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October 2007

TAB 1

RICHARD McGUIRE

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

February 10, 2009

In the Matter of Boston Redevelopment Authority)	OADR Docket No. 2008-128 Waterways Application No. W07-2172-N
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PRE-FILED TESTIMONY OF RICHARD MCGUINNESS

1. My name is Richard McGuinness. The statements sworn to herein are stated of my own personal knowledge except where I indicate that the statement is upon information and belief and as to those statements I believe them to be true.

2. I am the Deputy Director for Waterfront Planning for the Boston Redevelopment Authority (“BRA”). I have worked for the BRA for eight years and the City of Boston Environment Department for five years. I manage the BRA’s waterfront planning initiatives that include the basic functions of community planning, urban design, zoning, and infrastructure planning.

3. I am also part of the leadership team that sets the BRA’s waterfront planning and economic development agenda in support of the city’s larger policy priorities to revitalize Boston’s waterfront, create new job growth and connect the City’s neighborhoods to its Harbor.

4. I have been directly involved in many of Boston's most important waterfront planning efforts in the last thirteen years. They include the planning of the 1000-acre South Boston Waterfront, the City of Boston Harborwalk program, a proposed continuous 47-mile public walkway along Boston Harbor, East Boston Municipal Harbor Plan, Fort Point Channel Watersheet Activation Plan, Boston Marine Industrial Park Master Plan, Charlestown Navy Yard Waterfront Activation Plan, and the Inner Harbor Passenger Water Transportation Plan.
5. I represent Mayor Thomas M. Menino and the Boston Harbor Region on the Commonwealth of Massachusetts Seaport Advisory Council. I also represent the City of Boston on the Boston Harbor Islands National Recreation Area Partnership. I am a graduate of The Catholic University of America with a degree in Political Science and Urban Policy.

A. Introduction

6. The area of Long and Central Wharves has undergone decades of urban planning and design review. The area of the North End/Downtown Waterfront has also benefited from significant public investments including:
 - Faneuil Hall/Quincy Market;
 - The New England Aquarium;
 - Christopher Columbus Park;
 - Harborwalk;
 - Boston Harbor Clean-up Project;
 - Central Artery Project;

- Rose Kennedy Greenway;
- Columbus Park Redesign; and
- Over \$9 million invested in Boston's primary water transportation hub.

B. History of Long Wharf

7. Long Wharf is the oldest continuously operated wharf in the nation and is now a National Historic Landmark.
8. Since its construction in 1711 Long Wharf has been the historic gateway to Boston, leading up King Street (State Street) to the Old State House.¹ It has been a vital commercial center for the city for almost three centuries.
9. As originally built, Long Wharf was over 1/3 of a mile in length to allow larger ships to tie up in deep water and unload directly to warehouses. Ships have never been able to dock at the seaward edge of Long Wharf because of wave action.
10. Long Wharf extended the view corridor of King Street (now State Street) from the Town House right out to the end of the wharf. The tip of Long Wharf has remained essentially unchanged for three hundred years, but the water areas surrounding the landward end of the Wharf have been filled over time. Exhibit 26, State Street and Long Wharf Interpretive Plan 2007.
11. Visionary Uriah Cotting carried out the first major infill of streets and warehouses in the early 1800's. Subsequent infill projects occurred for the construction of Quincy Market and the U.S. Customs House. The final surge came in the late 1860's with the creation of

¹ Nancy S. Seasholes, Gaining Ground: A History of Landmaking in Boston. (Cambridge: MIT Press, 2003), 31.

Atlantic Avenue. The construction of the elevated Central Artery in the 1950's effectively separated Long Wharf from Boston's business district. Exhibit 27, Boston Harborwalk Initiative.

12. From the time of Long Wharf's construction, government, business, and residents regarded Long Wharf as a place of landing and official reception of arrivals to Boston; therefore, public establishments were encouraged.² Among the first public establishments built on Long Wharf in the 1700s was the Crown Coffee House at the landward end and the Bunches of Grapes Tavern at the seaward end. Exhibit 26, State Street and Long Wharf Interpretive Plan 2007.
13. The 1763 Gardiner Building, originally home to John Hancock's counting house and now the location of the Chart House, is the oldest surviving structure on Long Wharf. Exhibit 27, Boston Harborwalk Initiative.
14. In 1837 R. H. Eddy created a plan of the Custom House on Long Wharf. This delineated the end of the Wharf as a place for stores and shops, to complement the shops at Faneuil Hall. The Customs House was built at the foot of Long Wharf in 1838 to collect the government's primary revenue at the time, customs duties. Exhibit 26, State Street and Long Wharf Interpretive Plan 2007.
15. Notable historic events at Long Wharf are:

² Edwin M Bacon, Rambles Around Old Boston (Boston: Little, Brown, and Company, 1914), 163.

- a. In 1726 the notorious pirate William Fly was brought up the wharf in chains and hung above the wharf after his trial and execution.
- b. British troops landed on Long Wharf in 1768 under General Gage to enforce the tax acts and evacuated from Long Wharf in 1776.
- c. In 1854, the fugitive slave Anthony Burns was brought down Long Wharf to a steamer taking him back to slavery in Virginia. The entire downtown of the city shut down, as tens of thousands protested, and some historians view the Civil War as starting that day.

Exhibit 27, Boston Harborwalk Initiative.

16. In the mid-19th century, Long Wharf was home to numerous fish and salt stores and processors. In 1870 the United Fruit Company unloaded the first bananas in America onto Long Wharf.
17. Long Wharf in the late 19th century and early 20th centuries was an important part of Boston's fishing industry. Italian immigrants who settled in the North End operated from the pier, sold their catch to stores on Atlantic Avenue, and even sold directly to customers on Long Wharf. Exhibit 26, State Street and Long Wharf Interpretive Plan 2007.
18. Attached as exhibits 4-8 are photographs which give a sense of the evolution of Long Wharf from the late 1800s through the present.
 - Exhibit 4 depicts Long Wharf on the left viewed from the land and gives a sense of the heavy shipping traffic it serviced.
 - Exhibits 5A and 5B from the 1930s shows warehouses around the perimeter of Long Wharf and virtually no public space.

