

CUMBERLAND COASTAL WATERS COMMISSION  
MAY 11, 2010  
7:00 PM  
EAST CONFERENCE ROOM  
MEETING MINUTES

Present: Lewis Incze, Chairman, Peter Dion, Vice Chairman,  
John Williams, Craig Kinney, John McDonald, Tom  
Gruber.  
Staff: William Shane, Town Manager, George Turner, Council  
Liaison, Debbie Flanigan, Secretary  
Others: Barney Baker (Engineer), Chris Pierce (Applicant), John  
Lambert, Gary Weinstein, Andy Dyer (Custom Float Services),  
Brian Rayback (Attorney for Applicant).

**I. Public Hearing: Christopher & Nancy Pierce: Pier, Ramp and Float  
Application for property located at 21 Sturdivant Road, Map U5,  
Lot 7E, Cumberland Foreside, Maine.**

Chairman Incze called the meeting to order at 7:09 pm.

Chairman Incze complimented Barney Baker of Baker Design Consultants for a thorough and well written report, as the requirements of the ordinance were addressed. He also complimented applicant Christopher Pierce as well for his efforts to involve his neighbors with his project.

Mr. Shane stated that the application is complete and meets the criteria outlined in the ordinance. His recommendation would be to talk about any issues that were noticed at the site walk of property at 21 Sturdivant Road before the public hearing. One issue he commented on was that the Popes, who live at 19 Sturdivant Road, had not moved their float into storage during the off season and the Town had not been notified. He suggested that float storage should be part of the application and Mr. Pierce should notify the Town the first two years when he is moving the floats into storage and the Code Enforcement Officer will visit the property to verify that the floats are gone; after that there will be random inspections and Mr. Pierce will be called in November to ask if the floats are gone.

Mr. Baker stated that it is a condition of the DEP & Army Corps. permit that the floats be taken out each year, possibly stored at Chebeague Island Boatyard.

Mr. Gruber inquired what the plan was to prevent erosion on the embankment.

Mr. Baker stated that he would provide the Commission with a memo on how to address the erosion. He would check with landscaping companies as to what plant species would be the best to restate. On the plan, he has pointed to the area and stated "re-vegetate

existing slope where erosion has occurred with conservation mix and erosion control net". He is not permitted, due to the Army Corps and DEP restrictions, to plant any hardscape. Hopefully, native vegetation would eventually take over in that area.

Mr. Shane inquired of Chris Pierce about the area of tall grass of the back lawn, which is almost a buffer to the shoreline.

Mr. Pierce stated he mows the grass about once every one of two years, and the grass stays there as more of an erosion protection for the shore.

Mr. Williams stated that the Approval Standards and Criteria were written with the word "shall." Shall is mandatory. Does that mean that "shall" or "will" in the application means that it will be done.

Mr. Baker stated that being from an engineering background, he does a lot of specifications and drawings. When the word "shall" is used in a spec. that means that it will definitely be done. In this application, he is responding to the ordinance and talking about things that are going to happen in the future. He would be glad to write a note that says the "wills" are intended to be "shall". He is not taking anything for granted until he actually has the permit.

Mr. Williams inquired if there was an easement deed?

Brian Rayback, who is the attorney representing Mr. Pierce, stated that parties need to sign the easement. If the project doesn't go anywhere, it doesn't make sense to exchange property rights.

Mr. Baker referred to Tab A in the application, which is the Army Corps of Engineers permit, the conditions are stated on the second page, which are as follows:

1. This authorization requires you to 1) notify us before beginning work so we may inspect the project, and 2) submit a Compliance Certification Form. You must complete and return the enclosed Work Start Notification Form(s) to this office at least two weeks before the anticipated starting date. You must complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work and any required mitigation, (but not mitigation monitoring, which required separate submittals).

