



**Provincetown Public Pier Corporation (PPPC)
Judge Welsh Room - Town Hall
Meeting Minutes of Thursday, December 13, 2012**

Members Present: Lee Ash (LA), Rich Wood (RW), Carlos Verde (CV) and Scott Fraser (SF).
Members Absent: Ginny Binder (GB); excused.
Other Attendees: Rex McKinsey, Pier Manager/Harbormaster (RM) and Doug Allen, Administrative Asst.

Chair Lee Ash called the Public Meeting to order at 5:03 P.M.

LA stated the regular meeting would be followed by an executive session (as per MGL Chapter 30A/Section 21a).

AGENDA

Public Statements

Truro resident Rob Casper came before the Board to outline a Sailing Project proposal and to seek the Board's support.

LA advised Casper that the Board cannot formally endorse any project during public statements and suggested the proposal be placed on the regular agenda for consideration.

Casper stated that the Sailing Project has potential for significant benefits for town businesses and non-profits. It would be registered as a 501c3 charitable organization to initially promote a dry-sailing regatta involving U.S. and Canadian para-Olympic teams, with a suggested event date of June, 2013. Additionally, Casper would like to start a 2.4 class fleet of sailboats in Provincetown under the 501c3, to create a sailing venue for the physically challenged, disadvantaged youth, etc.

LA suggested Casper be placed on the regular meeting agenda at the beginning of the new year.

RM suggested the proposal be taken up at the January 10th meeting.

Town Manager Sharon Lynn (TM) advised the PPPC Board of Directors that she received letter from the District Attorney's office regarding the issue raised this summer from a resident, about the possible theft of moorings. Incident was investigated by Police who determined there was not enough information at the time to determine the action as criminal in nature. The District Attorney's office then reviewed the complaint and sent a letter to the PPPC Board Chair and Harbormaster stating a similar conclusion, but they

did recommend continuing investigation, including an independent audit study of Harbormaster's department, office records and the assignation of mooring locations. Lynn will recommend to the Town's Board of Selectmen that an independent auditor be hired by the town to conduct the investigation.

Special Agenda Items

None.

Review of Minutes

LA suggested that the October 25th meeting minutes may need revisions.

RW agreed, referencing the first paragraph of the meeting minutes draft which appear to be inaccurate.

No vote taken.

LA referred to the November 8th meeting minutes.

SF asked for opportunity to review the statement he made at that meeting which may have been paraphrased.

No vote taken.

A motion was made to approve the minutes of the Public Meeting on 11/08/12 as written.

Motion: Carlos Verde **2nd:** Rich Woods

Vote:

Yes: 4 **No:** 0 **Abstain:** 0

Motion passes.

Directors' Statements

Rich Wood: Nothing to report.

Carlos Verde: Nothing to report.

Scott Fraser: Nothing to report.

Lee Ash: Spoke on letter referred to by the Town Manager during public statements regarding resident's complaint of possible missing/stolen moorings. LA has questions about the document. Police Chief Jaran investigated, then passed on findings to the District Attorney's office which, in turn, passed on its findings to the Ethics Committee to make sure any and all questions were answered. LA doesn't know if, as part of the investigation, individuals have to show that they own the moorings. Not unlike other ethics investigations, however, LA believes it to be appropriate. She will circulate the District Attorney's letter of December 10, 2012, which was sent to Police Chief Jaran, and will try to get more details so as to provide a more thorough report.

SF asked when the moorings went in; that his understanding was they went in 17 years ago.

LA stated investigation is ongoing and did not want to get into details, but that the moorings in question go back many years.

SF asked RM if any fees have been paid on the moorings in the last five years?

RM replied that Barry Clifford has only paid for one mooring for the R/V Vast Explorer.

LA said a much more detailed conversation needs to take place on whether the owners were billed for the moorings or not.

SF stated that a reading of the harbor regulations indicates that if right fees aren't paid, moorings can be declared as abandoned for non-payment of fees and ownership of the block and gear reverts to the town of Provincetown.

LA closed any further discussion on the matter at this time.

Working Group Reports

Treasurer

Scott Fraser: Moved that Motion #1 (see handwritten page '24' of Public Meeting draft) be put on the table, to maintain fiscal year for purposes of annual audit to be consistent with Town's financial year, but that all internal planning and budgeting be done on calendar-year basis beginning January 1st and ending on December 31st.

