

Town of Freeport, Maine  
Coastal Waters Commission  
Meeting Minutes  
November 17, 2020

Participants:	Jeff Stenzel Dayton Benway Laurie Orlando Peter Polovchik Tod Yankee Mark Morrissy Joe Frazer Amy Tchao – Town Attorney Charlie Tetreau – Harbor Master
Absent:	
Guests:	Peter Joseph – Town Manager Peter Spencer Harry Keates Ethan Parker Jo Siviski Katrina Van Dusen Mary Foster Genie Field Marion Thornton Ring Joseph Field Carter Becker Gretchen Iszard Parker Barney Baker John Grillo Peter Selian Rob F – HYC Stafford Sue Hadlock 2 phone participant

Coastal Waters Commission (the Commission) Meeting was called to order at 7:37 pm on November 18, 2020 via Zoom video conference.

Minutes from the October 2020 meeting were reviewed with no revisions proposed. Mr. Polovchik moved to approve the minutes, and Mr. Frazer seconded the motion. All members of the Commission were in favor with none opposed.

#### **Harbormaster Report**

Mr. Tetreau shared the water front has slowed down with a majority of activity related to commercial fisherman. A project that will continue into next summer is identifying moorings outside the river with GPS coordinates for easier recognition and tracking.

**Wharfing Out Permit**

Mr. Becker, Falls Point Marine, representing Thomas and Mary Martin presented the Island Dock Access (wharfing out) application for Bustin's Island.

The total wharf and float length meet ordinance requirements. At the 75' foot mark the wharf is pinned to ledge. The 45' gangway will be stored on land, and the float will be hauled to Mere Point for storage. Use will be shared by neighbors, but not governed by any official contractual agreement. All abutters have been notified and no concerns have been raised. Construction will begin in the spring and is expected to be completed in a very short amount of time. Ice risk is as limited as possible given the placement of the permanent gangway on the land side. A 21' Grady White will be the primary boat use.

A call was made for public comment, and no attendees responded. The permit will be available for public viewing on the Town website for 30 days, and an official vote will be taken during the December 2020 meeting.

Mr. Spencer, Waterman Marine, representing the Keates-Silverman application for Kelsey Brook with property address of 64 Lupine Lane is under consideration having been tabled again at the Commission's October 2020 meeting. The revised application requested during the September and October Commission meetings was prepared for the November meeting as a book with tabs separating all individual ordinance sections of the application. At less than 100 total feet the total wharf and float length meet ordinance requirements. The entire structure is located fully within the Keates property boundaries. All abutters have been notified, and according to Mr. Spencer no opposition was expressed. Visual aspects of the structure have been reduced to eliminate viewing from Freeport Land Conservation Trust.

A portable 600 lbs hammer will be used to drive the wharf pilings. The hammer will be moved above the marsh grass using staging. The hammer is owned by Waterman Marine. The ramp will be stored on the pier, and the float will be stored upland next to the pier. Waterman Marine will be performing the ramp and float storage.

A call was made for public comment. Katrina Van Dusen, Executive Director of Freeport Land Conservation Trust, expressed concern about the use and character of the wharf and float as compared to the surrounding area. There are no other similar structures in the area, and it is in Ms. Van Dusen's opinion the wharf will be visible from Conservation property. Concern was also expressed for erosion and overall impact to the surrounding marsh land.

Mr. Morrissey asks how long this wharf will be usable during a normal tide. Mr. Tetreau shares the wharf and float will be accessible no more than 3 hours either side of high tide. Mr. Morrissey expresses serious concern that if the window of access is missed the marsh will be impacted by dragging a kayak or canoe over the marsh. Mr. Spencer responds that if a tide is missed the kayak or canoe will be anchored in the river and will not be dragged across the march.

Mr. Joseph Field, who has donated over 20 acres to the Freeport Land Conservation Trust, expressed concern about impact of this project on the Conservation marsh lands. Mr. Field references a book published by the Freeport Historical Society from 1985 that describes the significant importance of the marsh in Freeport. The history of the surrounding river has proven to support kayak and canoe access without the need for a wharf or float. In his experience the usable tide is at best 2.5 hours either side of high tide.

Mr. Spencer responds that the pristine use of the Conservation lands will not be impacted by the structure. The use will be to traverse the river. Mr. Spencer believes all ordinance requirements have been satisfied and thus the application deserves to be approved.

Mr. Stenzel points to an ordinance section that requires the structure to be consistent with the surrounding area. Mr. Stenzel also notes the concern of the public, abutters, and committee members continues to exist. Mr. Morrissey shares the project does not meet with the surrounding area as mentioned by Mr. Stenzel. Mr. Yankee reiterates Mr. Morrissey's concern. In addition, there is concern about erosion, the means to install the pilings without damaging the grass, and the visibility of the structure from the Conservation lands.

