**Coastal Waters Commission Minutes**

**Freeport Council Chambers**

**Wednesday, February 8, 2023**

**6 p.m**.

**Attending**: Scott Gleeson, Chair Mark Morrissey, Peter Polovchik, Jeff Stenzel, Tod Yankeeand Harbormaster Charlie Tetreau

**Excused:** Dayton Benway, Joe Fraser and Laurie Orlando,

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

1.Approval of minutes from January’s meeting

**MOVED & SECONDED:** To approve the minutes as written. (Stenzel & Gleeson) **VOTE:** (5 Ayes) (3 Excused: Benway, Fraser & Orlando) (0 Nays)

2. Harbormaster’s Report

Charlie reported that things are slow at the Harraseeket. He has been stamping mooring permits and just got the dinghy stickers in that were on backorder. If people can come in and grab their dinghy applications and stickers, they can. He had two LPA requests off Bustin’s Ledge that he is not going to sign off on because of the moorings and commercial lobstering in that area. Whether they send it up to DMR or not without his approval, it is up to them. His approval usually weighs pretty heavy.

Charlie advised that we might be getting a Harbor Webcam down at the Town Dock. This particular one he has been looking at has a nice zoom on it. You can go to the Town’s website and allow each person that goes on one minute to view. If you are up by Weston’s Point, you can read the registration on your boat. He looked into this because this fall while it was so windy, if you went down there on a good blow, a lot of our commercial guys were just coming down to the dock to put eyes on their boats making sure everything is swinging right so that will be excellent for them because they can simply go on their phone, and make sure everything looks good. We had one boat go down this fall in the really big blow we experienced and had they been able to look at something from home rather than having to drive all the way down to keep an eye on it, it might have helped out a lot so he urged the Commission to be on the lookout for that. Mr. Yankee asked if there is a weather station down there and Charlie advised that there is not. We used to have a rain gauge down there and those are pretty cheap now. You can get one for a couple of hundred bucks. He feels it would be nice to tie that right into what you can see the rain, temperature and all that stuff. From the old cameras that used to be at the dock, there is a nice spot to put it and you can actually look all the way to Brewer’s, up the river and then to Strout’s and out towards Pound of Tea and pretty much all the boats in the harbor which would be nice.

Mr. Stenzel asked Charlie if he is aware of a kelp farm out between French’s and Little Bustin’s? It is proposed and the person’s name is Levi Demoreau. His concern with it is that he is going to sink the lines and most of the buoys once he has harvested in the early spring but plans to leave the four perimeter buoys. That is a prime navigation place and a lot of people won’t know that the buoys that are left don’t even get quite close. Charlie mentioned he actually asked DMR if they can get rid of all the gear all together when they are not using it. They are still pretty adamant that they want the four still to mark them. For that one, the dates they will have the gear in is mid-November to April 1. By April 1 he has to take the gear out and he will just be left with the four markers. Charlie does not have a say in it because it is in law. It says in Title 12 that they have to have their corner buoys up. He would love to see them go away when they are not out there using it. If they are not going to be using it for six months, there is no need to have markers there but it is not his call. He could put a note in and request it but he has put a lot of notes in for quite a lot of things such as tags on all the gear and it is still not happening. Mr. Stenzel advised that there are some members of the Yacht Club, because that is where their kids often train, that are trying to get together five letters to the DMR so they will have to have a hearing. People won’t know what the markers are for. He doesn’t know if they are much different from oyster buoys. Charlie noted that all of us in Casco Bay requested that the markers be in yellow for aquaculture. A lot of the applicants comply with us but the DMR doesn’t really care if they are black as long as they have their number written somewhere on them. He agrees that it would be nice. Mr. Stenzel thanked Charlie for getting it together for the camera. He is aware that a lot of people do make a drive to check things out. Mr. Ring suggested that a copy of the letter could be forwarded to our Representative, Melanie Sachs with a request that she carry it over to the DMR? He asked if Charlie thought it might carry any weight? Charlie advised that it could.

Charlie noted we have a couple of non-residents and one of our active lobstermen drives from Hebron every day and he would probably love to sit on his couch and see that his boat looks great just the way it is and save $40 in gas. He is hoping that it will be up at some point this season but mentioned they are not cheap. They are close to $5,000 when all said and done.

