



Finance Committee

Provincetown Public Pier Corporation Financial Review

Findings & Recommendations

September 2, 2008

At the request of the Board of Selectmen, and with the agreement of the Provincetown Public Pier Corporation's Board of Directors, the Finance Committee has conducted review of the Provincetown Public Pier Corporation's finances. This report contains the Committee's findings and recommendations.

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Introduction & Summary

Introduction

At the request of the Board of Selectmen, and with the support of the Provincetown Public Pier Corporation's Board of Directors, the Finance Committee has reviewed the Pier Corporation's finances for the first time.

Since the beginning of June, the Committee has spent seven hours in public hearings and meetings; the Committee's Pier Workgroup has spent an additional six hours in meetings, plus time following up on open issues and drafting the Committee's report; and individual members have spent countless hours reviewing volumes of documents and preparing for meetings.

This report summarizes the Committee's findings and recommendations. We fully expect that some readers will disagree with our findings. However, we believe that we have been as thorough and unbiased in our review as possible, and that our conclusions are well supported by the facts.

Scope of the Review

From the outset, the Finance Committee made it clear that it would deal only those issues relating to the finances of the Pier Corporation. We did not conduct a detailed audit of the Pier Corporation's financial transactions. That is not our function. We focused on the Pier Corporation's financial policies and practices, identified deficiencies, and made suggestions for improvement.

Numerous other issues were raised during our review that, while they may have financial consequences, the Committee deemed to be management or operational decisions. Examples include the decision to purchase a barge, the installation of the ice machine, employee salaries, etc. In our opinion, these issues are better reviewed by the Pier Corporation's Board of Directors and the Board of Selectmen.

Summary of Findings & Recommendations

The Pier Corporation took over the operation of MacMillan Pier roughly three and a half years ago. During that time, the Pier Corporation has experienced some startup problems and made some mistakes but nothing that rises to a level that would cause us to call for the dissolution of the Corporation.

Most importantly, we would like to dispel the notion that monies are missing or unaccounted for. Over the course of our review, no credible evidence has been brought to our attention that

supports any accusations of financial malfeasance by the Pier Corporation. However, there are steps that need to be taken to make the Pier Corporation's finances more transparent to the public and to prevent such accusations from being made in the future.

Here are the Committee's key findings and recommendations. Each is discussed in more detail later in the report along with other findings that do not require any action.

Key Findings

- Oversight of the Pier Corporation's finances and management by the Town is insufficient.
- The Pier Corporation's year-end financial statements are confusing and inconsistent with interim statements.
- The Town is exposed to significant financial risk because MacMillan Pier is not insured.
- The use of a separate accounting system causes duplication of effort and adds an extra layer of reconciliation.
- Mooring Fees collected by the Pier Corporation on behalf of the Town are fully accounted for, but the bookkeeping method needs to change.

Key Recommendations

- The Pier Corporation should meet with the Finance Committee quarterly to track actual expenditures versus the budget, and annually to review its proposed budget for the next fiscal year.
- The Pier Corporation should also meet with the Board of Selectman on a regular basis to ensure that policy and management issues are resolved on a timely basis.
- The Pier Corporation should migrate from its standalone accounting software package to the Town's MUNIS system.
- The Pier Corporation should make its interim reports consistent with its year-end financial statements.
- Contributions to the Pier Corporation's Maintenance Reserve Fund should be raised significantly to cover emergency repairs to MacMillan Pier.
- Mooring Fees should be accounted for as a "pass through" to the Town, not as revenue to the Pier Corporation.

Conclusion

As former Selectman Cheryl Andrews said in a recent Viewpoint piece that appeared in the Provincetown Banner¹ – “Let’s allow the finance committee to examine the Pier Corp.’s books and hear what they have to say. If changes need to be made, make them. But don’t say that the Pier Corp. hasn’t lived up to its purpose”.

The Finance Committee has taken the charges raised by members of the public seriously and we have reviewed the finances of the Pier Corporation to the best of our ability. We have made recommendations that we believe, if implemented, will strengthen the Pier Corporation by making its finances more transparent to the public. We also believe that the Pier Corporation is fulfilling its purpose and that the citizens of the Town should support its mission going forward.

Acknowledgements

The Finance Committee would like to thank those interested members of the public who participated in our Public Hearings and who submitted background materials and questions for our review.

We would also like to thank the Town Finance Director, Alix Heilala, who provided key information to the Committee and who made herself available to answer our numerous questions.

Last, but not least, we would like to thank the Harbormaster and the Board of Directors of the Pier Corporation for their complete cooperation throughout the process.

