

Testimony of Shirley Kressel
Re: H 1803 An Act Relative to the Greenway Conservancy
Joint Committee on Transportation
March 12, 2012

I am a landscape architect, and have lived in Boston for almost twenty years. I have followed the Greenway Conservancy closely since its conception. I have attended most of its public meetings (and have been ejected from some of its private meetings) and I have sought, usually unsuccessfully, to obtain Conservancy documents and information. I have published many articles about it in the Boston Globe, the South End News, and the North End News over the years. I have previously written about much of the material published in the recent Herald expose, and have personally brought information to state officials about the Conservancy's profligate use of public money, withholding of information from the public, creative bookkeeping, and inappropriate ideas for control of the park's use. Despite this information, from myself and from others in the community, the state has turned a blind eye and continued to pour money into this entity. After so many years and so much public money, it took an errant email from Executive Director Nancy Brennan to force an inquiry into this so-called "public-private partnership."

The Greenway Conservancy was formed in July 2004, under a Memorandum of Agreement (MoA) with the Massachusetts Turnpike Authority (MTA). For four years, the Conservancy received \$500,000 a year (almost half of which was spent in salary to Executive Director Nancy Brennan), during which it was to demonstrate its capability to establish a \$20 million endowment and take responsibility for all future Greenway management solely with private funding. The MoA says:

"Section VII.

It is the intent of the Parties that the Conservancy undertake its obligations under this Agreement and the Bylaws without relying on any federal, state or local funding...."

By the time the Conservancy began any work, it had already received \$10 million in public funds (\$9 million from the state and \$1 million from the City of Boston via the Boston 2004 DNC surplus fund). To date, the Conservancy has received over \$16.2 million from the taxpayers.

While it was being publicly funded to establish a private funding mechanism, the Conservancy successfully lobbied the state legislature to get itself an enabling law that expressly terminated all the provisions of the Memorandum of Agreement, including the central one requiring it to operate solely on private funding. If not for this requirement, there would not be a Conservancy running our park; the sole reason for creating and supporting this entity was to spare the state's taxpayers any further Greenway management cost.

Just as it was to assume its obligations as promised, the Conservancy changed its "business model," using this enabling law to obtain a land lease (originally requested to be a 99-year lease, effectively an ownership interest) on our public park, and a commitment for state funding equal to half of the Conservancy budget, up to \$5.5 million per year. That provision anticipates a budget of \$11 million to maintain 13 acres of parkland, about \$846,000/acre. By comparison, the State Department of Conservation and Recreation is now managing 450,000 acres with \$70 million (\$150/acre), and the City of Boston cares for 2,200 acres with \$15 million (\$6,800/acre).

The Conservancy has taken advantage of its private 501(c)(3) status to keep its books and meetings closed. It is legally exempt from the public-integrity laws, including the Open Meeting Law and Public Record Law, the competitive procurement and bidding laws, and the conflict of interest laws. The Conservancy's secrecy may also be enabling political influence-buying by hiding the identity of big donors. Yet it controls our public realm, using public money.

Despite recent requirements by MassDOT Secretary Richard Davey to make itself subject to the Open Meeting and Public Record Laws, the Conservancy board has confirmed, at its public board meeting of February 7, 2012, that it is going to continue to maintain its secretive practices as its tax status allows. It will have public meetings when it wants to but private meetings when it so desires. And it will reveal to the public only the highly aggregated data that the IRS requires 501(c)(3) entities to disclose.

Secretary Davey also demanded a business plan within six months that would wean the Conservancy from public funds within five years, and do what it promised to do as a condition of its creation. However, the board has made it clear that they have no intention of making its finances as private as its information. The Conservancy is going to bring to bear all its considerable political connections and lobby vigorously to maintain its public funding.

The Conservancy is loath to disclose its finances, because then we will see how little of the money they have collected is going into the park. We already know that they spent a large portion of their money on generous administrative salaries and very little on park improvements. We have an indication that their “programs” may be heavily larded with more administrative costs. For example:

Their “Green and Grow” program spends almost \$300,000 a year to train a half dozen high school students in landscaping work. Billed as a “workforce development” program, the G&G funding includes about \$50,000 in student stipends. Who is getting the rest of that money? We don’t know; the books are closed.

It appears that the bulk of the park’s gardening work is actually done through a half-million dollar contract with Work, Inc., a government-subsidized group for disabled people. The breakdown of where that money goes is unknown; neither the Conservancy nor Work, Inc. will disclose the details.

The Conservancy has been renting a perfectly good classic historic children’s carousel and getting a share of the ride income. But it is spending \$3 million to create a new carousel so that it can keep all of the money coming from the children. Like the Conservancy itself, this new carousel was touted as a totally private undertaking; but now we find they have obtained \$250,000 from the state, toward what can fairly be called a profligate project.