2. The permittee shall assure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the work site authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects area of Corps of Engineers' jurisdictions at the site of the work authorized by this permit. This shall be done by including the entire permit in the

specifications of the work. If the permit is issued after construction specifications but not before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. The term "entire permit" included permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated to contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps of Engineers jurisdiction.

3. Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Mr. Baker then referred to the DEP permit, Standard Conditions of Approval, as listed on Page 5 of 8:

2. The applicants shall take all necessary measures to ensure that their activities or those of their agents do not result in measureable erosion of soil on the site during the construction of the project by this approval.

3. Severability. The invalidity or unenforceability of any provisions, or part thereof, of this License shall not affect the remainder of the provisions or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof has been omitted.

4. The applicant shall cure all CCA treated lumber on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

5. The applicants shall submit a copy of the signed purchase and sale agreement and the easement agreement to the Department, and remove the existing seasonal float system to the start of construction of the proposed dock.

Mr. Baker stated that the agreement was part of the NRPA application, referring to Tab C, Page 9, showing the Purchase and Sales Agreement, which the Pierces and Popes will sign, and the Easement Agreement will follow once the permits have been issued.

Brian Rayback stated that the copies of the Purchase and Sales Agreement and Easement Agreement will be provided to the Town.

Chairman Incze stated that the DEP Permit will cover any requirements concerning erosion during the construction process and

it's part of the obligation of the Coastal Waters Commission to see that the erosion control is in place. He inquired as to the procedure since the application does not have an erosion control plan in place, although there is an intent in place.

Mr. Shane stated that an erosion control plan would have to be submitted to be approved by the Town, to include the banking and underneath the stairs.

Mr. Gruber stated that the buffer grasses on top do promote a good erosion control point; maybe some more grasses there would be more helpful.

Mr. Baker stated that he would be willing to look at that and that the Shoreland Ordinance probably dictates that the buffer remain intact.

Chairman Incze stated that he has looked at the vegetation, and that the trees, even at the top of the bank, and back a little ways, are showing the effects of a slow creep of that hillside. You can see the curvature in the trunks of the trees.

Mr. Shane asked what Mr. Baker was looking at realistically for an early start date.

Mr. Baker stated that realistically if they have the approval from the Town Council meeting on May 24<sup>th</sup> or June 14<sup>th</sup>, it would easily be two months from that before construction could start.

Mr. Shane inquired if Mr. Baker would be adverse to accepting a July 12<sup>th</sup> early start date as a condition of approval?

Mr. Baker stated that would be fine.

Mr. Shane inquired about the helix anchors; has the Town required the chains to be removed anywhere on site? Are they pretty much lying in the mud?

Mr. Baker stated that from a practical stand point, you pretty much need to find what you are looking for.

Andy Dyer from Custom Float Services stated that you do more damage than good trying to find the chains, if you remove them.

Mr. Shane stated concern about the pile structures themselves that are driven and if it was possible to get a barge in close enough to drive the pilings that are closest to the banking?

Mr. Baker stated that a barge would come in with the crane sitting on the back so there will be very low water on the front. Arrival will be timed so they can get the piles off at the higher tides. They may start with the piles that are further out if the conditions aren't right when they show up. Those piles that are closest to the bank are going to be the most critical ones. The crane is mobile on the barge. The pilings start at 117' from the banking. The driving should be easy; there is no exposed ledge that close in. The ledge is off of Wildwood. Typically, they

get set up and get as least 1 bent in a day; perhaps more. There are 3 major bents, the first 2 being close together. They should be able to get those piles driven, move and get set up on the next one; they may lose a day because of the tides. Hopefully, they can have all the pile driving done in a week. Then they will put the crossbeams on, lay the timbers. What they will try to do is get all the bents put in; sometimes they want to cut the piles off until they have them all driven so they are all on the same level.

Chairman Incze stated that there is some peat and grass coming up through that whole area, so they will have to be pretty careful with the operation of the barge.

Mr. Shane inquired as to where the staging area would be for all the timbers.