- Exhibit 6 shows Long Wharf around 1980 prior to the construction of the Marriott Hotel. Pedestrian access has been revived but marina use around Long Wharf is relatively minimal.
- Exhibit 7 shows Long Wharf in 1988 with expanded marina uses and underutilized pedestrian access along the south side of the wharf.
- Exhibit 8 depicts present-day Long Wharf with a full perimeter Harbor Walk and a vibrant marina.

19. At present, Long Wharf is the launch site for ferries to Charlestown, South Boston, the Harbor Islands, Salem, Quincy, Provincetown, and numerous sightseeing cruise vessels and whale watch tours. There is also an active marina with a mooring field and a blue line subway stop servicing Long Wharf. Other commercial uses in the vicinity include the New England Aquarium, Marriot Long Wharf and several restaurants.

C. General Planning Context

20. Urban Renewal, referred to primarily as public efforts to revitalize aging and decaying inner cities, began to occur in Boston in the early 1960s following a nationwide movement towards redevelopment. This was enabled by the U.S. Housing Act of 1949 that provided for federally funded urban redevelopment. The tools of urban renewal, including land assembly, title confirmation, and development and design controls enable the Boston Redevelopment Authority (BRA) to guide private sector development initiatives toward areas in need.
21. In 1970, pursuant to the City's Urban Renewal Plan (1964), the BRA took ownership of Long Wharf and Custom House Block. The single most important feature of the Plan is

the relocation of Atlantic Avenue and the opportunity to connect the waterfront with the downtown business district. The Plan includes the following goals, which apply to Long Wharf:

- a. Eliminate obsolete and substandard building conditions which are a factor in spreading blight to adjacent areas.
- b. Promote the preservation and enhancement of buildings in the project area, which have architectural and historical significance.
- c. Create an area with a mixture of land uses compatible with living, working and recreational opportunities.
- d. Create an area for the development of marine or marine-oriented activities designed to stimulate tourism and symbolize the importance of Boston's historic relationship to the area.
- e. Provide public ways, parks and plazas, which encourage the pedestrian to enjoy the harbor and its activities.
- f. Provide maximum opportunity for pedestrian access to the water's edge.
- g. Establish a relationship between buildings, open spaces, and public ways, which provides maximum protection to the pedestrian during unfavorable weather conditions.
- h. Create an unobstructed visual channel from the Old State house at Washington and State Streets down to Long Wharf and the harbor beyond.

Exhibit 9, Urban Renewal Plan (Downtown Waterfront, Faneuil Hall), pp. 4-7.

22. The City created the Long Wharf Master Plan (1979), which describes the planning process for Long Wharf and the City's desire to revitalize the Wharf and develop its

parcels with commercial uses, along with public access pathways to the water. The Plan includes a build-out of Long Wharf, indicating the redevelopment of parcels for the Marriott Hotel, the rehabilitation of the pier, provision of public access walkways and water transportation gangways and ticket kiosks. The Plan includes the following goals:

- a. Assure adequate public access to, and open space along, the water's edge.
- b. Better accommodate boating uses, anticipate their growth, and to provide an orderly program for their expansion.
- c. Create opportunities for sound, higher density development that will be compatible with other waterfront uses.
- d. Improve linkages between the MBTA and commuter/tourist/excursion boats.
- e. Preserve and enhance environmental and navigational conditions in the harbor.
- f. Assure that contemporary design and new public spaces reflect the waterfront's historic past.

Exhibit 15, Summary of Long Wharf Master Plan 1981.

23. The Boston Harborwalk Initiative (Approx. 1980 – Present) is the centerpiece of the City's harbor agenda to provide public access to the waterfront. The planning chronology and goals of the Initiative are as follows:

- a. In the early 1980s the BRA began the Harborpark planning process for the waterfront and set forth a goal of a creating a continuous 47-mile waterfront walkway along Boston Harbor, called Harborwalk.

- b. In 1984, the City partnered with The Boston Harbor Association (TBHA) and the City's Harborwalk Advisory Committee to establish Harborwalk Guidelines that encourage development of public walkways, parks, sitting areas and public facilities along the Boston Harbor waterfront.
- c. Since 1994, the City has been working diligently in partnership with private developers and property owners and harbor advocates to improve waterfront sites and realize this goal.
- d. The Harborwalk System connects the City's neighborhoods to its Harbor, leading to recreational, cultural and historic attractions, and direct connections to public transit, including water transportation facilities. Over 38 miles of Harborwalk have been completed or are under construction. When completed, Harborwalk will stretch over 47 miles linking Dorchester to East Boston.
- e. Since May 2004, the BRA has funded \$40,000 to develop a comprehensive web-based resource on Boston's Harborwalk; bostonharborwalk.com. The website provides accurate and up-to-date information about the many points of interest along Harborwalk – from open spaces to water transportation terminals to cultural facilities. The website promotes Harborwalk to residents and visitors, encouraging the public to take advantage of all that Boston's waterfront has to offer.
- f. Since November 2006 the City has launched two Harborwalk audio tours to much acclaim. This novel and technologically advanced form of wayfinding has placed Boston well ahead of other cities. The tours provide an opportunity to educate the

public on the Harborwalk system, a proposed 47 mile continuous walkway around Boston Harbor. The tours are available free of charge on the Boston Harborwalk website and from the websites of the City of Boston and the Boston Redevelopment Authority. The audio tour is downloadable to MP3 Players (IPODs) and cell phones. A corresponding high resolution map is available on the websites for printing.

