

CUMBERLAND COASTAL WATERS COMMISSION

MEETING MINUTES

MARCH 26, 2011

EAST CONFERENCE ROOM

Present: Vice Chairman Kinney, Lewis Incze, Peter Dion, Kathleen Babeu, John Williams,
George Turner, Council Liaison

Staff: William Shane, Town Manager, Debbie Flanigan, Secretary

Other: Applicants Delvyn & Carole Case, Barney Baker, Baker Design Consultants

Vice Chairman Kinney called the meeting to order at 12:42 pm and opened the public portion of the meeting.

**I. Public Hearing: Delvyn & Carole Case: Shoreland/Wharfing Permit Application for Property
Located at 18 Ole Musket Road, Cumberland Foreside, ME, Map U02, Lot 20.**

Mr. Kinney opened the public portion of the meeting.

Mr. Robert Craig of 89 Sanderson Road, an abutter of the applicants, stated he was in favor of the project. It would be a good improvement over what is currently there.

Mr. Wayne Sherwood, 16 Ole Musket Road, stated he felt the project would be a positive for the area.

Mr. Kinney inquired of Barney Baker if he had addressed the two concerns voiced by the Coastal Waters Commission at the February 23, 2011 meeting:

- Where the float would be stored during the off season: It would be stored at the Chebeague Island Boatyard. The ramp would go with the float.

- What was the plan for the demolition of the pier: Custom Float Services will do the construction work on the new pier. They would hire a barge contractor to break up the existing pier and haul it off-site.

Mr. Baker stated that the concerns had been met, and also addressed the question of the clearance of the gangway, which would be 5'11' at low tide, allowing pedestrians to walk the beach.

Manager Shane inquired if Mr. Baker would be comfortable that there would be not be any blasting taking place. Mr. Baker stated that he had spoken with Custom Float Services and that no explosives would be used and there would be no mechanical noise or vibration. Once the process of removing started, it would take no longer than two weeks, with work being conducted during daylight hours.

Vice Chair Kinney asked the Commission members if they felt the original application items should be reviewed, since the application was reviewed at the February 23, 2011 meeting. There was no discussion among the Commission members.

Mr. Kinney closed the public portion of the meeting at 12:53 pm.

Mr. Williams moved to approve the application of Delvyn & Carole Case: Shoreland/Wharfing Out Permit Application for property located at 18 Ole Musket Road, Cumberland Foreside, ME, Map U02, Lot 20, with the following conditions, consistent with supplement provided by the consultant.

- Storage of float and ramp during off-season
- Demolition plan

Seconded by Mr. Dion.

VOTE: UNANIMOUS (5)

II. Approval of Minutes

February 23, 2011

Mr. Kinney asked if there was any discussion regarding the minutes of February 23, 2011 as written. There was no discussion.

Mrs. Babeu moved to approve the minutes of February 23, 2011 as written.

Seconded by Mr. Williams.

VOTE: UNANIMOUS (5)

III. Final Approval of Coastal Waters Ordinance Amendments

The Commission members review the proposed amendments to the Coastal Waters Ordinance that were discussed during the May 20, 2010 and February 23, 2011 meetings, with suggested corrections/additions presented by Mr. Kinney and Mr. Incze:

- In the phrase “harbors and coastal and tidal waters” the words “harbors and” would be deleted throughout the entire document
- Pg. 1, Article II, Paragraph 1, the sentence “The phrase “commercial vessel” as used herein shall mean any type of vessel used exclusively in a business or trade, the word exclusively should be deleted.
- Pg. 1, Article II, Paragraph 2, the word “master” should be capitalized in this section, and consistently throughout the whole document.
- Pg. 2, Article III, Paragraph 1, second sentence: the word “success” should be changed to “access.”
- Pg. 3, 2.a. The sentence “At least three (3) members shall be residents of Chebeague Island” to be deleted.
- Pg. 3, 2. f. The words “and secretary” to be deleted.
- Pg. 3, 3.a. Add the words “or designee” after “The Chairman”.
- Pg. 3, 3. b. The word “Secretary” shall be replaced with “Commission” throughout entire paragraph.
 - Pg. 3. 3. c. The entire paragraph shall be deleted.
 - Pg. 3. 3. d. This paragraph shall now be lettered as “c”.

- Pg. 4. d. 2. The last sentence “Notice of any decision...” the Planning Board shall be deleted; the word “their” in the last sentence to be replaced with “the Commission’s”.
- Pg. 4. Article IV. Harbormaster: Paragraph 2: The word “may” to be replaced with “shall”.
- Pg. 5. Article V. Moorings: 1. 1. The word “one” shall be replaced with the word “a”.

