**Coastal Waters Commission Minutes**

**Freeport Council Chambers**

**Wednesday, January 11, 2023**

**6 p.m**.

**Attending**: Dayton Benway, Scott Gleeson, Chair Mark Morrissey, Laurie Orlando, Jeff Stenzel and Harbormaster Charlie Tetreau

**Excused:** Joe Fraser, Peter Polovchik and Tod Yankee

Chair Morrissey called the meeting to order at 6:01.

1.Approval of minutes from November’s meeting

**MOVED AND SECONDED:** To approve the minutes of the November meeting. (Gleeson & Orlando) **VOTE:** (5 Ayes) (3 Excused: Fraser, Polovchik and Yankee)

2. Harbormaster’s Report

Charlie advised that things are fairly slow down at the dock. There are a few people lobstering and scalloping. We had that decent windstorm that came through around Christmas. He counted five unaccounted kayaks and suggested that owners contact him to figure out if they are theirs. We also had about 400 oyster trays that people use for aquaculture wash up mainly along the Winslow Park shoreline that was actually from a lease over in Yarmouth. There were a number of other ones that were random from other leases. He is trying to work with DMR as well as other Harbor Masters in Casco Bay to see if they can put their name and number on a sticker like the lobstermen have so if one washes ashore, we would at least know who to contact. Right now, the ones that washed up on Winslow, were filled with as many as 150 undersized oysters apiece so it is a lot of revenue lost. He didn’t know who to call as soon as he saw them. Chair Morrissey asked if tagging is statewide that people are talking about. Charlie advised that there is aquaculture everywhere but it is mostly in Casco Bay. They do have to mark the corners of their lease with buoys but he feels everyone is for tagging even if it is just a little ring with a number on it that you could look up. It could be something that is cost effective for those guys but it could go a long way in getting their gear back. He mentioned that if you were to walk the shoreline right now, yes, you do see lobster traps, perhaps a random one like you always have seen but when you add a whole other fishery to it, sometimes one oyster tray can sit there for a while and then it becomes one with the banking so some sort of identification would go a long way. Renewals were sent out on the 23rd and he has already gotten 100 back which he feels is pretty good with. He feels we are getting more and more efficient every year.

3. New Business:

                  Commercial Passenger Vessel Applications

Charlie advised that we did have two new applicants. He did not recall how we have done that in the past. Normally he just reviewed them and made sure they had x,y and z unless the Commission would like to see a copy of them. He has no issues with them. He has three renewals, the Pamela B., Jennie Allen and C. Walker for harbor cruises. We have one non-resident applicant, Eric Oransky who wants to do tours out by his aquaculture lease. He is a regular in the river already and Charlie has had no issues with him as far as violating the Ordinance in the past so he does not have any issues with his application. We have another resident that rents a mooring and has a catamaran and wants to do 2-hour bay cruises and his only issue is we have a 15’ beam limitation anywhere on the Town dock but he is 20’ so he would be limited to that face float. He has tied up to the face float before and there hasn’t been any navigational issues or folks complaining to him. He would be willing to grant him the application and keep an eye on it this year. If it doesn’t work out, then it will not work. It says in the Ordinance 15’ beam or approved by the Harbormaster. The applicant is Spencer Fuller of Cove Road and he has had that boat for three years. Chair Morrissey noted that if Charlie has no problem with the application, he doesn’t have any. Charlie advised that if issues come up, they will be documented and he might not be up for renewal next year. Charlie noted he has parking at his residence and Mr. Oransky has an arrangement with Brewer’s so no one will be parking down at the dock which is one of the main things we look at. They all provided licenses, paid the fees and have insurance.

Mr. Stenzel asked if this would fill up all the slots? Charlie advised we still have one non-resident and four residents and we have one resident that is still up for grabs for next year.