A motion was made to approve Motion #1.

Motion: Scott Fraser **2nd:** Carlos Verde

LA commented that motion is part of prior Board discussions that would better show auditors, the public, etc., how expenses are taken in.

CV agreed, stating it would be better for the PPPC to look at budget from beginning to end in one (calendar) year.

SF cited example of payments appearing skewed by monies collected (eg. of mooring fees) by the town in a fiscal year versus calendar year, as reason to approve motion.

Vote:

Yes: 4 **No:** 0 **Abstain:** 0

Motion passes.

Scott Fraser: Moved for consideration of Motion #2 (see handwritten page '24' of Public Meeting draft) regarding change of payment terms for dockage fees beginning with 2013 lease year. Proposal was discussed at February, 2012 PPPC meeting, but nothing found in minutes to indicate that motion had been passed.

Motion #2 proposes a 25% down payment (deposit) at time of dock permit application for application to be considered. Upon assignment of dock space, additional 25% payment would be due on July 1st, 25% on August 15th and 25% on October 1st. Should any outstanding balance remain on December 31st, dock holder's application would not be considered for renewal the following year. Recommended that the Harbormaster hold public hearing to have discussion; that current motion is for approval of proposal only.

A motion was made to approve Motion #2.

Motion: Scott Fraser **2nd:** Carlos Verde

CV stated he does not believe motion should apply to excursion floats.

RM changed 'lease year' language to 'permit' so as not to change excursion vessel requirements for their leases, as built into the Chapter 91 license. Asked if terms should refer to floating docks and fixed pier, or commercial fisheries dock permits?

LA suggested that motion needs to be reworked.

RM stated language to motion is close to complete and can go to public hearing with understanding that tenants will be reading the motion and have comments, adjustments which can then be made to motion.

SF suggested replacing the 'dock space' reference with 'floating docks and fixed pier'.

LA suggested addition of the phrase, 'effective for the 2013 permit year.'

CV stated that the monthly 1% interest accrual reference could be a loophole, that someone who pays full amount upfront might wait until end of year with only 1% fee penalty.

RM added that the 1% interest rate per month would lower the annual interest rate from 18% per annum to 12%, which he thought reasonable.

LA asked to have verified that even if percentages are paid by due dates, tenant will still be billed interest.

SF stated that unless bill is paid in full, interest will be calculated on due amount. If percentages are paid according to suggested calendar, any accrued interest will be cancelled upon completion of payment cycle.

LA suggested moving the motion to public hearing.

RW cited possible scenario where tenant who has balance of 25% due on or before October 1st, with 1% to be charged on balance until December 31st, tenant has paid only 75% of bill with possibly several hundred dollars balance due: is there another way to motivate tenant to make that final payment? For example, if tenant hasn't paid by October 1st, they could be moved to the end of the line for preferred location the following year. Otherwise, tenant could perceive 1% fee as not sufficient penalty.

SF said interest would accrue monthly and the only way for tenant to get interest cancelled is to pay full amount by end of October.

RM said floating dock assignments rarely change hands. He further suggested changing final payment due date to December 1st so as to have all payments in by end of calendar year to close year-end books.

LA wanted to make sure proposal did not apply to West Side tenants and suggested that the phrase, 'all dock space tents' at bottom of motion needs be changed so there is no confusion about whom this motion applies to.

RM will be sending-out letters to the tenants and suggested the last sentence of the motion state, 'This proposal does not change the terms of proposed float space licenses.'

RM suggested January 24, 2013 or February 14, 2013 as possible hearing dates, to allow for appropriate advertising, etc.

A motion was made to approve Motion #2 with changes and move to public hearing.

Motion: Scott Fraser **2nd:** Carlos Verde

Vote:

Yes: 4 **No:** 0 **Abstain:** 0

Motion passes.

Scott Fraser: Moved for consideration of Motion #3 (see handwritten page '24' of Public Meeting draft) which authorizes Harbormaster/Pier Manager to draft changes to section of Harbor Regulations for public hearing requiring all dockage tenants to have moorings in Harbor adequate to secure their vessels. Allows Harbormaster to get boats moved during a storm, and for instances of non-payment, gives Harbormaster authorization to remove vessel. Could be incorporated into terms of permit during application process, that Harbormaster would be given authorization by tenant to secure vessel at a surplus mooring, and tenant would not be allowed to use pier other than for off-loading until balance is paid.