24. The City's Municipal Harbor Plan (1990) refines the City's plans for waterfront areas, including Long Wharf. The Plan includes the following general goals for the North End and Downtown Waterfront Districts.
 - a. Provide public access to the waterfront's unique opportunities for recreation, economic activities, jobs and housing; promote the public's rights in the waterfront.
 - b. Activate the waterfront zone through appropriate urban design, active public and cultural uses, and water-dependent uses.
 - c. Protect and enhance the waterfront's maritime-industries, which require deep-water shipping channels and land-side facilities on the Harbor.

25. Revitalize Boston's underutilized and dilapidated shoreline by promoting growth through private investment that is appropriately-designed, and is a balanced mix of uses that bring

vitality to the waterfront and public benefits and amenities that are shared by all Boston Residents.³

26. The Plan includes the following specific goals and mandates for Long Wharf and/or the Doc's site:

- a. Maximize public access to and activity along, the entire waterfront area while preserving the original form and character of the area.
- b. Promote active water-dependent uses such as public landings, commercial boating activities, and water taxi facilities.
- c. Ensure that newly constructed buildings continue to reflect and blend with the existing historic waterfront architecture.
- d. Maintain view corridors to the harbor from significant streets in the North End and Downtown.
- e. Relate height, scale and massing of new development to the adjacent North End and Downtown Financial District areas.⁴
- f. In the North End/Downtown Waterfront, the Harborpark Plan requires a balance of uses.
- g. One hundred percent of the ground floor of any non-water dependent project located within one hundred feet of the shoreline must be devoted to FPA's.⁵

³ Boston Redevelopment Authority, Harborpark Plan: City of Boston Municipal Harbor Plan (City of Boston, MA, 1990), 2.

⁴ Boston Redevelopment Authority, Harborpark Plan: City of Boston Municipal Harbor Plan (City of Boston, MA, 1990), 13.

- h. Projects proposed at Long Wharf will be required to include business activities that will attract visitors and residents to the waterfront. These include water dependent uses such as water transportation facilities, as well as uses such as restaurants, hotels and cultural facilities.⁶

Exhibit 16, Municipal Harbor Plan, pgs. 13-14 & 54.

- 27. The City of Boston's North End Historic Pier Network Plan (1999) depicts the Harborwalk and Long Wharf's role as a prominent pier. Exhibit 17, Network Plan Map Overlay.
- 28. The Revised Long Wharf Master Plan (2000) occurred as part of the Central Wharf and Long Wharf Water Transportation Improvement Project, discussed further in the Transportation section. This plan designated the pavilion as "potential adaptive re-use." Exhibit 21, Executive Office of Transportation and Construction, Project Overview for Intermodal Transportation Facility 2003.
- 29. The primary goals of the Boston Inner Harbor Passenger Water Transportation Plan (2000) and associated projects at Long Wharf have been defined as:
 - a. Maximize public access to and along the entire waterfront area while preserving much of the original form and character of the area.

⁵ Susan F. Tierney, Secretary, Executive office of Environmental Affairs, Decision on City of Boston Request for Approval of the Boston Harborpark Plan Pursuant to 310 CMR 23.00 (Massachusetts Office of Coastal Zone Management, 1991), 31.

⁶ Boston Redevelopment Authority, Harborpark Plan: City of Boston Municipal Harbor Plan (City of Boston, MA, 1990), 54.

- b. Promote active water dependent uses such as public landings, commuter ferries, commercial boating activities, and water taxi facilities.
- c. Anticipate growth of these boating activities and provide an orderly program for their expansion, considering both waterside and landside space and functional needs.
- d. Provide additional terminal sites and berthing capacity to sustain anticipated ferry growth.
- e. Improve linkages among different ferry services to facilitate passenger transfers.
- f. Preserve and enhance environmental and navigational conditions of the harbor.

Exhibit 25, Central Wharf and Long Wharf Water Transportation Improvement Project, Application for State Bond Funds Fiscal Year 2006 ("2006 Application").

- 30. The City received an Excellence in Universal Design Award (2003) for its stewardship and "people friendly" design of Long Wharf from an international organization known as the Adaptive Environment Group. Exhibit 22, Excellence in Universal Design Award 2003.
- 31. The Crossroads Initiative (2005 – Present) reunites neighborhoods and revitalizes thirteen key streets that connect the downtown with the Harbor, including State Street. In 2005, a series of public meetings were held to discuss the City's Crossroads Initiative and the redesign of State Street from the Old State House to the tip of Long Wharf. Numerous presentations were made to the Mayor's Central Artery Completion Task Force and the Wharf District Task Force regarding the Initiative. Recommendations were made for destination and attractions at the end of Long Wharf. A separate community meeting was

held on May 10, 2007 with the North End Waterfront Association to discuss the Crossroads Initiative planning. Plans used during this public process included Doc's Restaurant at the end of Long Wharf as a Crossroads destination. Exhibit 23, Crossroads Initiative Memo/Agenda for 5/10/07 meeting.

32. In September 2008 the City dedicated the new "Norman B. Leventhal Walk to the Sea." This is a wayfinding path from the top of Beacon Hill, the highest point on the Shawmut Peninsula, to Boston's furthest projection into the harbor, Long Wharf. The Walk to the Sea features informational panels at eight locations depicting four centuries of Boston history. Three panels at Long Wharf are lit at night by low wattage LED lights powered by a small wind turbine, and can be enjoyed from a new seating area. Exhibit 27, Boston Harborwalk Initiative.
33. BRA planning has proceeded on the principle that existing and planned open spaces in the Long Wharf vicinity provide special opportunities for harbor-oriented recreation and pedestrian connections. Long Wharf is adjacent to the newly redesigned three-acre Christopher Columbus Waterfront Park, as well as the new open spaces along the Rose Kennedy Greenway and the new park at Central Wharf and Milk Street. These open space linkages enhance the visual connection of Long Wharf to neighboring areas and improve pedestrian and bicycle links. Exhibit 25, 2006 Application, Section 5.

