



**TOWN COUNCIL MEETING**  
**Jamestown Town Hall**  
**Rosamond A. Tefft Council Chambers**  
**93 Narragansett Avenue**  
**Tuesday, October 22, 2019**  
**11:00 AM**

*The public is welcome to participate in this Town Council meeting. Open Forum offers citizens the opportunity to clarify an item on the agenda, address items not on the agenda, or comment on a communication or Consent Agenda item. Citizens are welcome to speak to the subject of a Public Hearing, and are allowed to speak at the discretion of the Council President or a majority of Councilors present, or at other times during the meeting, in particular during New or Unfinished Business.*

*Anyone wishing to speak should use the microphone at the front of the room, stating their name and address for the record; comments must be addressed to the Council, not the audience. It is the Town Council's hope that citizens and Councilors alike will be respectful of each other's right to speak, tolerant of different points of view, and mindful of everyone's time.*

Attachments for items on this meeting agenda are available to the public on the Town website at: <http://www.jamestownri.gov/town-government/town-council/town-council-meetings-minutes/2019-meetings-minutes/2019-meetings>

**I. ROLL CALL**

**II. CALL TO ORDER, PLEDGE OF ALLEGIANCE**

**III. NEW BUSINESS**

*Please Note in Accordance with Section 42-46-6 (b) the Council May Review, Discuss and/or take Action and/or Vote on the following items:*

- A) Approval of Special Counsel for Museler Appeal Hearings
- B) Appeal Hearing of Kara and Christopher Museler; by their Attorney, Quentin Anthony, Esq; regarding the denial of their Guest Mooring Permit Application by the Jamestown Harbor Commission dated July 18, 2019; pursuant to Section 78-30 of the Jamestown Code of Ordinances
- C) Schedule Future Sessions – dates and times.

**IV. ADJOURNMENT**

*Pursuant to RIGL § 42-46-6(c) Notice of this meeting shall be posted on the Secretary of State's website and at the Town Hall and the Jamestown Philomenian Library. Notice is also posted at the Jamestown Police Station and on the Internet at [www.jamestownri.gov](http://www.jamestownri.gov).*

ALL NOTE: This meeting location is accessible to the physically challenged. If communications assistance is needed or other accommodations to ensure equal participation, please call 1-800-745-5555, or contact the Town Clerk at 401-423-9800, via facsimile to 401-423-7230, or email to [eliese@jamestownri.net](mailto:eliese@jamestownri.net) not less than three (3) business days prior to the meeting.

***Posted on the RI Secretary of State website on October 16, 2019***

TOWN COUNCIL OF JAMESTOWN

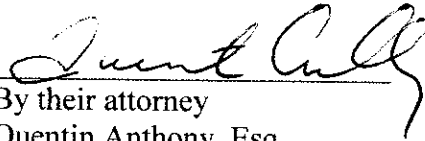
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**APPEAL**

IN RE: Guest Mooring Application of Kara and Christopher Museler

NOW COME Kara and Christopher Museler, by their attorney, pursuant to the Jamestown Harbor Ordinance and appeal the Decision/Letter dated July 18, 2019 of the Harbor Commission.

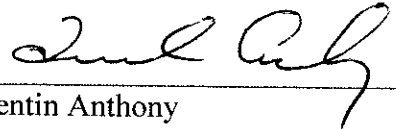
Kara and Christopher Museler



By their attorney  
Quentin Anthony, Esq.  
41 Long Wharf Mall  
Newport, Rhode Island 02840  
Tel: 401 847-1008  
Fax: 401 847-0018  
[qanthony@verizon.net](mailto:qanthony@verizon.net)

CERTIFICATION

I hereby certify that I hand-delivered this Appeal to the Town Council of the Town of Jamestown on July 31, 2019.



Quentin Anthony



**Jamestown Harbor Office**  
250 Conanicus Avenue  
Jamestown, RI 02835  
(401) 423-7190

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**MEMORANDUM**

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**TO:** Jamestown Town Council  
**FROM:** Chief Edward A. Mello  
**DATE:** August 13, 2019  
**SUBJECT:** Harbor Commission Appeal -Museler

Honorable Members of the Jamestown Town Council;

Attached you will find the formal notice of appeal of the Jamestown Harbor Commission as filed by Attorney Quentin Anthony on behalf of Mr. and Mrs. Museler. In my capacity as the Executive Director of the Jamestown Harbor Commission, I offer the following as background and a timeline of events.

**BACKGROUND:**

The matter before you is the appeal of a decision of the Jamestown Harbor Commission (JHC) as provided for within the Jamestown Ordinance. Specifically that any appeal of the JHC shall be filed with the Jamestown Town Council.

In August of 2017, Christopher and Kara Museler (Muselers) purchased a parcel of land located at 20 Westwind Drive. Before construction of their home, they made application for a primary riparian mooring to be associated with the property. Tax records and the respective deed indicate that the property is bordered by Zeek's Creek, not the Narragansett Bay.

This initial application was made outside of the harbor master's normal season and as such I, serving as the executive director responded to the request as a courtesy to the Muselers in order to expedite the process at their request.

The initial riparian mooring application was denied based on the information that the property was not waterfront and as such, the mooring could not be placed directly adjacent to the property. The Muselers appealed this denial to the JHC. Following a hearing, the JHC ruled that the Museler property was riparian but fell short of directing Harbor Staff to issue a mooring.

Following past practice of other mooring holders on Westwind Drive, Muselers were granted a mooring. This practice was later determined to be in violation of CRMC regulations.

The JHC received notice via a stipulation attached to the Harbor Management Plan approval that all moorings located within the Zeeks Creek Conservation Zone must be relocated. The Harbor Staff began the process to address this concern by working with Town and CRMC officials to reconcile a discrepancy of the designated conservation zone boundaries. This reconciliation would resolve the majority of moorings that were located within the conservation zone.

The Muselers desired location of their mooring would have resided within the conservation zone, which was under review and revision by CRMC. The Muselers were given the option to be immediately located outside the conservation zone or wait until such time a resolution was reached in terms of amending the conservation zone. The Muselers opted to be located outside the conservation area. Upon the mooring being placed, the Muselers filed an appeal with the JHC requesting that the mooring be located within the conservation zone. This appeal is likely to be resolved as the conservation zone was ultimately revised.

During the process of amending the conservation zone, the Harbor Staff learned from CRMC that all riparian moorings must lie directly within the seaward extension of the lateral property lines. The staff took no action to revoke any moorings that were previously issued, including Muselers.

In April of 2018, the Muselers filed an application for a second mooring (guest mooring). This application was denied by Harbor Staff based on the CRMC regulation, which requires that all riparian moorings must lie directly within the seaward extension of the lateral property lines. This denial is appealed by the Muselers to the JHC. The JHC ultimately upholds the decision of the Harbor Staff.

The matter before you is the decision related to the third appeal of the Muselers, specifically the denial of the guest mooring.

#### TIMELINE:

9/11/2017: Muselers make application for initial primary mooring. Applies as a riparian property owner (Class 1a) associated to his property located at 20 Westwind Drive.

1/2/2018: Application is denied by Executive Director. The Muselers' property and associated deed indicate that the northern boundary is defined as The Great Creek (aka Zeek's Creek) and is designated "Single Fam MDL-01" in the Tax Assessor records. All other properties, and their associated deeds within this area which have been granted riparian moorings, indicate the boundary as being Narragansett Bay and are designated as "Waterfront" properties in the Tax

Assessor records. The property does not have adequate water immediately adjacent to the property to support a mooring. Harbor staff relies on the following Jamestown Ordinance:

*Jamestown Ordinance Section Sec. 78-22. - Definitions.*

*Riparian property: A freehold estate of record in land within the town having shorefront directly adjacent to waters bordering the town.*

*Jamestown Ordinance Section 78-26*

*(c) Class 1 Riparian.*

*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.*

1/30/2018: Muselers file an appeal with the JHC.

2/14/2018 & 4/11/2018: JHC holds a hearing over two dates. JHC rules that the Muselers' property is riparian.

2/26/2018: Town receives notice from CRMC that Harbor Management Plan and Ordinance have been approved with the condition that all existing moorings located within the Zeek's Creek Conservation Zone must be relocated outside of the conservation upon next inspection (within three-years).

Harbor staff learns that the CRMC and the Town have conflicting boundaries for the conservation zone in question. Staff begins process to revise Town defined boundary in order to be consistent with CRMC boundaries. This will ultimately resolve the CRMC stipulation to vacate all moorings currently located with the Zeek's Creek Conservation area. It is during this process that Harbor staff learn that CRMC rules and regulations define riparian moorings as:

*CRMC RI Code of Regulations 1.1.2 90 (b)*

*"Riparian mooring" means 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. Said mooring may or may not be located within a CRMC approved mooring field.*

5/7/2018: Harbor Master offers the Muselers a mooring to be located outside of the Town/State Conservation Zone boundaries. The mooring is accepted and installed 5/14/2018.

5/8/2018: Muselers file an appeal with JHC as the Muselers desired location of this primary mooring resides within the Town Conservation area, the same area of which CRMC issued

notice to vacate all existing moorings. The mooring was placed outside of the Conservation Zone, per CRMC's direction.

4/15/2018: Muselers apply for a guest mooring to be associated with the primary mooring.

4/16/2019: Guest mooring application is denied. The proposed location of the guest mooring would not lie within the seaward extension of the Muselers property lateral lot lines as required by *CRMC RI Code of Regulations 1.1.2 90 (b)*.

The Harbor Staff relies on the below cited sections of the Rhode Island General Laws, the Jamestown Code of Ordinances, and the CRMC RI Code of Regulations (RICR) 650-RICR-20-00-01 (commonly referred to as the "Red Book") as follows:

*R.I.G.L. § 46-4-6.9 Town of Jamestown. Powers Conferred.*

- (b) *No powers or duties granted herein shall be construed to abrogate the powers or duties granted to the coastal resources management council as provided in chapter 23 of this title, as amended.*

*Jamestown Ordinance Section 78-26*

(a) *Permitting.*

*No mooring or outhaul shall be located or maintained in the harbor or coastal waters of Jamestown until a permit 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 it conforms to the specifications set forth in this article and in any other conditions established by the state or town.*

*Jamestown Ordinance Section 78-26*

(c) *Class 1 Riparian.*

*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.*

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*"Riparian mooring" means 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. Said mooring may or may not be located within a CRMC approved mooring field.*

It is further learned by Harbor Staff that the primary Museler mooring location is in conflict with this regulation and is non-conforming. The primary mooring should not have been permitted.

4/1/2019: Harbor staff, JHC and Jamestown Town Council resolve the matter of the Conservation area, thereby resolving the stipulation required by CRMC to vacate all existing moorings from this conservation area.

This action creates a pathway to resolve the appeal filed by the Muselers in reference to the location of the primary mooring. Harbor staff proposed relocation site submitted to the Muselers on 5/22/2019. This mooring has yet to be relocated by the Muselers.

4/18/2019: Muselers file an appeal of the denial of his guest mooring.

5/8/2019, 6/12/2019 & 7/10/2019: A hearing is held by the JHC resulting in a denial of the appeal.

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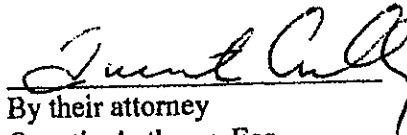
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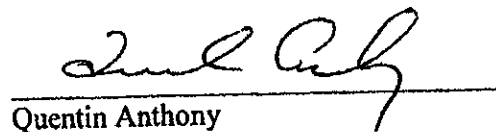
Kara and Christopher Museler



By their attorney  
Quentin Anthony, Esq.  
41 Long Wharf Mall  
Newport, Rhode Island 02840  
Tel: 401 847-1008  
Fax: 401 847-0018  
[qanthony@verizon.net](mailto:qanthony@verizon.net)

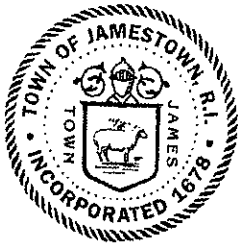
CERTIFICATION

I hereby certify that I hand-delivered this Appeal to the Town Council of the Town of Jamestown on July 31, 2019.



Quentin Anthony





## Jamestown Harbor Office

250 Conanicus Avenue

Jamestown, RI 02835

(401) 423-7190

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**RE: Museler File**


Office of the Harbor Clerk

### C E R T I F I C A T E

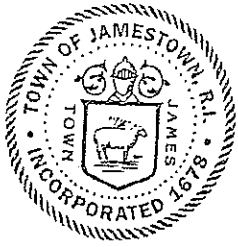
I, Kim Devlin, Harbor Clerk of the Town of Jamestown, having by law the custody of the seal, and the records, books, documents and papers of or appertaining to said Town, hereby certify the annexed to be true copies of papers appertaining to said Town, and on file and of record in this office.

In attestation whereof I have  
hereunto set my hand, and have  
affixed the seal of said Town, this  
11th day of October, 2019.

Kim Devlin



Harbor Clerk



## Jamestown Harbor Office

250 Conanicus Avenue

Jamestown, RI 02835

(401) 423-7190

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Christopher and Kara Museler  
20 Westwind Drive  
Jamestown RI 02835

July 18, 2019

Re: Appeal of Guest Mooring Application Denial filed on April 17, 2019

Dear Mr. and Mrs. Museler:

This letter serves as official notice of the Jamestown Harbor Commission decision to deny your appeal which you filed on April 17, 2019 related to your application for a guest mooring. The Harbor Commission heard testimony and argument during public hearings which took on May 8 and June 12, 2019.

Following discussion and argument, a motion was made to affirm the decision of the harbormaster to deny the guest mooring application because the harbormaster had to apply the state regulations concerning the definition of "riparian mooring" in accordance with the Harbor Ordinance. This motion passed by a vote of 3-2.

The Harbor Commission again discussed this matter at its meeting of July 10, 2019. A motion was made to reconsider the Commission's decision of June 12, 2019 to allow the "nay" voters to explain their reasoning. Said motion passed. Upon further explanation by Commissioner Wurzbacher of his "nay" vote, of which Commissioner Lexow joined, a motion was made to ratify the Commission's June 12, 2019 decision. This motion failed by a vote of 2-2. No other motions were made. By operation of law, the June 12, 2019 decision of the Harbor Commission stands.

As such, it is the ruling of the Harbor Commission that the Harbormaster and Executive Director acted appropriately in denying your application for a guest mooring as they are required to follow both local and state regulations. These regulations include the requirement that a riparian mooring granted by a municipality be located within the coastal waters bordering riparian property and bounded by the seaward extensions of that property's lateral lot lines. Since you cannot locate a mooring within the seaward extensions of your property's lateral lines, you cannot be granted a guest mooring under the Jamestown Code of Ordinances.

The Harbor Commission decision to deny your appeal was based on the below cited sections of the Rhode Island General Laws, the Jamestown Code of Ordinances, and the CRMC RI Code of Regulations (RICR) 650-RICR-20-00-01 (commonly referred to as the "Red Book") as follows:

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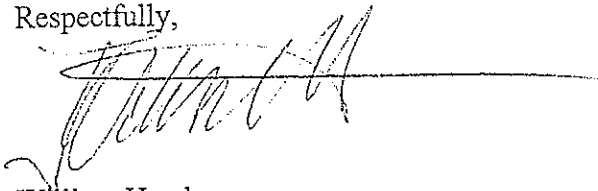
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If you feel you are aggrieved by this decision, Section 78-30 of the Jamestown Code of Ordinances provides for an appeal of this ruling to the Jamestown Town Council within 20 days from the mailing of this decision.