A motion was made to approve Motion #3 with discussion.

Motion: Scott Fraser **2nd:** Carlos Verde

LA asked RM if anything was on the books regarding annual inspection of moorings.

RM said there is an existing regulation that says mooring inspections have to be every other year based on permit number (even/odd years). Nothing in regulations requires Harbormaster to conduct inspections, but does not disallow it either. A current mooring inspector voiced concern that additional requirements for mooring inspectors could take away a segment of business or become more expensive than amount of money he earns.

LA asked if Board should be addressing issue of inspections at this time.

SF said he doesn't think Harbormaster/Pier Manager should get into business of mooring inspections.

CV registered concern that if Harbormaster assumes that responsibility and something happens to vessel, Pier is responsible. As far as every vessel having a mooring, he does not think there is enough protected area behind breakwater to have some vessels docked, and mooring field would have to be rearranged. Tenant is being asked to pay dockage fee which would add a few more hundred dollars on top of what they are already paying, for something they might not even use. Concerned about tacking on another mooring fee on the tenant.

RM said if someone is tenant on the Pier, the mooring is considered a holding mooring which is \$100.00 by regulation. A change was made in regulations stating if boat is on floating docks, tenant needs a mooring or the ability to pull boat in case Harbormaster/Pier Manager is calling boats out of the facility. Smaller boats could put boat on a trailer, but bigger boats have moorings behind the breakwater which is why the area looks so empty most of the time.

RM said one of the things being addressed with counsel was to make changes to the regulations to get away from liability whereby if Harbormaster/Pier Manager touches boat they then become liable for it, yet still allow for the ability to remove a non-paying boat from the Pier.

SF said counsel believes that can be done.

RW asked if counsel could provide PPPC/Harbormaster a way or process that would ensure them the authority to remove vessel of tenant that has not paid their bill, (eg. to have tenant sign document), and then does the boat get removed to a mooring owned by PPPC, to a private mooring or to a mooring that tenant has? And then tenant assumes that charge.

SF stated that in order to get permit, tenant would have to give permission in advance to allow vessel to be removed at discretion of Harbormaster if they have not paid their bill, to a mooring held by owner, which must be suitable for vessel. Tenant would automatically assume the charges of a private mooring and as non-paying tenant, remove their ability to take advantage of the pier.

LA suggested motion under discussion may not represent exact language, but should be viewed as a summary of intent.

CV agreed Harbormaster/Pier Manager should have ability to remove vessel at his discretion, but would rather have (eg. Bay Sails or Nauset Marine) haul boat rather than have Harbormaster push it off a mooring because once boat is touched by Harbormaster it becomes Pier liability and legal actions could be anticipated as a result.

SF moved to authorize Pier Manager to engage corporate counsel to draft appropriate changes to Section 1 which would allow removal of vessels from Pier for non-payment of dockage fees, and that the Harbormaster then develop draft to be discussed and approved by Board, which would then go to public hearing.

A motion was made to approve Motion #3 with changes and move to public hearing.

Motion: Scott Fraser **2nd:** Carlos Verde

Vote:

Yes: 4 **No:** 0 **Abstain:** 0

Motion passes.

Rich Woods recused himself from the following discussion.

Floating Docks

Carlos Verde: A letter was written to PPPC about some charter boat owners who felt they were paying higher rates than at other harbors. Problem in determining what people are doing on their boats: Is individual a charter or recreational fisherman, or another class of fisherman?

LA asked how the PPPC classifies commercial fishermen.

CV said the classifications are commercial fisherman, charter rate and mixed (or limited commercial). Limited commercial is highest rate, then charter, then commercial. Classifications are assigned anywhere from \$57.38 per foot times 40-feet (the length of the float) to \$122.04 times 40-feet. Because of variations in determining how vessel is classified and charged, intent of study is to try to close loopholes of variation.

LA asked if it was fair to say that there were some who are classified as commercial class where it may not be appropriate?

CV confirmed that this was so and stated some have been identified, but study is still ongoing and will be more complete report at next meeting.

Rich Woods returned to participate in the following discussion.

LA acknowledged the passing of F/V Twin Lights owner Jean Frottier, and asked for consideration to waive \$395.00 balance remaining on the books.