3. New Business:

[90 Birch Point Road-](https://www.freeportmaine.com/home/files/90-birch-pt-rd)

Chair Morrissey advised that this is an after-the-fact permit and Ben Wellauer is doing it on his own. He requested that Mr. Wellauer walk the Commission through the project.

Mr. Wellauer advised that he has lived at 90 Birch Point Road since 2002. In 2009 it became clear that egress across the grass was better than walking on the grass and damaging it. They found an aluminum structure that was compliant and has holes down the middle of the ramp. It is 4 ½’-5’ off the deck and is adjustable. It is fully temporary and is something you might see on ponds or inland waters. It attaches with a 16’ aluminum ramp to a couple of dock sections. One is 8 x 32 and the other is 12 x 16. In talking with the Code Enforcement Officer they were not aware that there is a max length within the code that they were in excess of by 6’ or 8’ so in their application they propose to pivot the middle section dock laterally to take advantage of the fact that they then would be compliant on the length and try to do the least amount of disruption. It attaches to the shore by gravity and in the fall he will take it out by himself. All of the aluminum is not stored within the 75’ line. To be honest, in years past they stored things down at the bottom of the shore. They realized they were not supposed to be doing that and have since moved all the aluminum up inland so it cannot be seen from the shore in the winter time and paid to have their dock stored up in the Cousins River Boat Yard. They do not have any dock storage now anywhere happening within the cove which they also in this process learned that it is not compliant. They are trying to get all things in compliance and would welcome any advice or feedback the commission has. The Elliott family, their abutting neighbor to the west has recently been through a lengthy application process. The difference between the two properties is that their neighbor has a shorter distance of marsh grass to transect to get to the mudflat but otherwise, they are identical. He feels they have a wonderful neighborhood. He has been there for 20 years and worked very openly even with neighbors who live closer to the road to say please come and use our dock for kayak or paddleboard access because there is not necessarily access to that part of the Harraseeket and we have no problem opening up our dock to neighbors who are on Birch Point Road and do not have frontage. It is not a private association but it is a nice community.

Mr. Gleeson clarified that this is after-the-fact and has been in use. Chair Morrissey added that the Code Enforcement Officer went down and nixed it. Mr. Gleeson did the calculations and agreed it is a long dock. It was 132’ originally. He mentioned that it looks identical to the 78 Birch Point application which was temporary and moveable so it is consistent.

Mr. Gleeson advised that the commission has to sit on this for 30 days. Mr. Wellauer mentioned that he put the application in back in June but experienced health issues in the fall so everything got tabled until now. They had letters from the neighbors not objecting to it and would be happy to refresh those between now and the next meeting to make it all current. No objections were raised by the neighbors.

Mr. Yankee asked if there are any drawings for the commission to review? Mr. Wellauer advised that he could provide a chart and give a rendering showing where the mean high water is and all that. Mr. Stenzel pointed out that the standard has been changed to the HAT and that is the mark they want on there. Chair Morrissey added that if Mr. Wellauer could get that and scan an e-mail to Charlie, he will forward it on to the commission. Mr. Yankee advised that if Mr. Wellauer needs an example, Charlie, Peter or Carter would have an example of what one looks like. Mr. Wellauer explained that he would make sure he gets it to the commission along with the letters. He mentioned there was a different set of stairs when they purchased the property in 2002 that were closer to the Elliott’s property. He relocated them in 2009 and then learned in this process that they need to get a permit for those stairs. They are also working with DEP because their patio is non-compliant so they are working through that with the Code Enforcement Officer and DEP and the stairs have been moved into that. The stairs are 50% wood on the top and not exceeding 4’ and then they are blue stone on the bottom half set on the ground. Mr. Adams invited the DEP and Army Corps and Charlie to a meeting and he got the information that this was a permit by rule stairs and it is just one page. He sent it in and it got looped in with the patio so we can do it at the same time. The only thing they asked us to do was make sure the stairs did not exceed 4’ in tread width.

Chair Morrissey thanked Mr. Wellauer and told him the commission would see him next month.

4. Old Business:

                  50 Rising Tide Lane / Waterman Marine

Chair Morrissey advised that some folks came down and took a walk between last month’s meeting and this one. He didn’t make the group walk but he drove down by himself prior.

