

# INTERESTED BYSTANDERS: THE REAL ESTATE PRO- FESSION AND BEHEMOTH PUBLIC WORKS PROJECTS

*The private real estate sector has been frozen out of gigantic new public works projects in Boston largely because of the lack of communication between big government and the real estate community.*

by Frank J. Parker, CRE

## A City On A Hill

**F**or three years after his arrival in the new world in 1622 until the autumn of 1630, Boston's first white settler, Reverend William Blaxton lived in solitary peace on Beacon Hill, a mere stone's throw from today's state capital building. When the Massachusetts Bay Colony residents began arriving and settling down, no doubt the Reverend Mr. Blaxton muttered to himself: "When is all this infernal construction going to stop?" Thirty-six decades later, residents of Boston, the home city of both Reverend Blaxton and this author, still are asking the same question.

*"And this is good old Boston  
The home of the bean and the cod  
Where the Lowells talk only to Cabots  
And the Cabots talk only to God."  
—John Collins Bossidy*

Since Bossidy wrote this couplet in 1910, the situation in Boston has changed little, if at all. In the current scenario, the generic entity described as "big government" (including federal, state and city) could be assigned the role of the Cabots. The real estate profession could play the role of the Lowells. God would make a return appearance in His original role. As always, the Cabots would be talking only to God, and the Lowells would be ignored by their earthly Cabot counterparts. Their state of diplomatic relations with God would remain unknown.

A chasm in communications between big government and a local real estate community is always serious, but it can be devastating if it persists after the local economy has fallen through the floor. In the glorious "home of the bean and the cod," the decade-long economic miracle that saw the gross product in the Commonwealth of Massachusetts grow at an average annual rate 33% higher than the national average has ended. Unfortunately, the Commonwealth's economic wheels have ground to a halt just as its public sector has geared up to start making more than \$12 billion in structural improvements to Boston's highway, tunnel and sewer systems. If the new construction does not take place—or, even worse, if it is halted midway through—the long-term adverse effects on real estate markets in the Commonwealth will be severe. Best estimates indicate that despite the bonanza in jobs that would be engendered by these public works projects, the Commonwealth's projected revenue shortfalls will approach \$2 billion a year for the foreseeable future.

Such mammoth public sector extravaganzas tend to plow ahead like some ancient brontosaurus. In its presence, local, private real estate professionals feel, at best, like bewildered bystanders and, at worst, like fresh food for the onrushing monster. This article

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discusses the coming surge in public works projects for Greater Boston and the difficulties in bringing them to fruition. The article also describes the internecine warfare in the public sector and the public sector's failure to include the private sector, especially the real estate community, as an active partner in these most important enterprises. Although the problems identified here may be worse in Boston than in other parts of the country because of the scope and costs of the projects involved, similar problems undoubtedly arise elsewhere.

### Artery-Tunnel Project

Automobile traffic in and through the center of the City of Boston has reached crisis proportions. The main thoroughfare, the Central Artery, is an elevated highway that was built at the end of the 1950s and was designed to carry 75,000 automobiles a day. At present, best estimates indicate an average of 200,000 automobiles clog this road system daily. Doomsday predictions of 14-hour-a-day traffic tie-ups by the start of the next century with a resulting loss in productivity of \$2 billion annually to area businesses have terrified the local business community. In response, state and city officials have announced a massive road and tunnel construction project that is intended to ease some of downtown Boston's staggering traffic congestion, drastically improve access to its international airport across the Charles River and double the capacity of both north-south and east-west automobile traffic.

The disruption to downtown Boston from this construction project is almost beyond conception. The seven-mile long project has as its focal point the replacement of the major elevated north-south thoroughfare, the Central Artery, with a new ten-lane roadway, mostly underground. The major east-west thoroughfare, the Massachusetts Turnpike Extension, will be lengthened via a new road and a new four-lane harbor tunnel which hopefully will relieve some of the current pressure on the two antiquated tunnels that serve Logan Airport. There are fears that the reduction in north-south expressway travel lanes during construction will cause traffic to back up onto city streets and stop practically all circulation of automobiles.