Terminology used in this report

The following phrases used in this report, unless a different meaning clearly appears from the context, have the following meaning:

“1997 Business Plan”, MacMillan Pier Redevelopment and Business Plan, prepared by Byrne McKinney & Associates, December 15, 1997

“Committee”, the Provincetown Finance Committee

“Commonwealth”, the Commonwealth of Massachusetts

“Enabling Legislation”, Massachusetts General Law, Chapter 13 of the Acts of 2000, as amended by Chapter 260 of the Acts of 2002.

“Fiscal Policy Plan”, Town of Provincetown – FY 2002-FY 2011 Fiscal Policy Plan

¹ See “Viewpoint – Taking care of a public asset” by Cheryl L Andrews in the June 12, 2008 issue of the Provincetown Banner.

“Lease Agreement”, Lease between Town of Provincetown, Landlord, and The Provincetown Public Pier Corporation, as Tenant, dated March 29 2005

“Marine Management Services Agreement”, Agreement for MacMillan Pier Marine Management Services, dated March 29 2005

“Pier Corporation”, the Provincetown Public Pier Corporation

“The Pier”, MacMillan Pier

“Region”, the Outer Cape (Provincetown, Truro, Wellfleet and Eastham)

“State”, the Commonwealth of Massachusetts

“Town”, the Town of Provincetown

Background & Timeline of this Review

On March 12, 2008 the Finance Committee received a request from the Town Manager to review the financial operations of the Provincetown Public Pier Corporation. This request came about as a result of charges brought by a group of citizens who were concerned about various aspects of the Provincetown Public Pier Corporation's operations. The Committee was in the middle of the FY09 budget review process and did not have the time immediately to undertake a review. The Committee also had concerns about its legal standing to undertake such a review. Therefore, it requested clarification from Town Counsel who later confirmed that the Committee does have legal standing to review the Pier Corporation's finances under Massachusetts law.

At the April 2008 Annual Town Meeting, Article 34, which was petitioned by Ms. Candace Nagle (a tenant of the Pier) and others, requested "that the Provincetown Public Pier Corporation should be dissolved in order to have a public hearing on that proposition". It failed to pass by a vote of 63 for and 85 against. Nevertheless, the Board of Selectmen believed that the issues raised had sufficient merit to request that the Finance Committee examine the Pier Corporation's finances.

In a letter dated April 22, the Town Manager, on behalf of the Board of Selectman, wrote a letter to the Chair of the Pier Corporation's Board of Directors requesting the Board's permission to proceed. At its meeting on May 8th the Board agreed to allow the Finance Committee to review its finances by a vote of 5 to 0.

On May 16th, the Chair and the Vice-Chair of the Finance Committee; the Chair and the Treasurer of the Pier Corporation's Board of Directors; and the Harbormaster met to agree what background material the Pier Corporation needed to supply to the Committee prior to its first Public Hearing. As requested, we received nine copies of the materials, packaged in 2 ½ " binders, one week prior to the meeting. In addition, we received the following documents:

- "The Provincetown Public Pier Corporation - A Failed Experiment" from Ms. Candace Nagle, and;
- A lengthy, untitled document from Mr. Duane Steele, who is a Pier Corporation employee.

Copies of these documents were distributed to the members of the Committee to review in preparation for the first Public Hearing.

The Finance Committee held two Public Hearings – the first on June 6th; the second on June 27th. Each meeting lasted approximately 2 hours. All members of the public had ample time to speak. In addition to verbal public statements, the Finance Committee received the following:

- An addendum to her earlier document from Ms. Nagle;

- Two letters from part-time resident Ms. Charlotte Walker via email;
- A copy of a memo to the former Town Manager, Keith Bergman, from the former Chair of the Pier Corporation's Board of Directors, Paul de Ruyter, titled "PPPC Valuation Analysis"; submitted by Mr. de Ruyter;
- One letter from Mr. Martin Huey, who is a former employee of the Pier Corporation, via email; and
- A letter from 18 current tenants of the Pier.

All of the documents delivered to us are available for review at Town Hall in the Town Clerk's office.

At the end of the second meeting, the Finance Committee appointed a Workgroup to distill all of the charges and concerns into a single document. The Workgroup met in public at Town Hall on July 7th to compile the list of questions. These were circulated among the Committee members for comments and suggestions and then submitted to the Pier Corporation via email 7 days prior to the next meeting.

The Committee's third meeting with the Pier Corporation took place on July 16th and lasted for two hours. Immediately prior to the meeting the Pier Corporation delivered the answers to the Workgroup's questions in writing. Copies were made available to the public. Each of the questions and answers were reviewed and discussed. A copy of the Pier Corporation's written reply is included in the minutes of the meeting.