Section 1. a. (1) states: A riparian owner who is the master or owner of one vessel may be assigned a mooring fronting his land even though the mooring is not within a mooring area shown on the coastal and tidal waters plan, so long as said mooring does not encroach upon the natural channel or channels established in said coastal and tidal waters plan and that the riparian owner shall annually register the mooring as provided in Article V (2) of this Ordinance.

Mr. Incze commented that if you look at (2) his understanding is that a person who already has up to 3 moorings in front of his property, that person would be allowed to keep those moorings. But (1) states that “a riparian owner who is the master of one vessel....”, that is only one vessel. This is one mooring, in contrast to the three moorings allowed under grandfathered conditions. It might be pointed out here (let’s say in a new section (2) immediately following, that additional moorings can be permitted, but they must be located in an approved mooring area according to Section 3.1.d (1). I think this is a difficult ruling. I think I understand the reason: 3 moorings is a lot if an owner owns just 100 ft. of waterfront. However, the town does not have a good public access approved mooring area, so this is a hardship. I suggest review of this issue, and suggest that the harbormaster can rule on whether sufficient room exists to not interfere with the rights of others.

If anyone is reading the current ordinance, it may be interpreted that only one mooring is allowed. If the Commission is going to allow anyone to have more than one mooring, it might be helpful for the Commission to address it at this point.

If someone has a narrow waterfront, the ordinance says 100’ is enough. The harbormaster can rule as to whether there is enough room to put three moorings there to not obstruct navigation and to not infringe on the rights of riparian abutters.

Mr. Shane suggested that any reference to mooring areas should be removed from the Ordinance, because technically the only legal access the Town of Cumberland has is Town Landing Road. If someone lived in West Cumberland and wanted a mooring, Town Landing Road would have to be the area identified as a mooring area.

Mr. Incze stated that he does have a mooring and he is not considered a riparian owner, but he does have a deeded right of way to the water.

It is not uncommon for someone who has waterfront access to want to have at least two moorings so the Coastal Waters Commission should anticipate that it would be a common request for waterfront owners to want more than one mooring.

Mr. Shane inquired if it would be an issue to allow up to three moorings and then after that the owner would have to get approval from the Harbormaster.

Mr. Incze stated that the Harbormaster has the responsibility of assigning mooring spaces and that is constrained by the rights of others and the rights of navigation.

The Coastal Waters Commission could put a limit on the number of moorings to three and every mooring must pass muster with the Harbormaster. The Harbormaster then becomes the point at which problems are caught.

Mr. Shane inquired if Article V of the ordinance was rewritten allowing up to three moorings, what the Coastal Waters Commission would prefer to do if someone requested more than three moorings.

Mr. Incze responded that anyone requesting more than three moorings would have to appear before the Coastal Waters Commission.

Mr. Turner inquired if the definition of “riparian” could possibly be changed to mean a person who has an ownership interest in shore rights to a parcel.

Mr. Incze inquired if someone could moor a boat in front of someone else’s property within the intertidal zone.

Mr. Shane responded that they could not because it would be considered private property.

Mr. Kinney stated that if the ordinance was changed to include boat owners with deeded access rights to the waterfront, he would prefer that it be looked at by Town Attorney.

Mr. Turner asked if a waterfront owner had two moorings and did not utilize three moorings, and then a boat owner who has deeded access rights to the water wanted a mooring, which the Harbormaster assigns in the area in front of the waterfront owner's area, would the owner of the waterfront property have any argument if he requested a third mooring and was assigned a mooring slip outside his waterfront property.

Mr. Williams asked about the intent of "deeded right of way". Is it more than having access to walk up and down the beach?

Mr. Kinney stated that if he had a mooring and Mr. Incze had a mooring, Mr. Incze would have easy access to his mooring due to his deeded right of way. Kinney would have to find other means to get to his boat because he doesn't have a deeded right of way.

Mr. Dion responded that if a resident had a deeded right of way, it would get the resident shore access. If the resident placed a mooring in front of one of the two adjoining lots, if it's beyond low water, it's not under riparian ownership. If a riparian owner is described as someone who has waterfront property or has deeded right of way, it's not effective because it is beyond the low water mark.

Mr. Turner asked if someone has a deeded right of way, does that person have the right to tell a friend that they can use that right of way.

Mr. Shane responded that usually in homeowner association documents it states who can or cannot access the right of way.

Mr. Kinney suggested the Ordinance include the right of ways with the riparian rights in the same clause.

Mr. Shane asked if the Ordinance should state “deeded rights or access rights shall be treated as if they have riparian rights in that right or way or section.”

Mr. Incze spoke about riparian rights: If a new waterfront owner applies for a mooring, with the ordinance stating that he can have up to three moorings affronting his land, and there are already several moorings in place and no more moorings may be placed without encroaching on navigation, how would that situation be handled.