Andy Dyer from Custom Float Services stated that most of the material with the barge would stay on the barge and will be taken off the barge. The barge will be the work surface. Generally, speaking the barge goes in and starts erecting the pile, puts up the bent caps into the area, and then puts up the stringers. Once the stringers are set and that work is done, the barge leaves at that point. Then Custom Float Services comes in with a small skiff which brings some of the material in, using a certain area for staging, but also the dock area will be used as part of the staging area to put the lumber on; then the decking would be laid out as a work area and then the railings would go up after that.

Mr. Baker stated that there is a 10' x 32' float and could possibly be built ahead of time and used as a staging area too. Custom Float Services does not have the capability to drive the piles. They would have a separate contractor come in for that.

Andy Dyer stated that the decking is pre-cut at the shop and they would be bundled up in a small 24' Carolina Skiff. They are then taken to the site; the decking is splayed out and used as a work surface.

Mr. Shane inquired as to what would happen to the floats owned by the Popes? Are they required to be removed before construction starts?

Mr. Baker stated that 2 floats will be recycled into the Pierce project; there will be a main float; two of the Pope floats will be used. There will be 4 surplus floats, which will be removed before the start of construction.

Mr. Gruber inquired about lighting on the float.

Mr. Dion stated that sometimes lighting does come up as an afterthought; it should be addressed, even if it is a year or no, especially if someone is going to be launching or doing something at night.

Chairman Incze stated that there is an ordinance governing lighting, whether the lights get put in now or later.

Mr. Shane stated that on previous docks and piers there was a lot of ornamental lighting that looked like lit up Christmas lights. There should be some lighting for safety sake; ground level directed more toward the stairs.

Mr. Baker stated that on previous floats there had been a light placed at each landing on the stairs, just to light the foot of the stairs, and one at the end of the pier, unobtrusive, pointing down.

Chairman Incze stated that lighting should be part of the plan, if lights were going to be part of the project.

Brian Rayback inquired if lighting requirements in the ordinance are specific to this kind of structure?

Chairman Incze replied that it was. Lighting should be installed that is dictated by the ordinance.

Mr. McDonald stated that he received a call from a neighbor, who uses the beach, who had a concern about the speed of boats approaching the docks, because of swimmers. Mr. McDonald spoke with the caller to answer the concern, stating it is stated in the Army Corps of Engineers conditions Tab B, Page 2 of 8, Section 4, Habitat Consideration, Paragraph one, last sentence:

"Access to the proposed floats by powerboat should be done at a slow speed so as not to damage eelgrass and the applicants should consider posting signs on the float to this effect."

Mr. Pierce has agreed to provide a sign stating "Private Dock Dries at MLW - Guests to Approach at Low Speed."

John Lambert, resident of 7 Ocean Terrace, inquired as to the process that the town offers for this application?

Mr. Shane explained that neighbors within 1500' of the applicant were notified of the site walk and public hearing. The site walk was held at 6:00 pm at 21 Sturdivant Road. A list of concerns about the project was drawn up and the Coastal Waters Commission met at Town Hall immediately following the site walk to address those concerns. The Commission will then make a list of recommendations to the engineer, who has to respond back to the Commission with those conditions. The application will go to the Town Council with a recommendation from the Commission with a list of conditions, and what their recommendation is for a "Wharfing out Permit." There will be a public hearing by the Town Council and they will vote to issue the Wharfing Out Permit or not.

Mr. Lambert inquired if this meeting was the opportunity for the public to have their input on this application.

Chairman Incze replied yes it was, and he opened the meeting for public discussion.

