

**Coastal Waters Commission  
Meeting Minutes  
Wednesday, November 18, 2015  
Council Chambers  
6:00 pm**

Present: Chairman Lewis Incze, David Witherill, David Carlson, Mike Schwindt, John Berrett, & Hugh Judge  
Staff: Town Manager William Shane, Town Attorney Alyssa Tibbetts, Town Council Liaison Thomas Gruber & Secretary Debbie Flanigan  
Other: Barney Baker & Daniel Bannon from Baker Design Consultants

Chairman Incze called the meeting to order at 6:00 pm.

Item II was taken out of order.

**II. Legal Review with Town Attorney and action reading the Pier-cost Sharing Proposal (vote required)**

Town Attorney Alyssa Tibbetts referred to the Memorandum of Agreement between the Town of Cumberland and 179 Foreside, LLC. which is a precursor to a License Agreement. This Memorandum of Agreement essentially obligates both parties to move toward a License Agreement; they have agreed that there will be a License Agreement. The Memorandum of Agreement includes the general terms of the License Agreement. In short summary our task here tonight is to assess whether we should change any of the basic terms included here. The License itself would contain details such as maintenance payments, capital improvement payments, the schedule and timing of those payments.

Chairman Incze asked for clarification from Attorney Tibbetts that this Memorandum of Agreement says that both parties have agreed to go forward and discuss this license. It doesn't obligate the Town to it in the event that the pier project does not move forward.

Attorney Tibbetts responded that his assumption was correct.

Mike Schwindt referenced Section 7 of the Memorandum of Agreement, the sufficiency of the insurance coverage.

Attorney Tibbetts responded that the provision as is written in the Memorandum of Agreement is simply to indemnify the town; it doesn't specify that there will be any insurance. To the extent that there is insurance, at this point, it's on 179 Foreside LLC as to how much insurance there is and if they are going to issue it. If the Commission and the Town Council feel insurance should be required, and the level of insurance that they would like to see, they can negotiate with 179 Foreside, LLC. This particular provision does note that the Town's statutory immunity should be maintained to the extent that they are

indemnifying us, so the assumption would be that the insurance coverage would be to the maximum level of \$400,000.

Manager Shane inquired why they would need insurance. There were questions that were asked last time where they had their own dinghies there and who would be responsible, and what happens if their guests go down to the pier after hours.

Attorney Tibbetts responded that ultimately the liability is on them because they are agreeing to indemnify the Town to the extent that any cause of action that arises out of their use of the pier; so if they get hurt or their property gets damaged they're going to defend the Town in any of those particular claims. If they decide not to have insurance, they are still responsible to defend the Town and indemnify the town. They don't have to have insurance to cover that indemnification.

Manager Shane asked in what set of circumstances that would happen?

Attorney Tibbetts responded that it would be action for property damage, or personal injury, and it's limited to use of the pier by the Association members or the homeowners and their guests. If there is a guest and someone falls, they agree that to the extent that their guest tries to sue them as the homeowner and the Town, they will defend the Town. They are agreeing to defend and indemnify the Town in those instances. If they decide they want to have insurance coverage to pay for those costs, they can do that. If they decide not to, they will still have to foot the bill. So it benefits them to have insurance in this situation; whether or not they do, what they are saying is they want the benefit of the Town's immunity and/or statutory limitation of The Maine Court Claim's Act. In the event that there are claims against the Town, they have to defend the Town. They want to limit their liability, the way the Town would if the claim was brought against the Town.

Hugh Judge stated that the Homeowners Association is willing to pay 50% of the cost of the new pier, up to \$150,000. If the cost were more than \$300,000, is the Homeowners Association will to go above the \$150,000 cap, would the Town have to make up the difference?

Attorney Tibbetts answered that it would be up to the Homeowners Association because they have the protection of the benefit of the number in the Memorandum of Agreement. The Town could push for a different number based on the information that they understand now.

David Carlson, as a small boat owner, stated that the Memorandum of Agreement was focused on the pier and its use.

David Witherill felt that one of the issues would be people not wanting to use row boats; there will be a lot of dinghies with motors being tied up at the pier. That would be a management issue.

Attorney Tibbetts recommended that in the License Agreement, that moorings and dinghies use would be subject to the Town rules as other similar uses. There is no reference in the current Memorandum.

Manager Shane asked if it would be important to add that language at this time.

Attorney Tibbetts responded that the Town could because the License Agreement has not been executed. She would be in touch with their attorney to see if they would be comfortable with that language.

David Carlson inquired if the current Memorandum was intended just for the pier and floats. There will be other rules or documents for the general public with respect for moorings use such things as to not beach a boat on the beach. There are other articles or documents that either the public or private landowners need be aware as well.

Attorney Tibbetts responded that there should be no question that there are no additional privileges; it should be absolutely clear that, with respect to have the additional tie-ups, they will still be subject to all the external documents and rules.

David Carlson commented in concern about the maintenance and winterization or dewaterization of the new pier, or even the existing pier; the time line when that occurs. Does that have to be in the Memorandum of Agreement or License Agreement that the landowners can choose when winterization of the pier occurs?