**MOVED AND SECONDED:** To approve the passenger licenses. (Stenzel & Gleeson) **VOTE:** (5 Ayes) (3 Excused: Fraser, Polovchik and Yankee)

4. Old Business:

                  50 Rising Tide Lane / Waterman Marine

Charlie advised that he did a couple of site visits, one with the Yarmouth Harbormaster and a State Marine Patrol Officer who both frequent the Cousins river as well. We didn’t find that where the stake was placed it would unreasonably affect navigation negatively. He added that there is a patch of rocks just south which is kind of a saving grace because you need to avoid those rocks. There is an association pier down there and there could be four or five in there now. He knows the Commission talked about possibly doing a site walk but he doesn’t know if that is something the Commission is still interested in doing. Mr. Stenzel noted he would be in favor of it. Chair Morrissey added that he knows there are other wharves there but he would like to take a look at the area to make sure it is something that fits the area. Mr. Gleeson feels the Commission has been consistent with site walks. He does not have a huge issue with the project but he is willing to take a look. Ms. Orlando agreed and suggested scheduling it soon. Charlie mentioned that it appears the other stake got washed out by the ice. Mr. Gleeson asked Mr. Spencer if the area is pretty accessible and was told that it is. He also noted that the residents would not have a problem with the Commission visiting the area. They plan to do the pier in the spring. The application was submitted in November. Charlie looked to see when low tide would make it possible for the Commission to visit the area as quickly as possible. Charlie mentioned that on January 26 at 8:30 a.m. the water height would be negative .5. He suggested meeting at 8:15 in the driveway. Mr. Gleeson suggested making a commitment to do it on that date definitely in respect to the application and then try to vote at our next meeting. Chair Morrissey asked Mr. Spencer to verify on the day before that the stake is there so we can move along judiciously on this. Mr. Spencer mentioned he has a photograph showing the stake and Chair Morrissey advised that he has seen it. Whoever can make the site walk will have a better look at it and will have a better idea. He will take some extra pictures on his phone. He thanked Mr. Spencer.

                  Moorings Outside the Harraseeket River

Chair Morrissey advised that we passed along the verbiage back from the Town Attorney. Charlie advised that he has not spoken to her other than in e-mails. She is very busy and has had a death in the family.  It is pretty much the same what we were discussing. She tweaked grandfathered moorings just a bit and that was really it.

Mr. Stenzel referred to Article IV. Harbormaster, Section 2 and 3 has changes that seem to remove Charlie from overseeing all of the Town’s moorings to just the anchorage. It says, Harbormaster shall oversee the Town’s moorings which is struck and the next one says the Harbormaster shall approve and control the placement of all moorings within the anchorage and maintain accurate records. Mr. Benway clarified that all registered moorings is what we are trying to do with this and register all the moorings and replaces the moorings above. Charlie advised that that was crossed out and No. 3 was added to clarify it a little more. He does not have the definition of anchorage but believes it is all tidal waters in the Town of Freeport and then the Harraseeket River. Mr. Benway feels what the Town Attorney is doing here is specifying that Charlie can control placement of all moorings within the anchorage but he is responsible for maintaining records of every registered mooring which is in the anchorage and out of the anchorage. Charlie agreed. Mr. Benway feels the Town Attorney is trying to clarify that which she thinks covers us. Charlie advised that he has the first few pages of the Ordinance but believes there is another section that specifies the moorings inside the Harraseeket anchorage. Anchorage Article II, anchorage is all tidal waters in the Town of Freeport that extend to the mean high tide line. The next section is Harraseeket River anchorage which is a portion of the anchorage upstream from a line drawn from Duck Ridge Point and Moore Point running through Pound of Tea. They defined them separately previously so when she is saying anchorage under Title IV, it is the entire tidal area of Freeport not just the river.

Mr. Stenzel mentioned people like Ken Mann who does not have riparian rights, they are grandfathered in but what if somebody from inland who doesn’t have riparian rights wants a mooring outside the Harraseeket? Charlie advised that the way this reads, you have to have shorefront property in order to have a mooring. It is consistent with towns in Casco Bay and other areas but if the Commission wants to create some verbiage that allows someone from Webster Road to have a mooring in the anchorage, that is something we would have to look into. He doesn’t know how that would look but he is not saying it is impossible. Mr. Stenzel noted he is referring to Ken Mann because he has been to a lot of these meetings but asked where does he park his car to get to his mooring? Does he have an agreement with a friend of his? Charlie had no idea but Mr. Ring noted that is probably the case because he has been down there a long time. Mr. Benway would lean towards not allowing people without riparian rights to start with. Let’s see how many requests that brings but if we have to deal with it, we will deal with it. It seems like that could open up a can of worms if anybody could throw an anchor out.

