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**TOWN OF JAMESTOWN  
HARBOR COMMISSION**

Minutes of the July 10, 2019 Meeting of the Jamestown Harbor Commission  
*Approved: 8/14/2019*

A meeting of the Jamestown Harbor Commission (JHC) was held Wednesday, July 10, 2019 at the Jamestown Town Hall, 93 Narragansett Avenue, Jamestown, Rhode Island.

**I. CALL TO ORDER AND ROLL CALL**

Chairman Harsch called the meeting to order at 6:36 PM with roll call:

Present:

William Harsch, Chairman  
Wayne Banks, Commissioner  
Eric Lexow, Commissioner  
Steven Bois, Commissioner  
Dan Wurzbacher, Commissioner  
Michael Junge, Commissioner

Absent:

James Heagney, Commissioner

Also in attendance:

George Souza, Conservation Commission Liaison  
Town Solicitor, David Petrarca  
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, June 12, 2019**

Commissioner Wurzbacher moved to approve the minutes; Chairman Harsch 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.

Commissioner Wurzbacher moved to move up item 11(A); Commissioner Bois seconded. So voted; 6 ayes, 0 nays.

**XI. NEW BUSINESS**

**A. Appeal – Edward Flanagan; re: Denial of Mooring Permit; 7/2/2019 – Review, discussion and/or potential vote**

Executive Director Chief Mello stated that Mr. Flanagan applied for a mooring to be placed in the same location as the mooring the prior owner of his property had permitted more than five years ago. The prior property owner had a non-conforming mooring there and also leased a portion of a strip of land that is riparian. That mooring should not have existed and was given up 5 years ago. The permit was denied because the ordinance does not allow for someone to apply for a mooring based off of the lease of a portion of a parcel of land; they must lease the entire parcel to apply for a mooring as a riparian.

Mr. Flanagan stated that he is asking the Jamestown Harbor Commission for an exemption and to allow him to permit a non-riparian mooring at that location.

Chairman Harsch asked Town Solicitor David Petrarca his opinion.

Town Solicitor Petrarca stated that once the non-conforming mooring permit lapsed you cannot go back to allowing a non-conforming mooring to be permitted. There is not a part of the ordinance that allows the Jamestown Harbor Commission to grant an exception and to do so would be a deviation from the Harbor Management Ordinance.

Chairman Harsch moved to deny the appeal based on the condition that the Jamestown Harbor Commission does not have the power to grant exceptions to the Harbor Management Ordinance.

Chairman Harsch asked Mr. Flanagan if he would like to pursue the permit as a riparian.

Mr. Flanagan stated no.

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

Executive Director Chief Mello had nothing to report outside of Harbormaster Campbell's report.

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

Harbormaster Campbell reported that the fireworks and the fourth of July went smoothly, there were no major incidents. The next event is the Save the Bay swim that he will be supporting and after that are the festivals in Newport that he has minimal involvement in, outside of a major incident occurring.

Chairman Harsch asked Harbormaster Campbell about the Fools Rules.

Harbormaster Campbell stated that he does support that event, as well, but it is not until August.

### **VI. MARINE DEVELOPMENT FUND BUDGET**

#### **A. 2018/2019**

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

Executive Director Chief Mello stated that we will hopefully have the complete financial report from last fiscal year for the August meeting.

### **VII. SUB-COMMITTEE REPORTS**

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

Commissioner Heagney was absent.

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

Commissioner Banks reported that the work done to the Ft. Getty pier looks great and he urged everyone to go out and take a look at the result.

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

Commissioner Banks had nothing to report.

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

This committee is vacant.

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

Commissioner Bois stated that the committee is planning a site visit for later in the summer or early fall.

Executive Director Chief Mello reported that Town Administrator Andy Nota was asked to plan the site visit and Harbormaster Campbell has been working on the transportation arrangements to make that happen.

### **VIII. LIAISON REPORTS**

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

Conservation Commission Liaison Souza reported that the Conservation Commission is aware that there is an upweller at Ft. Getty.

Executive Director Chief Mello stated that Tony and Joe Pinheiro were permitted by the Town to install an upweller at Ft. Getty pier on a pilot program that ends December 31 of this year. The equipment installed at Ft. Getty is not what was approved by the Jamestown Harbor Commission and the Town Council and the condition is not what was anticipated.

Executive Director Chief Mello stated that he will be documenting the project and will provide a report at the end of the approved pilot project timeframe of December 31.

Chairman Harsch asked Conservation Commission Liaison Souza if the Conservation Commission had an opinion on the project.

Conservation Commission Liaison Souza stated that they were neutral.

## **IX. OLD BUSINESS**

### **A. Election of Vice-Chair as needed – Review, discussion, and/or potential action and/or vote**

Chairman Harsch moved to appoint Commissioner Banks as the Vice-Chairman of the Jamestown Harbor Commission; Commissioner Wurzbacher seconded. So voted; 6 ayes, 0 nays.