Manager Shane stated that David Carlson had a great idea and the Commission should think about that.

Chairman Incze added that the License would come up with the dates; target dates are necessary.

Manager Shane suggested that the dates might be no later than May 15<sup>th</sup> and no sooner than October 15<sup>th</sup>.

Attorney Tibbetts that the dates could be drafted in the Agreement that the dates are subject to the rules of the Commission, and there would be target dates by policy but not be obligated so there would be some flexibility to shoot for particular dates. For purposes of the Agreement, it could read that the homeowners have agreed that for winter maintenance and storage, the timeline shall be established by the Town, i.e. the Town Council or Coastal Waters Commission, etc.

There was discussion about the word "beach" appearing in the Memorandum of Agreement, and if it needed to be included in the document.

David Carlson referenced Section 9 of the Memorandum of Agreement and the approval by the Cumberland Chebeague Land Trust.

Attorney Tibbetts stated that there was a provision in the subdivision easement:

- A broad catchall: Cumberland Land Trust approval is required for only certain Reserve rights;
  - a. Section 3H: "Any other use of the property for activity that would materially impair conservation value unless such use or activity is necessary for the protection of the conservation values that are

subject to this agreement, in which case such use or activity shall be subject to the prior rules and regulations of the Lands Trust."

Another point that Attorney Tibbetts made was that approval of the Lands Trust could be required as to ~~what~~ the extent that the pier is used for commercial activity.

The vote on this agenda item was delayed until after the presentation of the proposed pier from Barney Baker of Baker Design Consultants.

Mike Schwindt moved to accept and forward the Memorandum of Agreement to the Town Council and to give the Chairman the authority to present it to the Ocean Access Committee and report back to the Coastal Waters Commission prior to the Council meeting and present any substantive changes.

Seconded by David Witherill.

VOTE: UNANIMOUS

### **III. Review of Updated Pier Proposal from Baker Design Consultants.**

#### **a. Survey Results to Date**

Mr. Baker reviewed the results of the Broad Cove Reserve Pier Replacement Survey to date:

Question 1:

Please tell us about yourself

Answer Options	Yes	No	Response Count
• Are you a Cumberland resident?	34	2	36
• Do you own waterfront property?	5	31	36
• Do you own a boat?	18	15	33
Under 26'	13	4	17
Over 26'	4	6	10
Canoe/Kayak/Paddleboard	21	3	24
• Do you currently keep your Boat on a mooring?	11	17	18
	<i>answered question</i>		36
	<i>skipped question</i>		0

In reviewing the results of Question 1 of the survey, Mr. Baker noted that the majority of respondents were from Cumberland and also that the majority did not own waterfront property. Most of the respondents owned boats under 26'.

Question 2: The Town intends to upgrade and replace the existing

pier and add a mooring field to provide access to Casco Bay for Town residents. How would you use these facilities?

	<b>Yes</b>	<b>No</b>	<b>Response Count</b>
• Pier access for ocean views	26	10	36
• Fishing from the dock	16	17	33
• Bird watching	13	16	29
• Commercial fishing	2	22	24
• Recreational boating	17	15	32
• Seasonal mooring	7	21	26
• Other (please specify)			7

In reviewing the results of Question 2, pier access for ocean views seemed to be important, whereas fishing from the dock was split. Comments that were given included concerns about the limited number of parking spaces.

Question 3: What features are important to you in design of the pier and mooring facilities?

	<b>Very important</b>	<b>Somewhat important</b>	<b>Not important</b>	<b>Don't know</b>	<b>Response Count</b>
• Accessible/barrier free water access	14	5	14	1	34
• Pier overlook & benches	11	15	8	0	34
• Ability to launch canoes/kayaks/paddle boards	16	8	11	0	35
• Ability to store dinghies & small boats	12	3	17	2	34
• Short term tie-up	11	5	16	0	32
• Full-tide float access	11	6	17		34
• Town Resident moorings	10	6	17	1	34
• Guest moorings	3	3	27	1	34

Results of Question 3, showed that accessible/barrier free water access was very important. Pier overlook & benches was so-so, but people do not have to be on the pier to have ocean views.

### **III b. New Float Lay-out**

Mr. Baker referred to the previous meeting and he discussed the 6 span solution profile and the probes. Ledge is very shallow until you get to pin number 3 and then drops off very quickly. There were 2 short spans before hitting the cliff and then there were another 3 spans and a short span on the end, which supports the overlook. With the 80' gangway, it pushes everything further out. The new floats would be larger and would be parallel to the pier, to reduce the wind effect. The floats are 12 x 24 and put together they would measure 24 x 24. You could pull a dinghy, or kayak rack upon them.

He discussed 6 span solution attributes which include:

- Length of pier is 192 ½ feet
- Width is 6'; the existing pier width is 4'
- Minimum width requirement for public access is 3', with passing spaces for wheelchairs
- Number of floats is 5
- Depth of water at the base float is 9"

John Berrett left the meeting at 7:35 pm.