D. Project Consistency with Planning Criteria

34. The restaurant concept as a re-use of the MBTA vent structure meets the similar goals articulated in both the Urban Redevelopment Plan and the Long Wharf Master Plan, as follows:

- a. The BRA envisions that an enlivened Long Wharf, like the Harborwalk, will bring the activity of the city back to the harbor and the beauty and history of the harbor into the city. Licensing funds from the project will be used towards the installation of designed interpretive signage explaining the history of the Wharf, including the importance of the Wharf for commercial uses by North End and city-wide fishing groups.
- b. The BRA seeks to sensitively blend quality urban design with the architectural character of the neighborhood, provide street level activity that enhances the public realm, and provide quality commercial opportunities to city residents across a variety of income ranges.
- c. Rejuvenating the end of Long Wharf through redevelopment of the shade pavilion with seats and tables, refreshment, and restroom facilities will promote and enhance the use of existing water transportation by making the area a destination.
- d. Approximately 25,915 square feet of area at the seaward end of Long Wharf will be preserved as open space and continue to be used as a public plaza. Seasonal outdoor dining will occupy approximately 2,586 square feet. At the southeastern portion of the wharf there will be eighteen seasonal shaded tables for public use, independent of patronage of the restaurant. These amenities are intended to enhance the existing water dependent uses.
- e. Pedestrian access to the waterway will be improved through the rehabilitation of the Harborwalk.

35. At present, the pavilion is not fully utilized for approximately eight months out of the year. The winterizing of the building will allow for the use of the site on a year-round basis. The BRA hopes to fulfill the Urban Renewal goal of stimulating tourism and establishing a relationship between buildings, open spaces, and public ways, which provides maximum protection to the pedestrian during unfavorable weather conditions.
36. The proposed design does not adversely impact the planned view corridor from the Old State House at Washington and State Streets down to Long Wharf or sight lines to the water from the Harborwalk. There are very limited changes in view from the Pavilion to the restaurant because the existing columned structure will be reused and existing open views through the Pavilion will be maintained through the use of windowed walls.
37. The BRA planning team has considered carefully the project's effect on potential noise along the Wharf area. The restaurant use will not appreciably increase noise levels at the end of Long Wharf. Surrounded by an active marina, ferries to the Harbor Islands, the Long Wharf MBTA water shuttle, the Provincetown express, sight seeing cruise vessels, and whale watch tours, the end of Long Wharf is very loud a majority of the time.
38. The project complies with the referenced MHP mandates as follows:
 - a. Reuse of the building on the existing footprint maintains the existing foot travel to and from the end of the Wharf. In addition, the form and character of the structure will be preserved. Exhibit 12, Design "Mock-up" Images of Restaurant Project.
 - b. As a mandated Facility of Public Accommodation (FPA), according to the MHP, the restaurant will promote water-dependent uses at the Wharf by providing the

following accessory uses to these water-dependent uses: public restrooms, public seating and shelter for water transit users.

- c. The view corridors to the harbor from significant streets in the North End and Downtown will be maintained as the existing footprint and height of the Pavilion will be maintained.
- d. The height, scale and massing of the building will not be changed.
- e. The entire restaurant is considered a FPA, which meets the one hundred percent FPA mandate by the Secretary of Environmental Affairs in her decision on the Municipal Harbor Plan.
- f. The restaurant is designed to attract visitors and residents to the waterfront, as mandated in the MHP.⁷ An implementation strategy to encouraging year-round pedestrian use along the waterfront that is included in the MHP is the use of ground-level buildings and spaces in buildings to attract pedestrians. This project aims to attract pedestrians to the waterfront through the reuse of an existing structure; creating a place for those to meet and be sheltered in during the colder months as well as to sit and enjoy the outdoor space in the warmer months.
- g. The project will create job opportunities, an affordable dining establishment for residents and visitors, public amenities that currently do not exist (public shaded seating and restrooms) and a destination location to attract residents and visitors to the waterfront.

⁷ Boston Redevelopment Authority, Harborpark Plan: City of Boston Municipal Harbor Plan (City of Boston, MA, 1990), 54.

- h. There will be no total reduction of the Water-Dependent Use Zone (WDUZ), as required in the Waterways Regulations and substitute provisions of the MHP. In fact, an additional 3,135 square feet (approximate) of WDUZ setback area is proposed.

- 39. Activating the Pavilion is one facet of the Crossroads Initiative, which is intended to enhance connections between districts across the Greenway. Long Wharf is a celebrated gateway to the city for visitors arriving by boat, as a junction point for the Harborwalk, and as a starting point for excursions to the Harbor Islands. State Street through the end of Long Wharf is Boston's traditional thoroughfare to the sea and a designated Crossroad, providing an essential pedestrian link and visual connection between the Old State House, the financial district, the Wharf District Parks and the Harborwalk.

- 40. The restaurant would provide a destination and amenities for pedestrians using the Norman Leventhal Walkway to the Sea from the Old State House.

- 41. The proposed project does not interfere with the Harborwalk in any way, which runs the full perimeter of Long Wharf. In fact, the project maintains a wider Harborwalk (25 feet) than what is mandated (12 feet). Exhibit, 9 aerial photograph of Downtown Waterfront February 4, 2009 with overlay.

- 42. The delay in the commencement of the project from September 17, 2008 to present has placed the financial viability of the project at risk. Any further delay will be extremely detrimental, given the need to maintain financing commitments and the start of the construction season this spring.