Respectfully,



William Harsh  
Chairman  
Jamestown Harbor Commission

CC: Q. Anthony  
Town Solicitor  
Harbor Commission

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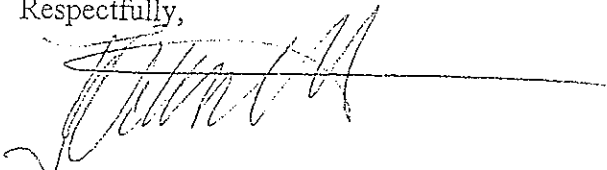
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Respectfully,



William Harsh  
Chairman  
Jamestown Harbor Commission

CC: Q. Anthony  
Town Solicitor  
Harbor Commission



Jamestown Harbor Office  
250 Conanicus Avenue  
Jamestown, RI 02835  
401-423-7190

**TOWN OF JAMESTOWN  
HARBOR COMMISSION**

Minutes of the July 10, 2019 Meeting of the Jamestown Harbor Commission  
*DRAFT – Not Approved*

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.

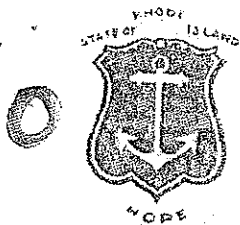
Respectfully submitted,



Kim Devlin  
Jamestown Harbor Clerk



Appellants 1



State of Rhode Island and Providence Plantations  
Coastal Resources Management Council  
Oliver H. Stedman Government Center  
4808 Tower Hill Road, Suite 3  
Wakefield, RI 02879-1900

(401) 783-3370  
Fax (401) 783-2069

February 26, 2018

Jamestown Town Council  
Jamestown Town Hall  
283 County Road  
Jamestown, RI 02806-2406

Dear Honorable Jamestown Town Council:

I am writing to you regarding the recently revised *Jamestown Comprehensive Harbor Management Plan as adopted by the Jamestown Town Council on August 4, 2014* (HMP). As you know, the Coastal Resources Management Council originally reviewed the HMP in 2015, and finding it generally consistent with the Rhode Island Coastal Resources Management Program (RICRMP) granted interim approval to provide the town with additional time to address certain stipulations that would enable the Plan to receive a full five-year approval. Subsequent review of the recently revised HMP, (including the harbor ordinance)(submitted to and received by the CRMC on September 30, 2017) has determined that these stipulations have been fully addressed.

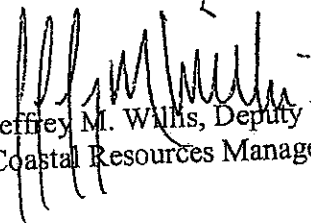
As such, in accordance with §300.15 of the Rhode Island Coastal Resources Management Program, I hereby grant a five-year approval of the Jamestown Harbor Management Plan to February 26, 2023.

Additionally, prior to the expiration of this approval, the Town shall address the following issues for inclusion into the next iteration of the HMP:

- Because eelgrass beds shift and migrate over time, existing mooring fields are at times found to have eelgrass present when originally sited there was none present. Therefore all existing conventional moorings located in mooring fields where eelgrass beds are now present must be replaced with a conservation-type mooring at the time of inspection per Section 78-26(1)(2) of the harbor ordinance or when in such a mooring field it is determined that any part of the existing mooring gear must be repaired or replaced. Conservation-type moorings include a screw type anchoring device that is embedded beneath the surface of the substratum and a buoyant line attached to the anchor and mooring float to ensure that no part of the mooring gear rests on the surface of the substratum at any time.
- All moored vessels located within the Zeek's Creek Conservation Zone (see map at HMP Appendix A-5.13) must be relocated outside the boundary of the conservation zone upon their next scheduled mooring inspection per Section 78-26(1)(2) of the harbor ordinance, or whenever any part of the mooring gear must be repaired or replaced for any reason prior to a mooring inspection per Section 78-26(1)(2).

- The definition for "Conservation zones" in Section 78-22 of the harbor ordinance must be amended within one year from the date of CRMC's approval of the HMP to state that CRMC jurisdiction is controlling within all conservation and other local zones established under the HMP.

Sincerely,

  
Jeffrey M. Willis, Deputy Director  
Coastal Resources Management Council

/lat

cc: Grover J. Fugate, CRMC Executive Director  
Kevin R. Cute, CRMC Marine Resources Specialist  
Dave Reis, CRMC Supervising Biologist  
Rich Lucia, CRMC Supervising Civil Engineer  
Anthony DeSisto, CRMC Legal Counsel  
Chief Edward Mello, Jamestown Harbor Office Director  
David Cain, Jamestown Harbor Commission Chair

## Exhibit 4

Appellant 2f

From: Chief Edward Mello  
Sent: Wednesday, March 14, 2018 7:21 PM  
To: 'Kevin Cute'  
Cc: 'Wyatt Brochu'; Mark Campbell; Kim Devlin  
Subject: Questions

Kevin

Nice chatting with last week. I just wanted to clarify a couple of topics that came out of our conversation.

- 1) Regarding the pending application by a property owner (property only no house) located on West Wind Drive (see graphic below); he has made application for a riparian mooring. I denied said application for two reasons. First he does not meet the Jamestown Ordinance definition of riparian that being a property which borders on the waters surrounding Jamestown. His deed depicts his northern property line border as Zeeks Creek; not Narragansett Bay as do all current riparian mooring holders. Second, the waters abutting his property would not allow for the 40 foot vessel as this is nothing more than a creek. If I understood correctly, the position of CRMC would be that all tidal waters are riparian and therefore the applicant is entitled to a mooring despite the fact that the mooring could not be placed within the lateral lines of his property, nor does he have property which abuts Narragansett Bay. Can you please confirm that would CRMC's position?
- 2) Regarding the approval letter of our harbor management plan; stipulation one calls for the replacement of all moorings which may reside within areas which have eel grass. That these moorings must be replaced with a conservation type mooring system. This system typically calls for a "screw" to be installed into the floor of the bay and the tackle is attached. We have learned from experience that the "screw" portion is problematic due to shallow ledge conditions thereby preventing installation. Others have employed the option of installing a weighted block and then attaching the elastic portion to the block. Before proceeding in notifying existing mooring holders, I would ask if this modified application would be permitted?
- 3) Stipulation two calls for the removal of all existing moorings from Zeeks Creek Conservation area upon inspection. My understanding from our conversation is that you indicated that these moorings can be moved into any other area to accommodate the owners and would not have to be placed within a designated mooring area and that this new cluster of moorings would not constitute a new mooring area open to the public. Please confirm if I understood that correctly.

Thank you.

Edward A. Mello  
Chief of Police  
Jamestown Police Department  
250 Conanicus Avenue  
Jamestown RI 02835

phone: 401-423-1212

fax: 401-423-9648



Appellant 3

Anthony DeSisto <adlawllc@gmail.com>

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**FW: HMP Approval Letter**

1 message

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**Kevin Cute** <kcute@crmc.ri.gov>  
**To:** Anthony DeSisto <adlawllc@gmail.com>

Tue, Aug 14, 2018 at 11:10 AM

Kevin R. Cute

Marine Resources Specialist

Coastal Resources Management Council

Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

Phone: (401) 783-3370

Fax: (401) 783-3767

Email: [kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)

Website: <http://www.crmc.ri.gov/>

---

**From:** Kevin Cute [mailto:[kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)]  
**Sent:** Thursday, May 10, 2018 10:18 AM  
**To:** 'Chief Edward Mello'  
**Cc:** 'Mark Campbell'  
**Subject:** RE: HMP Approval Letter

Hello Chief,

Regarding question one: Yes but please provide a reasonable explanation regarding any proposed change to the Conservation Zone.

Regarding question two: The Jamestown Harbor Ordinance includes a schedule of mooring inspections which requires all moorings to be inspected once every three years. The HMP is approved for a five year period during which any mooring in Jamestown that is not inspected will be in violation of the harbor ordinance. The CRMC HMP approval letter *specifies* that the moorings in the Conservation Zone at Zeek's Creek must be removed at the time of their next scheduled inspection, *or whenever any part of the mooring gear must be repaired or replaced prior to a mooring inspection*. As such, these moorings are potentially subject to relocation prior to their next lawfully mandated inspection. Its simple logic that whether a mooring is relocated prior to or at the time of the next inspection, either event will occur within the five-year approval period. But any interpretation of the approval letter which concludes that the "Zeek's Creek" moorings may be relocated at any time – up to the terminal date of the five-year approval period – is blatantly wrong and illogically opposed to the incontestable intent of the CRMC stipulation regarding their relocation. I'm entirely confident that the Jamestown Harbor Office will lawfully enforce this CRMC requirement but please don't hesitate to contact me should any problems arise for which you think CRMC's assistance may be helpful to that end. Therefore, please do begin to enforce this change immediately due upon next inspection.

Regarding question three: Yes, given the schedule established in the approval letter regarding the replacement of any and all conventional moorings located in eelgrass beds with a conservation type mooring. Consistent with my response to question two, please do begin to enforce this change immediately due upon next inspection

Please don't hesitate to contact me if you have any further questions on this matter.

Best,

Kevin

Kevin R. Cute

Marine Resources Specialist

Coastal Resources Management Council

Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

Phone: (401) 783-3370

Fax: (401) 783-3767

Email: [kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)

Website: <http://www.crmc.ri.gov/>

---

**From:** Chief Edward Mello [mailto:emello@jamestownri.net]  
**Sent:** Thursday, May 10, 2018 8:36 AM  
**To:** Kevin Cute  
**Cc:** Mark Campbell  
**Subject:** HMP Approval Letter

Good morning Kevin;

We are working with the Harbor Commission and the mooring holders within Zeeks Creek in order to address the stipulations as outlined in our approval letter. Specifically bullet point two.

As such I have a couple of questions:

- 1) Would CRMC be open to the Town amending the Zeeks Creek conservation area to mirror what CRMC indicates as a conservation area? There is an inconsistency of the Town's (1000 feet) vs. CRMC (500 feet). This would occur after hearing from our local Conservation Commission for input.
- 2) In the letter, it indicates "prior to the expiration of the approval..." and then stipulates that the moorings within Zeeks Creek must be moved upon inspection. Does this mean we need to change our documents prior to 2023 and then begin to enforce this change? Or do we begin to enforce this change immediately due upon next inspection?
- 3) The same question (2) would apply to the first stipulation as well.

Thank you.



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Anthony DeSisto <adlawlic@gmail.com>

**FW: Questions**

1 message

Kevin Cute <kcute@crmc.ri.gov>  
To: Anthony DeSisto <adlawlic@gmail.com>

Tue, Aug 14, 2018 at 11:10 AM

Kevin R. Cute  
Marine Resources Specialist  
Coastal Resources Management Council  
Stedman Government Center  
4808 Tower Hill Road  
Wakefield, RI 02879  
Phone: (401) 783-3370  
Fax: (401) 783-3767  
Email: kcute@crmc.ri.gov  
Website: <http://www.crmc.ri.gov/>

**From:** Kevin Cute [mailto:kcute@crmc.ri.gov]  
**Sent:** Thursday, April 05, 2018 4:02 PM  
**To:** 'Chief Edward Mello'  
**Cc:** 'Wyatt Brochu'; 'Mark Campbell'; 'Kim Devlin'  
**Subject:** RE: Questions

Chief,

Regarding question #2 – combining a weighted block and elastic “rode” is permissible and according to our permit staff supervisor it’s the preferred hybrid mooring option he recommends when moorings must be installed in eelgrass beds.

Regarding question #3 – I agree with your conclusions regarding the relocation of any *riparian* moorings (which if I recall properly you’d mentioned was the case for all of them) currently located in the conservation area near Zeek’s Creek. Any non-riparian moorings would have to be relocated in a mooring field, and it would be preferable for riparian moorings to be located as near as possible to the riparian properties with which they’re associated.

Best,

Kevin

Kevin R. Cute

Marine Resources Specialist

Coastal Resources Management Council

Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

Phone: (401) 783-3370

Fax: (401) 783-3767

Email: [kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)

Website: <http://www.crmc.ri.gov/>

---

**From:** Chief Edward Mello [mailto:[emello@jamestownri.net](mailto:emello@jamestownri.net)]  
**Sent:** Thursday, April 05, 2018 2:45 PM  
**To:** Kevin Cute  
**Cc:** 'Wyatt Brochu'; Mark Campbell; Kim Devlin  
**Subject:** RE: Questions

Thank you Kevin

I look forward to your response on items 2 and 3.

**Edward A. Mello**

**Chief of Police**

**Jamestown Police Department**

**250 Conanicus Avenue**

**Jamestown RI 02835**

**phone: 401-423-1212**

**fax: 401-423-9648**

---

**From:** Kevin Cute [mailto:[kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)]  
**Sent:** Thursday, April 05, 2018 2:37 PM  
**To:** Chief Edward Mello  
**Cc:** 'Wyatt Brochu'; Mark Campbell; Kim Devlin  
**Subject:** RE: Questions



Good afternoon Chief,

Thanks for your patience and persistence. As you know the CRMC recognizes that the lot at question possesses riparian rights as it's contiguous to tidal waters. But CRMC also recognizes municipal jurisdiction regarding mooring management and as such may consider a local decision to deny an application for a riparian mooring. But we would first need clear evidence regarding a municipality's position on any given matter that may be inconsistent with CRMC requirements for harbor management.

The initial denial of the permit application by the harbor office is clear in its intent. However I respectfully request that the matter be discussed with the harbor commission, as appears is already your intention for the commission's 4/11 meeting. If the commission and Town Council support the denial then CRMC will be willing to work with the town toward a final decision, one way or the other.

Please don't hesitate to contact me at your convenience should you wish to discuss this matter prior to next week's harbor commission meeting. I'm in the office today and tomorrow but next week I'm available only on Monday afternoon and all day Tuesday.

Thanks,

Kevin

Kevin R. Cute

Marine Resources Specialist

Coastal Resources Management Council

Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

Phone: (401) 783-3370

Fax: (401) 783-3767

Email: [kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)

Website: <http://www.crmc.ri.gov/>

---

**From:** Chief Edward Mello [mailto:[emello@jamestownri.net](mailto:emello@jamestownri.net)]  
**Sent:** Monday, April 02, 2018 3:31 PM  
**To:** Chief Edward Mello; Kevin Cute  
**Cc:** Wyatt Brochu; Mark Campbell; Kim Devlin  
**Subject:** RE: Questions

Good afternoon Kevin

Just checking in with you regarding the below email in an effort to seek clarification and prepare for our Harbor Commission meeting scheduled for 4/11

Thank you.

