**Coastal Waters Commission Minutes**

**Freeport Council Chambers**

**Wednesday, March 8, 2023**

**6 p.m**.

**Attending**: Dayton Benway, Joe Fraser, Chair Mark Morrissey, Laurie Orlando, Jeff Stenzel and Tod Yankee

**Excused:** Harbormaster Charlie Tetreau, Scott Gleeson, Peter Polovchik,

Chair Morrissey called the meeting to order at 6:04 p.m. and explained that Charlie is attending the Annual Harbormaster’s Convention in Castine so we will not have the Harbormaster’s Report. He rearranged the schedule and took up Old Business first.

1. Approval of minutes from February’s meeting: Mr. Yankee advised that the commission would not be able to approve the minutes tonight. We would need a quorum of members that were in attendance and we only have three tonight.
2. Old Business

50 Rising Tide Lane /Waterman Marine/Peter Spencer’s project.

Chair Morrissey advised that the commission had a site walk yesterday after two failed site walks by Mother Nature. After two failed attempts, some folks on the commission wanted to get a better look at the layout of the area and we answered all our questions.

Mr. Stenzel noted that the DEP application references a twin engine center console boat being at the dock and now it has been skinnied down to a skiff. In accordance with the ordinance, that the structure is larger than it needs to be for that and it can be shortened up and the float can be diminished in size. Mr. Spencer advised that they did not have any idea when they filed the application about the amount of water that there might be or might not be in front of this property. That didn’t come until they did other things and discovered there was very little water there so there is no center console boat being moored at the float. They have a 10’ skiff and the commission has a letter from him and Mr. Goodrich is here tonight should the commission have questions for him. There is no intention to do that and as far as shortening the float, there is no necessity either for navigation or any other good reason to make this thing less protruding into the water then 40’ of a low-tide channel of about 200’. They are not intruding. You cannot run a boat across the front of where this system is going to go and they showed the commission that yesterday. There is ledge everywhere and there is a small channel from where the float is going to be sitting out 110’ out to the navigable channel. He does not propose any changes to make any sense to this project. He feels it is quite reasonable what they are doing and within the guidelines of both the DEP and Army Corps.

Mr. Fraser noted he was away but asked what the commission found on the site? Chair Morrissey advised that the commission did a site walk and to him, it was definitely difficult to determine what boat can or can’t get through the channel. Personally, he is relying on the Harbormaster who ran the channel a couple of different times and was with the Yarmouth Harbormaster. At low tide Charlie said he could barely get his aluminum skiff through there so he also said at high tide, you can get a reasonable boat through there. Chair Morrissey noted that he will fall back on the Harbormaster’s recommendation. He is the expert on the water and Chair Morrissey is not. He asked why he should argue with two Harbormasters who have no problem with the project. This is where he is at with it. Mr. Yankee advised that he would agree with Chair Morrissey as well. The ledge was pointed out yesterday and you could see the turbulence from it. It seemed to confirm to him that the channel was quite a ways out and if it was low water, you would hit the ledge before you would hit the float was what he saw.

Mr. Stenzel noted that the difficulty with that argument is you can’t get to that wharfing out without it being at least half tide and there is a navigable channel on the Freeport side. Mr. Yankee added that it was not brought to his attention and he did not notice that. Mr. Stenzel mentioned he is trying to bring this in to the ordinance parameters of no larger than necessary. Mr. Yankee clarified that right now it is 12’ x 24’. Mr. Stenzel added for a 10’ skiff. Mr. Spencer explained that the owner does have a boat which he can bring to the float at high water.

Mr. Benway asked if there are other wharfs or floats within a close proximity that are either of similar size or much smaller because we typically look at surroundings? Mr. Stenzel advised that there is one downstream that is shorter and not as big.

