

Approved 7/16/14

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

June 4, 2014

Commissioners Present: Aldo Ghirin, Vivien Li, John Sullivan, Michael Wilson

Commissioners Not Present: Charles Button, Jacob Kritzer, Stephen Kunian

Staff Present: Stephanie Krueel, Executive Secretary

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- **Motion made by A. Ghirin and seconded by M. Wilson to appoint V. Li as the meeting chair (4/0/0 6:05 pm).**
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6:05 PM Notice of Intent for **DEP File No. 006-1394** from Old Colony Yacht Club, Maintenance Dredging, 235 Victory Rd, Dorchester, Neponset River (LUWW, Buffer to Coastal Beach & Salt Marsh)

Representative: Joseph Hannon, Mayflower Engineering

J. Hannon described the project location, existing conditions, and the scope of work. The work is within an ACEC. GZA Geoenvironmental will be performing sediment sampling in accordance with USACE and DEP requirements. Dredging will take 15 work days and will take place in 2015. Chapter 91 and USACE permits are still needed. The pump out system is in place and functioning. Mr. Hannon mentioned the COC request had been submitted.

S. Krueel asked the Commission if the COC request could be considered as part of tonight's general business.

Mr. Hannon added that six existing piles in float area A will need replacement, and will be added to NOI. He would also like to replace a corroded sheet pile wall.

A. Ghirin asked how the piles would be removed. Mr. Hannon replied that they will be pulled if possible, or cut at grade if they are too degraded. He would like to replace them in-kind in the same footprints.

A. Ghirin asked if there is a plan for minimizing turbidity in the water. Mr. Hannon replied that a silt curtain would be deployed.

J. Sullivan noted that a sediment curtain will be in place anyway for the dredging work. He stated that all piles must be pulled. If they need to be cut off at the mud line the applicant must obtain permission from Commission staff.

V. Li asked for documentation showing which piles would be pulled. Mr. Hannon offered to supply plans and a memo describing the work. Ms. Li asked if the work would be done at the end of the boating season. Mr. Hannon said it will be contingent on permit approvals. Ideally it would be done spring 2015, but may need to be done fall 2015 after the boating season if the permits don't come through on time.

Dick Mulligan of the BRA declared that the marina is silted up and dredging is definitely needed.

M. Wilson noted that condition #49 states that there shall be no dredging within 25 feet of any salt marsh. He asked if salt marsh is delineated on the plan. Mr. Hannon replied that there is no marsh grass in float area A. There is some marsh grass in the vicinity, but at least 50 feet away from proposed work. There will be no disturbance of the ACEC.

Ms. Li requested that a condition be added regarding pump out facility maintenance.

- **Motion made by A. Ghirin and seconded by M. Wilson to issue the Order of Conditions with the following amendment (4/0/0 6:20PM):**
 - **Piles shall be extracted entirely by pulling. If there is a structural reason for cutting the piles, then the contractor must cut them at the mud line, and the Applicant shall submit to Commission staff a letter from a registered, professional engineer certifying the reason therefore. The Applicant must also submit a plan stamped by a registered engineer indicating the location of piles that remain below the mud line.**
 - **The Applicant shall install waterside signage adjacent to the pump-out facility prominently displaying its availability to the general boating public. The Applicant shall provide annual notice to the Massachusetts Office of Coastal Zone Management for their list of pump-out facilities in Boston Harbor. This condition shall be a maintenance condition, and shall not expire upon the issuance of a certificate of compliance.**

6:20 PM Notice of Intent from Commercial Wharf East Condo Association, Paving Work, 84 Atlantic Ave, Downtown, Boston Harbor (LSCSF)

Representatives: Michael Carney, Seacoast Contractors; Cheryl DelGreco, Commercial Wharf East Condo Assoc.

V. Li stated that Commercial Wharf East Condominium Association (CWECA) is a dues paying member of her employer, The Boston Harbor Association.

M. Carney explained the proposed project. In 2005 under another OOC, the pavement was required to be graded to direct stormwater to catch basins rather than to the Harbor. At that time the gate was inoperable and was supposed to be removed and reset. The owner of the gate had proposed to redesign and relocate the gate. Since that time the gate has sagged further. The Condo Board is requesting permission to alter the paving to accommodate the existing gate. Mr. Carney himself is not in favor of this approach.

Ms. Li asked to whom the gate belongs. Mr. Carney replied that it belongs to Barnacle Marina. The proposed work would be on the parking lot side of the gate. Ms. Li asked how long the work will take. Mr. Carney replied one day, and added that the area must be ADA compliant, and is part of the Harborwalk.