Carter Becker, as a resident not being a waterfront owner in that area, but owning other properties, he objects to that thought because we are a Freeport people, not the haves and the have nots. There are a lot of people that would like to have access to the water that don’t have it and denying them the right to put a mooring out there is selective and exclusive. He is confident it would be stricken down in court probably if it was worded that way. It’s we the people, not we, the exclusive.

Mr. Gleeson referred to a haul-off mooring, one says 12’ and one says 14’. Charlie advised that the one that says 14’ is the updated one. The way it is worded right now, anybody can put a boat out there and he believes we should not change that. It will simply exasperate his issue of moorings going up everywhere. He doesn’t like what is happening outside of Pound of Tea and everything else. That is another whole subject. If somebody wants to go out near Little River and that area, he doesn’t know how they will get there but perhaps they have a buddy that has a truck. Mr. Becker noted they have a problem because they have to get there. Mr. Ring added that Mr. Webster Road, Mr. Durham Road or Mr. Keystone Road should have an equal shot to have a mooring somewhere within Freeport waters if possible. There is plenty of water out there and there is no reason to exclude them but yes, they will have to make arrangements for parking, taxiing to the waterfront or some other method. Mr. Gleeson feels the commission has enough going on without muddying it up any more.

Chair Morrissey pointed out that we have left it open to anybody and he doesn’t think we will make everybody happy with how we write this. He thinks we should leave it up to Charlie who has eyes and ears out there and if we have a problem later on, we will have to address it again but right now, he feels this is a reasonable cut on it. Charlie noted that right now Article V, Section 20 reads you have to have shorefront property in order to have it so we will need to rewrite it.  Charlie added that this is not how it has always been. This is new as of six months ago. Mr. Gleeson advised that this was actually well intended. It was when we had the public comment period and the owners were saying they shouldn’t have to ask you to have a mooring application when they have riparian rights to have a mooring. What this was trying to do was to say, you may have one and it is allowing them to not having you make that final decision. It could be construed as restrictive while it is really meant to be broadened to make sure the landowners have no way of having it declined because they have a right to a mooring under riparian rights. Charlie mentioned that something would need to be added in there that would say all other Freeport residents wishing to have a mooring in the anchorage must have an access point other than the Town dock, x,y,z and they would have to fill out an application that would have to be approved.

Mr. Gleeson asked how long it takes for the Town Attorney to come back if we make a change? Charlie would say it might be a month or a week but on average, two months. Chair Morrissey added that if we decide this is something we want to add and get this to her, if we will get it back for the March or April meeting, he feels we are doing due diligence there. No one will be looking to put in a mooring before that anyway.

Charlie asked what the commission would like the change to say? Chair Morrissey noted that the Town Attorney is the wordsmith but basically it is to open it up. Charlie asked if he wants it for just Freeport residents or someone as far away as Gray? Mary Jackson advised that it doesn’t seem right that the Commission is saying that someone from outside of town can put a mooring in but someone who lives across the street from the water can’t. She feels that is how it is worded. Mr. Gleeson pointed out that that is not the intent. Mr. Gleeson mentioned that the registrations for moorings outside the Harraseeket River, all mooring assignments beyond the mean low water that are located outside the Harraseeket must submit an annual on-line registration between January 1 and March 1. He feels it is sort of saying the same thing. Mr. Stenzel clarified that that is the registration and not the assignment Charlie advised that we need to put something under 20.

Mr. Stenzel asked Charlie if he remembered the ratio for resident to non-resident moorings in the anchorage? Charlie advised that it can’t be more than 10% for non-resident. Ms. Orlando asked how to protect the landowners that have access from losing a spot in front of their own house if someone puts a mooring there? Mr. Gleeson noted that they were not worried about that. They didn’t want us seeing what was going on there and they made it pretty clear. Mr. Gleeson noted he would add to 20 and if we wanted to make it easier to read: Mooring assignments outside the Harraseeket River anchorage shall be granted to riparian landowners and add mooring assignments outside the Harraseeket River anchorage for non-riparian landowners may submit an application. He doesn’t think the commission should blow the whole thing out and try to rewrite it again. Mr. Stenzel feels it would be helpful to the landowners that if somebody wants to come in, they have to secure permission if they are going across somebody’s property to get to their skiff. Chair Morrissey agreed that they can’t walk across anybody’s property. Charlie doesn’t want to be the one to be checking on all those agreements. Ms. Orlando noted that people can always say they have an agreement but property owners can change. Chair Morrissey does not anticipate that being an issue. If anyone has a mooring out there and we allow it, he thinks they will have to come up with a way to get out there without cutting across someone’s yard.