### **B. 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 Traffic Committee is not a chartered committee but that is an advisory board to the Town Council. The Traffic Committee meets each month and when it was established they expected a member from the Jamestown Harbor Commission to serve on that board.

Executive Director Chief Mello stated that the Mooring Implementation sub-committee is not time consuming. The last time they were active was when two boat yards were requesting an increase in the number of commercial moorings they were permitted to have installed. The involvement is usually limited to the member meeting with staff and reporting back to the commission.

Commissioner Bois moved to appoint Commissioner Junge to the Traffic Committee; Chairman Harsch seconded. So voted; 6 ayes, 0 nays.

Commissioner Bois moved to appoint Vice-Chairman Banks to the Mooring Implementation sub-committee; Commissioner Wurzbacher seconded. So voted; 6 ayes, 0 nays.

Vice-Chairman Banks asked about the Pinheiro letter that was sent to him and forwarded to staff for inclusion and discussion at the last meeting.

Executive Director Chief Mello stated that the letter was on the agenda and it was discussed; however, they are not operating under the approved conditions so it was suggested that the Jamestown Harbor Commission hold off on taking any action at this time.

### **C. Appeal – Mr. Chris Museler; re: Denial of Guest Mooring Permit; 4/18/2019 – Review, discussion, and/or potential action and/or vote; Possible motion to reconsider vote & decision from the June 12<sup>th</sup> meeting in which the Harbor Commission affirmed the Harbormaster’s denial of the Guest Mooring Permit.**

Chairman Harsch stated that it is normal for members of a Commission that are voting to express the reasons for their vote and their opinions on the matter in question. Chairman Harsch is concerned that a couple of members did not express themselves at the last meeting and feels that they should have the opportunity to do so.

Chairman Harsch moved that the Jamestown Harbor Commission reconsider the vote taken at the last meeting and to allow members to express their views and when they vote to make a comment on the record as to the reasons for their vote. Commissioner Wurzbacher seconded. So voted; 6 ayes, 0 nays.

Chairman Harsch asked Town Solicitor Petrarca if he contacted the council for Mr. Museler to inform them that this would be on the agenda again tonight.

Town Solicitor Petrarca stated that yes, he did contact Mr. Museler’s council.

A discussion on Robert’s Rules and the type of information and discussion that should take place ensued.

Town Solicitor Petrarca stated that any member can make a motion to reconsider if they feel a member has may a certain rational for how they voted that might have made a difference in the vote. Town Solicitor Petrarca stated that the members may discuss amongst themselves, but that no new testimony or documentation should be introduced.

Commissioner Wurzbacher asked to speak and stated that he voted against denying the appeal and would like to share the

context in which he is approaching his decision with. Commissioner Wurzbacher stated that he is looking out for coastal landowners in his role on the Harbor Commission. Commissioner Wurzbacher stated that he has considered a lot of different factors in the Museler's appeal and as we've moved through that process, and as riparian landowners, they have a right to a mooring and that the guest mooring is a difficult thing to deny.

Commissioner Lexow stated that he agrees with Commissioner Wurzbacher.

Chairman Harsch moved to reaffirm the vote taken to deny the guest mooring permit; Commissioner Bois seconded.

Executive Director Chief Mello stated that the challenge, procedurally, is that this matter has been heard over the course of three meetings and only three members have been present at all three of those meetings who have heard all of the testimony.

Town Solicitor Petrarca stated that when there is a motion to reconsider a vote it has to be the same members voting that voted during the original vote.

Executive Director Chief Mello stated we should take a roll call vote and that voting affirmative is voting to uphold the decision from the last meeting to deny the appeal.

Commissioner Bois voted aye.

Commissioner Lexow voted nay.

Commissioner Wurzbacher voted nay.

Chairman Harsch voted aye.

Town Solicitor Petrarca stated that it is a tie vote and that the motion does not carry and that the vote from the last meeting stands.

Commissioner Bois moved to move forward; Commissioner Junge seconded.

Commissioner Bois asked Town Solicitor Petrarca if the Museler's can appeal to the Town Council.

Town Solicitor Petrarca stated that once they receive the decision letter they can appeal the decision to the Town Council.

Commissioner Bois stated that he feels like we should accept that process and move on so he will make a motion in that regard.

Commissioner Bois moved to accept the process as it is and to move on; Commissioner Junge seconded. So voted; 6 ayes, 0 nays.

#### **X. CORRESPONDENCE**

There was no Correspondence.

#### **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 7:32PM; Commissioner Heagney seconded. So voted; 6 ayes, 0 nays.

Respectfully submitted,



Kim Devlin  
Jamestown Harbor Clerk