M. Wilson asked about feathering the pitch back to the Harborwalk. He asked if there is a need to open the gate.

C. DelGreco stated that the gate does not open to anything. Mr. Carney noted there are expired OOCs that were approved to rebuild the gate. Boston's Inspectional Services Department condemned the gate, and it is not secure.

Mr. Wilson asked about differential settling. Mr. Carney replied that the gate is balanced on a wooden timber underneath the concrete deck.

J. Sullivan declared that he did not understand why the Commission would allow the pavement to be lowered, resulting in sheet flow into the harbor. He asked if the work is part of a court order. Mr. Carney explained that the Condo board offered to pay to trim and re-weld the bottom of the gate, but the owner of Barnacle Marina wants the asphalt removed. Again, it's a non-conforming, condemned structure.

S. Krueel stated that there is a photo on file showing signage condemning the gate.

Ms. Li asked why CWECA filed this NOI. Ms. DelGreco explained that Barnacle Marina took CWECA to municipal court in November 2013, and the judge wants the Condo board to make an effort to let the gate open. They don't know what else to do to try to fix it. She stated that she is not aware if the court knew the gate opened to nothing. Mr. Carney added that the parking lot paving work done in 2005 was supervised by Bourne Consulting Engineering, and inspected by Chris Busch & Rich McGuiness.

Ms. Li requested a copy of the Municipal Court Judge's ruling.

Caitlin Condon of Lawson & Weitzen spoke on behalf of Barnacle Marina Realty Trust. She provided a letter to the Commission dated June 4, 2014. Her client is largely in favor of the work contained in the NOI. Barnacle Marina has a series of easements over the association's property to access the marina, including an easement at this location. The parties have tried for a period of time to resolve this issue and have not been able to do so. Her client is looking to do renovations, which would also need to come before the Commission. However, the work done in 2005 prevents the gate from opening, therefore there is no access to make renovations. Ms. Condon was present during the hearing before Municipal Court Judge McKenna, who agreed that Barnacle Marina does hold easements, and declared that it must have access to its property. A motion for a preliminary injunction had been filed to do the work, and it was agreed that the work first needs to be approved by the Commission. The photos provided in today's package were presented to Judge McKenna. Barnacle Marina believes the gate is on the association's property, or directly on the line and belongs to both. Barnacle Marina takes the position that the asphalt and the gate must be repaired. In the site's current state, it appears that material may fall into the Harbor.

Ms. Li confirmed with Ms. Condon that the gate opens to water. Ms. Condon stated that the marina wants to fully utilize this access area. Ms. Li observed that it makes sense that new work and gate access occur together. It doesn't make sense to change the asphalt, since it may not ultimately be the configuration needed by Barnacle Marina. Ms. Condon stated that it has taken a number of months to come to an agreement about the gate. A joint application may not be possible. Ms. Li clarified that two proposals could be looked at in tandem.

A. Ghirin requested a graphic that shows the easements. Ms. Condon stated that there is a subdivision plot plan in the registry of deeds that shows the lots lines, but was not part of the submission. She can provide it to the Commission. Mr. Ghirin pointed out that the grading is a result of a previous OOC, which is attached to both the property and the easement. The proposed change would violate the OOC. He asked if Barnacle Marina had been informed of and/or represented during the previous OOC process. MS. Condon said yes. She said at the time it was unclear that the paving work would result in an inoperable gate.

Ms. Li noted that Barnacle Marina could have appealed the OOC, but did not.

J. Sullivan declared his state of confusion. He asked who owns the gate. Mr. Carney replied that he has been working in that area for 30 years and has seen numerous documents that show the gate within Barnacle Marina's property. He recalls that the property line is landward of the seawall 18". Further, Barnacle Marina is a defunct marina and was cited by ISD multiple times- He questioned the validity of their license, and stated that it is a serious hazard. The 2-ton gate is held up by a half-inch piece of rebar. Some Barnacle Marina floats sank and have been left on the Harbor Bottom. In 2004, prior to the Democratic National Convention Mayor Menino cited numerous properties due to dilapidated conditions- Barnacle Marina was one of them. No one is contesting that there should be access to the Marina: There are several other access points to the east of the gate.

Ms. Condon stated that Barnacle Marina does not believe the gate belongs to them.

Ms. Li summarized that no one seems to claim ownership of the gate. It follows that if Barnacle Marina doesn't own the gate, CWECA should be free to cut it.

Mr. Sullivan stated that he does not want to take action unless and until there is a court order to do so.

Ms. Li asked for the Commissioners' impression of the situation.

Mr. Sullivan asked Ms. Krueel what the options are. Ms. Krueel stated the Commission could fail to make a motion, putting the application in DEP's court, or the Commission could deny issuance of an OOC. Mr. Sullivan stated his preference for making a decision.