At the end of the meeting, the Committee agreed that the fact-finding phase of its review was substantially complete. The Committee charged the Workgroup with drafting its final report and following up on any open issues. The Workgroup met on July 25th for two hours to begin that process, followed by another two hour session on August 1st. The Committee held its final meeting on August 28th to review and finalize this document.

Throughout the process, the Committee has continued to receive new concerns and requests for information from Ms. Nagle and others via email. The Committee made its best effort to review, investigate, and respond to these requests along the way.

In total, the Finance Committee has spent seven hours in public meetings; the Workgroup has spent an additional six hours in meetings, plus time following up on open issues and drafting the Committee's report; and individual members have spent countless hours reviewing documents and preparing for meetings.

The Finance Committee believes that we have given this assignment serious consideration. Even though some individuals may not agree with our findings, we would strongly challenge anyone to say that we did not do a thorough investigation of this matter.

Why was the Provincetown Public Pier Corporation created?

In light of the fact that some members of the Public have called for the dissolution of the Provincetown Public Pier Corporation, it is instructive to review the reasons why the Pier Corporation was created in the first place.

In 1996, in the early stages of the MacMillan Pier reconstruction project, the Massachusetts Development Finance Agency, with the cooperation and support of the Town, commissioned an outside study² to "... review the existing economic role of MacMillan Pier and evaluate future options for Pier redevelopment and management in light (of) the poor condition of the existing infrastructure and the probable need to replace the Pier in the near term".

In the Management Options section of the study, four possible management options were evaluated, as quoted below:

❖ Management by the Commonwealth (or Commonwealth-chartered authority)

➤ Advantages

- Would centralize management with the entity primarily funding the reconstruction
- Would ensure management would meet regional needs as well as specific Town needs
- Would remove a potential deficit operation from Town accounts (advantage to Provincetown)
- Would allow for efficiencies due to State experience in managing similar operations

➤ Disadvantages

- Would create potential conflicts between Town needs and State control of the facility
- Would create potential deficit operation for the Commonwealth (disadvantage to the State)

❖ Management by private sector through lease

➤ Advantages

- Would remove a potential deficit operation from Town accounts (advantage to Provincetown)
- Would help ensure cost effective management

² See "Development Analysis and Business Plan for MacMillan Pier in Provincetown" prepared for the Massachusetts Development Finance Agency; prepared by Cecil & Rizvi Inc. with FXM Associates, Nucci/Vine Associates, Inc. & BRFG Consulting Group, November 27, 1996. (Paper copy on file in the Town Clerk's office)

➤ Disadvantages

- Failure of the business enterprise to be profitable would result in public takeover and management of the Pier
- If successfully and profitably managed, only some of the benefit would be recaptured by the public
- As a publicly-constructed Pier within Chapter 91 jurisdictions, significant constraints would be placed on private management to ensure access by water-dependent uses and the public that could conflict with private management needs
- The public could lose adequate control of lease rates and docking fees for water-dependent uses in light of the Chapter 91 requirement noted above and other public interests

❖ **Continued direct management through existing Town mechanisms**

➤ Advantages

- Requires no major changes

➤ Disadvantages

- Allocation of management responsibilities for a major infrastructure element are distinct from and compete with current Marine Superintendent duties
- Current mechanisms are inadequate to ensure optimal financial management in terms of ongoing capital improvements, maintenance, rate setting, long-term capital needs, and other management needs
- Current organization cannot separately support capital financing as a contribution to improvements or reconstruction

❖ **Management by a Town-created entity³**

➤ Advantages

- Would provide for dedicated and specialized professional management of the Pier
- Would allow for clear and separate accounting, and accountability for ongoing and long term management
- Would be less susceptible to short-term, politically motivated decisions linked to other Town priorities

³ As actually published in the report, the advantages and disadvantages of this option were reversed – an obvious mistake.

- Could allow for a distinct financing mechanism to contribute to reconstruction or other improvements
- Disadvantages
 - Would require Town approval and numerous actions to create such an entity
 - Mechanism would need to be constructed to fund potential deficit operations

After weighing the advantages and disadvantages of the four management options, the report concluded that “The management of MacMillan Pier may be best undertaken by a distinct entity that would be responsible for all fiscal, operational, and maintenance requirements for the Pier.”