Mr. Kinney suggested that moorings should be subject to Harbormaster approval, without stating how many moorings waterfront owners are allowed. The Harbormaster would then determine how much room is available and how many moorings the owner is allowed. If a waterfront resident applied for a mooring and there was no more room available for the mooring, the owner would have an argument because the ordinance states that he may have moorings affronting his property.

Mr. Williams inquired as to how the number of moorings was originally stated as three.

Mr. Shane felt that it was because Chebeague Island was once part of Cumberland, with seasonal land owners having moorings and the fishermen having navigational issues.

Mr. Williams suggested that the ordinance may state that “waterfront owners may have one mooring space reserved in space affronting his property.”

Mr. Shane suggested that the Coastal Waters Commission should table this section of the Ordinance until the fall meeting, after the mooring locations have been determined by GPS, and there is a depth chart showing the channel.

Mr. Incze stated that he was not in favor of reserving mooring space for riparian owners. It would make the Harbormaster's job more difficult when he would need to ask a mooring owner to relocate their mooring if that mooring was located in space that was affronting a riparian owner who wished to have a mooring.

Sturdivant Channel is a concern because if the Harbormaster starts staggering moorings to create more space, you are getting out into what people consider a channel. That's not to say that there isn't enough space to drive up and down without hitting other boats, it's just the idea that you are now pushing out into the channel. Eventually, there may be more docks, more access along the shoreline, with more moorings. As more moorings are placed there, more people will accept the fact that boats will still be able to navigate the channel, but there will be more boats there.

Mr. Kinney stated he was not inclined to keep the number of moorings at three. He suggested Article V be tabled item until the fall meeting, with the Harbormaster present.

- Pg. 5. 2. Deeded Access Rights.

Discussion among Commission members included:

1. Riparian rights have been defined but other's rights have not.
2. What is a non-private access right?
3. There are no public rights of way to the water in Cumberland.
4. Assignment and location of mooring privileges doesn't have anything to do with deeded access.
5. Someone with access to the water, who is a resident of Cumberland, presumably, has the right to have a mooring, but it is not defined in Article V Section 2.
6. Mooring area in Cumberland needs to be defined.
7. What is the State rule for mooring areas?

The consensus among Commission members was to table Article V, Section 2 until the fall meeting. Mr. Kinney suggested information from surrounding town regarding their mooring rules would be helpful.

- Pg. 6. c.1. Date of mooring privileges will change from February 1 March 1.
- Pg. 6. c.2. Sentence after "... by order of the Town Council" will be deleted.
- Pg. 7. d. 4. The word "principle" to be replaced with "principal."
- Pg. 7. d. 4. The word "less" to be replaced with "fewer."
- Pg. 7. d. 5. The word "principle" to be replaced with "principal."
- Pg. 7. d. 5. The word "less" to be replaced with "fewer."

Pg. 8. Inspections.

- a. Change paragraph to read: "All seasonal moorings located within the coastal and tidal waters of the Town of Cumberland shall be required to be inspected every three years. All moorings used year round located in the coastal and tidal waters of the Town of Cumberland shall be required to be inspected every year. A different inspection schedule may be required for commercial moorings. Inspections shall be performed by independent contractors and all approved by the Harbormaster inspection reports shall be copied to the harbormaster. If inspection identifies any issues, those issues must be address by the mooring owner by June 1."

Pg. 8. Article VI. Abandonment of Watercraft

- Second sentence and to end of paragraph to read: "The Harbormaster shall notify the Master or owner of a watercraft determined by the Cumberland Coastal Waters Commission to be a derelict or abandoned watercraft when said watercraft lacks a permit, that said watercraft must be removed within seven (7) days, except that in the event that the harbormaster determines that said watercraft causes or threatens to cause property damage or is a hazard to navigation, then notification shall be by the fastest means available. In this case, if contact with the Master or owner of the vessel or correction action cannot be made within twenty-four (24) hours after such notice, the Harbormaster is authorized to remove said watercraft at the Master or owner's expense. Otherwise, if the Master or owner of said watercraft has not removed it after the expiration of the seven (7) days, the Harbormaster is authorized to remove said watercraft at the Master or owner's expense."

Pg. 8 Article VII. Penalties.

- 3. Amended to read: "The Harbormaster shall suspend for the remainder of the calendar year the mooring privilege assignments of any person who violates this Ordinance two or more times within that calendar year."

Mr. Kinney felt that the suggested amendments to the ordinance should be done at this time and further discussion of changes to Section V – Moorings will take place during the fall meeting of the Commission.

IV. Other Business.

None

V. Adjourn.

Mr. Dion moved to adjourn at 2:45 pm.

Seconded by Mr. Williams.

VOTE: UNANIMOUS (5)

Respectfully submitted,

Debbie Flanigan, Secretary