M. Wilson requested documentation of the property lines, the specific terms of the easements, and any history of enforcement through ISD. He would like to know if there have been plans to bring the gate into compliance. He believes there are other options other than violating a previous OOC.

Ms. Li stated that she is uncomfortable with a proposal that allows sheet flow into Boston Harbor. The previous paving work was approved, it was not appealed, and it was completed.

Mr. Sullivan stated that if a court orders lowering of the pavement, a system must be engineered to drain stormwater back into a catch basin.

Mr. Ghirin doesn't understand where the easement is, or who owns the gate. He feels that the current scope of work violates the WPA, and therefore should be denied.

Ms. Li suggested that someone make a motion to deny due to inconsistency with the charge of BCC & the intent of the WPA.

Mr. Carney submitted a copy of a permit from ISD to remove the gate, which was issued to Buk Lhu of Barnacle Marina on November 20, 2003, thus proving that Barnacle Marina owns the gate.

- **Motion made by M. Wilson and seconded by A. Ghirin to deny the issuance of an Order of Conditions due to the project's inconsistency with the mission of the Boston Conservation Commission and the Wetlands Protection Act (4/0/0 6:58 PM).**

7:00 PM Updates and General Business

- Shipyard Quarters Marina: Refuse management & repair work update

Representatives: Seth Latrell Bourne Consulting , Chris Drew, SQM; Charlie Lerner, Pier 6 Restaurant

S. Krueel relayed that Mr. Oliner sends his regrets for not being able to attend due to the Jewish Holiday.

V. Li stated that Bourne Consulting Engineering is a dues-paying member of her employer, The Boston Harbor Association.

Geoff Lake, the contractor, was not able to attend due to a prior commitment.

S. Lattrell provided a memo and explained that 36 post repairs, deck repairs under gazebo, and repairs to the walkway between piers 7 & 8 have been completed. The contractor attempted to ship the Gazebo off site for refinishing, but there is currently no space to complete the work at the Boston Harbor Shipyard. BHS will be able to complete the work by July 1st. Mr. Lake had spoken to Ms. Krueel about doing the refinishing work in place by hand. However, the owner has chosen not to do this because doing it off site will increase the longevity of the repairs. A photo of the new trash enclosure at Pier 6 was submitted.

Ms. Li confirmed with Mr. Lattrell that the gazebo will in fact be painted off site, and returned by mid-July.

Barbara Mackey of Shipways Place stated that construction seems to have been carried out well. When the current repairs are done (under the current contract), several benches and

boardwalk areas will still be shabby and in need of repair. When the repaired gazebo is reinstalled, the benches will stand out as looking terrible.

Ms. Li asked about the trash situation as we approach the summer season. Ms. Mackey stated that she does not see the restaurant area very often.

Dick Mulligan stated that Charlie Lerner, the owner of Pier 6 Restaurant, is doing a great job and making Mr. Oliner look good. All the work on the land side of Pier 8 is almost done. Chris Drew is always out there doing work.

Ms. Li stated that the Commission is pleased with the quality of work that has been authorized, and stated that trash is being handled well. The Commission wants to thank the contractor, Mr. Drew, Mr. Lerner, and Mr. Oliner for the work done so far. There needs to be continuing work on the broken benches.

Elaine Vigneau of Constellation Wharf recalled that the Commission had asked for pictures of all the repairs, not just the front of the trash container. Ms. Li replied that when the work is completed, pictures should be submitted. She asked Ms. Vigneau if she is claiming that the work hasn't been done. Ms. Vigneau replied that she has not inspected the work. Ms. Li asked Mr. Lattrell to provide photos of all work upon completion. Ms. Vigneau stated she was looking for more of a progress report than a completion report, and continued to be disappointed by the lack of photographs.

Dick Mulligan noted that the owner still owes the BRA over \$100,000 for snow removal.

- Update: FEMA Floodplain Map Appeal Process

S. Krueel distributed a draft flyer explaining the above process. She explained the FEMA is in the process of updating the coastal flood maps for Suffolk County. Preliminary maps were made available to the public in November. The appeal period began May 29th and will end on August 27th. Various city agencies are working with FEMA and DCR on a strategy to inform the public of their rights during the appeal period. In addition to the flyer, information on the insurance implications of the new maps, coastal construction methods, and the Letter of Map Change process will be distributed on June 25th through the Mayor's Office of Neighborhood Services. Boston hired the Woods Hole Group in January, and is working on its own technical and scientific review and potential appeal of the maps. Their report will be completed once they receive additional information from FEMA. At that point we will have an idea of the scope of an appeal. After the appeal process is over, FEMA will revise the preliminary maps and make them available to the public. Approximately 6 months later, they will send Mayor Walsh a map finalization letter. Then the City will have 6 more months in which to adopt the map as its Special Flood Hazard Area, and it will become effective for building, zoning, and insurance purposes.

