



COASTAL WATERS COMMISSION

MEETING MINUTES
Wednesday, December 21, 2016
6:00 PM – 8:00 PM
Council Chambers

Committee Members:
Lew Incze, Chairman
David Carlson
Hugh Judge
Brent Sullivan
Mike Schwindt
Richard Thompson
Bob Vail
David Witherill

Town Staff:
Tom Gruber
Charles Rumsey
Milton Calder
Jean Duchesneau

Present: Chairman Lew Incze, Mike Schwindt, Richard Thompson, Bob Vail, and David Witherill, Hugh Judge, David Carlson,

Absent: Brent Sullivan

Town Staff: Tom Gruber, Councilman; Charles Rumsey, Chief of Police; Milton Calder, Lieutenant; and Jean Duchesneau, Committee Secretary.

Call to Order

Lew Incze called the meeting to order at 6:00 p.m.

1. Mooring Ordinance Revisions (proposed) 48-5

Charles Rumsey lead the discussion regarding 48-5.C Moorings, the last sentence of the paragraph, "Guidance for selecting the sizes of materials can be obtained from the Town website and/or from qualified mooring specialists who are also listed on the Town website." After migrating to a new town website it was discovered that neither of these two items were on the website. The "guidance for selecting the sizes of the materials" issue has been rectified and is now on the site; however, the list of qualified mooring specialists is not. Charles felt there should be some discussion as to whether we should post a list on the site, as it could possibly be viewed as an endorsement for a particular business. His concern is to be in compliance with the ordinance, whether that means to place a list on the website or to strike that portion from the ordinance. Charles offered to put together a list of specialists. Those listed will need to file a current certificate of insurance liability with us. After discussions regarding what language should to be used regarding the specialists' list on the website, it was determined to check with area towns to see what language they have in their ordinance and on their website and revisit this at our next meeting.

Charles brought up the Town's new website on the overhead projector and gave us a brief walk through of the CWC portion of the website and invited the committee to look it over and to bring us information, pictures or ideas for the site.

Mike Schwindt went over each proposed change in the ordinance (a copy of which is incorporated into these minutes below, see the highlighted areas). A lot of the changes involve changing the word "shall" to either "must, may, is, can or will" (the word that describes the intent of the ordinance). Mike stated the word shall is the most litigated word, as it is both active and permissive.

Discussions followed regarding following highlighted changes to the ordinance:

§ 48-5 Moorings.

- A. General. No person **shall can** place or establish a mooring in the coastal and tidal waters of the Town except within designated mooring areas as described in and shown on the Coastal and Tidal Waters Plan; provided, however, that:

- (1) A riparian owner who is the master or owner of a watercraft may be assigned a mooring fronting his/her 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 provided that the riparian owner **shall must** annually register the mooring as provided in Subsection B of this section.
- (2) A riparian owner using a mooring or moorings fronting his/her land but not located within the mooring areas shown and described in the Coastal and Tidal Waters Plan of the Town as of the effective date of this chapter and said plan **shall may** be allowed to continue to use up to three such moorings at the same location, so long as said moorings do not encroach upon the natural channel or channels established in said plan and provided that such person informs the Harbormaster of the location of said moorings within one year from the effective date of this chapter and annually registers the moorings as provided by Subsection B of this section.
- (3) A property owner with a right-of-way (ROW) to the water is accorded the same rights and restrictions accorded to a riparian owner under Subsection A(1) and (2) above, except that the mooring(s) **shall may** be placed as conveniently as possible in front of the ROW and **shall must** not interfere with the reasonable placement or moorings allowed for riparian owners. Furthermore, should space be insufficient to meet demands, the number of moorings allowed for a ROW property owner in front of the ROW may be reduced to one.

B. Assignment and location of moorings.

- (1) No person **shall may** moor his/her watercraft in any part of the coastal and tidal waters of the Town without first annually registering said watercraft **with the Town** and obtaining a mooring assignment specifying the location of the mooring. **The mooring registration number and the name of the watercraft owner or master must be affixed to the mooring float.**
- (2) No owner or master of any watercraft **shall may** permit or suffer his/her watercraft to be docked or moored in such a manner as to obstruct the free passage of other watercraft going to or from any wharf or pier in the Town.
- (3) Any mooring assignment in the coastal and tidal waters of the Town **shall is** governed by the following guidelines:
 - (a) Application for a mooring must be made by May 1 of each year unless an applicant shows good cause why he/she could not apply before May 1 (as, for example, a person who acquires a boat or becomes a resident after May 1). A mooring assignment **shall will** be valid until the next April 30.
 - (b) All persons applying for and receiving a mooring assignment must pay to the Town a fee as established by order of the Town Council.
 - (c) If a person with an assigned mooring changes watercraft during the permit year, a new mooring application **shall must** be submitted as soon as possible describing the new watercraft. If the characteristics of the mooring (block, chain, pennant) must be changed to accommodate the new watercraft, the application should be made in advance of the changes. If the mooring location needs to change, the application and approval **MUST** precede any changes. No new fees will be charged. The Harbormaster should be consulted if there are any questions.
 - (d) Each mooring application **shall must** be fully completed.
 - (e) Notwithstanding any provision of this chapter to the contrary, any person using a mooring located within the mooring areas shown and described in the Coastal and Tidal Waters Plan of the Town as of the effective date of this chapter and said plan **shall will** be allowed to continue to use that mooring at the