Another concern is the fear of disease. Because a large part of the city was built by artificial accretion from the soil in Boston Harbor, there is an enormous rodent population. A recent attempt to build a small parking garage on Beacon Hill dislodged and spilled so many distinctly unhappy four-legged creatures onto adjacent streets and into neighboring buildings that the mind absolutely boggles at what will occur when the digging begins for the Central Artery submersion and the third harbor tunnel—notwithstanding assurances by the contractors that they have hired the world's leading rodent control specialists to solve the problem.

In addition, there is great fear that the substructure of the city will not be able to handle the strains of the digging. Since absolutely everything underground in the central city area will be touched during construction, the possibilities for destruction—

even catastrophe—are present. "Can't happen, here!", roar city and state officials in reply. "We have hired a geotechnical engineer, an architectural historian and a structural engineer to protect ourselves." Perhaps these assurances of safety will prevail, perhaps not. The results won't be pretty, however, if damage does occur to historic landmarks that will be disturbed—the 1711 Old State House, 1825 Faneuil Markets and the 1750s Blackstone Buildings.

What will it all cost? More and more, the answer seems to be: Who knows? State officials who are not known for exaggerated cost estimates of public works projects have increased the final anticipated cost of the artery tunnel project from \$3.3 billion at the project's commencement to \$4.43 billion in 1987 and \$4.97 billion in July 1990. Additional upward cost revisions appear inevitable.

There also is concern that the federal government may reduce its funding commitment to the Greater Boston road and tunnel system before the project is completed. The Federal Highway Trust Fund is the major source of federal monies for roadway projects.

However, until now, the federal government has committed itself to only \$2.3 billion of the project's expenses. Although the election of Republican William Weld as Governor of Massachusetts may elicit a cooperative attitude from Washington, the national budget crisis almost certainly will restrict the overall federal subsidy that will be available. As the project's costs continue to rise, doubts are increasing about how deeply into the Highway Trust Fund the Bush Administration will dig to assist the Commonwealth of Massachusetts.

To make matters worse, downtown Boston's bridge and tunnel project is not the only roadway expenditure facing the Commonwealth of Massachusetts at present. An additional \$15 billion must be found to perform needed repairs elsewhere. It is questionable whether the financially hard-pressed Commonwealth will be able to carry its share of the Central Artery—Third Harbor Tunnel project, which totals 10% of the final accounting plus the amount the federal government refuses to pay, as well as its share of the cost of these other repairs.

During June 1990, the long-awaited plan for the Central Artery and the Third Harbor Tunnel was released for public comment by the Massachusetts Department of Public Works. The report on the project's environmental impact was three years late. It encompassed nine volumes of material in 2,500 pages, weighed 40 pounds, was eight times larger than the telephone white pages for the City of Boston, and cost the Commonwealth of Massachusetts \$10 million to prepare. Nevertheless, the one and only public hearing on the plan was scheduled one week after the report's release.

Heavy criticism has been directed at many of the plan's proposals, including the proposal to place most of the 13.5 million cubic yards of fill generated by digging in the central city on Spectacle Island, the 97-acre eyesore in the middle of Boston Harbor. In the end, it is hoped that a 227-acre public park

will be sculpted from the deposited rubble. Can this proposal work? The federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers are highly skeptical. Both possess veto power and both want on-land fill site alternatives.

Criticism also has been expressed by the Sierra Club, which has gone to court to demand that the EPA investigate and grant air quality permits for seven ventilation towers planned for use during construction. The National Association of Railroad Passengers and the ever-active Sierra Club are asking U.S. Transportation Department officials to require a full study of adding a North Station to the South Station rail line before digging can begin. East Boston residents want the toll plaza removed from their neighborhood. In addition, the Army Corps of Engineers is rethinking whether a 40-foot deep tunnel is adequate in light of the accident of January 1, 1990 in which the Turkish oil tanker *Gebze* struck bottom in 42.9 feet of water in Boston Harbor. All in all, \$4.97 billion may be just the initial, not the final, cost of the artery-tunnel project.