V. Li asked if the Conservation Commission and/or the public can see the consultant's report. Ms. Krueel responded that she isn't sure when it will be made public. First the City will need to review it and determine its course of action. She expects the report to be completed within two weeks after FEMA supplies the answers to the questions WGH proposed to them one month ago. Ms. Li expressed concern about meeting the August 27th deadline. Ms. Krueel stated that we should have the report by early- to mid-July, and that WHG has assured the City that it will be able to file a timely appeal, which will be submitted at the end of the appeal period.

J. Sullivan asked now people living in Port Norfolk, for example, who have never paid insurance will get notified that they should pay attention. Ms. Krueel explained that the Mayor's Office of Neighborhood Services will reach out to affected neighborhoods and provide information on the preliminary maps. Once the maps are finalized -but before they are effective- FEMA will hold

three Public Open House meetings in Suffolk County, lasting 4-6 hours, wherein Insurance Specialists will meet with individuals one-on-one to determine their status and help them understand the insurance implications of the maps.

Mr. Sullivan stated that people have the right to make their feelings known before the maps are finalized. If they are not part of the process, they will hold the City responsible for not informing them. Ms. Krueel replied that the City will be providing information by June 25th so that people will have 60 days within the appeal period to comment. All comments and appeals need to be directed to Ms. Krueel, who will either answer questions or direct them to the proper staff at FEMA. FEMA does not have any plan in place to notify people of the preliminary maps. The City is taking on this responsibility.

Mr. Sullivan added that Mayor Walsh is emphasizing transparency in government, and this process needs to be as transparent as possible. Ms. Krueel agreed. She added that FEMA has committed to replying to each and every comment and appeal.

M. Wilson confirmed with Ms. Krueel that an appeal is a formal process requiring an engineer or land surveyor. Ms. Krueel noted that an appeal not only has to point out that FEMA made an error, but has to supply the corrected data and/or map.

Mr. Sullivan pointed out that the Letter of Map Change is pretty straight-forward, and is based on topography. Appealing a model is something that can't easily be done by an individual.

Mr. Wilson asked if the City will be reviewing and/or consolidating the comments. Ms. Krueel replied that the City will simply collect the comments and forward them to FEMA.

A. Ghirin asked if the Landmark project would be affected by the remapping. Ms. Krueel replied that the remapping only applies to coastal panels, and the inland panels are not being revised.

Ms. Li asked when the Commission could be made aware of the extent of the City's appeal. Ms. Krueel said she would find out. Mr. Wilson noted that making it public sooner rather than later could generate more useful comments.

Elaine Sudanowicz of the City's Office of Emergency Management shared that FEMA is currently backlogged. She has been extremely frustrated by the lack of responsiveness from FEMA on Boston's Hazard Mitigation Plan. She stated she was in attendance to support Ms. Krueel. She is most concerned about foreclosure and displacement. Ms. Krueel noted that upon map finalization, the Department of Neighborhood Development will deploy programs aimed at helping people afford their flood insurance. Mr. Sullivan pointed out that flood insurance is an annual expense. It's one thing for DND to provide subsidies for one-time expenses such as roof repairs. Ms. Krueel noted that the help probably will not come in the form of direct financial assistance, but rather in helping people identify appropriate finance programs & products.

- Request for Certificate of Compliance for **DEP File No. 006-1335**, 776 Summer St, South Boston, Geotechnical Borings, Reserved Channel

S. Krueel described the project and stated that all conditions have been met.

- **Motion made by A. Ghirin and seconded by M. Wilson to issue the Certificate of Compliance (4/0/0 7:30PM)**

- Request for Certificate of Compliance for **DEP File No. 006-1020**, 235 Victory Rd, OCYC Maintenance Dredging, Neponset River

S. Krueel described the project. The order was issued in December 2004, the conditions were met, and the request for COC was submitted. She reviewed the permitting history of the project. None of the Commissioners could recall why the COC had not been issued.

- **Motion made by A. Ghirin and seconded by M. Wilson to issue the Certificate of Compliance (4/0/0 7:32PM)**
 - Review of Minutes: 4/16/14, 4/30/14
 - **Motion made by A. Ghirin and seconded by M. Wilson to approve the minutes of the April 16, 2014 hearing as written (4/0/0 7:33 PM).**
 - **Motion made by M. Wilson and seconded by A. Ghirin to approve the minutes of the April 30, 2014 hearing as written (4/0/0 7:34 PM).**
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- **Motion made by J. Sullivan and seconded by A. Ghirin to adjourn the meeting (4/0/0 7:34 PM).**

Respectfully submitted,

Stephanie Kruel

Stephanie Kruel
Executive Secretary