same location, so long as said mooring does not encroach upon the natural channel or channels established in said plan, and provided that such person informs the Harbormaster of the location of said mooring within one year from the effective date of this chapter and annually registers the mooring as provided by this Subsection B.

- (4) In the event that more mooring applications are received than there are available spaces, the Harbormaster **shall may** maintain a waiting list of all applicants who have not been assigned a mooring. Further, if a plan is amended and that revised plan provides for fewer moorings, the moorings available under the revised plan **shall must** be assigned to persons who had registered moorings at the time of amendment of the plan under this allocation system, except as otherwise provided by this chapter. Persons may add their names to the waiting list at the Town Clerk's office during normal business hours. This procedure **shall must** be posted in the Town Hall, and the waiting list **shall must** be a public document under the Freedom of Access Law. The waiting list **shall must** be maintained in chronological order of application, and any vacant space **shall must** be assigned to the first person on the waiting list, in accordance with the following priorities:
- (a) A riparian owner who is the owner or master of a watercraft and who is applying for a mooring assignment **shall must** receive the first vacancy available, and the mooring **shall must** be located fronting his/her property, provided that such location does not encroach upon the natural channel or channels established by municipal officers. No more than one mooring may be assigned to any shorefront parcel of land under this priority, but this limitation **shall may** not prevent a riparian owner from receiving additional mooring assignments under this allocation system.
- (b) A home owners' association member who has recorded rights to the shore through a deed, subdivision plan, or homeowners' association document.
- (c) A property owner with a right-of-way (ROW) to the water is accorded the same rights and restrictions accorded to a riparian owner, except that the mooring(s) **shall may** be placed as conveniently as possible in front of the ROW and **shall must** not interfere with the reasonable placement of moorings allowed for riparian owners.
- (d) Any other resident or property owner of the Town.
- (e) Any person who does not meet the requirements of Subsection B(4)(a) through (d) above; however, if a waiting list is created, the next vacant space **shall must** be assigned to the first nonresident on the waiting list in accordance with the following priority:
- [1] If the principal use of the vessel is noncommercial and less than 10% of the assigned moorings in the mooring area are currently assigned to persons fitting this description, then to the first such person on the waiting list.
- [2] If the principal use of the vessel is commercial and less than 10% of the assigned moorings in the mooring area are currently assigned to persons fitting this description, then to the first such person on the waiting list.
- [3] If both nonresident noncommercial and nonresident commercial assignments are below 10% of the moorings and there are both types of applicants on the waiting list, the available space **shall must** be assigned to the first applicant in the category that is farthest below 10%.
- (5) The Harbormaster **shall must** maintain a record of each mooring assignment, including the location of assignment as well as the application information required by this chapter.
- (6) Mooring assignments ~~shall not be transferred~~ **are not transferrable**, and such assignments **shall must** not be rented unless ~~the provision for rental was made known to~~ **approved by** the Harbormaster.

Comment [1]: Editor's Note: See 1 M.R.S.A. § 401 et seq.

(7) The Town reserves the right to reassign moorings each year to better use available space.

- C. Moorings. Moorings ~~shall must~~ consist of appropriately sized mushroom anchors, granite blocks, or helix moorings, connected to a surface buoy by a chain of appropriate size and length for the vessel, depth of water, and exposure to weather. Concrete blocks, engine blocks, and other ~~{ "objects of convenience" }~~ are not allowed. The surface float ~~shall must~~ consist of a white mooring ball on which the ~~name of the watercraft owner or master and~~ mooring registration ~~number~~ is painted with at least three inch tall ~~letters and~~ numbers in a contrasting color. A pennant of suitable diameter and length completes the mooring assembly. Guidance for selecting the sizes of materials can be obtained from the Town website and/or from qualified mooring specialists who are also listed on the Town website.
- D. Inspections. Each mooring must be inspected every two years by a qualified mooring specialist. The inspection results must be reported to the Harbormaster and all deficiencies repaired within 30 days.
- E. Winter spars. Winter spars cannot be installed before September 15 and ~~are required to must~~ be attached by ~~December 31 November 1 December 1~~ each year. They must be removed and replaced ~~by with~~ the white ball by June 1.
- F. Removal of moorings. An owner who ~~wishes to discontinue maintenance and discontinues the~~ use of a mooring is responsible for removing the mooring from the marine environment. The Town has the right to remove any mooring ~~that has not been registered including unsafe, abandoned, unregistered and "objects of convenience" moorings~~ at the owner's expense.