Mr. Morrissey moves to deny the application. Mr. Yankee seconds the motion to deny the application. Mr. Stenzel, Mr. Morrissey, Ms. Orlando, Mr. Yankee, Mr. Benway, and Mr. Frazer vote to deny the application. Mr. Polovchick abstains. The vote to deny the application is upheld.

#### **Harraseeket Yacht Club (HYC) Hoist and Float Improvement Application**

Mr. Morrissy takes the chair for this issue after Mr. Stenzel recuses himself as he is a party to both the Commission and the HYC. Mr. Yankee and Mr. Frazer are similarly conflicted and recuse themselves.

The Commission has a sufficient quorum after the members have recused themselves.

Mr. Morrissy provides a brief reminder of proceedings from the October meeting related to this issue.

Ms. Tchao requests that Mr. Siviski present potential discrepancies with the property rights of the boundaries for abutters. Mr. Siviski shares the property rights remain unresolved.

Ms. Tchao explains the Commission does not have the experience nor the authority to determine Right Title and Interest (RTI) issues. Ambiguity remains pertaining to RTI of abutters as deeds make mention to rights relative to the intertidal lands.

Mr. Baker shares that HYC does not have additional information to generate a clear document of RTI for all relevant parties. Ms. Tchao asks Mr. Baker if the HYC would engage counsel to help resolve the RTI issue, and Mr. Baker is willing to get a legal opinion.

Ms. Tachao informs Mr. Morrissey the Commission can proceed with discussion of the application, or we can wait for the RTI to be resolved before performing further discussion.

Commission members agree to move forward with hearing the case pending a legal opinion from HYC counsel.

Mr. Tetreau shares that float J will not impact access or navigation around the Parker's mooring. There are two HYC moorings that might need to be relocated to the other side of the HYC to ensure the right to Parkers access their mooring.

Mr. Morrissey confirms with Mr. Tetreau the HYC is responsible for ensuring safe navigation and access to the Parkers mooring. Mr. Tetreau and all Commission members agree. Mr. Baker supports Mr. Tetreau monitoring access to the Parkers mooring.

Ms. Parker asks which boats will be placed on the HYC moorings closest to the Parkers mooring. Mr. Baker explains that either the Boston Whalers or the Sonar might be used. Mr. Tetreau explains the boat that is registered to each of those two moorings must be the vessel that is placed on those moorings. Ms. Parker is satisfied with Mr. Tetreau's approach.

Ms. Foster expresses concern with float J, but is pleased the Parkers will keep their mooring.

No other public comment is made about float J and the Parkers mooring.

There remains uncertainty about the authority of the Commission to approve the application for the hoist.

Ms. Tchao spoke with the Freeport Code Enforcement Office, Nick Adams, about State Shore Land Zoning requirements. The DEP ordinance includes language to consider "other structures". The Commission ordinance does not include similar language. Consequently, the DEP does not believe the Commission has authority to approve the hoist. Ms. Tchao agrees the Freeport Planning Board Project Review Board has the authority in this situation. Mr. Baker explains the project was presented to the Project Review Board earlier tonight. According to Mr. Baker the Project Review Board wants the Commission to determine the issue of navigational hazard.

Mr. Tetreau asks Mr. Baker how frequent the hoist will be used, and Mr. Baker explains it will be somewhat infrequent, but more intense when a regatta is happening. Mr. Baker believes the only impact to navigation will be when vessels are launched and need to exit the bulkhead into the river.

Ms. Tchao believes the potential overlapping of consideration of this issue between the Project Review Board and the Commission suggests the Commission must only focus on those items that pertain to navigation, water ways, and other items where the Commission has unique expertise.

Mr. Joseph agrees with Ms. Tchao that the portion of the hoist and structure above the high water line should be under the authority of the Project Review Board. Mr. Tetreau volunteers to be the liaison between the Commission and the Project Review Board.

Commission members agree navigational issues are not a concern or will adversely affect access or water use by adjacent properties. In addition, access to other marine uses including commercial marine uses will not be adversely affected. Marine channels will not be directly impacted. Erosion is not perceived to be an issue under application as proposed.

Mr. Siviski contributes he agrees two boards should not attempt to address the same issue. He is concerned the standards in Article 13 of the Commission Ordinance present an inherent overlap with considerations of the Project Review Board.

Mr. Parker adds that float J as applied for could potentially impede his ability to get a wharfing out permit of his own approved in the future due to navigational issues. He requests the Commission take this under consideration as a decision is made about approval of the float J portion of the application.

Mr. Morrissy calls for further comments from the audience. After no additional commenters make themselves known Ms. Orlando moves to adjourn and table further discussion to the December meeting. Mr. Polovchik seconds the motion. All members of the Commission are in favor with none opposed.

The meeting adjourns at 10:26 pm.