Mr. Gleeson mentioned he went down with Charlie and saw Peter. His only concern that he wanted to verify was that despite the Cousins being highly tidal, he wanted to make sure it was not a hazard to navigation. The best thing he saw to alleviate that is that this is being tucked in and there is a rock pile just to the left so the preferred channel is actually on the opposite side. It is consistent with other things in the area and right smack across the river is another pier structure. He has zero problems with the project.

Charlie agreed with what Mr. Gleeson just mentioned. It was the third time he went down there with a Yarmouth representative as well just because what happens on the Cousins, the line is right down the middle and they like to keep each other in the loop. His concern with the Cousins is navigation and there are a couple of boulders.

Carter Becker added that he feels 30’ is too long in navigable waters. He runs up with large wide equipment and needs every inch he can get underneath him. They are about 30’into that deep water use when they are pushing on marginal tides and there are other large vessels going up and down that river on a regular basis. If you look at it with a whole float is a float

all you need is a float at the other inch of a float. If it is pulled back any distance, it would be a gift back to the public not given away if you could bring 10’ or 30’, something would be better because on marginal tides they are always pushing it. They need every little bit they can get and having a 15’ wide boat on the end of a float that is out that far is that much more take of the navigable channels because you always have to figure there is always a boat on the end of a float. It is not just a float. It was mentioned in this presentation. He added that he has a 24’ wide boat, a 15’ wide boat and an 8’ wide boat. He asked if it is a pontoon boat that we are seeing more of and they are not narrow. Is it a catamaran that comes up from the islands with an even keel? What are we taking from the true navigable waters at marginal tides? Shortening it up is what he is asking for so we don’t take it from the public. It is sticking out into the navigable channels. Mr. Yankee asked if it is advertised as all-tide dock? Mr. Becker advised that it is advertised that way 22” is what he heard of water and if you could get 22” or something similar 10’ back from it, you don’t need a float to float. You need the boat to float. Mr. Yankee questioned is it 22” under the in-shore part of the float? Mr. Spencer advised that it is 22” at the extremity of the float on the outside. There is no navigable water in there. There is ledge on both sides. Mr. Becker pointed out that it would be nice to do a site walk. Chair Morrissey added that some members did and some did not view the site. As for procedure, Mr. Yankee advised that the Commission is only permitted to do site walks together as a proper Commission. He suggested that the Commission try to reschedule a site walk if one is needed. Chair Morrissey pointed out that he does not know of any guidance that says we have to do it as a group. We went out and a couple of people went at different times. Mr. Stenzel added that he received guidance on this and Mr. Yankee is correct. We can go out as a group and there has to be 7-10 days of public notice. Chair Morrissey noted that we did that and we put it on the website. Mr. Stenzel mentioned that it was only to commission members, not to the public. If we schedule a site walk tonight, we would set a date and it would appear on the Town’s website. Mr. Gleeson advised that we tried to do it but we had a big storm that held us up which was not the applicant nor the contractor’s fault. He went out there and will not do a site walk. He is fine with the project and if the commission wants to do a site walk, that is fine. He is ready to vote on it.

Mr. Stenzel pointed out that we have a request from the public to do a site walk. He knows Mr. Yankee is correct on that because we did this on another wharfing out project and it was crystal clear that we had to do it the way Tod said. Chair Morrissey stood corrected.

Chair Morrissey asked Charlie for his thoughts on the navigation. Charlie noted he does not know what the owner is planning on putting on for a boat and he doesn’t know anyone that runs up at low tide. Mr. Becker added that when there is just enough water to get barges and boats up, he is 24’ wide. Charlie noted that he would appreciate a Board decision on this. At low tide that was why he was sent down there because of a navigational issue at low tide unless he has a boat with a huge beam on it. He asked Mr. Spencer what he is putting on there for a boat. Mr. Spencer advised that he will be putting a small dinghy on it. Mr. Yankee advised that he has not been down there and feels a site walk would be helpful and also beneficial to the applicant to have a drawing of where the channel is at low tide and the proximity of where the float would be located. Mr. Spencer advised that the channel is 100’ but Mr. Yankee pointed out it is on one side. Mr. Spencer noted it is on the west side of the river. There is no channel on the east side. Mr. Yankee advised that he would like to see a drawing of the float position with both sides of the channel at low tide. He feels it will be helpful when the commission does a site walk.

