Zone to Bank of the Charles River, Buffer Zone to Coastal Bank of Boston Harbor, Land Subject to Coastal Storm Flowage).

Owner: City of Boston
 Representative: Andrea Kendall, Mason & Associates; Deborah Blanch, National Grid
 Documents: Photos and plans submitted with original NOI

Ms. Kendall described the project as providing new gas service to the Marine Police building located at 200 Beverly Street. Over an 8-10 day work period, during which time the site will still be accessible to pedestrians, a new pipe will be placed to avoid any existing utilities.

Ms. Kruel conducted a site visit on 10/11/12 and provided photos to the Commission. She recommended that a Negative Determination be issued as the project met the criteria for qualifying buffer zone work for a negative DOA (erosion & sediment controls are provided at the edge of the work, and a small area of alteration was being proposed). She also indicated that this property contains a portion of the Harborwalk.

- **Motion made by V. Li and seconded by T. Pollak to issue the Order of Conditions as written (5/0/0 8:13pm).**

7:30 PM

Request for Amended Order of Conditions **DEP File No. 006-1175** from 892 River Street, LLC for a minor project change to the Shops at Riverwood including the addition of a loading dock in the rear of proposed building G, an associated paved driveway, relocation of a retaining wall and a dumpster enclosure, at 892 River Street, Hyde Park, Neponset River (100-foot Buffer Zone).

Owner: 892 River Street, LLC
Representative: Jay Proudly, VHB
Documents: Photos and plans submitted with original NOI

Ms. Li stated that VHB is a dues-paying member of her employer, The Boston Harbor Association.
Mr. Proudly described the project as adding a 300 square feet of pavement for a loading dock on an 8 acre site. The overall site has BWSC approval for stormwater.

Ms. Kruel conducted a site visit on 10/5/12 and provided photos to the Commission. She noted that all proposed work was within the buffer zone.

- **Motion made by J. McHallam and seconded by V. Li to issue the Order of Conditions as written (5/0/0 8:17pm).**

7:45 PM

Notice of Intent from the Massachusetts Port Authority for installation of a trailer and associated utilities at the Boston Fish Pier, 212 Northern Ave, South Boston Waterfront (Designated Port Area, Land Subject to Coastal Storm Flowage).

Owner: MassPort
Representative: Jim Stolecki, MassPort
Documents: Photos and plans submitted with original NOI

Ms. Li stated that MassPort is a dues-paying member of her employer, The Boston Harbor Association.
Mr. Stolecki described the project as installation of a permanent trailer to be serviced by electric and telecom lines. There will be no bathroom in the trailer. The site selected is the alternate shown on the plans, which is near the existing building (not the site located nearer to Northern Ave). Ms. Li inquired about the presence of public benches and the practice of snow removal, to which Mr. Stolecki replied that there are no existing benches on the pier and snow removal is conducted appropriately. He noted that more Harborwalk signs are to be added.

Ms. Pollak articulated that a trailer in this location was not desirable.
Ms. Kruel conducted a site visit on 10/5/12 and provided photos to the Commission.

- **Motion made by V. Li and seconded by T. Pollak to issue the Order of Conditions as written (5/0/0 8:25pm).**

8:00 PM

Notice of Intent **DEP No. 006-1318** from the Department of Conservation and Recreation for site improvements to the DCR Morton Street Compost Facility including material removal, installation of a gravel access road and stormwater management improvements at 450 Canterbury Lane, Boston, Canterbury Brook (Bank, Land Under Waterbodies and Waterways, 100-foot Buffer Zone).

Owner: Department of Conservation and Recreation
Representative: Robert Lowell, DCR; David Pickart, VHB

Documents: Photos and plans submitted with original NOI

Ms. Pollak recused herself from this deliberation.

Ms. Li stated that DCR and VHB are dues-paying members of her employer, The Boston Harbor Association.

The applicants described the project as intended to protect wetland resources and improve drainage. Mr. Pickart described the project as a 7.1 acre compost facility with 1.3 acres with the 100-foot buffer zone of Canterbury Brook. The site currently has no functioning drainage system. A new bituminous-lined swale will be directed to a new catch basin with a trap for coarse materials. A gravel berm will promote recharge and protect the brook.

- **Motion made by J. Lewis and seconded by J. McHallam to issue the Order of Conditions with the condition that final stamped plans are to be filed with staff (4/0/1 8:35pm)**

8:15 PM

Updates and General Business

- Transfer of West Austin and Deforest Urban Wilds to the Commission
 - **Motion made by V. Li and seconded by J. McHallam to support the transfer of parcels within the West Austin and Deforest Urban Wilds to the Commission (5/0/0 8:40pm).**
- Muddy River Decomposition Study of Japanese knotweed and Jewelweed
 - **Motion made by V. Li and seconded by S. Kunian to send letter indicating lack of jurisdiction regarding the proposed study (5/0/0 8:46pm).**
- Charles River VMP cutting for the Head of the Charles Regatta: Ms. Krueel conducted a site visit on 10/2/12 and provided photos to the Commission.
 - **Motion made by V. Li and seconded by S. Kunian to accept the letter signed by Charles Button regarding hand pruning of certain lands subject to the Charles River VMP (5/0/0 8:50pm).**
- Administrative Approval for Shaffer Paper Property subsurface site investigations
 - **Motion made by V. Li and seconded by S. Kunian to accept the approval letter for subsurface site investigations at the Shaffer Paper Property (5/0/0 8:53pm).**
- Funding for a Water Transportation Facility at 500 Atlantic Ave has been approved and project assigned to a project manager at DOT.
- **Motion made by V. Li and seconded by everyone to adjourn the meeting (5/0/0 8:54pm).**

Respectfully submitted,



Stephanie Krueel
Executive Secretary