A motion was made to waive the balance remaining on F/V Twin Lights account.

Motion: Scott Fraser **2nd:** Carlos Verde

Vote:

Yes: 4 **No:** 0 **Abstain:** 0

Motion passes.

LA said that due to holiday calendar and Harbormaster's scheduled vacation time, next meeting would be waived until after the new year (January 10, 2013).

Pier Manager Report

Rex McKinsey: Reported on training of new Administrative Assistant, that it is moving along and billing is underway.

RM informed Board members that the DEP trailer is temporarily on Pier because DPW is cleaning Highway Garage area. A plan will be made to place it at another location in the Spring, possibly to Highway Garage or Coast Guard Station.

Annual inspection report was e-mailed to Board members and will be discussed more in-depth. Recently completed five-year CIP becomes a discussion about maintenance and funding. Report reiterates the cost of what needs to be done; no real surprises anticipated. The Pier is about 10-years old, or at 20% to 25% of its design life. Need to continue to work on issues brought up by inspection reports.

RM and Asst. Harbormaster Ribas will be alternating vacation time off through the Christmas holidays; one or the other will always be available for calls.

Regional meetings regarding seal and shark populations moving forward. Grant proposed and sent to Governor Patrick regarding signage, transponders and tags, to learn more about these species to educate the public and media.

Port Safety and Security Forum was held by Coast Guard on lessons learned from Hurricane Sandy. One problem identified was about fuel (availability). Office is on generator, but question remains if fuel pumps are on generators, and fuel providers as well, to fill trucks and make deliveries. RM still gathering information.

EPA moving forward with Ethanol-15 in spite of the fact that the marine trade has raised objections to what it does to marine engines, gas tanks, fuel lines, etc.; also compromises process of water settling out of suspension and fuel. A difficult transition for the marine industry to make. Local providers still using Ethanol-10.

Coast Guard working with State and Seaport Advisory Council on 'near-derelict' vessels to make changes to State law for vessels that have been abandoned, to get in front of curve before vessel comes to shore and is completely abandoned.

Annual Town report due on January 23rd.

LA said she was currently working on report; asked for status on purchase of safety buoys.

RM said buoys have been ordered and Pier should be in receipt of them in about six weeks.

CV asked for status on the flag pole.

RM answered there has been no movement on that matter.

CV asked for status report on Marine 1 patrol boat.

RM said boat is at Nauset Marine for winterization, cleaning, painting, and being checked for motor and fuel problems reported by Asst. Harbormaster Ribas. The clutch dog has worn-out due to abuse during boat operation. Control cables were checked and are working fine, but RM wants Nauset Marine to reroute them next time they have to be replaced, to allow for longer, slower curve going to the engines.

CV asked if work being done on the motor was under warranty.

RM replied it is not.

RW referenced Asst. Harbormaster Ribas' report on Marine 1 and asked if there should be conversation about replacing Marine 1.

RM said there were divergent opinions regarding the condition of the engine.

LA deferred further discussion until next meeting so as to have opportunity to review Nauset Marine findings.

CV suggested that the topic be included on next meeting agenda and that Asst. Harbormaster Ribas be asked to attend in order to provide status report.

RW asked that report already compiled by Asst. Harbormaster Ribas be forwarded to Board members for review.

CV asked that discussion regarding flag pole also be put on next meeting agenda.

LA asked if there had been an insurance settlement on the matter.

RM stated he did not know and still needed to provide parties with additional information before damages could be assessed and payment/reimbursement made for flag pole repair/replacement.

CV asked if an adjustor had been on site to make an assessment.

RM stated he is getting quotes and believed the responsible parties would be paying out-of-pocket for damages incurred.

LA and CV said the other parties should be getting the quotes to fix or replace flag pole.

LA asked RM to provide her with information for the contact person.

New Business

Executive Session

A motion was made to go into Executive Session at this time, pursuant to MGL Chapter 30A/Section 21a, and not reconvene in open session thereafter.

Motion: Rich Woods 2nd: Carlos Verde

Vote:

Yes: 4 **No:** 0 **Abstain:** 0

Motion passes.

Meeting adjourned at 6:25 p.m.

Respectfully submitted,

Doug Allen
PPPC Administrative Asst.

Lee Ash, Chair