



Jamestown Harbor Office
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**TOWN OF JAMESTOWN
HARBOR COMMISSION**

Minutes of the June 12, 2019 Meeting of the Jamestown Harbor Commission
Approved: 7/10/2019

A meeting of the Jamestown Harbor Commission (JHC) was held Wednesday, June 12, 2019 at the Jamestown Town Hall, 93 Narragansett Avenue, Jamestown, Rhode Island.

I. CALL TO ORDER AND ROLL CALL

Vice-Chairman Harsch called the meeting to order at 6:35 PM with roll call:

Present:

William Harsch, Vice-Chairman
James Heagney, Commissioner
Eric Lexow, Commissioner
Steven Bois, Commissioner
Dan Wurzbacher, Commissioner

Absent:

Wayne Banks, Commissioner

Also in attendance:

George Souza, Conservation Commission Liaison
Chief Mello, Executive Director
Mark Campbell, Harbormaster
Kim Devlin, Harbor Clerk

II. APPROVAL OF MEETING MINUTES - Review, discussion and/or potential action and/or vote

A. Wednesday, May 8, 2019

Commissioner Lexow moved to approve the minutes; Commissioner Heagney seconded. So voted; 5 ayes, 0 nays.

III. OPEN FORUM

A. Scheduled Requests to Address

There were no Scheduled Requests to Address.

B. Non-scheduled Requests to Address- Review, discussion and/or potential action and/or vote

There were no Non-Scheduled requests to address.

IV. EXECUTIVE DIRECTOR MELLO'S REPORT- Review, discussion and/or potential action and/or vote

Executive Director Chief Mello reported that staff is working with the Public Works department to prepare the Harbor assets for the season; the pumpouts are operational and all of the docks are in. Executive Director Chief Mello stated that he is hoping to have a summary of all of the work completed to improve the Harbor assets this year for the August meeting.

Vice-Chairman Harsch asked Executive Director Chief Mello about the work being done at Ft. Getty.

Executive Director Chief Mello stated that there have been planks on the deck of the pier that have been replaced, the bulkhead has been replaced and the gangway is now handicap accessible. The erosion around the bulkhead has been fixed and the paving will be done soon, as well as the guardrails being replaced. The work will be completed soon.

V. HARBORMASTER REPORT- Review, discussion and/or potential action and/or vote

Harbormaster Campbell suggested to the Jamestown Harbor Commission that they check out the new floating dock at East

Ferry, that it is a great improvement from the old dock.

Harbormaster Campbell also reported that Memorial Day was pretty quiet and he participated in the blessing of the fleet on Saturday. The fireworks will be on July 1st this year and he will support that event.

VI. MARINE DEVELOPMENT FUND BUDGET

A. 2018/2019

MDF YTD Budget- Review, discussion and/or potential action and/or vote

The budget was not available but Executive Director Chief Mello stated we will have that available ASAP, and that this year was an anomaly for the budget as we spent a lot of funds on the maintenance of docks and harbors. If the operating budget will not support the expense we will have to use funds from the reserve account.

VII. SUB-COMMITTEE REPORTS

A. Budget - Review, discussion and/or potential action and/or vote

Commissioner Heagney had nothing to report.

B. Facilities - Review, discussion and/or potential action and/or vote

Commissioner Banks had nothing to report.

C. Mooring Implementation - Review, discussion and/or potential action and/or vote

Commissioner Banks was absent.

D. Traffic Committee - Review, discussion and/or potential action and/or vote

Vice-Chairman Harsch had nothing to report.

E. Gould Island Restoration Committee - Review, discussion and/or potential action and/or vote

Commissioner Bois had nothing to report.

VIII. LIAISON REPORTS

A. Conservation Commission Liaison- Review, discussion and/or potential action and/or vote

Conservation Commission Liaison Souza had nothing to report.

IX. OLD BUSINESS

A. Appeal – Mr. Chris Museler; re: Mooring location; 5/8/2018 – Review, discussion and/or potential vote; Continued from December 12, 2018

Mr. Quentin Anthony stated that it is his understanding that the mooring will be relocated and he would like to suspend this appeal.

Vice-Chairman Harsch moved to suspend this item until August 14th; Commissioner Bois seconded. So voted; 5 ayes, 0 nays.

B. Appeal – Mr. Chris Museler; re: Denial of Guest Mooring Permit; 4/18/2019 – Review, discussion, and/or potential action and/or vote

Executive Director Chief Mello addressed the Jamestown Harbor Commission with the closing arguments for the Town's position on denying Mr. Museler's appeal.