**MOVED:** That we do a site walk. Mr. Yankee added: that we have a drawing that shows both sides of the channel and where the float is relative to the channel at low tide. (Stenzel) (**NO VOTE**)

Mr. Spencer felt it would be a waste of time. He asked how many eyes have to see this? We had two Harbor Masters, Scott has been down and we have photographs showing the end of the float in the river with 22” of water. On both sides of the area there are rocks protruding at low tide. You can’t take a barge anywhere near this thing even at high tide. The applicant is not keeping his motorboat at the float. It is on a mooring up river. Mr. Gleeson asked Mr. Spencer how long it will take to build the project. Mr. Spencer advised they haven’t done anything yet because they do not have a permit so we are delaying this thing another month.

**MOVED AND SECONDED:** To table the application and schedule a site walk and have a drawing showing both sides of the channel and where the float is relative to both sides of the channel at low tide. (Stenzel & Yankee) **VOTE:** (4 Ayes) (1 Nay-Gleeson) (Excused: Benway, Fraser and (Orlando) (0 Nays)

Chair Morrisey noted he is sympathetic to Mr. Spencer but explained that we have a member of the public and concerns from another couple of chairs and he feels that we need to do our due diligence on this. Mr. Spencer feels the member of the public is his competitor and would like to see the project shelved. Mr. Yankee added that he has not seen this. Our site walk was cancelled because of bad weather but the commission previously felt that a site walk was warranted and needed for consideration of this. It was not conducted and based on the previous discussion, it does not seem appropriate to forego a site walk. Mr. Stenzel agreed.

After checking, the site walk was scheduled on Friday, February 24 at 8 a.m. and commission members agreed. Mr. Gleeson noted he would not be there. Chair Morrissey advised that it would be put on the Town’s calendar tomorrow and he will reach out to commission members tonight. Charlie advised that Mr. Gleeson was the only one that showed up for the first site walk. He requested that Mr. Spencer provide the drawing. Charlie advised that it is the Google Earth overlay of where the project would be at low tide on both sides of the channel. Mr. Yankee referred to Page 17 of Mr. Spencer’s submittal there is a proposed dock location in landscape view and it does show the other side of the river bank but it does not show where the water would be at low tide. Right now, it just shows the bank. Mr. Spencer noted that there is no navigable channel on the east side. It is closest to the west side and 100’ or more from this dock. Mr. Yankee explained it would be helpful to see what Mr. Gleeson is saying is not a problem. Mr. Spencer advised that he would not happily provide it and Chair Morrissey respected that.

                  Moorings Outside the Harraseeket River

Chair Morrissey advised that it is unfortunate that we had some people with business arrangements that could not make tonight’s meeting. He would have liked to have more folks here. Charlie had sent everybody some verbiage regarding the 10% of non-residents and the verbiage included was for all residents having the ability to have a mooring. Mr. Yankee noted being short on attendance tonight but we are looking to give the harbormaster feedback comment on this change and we will then take the whole thing up.

Charlie explained that this is what the commission requested at the last meeting to have the green verbiage, not exactly what he just came up with what he thought captured that. That is what the commission wanted added into this section so we could have it all in there before we sent it to the Town Attorney. It pretty much gives anyone that owns property in Freeport the chance to have a mooring outside the anchorage and not just shorefront owners. Chair Morrissey feels the commission is all in agreement with the entire process except for why this is a specific burden. We are kicking this verbiage on how should we put it. Carter said everybody should have the opportunity and we said it was a good idea and we came up with the 10% in conjunction for non-residents inside the Harraseeket so we put that number in there to be consistent with the 10% number for the non-residents. It was really just a matter of liking the verbiage before sending it to the Town Attorney. Mr. Yankee asked if after it goes to the Town Attorney, will it come back here so we could make a formal recommendation to the Town Council? Chair Morrissey advised that it would.