**From:** Chief Edward Mello  
**Sent:** Wednesday, March 14, 2018 7:21 PM  
**To:** 'Kevin Cute'  
**Cc:** 'Wyatt Brochu'; Mark Campbell; Kim Devlin  
**Subject:** Questions

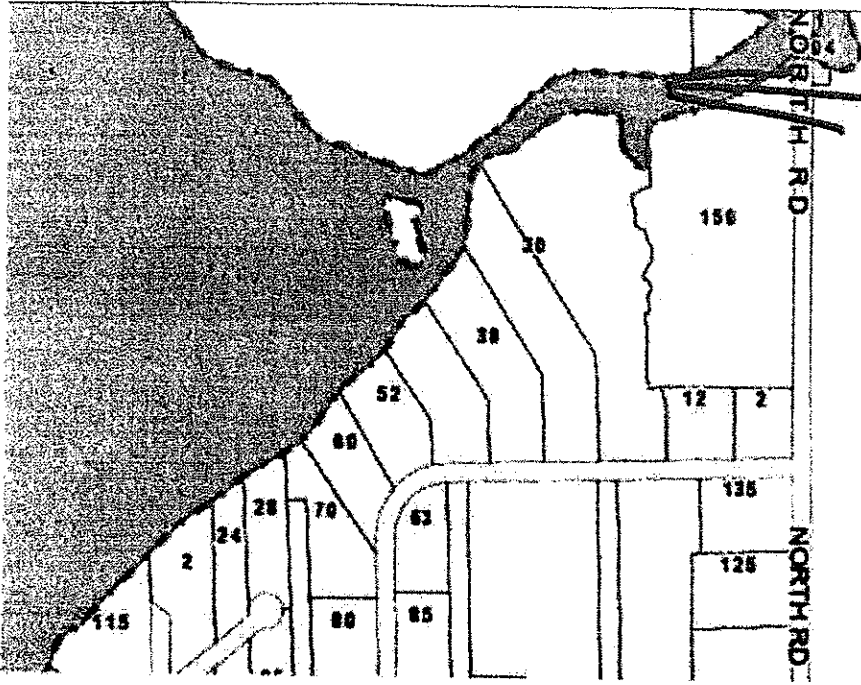
Kevin

Nice chatting with last week. I just wanted to clarify a couple of topics that came out of our conversation.

- 1) Regarding the pending application by a property owner (property only no house) located on West Wind Drive (see graphic below); he has made application for a riparian mooring. I denied said application for two reasons. First he does not meet the Jamestown Ordinance definition of riparian that being a property which borders on the waters surrounding Jamestown. His deed depicts his northern property line border as Zeeks Creek; not Narragansett Bay as do all current riparian mooring holders. Second, the waters abutting his property would not allow for the 40 foot vessel as this is nothing more than a creek. If I understood correctly, the position of CRMC would be that all tidal waters are riparian and therefore the applicant is entitled to a mooring despite the fact that the mooring could not be placed within the lateral lines of his property, nor does he have property which abuts Narragansett Bay. Can you please confirm that would CRMC's position?
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- 3) Stipulation two calls for the removal of all existing moorings from Zeeks Creek Conservation area upon inspection. My understanding from our conversation is that you indicated that these moorings can be moved into any other area to accommodate the owners and would not have to be placed within a designated mooring area and that this new cluster of moorings would not constitute a new mooring area open to the public. Please confirm if I understood that correctly.

Thank you.

**Edward A. Mello**  
**Chief of Police**  
**Jamestown Police Department**  
**250 Conanicus Avenue**  
**Jamestown RI 02835**  
  
**phone: 401-423-1212**  
**fax: 401-423-9648**



Leaks

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Anthony DeSisto <adlawllc@gmail.com>

---

## Jamestown HMP

1 message

---

**Kevin Cute** <kcute@crmc.ri.gov>  
To: Anthony DeSisto <adlawllc@gmail.com>  
Cc: Jeff Willis <JWillis@crmc.ri.gov>

Tue, Aug 14, 2018 at 11:41 AM

Tony,

The three emails I forwarded to you between 11:10 – 11:11 am this morning represent all of my email communications with the town regarding the riparian mooring issue we discussed earlier today. Please don't hesitate to let me know if you need anything else from me on this matter.

Kevin

Kevin R. Cute

Marine Resources Specialist

Coastal Resources Management Council

Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

Phone: (401) 783-3370

Fax: (401) 783-3767

Email: [kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)

Website: <http://www.crmc.ri.gov/>



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KNOW ALL MEN BY THESE PRESENTS, that I, JOYCE C. RODRIGUES, of 28580 Altessa Way, Unit 202, Bonita Springs, Florida 34135, for consideration paid in the amount of \$600,000.00, grant to CHRISOPHER J. MUSELER and KARA L. MUSELER, husband and wife, both of 1271 Anthony Road, Portsmouth, Rhode Island 02871, as tenants by the entirety, with WARRANTY COVENANTS:

**SEE ATTACHED EXHIBIT A**

Being the same premises conveyed to this grantor by deed of RONALD J. RODRIGUES, and recorded on May 26, 2009, in the Records of Land Evidence in said Town of Jamestown, Rhode Island, in Book 674 at Page 104.

Subject to restrictions of record in so far as applicable.

Subject to taxes and assessments assessed as of December 31, 2016.

I, JOYCE C. RODRIGUES, do hereby covenant that I am not a resident of the State of Rhode Island and that a Discharge of Lien pursuant to RIGL 44-30-71.3 has been requested from the Rhode Island division of Taxation.

The undersigned hereby certifies compliance with the requirements and all other provisions of the smoke detector and carbon monoxide detector laws and regulations of the Rhode Island Fire Safety Code.

WITNESS my hand and seal this 20th day of June, 2017.

*Joyce C. Rodrigues*  
Joyce C. Rodrigues

06751  
STATE OF RHODE ISLAND  
COUNTY OF BRISTOL

In the Town of Bristol on the 20th day of June, 2017, before me personally appeared JOYCE C. RODRIGUES, to me known and known by me to be the party executing the foregoing instrument, and she acknowledged said instrument by her executed, to be her free act and deed.

*John G. Rego*  
Notary Public

**John G. Rego**  
Notary Public  
Commission Expires 6/16/21

TAX \$ 2760.00  
DATE Aug 30 2017  
RECORDED BY *[Signature]*  
TOWN OF JAMESTOWN

RIE ISLAND  
ESTATE CONVEYANCE TAX

Exhibit A Description  
Plat 8 Lot 663  
Westwind Drive  
Jamestown, Rhode Island

That certain tract or parcel of land situated northerly of Westwind Drive, in the Town of Jamestown, Newport County, State of Rhode Island and Providence Plantations, delineated as AP 8, Lot 663 on that plan entitled "Superior Court Order NC95-0182 Administrative Subdivision AP 8 Lots 609, 662 & 663 Westwind Drive / North Road Jamestown, Rhode Island Gidley, Sarli & Marusak, L.L.P. Attorneys at Law One Turks Head Place, Suite 900 Providence, Rhode Island 02903 Project No. 06-010 Scale: 1" = 40' Date: 12/12/08, by Waterman Engineering Co. East Providence, RI, Richard S. Lipsitz, PLS #1837." Said parcel being more particularly bounded and described as follows;

Beginning at an iron rod in the northerly street line of Westwind Drive, said iron rod marking the southwesterly corner of land now or formerly of Peter A. & Rochelle Carnevale and the southeasterly corner of the parcel herein-described;

thence proceeding S 85°49'03" W, by and with the said northerly street line of Westwind Drive, a distance of one hundred fifty and 00/100 (150.00') feet to the southeasterly corner of land now or formerly of Robert S. Powers and the southwesterly corner of the parcel herein-described;

thence proceeding N 04°10'57" W, a distance of three hundred forty five and 00/100 (345.00') feet to an angle point;

thence proceeding N 35°45'10" W, a distance of five hundred fifty seven (557'+/-) feet more or less, to the mean high water line of The Great Creek, so called, and the northwesterly corner of the parcel herein-described. The last two herein-described courses are bounded westerly by the said Powers land;

thence proceeding northeasterly and easterly, by and with the said mean high water line of the said Great Creek, a distance of four hundred fifty eight (458'+/-) feet, more or less, to land now or formerly of Joan Dupee and the northeasterly corner of the parcel herein-described;

thence proceeding southwesterly, southerly and southeasterly, by and with the said mean high water line of the Great Creek, a distance of five hundred (500'+/-) feet, more or less, to its intersection with a concrete wall;

thence proceeding S 82°17'34" W, by and with the said wall, a distance of eleven and 58/100 (11.58') feet to a corner in the said wall;

thence proceeding S 07°41'45" E, by and with the said wall, a distance of ninety four and 46/100 (94.46') feet to an angle point;

thence proceeding S 00°00'12" E, partly by and with a wire / vinyl fence, a distance of fifty five and 18/100 (55.18') feet an angle point;

thence proceeding S 03°15'38" E, along a wood rail fence, a distance of forty seven and 01/100 (47.01') feet to an angle point;

thence proceeding S 08°34'54" E, along the said wood rail fence, a distance of forty five and 49/100 (45.49') feet to a corner;

thence proceeding N 77°58'48" E, along the said wood rail fence, a distance of twenty nine and 71/100 (29.71') feet to the northwesterly corner of the said Carnevale land. The last seven herein-described courses are bounded easterly and northerly by the said Dupee land;

thence proceeding S 04°10'57" E, a distance of ten and 15/100 (10.15') feet to an angle point;

thence proceeding S 11°59'44" E, a distance of fifty five and 00/100 (55.00') feet to an angle point;

thence proceeding S 04°10'57" E, a distance of one hundred ninety and 00/100 (190.00') feet to the said northerly street line of Westwind Drive and the point and place of beginning;

The above-described parcel contains 189,110+/- square feet (4.34+/- acres) of land, more or less.

RECEIVED FOR RECORD  
Aug 30 2017 03:51P  
JAMESTOWN TOWN CLERK  
CHERYL A. FERNSTRÖM, CMC



Jamestown Harbor Office  
 250 Conanicus Avenue  
 Jamestown, RI 02835  
 401-423-7190

**Request for Appeal**

Appeals of actions by the Harbor Master or Executive Director other than violations of section 78-27 may be appealed to the Harbor Commission. Written appeals must be filed with Harbor Clerk within 30 days of incident or notice.

Appeals of the decision of the Harbor Commission may be appealed to the Town Council. Written final appeals must be filed Town Clerk within 20 days of the mailing date of the Harbor Commission decision.

Name of Appellant: Christopher and Kara Musler  
 Address: 20 Westwind Dr. Jamestown RI  
 Phone: 401 835 5406  
 Mooring Permit #: M1281C

You are appealing a decision of (circle one): Harbormaster or Harbor Commission

Date that you received notice of the decision that is subject of this appeal: 4/11/2019  
4/16/2019 4/16/2019 4/23/2019

Please attach a copy of the written decision that is the subject of this appeal. If the written decision that you are appealing covers more than one issue, please describe below the specific decisions you are appealing or attach a separate sheet.

Appealing denial of guest mooring

In the space below, please indicate the reason for your appeal. Indicate any details and facts that will help the appeal board understand your position. You will be able to present this and other information to the appeals board at the time of your hearing.

The decision is inconsistent with the unambiguous language of the Harbor ordinance which the Harbor Master is, by law, duty bound to follow. A riparian property owner is entitled to a guest mooring and the ordinance does not restrict the location to within the extensions of the property lines. We will supplement with legal authority

Appellant Signature The Muslers Date 4/17/2019  
By their attorney Quentin Anthony 4.19.19  
 Request for Appeal received by (Name & Signature) Date Received



## Quentin Anthony

---

**From:** Christopher Museler <cmuseler@gmail.com>  
**Sent:** Wednesday, April 17, 2019 2:00 PM  
**To:** Quentin Anthony; Quentin Anthony; Eileen P. Hadfield Esq.  
**Subject:** Fwd: Museler Mooring Application

Sent from my iPhone

Begin forwarded message:

**From:** Mark Campbell <[mcampbell@jamestownri.net](mailto:mcampbell@jamestownri.net)>  
**Date:** April 11, 2019 at 11:45:26 AM EDT  
**To:** Christopher Museler <[cmuseler@gmail.com](mailto:cmuseler@gmail.com)>  
**Cc:** Kim Devlin <[kdevlin@jamestownri.net](mailto:kdevlin@jamestownri.net)>, Chief Edward Mello <[emello@jamestownri.net](mailto:emello@jamestownri.net)>  
**Subject:** RE: Museler Mooring Application

Mr. Museler: Sorry, my season runs from May - October, I came in this week and saw your email, thus the delay in response. My understanding is that we will not be issuing new permits for non conforming moorings, which is what your guest mooring would be.

Mjc

M.J. Campbell  
Mark J. Campbell  
Harbormaster  
Jamestown, RI  
O: 401-423-7249  
C: 401-265-3990  
Email: [mcampbell@jamestownri.net](mailto:mcampbell@jamestownri.net)

-----Original Message-----

**From:** Christopher Museler [<mailto:cmuseler@gmail.com>]  
**Sent:** Tuesday, March 26, 2019 11:24 AM  
**To:** Mark Campbell; Kim Devlin  
**Cc:** Quentin Anthony; Quentin Anthony  
**Subject:** Museler Mooring Application

Hello, Please let me know when I should expect a reply from the following email sent March 19, 2019.  
Thank you for your help in advance.  
Chris Museler

Dear Mr. Campbell,  
From what I heard last Wednesday night, I am confident that you were unaware of Ms. Devlin's May 2018 email to me advising no "further" moorings would issue. Because Ms. Devlin asked in that email for the \$190 fee for the primary mooring sticker, she clearly was addressing my pre-existing on-line application for a guest mooring.

**Quentin Anthony**

---

**From:** Quentin Anthony <qanthonylaw@verizon.net>  
**Sent:** Tuesday, April 16, 2019 10:08 AM  
**To:** emello@jamestownri.net  
**Cc:** david@rubroc.com; 'mcampbell@jamestownri.net'  
**Subject:** Museler

Dear Chief Mello,

I am writing to request clarification.

In Mr. Campbell's 4/11 email to Mr. Museler, Mr. Campbell said Mr. Museler's request for a guest mooring would not issue because it would be non-conforming, yet in your 4/2 email to me and Mr. Museler, there was no mention of any so-called non-conformity.

Of course, it is our hope that Mr. Campbell misspoke. The Commission sustained Mr. Museler's appeal, ruling that he was a riparian property owner. As such, the Ordinance says he is entitled to a guest mooring. If Mr. Campbell's email does, in fact, constitute a denial, we would like to appeal now so we can be on the May agenda.

Thank you for your anticipated help in understanding this matter.

Very truly yours,

Quentin Anthony, Esq.

Law Office of Quentin Anthony  
41 Long Wharf Mall  
Newport, Rhode Island 02840  
Tel: (401) 847-1008  
Fax: (401) 847-0018

The information contained in this electronic message and any attachments hereto is intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify the Law Office of Quentin Anthony at 401-847-1008 or [qanthonylaw@verizon.net](mailto:qanthonylaw@verizon.net) and destroy all copies of this message and any attachments. Any dissemination of this information is strictly prohibited. Thank you.

## Quentin Anthony

---

**From:** Christopher Museler <cmuseler@gmail.com>  
**Sent:** Wednesday, April 17, 2019 11:46 AM  
**To:** Quentin Anthony; Quentin Anthony; Eileen P. Hadfield Esq.  
**Subject:** Fwd: Guest Mooring Application

Begin forwarded message:

**From:** [alerts@onlinemooring.com](mailto:alerts@onlinemooring.com)  
**Subject:** **Guest Mooring Application**  
**Date:** April 16, 2019 at 11:33:46 AM EDT  
**To:** [cmuseler@gmail.com](mailto:cmuseler@gmail.com)  
**Reply-To:** [kdevlin@jamestownri.net](mailto:kdevlin@jamestownri.net)

Guest mooring Application;

Guest mooring application is denied. Proposed location is not located within the seaward extension of property lateral lines.

TOWN OF JAMESTOWN  
JAMESTOWN HARBOR COMMISSION

RE: MUSELER

MUSELER MEMORANDUM IN SUPPORT OF GUEST MOORING APPEAL

# MUSELER MEMORANDUM IN SUPPORT OF GUEST MOORING APPEAL

## BACKGROUND

“The public’s safety and the survival of our republic rests in enforcing and respecting duly passed laws, rather than substituting personal inclinations for those laws.”