Mr. Lambert stated that he had only recently learned of Mr. Pierce's application. Without the benefit of having seen the plan, he felt the proposed project would be an astonishing disruption of a long established use on Wildwood beach, where there are no natural or manmade boundaries. The beach is open to everybody who has access, and what is being proposed is not consistent with surrounding uses. The pier won't work in the winter because of the ice. The entire span of beach, which is over a mile, has been shared and used by everybody who abuts the property. The Coastal Waters Commission needs to appreciate that this project is not consistent with the uses and is an obstruction of the current uses. The Popes' floating docks are minimally intrusive. For what is being accomplished, this is overbuilt use. Especially since it is not going out for full tide purposes. Why can't the Pope's docks be used instead? They are less intrusive and can be moved in the winter.

Mr. Shane stated the difficulty is the balance of personal property rights. The Commission's responsibility is to preserve the colonial rights where fishing, fowling and navigation are concerned; they need to be looked at to see how they can be protected. This process has already gone through the Army Corps as well as the DEP process. We tried to minimize the impact of this Commission and also respect the personal property rights at the same time. It's a balancing act with every one of these applications.

Mr. Lambert stated that he spend a fair amount doing that. The policy of this town right now in Shoreland zoning is that you can't even touch a twig on a tree. Then this project is ok? This can't be reconciled. We can't cut trees to protect erosion or stop erosion because we value Shoreland zoning so much. You cannot justify this level of intrusion into the same land that warrants that level of protection; that is inconsistency in the policy.

Chairman Incze stated that in respect to the trees and buffer zones, as well as the piers and docks on the shoreline, all we are really entitled to do as a Town is modify what the State restrictions are. We are entitled to oversee and modify to some extent, these restrictions that are coming down from a higher authority.

Mr. Lambert stated that he understood that you have to follow the law. To suggest that there is a black and white, when the application involving zoning, is utterly gray, is not correct. "The facility shall be no longer in dimensions that necessary to carry on the activity; the facility shall be consistent with the surrounding character and uses of the area." That is not consistent with the surrounding character and uses of the area. There is no argument made that this is consistent.

Mr. McDonald inquired of Mr. Lambert as to what is the surrounding area?

Mr. Lambert replied that it was the rest of the beach and all of

the way over to the Goravanelli's, which is the visual area. Looking at the beach, there is a dock at one end, and then a long expanse with nothing manmade all the way over to the Goranavelli's; the Grovanelli's are not able to be seen because they are around the point in that small cove.

Mr. Williams inquired about the definition of unreasonable interference. If an applicant comes before us and meets the statutes and meets the town ordinance, then we are compelled to approve an application that has hit all the wickets.

Mr. Lambert stated that his point to the Commission is that the applicant hasn't met the statutes and ordinances because it isn't consistent with the surrounding character and use of the area and it does interfere with the existing natural beach area. If Mr. Pierce would put a float into a highly developed area, such as Falmouth Town Landing, the same argument couldn't be made. There are a number of piers down there and they have been there for a long time. That is not the case here.

Mr. McDonald asked if the Lockwood property would be able to re-wharf, with the existing pylons still visible.

Mr. Lambert stated no, and he would be able to make the same argument. Those are the remnants of a dock from 1970. That is no longer grandfathered.

Mr. Williams stated that the problem is that this is not the first time this particular item has been discussed in the state or anywhere there is oceanfront property. He quoted from the application, "The proposed project was evaluated using the department's visual impact assessment matrix." Speaking to Mr. Lambert, he stated maybe your concern would be best addressed looking at that matrix and trying to decide whether, in fact, you believe that meets the needs of the general population. When they have a matrix, and it's the tool that we use, we have to use the matrix. The Department used the matrix and found an acceptable, potential visual impact rating. He is not familiar with the matrix. The Commission has to consider the matrix in their dealings.

Mr. Lambert replied that Defense is not something that guides the town. That's a different authority of its own. The town has its own set of rules, applies its own common sense and judgement.

Mr. Williams had a suspicion that if we deviated from accepted rules, policies and past practices, someone would have the potential to legally challenge the Commission's decisions.