Mr. Benway mentioned having lived on the water and experienced people parking in his driveway so they can go across his lawn and look at the water noted the commission would be surprised. Ms. Jackson pointed out that she is a prime example of the non-riparian person on Island View Lane. She is very good friends with the people that live across the street from her. They have a mooring and she has a very little boat. She lets them use the little boat and they let her use the mooring. It took 3 or 4 years to establish such a friendship with her neighbors and determine they wanted to do this together. She feels people could work it out like that.

Chair Morrissey noted that we are going to rely on Charlie to make sure the riparian owners and the grandfathered moorings get first say on what they want. We heard from people that there are 3 or 4 moorings out there but now that they are going to be registered, there will be only 1 or 2. If that is what they are going to pay for and that is what they are, he feels we can rely on Charlie to make sure they get their first rights. He doesn’t think we need to put all that in the verbiage but some of the stuff is going to be implied. Ms. Jackson asked if an across the street person will be allowed to be grandfathered in where her neighbors have the mooring in front of their house? Mr. Gleeson pointed out that there is a grandfather clause anyway. Chair Morrissey assured her that the commission’s goal is not to interfere with what she has. Our goal is to make sure they are registered and we can track them down. We will rely on Charlie to ensure that any new moorings out there do not impact the riparian rights.

Mr. Stenzel pointed out another issue that is not addressed in the proposed changes is that there are very strict rules about renting out moorings or no inheritance of moorings except in certain commercial situations. Chair Morrissey feels those things go along with what we already have in the Ordinance as far as that goes. Charlie added that this is in State Statutes. Ken Mann was mentioned as an example and Chair Morrissey noted that if the next generation lives in Ken’s house, he would not have a problem with that. If Ken sells his house, that might be a problem but we can’t address every eventuality. Right now, Ken is grandfathered in and if he passes, it is not on our commission to worry about it. Charlie added that if we change this to say that anybody can have a mooring, Ken’s kids are not prevented from filing a new application and dropping a mooring exactly where Ken’s was. It just would not be a direct inheritance for the kids. They would have to go through the process of the application and come up with a way either working with the landowner that Ken used to cross to get to his boat or some other avenue of getting there. They would just have to go through the process.

Mr. Gleeson asked what the commission would think about putting something simple in B. Non-riparian landowners may apply for a mooring assignment outside the Harraseeket River by contacting the Freeport Harbormaster. B would then become C and then go with the deeded right-of-way. It could be something that simple and the Town Attorney could add her verbiage on it. He thinks it will be clear to anyone reading that. We could see if it is redundant with her. He doesn’t think we should delete it and rewrite the whole thing, but we should add to it.

Ms. Jackson asked if the commission could put a limit of 20% on the moorings outside of the Harraseeket Harbor because right now, her neighbor is saying that he is concerned because a non-resident could come and drop five moorings in front of his house and rent them out or have boats on them if they are non-residents. Mr. Gleeson advised that he 100% agrees with that concern. We had a packed room and he brought that point up and everybody on Flying Point did not seem concerned. He thanked her for validating that same concern. Ms. Jackson noted there is a lot of space out there and it is not a problem now because they only have 6 or 7 boats in their neighborhood and they are all people that have waterfront or are next to it.

Mr. Stenzel suggested mirroring the language of the Harraseeket Anchorage and limit it to 10%. Mr. Gleeson added that all the feedback we got of any opposition was mostly from residents so he could see mirroring exactly. He thinks it should be consistent with what we already have. Mr. Benway noted he would be surprised if non-residents come up with Freeport as their destination for their mooring unless they have lived here and moved away but know the area really well. You would have to know what you are doing to access the water.