*Providence Journal Editorial 4/29/2019*

The principle that we are a nation of laws and its corollary that we don’t get to ignore laws we don’t like is the theme of this appeal, and we will return to it as we point out that the Harbor Office has ignored the very law that it is duty bound to uphold. However, before we start the journey, we should explain what we have appealed and why. This is a new appeal, and, accordingly, all Commission members can participate in the decision. The appeal is from the denial by the Harbor Office of a guest mooring for the Muselers. The correspondence regarding the denial are the emails from the Harbor Master and Executive Director attached to the appeal and this Memorandum. **Exhibits A, B, C, D.**

In what follows, we will discuss why you should summarily sustain this appeal, but it will assist if you understand the basis for the denial. It is contained in the April 16<sup>th</sup> email of the Executive Director. **Exhibit D.** The Executive Director says that the Harbor Ordinance should say that a guest mooring must be within the waters delineated by the extension of the property boundary lines, and, acting consistently with how he thinks it should read, he denies the guest mooring. At the same time, he illogically says the Museler primary mooring can be outside those lines. Of course, we all recognize that the Ordinance does not say what the Executive Director wishes it would say. We know that every riparian property owner who wanted a guest mooring was granted one, for that is what the Ordinance says.

In effect, the Harbor Office has deliberately chosen to ignore the plain language of the Harbor Ordinance and without any proper, legally cognizable authority, rewritten the ordinance and substituted his “personal inclinations for [the law].” As will be discussed, it is the sworn duty of the Harbor Office to uphold the Ordinance and not subvert it with what one thinks should be the law. Adding to the misconception of its duty, the Harbor Office revised the Ordinance without the approval of this Commission and without adoption of an amendment by the Town Council. It did this fully knowing that this was the correct process yet proceeded to disregard the process anyway. In his email to you of January 2019, he laid out this process for you and attached the draft amendments he wanted, including a new definition of riparian rights. When you failed to approve, he acted on his own. **Exhibit E.**

To avoid any confusion, we should explain that the Muselers had appealed another denial of a guest mooring, and this appeal was before the Commission in March of this year. At the March meeting, the Harbor Office Clerk testified under oath that she had sent an email to Mr. Museler on May 11, 2018 without any authority. **Exhibit F.** While there was some question by the Harbor Office that it was not a denial, the email from the Clerk asked for the primary mooring fee and stated no further moorings would be issued. Since a guest mooring application had been filed by Mr. Museler and he had written to the Harbor Office prior to the Clerk’s email inquiring of his guest mooring status, there can be no doubt that the Clerk’s email was intended as a denial or that Mr. Museler misinterpreted the email. **Exhibit F.** In any event, it is now a moot point.

To this day, no explanation or apology has been given for the Clerk’s unauthorized email. Another troubling enigma remains unanswered. Why was Mr. Museler’s guest mooring application not addressed by the Harbor Office for almost a year? What became of it? Why was

it never brought to the attention of the Harbor Master or Executive Director? Notwithstanding, Mr. Museler has proceeded on the assumption that the Clerk's email was without the blessing or knowledge of the Harbor Master or Executive Director. Therefore, following the March meeting, he asked the Harbor Master the status of his application for a guest mooring which had now been pending for almost one year. **Exhibit B.** While waiting for the Harbor Master to respond, Mr. Museler received a promising email from the Executive Director. **Exhibit A.** With its arrival, Mr. Museler thought his problems were over. Why would the Executive Director tell him his guest mooring would be addressed in May if it were, in fact, illegal? If the Executive Director considered it illegal, why would he not just say it? What could change between April 2, the date of this email, and mid-May were the guest mooring non-conforming? However, it was not long before Mr. Museler's optimism was crushed when he received an email from the Harbor Master who used the phrase "non-conforming". **Exhibit B.** This was followed by an official denial. **Exhibit C.** Finally, an explanation from the Executive Director arrived. **Exhibit D.**

## LEGAL ANALYSIS

### PRELIMINARY COMMENTS

The Town Council is the legislative body of Jamestown. It enacts ordinances which are the laws by which our town is governed. No other board or commission has the power to enact laws in Jamestown.

Just as the Town Council has enacted our Zoning Ordinance, it has enacted our Harbor Ordinance. The Zoning Board of Review sits as a quasi-judicial body when considering appeals from the decisions of the building inspector and when considering applications for variances and

especial exceptions. Similarly, this commission sits as a quasi-judicial body when considering appeals from the Harbor Master or Harbor Office.

Neither the building official nor the harbor master has the right to ignore his respective ordinance. The ordinances were adopted by the Town Council, and the building inspector and harbor master are legally obligated to interpret and enforce the law as written. This legal obligation applies equally to the zoning board and harbor commission when acting quasi-judicially.

### THE TOWN HARBOR ORDINANCE

This Commission must look to the Harbor Ordinance as written in considering this appeal. The Ordinance as written provides a riparian property owner has a right to a primary mooring and guest mooring. While some may not like the law, they must enforce the “duly passed laws, rather than substituting personal inclinations for those laws.” A riparian owner’s right to a guest mooring has been in the ordinance for almost 30 years and routinely granted until Mr. Museler applied. Moreover, this provision of the ordinance has been approved by CRMC from its first iteration until now with the most recent CRMC approval in February 2018.

**Exhibit G** is from the CRMC Guidelines and explains what a Final Approval of a Harbor Management Plan means. You will recall that the Jamestown Final Approval was issued by CRMC in February 2018 for a five year period. The Approval was written by the CRMC employee who recently attended one of your meetings and the same person who denied Mr. Museler access to the Jamestown CRMC file, including emails regarding Mr. Museler, which were only obtained at considerable cost by a statutory records request. No reason, much less credible reason, was given for denying the file and CRMC counsel produced the records without reservations immediately.



Under the Guidelines, “Approval” means the Jamestown Harbor Management Plan is the “most desirable use of the harbor for recreational, commercial, conservation and other purposes consistent with the requirements of the CRMP...” The CRMP is the Coastal Resources Management Program. It should not go unnoticed that the CRMP is also known as the “Red Book.” The CRMC website says the CRMP is “a/k/a Red Book.” Also, the “Approval” means the Harbor Management Plan has included provision for the orderly, safe, equitable, and efficient allocation of the harbor for boating by establishing: (a) the location and distribution of seasonal moorings and anchorages.” Actually, it states that the Approval means the Harbor Management Plan has met the CRMC requirement of the best allocation of harbor waters for moorings. It is difficult to think of a stronger statement that Jamestown is in full compliance with the Red Book. The Guidelines actually state that the “Approval” constitutes compliance.

We will now consider the effect of the 2018 CRMC Approval. The Approval makes the Jamestown Harbor Ordinance the law of the land. The Town Council of Jamestown has the authority to enact a harbor ordinance pursuant to RIGL 46-4-6.9, and the CRMC Approval confirms that it meets CRMC goals and objectives. Thus, the Jamestown Harbor Ordinance, as written, is the law. It is this body of law that you must examine in an appeal to determine if the decision of the Harbor Master was right or wrong. Likewise, the Harbor Master can only look to the law as written in making his decision. For example, if the Harbor Master based his decision on what something someone at CRMC told him that was inconsistent with the approved ordinance, he would be violating his duties. The Harbor Office is not the lapdog of CRMC. Nor is this Commission.

This same limitation applies to the Harbor Commission when acting on an appeal. It is axiomatic that an administrative agency must assume the legitimacy of the ordinance it is

charged with enforcing. A compelling analogy is a zoning board. It is the duty of a zoning board to assume the validity of zoning provisions controlling its decision. Mobile Homes Inc. v. Zoning Bd. of Pawtucket, 91 RI 464, 165 A.2d 510 (1960). A zoning board does not have authority to consider the validity and enforceability of provisions in the ordinance. M.B.T. Const. Corp. v. Edwards, 528 A.2d 336 (RI 1987). This principle is a healthy control on the lawlessness that would ensue if members could refuse to follow what they thought was illegal or just didn't like.

For the Harbor Commission to ignore the clear, unambiguous language of its approved ordinance would be a violation of its duty to assume the legitimacy of the ordinance. Just as a zoning board can't question the zoning ordinance, the Harbor Commission must interpret the Harbor Ordinance as written. Granted "interpretation" is often required when an ordinance is ambiguous. When it is not ambiguous, neither a court nor this Commission has the right or authority to add or detract from what is written.

It has long been a cardinal principle of statutory construction in this jurisdiction that when a statute is free from ambiguity and expresses a clear and definite meaning, the court must accord to the words of the statute such clear and obvious import without adding to or detracting from the plain everyday meaning of the words contained in the statute. (Underlining supplied.)

Providence Journal Co. v. Kane, 577 A. 2d at 664; Wilson v. Krasnoff, 560 A2d 335, 339 (R.I. 1989); State v. Calise, 478 A.2d 198, 200 (R.I. 1984); Kastal v. Hickory House, Inc., 95 R.I. 366, 369, 187 A.2d 262, 264 (1963).

Apropos of this appeal, the Rhode Island Supreme Court has disdainfully described efforts to add or detract from straightforward language in a statute. It calls such an effort an improper and illegal "interpretation by amendment." In other words, the Court describes "interpretations by amendment" as efforts to stretch the language of a law to the breaking point and to effectively amend the law which only the legislative body can do:

It is not the function of this court to rewrite or to amend statutes enacted by the General Assembly.

*See State v. Feng*, 421 A.2d 1258, 1264 (R.I. 1980); *New England Die Co. V. General Products Co.*, R.I. 292, 297, 168 A.2d 150, 154 (1961).

Frankly, that anyone from CRMC or elsewhere would now say there is an inconsistency between the Jamestown ordinance and the Red Book should leave everyone speechless. It is impossible to understand how a representative of CRMC, who has said he wrote the Final Approval, could stand before you and say the Jamestown Harbor Management Plan was inconsistent with the Red Book. This is particularly true given that in the emails handed out at the March meeting, the same CRMC representative said that riparian property owners had the right to moorings outside the extension of their lateral lines. In any event, what this person says is irrelevant. The Ordinance was approved. This cannot be debated, and the Ordinance is the law.

#### CONCLUSION

It would be one thing to say the Harbor Office incorrectly interpreted the Harbor Ordinance or stretched the language so far that it engaged in prohibited “interpretation by amendment.” Unfortunately, it did more than ignoring the clear language of the ordinance as written. It knew the process. It knew an amendment was required, sought your approval, and stated that Town Council and CRMC adoption must be obtained. We refer to **Exhibit E** wherein the Executive Director acknowledges this Commission must approve the proposed amendment regarding riparian moorings and, then, the Town Council must adopt the amendment. It asked you to approve the amendment, and you have not nor should you.

The Executive Director has redefined the rights of a riparian property owner and limited those rights to the area within the extension of the property boundary lines. He completely understands that this requires a legislative act and the necessity of Town Council legislative action. Yet, he ignores the process he asked you to follow and applies a standard completely foreign to and unsupported by the Harbor Ordinance which he is legally obligated to follow. He

has substituted his personal inclinations for the law. When it is done knowingly, it exceeds “interpretation by amendment” and amounts to an unprecedented usurpation of the power of the Harbor Commission and Town Council.

We used the expression “lapdog” earlier, fully conscious of its pejorative connotations. We hesitated, but, in the end, thought the phrase fully captured the reality. Were the Harbor Office, the Harbor Commission, and Jamestown Town Council but “yes men” for the CRMC, there would be no reason for the General Assembly to give the Town Council broad powers to regulate the Jamestown Waterfront pursuant to R.I.G.L. 46-4-6.9, and Act enabling the Town to adopt a harbor ordinance.

The Harbor Office and this Commission should be fighting to protect the integrity of the Ordinance duly created by the Town Council 30 years ago and upon which so many islanders have relied in good faith, including the Muselers. Among many others, they paid dearly for rights clearly spelled out, without ambiguity, in the Ordinance. Should they now be told the Ordinance, in place for 30 years, does not mean what it clearly states? This is exactly what is happening, and it is just plain wrong – a miscarriage of what is just and fair.

The Muselers have faced nothing short of a campaign of obstruction to get a mooring and guest mooring. For example, the request that you adopt a moratorium was admittedly directed at only the Muselers. You were asked to adopt when only the Town Council (a legislative body) can adopt a moratorium (but that apparently did not matter) and the only identified, but wholly illusory, threat to support to moratorium was one family. We could go on with many other examples of this animus, but they simply distract from what has happened and what you need to reverse.

What is before you is a denial of the Museler guest mooring application on the basis of rewriting the Jamestown Harbor Ordinance by arbitrary fiat by the Harbor Office without so much as an acknowledgement that there is a proper path that the law requires in amending the ordinance. We ask that you refuse to participate in this campaign and sustain the appeal.

Respectfully submitted  
Christopher and Kara Museler  
By and through their Attorney,



---

Quentin Anthony, Esq. (#1939)  
41 Long Wharf Mall  
Newport, RI 02840  
Tel: (401) 847-1008  
Fax: (401) 847-0018  
[qanthony@verizon.net](mailto:qanthony@verizon.net)

## Quentin Anthony

---

**From:** Quentin Anthony <qanthonylaw@verizon.net>  
**Sent:** Wednesday, April 3, 2019 9:37 AM  
**To:** Quentin Anthony  
**Subject:** FW: Town Council Action  
**Attachments:** Relocation Request Form.pdf

---

**From:** Kim Devlin [mailto:kdevlin@jamestownri.net]  
**Sent:** Tuesday, April 02, 2019 2:20 PM  
**To:** Christopher Museler; Quentin Anthony  
**Cc:** Chief Edward Mello; Mark Campbell; David Petrarca, Jr.  
**Subject:** Town Council Action

Mr. Anthony and Mr. Museler;

At the April 1 Town Council meeting the proposed ordinance which revised the existing conservation zone located at the mouth of Zeek's Creek was reduced by 500 feet inward. This change will allow your existing mooring to be relocated, based upon my understanding as to your desired location. As such, I have attached a relocation request form which must be completed and submitted to Harbor Office.

It is my understanding that the Harbor Master will now be able to accommodate your request to relocate you mooring to your desired location.

I expect the Harbor Master to return to work mid-May, at which time, I will ask him to address this request as well as respond to your request for a guest mooring.

**Edward A. Mello**  
**Chief of Police**  
**Jamestown Police Department**  
**250 Conanicus Avenue**  
**Jamestown RI 02835**



**phone: 401-423-1212**  
**fax: 401-423-9648**

A

## Quentin Anthony

---

**From:** Christopher Museler <cmuseler@gmail.com>  
**Sent:** Tuesday, April 30, 2019 10:52 AM  
**To:** Quentin Anthony; Quentin Anthony  
**Subject:** Fwd: Museler Mooring Application

Begin forwarded message:

**From:** Mark Campbell <[mcampbell@jamestownri.net](mailto:mcampbell@jamestownri.net)>  
**Subject:** RE: Museler Mooring Application  
**Date:** April 11, 2019 at 11:45:26 AM EDT  
**To:** Christopher Museler <cmuseler@gmail.com>  
**Cc:** Kim Devlin <[kdevlin@jamestownri.net](mailto:kdevlin@jamestownri.net)>, Chief Edward Mello <[emello@jamestownri.net](mailto:emello@jamestownri.net)>

Mr. Museler: Sorry, my season runs from May - October, I came in this week and saw your email, thus the delay in response. My understanding is that we will not be issuing new permits for non conforming moorings, which is what your guest mooring would be.  
Mjc

M.J. Campbell  
Mark J. Campbell  
Harbormaster  
Jamestown, RI  
O: 401-423-7249  
C: 401-265-3990  
Email: [mcampbell@jamestownri.net](mailto:mcampbell@jamestownri.net)

-----Original Message-----

**From:** Christopher Museler [mailto:[cmuseler@gmail.com](mailto:cmuseler@gmail.com)]  
**Sent:** Tuesday, March 26, 2019 11:24 AM  
**To:** Mark Campbell; Kim Devlin  
**Cc:** Quentin Anthony; Quentin Anthony  
**Subject:** Museler Mooring Application

Hello, Please let me know when I should expect a reply from the following email sent March 19, 2019.  
Thank you for your help in advance.  
Chris Museler

Dear Mr. Campbell,  
From what I heard last Wednesday night, I am confident that you were unaware of Ms. Devlin's May 2018 email to me advising no "further" moorings would issue. Because Ms. Devlin asked in that email for the \$190 fee for the primary mooring sticker, she clearly was addressing my pre-existing on-line application for a guest mooring.