Mr. Dion stated that having done a few of these, particularly in the same area, the first one wanted to add an extra float onto some of the tidal floats they had, and literally, it was people from Wildwood who came down and told them they couldn't have them. And that was for one extra float of the one that had already sat there and some of it had rotted away. There are always going to be objections for this sort of thing. Part of what has been the consideration of this particular body, has been to try and find ways to find common structure, common access to



minimize these sorts of things. It's problematic at best in terms of questions of maintenance and ownership and all the other sorts of things. You're left with this type of alternative, as Mr. Shane has explained. There are certain private property rights, in his opinion, that are very important. The question is, to deny somebody those rights, what will be gained.

Mr. Lambert replied that Shoreland zoning is very high priority; you are discouraged from uses within it and structures in it. Floats are of much smaller magnitude of disruption. That pier, with permanent pilings that are out of the water, will interfere with current uses of the beach. There are other alternatives. And to the issue of private property, there are also set back requirements, limits on the number of units that can be built; we have numerous examples of zoning that compromise our private property rights. Those choices are made by the town because we think there is a larger and better good to be served. That is especially true now in the shorefront zoning. As a state and a town, they need to make sure that disruptions are as minimal as possible. This is inconsistent with those policy objectives in the town. The current use works and seems to fill the same needs in terms of tidal access. It's been there for a while, and this is an entirely different magnitude and it's not something that the town needs to do. You're not obligated to do it, you are not disrespectful of the rights of private property any more than telling somebody you can't build outside the setback requirements when you can't add a fourth unit, or an apartment in this town you can't build over 36' high because we have decided 35' is the highest we're going to allow a building to be built. We have numerous rules that compromise for the greater good what you can do with property. And to set up and say "private property", you are constantly working the balance there. I just suggest to you that this is out of whack with that balancing.

George Turner, Council Liaison to the Coastal Waters Commission, replied to Mr. Lambert: "John, one of the things that bothers me with your argument to some extent is that it was either the Army Corps or the DEP that suggested the Pope float, that they applauded, the idea that this pier is going in and the Pope float was coming out because it's grounded and doing more damage to the horseshoe crabs and whatever else there; that was part of their rationale. So I think the idea of leaving the Pope float instead, is the weak part of your argument. Other than that, I think your point, is argumentative. This pier is going to do less damage environmentally, at least from their point of view, than the Pope floats are".

Chairman Incze stated that he felt that was true environmentally. He felt Mr. Lambert was talking about a different set of concerns.

Mr. Lambert said he was not going to concede that permanent pilings are better for the environment. There isn't a reason in the world that those docks couldn't and shouldn't be moved at the end of October.

Chairman Incze replied that they should have been removed. They

were licenses for seasonal use and none of us happens to live down there so we haven't noticed that they weren't being removed. That was the intent; it was conditional approval.

Mr. Shane stated part of the approval here is that Mr. Pierce will notify the town about a certain date of removal of the floats offsite. The Commission's responsibility is to review the application and make a recommendation to the Town Council for approval for a wharfing out permit or denial of a wharfing out permit. The Town Council will hold a public hearing on the Commission's recommendation and the Council will decide to issue a permit or not. With any permit it is appealable for thirty days and neighbors have the right to do that.

Mr. Lambert thanked the Commission for listening.

Mr. Shane stated that the two issues that are still lingering are the lighting plan and erosion and with the understanding that the Commission will not be making a recommendation until June 14, 2010. Does the Commission want to review the application one more time before June 14<sup>th</sup> or is the Commission comfortable with the explanation that Barney Baker gave regarding the external lighting?

Mr. Williams requested to see a lighting plan and also an erosion plan.

Mr. Baker stated that he thought it was appropriate to see the plans. The only thing he would point out is that there is intent on the plan to address the erosion of that bank, and he would be happy to improve upon what was shown there. His feeling, with the benefit of the expertise around the table, is that more can be done to improve the erosion in that area. His other point with the lighting is that the town does have an ordinance and he is agreeable to providing lighting within the context of that ordinance. He would prefer to have the Commission to approve the project this evening, possibly.