From that point forward, the Town incorporated the recommendation that a quasi-independent town entity manage MacMillan Pier into its own “MacMillan Pier Redevelopment and Business Plan”⁴. The Business Plan advocated the creation of an “entrepreneurial management structure which whole-heartedly embraces market competition and engenders the confidence of public and private sector investors in the project. Without significant management autonomy, the critical objective of a business-like operation cannot be assured and it is unlikely that funding for the project can be obtained.”

Subsequently, the Business Plan made the rounds from funding agency to funding agency in the late 1990s, and was the blueprint for ultimately raising some \$14.3 million in State and Federal grants, for the reconstruction of Macmillan Pier. Town Meeting approved a home-rule petition to create the Provincetown Public Pier Corporation in 1999, and it was signed into law by the Governor of the Commonwealth in 2000.

In conclusion, while neither the State nor the Federal Government may have “mandated” the creation of the Pier Corporation as a condition of their grants, the Town clearly touted the creation of the Pier Corporation as a major selling point to get the funding. Dissolution of the Pier Corporation would likely be viewed very negatively by the agencies that provided the reconstruction grants to the Town, and could jeopardize future funding requests.

⁴ See “MacMillan Pier Redevelopment and Business Plan”, prepared by Byrne McKinney & Associates, December 15, 1997 (available on the Town website).

Public Charges & Conclusions

This section of the Committee's report addresses the more significant charges made by members of the public, and summarizes our findings on each. Please refer to the Committee's meeting minutes for additional discussion on other issues.

Oversight

Charge: No one from Town Government is adequately overseeing the Provincetown Public Pier Corporation's finances or operations.

Conclusion: TRUE

Years of insufficient oversight by the Town have resulted in significant public frustration and suspicion regarding the Pier Corporation's operations, finances and management. Recently, the Board of Selectmen, in response to public pressure, has begun to take a more active interest in the Pier.

The Board of Selectmen's request that the Committee review the Pier Corporation's finances was a good and necessary first step to help clear the air. Based on the Committee's review, most of the allegations regarding the Pier Corporation's finances are unsubstantiated. However, significant changes should be made to restore the public trust.

Background

In discussing the management plan for MacMillan Pier, the 1997 Business Plan states "...our analysis suggests that a Public Pier Corporation with strong ties and clear accountability to the Board of Selectmen ... provides the best recommendation for a MacMillan Pier Management Plan."

As implemented by the Enabling Legislation⁵ for the Pier Corporation, the powers of the Board of Selectmen are limited to the following:

- To enter into a Lease Agreement with the Pier Corporation;
- To appoint the members of the Pier Corporation's Board of Directors, as recommended by a Nominating Committee⁶ that includes two representatives from the Commonwealth;
- To remove members of the Pier Corporation's Board of Directors for cause;

⁵ See Massachusetts General Law, Chapter 13 of the Acts of 2000, *as amended by Chapter 260 of the Acts of 2002*. A link to the full text of the law is available on the Town website. Citations from the law in this report are truncated or paraphrased unless in quotation marks.

⁶ According to our reading of the Enabling Legislation, the nominating committee process remains in effect for all future appointments to vacancies on the Pier Corporation's Board of Directors.

- To approve any financial expenditure or obligation of the Pier Corporation in excess of \$50,000, in the aggregate; and
- To dissolve the Pier Corporation after making a finding that the corporation is no longer needed or that the corporation has failed to fulfill its mission.

Under the same law, the obligations of the Pier Corporation's Board of Directors to the Town are limited to the following:

- To make a report annually to the Board of Selectmen, containing an abstract of such accounts and detailed information of all receipts and expenditures and other information as may be helpful; and
- To seek the approval of the Board of Selectmen before making any expenditure, or entering into an obligation, in excess of \$50,000.

Town Meeting also has limited authority, namely:

- To approve dissolution of the Pier Corporation, if requested by the Board of Selectmen;
- To approve the sale or transfer of Town property to the Pier Corporation, subject to a two-thirds vote;
- To approve the acquisition of Fisherman's Pier, subject to a two-thirds vote; and
- To approve any financial obligation of the Pier Corporation, thereby making it an obligation of the Town itself, subject to a two-thirds vote.

In the opinion of the Committee, the minimal requirements written into the law do not amount to the "strong ties and clear accountability" that were repeatedly emphasized in the 1997 Business Plan. This is clearly *not* the fault of the Pier Corporation.

We do not believe that it is necessary to revise the Enabling Legislation to address these deficiencies, but we do make the following recommendations that should be incorporated into the Pier Corporation's Lease Agreement or agreed to voluntarily.