B

While I can think of no reason that she did not tell you or the executive director of her email to me, it has unfortunately been done. Can you please help me understand where I now stand with you with this guest mooring application?

Thank you for your cooperation.  
Chris Museler



## Quentin Anthony

---

**From:** Christopher Museler <cmuseler@gmail.com>  
**Sent:** Monday, April 29, 2019 2:54 PM  
**To:** Quentin Anthony; Quentin Anthony  
**Subject:** Guest Mooring Application Denial

Sent from my iPhone

Begin forwarded message:

**From:** [alerts@onlinemooring.com](mailto:alerts@onlinemooring.com)  
**Date:** April 16, 2019 at 11:33:46 AM EDT  
**To:** [cmuseler@gmail.com](mailto:cmuseler@gmail.com)  
**Subject:** Guest Mooring Application  
**Reply-To:** [kdevlin@jamestownri.net](mailto:kdevlin@jamestownri.net)

Guest mooring Application;

Guest mooring application is denied. Proposed location is not located within the seaward extension of property lateral lines.



## Quentin Anthony

---

**From:** Chief Edward Mello <emello@jamestownri.net>  
**Sent:** Tuesday, April 16, 2019 2:30 PM  
**To:** Quentin Anthony; Quentin Anthony  
**Cc:** david@rubroc.com; Mark Campbell; Andrew Nota; Kim Devlin  
**Subject:** RE: Museler  
**Attachments:** appeal form.pdf

Mr. Anthony

My email of April 2 referred to the only matter currently under appeal, which is the location of the existing mooring issued to Mr. Museler. As I expressed, the reconfiguration of the conservation area will allow for that mooring to be relocated to what I believe is his desired location.

In reference to the guest mooring application which is a separate matter; CRMC officials have brought to our attention the fact that the Town has been in violation of issuing moorings, which do not comply with CRMC Code of Regulations: (page 12)

90. "Mooring" means the location where a vessel is secured to the submerged land of a waterway by mooring tackle.

a. "Private mooring" means a mooring rented by a resident or nonresident of a municipality under a permit granted by said municipality, and which is located within a CRMC approved mooring field.

b. "Riparian mooring" means 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. Said mooring may or may not be located within a CRMC approved mooring field.

c. "Commercial mooring" means a mooring rented by a commercial entity (e.g., marina, yacht club, etc.) under a permit granted by a municipality to residents or nonresidents, and which is located within a CRMC approved mooring field.

As such, the Town will no longer issues riparian moorings, which are not located within the seaward extension of that property's lateral lot lines. The application of Mr. Museler for a guest mooring would fall into this category and as such is denied. Mr. Museler will find his official denial via his online mooring account.

I have attached an appeal form as I assume you will appeal this matter to the Harbor Commission. Once the form is completed and returned, we will add the matter to the JHC agenda.

Thank you.

---

**From:** Quentin Anthony <qanthonylaw@verizonnet>  
**Sent:** Tuesday, April 16, 2019 10:08 AM  
**To:** Chief Edward Mello <emello@jamestownri.net>  
**Cc:** david@rubroc.com; Mark Campbell <mcampbell@jamestownri.net>  
**Subject:** Museler

Dear Chief Mello,

I am writing to request clarification.

D

In Mr. Campbell's 4/11 email to Mr. Museler, Mr. Campbell said Mr. Museler's request for a guest mooring would not issue because it would be non-conforming, yet in your 4/2 email to me and Mr. Museler, there was no mention of any so-called non-conformity.

Of course, it is our hope that Mr. Campbell misspoke. The Commission sustained Mr. Museler's appeal, ruling that he was a riparian property owner. As such, the Ordinance says he is entitled to a guest mooring. If Mr. Campbell's email does, in fact, constitute a denial, we would like to appeal now so we can be on the May agenda.

Thank you for your anticipated help in understanding this matter.

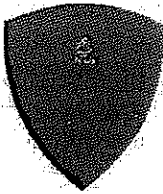
Very truly yours,

Quentin Anthony, Esq.

Law Office of Quentin Anthony  
41 Long Wharf Mall  
Newport, Rhode Island 02840  
Tel: (401) 847-1008  
Fax: (401) 847-0018

The information contained in this electronic message and any attachments hereto is intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify the Law Office of Quentin Anthony at 401-847-1008 or [qanthonylaw@verizon.net](mailto:qanthonylaw@verizon.net) and destroy all copies of this message and any attachments. Any dissemination of this information is strictly prohibited. Thank you.

D



Edward A. Mello  
Chief of Police

# JAMESTOWN POLICE DEPARTMENT

250 Conanicus Avenue, Jamestown, RI 02835

Tel: (401) 423-1212 Fax: (401) 423-3710

www.jamestownri.net/police



## MEMORANDUM

---

**TO:** Jamestown Harbor Commission  
**FROM:** Chief Edward A. Mello  
**DATE:** January 3, 2019  
**SUBJECT:** Revisions to Harbor Ordinance

---

Please see the recommended revisions to the current Harbor Ordinance. These recommended changes are the result of discussions over the recent meetings with both the JHC and CRMC. The changes also include the complete replacement of Appendix A with the ordinance (new Appendix A attached). The new Appendix will codify all areas and their specific uses within the jurisdiction the Town of Jamestown. The change also includes the revision to the conservation area with Zeek's Creek. The change also more clearly defines the riparian property owners' ability to apply for a mooring(s).

These changes if so approved would require Town Council adoption and approval by CRMC.

As a reference document for the existing ordinance I refer you to the Municode website:

[https://library.municode.com/ri/jamestown/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH78WA](https://library.municode.com/ri/jamestown/codes/code_of_ordinances?nodeId=PTIICOOR_CH78WA)

### Sec. 78-22. Definitions.

Riparian property: A freehold estate of record in land within the town having shorefront directly adjacent to waters bordering the town.

Harbor waters: The waters in the ~~three~~ two harbors of the town: East Harbor, and West (Dutch) Harbor, and South (Mackerel Cove) Harbor. The boundaries of these harbors are defined in section ~~78-24~~ 78-34; Appendix A of this article.

Waters of the town: The harbor and coastal waters under town jurisdiction described in sections 78-23, 78-24, and 78-34; Appendix A of this article.

E

**Sec. 78-23. - Areas under jurisdiction.**

The Town of Jamestown hereby assumes management authority for the purposes of this article consistent with the powers, duties, and authorities granted under G.L. 1956, 46-4-6.9 over the following waters:

(a)

*Harbor waters.* The waters of the ~~three~~ two harbors—East Harbor, and West (Dutch) Harbor, and ~~South (Mackerel Cove) Harbor.~~ The boundaries of these harbors are defined in section 78-24 and 78-34; Appendix A of this article.

(b)

*Coastal waters.* All waters bordering the town from the shore to a distance of 500 feet seaward not included in the designation "harbor waters" ~~and excluding or~~ the "mooring areas" listed ~~below,~~ the boundaries of which are defined in section 78-24 and 78-34; Appendix A of this article. ~~below.~~

(c)

*Mooring areas.* The waters within ~~three~~ three areas defined in section 78-24 and 78-34; Appendix A of this article. ~~below and referred to as Head's Beach, Park Dock, and Cranston Cove.~~

Sec. 78-24. Harbor and mooring area boundaries. Refer to 78-34; Appendix A of this article. Refer to appendix A within the Comprehensive Harbor Management Plan for maps of the harbor boundaries and specific areas within the harbor boundaries, and for a table giving Rhode Island State Plane Coordinates and lat/longs for each boundary point.

**Sec. 78-26. Mooring and outhaul regulations.**

Class 1a: Riparian.

Harbor waters: Owners of riparian property directly adjacent to harbor waters, including individual owners and the owners or directors of profit or nonprofit associations, partnerships, corporations or such other legal entities owning riparian property directly adjacent to harbor waters, 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. The location of said mooring must be located within the waters between the lateral property lines as extended directly seaward for a distance up to 1000 feet.

Coastal waters: Owners of riparian property directly adjacent to coastal waters, including individual owners and the owners or directors of profit or nonprofit associations, partnerships, corporations or such other legal entities owning riparian property directly adjacent to coastal waters, are entitled to apply, without priority over other mooring permit classes, for up to four moorings per property parcel directly adjacent to the shorefront property parcel. The location of

E

said mooring must be located within the waters between the lateral property lines as extended directly seaward for a distance up to 500 feet.

~~They may apply for additional class 1 moorings, up to four in total, without priority over other mooring permit classes. In both all cases applications are subject, as determined by the harbormaster, to the availability of space and to state and local regulations. Contiguous lots under the same ownership shall be considered as one property parcel. An individual owner may designate only immediate family members (the owner or the owner's spouse, children, or parents) or the current lessee of the owner's riparian property as holders of the permitted moorings. An association, partnership, or corporation may designate any of its members in good standing as holders of its permitted moorings. With the approval of the harbormaster, mooring privileges in this category may be granted to owners whose riparian property is adjacent to a town conservation zone.~~

Guest moorings: Only owners of riparian property may have guest moorings. Within harbor areas, riparian property owners may designate their second mooring as a guest mooring. Within the coastal areas, riparian property owners may designate their second and fourth mooring as guest moorings.

~~Only one of the two moorings permitted class 1a permit holders may be a guest mooring, except that~~

~~n~~ Nonfamily associations, partnerships, or corporations owning developed riparian property may designate as guest moorings one or ~~both~~ two of their permitted moorings.

Guest moorings ~~may~~ shall not be rented or leased. The harbormaster may on application permit a single vessel to occupy a guest mooring on a seasonal basis. Applications for private guest moorings must specify the length of the largest vessel able to occupy the mooring under normal conditions.

Non-Conforming riparian moorings. All existing moorings which are permitted and installed as of January 1, 2019 and classified as Class 1a: Riparian moorings which do not conform to the required location to be within the extension of the lateral property lines as required above shall be considered grandfathered until such time that the ownership of the associated property transfers; at which time only one said mooring shall be allowed to remain associated with said property. This mooring shall not be a guest mooring.

Swim Float- One (1) swim float is permitted per riparian property as defined above. Said swim float shall reduce the number of total permitted moorings associated to said property by one (1). Swim float size, shape and usage shall be governed according to the adopted rules and regulations as promulgated by the Harbor Commission and shall be enforced by the Harbor Master. The Harbor Master shall determine the placement and final approval of all swim floats.

78-34 Appendix A; Jamestown harbor boundaries Specific areas within jurisdiction; State plane coordinates. For general mapping graphical, refer to Jamestown Harbor Management Plan Appendix A.

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## Quentin Anthony

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**From:** Christopher Museler <cmuseler@gmail.com>  
**Sent:** Monday, April 29, 2019 2:56 PM  
**To:** Quentin Anthony; Quentin Anthony  
**Subject:** Devlin May 11, 2018 "not issuing"

**From:** Kim Devlin <kdevlin@jamestownri.net>  
**Date:** May 11, 2018 at 8:20:08 AM EDT  
**To:** Christopher Museler <cmuseler@gmail.com>  
**Subject:** RE: MAGIC documentation

Hi, Chris

The permit fees for your 40' vessel are \$190 if you could drop off a check at the police station I will give you the permit sticker for your mooring ball. We are not issuing any further mooring permits in the area at this time.

Kim Devlin  
Jamestown Police and Harbor Office  
250 Conanicus Avenue  
Jamestown, RI 02835  
401-423-7190

-----Original Message-----

**From:** Christopher Museler [mailto:cmuseler@gmail.com]  
**Sent:** Thursday, May 10, 2018 3:58 PM  
**To:** Kim Devlin <kdevlin@jamestownri.net>  
**Subject:** MAGIC documentation

Hi there,

Here it is, please let me know how to proceed.

Also please let me know if we can have the second Mooring request placed outside the 1000' bounds.

Our provider is waiting to put that on their schedule.

Thank you

## THE CRMC APPROVAL PROCESS

### A. REVIEW

When the harbor management plan and harbor ordinance have been approved by the local town council, and a letter from the town solicitor has been provided certifying that the plan is consistent with the Rhode Island Coastal Resources Management Program (RICRMP), the HMP is sent to CRMC for staff review. It is reviewed for consistency with these Guidelines, and for applicability with any existing Special Area Management Plans and the RICRMP itself. Any major discrepancies discovered during this review process may cause the plan to be returned to the respective community for reconciliation.

Following staff review, a completed report will be forwarded to the CRMC Planning and Procedures Subcommittee for review and recommendation to the full Council. The plan will be scheduled for public hearing before the entire Council at which time members of the community's Harbor Commission will be invited to attend in order to address any questions Council members may have concerning the plan. The Council will vote to approve or reject the plan, with approval generally being given for a period of five years. The Council may grant limited approval pending correction of minor discrepancies, or satisfactory completion of plan deficiencies, as may be indicated in staff review documents.

Harbor Management Plans shall be classified by the CRMC as one of two types: Interim or Final.

**1. Interim Harbor Management Plans** - Interim HMPs shall be those elements of approved municipal programs which, in the determination by the CRMC, are consistent with, support, or advance the goals and policies of the CRMP, but which require continuing oversight to insure that the concerns and requirements of the CRMP are met. CRMC will hold public hearings to solicit the input and concerns of interested and affected segments of the public. In granting approval, the CRMC shall set conditions concerning CRMC oversight and the manner in which the Interim HMPs may be exercised. Upon approval, primary management authority for activities managed under the Interim HMP shall be delegated to the municipality, and all applications for such activities shall be required to gain local approval, subject to the conditions and stipulations established above. The CRMC shall reserve the right to refuse delegation of any activities it feels are inappropriate for municipal governance where these activities are subject to the regulatory authority of the state. Upon approval and delegation of management authority, no separate application may be made to the CRMC for that activity. The conditions and stipulations of the delegation of management authority shall be detailed in final CRMC decisions on Interim Harbor Management Plans.