Mr. Shane replied that he didn't know if the Commission could approve the project without the lighting plan.

Mr. Turner, speaking as one member of the Council, was impressed with the approval standards and criteria as far as Mr. Baker's explanation of each instance, except one. He referred to Page 9, "Approval Standards and Criteria", Subsection d):

"The following elements of the design were incorporated to minimize impact of the proposed facility on the coastal resource and to ensure that the project is no larger in dimension than necessary."

i. A new elevated embankment stair replaces an existing deteriorated structure and provides year round access to the shorefront on a similar alignment. This layout takes advantage of the existing stone slope stabilization at the site."

Mr. Turner stated underneath that stair, there isn't any existing stone. That is a serious erosion concern. He expressed concern

that the new stair was going to be placed in the same place.

Mr. Shane replied the new one would be slid over toward the oak tree.

Mr. Baker stated that he would plant where the old staircase is. He would have to work within the allowance of the Shoreland Ordinance.

Mr. Weinstein inquired about when the notification to the abutters was sent out.

Mr. Shane explained that the notices went out last Wednesday, May 5<sup>th</sup>. Twenty five to thirty people were sent notification.

Mr. Baker stated that the project has been advertised with the DEP application in the paper. There was a direct notification to the abutters.

Mr. Weinstein stated that in Wildwood, they do have access to the beach. This project will impact their access and it is sort of a gray area.

Mr. Lambert stated that Mr. Pierce's property is not part of Wildwood. It underscores the neatness of the situation, how many people are affected by what's going on.

Chairman Incze said he appreciated the points that Mr. Lambert made and understood what he was saying.

Chairman Incze closed the public discussion portion of the meeting.

Mr. Lambert thanked the Commission for their time and asked the date of the Council meeting for the public hearing on the Pierce application.

Mr. Shane responded that it looks like it will be June 14<sup>th</sup>.

Chairman Incze questioned Mr. Shane if any part of the meeting was open to the public.

Mr. Shane answered that yes it was, but once the public portion was closed, the meeting is directed by the Chairman and he can ask anyone from the public or the applicant any questions. Mr. Shane shared with the Commission that consistently these applicants have been looked at; they go out and look at the impact on the shore and try to minimize the impact; our role is protection of colonial rights, fishing, fowling, and navigation. It doesn't allow any sunbathing in front of Mr. Pierce's house.

Mr. Turner stated there was a time, in the not too distant past, when a lady that owned, basically, the shorefront at Wildwood; association members were paying dues and wanted to walk on the beach. She was paying the taxes. The association had nothing to do with that until it got straightened out a number of years ago. Before that, there was still an attempt to keep the public out.

He felt it was interesting that somebody off the beach area in Wildwood is going to extend the scope further down the beach when it's in their interest to try to block something like this. As far as private property rights, it's a dicey issue.

Mr. McDonald stated that he lives in Wildwood and was very involved in the beach history. He tried to bring up points from Mr. Lambert:

A. What is your point of reference?

Mr. McDonald's point is that, after cruising the Maine coast for 30 years, he sees docks all over the place. He is glad they are here and they provide a needed service to access the water, which is of this project.

B. There are at least two docks there now, one of which was built in 1910. There is not much left, but if someone buys the Lockwood place for \$2m bucks and comes along with another \$2m bucks, and sits down at this meeting and says can I repair, rebuild or whatever, we are going to have a hard time saying no you can't do that. The pilings are still there, you can count them, and there is more than just one. And there is a concrete block as big as this room that will be there after he dies. There is plenty of evidence and the Payson pier has been there longer than God invented money and the Paysons.