### **III c. Preliminary Cost Estimate**

Mr. Baker reviewed some of the construction costs of the 6 span solution replacement pier:

- \$257,000 for total materials cost
- \$15,000 for demolition disposal of the existing pier
- \$30,000 for the ADA 80' gangway
- \$35,000 10% consultant services

To reduce the cost of construction of a new pier, a 5 span solution pier could be constructed, which would include the following changes:

- Reduce the length of the pier to 172'
- Eliminate the overlook located at the 2<sup>nd</sup> span
- Make the pier 5' wide
- Decrease the number of spans, but increase the length of the spans
- Eliminate the big float, reducing the number of floats to 3
- Change the piles

David Carlson inquired about the granite crib.

Mr. Baker explained that mean low watermark is -5.3. A pile cannot be driven without drilling it into a rock. That can be expensive if you are a contractor that doesn't have drilling equipment. The granite crib is a good solution when you have shallow bedrock. The crib may have to be moved from pile 2 to pile 3.

David Carlson referenced the cost difference between a crib and a pile. A granite crib would cost \$20,000 and he inquired of Mr. Baker what the cost of one piling point would be.

Mr. Baker responded that it would be anywhere between \$2,000 and \$3,600, for the piles that support the pier.

David Carlson inquired as to the maximum number of floats that would be allowed in the 5 span pier?

Mr. Baker responded that you could have as many floats as you wanted. You are not dependent on the ramp or the pier. The floats require maintenance, i.e. putting them in and taking them out. They also move, which makes them subject to wear and damage.

Manager Shane referenced the cost difference between the 6 span and 5 span pier. It would cost \$100,000 to go an extra 20 feet. There would be no significant gain in the water depth or the tide. He also said he would be disappointed in having to go back to 5' wide pier. The width of the pier could be a really important piece of this. There would be a barrier, for example, if there were two wheelchairs, or if people were fishing off the edge of the pier.

Mr. Baker stated that the difference in cost would be \$5,000 to add a foot to the width of the pier. There would be some additional load to the glulams, but the additional foot would not be adding that much extra weight. The spans would be farther apart in the 5 span, being at 36' to 40'.

Discussion about the floats included:

- If the 5 span pier is built and there are three floats, can the floats be expanded at a later date?
- The farther out you extend the floats, the more exposure there is to the prevailing southwest winds
- Instead of having the floats fastened to each other, put ramps in between them
- The proposed "t" configuration would actually be a more stable configuration than horizontal one that stretches in a single row out from and in line with the end of the pier. The gangway float needs to be stable
- Would the proposed floats work on the existing ramp?
- The live load capacity of the floats would be 30lbs per square foot

Tom Gruber agreed that the pier needs to be 6' wide.

Barney Baker recommended that the Commission proceed with the 5 span, 6'wide pier, and removable floats. The 5 span would be able to do what it needs to do and is closer to the Town budget.

### **III d. General Feedback from Meeting**

Manager Shane felt that a masterplan needed to be designed, with the plan showing 2 - 3 floats, with room for additional floats. You would permit for the ultimate, but build for your budget. He felt that Mr. Baker had done a great job with the presentation of the 5 span and 6 span pier. The Commission is comfortable with the 5 span solution, the decking at 6 (width) and a masterplan that shows up to 7 floats for now, with the understanding that there will be only 2 or 3 floats (plus ? the gangway landing float) when the pier goes to construction.

Mr. Baker asked about getting information to the stakeholders. Should the results of the survey be shared with them?

Manager Shane suggested waiting another month to get more response to the survey.

### **I. Approval of Minutes September 16, 2015**

Chairman Incze requested the following amendments:

Pg. 8. 1<sup>st</sup> Paragraph. Change 1<sup>st</sup> sentence to read:

"Chairman Incze stated that the Homeowners Association want their moorings close to the channel leading to/from the pier. David Witherill requested the following amendments:

Pg. 4. 2<sup>nd</sup> Paragraph. Change 2<sup>nd</sup> sentence to read: "He sailed into the cove in August and the "seas" had built up pretty good."

Mike Schwindt moved to approve the minutes of September 16, 2015 as amended.

Seconded by Hugh Judge.

VOTE: UNANIMOUS.

### **IV. Strategy for Obtaining a Good Assessment of Public Interest in the Pier & Mooring Area (Outreach Strategy)**

Manager Shane stated that the town interns would be home for the holidays so he would have them work on the social media, i.e. Facebook and Twitter aspect of getting information out there. They can also develop some slides for Channel 2 and also an article for the Forecaster. The list of stakeholders would receive an email with all of the up to date information about the proposed pier and moorings.

### **V. Update on Town Landing Kiosk.**

Tabled to the December 16, 2015 meeting.

**VI. Discussion of Vice-Chair.**

Hugh Judge moved to nominate David Witherill as Vice-Chair.

Seconded by David Carlson.

VOTE: UNANIMOUS

**VII. New Business – Next Meeting Wed., December 16, 2015  
Wed., January 20, 2016  
Wed., February 17, 2016**

**VIII. Adjourn.**

Chairman Incze adjourned the meeting at 8:16 pm.

Respectfully submitted,

Debbie Flanigan, Secretary