Chair Morrissey pointed out that we have put so much effort into this so far, and while he would like to get some input from folks tonight, we should table it for another month to get most of our members here so we can get their input. We have talked about it for a long time and we have gotten a lot of input from people who are not here tonight. He doesn’t think they would have an objection but he thinks in order to do due diligence for everything, that is the way to go. He invited folks to share their thoughts. Mr. Stenzel feels Charlie captured the discussion pretty well in green. Charlie added that the Town Attorney might tweak it a bit. Chair Morrissey agreed that Charlie captured what the commission wanted. Mary Jackson of Lower Flying Point asked if this only pertains to recreational moorings? Chair Morrisey advised that it is only for recreational. Ms. Jackson advised that she likes the verbiage. Mr. Stenzel asked about a mooring for a lobster boat outside of the harbor? Charlie advised that if the placement is right, he does not have an issue with it. Rental and commercial moorings all have to be registered with the Army Corps. He worries about the placement of where it is and how they are accessing it. Mr. Stenzel pointed out that the way it is written, it does not exclude a commercial enterprise. Any commercial use has to come to Charlie. Mr. Stenzel advised that boat yards are allowed to have 15 rental moorings in the harbor. He asked if we want to have a similar cap outside of the harbor? Charlie feels there should be some sort of cap and perhaps we should put that in writing or someone could essentially put 41 out there and have it be a rental marina. Mr. Yankee asked if there is an approval process to become a certified shipyard/boatyard? What does that mean? Mr. Stenzel advised that it is a zoning issue controlled by the Planning Board. Mr. Yankee added that the Planning Board does not approve transactions like that. Charlie explained that if we want to make it consistent, we could just take the same verbiage for in the harbor and put it in this section saying 15 per marina. Mr. Stenzel pointed out that there are only 3 zoned boatyards, Carter’s, Brewer’s and Strouts and he does not foresee anyone making another one. Right now, no one is supposed to be renting a mooring except these three boatyards. Ms. Jackson was under the impression that there were only two boatyards. Mr. Stenzel advised that there was an allocation made to the Dunning Boatyard rental moorings.

Mr. Gleeson did not see the need to increase 15 outside the river. They can go anywhere you want within the Harraseeket and Freeport waters. If we want to delve into that, it will be another meeting and possibly another meeting after that. Charlie heard 15 in and 15 out making it 30 Mr. Gleeson advised that it should be 15 total and others agreed. Mr. Yankee added that if it becomes a problem, we can always increase it later on. Chair Morrissey explained that this is not the final document. It is a working document and we have to be reasonable in our expectations if we are going to forward it to the Town Council for their approval. Mr. Stenzel wants to think about this but feels it reduces the gold rush mentality if the moorings can’t be rented. Somebody might put out 10 moorings and rent them but they can’t do it in the river. He thinks we should give some thought to addressing that. They are popping up like mushrooms around Pound of Tea. Charlie will add something in there that encompasses what was just said. Mr. Becker does not feel it works out on Flying Point because he has watched it.

Chair Morrissey advised that he is comfortable with the verbiage of 15 total and moving forward. He does not see this as a problem. Charlie mentioned it sounds like we are going to bring this back when we have a full board so he will tweak it.

**MOVED AND SECONDED**: To table to next month. (Gleeson & Yankee) **VOTE:** (5 Ayes) (3 Excused: (Benway, Fraser and Orlando) (0 Nays)

 5. New Business

Mr. Yankee mentioned last night’s Council meeting. The Downtown Vision project continues to make progress with the Town Council signing off on a number of projects and two of them are peripheral to what this organization does. One is to do an update to the Planning related ordinances, zoning, subdivision and all of that. It did not come up with Coastal Waters in terms of the ordinances but one of the other projects is to streamline the permitting process in town. Given Peter’s frustration today, he thinks we may want to consider piggybacking on that process to see if there is also a way that we can streamline our process here since they are doing it for the Project Review Board tied to the ordinances and tied to the Zoning Ordinance, Subdivision and Design Review. This is an opportunity to perhaps get some consulting hours that someone else is paying for and say, hey, we are experiencing similar sorts of issues. Can we also participate in that process as well? Applicants might find it a little easier and the Town Council seemed to push that to the top of the other projects to streamline the process for development in town. Chair Morrissey mentioned he would be interested in that. He asked if they had a timeline? Mr. Yankee feels the process will start happening pretty fast. Caroline is working on scoping what the consultant would do. He suggested reaching out to Caroline and Dan Piltch and is confident there will not be any resistance.

6. Adjournment

**MOVED AND SECONDED:** To adjourn at 7:03 p.m. (Stenzel & Gleeson) **VOTE**: (5 Ayes) (3 Excused: **:** (Benway, Fraser and Orlando) (0 Nays)

Recorded by Sharon Coffin