E. The Proposed Project is Fully Authorized by the City of Boston Zoning Commission, the Massachusetts Office of Coastal Zone Management, and the Massachusetts Historical Commission

43. On November 12, 2007, the Massachusetts Office of Coastal Zone Management issued its determination in support of the proposed expansion and reconfiguration of the water-dependent use zone. CZM found: "Given its location on Long Wharf, adjacent to the existing Harborwalk and open space, the expanded and reconfigured setback area will promote water-dependent activity on and adjacent to the project site." Exhibit 29, Office of Coastal Zone Management Memorandum 11/12/07.
44. On November 15, 2007, the Massachusetts Historical Commission issued a determination in support of compliance with M.G.L. Ch. 9 §§26-27C, and Massachusetts Environmental Policy Act 301 CMR § 11. MHC found that "the project will have no adverse effect as defined by 36 CFR 800.5(b) and 950 CMR 71.07(2)(b)(2) on the Custom House Block or the Long Wharf and Custom House Block Historic District." Exhibit 30, Massachusetts Historical Commission Letter dated 11/15/07.
45. The project did not require any variances from the numerical standards or substantive provisions of MHP under 310 CMR 9.34(a)(2).
46. On January 22, 2008, the City of Boston Board of Appeal granted variances from the zoning code to permit a change of occupancy for the pavilion to a restaurant. The Board of Appeal found:

- a. “The property site has been the subject of much study and planning by the City of Boston and the BRA for the purpose of connecting the waterfront to the neighborhood and streets surrounding the new Rose Kennedy Greenway.” Exhibit 31, Decision of Board of Appeal dated 1/2/08, p. 2.
- b. The granted zoning relief will allow redevelopment of the MBTA vent structure “into a reasonably priced neighborhood concept at this location, with sit-down dining, outdoor seating, live entertainment and take-out food service in a manner that is complimentary to the immediate and surrounding neighborhoods.” *Id.*, p. 3.
- c. The grant of relief is in the public interest because the project enjoys broad community support from the North End Residents’ Association, the Wharf District Task Force, the Mayor’s Office of Neighborhood Services, and certain residents of the surrounding residential buildings. *Id.*, p. 10.
- d. The proposed project serves a proper public purpose because it complies with Chapter 91 requirements for conserving and utilizing the capacity of the site to accommodate water-dependent use. The project maintains visual access to the water; provides access for fishing and walking along the water’s edge, and exceeds regulatory standards for open space areas. *Id.*, p. 11.
- e. “The proposed project is entirely consistent with the applicable Urban Design Guidelines . . . [and] the planning goals and objectives of the City and the BRA to reengage the subject property with the Boston waterfront and its immediate neighborhoods.” *Id.*, p.

- f. "All conditions required for the granting of a Variance under Article 7, Section 7-3 of the Zoning Code have been met and varying the terms of the Zoning Code as outlined above will not conflict with the intent and spirit of the Zoning Code." *Id.*, p. 14.

Signed under the pains and penalties of perjury this ninth day of February 2009.


Richard E. McGuinness

TAB 2

Lawrence Mammol:

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

February 10, 2009

In the Matter of Boston Redevelopment Authority)))))	OADR Docket No. 2008-128 Waterways Application No. W07-2172-N
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PRE-FILED TESTIMONY OF LAWRENCE MAMMOLI

1. My name is Lawrence Mammoli. The statements sworn to herein are stated of my own personal knowledge except where I indicate that the statement is upon information and belief and as to those statements I believe them to be true.

2. I am the Director of Engineering and Facilities Management for the Boston Redevelopment Authority. I have worked for the BRA for twenty-nine years. I have a Degree in Civil Engineering from Northeastern University. My experience includes management of all BRA properties, including its many waterfront properties such as Marine Industrial Park, Charlestown Navy Yard, Sargent Wharf, and Long Wharf. I am also responsible for all capital improvements performed by the BRA, including a number of waterfront construction projects. As Director of Engineering & Facilities Management, I am responsible for the management of the Asset Management Department, Capital Construction Department, Industrial Development and Commercial Leasing and MIP Operation Department

A. Long Wharf is the Hub of Boston's Water Transportation System

3. The BRA applied for state funding to finance in part a comprehensive, multi-year program known as the *Central Wharf and Long Wharf Water Transportation Improvement Project*. The purpose of the project is to expand the capacity and improve the quality of water transportation infrastructure at this key downtown terminal. Exhibit, Boston Inner Harbor Passenger Water Transportation Plan 2000; November 20, 2000 letter from Executive Office of Transportation and Construction (EOTC) awarding BRA \$1,800,000.00 grant.
4. In 2000 the BRA and the EOTC identified the Long Wharf/Central Wharf area as the highest priority site in Boston's Inner Harbor for infrastructure investment because of the high volume of vessel operations which accommodate multiple uses. Exhibit 25, Central Wharf and Long Wharf Water Transportation Improvement Project: Long Wharf North Terminal Extension, Application for State Bond Funds Fiscal Year 2006 ("2006 Application"), Section 4.
5. The primary goals of the transportation project at Long Wharf have been defined as:
 - a. Maximize public access to and along the entire waterfront area while preserving much of the original form and character of the area.
 - b. Promote active water dependent uses such as public landings, commuter ferries, commercial boating activities, and water taxi facilities.
 - c. Anticipate growth of these boating activities and provide an orderly program for their expansion, considering both waterside and landside space and functional needs.

- d. Provide additional terminal sites and berthing capacity to sustain anticipated ferry growth.
- e. Improve linkages among different ferry services to facilitate passenger transfers.
- f. Ensure that newly constructed buildings and terminals (including waiting areas, kiosks, and associated amenities) continue to reflect and blend with the existing historic waterfront architecture.
- g. Preserve and enhance environmental and navigational conditions of the harbor

Exhibit 25, 2006 Application.