Carter Becker suggested a solution. He agreed it is in the way but his solution is to leave it as is and protect public navigable ways. Between the ledge and his pier, if you put his mooring in there, it will force the public out around the ledge and not to come here. It will really make a statement: don’t come to this side of the ledge! If he moves his boat there, it’s 90’ between the ledge and his dock, put his mooring right smack in between the two pushing it out of the way and it definitely says, go to the other side! So, you are using his pier and his mooring as defense to help them stay off the rocks and stay off his dock and stay away. Recommend to Charlie he move his boat right there just down river of the float half way between the ledge and his dock and then it will be service to the public since he is going to have a dock there anyway and this will really force them to the other side with a mooring ball there. He is looking for solutions rather than holding people back. There are other options but this is the let’s get it done option.

Mr. Spencer did not believe there is enough water there for a mooring for a center console boat. The depth of water at the end of the float at low water is about 23”. As you walk out from that point going out 30’, it actually diminishes until you get to the channel and then it becomes almost 30”. In wind at low water, the boat would hit the bottom on the ledge and it would damage it. Mr. Becker added that he is not here to argue but rather to bring solutions.

Chair Morrissey pointed out that this is a difficult position. He hears what Carter is saying and what Mr. Stenzel and Mr. Spencer is saying. Unfortunately, Charlie is not here to discuss this. He thinks we owe Mr. Spencer a vote at least if no one has any problems with that, we can go from there. If it gets denied, we can at least go back and circle back next time with Charlie and re-discuss this but if it passes, it passes and we can still talk with Charlie. He is our expert and we would have to fall back on Charlie’s decision for this. He feels it is reasonable and asked if anyone has any objections. Mr. Yankee mentioned he is curious if there are any public comments tonight. Chair Morrissey advised that Charlie and the Yarmouth Harbormaster were both okay with this. Chair Morrissey advised that he was out there yesterday and did not have any problem with this. He does not feel it is his position to alter the location of the property where the property owner wants to moor his boat. It falls under Charlie’s decision. He is our expert.

**MOVED AND SECONDED**: To approve the 50 Rising Tide Lane project. (Orlando & Yankee)

Mr. Stenzel accepts Carter’s idea that with the present configuration of a wharfing out, that a mooring ball between the ledge and the dock is a good idea to warn people who navigate up that river to swing to the Yarmouth side. Mr. Yankee added that if we want to make that a condition that the Harbormaster look into that, he would be good with that. He asked if that is a condition outside of what the Harbormaster might recommend? Mr. Stenzel noted he would feel comfortable with Charlie being able to say yes, you can moor a boat that the customer wants downstream of the dock and make it clear to people coming up the river because you can’t navigate in that river over the sandbar to the ocean without it being at least half tide. People are going to bring in larger boats an hour before full tide to an hour after full tide and this gives them a good visual reference. He does not know exactly what the bottom is like some feet downstream. It seemed like there was enough room to put a mooring in there to make it clear that people coming up or down the channel needed to instead of doing an S Turn around that ledge we saw with the ripples to stay on the Yarmouth side. Mr. Benway mentioned that the channel is on the other side so if we want to revise the motion to include a caveat that Charlie works with the landowner to arrange a mooring in an acceptable position to Charlie, then we can do that and vote for this and move on. Mr. Yankee pointed out that if the commission does that, we are saying that there has to be a mooring that is part of this at the discretion of Charlie. If Charlie says this is a terrible idea, we will respect his opinion that it is a terrible idea. If Charlie looks at it and says that is a great idea, we will respect his opinion. Ms. Orlando asked if it has to be a mooring that they keep their boat on or can it be just a marker? Chair Morrissey noted that is something Charlie will have to decide. The landowner should discuss this with Charlie as well. Chair Morrissey asked Mr. Spencer if he is comfortable with the commission taking a vote on this project. If approved, there will be a caveat that will have the Harbormaster look at the arrangement and see how he feels about it. Mr. Spencer advised that they have no problem with the Harbormaster doing that.