### The Scheme Z Fiasco

All other complaints about the proposal put together pale in comparison to the uproar created by Scheme Z. To quote the distinguished architecture critic of *The Boston Globe*, Robert Campbell, the new Central Artery will be "a grotesque monstrosity" because a major part of the new roadway will be a 125-foot high, 300-foot wide, 13- to 18-lane wide bridge over the Charles River rather than a tunnel under the Charles River.

The usually positive and reserved critic was excoriating in his criticism: "There is something truly nutty about all of this. The whole point of The Central Artery project is to get rid of the overhead expressway in Boston in order to connect the city to its waterfront. What is the point of replacing one overhead highway with an even bigger one somewhere else? It is as if we were witnessing some perverse law of physics. If you push the artery down in one location, an equal and opposite mass will pop up somewhere else."

The EPA, the main permit-granting hurdle for the Artery-Tunnel Project, agreed with Campbell. The agency termed this Charles Bridge design to be "the ugliest single structure in New England." A host of groups threaten to sue and thus block the Scheme Z part of the plan. Among the dissenters are the Cambridge Conservation Commission, the Charles River Watershed Association, the Cambridge Citizens for Liveable Neighbors, Citizens for a Liveable Charlestown and, as always, the Sierra Club. The Weld Administration has promised a close review of Scheme Z.

### MWRA Boston Harbor Cleanup

Even worse from the Greater Boston area's perspective, is that the problems do not stop at the shoreline. Temporally contemporaneous with the \$4.97 billion Central Artery-Third Harbor Tunnel project is the need for a federally mandated secondary water treatment cleanup of Boston Harbor. Anyone who

saw President Bush's 1988 campaign commercial knows that Boston Harbor has the highest levels of toxic metals and polychlorinated biphenyls found in any American body of water. The fiscal damage from this cleanup is estimated at \$7.0 billion, up from an earlier quotation of \$6.6 billion. But here, no convenient sugar daddy such as the Federal Highway Trust Fund stands on the horizon to cushion the financial shock of the cleanup at the local level.

The 60 Eastern and Central Massachusetts communities that make up the local Massachusetts Water Resources Authority (MWRA) must foot the lion's share of the bill for the harbor cleanup—over 90% of the cost at current estimates. Water rates in the district have more than tripled since 1985, reaching an average assessment of \$377 per ratepayer for fiscal year 1991. By the time the cleanup is scheduled to end in 1999, it is estimated that these rates will more than triple and reach an average yearly payment of \$1,200 per ratepayer.

The scope of the cleanup is daunting: There are 5,300 miles of collection pipes under the control of 43 local governments; 228 miles of larger pipes held region-wide; tens of thousands of lateral connections in private ownership; over 100 governmental agencies with competing or overlapping interests.

From day one, every move of the MWRA has been subjected to public scrutiny, often to withering criticism. Public objection has ranged from the trivial (MWRA paid to have its automobiles washed; MWRA paid for coffee for its employees on break and, worse yet, for an employee Christmas party) to the deadly serious backed by the threat of time and money-consuming lawsuits. MWRA is criticized for its decision to build a \$52.6 million office headquarters in Roxbury, rather than take over facilities in an abandoned shipyard in one of the smaller cities in the district and an equally contested decision is criticized of awarding work only to contractors that employ union labor—an act that the Associated Builders and Contractors of Massachusetts, which represents 750 non-union and semi-union contractors, vowed to challenge in court.

Controversy also has arisen involving the proposed locations for 15 sewerage overflow facilities, of which a number need to be placed in the middle of the City of Boston. A MWRA memorandum best sums up the problem: "Potential impacts include the permanent loss of the 1/4 to 1/2 acre site for any development purposes, periodic truck traffic to remove debris, increased noise from the heavy equipment and cleaning operations, possibly inadequately controlled sewerage odors—existing control systems often malfunction—and undesirable ascetic impacts—concrete work pads and shaft covers—although the remainder of the site could be covered with grass or other landscaping; all of which would adversely affect property values and the marketability of the development."

The disputes described here cannot begin to equal in contentiousness the furor that has surrounded the placement of the sewage by-products landfill. The chosen site will be the principal depository for grit,

twigs, non-treatable plastics and a secondary landfill for sludge products if the MWRA plan to turn harbor sewage into commercially salable fertilizer pellets should fail. The towns that may be selected as landfill sites have thrown tantrums of monumental proportions. As a result, the Commonwealth's executive and legislative branches have avoided making a decision. A thoroughly frustrated U.S. District Court judge set a date at which time he will select the landfill site and order condemnatory proceedings if the legislature avoids its constitutional obligation to do so.