The Conservancy has always refused to solicit competitive bids, and the state has neglected to do so before approving the Conservancy’s black-box budgets. Because of the Conservancy’s secrecy, we have no figures on what the cost of a reasonable, sensible management plan would be. Yet we are pouring taxpayer money into the Conservancy to let it spend exorbitantly, while it reassures us that it is spending modestly – according to its own undisclosed study of other parks that it chose for comparison. Our legislators should be looking at the Conservancy’s budget in the context of our own public parks and other public services; that is your responsibility to the taxpayers, not to match the wildly extravagant budgets of other parks the Conservancy has chosen as “benchmarks,” parks that are privatized and in many cases very controversial in their own cities.

In this context, Representative Aaron Michlewitz and Senator Anthony Petrucci, who support an indefinite continuation of the Conservancy’s operation, have filed H1803.

I am testifying in opposition to this bill.

The bill has three main provisions:

- Conservancy compliance with the provisions of the Open Meeting Law
- Conservancy budget review by the Conservancy Leadership Council
- Reduction of the State’s obligation to fund half the Conservancy budget from \$5.5 million to \$4 million.

None of these provisions will improve this untenable situation.

The Conservancy has already publicly announced, as mentioned above, that they are not obligated to, and will not, comply with the Open Meeting Law. They may have public sessions for “dog and pony shows,” but they will also have private sessions where they can make the important decisions over our public realm. Oddly, the bill does not mention compliance with the Public Record Law; but of course this demand would also be rejected.

The Leadership Council, ostensibly meant to bring in the “voice of the community,” is a rubber stamp, consisting mostly of corporate and political interests and others with conflicts of interest, and even at that, only a handful of the 13 voting seats are filled, according to the Conservancy website. The chair is Michael Cantalupa, Vice President for Development at Boston Properties, which is seeking permits for projects along the Greenway corridor. To date, the Leadership Council has never challenged the board’s actions, and never requested or received financial information beyond what the public has seen. Its budget review will be uninformed and biased. It will never be a check-and-balance to the board.

Finally, we should ask on what factual basis Rep. Michlewitz and Sen. Petrucci decided on \$4 million a year as a proper state funding level for the Conservancy. Where did they get the idea that \$8 million is a reasonable budget for this park, the size of a dozen suburban house lots?

And furthermore -- where do they think this \$4 million would come from? The enabling law, Chapter 306 of the Acts of 2008 (AN ACT AUTHORIZING THE ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY, INC. TO OPERATE, MANAGE AND MAINTAIN THE ROSE KENNEDY GREENWAY) provided that the annual financial assistance “shall be paid annually from interest earnings on the Central Artery and Statewide Road and Bridge Infrastructure Fund, established in section 63 of chapter 10 of the General Laws.” That source was depleted last year. The legislation has not been amended, so MassDOT is now apparently funding the Conservancy unlawfully. It is using turnpike tolls, without any official appropriation process. Is this a legal use of toll fees -- or is it taxation without representation? Would the state’s drivers be happy to know they are still paying tolls -- not for the road upkeep, but for the six-figure salaries of Nancy Brennan and her administrative cadre?

And where would the future subsidy money come from – perpetual toll siphoning? The General Fund, where underfunded schools, health care, roads and bridges, libraries, parks and mass transit compete for resources every year? Which legislators will stand before their voters and support an appropriation for this profligate and secretive Conservancy, which has no public accountability and intends to keep it that way?

There is, in fact, no evidence that an \$8 million budget is necessary for this park; on the contrary, it appears that the real cost of park maintenance is a small fraction of that. But the Conservancy has steadfastly blocked competitive bidding for this work.

To find out what funding the park actually requires, MassDOT should immediately issue an RFP for bids; the maintenance standards are spelled out in the Conservancy lease. Massport’s well-kept East Boston Piers Park is maintained through a contract; a review of that experience might be helpful.

The Greenway Conservancy is not acting in good faith. It cannot be improved and does not want to be improved. It should not be the steward of our public space.

The solution is clear. MassDOT should let the Conservancy lease expire this June, end this subsidy, and contract out for the Greenway’s care on the basis of a competitive bidding process. This is good business practice and good government practice.

The \$16 million to be recovered by the state from the Conservancy at the termination of the lease can serve as an endowment or a set-aside fund to supplement annual appropriations.

Once the Conservancy is gone, a community-based “Friends of the Greenway” (which has also been blocked by the Conservancy) will spring up, to be sure that there is direct public input and oversight and to organize volunteer activities. That’s the model that has been working with other public parks.

The Greenway is a public park. It should be managed by a publicly accountable agency that will use public resources for the park, not for inflated private administrative salaries and profligate “programs.” As our elected representatives, it is your obligation to achieve this goal.

Shirley Kressel
27 Hereford Street
Boston, MA 02115
617-421-0835
shirley.kressel@verizon.net