**MOVED AND SECONDED:** To remove the motion on the floor. (Yankee & Orlando) **VOTE:** (6 Ayes) (2 Excused: Gleeson & Polovchik) (0 Nays)

**MOVED AND SECONDED:** To approve the wharfing out application for 50 Rising Tide Lane but will now include the Harbormaster working with the landowner to come up with the placement of a mooring or some other safety mechanism to keep people away from the ledge that sits off the end of the float at the Harbormaster’s full discretion. (Benway & Stenzel) (6 Ayes) (2 Excused: Gleeson & Polovchik) (0 Nays)

Chair Morrissey advised that he will talk with Charlie and will have him do a site walk and look at what we want to do. If he feels he needs to put a mooring there, he will. They will talk about that.

90 Birch Point Road

Ben Wellauer explained that he was asked to provide a drawing showing the highest annual tide and lowest annual tide and he provided six copies to the commission. He noted that some of the older Google Earth imagery shows low tide on there and he used a measurement tool there to get about 344’ to the low tide at muds-out and high tide is at the base of the bill where the bottom of the stairs are. This is sort of an amendment to the same drawing the commission saw in the original application. Charlie asked him to resend the same certified letters because it had been six months. At this time of year, he also did the courtesy of e-mailing folks because people are travelling or whatever. Mr. Stenzel asked what those aluminum t-heads are? Mr. Wellauer explained that they are aluminum poles with a pad on them sitting in the marsh grass. He asked the commission to think of an aluminum structure that has been in since 2009 and comes out every fall. They have changed their practices and now they are not marshing their dock up in the high tides anymore. He will pay to have it hauled and they are also storing their aluminum outside of the 75’ line which they were mistakenly not doing previously.

Mr. Yankee asked about the aerial photographs and what the white line represents? Mr. Wellauer advised that it is a google Earth measurement from the end of the historical pier as it lays out to where the river is at low tide. It turns into a creek at the Upper Harraseeket where you can get a canoe, airboat or small boat up there. It is only a few feet deep but there is always some sort of small river in the Harraseeket. That white line correlates to the measurement that is on the bottom left, the 344’ off the satellite photo. The thicker white line is the pier that was in.

Mr. Stenzel thanked him for doing this. Mr. Wellauer noted he is happy to be compliant. There were no further questions.

**MOVED AND SECONDED:** To approve the project at 90 Birch Point Road (Benway & Yankee)

There was no further discussion.

**VOTE:** (6 Ayes) (2 Excused-Gleeson & Polovchik) (0 Nays)

Chair Morrissey congratulated Mr. Wellauer and mentioned he is now compliant.

1. New Business:

159 Maquoit Drive/Falls Point Marine

Mr. Becker advised that this is another Freeport Marsh System. It is about what we have all except for six properties in Freeport. He took the ordinance out and checked boxes for every thing in the ordinance from Page 19-23. He did not include it with the commission. He just went through it and checked them all off. For him, the most important one is the drawing which is in the back of the commission’s packet, probably on Page 11. It is his hand-drawn drawing but the commission’s packets might not be in the same order as his. Basically, it is from the float coming in shore 83’ to the HAT line and they have elevated pier back to the shore to the stairs going up. The whole system is raised 6’ above the marsh at the outer end. Mean high water is out at the pier itself and the float sits seaward of the zero elevation or half tide by only about 8’ and going any further seaward gives them no more advantage of water. It starts to come up quickly from that zero elevation on up through the little marsh to the high marsh and then there is a middle-set stairs on top and that is pretty much their standard pile-driven system on the outer end and helicon driven inland. They can’t reach that part with a crane so they have a little crawler with a hydraulic drive unit so they put that on mud mats and drive upland and that little machine can come down from the top of the bank or can come in from the sea depending on each and every individual job that they do or not. It is an aluminum walkway raised with wood walking surfaces and the hand rails are all aluminum to keep birds from leaving too much of their mess so it is an easy clean. It is the last house on the road. You will notice that the project goes by an LLC name, Route 888 LLC but the guy’s name is Ryan Devon so the commission can put a face to this system. The float will be taken away to Smith’s Boat Yard in the winter for storage so it will be hauled way above the HAT to go up into the boat yard, 83’ beyond the HAT. There is no eel grass visible. It is over 1,000’ to the low water mark as you are looking out the pier to the right-hand side, it is 1,000’ plus to the low water line. He has over 200’of shore frontage and we have him greater than 25’ from his property line to his next neighbor. Most of the work will happen by barge. Some will come in by land for the upland part of the replacement stairs.