### **The Regulatory Overlay**

The public sector planning and supervision that engulf the artery-tunnel and harbor cleanup projects share a symbiotic relationship with standard environmental and zoning restrictions found in Boston and practically any other large city. This joining together of dissimilar organisms seems to strengthen the regulatory mass as a whole and create a construction environment that is bewildering in complexity, massive and uncertain in cost and forbidding in risk. Zoning and linkage are problems that real estate professionals expect in any major new undertaking. Increasingly, however, solid waste removal, clean air mandates and design review regulations—to name but three important complications that mount continually in Boston—are making the artery-tunnel and harbor cleanup even more daunting than would otherwise be the case. The overall result is that large investors are saying there must be easier places than Boston in which to build, and they are beginning to look elsewhere.

#### *Solid Waste Removal*

Recently a solid waste master plan set up a 46% of total recycling goal that would ban in Massachusetts the burial or burning of certain recyclables during a ten-year period. Many were skeptical of the viability and cost of this project. As if to agree, the Commonwealth simultaneously went ahead with the building of one new large incinerator plant and with plans to expand greatly the capacity of one already existing. Opponents were quick to point out that the private sector company most involved in evaluating and constructing the incinerator plants was heavily staffed with former employees of a number of state environmental agencies. Because of the potential for conflict of interest lawsuits in addition to the litigation that almost inevitably occurs in connection with selecting a site for an environmental treatment plant, the possibility of major disruptions in any construction project in Greater Boston is likely.

#### *Clean Air Mandates*

With no intention of giving air quality problems a back seat to problems concerning solid waste removal, tunnels, roads and water, Massachusetts has set about implementing draconian standards for cutting smog-causing car emissions. This crusade is being led by state environmental regulators whose zeal to cleanse the air in the Commonwealth has reached a fever pitch that perhaps has not been experienced in these parts since Increase Mather and his Protestant clergy brethren were intent upon

cleansing sin from the moral environment of 17th century Massachusetts Bay Colony. Recently regulators announced plans to force a 25% to 40% reduction in carbon monoxide, nitrogen oxides and hydrocarbon emissions from the Commonwealth's four million motor vehicles.

It is probable that the private sector will go along with the proposal to install air pollution prevention devices, which are estimated to increase the cost of new automobiles by an average of \$150 apiece. However, storm clouds are on the horizon. The Massachusetts regulations were announced as part of an eight-state regional pact called Northeast States for Coordinated Air Use Management (NESCAUM). This association of public sector regulators is allied closely with a number of non-profit sector environmental protection groups. As a result, an overall environmentally driven regulatory climate seems to be feeding upon itself and operating almost without reference either to the legislative process or the wishes of the electorate.

Referring to NESCAUM, the Massachusetts Environmental Affairs Secretary in the Dukakis Administration, John DeVillars, stated: "We can do this without legislation. But it is part of a belt and suspenders approach." Such an attitude leads almost inevitably to comments such as the following which were made by a Boston environmental attorney applauding the NESCAUM actions. "Absent of a national program, a regional program is the most effective way of battling the clean air problems facing the Northeast. We would be thrilled by regional action to move forward to adopt California's emissions program. Unfortunately, the federal government is gridlocked and it is up to states like Massachusetts to take the lead. Hopefully today's actions will send a strong message to the White House: President Bush, wake up and smell the ozone!"

#### *Design Review Regulations*

A similar regulatory evangelism permeates the enabling legislation for the Boston Civic Design Commission, an eleven-member group of citizens, at least six of whom must be architects, landscape architects or urban designers. They are appointed by the mayor to review the design (including the environmental impacts) of large-scale and other significant public and private projects within the city limits.

The scope of control that the City of Boston abrogates through the agency of the volunteer Boston Civic Design Commission is truly staggering. In the purpose clause of the legislation, the role of this supervisory group is clearly, if grammatically incorrectly, delineated: "By assisting and advising the city in the design review of projects that affect the public realm, the Design Commission will provide a forum for the general public and the professional design community to actively participate in the shaping of the city's physical form and natural environment."