**2. Final Harbor Management Plans** - Final Harbor Management Plans shall be those comprehensive municipal programs which establish a management plan for the most desirable use of the harbor for recreational, commercial, conservation and other purposes consistent with the requirements of the CRMP, and which meet the following requirements:

- identify existing and potential harbor problems;



- establish goals and make recommendations for the use, development and preservation of the harbor and its resources consistent with the policies, goals and requirements of the RI Coastal Resources Management Program;
- establish an adequate management structure for implementation of the Plan;
- identify officials responsible for enforcement, and propose ordinances to implement the plan;
- include a verbatim copy of all proposed ordinances, resolutions or other documents which have been, or will be adopted to authorize and/or guide the regulation or management;
- include a certification from the legal department or solicitor of the municipality that the proposed regulations or management programs conform to the Coastal Resources Management Program and the General Laws of the State of Rhode Island;
- include, but not be limited to, provisions for the orderly, safe, equitable and efficient allocation of the harbor for boating by establishing:
  - (a) the location and distribution of seasonal moorings and anchorages;
  - (b) Unobstructed access sufficient to prevent the interference with the exercise of private or public rights to and around: federal navigation channels; anchorage areas and harbor facilities; riparian areas associated with waterfront properties; and shoreline public right-of-ways;
  - (c) space for moorings and/or anchorages for transient vessels; and,
- provide a map prepared and stamped by a professional engineer, land surveyor or architect that designates the area of tidal water that will be affected by the Harbor Management Plan;

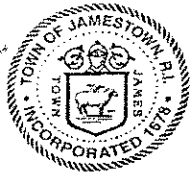
In addition, the following sections are suggested for inclusion in the HMP.

- boundaries designating the limits of seaward development of pierhead, bulkhead and shoreside activities, to be approved and established by the CRMC. Designation of such lines shall not be construed to abrogate or diminish the exercise of the regulatory powers of the State of Rhode Island regarding activities conducted within these areas;
- recommendations for approval and establishment by the CRMC of channels and boat basins;
- boundary lines designating the limits of areas for the location of vessels with persons living aboard, to be approved and adopted by the CRMC, with review and recommendation from the Department of Environmental Management;
- recommendations for the location of marine pump-out facilities and the designation of no discharge zones in accordance with Section 312 of the Water Quality Act of 1987.

#### *Factors Considered in Preparation of the Plan*

In preparing the plan, the municipality shall consider the following factors:

- Recreational and commercial boating;
- Recreational and commercial fisheries and shellfisheries;
- Fish and shellfish resources, including leased beds, licensed aquaculture projects, and shellfish management areas as designated by the Department of Environmental Management;
- Conservation of natural resources, including the policies, rules and regulations of the Coastal Resources Management Council and Program, the Department of Environmental Management, and the State Guide Plan;



Jamestown Harbor Office  
250 Conanicus Avenue  
Jamestown, RI 02835  
401-423-7190

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**TOWN OF JAMESTOWN  
HARBOR COMMISSION**

Minutes of the May 8, 2019 Meeting of the Jamestown Harbor Commission  
*Approved: 6/12/2019*

A meeting of the Jamestown Harbor Commission (JHC) was held Wednesday, May 8, 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 6:39 PM with roll call:

Present:

William Harsch, Vice-Chairman  
James Heagney, Commissioner  
Wayne Banks, Commissioner  
Eric Lexow, Commissioner  
Steven Bois, Commissioner

Absent:

Dan Wurzbacher, Commissioner  
George Souza, Conservation Commission Liaison

Also in attendance:

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, March 13, 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 the East Ferry touch and go replacement is being built by Ramon; the deck is constructed and the floatation devices will be attached tomorrow. Regan is setting the pilings and angling the deck and affixing the float. The project should be completed in about one week. Regan will also be replacing some broken stringers. The docks at West Ferry are spread out for Ramon to repair and the pumpouts will be operational by the end of next week.

Executive Director Chief Mello also reported that the concrete is done at Ft. Getty pier and the clean up to the approach and gangway will be completed soon. The decking on the pier is being replaced and is about 75% complete.

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

Harbormaster Campbell reported that he is back for the season and the Freedom is commissioned and launched. The Ribcraft will go in when the docks are in on the west side.

## **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.

## **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**

Chairman Cain resigned; Commissioner Banks volunteered to be the point person for this topic.

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

Chairman Cain resigned; Vice-Chairman Harsch volunteered to be the point person on this topic.

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

Commissioner Bois stated that the restoration is progressing, however bird nesting season has brought some of the activities to a halt. DEM has agreed to post signage.

## **VIII. LIAISON REPORTS**

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

Conservation Commission Liaison Souza was absent.

## **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 Executive Director Chief Mello has indicated that Mr. Museler's mooring can be moved to the location he is requesting, so the appeal is moot.

Vice-Chairman Harsch stated that the appeal is off the table.

## **X. CORRESPONDENCE**

### **A. Letter from Executive Director Chief Mello to Tony and Joe Pinheiro – Re: Upweller approval by Town Council; 4/10/2019**

Executive Director Chief Mello stated that this is a letter of support from the Jamestown Harbor Commission and the Town Council which states that the Town Council approved the recommendation and it is to serve as official notification to the Pinheiro's to allow them to complete the application process to CRMC.

## **XI. NEW BUSINESS**

Vice-Chairman Harsch moved to move up item 11(B); Commissioner Lexow seconded. So voted; 5 ayes, 0 nays.

### **B. Qualified Service Provider List - Review, discussion and/or potential action and/or vote**

Executive Director Chief Mello stated that this is a practice for each year to have the Harbormaster approve the list and then Harbor Commission votes to place the mooring inspectors on the Qualified Mooring Inspector and Installer list.

Commissioner Lexow moved to accept the list; Commissioner Banks seconded. So voted; 5 ayes, 0 nays.

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

Vice-Chairman Harsch asked the staff to lay the groundwork for the appeal.

Executive Director Chief Mello distributed to the Jamestown Harbor Commission a map of Mr. Museler's property, the Harbor Management Ordinance language on riparian moorings, CRMC's definition of riparian moorings, and a map Mr. Museler submitted to the Harbor Office indicating the location he wants his mooring.

Executive Director Chief Mello stated that Mr. Museler applied in early 2018 for a guest mooring and no action was taken on that application because of ongoing discussions and the appeal of the location of Mr. Museler's primary mooring. Now that

the primary mooring appeal is resolved, Mr. Museler's application for a guest mooring was denied on the grounds that the proposed mooring location will not reside within the lateral extensions of his property lines.

A discussion on the other moorings issued to properties on Westwind Drive ensued.

Executive Director Chief Mello stated that CRMC brought it to our attention that the moorings should not have been issued to the properties on Westwind Drive where there is not enough water within the lateral extensions of the property lines to support a mooring. After the meeting with CRMC where this was discussed we ceased to issue new permits. We will continue to issue renewal permits for the existing moorings but those moorings are considered non-conforming and no new non-conforming permits will be issued.

Mr. Quentin Anthony asked Executive Director Chief Mello questions about riparian moorings in the area, CRMC's letter of approval of the Harbor Management Ordinance.

A discussion ensued on grandfathering the existing non-conforming moorings.

Harbormaster Campbell stated that the Harbor Management Ordinance says that riparian property owners are entitled to apply for a mooring. The Harbor Management Ordinance does not say that they are entitled to a mooring.

Commissioner Bois moved to ask Executive Director Chief Mello to gather the following information - do the properties adjacent to Mr. Museler's have guest moorings and do other towns in the area interpret the CRMC definition of riparian moorings the same way? Commissioner Heagney seconded. So voted; 5 ayes, 0 nays.

Vice-Chairman Harsch moved to continue this item until the June 12<sup>th</sup> meeting of the Jamestown Harbor Commission, Commissioner Lexow seconded.

**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 Banks moved to adjourn at 8:15PM; Commissioner Bois seconded. So voted; 5 ayes, 0 nays.

Respectfully submitted,



Kim Devlin  
Jamestown Harbor Clerk



APP 1

mail

Questions

message

Tue, Aug 14, 2018 at 11:10 AM

Kevin Cute <kcute@crmc.ri.gov>  
Anthony DeSisto <adiawlc@gmail.com>

Kevin R. Cute  
Marine Resources Specialist  
Coastal Resources Management Council  
Stedman Government Center  
4808 Tower Hill Road  
Wakefield, RI 02879  
Phone: (401) 783-3370  
Fax: (401) 783-3767  
Email: kcute@crmc.ri.gov  
Website: <http://www.crmc.ri.gov/>

**From:** Kevin Cute [mailto:kcute@crmc.ri.gov]  
**Sent:** Thursday, April 05, 2018 4:02 PM  
**To:** 'Chief Edward Mello'  
**Cc:** 'Wyatt Brochu'; 'Mark Campbell'; 'Kim Devlin'  
**Subject:** RE: Questions

Chief,

Regarding question #2 – combining a weighted block and elastic "rode" is permissible and according to our permit staff supervisor it's the preferred hybrid mooring option he recommends when moorings must be installed in eelgrass beds.

Regarding question #3 – I agree with your conclusions regarding the relocation of any riparian moorings (which if I recall properly you'd mentioned was the case for all of them) currently located in the conservation area near Zeek's Creek. Any non-riparian moorings would have to be relocated in a mooring field, and it would be preferable for riparian moorings to be located as near as possible to the riparian properties with which they're associated

Best,

Kevin

APP 2

From: Chief Edward Mello <emello@jamestownri.net>

Date: January 11, 2018 at 10:54:56 AM EST

To: "cmuseler@gmail.com" <cmuseler@gmail.com>

Cc: Kim Devlin <kdevlin@jamestownri.net>

Subject: Museler mooring

Chris

Kim forwarded your email to me and I offer the following information to you;

In regards to your anticipated appeal. In my written response to you, we have enclosed an appeal form. Once this form is received by our office, we will schedule for a meeting with the Harbor Commission. The next meeting is schedule for 6 PM on February 14. You need to file an appeal within 30 days of notice. We would need to receive that appeal 7 days before the scheduled meeting in order for it to appear on the agenda. This is a public meeting and you or a representative must appear in order to explain your appeal.

In your email you refer to an area described as not an "official" mooring area. To be clear, it is not a mooring area either officially or unofficially. The area which you refer is a merely a group of moorings riparian moorings and include those listed below. This area also happens to be within a conservation area. Only riparian moorings are permitted within a conversation area.

Riparian moorings:

Ross

Yole

Center

McCooey

Sybertz

Katz

Zebetakis

Main

Kalander was granted the mooring in 1999 and has since been grandfathered in.

Edward A. Mello

Chief of Police

Jamestown Police Department

250 Conanicus Avenue

Jamestown RI 02835

phone: 401-423-1212

fax: 401-423-9648

APP 3

Kevin R. Cute

Marine Resources Specialist

Coastal Resources Management Council

Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

Phone: (401) 783-3370

Fax: (401) 783-3767

Email: [kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)

Website: <http://www.crmc.ri.gov/>

**From:** Chief Edward Mello [mailto:[emello@jamestownri.net](mailto:emello@jamestownri.net)]  
**Sent:** Thursday, April 05, 2018 2:45 PM  
**To:** Kevin Cute  
**Cc:** 'Wyatt Brochu'; Mark Campbell; Kim Devlin  
**Subject:** RE: Questions

Thank you Kevin

I look forward to your response on items 2 and 3.

**Edward A. Mello**

**Chief of Police**

**Jamestown Police Department**

**250 Conanicus Avenue**

**Jamestown RI 02835**

**phone: 401-423-1212**

**fax: 401-423-9648**

**From:** Kevin Cute [mailto:[kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)]  
**Sent:** Thursday, April 05, 2018 2:37 PM  
**To:** Chief Edward Mello  
**Cc:** 'Wyatt Brochu'; Mark Campbell; Kim Devlin  
**Subject:** RE: Questions



Good afternoon Chief,



Thanks for your patience and persistence. As you know the CRMC recognizes that the lot at question possesses riparian rights as it's contiguous to tidal waters. But CRMC also recognizes municipal jurisdiction regarding mooring management and as such may consider a local decision to deny an application for a riparian mooring. But we would first need clear evidence regarding a municipality's position on any given matter that may be inconsistent with CRMC requirements for harbor management.

The initial denial of the permit application by the harbor office is clear in its intent. However I respectfully request that the matter be discussed with the harbor commission, as appears is already your intention for the commission's 4/11 meeting. If the commission and Town Council support the denial then CRMC will be willing to work with the town toward a final decision, one way or the other.

Please don't hesitate to contact me at your convenience should you wish to discuss this matter prior to next week's harbor commission meeting. I'm in the office today and tomorrow but next week I'm available only on Monday afternoon and all day Tuesday.

Thanks,

Kevin

Kevin R. Cute

Marine Resources Specialist

Coastal Resources Management Council

Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

Phone: (401) 783-3370

Fax: (401) 783-3767

Email: [kcute@crmc.ri.gov](mailto:kcute@crmc.ri.gov)

Website: <http://www.crmc.ri.gov/>

**From:** Chief Edward Mello [<mailto:emello@jamestownri.net>]

**Sent:** Monday, April 02, 2018 3:31 PM

**To:** Chief Edward Mello; Kevin Cute

**Cc:** Wyatt Brochu; Mark Campbell; Kim Devlin

**Subject:** RE: Questions

Good afternoon Kevin

Just checking in with you regarding the below email in an effort to seek clarification and prepare for our Harbor Commission meeting scheduled for 4/11

Thank you.

APP 4

Exhibit 4

From: Chief Edward Mello  
Sent: Wednesday, March 14, 2018 7:21 PM  
To: 'Kevin Cute'  
Cc: 'Wyatt Brochu'; Mark Campbell; Kim Devlin  
Subject: Questions

Kevin

Nice chatting with last week. I just wanted to clarify a couple of topics that came out of our conversation.

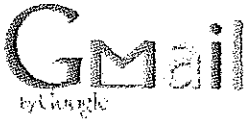
- 1) Regarding the pending application by a property owner (property only no house) located on West Wind Drive (see graphic below); he has made application for a riparian mooring. I denied said application for two reasons. First he does not meet the Jamestown Ordinance definition of riparian that being a property which borders on the waters surrounding Jamestown. His deed depicts his northern property line border as Zeeks Creek; not Narragansett Bay as do all current riparian mooring holders. Second, the waters abutting his property would not allow for the 40 foot vessel as this is nothing more than a creek. If I understood correctly, the position of CRMC would be that all tidal waters are riparian and therefore the applicant is entitled to a mooring despite the fact that the mooring could not be placed within the lateral lines of his property, nor does he have property which abuts Narragansett Bay. Can you please confirm that would CRMC's position?
- 2) Regarding the approval letter of our harbor management plan; stipulation one calls for the replacement of all moorings which may reside within areas which have eel grass. That these moorings must be replaced with a conservation type mooring system. This system typically calls for a "screw" to be installed into the floor of the bay and the tackle is attached. We have learned from experience that the "screw" portion is problematic due to shallow ledge conditions thereby preventing installation. Others have employed the option of installing a weighted block and then attaching the elastic portion to the block. Before proceeding in notifying existing mooring holders, I would ask if this modified application would be permitted?
- 3) Stipulation two calls for the removal of all existing moorings from Zeeks Creek Conservation area upon inspection. My understanding from our conversation is that you indicated that these moorings can be moved into any other area to accommodate the owners and would not have to be placed within a designated mooring area and that this new cluster of moorings would not constitute a new mooring area open to the public. Please confirm if I understood that correctly.

Thank you.

Edward A. Mello  
Chief of Police  
Jamestown Police Department  
250 Conanicus Avenue  
Jamestown RI 02835

phone: 401-423-1212

fax: 401-423-9648



Apps

Eileen P. Hadfield, Esq. &lt;eph@legacylawri.com&gt;

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**May 2018 HC Meeting Transcripts on Placement**

2 messages

**Christopher Museler** <cmuseler@gmail.com>

Wed, Mar 13, 2019 at 12:59 PM

To: Quentin Anthony &lt;qanthony@verizon.net&gt;, Quentin Anthony &lt;qanthonylaw@verizon.net&gt;, "Eileen P. Hadfield Esq." &lt;eph@legacylawri.com&gt;

Transcripts from May 9, 2018 Jamestown Harbor Commission Meeting  
RE: Placement of Museler Mooring

72:26

Mello-So it is certainly within the prerogative of the Harbor Master to place moorings where he deems appropriate.