Mr. Becker added that every summer resident is not a resident and you will find out in the bay that you have a lot of non-residents. They may be associated with Freeport but they are not a resident. He stated there will be a high percentage of that and asked if that is a bad thing? These are people that are using the waterfront, renting houses, are snowbirds or whatever and they can have their boat. It is not a bad thing to have them out there using the bay. The bay is being used less and less now than it has in years past. It is good to promote more boating out there and if you are a riparian person, you probably have 350’ before you can get to 6 inches of water at low tide so it is not putting a mooring in your face. He does not believe we will have a Falmouth harbor outside of Flying Point or anywhere else because we are a mudflat community, not a deepwater community.

Charlie pointed out that we say property owner, not resident so that might clarify that. That might fix some of that because if they are a property owner and not a resident, they still have access. Mr. Becker noted a renter is a property owner through proxy which is fine. He is trying to promote boating but he doesn’t want all of Portland Harbor in Freeport. There is a difference there. He has had a lot of mooring interest from people in Portland and even out of the country. That is not what he thinks we should be promoting. It is more residential for our community.

Chair Morrissey suggested banging something together and he will e-mail it to the commission and then we will go from there and move the process along.

Mr. Ring asked what about the person that lives over the Pownal line, Durham, Brunswick, Yarmouth or North Yarmouth? They don’t exclude us from going to Bradbury Mountain or North Yarmouth’s walking trails or whatever Durham has. He feels we are blessed having the waterfront property but we need to include rather than exclude those folks. Ms. Orlando pointed out Winslow Park and Mr. Ring noted Winslow Park does not have Freeport residents only. Mr. Becker advised that Mr. Oransky, that just came for a commercial application, is a Brunswick resident so we are giving our harbor access to people just over the line. He thinks the point is how big a circle does the commission accept our community? Chair Morrissey added that 10% is the number and it is a reasonable number consistent inside the federal anchorage. Mr. Gleeson asked if it was already the number anyway? Ms. Orlando asked if Mr. Ring feels it should be more and we should open it to 20%? Mr. Ring did not want to put a number on it at this point. Mr. Orlando advised that according to what the public has told us, we are not going to have that anyhow so what does it matter? Chair Morrissey feels 10% is a good starting place. It is something we have on the books and we are moving forward. If it becomes a bigger issue, we will have to address it then. Charlie tried to clarify it by asking if the commission wants to word it by 10% of non-property owners? More discussion followed. Mr. Ring mentioned that the commission is asking applicants to submit their applications starting on January 31 or some other number, and some renters do not make their arrangements until June, July or August. Chair Morrissey noted that it would not happen this year and he doesn’t think it will be an issue. Mr. Becker explained that Charlie or other companies have gone out and temporarily dropped mushrooms for renters and at the end of the year, they take them in and they are not there for the winter so it is a short-term mooring. You have to plan ahead for renewals. Mr. Becker usually gets mooring requests after they buy a boat and it is now an urgency thing. Charlie should not be locked in for registrations on only those dates. They should be just for renewals.

Charlie advised that that is what he does with the wait list right now. You can collect the wait list anytime and they have to renew it within certain dates.. Chair Morrissey suggested keeping the verbiage consistent. Mr. Gleeson feels consistency is the point of doing all of this. He doesn’t want to be all over the place. If we start getting way off the track here, what’s the point of this whole exercise? Mr. Benway feels the more exceptions we have, the worse it is going to be when it comes time to defend what we are deciding to do. The more we can have consistency, it only protects this group if there is a challenge. Mr. Gleeson does not want to be arbitrary.

Mr. Ring asked if the e-mail of Charlie’s proposal will be available to the public? Chair Morrissey noted that the commission is just talking about massaging it among themselves but we will have a meeting and explain it all. Mr. Gleeson added that the commission still has to vote to approve it and then it is only our recommendation. The Council will have to approve it. Mr. Ring feels it would be helpful to have bits and pieces. Chair Morrissey explained that it will be massaged and he does not want to drag this out. We are just talking about a few words. We are all on the same page and he feels we can move it along. Mr. Benway advised that he feels it is coming back. Charlie advised Ms. Jackson that there is a form on line to register a pre-existing mooring. She noted that she wants to get ahead of the curve now.

5. Adjournment

**MOVED AND SECONDED:** To adjourn (Gleeson & Benway) **VOTE:** (5 Ayes) (3 Excused: Fraser, Polovchik and Yankee**)**

Recorded by Sharon Coffin