He felt that this project belongs there and he will walk the beach twice a day, and won't bump into the pilings, and it won't impact unnecessarily. He wouldn't gainsay the people, the scientist, and the public officials who job it is to evaluate the impact, not only for the ecosystem, but for the humans who walk around as well. They have signed off on this and he won't second guess them. If he thought they were way out of line, he might question them. Mr. Lambert was not willing to concede the point that a piling has less impact than a float. That flies in the face of the science that the DMR, Inland Fisheries & Wildlife and so forth.

Chairman Incze stated that his view is it is a change that many people will regret, but you have the right to make that change. I think most of us feel that is true. You have the right to build a pier there; there will be people disappointed, that's guaranteed.

Mr. Shane applauded Mr. Pierce for reaching out to his neighbors and asked them to participate. This is the first application where an applicant actually out and got neighbors involved and one said "Sign me up". That is the intent is this was, not to add forty four piers along the coast. Whoever makes the presentation to the Council, make sure that is clearly stated in the early presentation. The neighbors were involved and the Popes have chose to participate, eliminating two sets of floats side by side. The Council will be very happy with that. There will be a lot of emotional testimony about why it shouldn't be done, why it shouldn't be allowed, and a lot of subjectivity and the wording of most ordinances. That's why the Commission starts the

process and catches the javelins and then passes it onto the next level.

Mr. Dion stated that the first application he ever did was in Wildwood. There were people coming out of the woodwork saying, "Oh, you can't do that." There are no easy answers to any of this.

Mr. Kinney discussed lighting. If there is no intent to put lighting on at this point, putting in a caveat in there that would be done per the requirements, if it is done in the future, may well address that. But if it is going to be done up front, we would need the plan.

Mr. Dion responded that if you say that no lighting is planned for at this time, and if at such point is planned, it will be in accordance with the ordinance.

Mr. Shane stated that the town does not have a lighting ordinance yet.

Chairman Incze suggested that Mr. Pierce could have a light at one end that could be a warning that there is a structure there. He was not able to locate the section of the lighting in the shoreland ordinance.

Mr. Shane suggested that portion may have gotten lost when they updated the ordinance. The Commission had spent an entire meeting on lighting. He would check. He said that it had to be consistent with the navigational.

Chairman Incze remembered there couldn't be anything fancy, like green or red that would throw a navigator off. Modest lighting on the end would be appropriate.

Mr. Baker stated that the lighting would be to prevent someone from falling. He suggested a down light that would be mounted on the railing itself, so they are not down too far, and not too high up. There would be a small lit area at each landing. At the end of the pier, he wanted to do something acceptable to the Coastal Waters Commission; you want to be able to see something coming in from the water. Or if you are kayaking around the area at night, or a teenager boating at high tide, you need to be able to see the light. It doesn't have to be intrusive, just one light faced out to sea, but not back toward shore; not a high wattage light, but a navigational light.

Mr. Shane questioned the purpose of having a light on the end of the pier serve if you have a 30' ramp that close?

Chairman Incze responded that it serves as a warning that there is a structure out there.

Mr. Dion stated that most of the ones he has seen are downward facing floodlights on the gallows; it illuminates the float in front of them.

Mr. Baker referenced the controversy in Falmouth regarding the boat that was hit as it was in the navigation channel. There is a requirement to, if you are at anchor in a navigational way, you need to have a ball during the day and a light at night.

Mr. Shane stated that if there was intent to light this structure that had to be part of the approval process. If there is no intent at this time, if there was intent at a future time, you have to come back to get approval for that.

Mr. Williams inquired about electricity on the pier, regardless of lighting. Are there going to be outlets?

Mr. Baker stated that would be electricity and water on the pier all the way to the ramp.

Andy added that there would be conduits on both sides of the gangway. You can run water through one and electricity through the other. They are made specifically for that; the connection can be made to that point through a rubber hose or a conduit on both sides. Then you can disconnect before you take it out for off season.

Chairman Incze stated that if the intent was to put lights on, they have to be described for the Commission; if the process is held up, it should be said that a lighting plan will be submitted subsequently.