Chairman Harsch-What would you feel about the idea of having him place his mooring outside the blue line (500') but in the general mooring area and take his chances if he has to move it?

Mello-That's certainly something the commission can consider as a matter of resolving his appeal.

Chairman Harsch-Mr. Harbormaster, how do you feel about that?

Mark Campbell-That can be done. The idea here, though, was, and I presented to Mr. Museler an option, you can go, if you have to have it yesterday, which has been his position throughout this thing, he wants it yesterday, you can, to me it makes sense to put him outside, if you want to have a mooring you can put it outside that yellow line (1000') and play it safe, you're good to go. If you put it inside between the blue and the yellow line, there's a good chance that in the very near future, you're going to have to move out. So to me it made no sense to put him inside there. I can find him a place in there.

---

**Quentin Anthony** <qanthony@verizon.net>

Wed, Mar 13, 2019 at 5:12 PM

To: eph@legacylawri.com

[Quoted text hidden]

OFFICE COPY

APP 6

Martin Anthony  
Attorney at Law  
100 Wharf Mall  
Providence, Rhode Island 02840  
Phone: (401) 847-1008  
Fax: (401) 847-0018  
mqaanthony@verizon.net

September 5, 2018

Chairman David Cain  
Jamestown Harbor Commission  
Jamestown Town Hall  
93 Narragansett Ave.  
Jamestown, RI 02835

RE: Museler

Dear Chairman Cain and Members of the Commission,

As you know there is an appeal pending. The Muselers were originally denied a mooring permit and told that they did not own riparian property. This decision was overturned. However, when the Muselers asked that their mooring be located in the same accessible area as other riparian owners, they were denied. They were also denied a guest mooring which the ordinance allows. These decisions were appealed and are now before you.

At the June meeting, Mr. Harsch asked that I communicate with the solicitor's office. However, as material was mentioned at the June meeting which I had never seen, I could not properly represent my clients or intelligently address this Honorable Commission until I had seen the correspondence between the Town and CRMC. Said correspondence, or at least a part of it, had been distributed to the commissioners prior to or on the day of the June meeting.<sup>1</sup> As you will see in what follows, I was never given those emails and was not able to obtain them until last week and then only because a statutory Request For Public Records was filed. Until this statutory request was made, my clients had been stonewalled by CRMC and my co-counsel, Eileen Hadfield, Esq., had been stonewalled as well. We will return to this later in this letter.

I was unable to attend the July meeting of the Harbor Commission but have since read a transcript of comments made by the executive director relating to my clients, Kara and Chris Museler. First, I read in disbelief the statements made by the executive director to the commissioners

<sup>1</sup> Executive Director: "Within the packet I provided you tonight [June 13, 2018] attached to the CRMC approval letter in my memo which I believe answers that question, documented via email question to Kevin Cute and his response that the stipulation ... and the moving of these particular moorings outside of the conservation area would begin implementation now."

App 7

**Quentin Anthony**

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**From:** Christopher Museler <cmuseler@gmail.com>  
**Sent:** Wednesday, March 13, 2019 12:15 PM  
**To:** Quentin Anthony; Quentin Anthony  
**Subject:** Harbor Office Response to Guest Mooring Request

**From:** Kim Devlin <kdevlin@jamestownri.net>  
**Date:** May 11, 2018 at 8:20:08 AM EDT  
**To:** Christopher Museler <cmuseler@gmail.com>  
**Subject:** RE: MAGIC documentation

Hi, Chris  
The permit fees for your 40' vessel are \$190 if you could drop off a check at the police station I will give you the permit sticker for your mooring ball. We are not issuing any further mooring permits in the area at this time.

**Kim Devlin**  
**Jamestown Police and Harbor Office**  
**250 Conanicus Avenue**  
**Jamestown, RI 02835**  
**401-423-7190**



Jamestown Harbor Office  
250 Conanicus Avenue  
Jamestown, RI 02835  
401-423-7190

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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 1<sup>st</sup> 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 14<sup>th</sup>; 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 biner 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**

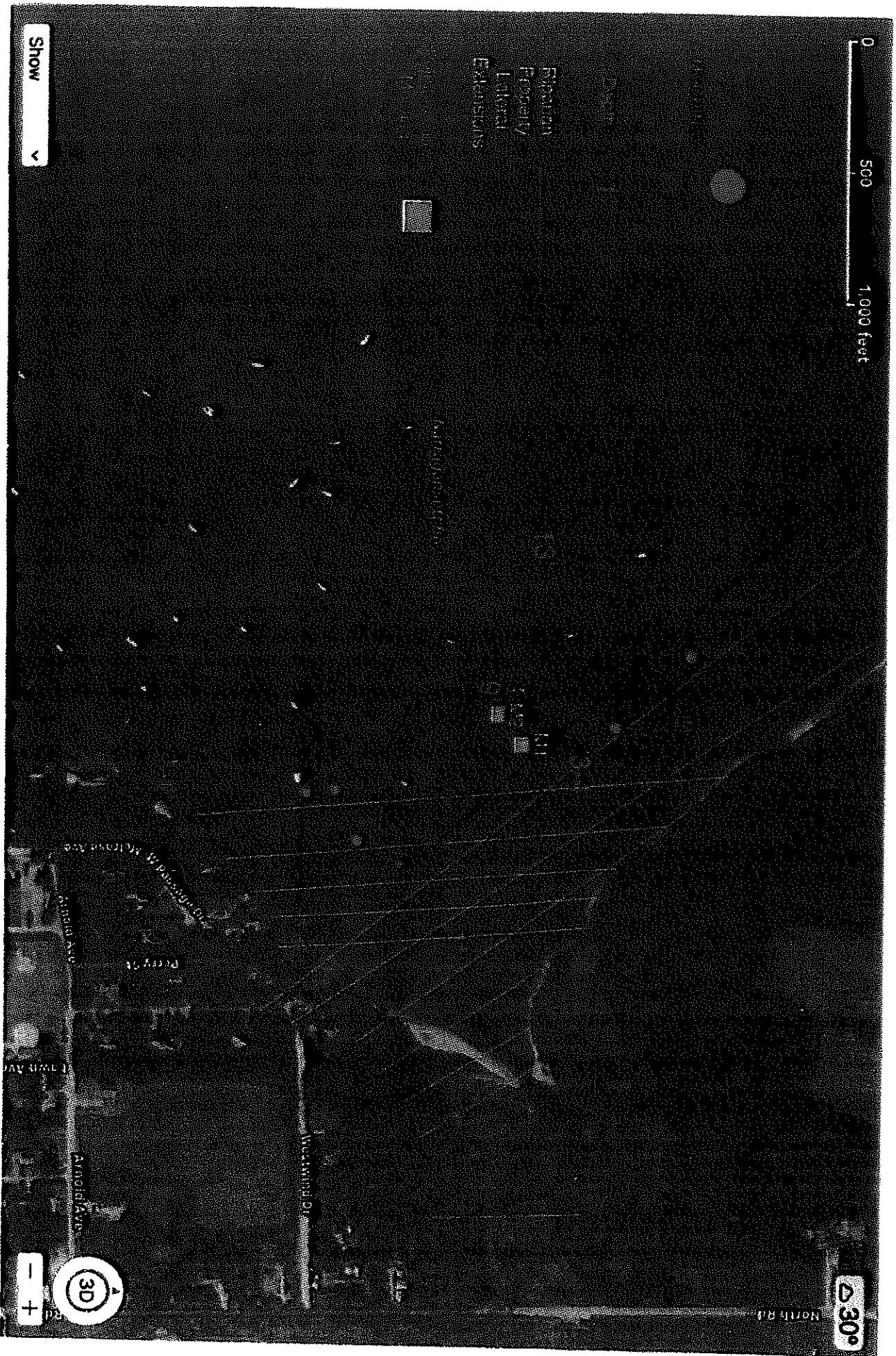
Commissioner Bois moved to adjourn at 8:00PM; Commissioner Heagney seconded. So voted; 5 ayes, 0 nays.

Respectfully submitted,



Kim Devlin  
Jamestown Harbor Clerk

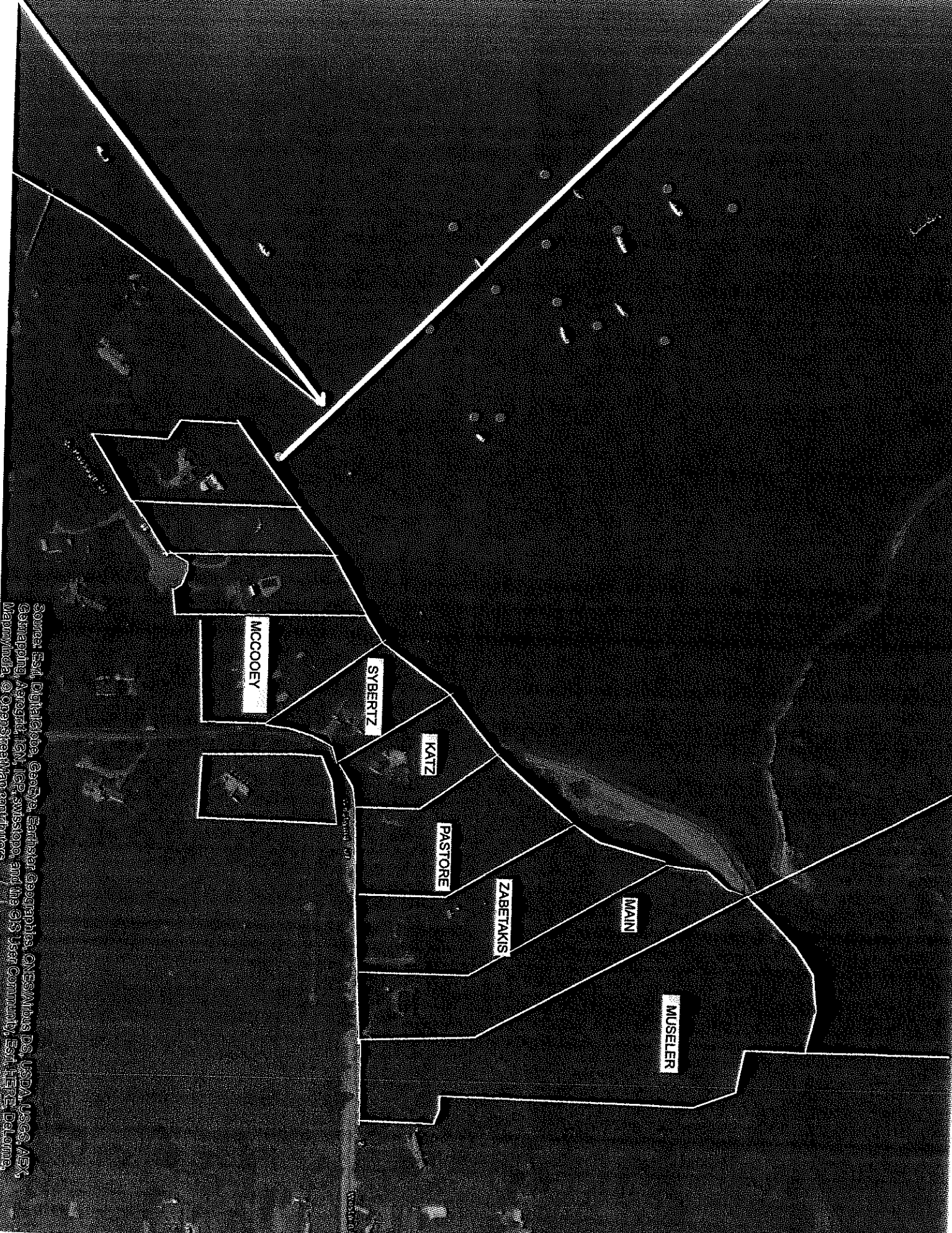




Town Exp. 1



TOWN EX. 2



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, Aero  
Gmapping, AeroGRID, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme,  
Mapbox, © OpenStreetMap contributors



inspection. Within the space available, requests shall be treated in accordance with the following priority guidelines:

*Class 1: Riparian.*

1106

a. 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. Contiguous lots under the same ownership shall be considered as one property parcel. An individual owner may designate only immediate family members (the owner or the owner's spouse, children, or parents) or the current lessee of the owner's riparian property as holders of the permitted moorings. An association, partnership, or corporation may designate any of its members in good standing as holders of its permitted moorings. With the approval of the harbormaster, mooring privileges in this category may be granted to owners whose riparian property is adjacent to a town conservation zone.

Guest moorings: Only owners of riparian property may have guest moorings. Only one of the two moorings permitted class 1a permit holders may be a guest mooring, except that nonfamily associations, partnerships, or corporations owning developed riparian property may designate as guest moorings one or both of their permitted moorings. Guest moorings may not be rented or leased. The harbormaster may on application permit a single vessel to occupy a guest mooring on a seasonal basis. Applications for private guest moorings must specify the length of the largest vessel able to occupy the mooring under normal conditions.

b. On coastal waters, property owners holding a freehold estate of record with a deeded right of access to riparian property owned by a nonprofit association, partnership, or corporation of which they are members in good standing are entitled to apply for a single mooring permit per property directly adjacent to that riparian property. The privilege of a mooring permit in this category is subject to the reasonable availability of mooring space as determined by the harbormaster. This category of mooring is not permitted in harbor waters, may not be placed in a town conservation zone, and may not be a guest mooring. All moorings in this category shall be counted toward complying





a proposed development has met a standard to the maximum extent practicable, the applicant must demonstrate the following:

- a. all reasonable efforts have been made to meet the standard in accordance with current local, state, and federal regulations;
  - b. a complete evaluation of all possible management measures has been performed; and
  - c. if full compliance cannot be achieved, the highest practicable level of management is being implemented.
89. "Moor" means to permanently secure a vessel to the submerged land of a waterbody by use of mooring tackle.
90. "Mooring" means the location where a vessel is secured to the submerged land of a waterway by mooring tackle.
- a. "Private mooring" means a mooring rented by a resident or nonresident of a municipality under a permit granted by said municipality, and which is located within a CRMC approved mooring field.
  - b. **"Riparian mooring" means 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. Said mooring may or may not be located within a CRMC approved mooring field.**
  - c. "Commercial mooring" means a mooring rented by a commercial entity (e.g., marina, yacht club, etc.) under a permit granted by a municipality to residents or nonresidents, and which is located within a CRMC approved mooring field.
91. "Mooring area" means a designated water area managed by a municipality or non-governmental entity where five (5) or more recreational vessels are moored.
- a. "Public mooring area" means those mooring areas managed by municipal or state agencies. Public mooring areas shall be delineated in approved HMPs.
  - b. "Marina mooring area" means those mooring areas managed by a private organization (e.g., marinas, yacht clubs, etc.). Marina mooring areas shall be considered as marina facilities and are subject to the provisions of the CRMP governing marina activities.



Documents

Exhibit 1

Harbor Documents

Forms

Harbor Agendas

Harbor Meeting Minutes

Waypoints

The Jamestown Harbor Commission

The next regular meeting of the Jamestown Harbor Commission will commence on Wednesday, May 8, 2019 at 6:30 PM in the Council Chambers of Town Hall.