G. An applicant receiving a mooring assignment within Broad Cove Reserve, effective on or after May 1, 2017, must install the mooring during the first year of assignment. Should a mooring not be installed during that first year and the applicant again apply within three years, a relocation fee must be paid to cover the expense of retrieving the original marker and subsequent locating and marking of the second mooring site.

84-12 C. Relocation fee \$250.00

Mike wanted a little time to research the 48-5.5G change, but was in agreement with the rest of the changes.

Motion: To accept ordinance changes as amended.

Moved by: Bob Vail

Seconded by: Dave Witherill

Voted: Unanimous

2. **Mooring Program Update:** Chief Rumsey spoke about what has been done to get the mooring program up and running and compliant with the ordinance for the upcoming 2017 season. He stated we have compiled a mailing list to include all of Route 88, water side from the Yarmouth town line through to the Falmouth town line, Sturdivant Island and any previous and current mooring holders. He shared with the members a written a letter and information sheet (final version attached) to be mailed to the above mention addresses, advising the people what we are trying to do and asking for their help. We are looking to send this packet out the around the second or third week of January 2017.
3. **Wharfing Out Permit – Chris Dimillo at 30 Ferne Lane**
Chief Rumsey stated that Bill Shane had reviewed the application and all seemed to be in order except for a diagram that shows the height between the bottom of the pier and the low water mark for passage. There is wording in the narrative (Town of Cumberland, Zoning Ordinance, Land Use Standards, Section 226-25(D) 9) dealing with the elevation, but not a diagram. We have asked them for a diagram as well.

Discussions took place about the eel grass in the area, the visual aspect and the environmental impact of private docks. Lew stated that anything subtidal is the State of Maine's concern and the town has no jurisdiction. If the applicant has all the proper state permits, the town is just a "rubber stamp" on the project. Lew did state that town can control what happens in the intertidal areas and the applicant must comply with our ordinances. We have limited ordinance jurisdictions. The town has tried to encourage group docks, but after all the expenses involved in the permitting and building of a dock, the owner applies for a private dock. Most of the eel grass is in the southern part of the shoreline, starting at Payson pier and goes southward. The eel grass beds in the upper part of the cove are not the same rich beds that exist of Wildwood and off Broad Cove Reserve.

Lew stated that the procedure here is that if Bill has found all the submitted materials to be adequate, we are supposed to schedule a site walk. Chief Rumsey relayed a discussion he had with Bill regarding the site walk. A spring site walk was suggested due to the weather, light, tides, and the timeframe for proper public notice. A possible site walk which is open to the public could tentatively be set for April 19th (if the tides are low), as well as a regular CWC meeting. The Chief will notify the applicant of a mid-April site walk date and will keep him informed as the time approaches.

A public notice will be sent to abutters (within 1500 feet of 30 Ferne Lane) indicating the date, time and location of site walk, date, time and location of the public hearing and date, time and location of the next council meeting when your recommendations would be considered by the council. The dates will be forthcoming as we get closer to spring.

There was some discussion about the town's ability to make restrictions to an application regarding a float/dock. Lew stated things we have materially affected on docks that he remembered were, anchoring systems, lights, height clearance underneath and we have not allowed floats to be stored on the shore, with one exception. We have prevented haul-outs. These are the types of restrictions that we have had in the past. Lew stated that if the application meets the requirements of the ordinance, then it has to be approved.

4. Approval of the Minutes:

Motion: To approve the minutes:

Moved by: Richard Thompson

Seconded by: David Carlson

Mike Schwindt noted that the spreadsheets (from the last meeting) indicated Broad Cove Reserve had a large number of visitors over the summer.

Vote: Approved

5. Other Business:

Next meeting is set for January 18, 2017 at 6:00 p.m. in the Council Chambers.

Lew stated his position as chairman of the commission is a one-year commitment and anyone interested in the position should think about it let the commission know at the next meeting.

6. Adjournment:

Motion: To adjourn at 7:55 p.m.

Moved by: Lew Incze

Seconded by: Richard Thompson

Vote: Unanimous

Respectfully submitted,
Jean Duchesneau