Mr. Becker pointed out that he has gone through the ordinance for all your different things. He feels safe that he has checked all boxes for the commission. He suggested that the commission should feel free to go through the ordinance and check them and see what page they relate to. He can answer questions next month when the commission will see it again for the 30-day hold period but this is pretty much it.

Mr. Stenzel mentioned that in looking at the drawing, the length of the project starts at? Mr. Becker instructed him to come back from the float 83’ and he will see the peninsula HAT line.

Mr. Stenzel noted that with the 20’float plus the 45’ gangway, he noticed Mr. Becker had two numbers here, he has 45 and 55. Mr. Becker mentioned what he does not have on that drawing is the HAT line is the dotted line that goes between the two different versions and from that HAT line going seaward is 83’. It doesn’t draw it on there. It just states that it is less than 125. He drew it on his copy, a seaward line and it says 83. He did not proofread this one before it got to the commission to get the line on there very well and that is why he went through with a fine-tooth comb afterwards.

Mr. Stenzel mentioned just before HAT on the elevation drawing at the top, is that a stairway down? Mr. Becker advised that it is top of bank at 23’ elevation. It is an existing stairway being replaced with a new stairway from the top of the bank down the embankment and there is an elevated walkway to the Hat line to the gangway and float. Mr. Benway asked if half way down the walkway there is a staircase? Mr. Becker noted that yes, it is. Mr. Yankee mentioned the old walkway and asked if that is the same location as the new? Mr. Becker advised that the new has shifted over a bit to the east. Mr. Yankee asked where the property line is located? Mr. Becker pointed out where the iron pin is located. More discussion followed. Mr. Yankee asked how far down does the augers go? Mr. Becker advised that they are 7’ augers and he leaves a little bit of steel above the ground and then extends up with aluminum.

Chair Morrissey asked Mr. Becker give the commission at least one drawing of the 83’ line next month? Mr. Becker agreed to provide new drawings. There were no further questions for Mr. Becker. Chair Morrissey thanked Mr. Becker.

Moorings Outside the Harraseeket River

Chair Morrissey mentioned that Charlie gave everybody some verbiage earlier this month about the 15 moorings we talked about last month. He was comfortable with that and knows he is sending it to the Town Attorney for her spin on it. We haven’t gotten that back yet. He asked if anybody has any comments or concerns about that?

Mr. Stenzel, just to recap what we are recommending to the Council is that the fees are the same? Chair Morrissey advised that the fee for a private residential mooring will be flat $50 inside the Harraseeket. The mooring per foot fee inside the Harraseeket will remain what they are now. We mirrored the number of non-resident moorings inside the Harraseeket that are on the outside of the Harraseeket. That was the verbiage we talked about and Charlie sent to everybody.

Mr. Yankee asked if the verbiage will come back to us from the Town Attorney before it goes to the Town Council and we will be formally making a recommendation or not? Chair Morrissey advised that it will. He asked if everybody is comfortable with where we are now so when we get the verbiage back, we can vote on it and proceed forward? Mr. Benway feels it makes sense when he read the language and that it is consistent with what we talked about in the meeting immediately before that. Chair Morrissey added that we don’t know where it is going to go. The Council will have a public hearing at the Council level. He would like to give them the best possible input from our commission moving forward.

1. Adjournment

**MOVED AND SECONDED:** To adjourn at 7:45 p.m. (Yankee & Benway) **VOTE:** (6 Ayes) (2 Excused-Gleeson & Polovchik) (0 Nays)

Recorded by Sharon Coffin