- 6. The project area extends from Christopher Columbus Park to East India Row along the downtown Boston waterfront. Since 1996, the BRA has sought funding in each fiscal year for a number of discrete projects included in the *Central Wharf and Long Wharf Water Transportation Improvement Project* pursuant to legislative authorization for the expenditure of funds for "public piers and improvements to the public harborwalk, so called, on and about central wharf in the city of Boston, for the purpose of enhanced water transportation capacity and intermodal access to the waterfront ..." The BRA sought funding that was available under Chapter 205, Section 2 of Acts and Resolves of 1996 for many Fiscal Years including and up to FY2006. *Id.*
- 7. The BRA matched state funding for total project improvements of over nine million dollars that was invested in the Long Wharf area.
- 8. From fiscal years 1998 through 2008, the BRA completed a number of improvement projects in the Central Wharf and Long Wharf Project area. Funding for this work came from the BRA, EOTC, and the Commonwealth of

Massachusetts Department of Environmental Management (DEM). Projects include but are not limited to:

Design and Construction of a Pedestrian Walkway on the north side of Long Wharf:

This walkway begins at Christopher Columbus Park and extends to the head of Long Wharf, and includes new decking, lighting, seating and other amenities. The total design and construction cost was \$363,125.

Design and Removal of Dilapidated Timber Piles at Long and Central Wharves:

This work included the removal of dilapidated and rotted wood timbers and the removal of large granite blocks from the Central and Long Wharves watersheet to remove a hazard to navigation. The total design and construction cost was \$78,702.

Walkway Improvements to East India Row/Harborwalk:

This work included improvements to the pedestrian portion of East India Row along the Harborwalk, such as the replacement of paving blocks in the handicapped ramp and the removal and replacement of damaged granite seawall. The total cost of this work was \$28,695.

Dredging Design - Long Wharf and Central Wharf:

This work involved the preparation of contract documents that are suitable for public bidding and can be used to obtain all of the necessary permits to dredge an area on the north side of Long Wharf where Harbor Express is located along with required site improvements. The cost of this design was \$113,500.

Dredging and Dock Reconfiguration North Side of Long Wharf:

This work involved the dredging and reconfiguration of the *Harbor Express* facility on the north side of Long Wharf. This work provided for an increase in watersheet on the north side of Long Wharf, minimizing the impact of the commuter docking facility on the use of the watersheet by additional water transportation vessels as well as recreational and commercial vessels in the area. This work represented the first phase of the long-term plan build-out along the north side of Long Wharf. The cost of this project was approximately \$716,000.

Preparation of Design and Construction Documents for Water Transportation Facility Improvements at Long and Central Wharves

The BRA hired consultants to prepare design and construction documents for the construction of water transportation facility improvements around the perimeter of Long Wharf, between Long and Central Wharves, and along the north face of Central Wharf. The Engineering and Design services have provided for safe and convenient facilities for use by the general public. The consultants determined the structural repairs necessary to satisfy typical loading requirements for a variety of maritime users who will be using the wharves for loading and unloading boats. Design and engineering elements included the reconstruction or rehabilitation of the seawall, rehabilitation of utility infrastructure, improvements to selected existing waterfront structures and development of new facilities and amenities, such as waiting area, signage and information area. The work was completed at a cost of \$440,000.

Old Atlantic Avenue Project

The work included (1) the construction of a new pier facility adjacent to the existing seawall parallel to the old Atlantic Avenue together with a new floating dock to replace the existing 80-foot MBTA floating dock; (2) the installation of fixed and articulated ramps to provide fully accessible access from the new pier to the floating dock surface; and (3) the construction of 150 feet of new linear berthing space along the north side of Central Wharf. Approximate cost \$2.4 million

Central Wharf, South Pier Improvements

The BRA and the New England Aquarium (NEAQ) partnered on a project to create a water transportation dock and public access on the south side of Central Wharf. NEAQ completed the Harborwalk around its IMAX Theater in 2004. The South Pier is now open to the public. The Discovery was recently moved to accommodate the new dock. This dock will serve smaller vessels primarily, freeing up space on the north side of Central Wharf for larger vessels. Approximate cost \$2 million

Emergency Repair of Collapsed Seawall on South Side of Long Wharf - Phase I

The BRA performed demolition, stabilization, and remediation of a collapsed length of historic Long Wharf. The cost of construction was \$740,724

Emergency Repair of Failed Seawall South Side of Long Wharf – Phase II

The BRA performed stabilization and remediation of an additional failed section of historic Long Wharf. The cost of construction was \$644,524

Long Wharf - South – Pier Restoration Project

The BRA completed construction of a new 300-foot long boardwalk to complete Harborwalk/Walk to the Sea improvements atop the recently completed seawall stabilization. Total project cost valued at approximately \$1,300,000

Long Wharf - North – Pier Restoration Project

BRA completed construction of a new boardwalk to complete Harborwalk/Walk to the Sea improvements and 180-foot long floating dock system. Total project cost valued at approximately \$1,600,000.

Additional Improvements:

Additional improvements to the area included new light pole fixtures for the Harborwalk area on the south side of Long Wharf, repairs to the flagpole, and other site improvements. The cost of these improvements was approximately \$120,000.

New waiting area/shelters for MBTA water shuttles have been installed with telephone kiosks at a cost of \$160,000. A public bathroom was added in 2004 at a cost of \$340,000. Another public bathroom is under construction at a cost of \$350,000.