\* Agenda \*

The Jamestown Harbor Management Commission is the primary regulatory and management group for the waters of the Town of Jamestown consistent with the authorities granted the Town under RIGL § 46-4-6.9 [Title 46: Waters and Navigation; Chapter 46-4: Harbors and Harbor Lines; Section § 46-4-6.9: Town of Jamestown-Powers conferred]. It shall have the authority to adopt any additional regulations consistent with the terms of this Ordinance. It also hereby assumes the powers of the Jamestown Waterfront Authority. If a substantive change is proposed in the ordinance, it must be adopted by the Town Council and approved by the Coastal Resources Management Council (CRMC) before it may become effective.

The Jamestown Harbor Commission meets on the second Wednesday of each month in the Council Chambers of Town Hall.

Jamestown Harbor Commissioners

David Cain	Chairman
William Harsch	Vice-Chairman
Wayne Banks	Commissioner
Steven Bois	Commissioner
James Heagney	Commissioner
Eric Lexow	Commissioner
Dan Wurzbacher	Commissioner

NEWS



Jamestown Harbor Office  
250 Conanicus Avenue  
Jamestown, RI 02835  
401-423-7190

Exhibit #2

**TOWN OF JAMESTOWN  
HARBOR COMMISSION**

Minutes of the April 11, 2018 Meeting of the Jamestown Harbor Commission  
*Approved: 5/9/2018*

A meeting of the Jamestown Harbor Commission (JHC) was held Wednesday, April 11, 2018 at the Jamestown Town Hall, 93 Narragansett Avenue, Jamestown, Rhode Island.

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

Chairman Cain called the meeting to order at 6:03 PM with roll call:

Present:

David Cain, Chairman  
Wayne Banks, Commissioner  
Dan Wurzbacher, Commissioner  
James Heagney, Commissioner  
Steven Bois, Commissioner  
Eric Lexow, Commissioner

Absent:

William Harsch, Vice-Chairman

Also in attendance:

Chief Mello, Executive Director  
Mark Campbell, Harbormaster  
Kim Devlin, Harbor Clerk  
Wyatt Brochu, Town Solicitor

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

**A. Wednesday, March 14, 2018**

Commissioner Banks moved to approve the minutes of the March 14, 2018 Jamestown Harbor Commission meeting; Commissioner Wurzbacher seconded. So voted; 6 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**

Mr. Bill Munger addressed the Jamestown Harbor Commission regarding the replacement floating dock at the end of the Wood Pile Pier that the Jamestown Harbor Commission voted to move forward with constructing. Mr. Munger stated that he was under the impression that the dock was going to be the same size as the old dock and that he has concerns about the larger dock.

Commissioner Bois asked Mr. Munger what his concerns are.

Mr. Munger stated that the dock will be too heavy to haul and that it will shorten the width of the fairway.

Commissioner Banks moved to add the item to the next agenda; Commissioner Lexow seconded. So voted; 6 ayes, 0 nays.

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

Executive Director Chief Mello reported that he and Mark picked up the new Harbormaster truck.

Executive Director Chief Mello stated, regarding the East Ferry parking lot project, part of the plan is to relocate the pumpout pump into a smaller housing unit and footprint. The easternmost pumpout station will also be operational. 75% of the cost of the project will be funded by a DEM grant. The West Ferry pumpout stanchion will be relocated to the inside of the touch and go, as it offers more protection.

Executive Director Chief Mello reported that the docks are in the water at West Ferry but the gangways are not.

Executive Director Chief Mello stated that this is the busiest time of year for the Harbor Department, processing permits and getting things ready for the season and that will continue until July.

Executive Director Chief Mello reminded the Jamestown Harbor Commission that the discussion for additional kayak racks is ongoing and that the Jamestown Harbor Commission agreed that the staff would handle the permitting for the new racks. The group that is pushing for the additional racks is trying to push that forward and will begin to look at the funding of those racks.

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

**VI. MARINE DEVELOPMENT FUND BUDGET**

**A. 2017/2018**

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

There was no budget to present.

**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 and Commissioner Wurzbacher had nothing to report.

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

Chairman Cain had nothing to report.

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

Chairman Cain had nothing to report.

**VIII. LIAISON REPORTS**

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

Conservation Commission Liaison Souza was absent.

**IX. OLD BUSINESS**

**A. Appeal – Mr. Chris Museler – Denial of riparian mooring - Review, discussion and/or potential action and/or vote**

Chairman Cain stated that he would like to open this part of the meeting with a brief discussion among the members of the Jamestown Harbor Commission on whether or not the property in question is riparian, because if we agree that the property is riparian the appellant can go back to the Executive Director and pursue his options.

Town Solicitor Wyatt Brochu reviewed the material and stated the property is riparian and that it is clearly bounded by tidal waters.

Commissioner Bois stated that the property is tidal in his opinion, but that it is not being taxed as riparian property.

Town Solicitor Brochu advised the Jamestown Harbor Commission not to base their decision on tax records.

Chairman Cain asked the members of the Jamestown Harbor Commission if everyone is familiar with the area in question and if the members of the Jamestown Harbor Commission can form an opinion on whether or not the property is in tidal waters.

Chairman Cain moved that the Jamestown Harbor Commission finds the waters adjacent to the appellant's property riparian; Commissioner Wurzbacher seconded. So voted; 6 ayes, 0 nays.

Chairman Cain stated that the appellant can take up his application with the Executive Director.

Mr. Quentin Anthony, attorney for the appellant, asked if his client's property is riparian under the ordinance.

Town Solicitor Brochu stated that, based on the conclusion of the Jamestown Harbor Commission, the property is in tidal waters and that it is also riparian.

Chairman Cain moved that the appellant's property is riparian under the ordinance; Commissioner Heagney seconded. So voted; 6 ayes, 0 nays.

#### **X. CORRESPONDENCE**

##### **A. Clark's Boat Yard – Installer and Inspector Application; 4-2-2018**

Commissioner Lexow moved to accept the mooring installer and inspector list as correspondence; Commissioner Banks seconded. So voted; 6 ayes, 0 nays.

#### **XI. NEW BUSINESS- Review, discussion and/or potential action and/or vote**

##### **A. Updated Mooring Installer and Inspector List**

Chairman Cain moved to accept the mooring installer and inspector list as correspondence; Commissioner Banks seconded. So voted; 6 ayes, 0 nays.

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

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

Chairman Cain moved to adjourn at 6:26 PM, Commissioner Banks seconded. So voted; (6 ayes, 0 nays).

Respectfully submitted,



Kim Devlin  
Jamestown Harbor Clerk

Exhibit 3

Code of Ordinances

*Executive director:* The member of the town administration nominated by the town administrator and appointed by the town council to supervise the harbor staff and to administer the provisions of this article and any additional regulations subsequently required for the implementation of the article.

*Fairway:* Any locally designated and/or maintained water areas, usually in harbors or in mooring zones, reserved for the unobstructed movement of vessels.

*Guest mooring:* A private mooring of a riparian property owner reserved solely for the use of guests.

*Harbor commission:* The local advisory and regulatory body authorized by the town council to manage the coastal waters and harbor areas of the town.

*Harbormaster:* The individual, hired on approval of the town council by the town administrator, who is primarily concerned with enforcement and activity on the waters of the town. The harbormaster reports to the executive director.

*Harbor waters:* The waters in the three harbors of the town: East Harbor, West (Dutch) Harbor, and South (Mackerel Cove) Harbor. The boundaries of these harbors are defined in section 78-24 of this article.

*Headway speed:* the slowest speed at which a vessel can operate and maintain steerage.

*Moor:* To secure a vessel to the bottom of a waterbody semi-permanently or seasonally.

*Mooring:* All hardware or tackle used to moor a vessel. For the purposes of this article, a mooring is considered either commercial or private.

*Mooring area:* A bounded area outside the harbor waters in which moorings may be placed. Per CRMC regulation, more than four moorings (the maximum which riparians may have) is considered a mooring area, and must be properly recognized in the harbor ordinance.

*Mooring permit:* A license authorized by the Town of Jamestown granting the permittee the privilege of using an assigned mooring space in the waters of the town for a specified season.

*Mooring space:* The specific space assigned by the harbormaster to the holder of a valid mooring permit for the placement of a mooring.




Rhode Island Statutes

Title 46. Waters and Navigation

Chapter 46-4. Harbors and Harbor Lines

*Current through Public Law 14 of the 2019 Legislative Session*

**§ 46-4-6.9. Town of Jamestown, Powers conferred**

- (a) The provisions of § 46-22-14, or any other provisions notwithstanding, and in addition to any authority and powers conferred upon the town council of the town of Jamestown, authority shall also be granted to the town council of the town of Jamestown to enact ordinances as the town council may deem necessary or desirable for the enforcement and supervision of any rules and regulations established by the town council governing the public waters within its jurisdiction, and to regulate by ordinance the speed, management, and control of all vessels and the size, type, location, and use of all anchorages and moorages within the public waters within the confines of the town, including, without limiting the generality of the foregoing, the authority and power to regulate waterskiing upon any of the public waters; to designate upon a map of the public waters within the town the places where permanent or temporary moorings or anchorages may be maintained; to assign moorings; to remove moorings; to collect fees for the use of moorings; to provide for minimum mooring specifications; to provide for inspection of moorings; to provide regulations for houseboats that are not self-propelled; to provide regulations for regattas, races, marine parades, tournaments, and exhibitions; to provide for the removal of wrecks or derelict or abandoned boats or docks; to provide for the regulation of skin diving and scuba diving; and to impose penalties for violation of the ordinances not exceeding in amount one hundred dollars (\$100) or imprisonment not exceeding ten (10) days in some jail or house of correction for any one offense and the fines to be recovered to the use of the town. 
- (b) No powers or duties granted herein shall be construed to abrogate the powers or duties granted to the coastal resources management council as provided in chapter 23 of this title, as amended.

Cite as R.I. Gen. Laws § 46-4-6.9

History. P.L. 1983, ch. 258, § 1; P.L. 2007, ch. 340, §38.

Exhibit 5

(Ord. of 11-7-2011)  
Code of Ordinances



**Editor's note**— An ordinance adopted Nov. 7, 2011, redesignated former §§ 78-32 and 78-33 as §§ 78-34 and 78-35.

**Sec. 78-33. - Effective date.**

This chapter shall take effect upon its passage by the town council with respect to provisions that do not require approval of the coastal resource management commission.

(Ord. of 11-7-2011)

**Editor's note**— See editor's note to § 78-32.

**Sec. 78-34. - Appendix A; Jamestown harbor boundaries.**

(See section 78-24)

Map	41-Lat/71-Lon	RISPC Nad-1983	Location
LOC	Decimal Min.	Northing/ Easting	Description
A	30.852/21.978	157060/364840	Easterly extension of utility pole line on northerly side of Weeden Lane at M.H.W.
B	30.852/21.870	157060/365340	500 feet east of (A)
C	30.852/21.756	157060/365840	1,000 feet east of (A)
D	30.422/21.522	154450/366920	Centerline—Newport Bridge at M.H.W.
E	30.398/21.420	154310/367400	Centerline—Newport Bridge 500 feet from (D)

*From the REO Book*

4. "Alteration of a marina" means any activity that result in changes to the existing or previously approved recreational boating facility design. Such activities include, but are not limited to, the removal, addition, or relocation of piles, floating docks or fixed piers and changes to the marina perimeter limit.
5. "Alterations to coastal wetlands" means, but shall not be limited to: filling, removing or grading; dredging and dredged materials disposal; and any significant cutting or removal of vegetation; and excavation, draining, damming and/or diverting of hydrological flows in a coastal wetland. Any activity, including the aforementioned, taking place in an area adjacent to a coastal wetland which impacts the coastal wetland, shall be considered an alteration to coastal wetlands.
6. "Alterations to the circulation of tidal waters" means all structures and fill material that alter the behavior of waters within tidal water bodies, including the removal of tidal waters for industrial cooling or other purposes and the installation of structures in embayments and salt ponds that alter the volumes and/or timing of exchange with outlying tidal waters.
7. "Alterations to the flows of tributaries" means the installation of dams or other devices or fill material that alter flows of tributaries to tidal waters and that significantly change the timing and/or volumes of fresh water to coastal waters.
8. "Anadromous fish" means oceanic or estuarine species that spawn in fresh water.
9. "Approved harbor management plan" or "HMP" means a plan that has been prepared by a municipality in accordance with the CRMC municipal harbor regulations and CRMC Guidelines for the Development of Municipal Harbor Management Plans, adopted by a city or town council, and approved by the Coastal Resources Management Council.
10. "Approved waters" means marine waters of the state classified by RIDEM as approved areas fit for the taking of shellfish for human consumption on a regular basis according to criteria established by the National Shellfish Sanitation Program.
11. "Aquaculture" (refer to definitions of "marine aquaculture" and "freshwater aquaculture" in § 1.1.2 of this Part herein.)
12. "Areas of historic and archaeological significance" means those resources as defined by R.I. Gen. Laws § 45-22.2-4(12).
13. "Associated residential structures" means, but is not limited to, decks, porches, walls, boardwalks, swimming pools, roads, driveways, and shall include other structures integral to or ancillary to a residential building

2. Recommended Actions:

REP Book

While policies identify what the town wants to manage, recommended actions set out how those policies will be implemented. Without an "action plan" outlined within the HMP, drafting a harbor management plan becomes a philosophical exercise and not a practical guide to resource management. Therefore, each policy must be accompanied by recommended actions for implementing the policy.

For example, many communities have adopted a policy which prohibits the overboard discharge of sewage wastes into the waters of the state, and which may read as follows:

*"It is the policy of this town to prohibit all overboard and through-hull discharges of boat sewage wastes into the waters of the state."*

However, it is the recommended action which actually demonstrates how this policy will be implemented by the town. Such a recommended action may read as follows:

*"It is recommended that the town confer through ordinance to the harbormaster the legal authority for regulating all overboard and through-hull discharges of boat sewage wastes into the waters of the state as found in Rhode Island General Laws 46-12-39 through 46-12-41."*

**E. PREPARING DRAFTS OF THE HARBOR MANAGEMENT PLAN**

It is important to understand that a harbor management plan consists of two interdependent elements: a plan and an ordinance.

The plan sets out the need for effective management of the harbors of a town by identifying pertinent issues, establishing policies that address these issues, and recommending actions that the community will undertake to implement these policies, consistent with relevant state and federal guidelines.

The ordinance is the legal implementation vehicle that gives specific local departments the ability to carry-out the identified actions of the plan. Without the implementing ability of the ordinance, the plan can only act as a document that provides a long-term vision of how the community wants its harbor areas to be managed. Therefore, the development of the ordinance is as important as the development of the plan.

Once consensus has been reached on what policies and recommended actions are needed, a harbor ordinance should be drafted or the existing ordinance should be amended, as necessary. The development of a single document - The Harbor Management Ordinance - has worked best in many cities and towns. The Ordinance is divided into subarticles: Harbormaster Powers and Duties, Harbor Regulations, Mooring Regulations, Harbor Committee Powers and Responsibilities, etc. (See Appendix III for a sample model ordinance.) It is important to draft the ordinance at the time the plan is developed to ensure consistency with the plan's recommendations.

**Erin Liese**

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**To:** Christina Collins; Chief Edward Mello; Peter Ruggiero  
**Subject:** Museler Appeal

Good Afternoon,  
Allied Court Reporters have confirmed for Stenographer Services for  
October 22, 2019 at 11 a.m. for the Museler Appeal.

I have notified Attorney Anthony of the Hearing Date as well.

Yours truly,

Erin F. Liese, CMC  
Town Clerk  
Town of Jamestown  
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Jamestown, RI 02835  
401-423-9800  
eliese@jamestownri.net