Mr. Shane stated that listening to what everyone described, one spotlight at the top directed down the ramp toward the floats, and if Mr. Baker put in changes in elevation downward directed from the railings, the Commission could approve the application conditionally upon the intent.

Mr. Williams had a concern regarding signing off on the lighting plan, for which there are no standards.

Chairman Incze stated that the lighting plan just had to meet the ordinance.

Mr. Shane stated that part of the ordinance is extremely subjective. It's really to prevent the "Christmas Tree" lighting, decorative lighting, as is on the piers on Chebeague Island.

Mr. Williams stated that he would want to take a look at the DEP visual impact matrix, to see if it addresses the lighting.

Mr. Baker stated that the visual impact assessment is based from the perspective of people looking at the site from all points, and primarily public points. They would first determine whether there is a public park, and then they would look at how the structure fits in with the background.

Brian referred to Tab C, Page 45, Appendix A, a checklist that is required from DEP, which is an initial look at what the impacts might be. It is aimed at visual impacts to public spaces. DEP does not regulate visual impacts to private locations. What DEP

looked at here was the visual impact of this pier is from people walking the beach, not specifically at lighting.

Mr. Baker stated that there are no lights identified in the application. He inquired if the application could state that the only lighting that is being proposed for this pier is specifically one light at the end of the pier to mark it for navigation, and unobtrusive safety lights at each change in elevation.

Andy Dyer inquired about the lighting being uses for "in use", if the pier was being used at dusk or night time, would the lighting be on a manual switch and everything could be turned off in the middle of the night, or would it have to be left on.

Chairman Incze responded that part of Mr. Pierce's concern was if a boater was out in the water, even if the person is acting responsibility, he would want to take every precaution he could to prevent someone from running into the pier. The town does not have a requirement for lighting, except that if lighting is going to be installed, that it not be excessive.

Mr. Shane stated that he felt the Coastal Waters Commission has met all the requirements of the ordinance by reviewing and discussing the application, reviewing the standards, holding a site walk, and listening to the public.

Mr. Shane asked Mr. Baker if he felt he had met all the conditions that are listed in the ordinance. Are there any exceptions or modifications or any type of variance that Mr. Baker was looking for from those conditions?

Mr. Baker responded that he did not have any. He strongly recommended that the Commission consider, with their recommendation to the Council, to mention that this is a multi-property pier.

Chairman Incze stated that his previous compliments to Mr. Baker on his thorough application and Mr. Pierce on engaging his neighbor in his project would be repeated to the Town Council during the public hearing.

Mr. Williams moved to approve to send the application of Christopher and Nancy Pierce, 21 Sturdivant Road, Cumberland Foreside, Maine, Map U5, Lot 7E to the Town Council, with the following conditions attached:

1. A re-vegetation plan with netting and vegetation species be submitted to the Town Manager for the entire project area for review and approval;
2. The buffer at the top of the slope, to be clarified as the area between the maintained lawn area, and the top of the bank, be maintained in its existing state;
3. That an early start date for construction will be no sooner than Monday, July 12, 2010;
4. All federal and state conditions be met as part of this application, with specific reference to the Army Corp. and the DEP NRPA approvals;
5. A building permit be obtained from the Town of Cum-

- berland prior to the start of any construction;
6. All floats must be removed and stored offsite; and the Code Enforcement Officer be notified during the first two seasons.

Mr. Gruber seconded.

VOTE: UNANIMOUS (6)

**II. Approval of Minutes.**

Tabled to May 20, 2010 meeting.

**III. Election of Chair & Vice Chair.**

Tabled to May 20, 2010 meeting.

**IV. Other Business.**

Tabled to May 20, 2010 meeting.

**V. Adjournment.**

The meeting was adjourned at 9:17 pm.

Respectfully submitted,

Debbie Flanigan, Secretary