Executive Director Chief Mello stated that in Mr. Museler's pursuit of the primary mooring CRMC had informed Town staff that we had to adhere to the rules and regulations set forth in the CRMC Red Book.

Executive Director Chief Mello stated that the guest mooring would lie outside of the lateral extensions of the property lines, and that CRMC notified Town staff that we must adhere to the rules and regulations of the State of RI.

Mr. Quentin Anthony objected to Executive Director Chief Mello's statement claiming it is hearsay.

Vice-Chairman Harsch determined that in Executive Director Chief Mello's capacity as the Chief of Police he is authorized to make a representation and if Mr. Anthony wants to object to that he may.

Executive Director Chief Mello stated that in Town's exhibit 4, the CRMC Red Book's definition of a Riparian Mooring, which states that a "Riparian Mooring" indicates that a mooring rented by a riparian property owner under a permit granted by a municipality located within coastal waters bordering that property as bounded by the seaward extension of that property's lateral lot lines. Executive Director Chief Mello further stated that the Town's ordinance requires the Harbormaster to issue moorings with the availability of space and in accordance with state and local regulations and that was offered in Town's

exhibit 3.

Executive Director Chief Mello stated that the information requested by the commission on other Town's policies is irrelevant, but also many times in line with the ordinance we have in Jamestown. Executive Director Chief Mello pointed out that any past practices of issuing mooring which were not compliant with CRMC regulations are also irrelevant. Errors of the past do not require us to continue issuing moorings in error in the future.

Executive Director Chief Mello stated that by our estimations there are approximately 80 properties in Jamestown that are riparian properties that do not have the space or the access to the water that would allow for the issuance of any mooring.

Executive Director Chief Mello stated that, in closing, any action by the Harbor Commission that is not a denial of the appeal would be a violation of CRMC rules, and by that a violation of our own ordinance.

Mr. Anthony asked if we had gathered the information requested from the last meeting.

Town Solicitor David Petrarca stated that nothing formal was sent to the commission.

Mr. Anthony began his closing argument by stating that the Harbor Commission is duty bound to enforce the Harbor ordinance as written. Mr. Anthony referred to two Supreme Court cases that stated that members of Boards and Commissions must accept "the validity and enforceability of the visions of the ordinance they are tasked to enforce.

Mr. Anthony stated that the denial of the Guest Mooring by the Harbor Office is based on the determination that a provision of the ordinance is invalid and questions the validity of the ordinance as it is written. Mr. Anthony stated that the ordinance has a definition of Riparian Property but not a Riparian Mooring so either that is wrong or the provision regarding Guest Moorings is invalid and that is why the denial of the Guest Mooring is wrong, that it declares a part of the Harbor ordinance as invalid.

Mr. Anthony submitted seven additional exhibits to the Jamestown Harbor Commission.

In conclusion, Mr. Anthony stated that Mr. Museler is entitled to a Guest Mooring based on the current Harbor ordinance.

Vice-Chairman Harsch asked Mr. Anthony if he was finished and then asked Executive Director Chief Mello and Town Solicitor Petrarca if they had any comments.

Executive Director Chief Mello followed up with a clarification on Mr. Anthony's closing remarks, that it was implied that riparian property owners have a right to Guest Moorings. The language in the ordinance states that Riparian property owners may have Guest Moorings are entitled to apply. Nowhere in the ordinance language does it say they shall have one.

Town Solicitor David Petrarca advised the Jamestown Harbor Commission to deliberate amongst themselves, to weigh the evidence and to make their own conclusions. Under Section 78-30 (of the Harbor Management Ordinance) the Jamestown Harbor Commission has the power to stand in the shoes of the Harbormaster who made this decision and to review it based on the ordinance.

Vice-Chairman Harsch asked if any members of the Jamestown Harbor Commission wanted to hear from the Harbormaster.

There were no questions for the Harbormaster.

Commissioner Wurzbacher moved to close the Public Hearing stage of this proceeding and to open up discussion within the Jamestown Harbor Commission; Commissioner Heagney seconded. So voted; 5 ayes, 0 nays.

Vice-Chairman Harsch stated that the commission will now discuss the appeal amongst themselves.

Commissioner Bois stated that he had requested information on the other town's in the area and if they are imposing something similar, if there is any information on that.

Town Solicitor Petrarca stated that that information was forwarded to the commission members, and he compiled sections from four other towns in the area, and the definitions and ordinances vary greatly. Some actually use the (CRMC) Red Book definition in their ordinance and others do not mention it at all. There is one ordinance that does not mention the word "riparian" ever.