A number of real estate professionals view this new commission with unabashed concern because the stakes are very high. This design group will be charged with making recommendations to the Boston

Redevelopment Authority about the usage of the 30 acres of prime downtown Boston real estate that will become available when the Central Artery is submerged. Its opinion on air rights usage is similarly crucial. In fact, every major new project for Boston must pass its muster.

The legislation creating the Boston Civic Design Commission is so vague that it is not clear whether the commission's disapproval has the legal weight of a veto or acts merely as a recommendation to the Boston Redevelopment Authority. In either case, it seems safe to say that, when private sector architects and planners receive from a municipality the authority to influence the viability of their competitors' private sector projects, they are given power and control that is subject to abuse. After four years of dispute as to whether there were insoluble conflicts of interest inherent in serving on this commission, the state legislature exempted commission members from state laws on the subject. However, this exemption may not sufficiently shield commission members from civil lawsuits for interference with contracts.

The Boston Civic Design Commission continues the public sector's trend toward seeking advice from financially uninvolved members of the private sector who have a special interest agenda that may be radically different from the agenda of the general public or of those in the private sector who are willing to risk their own capital to construct projects. To the multi-layers of public sector regulators and neighborhood groups that influence the major projects that can be built, to their cost and rent now must be added architects, landscape architects, planners, profit-making environmental design and cleanup firms and public-interest environmental lawyers general tendency to supervise, supervise, supervise before any major project can be started.

No wonder one major developer, frustrated to the breaking point as his stalled project headed toward foreclosure, felt compelled to state in a local newspaper: "Basically the city and state were too greedy. The bureaucratic process, both on the local level and the state level, is out of control in Boston. There is no question that abuse of developers is taking place. Architects and consultants costing \$100 an hour are required to spend numerous meetings with Boston Redevelopment Authority staff while the developer spends \$10,000 a day or more on interest payments waiting for development permits. Here we have people crawling around on the street for food and shelter while hundreds of thousands of dollars are being frittered away to banks on interest charges. All that money could have gone somewhere else. We waste millions of dollars redesigning the minutest detail while the Boston Redevelopment Authority is picking apart a design. Meanwhile homeless people are picking around in the street for lunch. It is sick!"

### Bringing The Sectors Together

The 19th century British historian, Lord Thomas Babington Macaulay, is attributed with promulgating the concept of the public weal and capturing in

essence the sound, healthy prosperous state of well-being in the nation. At present, in Boston few people would speak with great enthusiasm about a state of well-being as the private sector real estate community wrestles to represent its concerns in the middle of public sector real estate squabbles.

The real estate community is a diverse entity. Unlike medicine, law, insurance, theater, physics and numerous other fully matured professions, real estate is not integrated. While members of mature professions perform roughly the same tasks, those who concentrate in real estate perform many different professional tasks, including legal, brokerage, appraisal, engineering, architecture, planning, marketing, banking and public relation functions. As a result, it is more difficult for the real estate community to band together as an entity and speak than it is for other professions.

If the Commonwealth of Massachusetts had undertaken sweeping changes in areas directly affecting law or medicine, for example, these professional groups would band together to make certain that the public sector understood, appreciated and took into account their opinion on proposed changes. Due to the lack of homogeneity of the discipline, such is not the case in real estate.

The public sector predilection to go it alone in real estate ventures is to some degree understandable, even though when it acts independently, the public sector, whether it is national, regional or local, is not capable of addressing all of the ventures' problems. In fairness to the public sector, so many disciplines are affected by its real estate-based decisions that locating proper forums for the expression of interested private sector commentary is difficult. Perhaps here is an agenda for the real estate counselors as a national, regional and local organization. Real estate counselors are broad-based enough to represent all facets of the private sector real estate industry in general discussions with the public sector and its public interest supporters. Their membership also is sufficiently prestigious to act as mediators in disputes between public sector factions that are engaged in real estate-related regulation. The task is daunting but so are the difficulties all public and private sector participants are trying to solve. It is time to begin.

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