



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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April 9, 2015

In the Matter of
Allston Brighton Friends of Daly Field, Inc.

OADR Docket No. 2014-027
DEP File No.: Waterways License
Application No. w14-4141, Draft
Waterways License Amendment
Boston/Newton, MA

FINAL DECISION

On December 4, 2014, 12 residents of the Commonwealth and the Charles River Watershed Association, Inc. (“CRWA”) (collectively “the Petitioners”) brought this appeal challenging a Draft License Amendment for Waterways License Application No. w14-4141 (“the Draft License Amendment”) that the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Allston Brighton Friends of Daly Field, Inc. (“the Applicant”) on November 13, 2014, pursuant to the Massachusetts Public Waterfront Act, G.L. c. 91 (“Chapter 91” or “c. 91”), and the Waterways Regulations at 310 CMR 9.00. The Draft License Amendment authorized the Applicant to perform major improvements to Daly Field, an approximately seven acre site in Boston’s Brighton section that is owned by the Commonwealth of Massachusetts and overseen by its Department of Conservation and Recreation (“DCR”).

Daly Field is located in area that is bounded by the Charles River to the north, and

includes areas that were at one time subject to the ebb and flow of Boston Harbor tides, which are subject to jurisdiction under Chapter 91 and 310 CMR 9.00. These areas along the banks of the Charles River were filled in connection with improvements to the Charles River Basin pursuant to a License issued on October 9, 1913. The Site is between the Daly Skating Rink, in Newton to the west, and the Community Rowing facility in Brighton.

The Draft License Amendment authorized the Applicant to construct and maintain the following at Daly Field:

- (1) an approximately 5,523 square foot portion of a synthetic turf softball field and a synthetic turf field hockey field;
- (2) an approximately 2, 895 square foot portion of a tennis court;
- (3) perimeter fencing around the playing fields and tennis courts;
- (4) two athletic field light towers;
- (5) a multi-purpose scoreboard;
- (6) soil berms for informal spectator seating;
- (7) a vegetated swale;
- (8) a bio-retention area;
- (9) underground utilities;
- (10) other underground storm water management facilities;
- (11) replacement of an existing 20 foot wide service road along the water's edge with an 8 foot wide bituminous concrete (asphalt) pathway, which connects to the public access path at the Community Rowing, Inc. site to the east and to the Daly Memorial Rink site to the west;
- (12) associated landscaping; and

- (13) removal of an eight foot high chain link fence along the sides of the existing service road.

Draft License, at p. 1. The structures authorized by the Draft License Amendment were limited to the following uses: “public access to and enjoyment of the waterfront including active recreation in the form of tennis; field hockey, softball, and informal team sports; underground storm water drainage facilities and underground transmission of utilities.” *Id.*, at p. 2. The Draft License Amendment’s term was also for 30 years. *Id.*

According to DCR, the Draft License Amendment is consistent with Chapter 223 of the Acts of 2012 (“Chapter 223”), legislation enacted by the Massachusetts Legislature in 2012 that authorized the Commonwealth’s the Division of Capital Asset Management and Maintenance (“DCAMM”), in consultation with DCR, to enter into a lease agreement with the Applicant for Daly Field and authorized the improvements, activities and uses set forth above.

On February 19, 2015, the Chief Presiding Officer conducted a Pre-Screening/Pre-Hearing Conference (“Conference”) with the parties in accordance with 310 CMR 1.01(5)(a)15, 310 CMR 1.01(9), and a Scheduling Order that he issued to the parties on December 22, 2014.¹ At the Conference and after hearing from the parties, the Chief Presiding Officer identified the Issues for Resolution in the Appeal in the event that the appeal was not settled by agreement of the parties, and established a litigation schedule to resolve the Issues through an evidentiary Adjudicatory Hearing (“Hearing”) on April 2, 2015 where witnesses would appear on behalf of

¹ The Conference had been originally scheduled for January 28, 2015 but had to be re-scheduled several times due to major snow storms that the Commonwealth experienced from late January to mid-February 2015 that resulted in the closing of State offices in Boston.

the parties to be cross-examined on the sworn Pre-filed Testimony (“PFT”) that they filed prior to the Hearing.²

Since the Conference, the parties have engaged in serious settlement discussions to resolve this appeal. Their efforts have been fruitful because pending before me for review and approval is the parties’ Joint Motion for Approval of Settlement Agreement and Issuance of the Final License (“Joint Motion to Approve Settlement”).

Attached to the parties’ Joint Motion to Approve Settlement, are: (1) the parties’ proposed Settlement Agreement; and (2) the proposed Final License. The Settlement Agreement has been signed by George A. Hall, Jr., as legal counsel and representative for all of the Petitioners; Lynda M. Connolly, the Applicant’s President; Thomas J. LaRosa, Deputy General Counsel for DCR; and Ben Lynch, the Department’s c. 91 Program Manager.

I have reviewed the proposed Settlement Agreement and proposed Final License, and find that both serve the public interest and the statutory and regulatory interests of Chapter 91. Under the settlement and as reflected in the proposed Final License, the Final License will be deemed a new Chapter 91 License rather than an “amended” License as the Draft License Amendment currently categorizes the License. The only other change that has been made to the Draft License Amendment is to eliminate the requirement that the riverside eight foot wide

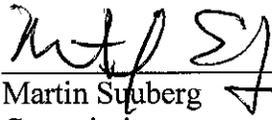
² Under the December 22, 2014 Scheduling Order that the Chief Presiding Officer had issued in the case, the original Hearing date in the appeal was scheduled for June 17, 2015. Scheduling Order, ¶ 10. On January 30, 2015, the Applicant filed a motion requesting that the appeal be resolved by the beginning of March 2015 pursuant to MassDEP Policy No. COM-00.002 entitled “Expedited Review of Applications and Adjudicatory Hearings” (“Expedited Review Policy”). Applicant’s Motion to Expedite, ¶¶ 1-10. At the Conference, the Chief Presiding Officer heard argument from the parties on the Applicant’s request for expedited review of the appeal, and subsequently for good cause granted the Applicant’s request in part by moving up the Hearing date from June 17, 2015 to April 2, 2015 and establishing a schedule for resolution of the appeal by April 30, 2015. See Pre-Screening/Pre-Hearing Conference Report and Order (February 23, 2015), at pp. 13-17, 21-22.

walkway be constructed only of asphalt. See p. 2 above, ¶ 11; Settlement Agreement, ¶ 8.

Under the settlement, this walkway may be constructed “with any material that does not restrict universal public access to the walkway.” Settlement Agreement, ¶ 8. The settlement will allow the remaining work authorized by the Draft License Amendment to proceed without impairing any interest under Chapter 91.

Accordingly, I issue this Final Decision approving and incorporating the Settlement Agreement and the Final License. Within two business days of this Final Decision, the Department shall provide me with an original Final License that has been executed by the Department’s c. 91 Program Manager in order that the License can be finalized.

Under the terms of 310 CMR 1.01(8)(c), these proceedings in this appeal are dismissed with the parties waiving whatever rights they may have to further administrative review before the Department as well as appeal to court.



Martin Stuber
Commissioner

SERVICE LIST

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