Vice-Chairman Harsch began by offering his view on the matter, stating that he noticed in Quentin's Exhibit 4 (RIGL 46-4-6.9) he made reference to it and subsection (b), which comes after (a) that grants powers to the town, states that "No powers or duties granted herein shall be construed to abrogate the powers or duties granted to the coastal resource management council as provided in chapter 23 of this title, as amended. So it appears to me that we have an explicit inclusion of exactly the same provision that you have to pay attention to the Coastal Resources Management Council and what its rules and regulations are.

Vice-Chairman Harsch states that Mr. Anthony has made much of his argument as to the obligation of this body (Jamestown Harbor Commission) has to observe the town ordinance as approved by CRMC. Going back and looking at our ordinance, Section 78-26 entitled *Mooring and Outhaul Regulations* with the subsection (a) *Permitting*, states that "No mooring or outhaul shall be located or maintained in the harbor or coastal waters of Jamestown without a permit that has been issued for the use of such mooring or outhaul by the harbormaster. No mooring or outhaul shall be permitted until the harbormaster has determined that conforms to the specifications set forth in this article and in any other conditions established by the state or town."

Vice-Chairman Harsch stated that he sees Coastal Resources Management Council swept into the guidance on how the harbormaster is to conduct himself in making a discretionary determination on mooring compliance and that it is essentially a reference to the Red Book.

Vice-Chairman Harsch also looked at the section of the ordinance that discusses Class 1a riparian moorings and quoted from Section 78-26 (c) of the ordinance "Owners of riparian property, including individual owners and the owners or directors of profit or nonprofit associations, partnerships, corporations or such other legal entities owning riparian property, are entitled to apply, with priority over other mooring permit classes, for up to two moorings per property parcel directly adjacent to the shorefront property parcel. They may apply for additional class 1 moorings, up to four in total, without priority over other mooring permit classes. In both cases, applications are subject, as determined by the harbormaster, to the availability of space and to state and local regulations."

Vice-Chairman Harsch stated that, in his mind, the Coastal Resources Management Council is present in our ordinance now, as it presently exists. That means that the harbormaster has the responsibility to address what is required by state and local regulations. There are two places in our ordinance where it preserves the powers of the CRMC.

Vice-Chairman Harsch stated that this topic of riparian moorings being issued between the lateral extensions of the property lines has not been thought through as a limitation on riparian moorings being issued and that there are a number of moorings in Jamestown that do not comply with this regulation. The proposed amendments to the ordinance attempt to clarify the matter and the time of being relaxed about this is over. We are bound by the Red Book and now that the issue is squarely on the table we have to face it.

Vice-Chairman Harsch moved to not reverse, in other words accept the determination of the Harbormaster, on the question of a guest mooring being allowed to Mr. Museler in accord with his application; Commissioner Heagney seconded. So voted; 3 ayes (Vice-Chairman Harsch, Commissioner Heagney, Commissioner Bois), 2 nays (Commissioner Wurzbacher, Commissioner Lexow).

Town Solicitor Petrarca stated that the motion passes.

X. CORRESPONDENCE

A. Email from David Cain; Re: Resignation; 5/7/2019

Vice-Chairman Harsch stated that former Chairman Cain has resigned.

XI. NEW BUSINESS

A. Pinheiro Aquaculture Site Visit

Executive Director Chief Mello stated that he spoke to Joe about two weeks ago and he has provided the insurance binder but he still needs to provide the CRMC approval letter and also, the aquaculture site is not yet up and running so we should remove this item from the agenda until he is prepared.

B. Election of the Chair and Vice-Chair as needed – Review, discussion, and/or potential action and/or vote

Commissioner Bois moved to appoint Vice-Chairman Harsch as the Chairman, Commissioner Wurzbacher seconded. So voted; 5 ayes, 0 nays.

The Jamestown Harbor Commission did not appoint a Vice-Chairman at this time and will hold off until Commissioner Banks

is present.

C. Appointment of Sub-Committee Members – Review, discussion and/or potential action and/or vote

1. Traffic Committee

2. Mooring Implementation

Executive Director Chief Mello stated that the individual appointed to the Traffic Committee will be a part of that committee and sit on the board.

XII. OPEN FORUM – CONTINUED- Review, discussion and/or potential action and/or vote

There was no Continued Open Forum.

XIII. ADJOURNMENT- Review, discussion and/or potential action and/or vote

Commissioner Bois moved to adjourn at 8:00PM; Commissioner Heagney seconded. So voted; 5 ayes, 0 nays.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'K. Devlin', written in a cursive style.

Kim Devlin
Jamestown Harbor Clerk