9. The BRA and its design consultants received a design award for the phase one project. Exhibit 22, Long and Central Wharves Marine Berthing Facility Adaptive Environments' award for Excellence in Universal Design 2003.
10. Among other aspects, the Adaptive Environment Group commended the BRA for its stewardship and "people friendly" design of Long Wharf. *Id.*
11. The Adaptive Environments' award for Excellence in Universal Design 2003 notes that the Long and Central Wharves Marine Berthing Facility:

“solves a range of complex design, structural issues and queuing space problems in a very prominent downtown location that serves thousands of commuters and visitors. Instead of looking at the obligation of accessibility as a discrete task, the team sought an integrated solution that

would address the disparate set of goals. The new pier, accessible ramps and floating berthing facility resulted in a major new urban marine intersection that created a highly visible system with a bold industrial look that is a primary point of access for everyone to the Harbor.” *Id.*

12. The BRA has sought to design and construct projects on Long Wharf that maximize public access to the water and waterfront view corridors. For example, innovative configuration of fully accessible ramps and floats at the marine facility respect the site’s historic context while minimizing visual obstructions. *Id.*
13. Transportation studies have shown that wave action at the tip of Long Wharf prohibits the City from providing dockage at this location of the Wharf.

B. Project Consistency with Planning Criteria

14. The project complies with the Master Harbor Plan (MHP) mandates as follows:
 - a. According to the MHP, the pavilion is an underutilized site that currently does not serve the proper public purpose. The project aims to meet MHP mandates and create a superior use by revitalizing an underutilized structure with the use of private funds. This project will create job opportunities, an affordable dining establishment for residents and visitors, public amenities that currently do not exist (public shaded seating and restrooms) and a destination location to attract residents and visitors to the waterfront year-round.
 - b. Through the creation of a partnership with the tenants, the BRA will revitalize an underutilized structure and generate capital investment that will allow for improvements to adjacent open space. An implementation strategy to encouraging year-round pedestrian use along the waterfront that is included in the MHP is the use of ground-level buildings and spaces in buildings to attract pedestrians. This project aims to attract pedestrians to the waterfront through the reuse of an existing structure; creating a place for those to meet and be sheltered during the colder months as well as to sit and enjoy the outdoor space in the warmer months.

- c. The project complies with applicable city and state plans as well as written memoranda of understanding and decisions by the Secretary of Environmental Affairs.
15. The MHP allows for “a reconfiguration of setback distances along the ends and sides of wharves” if the reconfiguration “promotes public use or other water dependent activity in a clearly superior manner” and if no overall reduction of total setback area occurs.
16. No total reduction of the Water-Dependent Use Zone (WDUZ), as required in the Waterways Regulations and substitute provisions of the MHP, will occur. In fact, an additional 3,135 square feet (approximate) of WDUZ setback area is proposed.
17. The proposed project does not interfere with the Harbor Walk in any way, which runs the full perimeter of Long Wharf. Similarly, the proposed design does not adversely impact the view corridor from State Street or sight lines to the water from the Harbor Walk. Exhibit 9, aerial photograph of Downtown Waterfront with overlay.
18. The restaurant use will not appreciably increase noise levels at the end of Long Wharf. In addition to the noise of boat engines, the United States Coast Guard requires vessels to blast the horn three times when leaving the fairways from either side of Long Wharf or when entering into the harbor.
19. Approximately 25,915 square feet of area at the seaward end of Long Wharf will be preserved as open space and continue to be used as a public plaza.
20. The existing egress structure occupies approximately 3,430 square feet. The proposed additions will occupy approximately 1,225 square feet.

21. None of the proposed additions are closer to the water than the existing structure. All of the proposed additions are at least twenty-eight feet from the water.
22. Seasonal outdoor dining will occupy approximately 2,586 square feet. At the southeastern portion of the wharf there will be eighteen seasonal shaded tables for public use, independent of patronage of the restaurant.
23. The proposed design of the restaurant will complement the surrounding open space and the other buildings on Long Wharf.
24. The proposed use will complement existing public and commercial uses.
25. The proposed use does not include any expansion of the limited area available for vehicular parking.
26. The proposed design includes flood mitigation measures of rabbited aluminum barrier door stop.

Signed under the pains and penalties of perjury this sixth day of February 2009.


Lawrence Mammoli

TAB 3

MARK DONAHUE

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

February 10, 2009

In the Matter of Boston Redevelopment Authority)))))	OADR Docket No. 2008-128 Waterways Application No. W07-2172-N
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PRE-FILED TESTIMONY OF MARK DONAHUE

1. My name is Mark Donahue. The statements sworn to herein are stated of my own personal knowledge except where I indicate that the statement is upon information and belief and as to those statements I believe them to be true.

2. I am the Deputy Director for Asset Management for the Boston Redevelopment Authority. I have worked at the BRA for eleven years. I hold a BA in History from the University of Massachusetts and I am a candidate for the Certified Property Management (CPM) designation issued by the Institute of Real Estate Management in Chicago. Prior to joining the BRA I owned and operated a Landscape Design and Maintenance service on Cape Cod.

3. My role as the Deputy Director of the Asset Management oversees and manages the Asset Management/Real Estate Team. We are responsible for the

management, maintenance and enhancement of all BRA-owned property, approximately seven (7) million square feet, city wide.

4. The Asset Management Department promotes the use of BRA-owned property for potential redevelopment with a public purpose. We seek to maximize the value of BRA property through improvement, investment, and/or conveyance, and look to ensure that BRA properties serve as assets to the communities and the neighborhoods throughout the City. This work is reflected on BRA-owned land along the waterfront including Central, Long and Sargents Wharves as well as the Charlestown Navy Yard and the Terminal Street Boat Ramp.

A. Long Wharf is the Hub of Boston's Water Transportation System

5. Comparative data for water transit riders passing through Long and Rowes Wharves shows that total ridership grew from an estimated 550,000 passengers in 1988 to 1.4 million passengers in 1998. Estimate annual volume for the number of passengers passing through the downtown terminals in 2010 is 3.8 million. Exhibit 25, 2006 Application.

B. Long Wharf Pavilion

6. In 1983 the Department of Environmental Quality Engineering issued two licenses for the Site:

- a. License Number 977 to the Massachusetts Bay Transportation Authority for the construction of emergency egress and ventilation shaft for the Blue Line, to be combined with a shade pavilion; and
- b. License Number 988 to the BRA for renovations to the plaza area surrounding the egress.

C. Redevelopment of Long Wharf Pavilion for Year-Round Use

7. In 2000 the BRA began focusing on activating the pavilion area year-round. The BRA began a series of meetings with interested parties, abutters, users of the waterfront, public agencies, and elected officials to explore the idea of reuse of the MBTA vent structure.
8. In 2003 the BRA submitted an application for funds to enhance water transportation which included a revised site plan from the Long Wharf Master Plan designating the pavilion as “potential adaptive re-use.” Exhibit 21 Executive Office of Transportation and Construction, Project Overview for Intermodal Transportation Facility 2003.
9. In 2005, a series of public meetings were held to discuss Mayor Menino’s Crossroads Initiative and the redesign of State Street from the Old State House to the tip of Long Wharf. The Crossroads Initiative reunites neighborhoods and revitalizes thirteen key streets that connect the downtown with the Harbor, including State Street. Numerous presentations were made to the Mayor’s

Central Artery Completion Task Force and the Wharf District Task Force regarding the Initiative.

10. The restaurant concept as a re-use of the MBTA vent structure met many needs articulated by the Urban Redevelopment Plan and the complimentary Crossroads Initiative. In addition, a restaurant would provide a destination and amenities for pedestrians using the Norman Leventhal Walkway to the Sea from the Old State House.
11. In 2006 the BRA issued a Request for Proposals for the redevelopment and restaurant operation of the pavilion and associated plaza at Long Wharf. The BRA carefully reviewed competing proposals before choosing Eat Drink Laugh Restaurant Group as the designated developer for the Site. Exhibit 24, BRA Request for Proposals for Long Wharf Pavilion; Exhibit 24A, Legal Notice; Exhibit 24B, List of Applicants.
12. A separate community meeting was held on May 10, 2007 with the North End Waterfront Association to discuss the Crossroads Initiative planning. Plans used during this public process included those for Doc's Restaurant at the end of Long Warf as a Crossroads destination.
13. In 2007 DEP issued License Number 11853 to the BRA for improvements to Long Wharf. Pursuant to this license BRA invested \$1,600,000.00 which resulted in public access to an additional 5,200 square feet on Long Wharf.
14. In September 2008 the City dedicated the new "Norman B. Leventhal Walk to the Sea." This is a wayfinding path from the top of Beacon Hill, the highest

point on the Shawmut Peninsula, to Boston's furthest projection into the harbor, Long Wharf. The Walk to the Sea features informational panels at eight locations depicting four centuries of Boston history. Three panels at Long Wharf are lit at night by low wattage LED lights powered by a small wind turbine, and can be enjoyed from a new seating area. Exhibit 27, Boston Harborwalk Initiative.

D. Planning Criteria and Development Goals for Long Wharf Pavilion

15. One of the goals of a restaurant at the end of Long Wharf is to winterize the site and provide year-round use. At present, the pavilion is not fully utilized for approximately eight months out of the year.
16. The Site currently is not a secure destination, as indicated by the spate of Boston Police Department Area A-1 reports and Municipal Protective Services Incident reports.¹ The BRA seeks to improve security by activating the Site with a public presence and retaining a private entity to monitor security and add lighting. Exhibit 10, photographs of Pavilion exterior and interior circa 2006, depicting use by housing challenged individuals.
17. The BRA and the City of Boston have consistently focused urban design efforts and investment to provide residents with parks, open space, and public access to the waterfront.

¹ Documentation for March 2008 through 2008 from the Boston Police Department and Municipal Protective Services amounts to over 200 pages and has not been produced as an exhibit herein in the interests of economy. The BRA will make these documents available for review upon the request of any party.

18. All along the North End waterfront, from the North Washington Street Bridge to Long Wharf, there is public access to park land, and on licensed private property with peaceful contemplative spaces. None of the petitioners can reach Long Wharf on foot without going through Christopher Columbus Park. *See* Exhibit 11A.
19. Other parks in Boston which provide seats, shade, and waterfront views in proximity to the petitioners are:
 - a. Puopolo Playground is inviting for fishing, swimming, baseball, and bocce. It has seats, an expansive waterview and a tot lot. Exhibit 11B.
 - b. The North End's Lagone Park connects to the DCR's Prince Street Park, which connects to the Portal Park, the Rose Kennedy Green Way, Revere Landing Park, and to the Charles River Esplanade. Exhibit 11C.
 - c. Lewis Wharf, Battery Wharf, and Burroughs Wharf provide landscaped seating areas with views of the waterfront. Exhibits 11D, 11E, 11H.
 - d. Sargent's Wharf provides seats, landscaping, and private nooks and crannies for quiet views of the harbor. Exhibit 11F.
 - e. Copp's Hill Terrace provides seating with elevated views of the waterfront. Exhibit 11G.
 - f. The Rose Kennedy Greenway will create a ribbon-like park along the perimeter of the North End. See Exhibit 9, aerial photograph of Downtown Waterfront February 4, 2009 with overlay.

20. The proposed project will feature shaded seating and restrooms open to the public not dependent upon patronage of the public and the maintenance of several sets of binoculars for the public's enhanced viewing of the waterfront. These amenities are intended to enhance the existing water dependent uses.

Signed under the pains and penalties of perjury this ninth day of February 2009.


Mark Donahue