Recommendations:

- The Finance Committee and the Pier Corporation should hold joint quarterly meetings to review quarterly and year-to-date financial results, as the Committee is now doing with the Town;
- The Pier Corporation should submit its annual operating budget, including revenue projections and a Capital Improvements Program (CIP), to the Finance Committee for review;

- The Finance Committee should report to the Town on the Pier Corporation's budget and its recommendations in its annual Letter to the Voters; and
- In its role as the elected executives of the Town, the Board of Selectmen should take a more active consultative role on policy and management issues.

As the legislation is currently written, approval of the Pier Corporation's budget is not subject to Town Meeting approval. Despite that, the Committee believes that above recommendations will make the Pier Corporation's finances more transparent to the public, without unduly limiting the Pier Corporation's operational independence.

Financial Statements

Charge: The Pier Corporation's financial statements are inaccurate and confusing.

Conclusion: FALSE, but...

There is no evidence that the Pier Corporation's financial statements are falsified or deliberately intended to mislead the public. However, the Committee did find that difference between the unaudited year end statements and the final audited ones was significant and confusing.

The reason for the confusion, to put it simply, is that the Pier Corporation's day-to-day management reporting requirements are different from those required by the State at year end. This means that, at year end, the Pier Corporation's financial transactions have to be re-categorized and re-stated for the State.

A similar situation exists on the Town side as well. The annual Town Report summarizes the Town's finances in a format that is familiar to the voters at Town Meeting. However, if you go to the State's Department of Revenue website, you will find Provincetown's financial information summarized and reported in a very different way. They are both true, but they serve different purposes.

Recommendations:

- The Pier Corporation should review its accounting and reporting practices to harmonize them with year-end State reporting requirements, if possible; or
- The Pier Corporation should produce two separate sets of year-end financial statements – one for itself and the Town; the other for the State.

Pier Revenue Projections

Charge: Pier Corporation revenues have never met the original targets set in either the 1997 Business Plan or the Town’s “FY 2002-FY 2011 Fiscal Policy Plan”⁷.

Conclusion: TRUE, but ...

Several key assumptions in these documents turned out to be incorrect. Specifically:

- The Fishing industry has not recovered as expected, nor is it likely to do so in the near future;
- Docking fees for fishermen have not risen to market rates. Instead, they continue to be subsidized, as agreed by the Board of Selectmen, Pro-Fish and local fishermen; and
- The Fiscal Policy Plan projected \$150K of “other revenue” with no substantiation whatsoever.

The Pier Corporation has been successful in raising docking fees for commercial tenants on the west side of MacMillan Pier to market levels. It has also attracted new ferry services and created other new sources of income such as hosting special events, local artist trap sheds, etc.

The Pier Corporation should review its rates on a regular basis to keep them in line with the marketplace (e.g. charter fishing boat rates on the east side of MacMillan Pier), and it should continue to look for new revenue streams. However, as a public corporation, it will always be constrained by its public mission.

Pier Debt Service & Rent Payments

Charge: Rent from the Pier Corporation to the Town does not cover the cost of the annual debt service paid by the Town for the rehabilitation of MacMillan Pier as originally envisioned.

Conclusion: TRUE, but ...

The 1997 Business Plan estimated that the Town’s share of the project would be \$2.8M; that annual debt service would be \$150K per year over 40 years; and that the Pier Corporation’s projected revenues would be sufficient to pay it in full each year.

All three assumptions turned out to be false. Specifically:

- The Town’s contribution to the rehabilitation project was \$1M more than estimated original business plan -- \$3.8M instead of \$2.8M;

⁷ See “Town of Provincetown – FY 2002- FY 2011 Fiscal Policy Plan”, prepared by Town Manager Keith Bergman, pages 22 – 25” (available at the Town Clerk’s office)

- Instead of financing the debt over 40 years, the Town financed part of it over 17 years on a declining balance basis; and the rest on a straight-line amortization basis over 40 years. As a result, the 17-year loan which runs from 2003 to 2019 has much higher payments in the early years than in the later years. In the real world, this meant that in the first year the total debt service payment was \$399K, not \$150K as originally projected; and
- As pointed out in the “Pier Revenue Projections” section above, the Pier Corporation’s revenues were lower than originally projected making it impossible for the Pier Corporation to cover the annual debt service payments.

The lease negotiated between the Town and the Pier Corporation in 2005 recognizes these facts. Specifically, rent payments are now based on the Pier Corporation’s net positive cash flow (i.e. “profit”), rather than the amount of the debt service that the Town is paying for the Pier reconstruction. The Committee agrees that this is entirely appropriate.

It is important to point out that the Town owns MacMillan Pier, *not* the Provincetown Public Pier Corporation. Therefore, the debt service is an obligation of the Town *not* the Pier Corporation. It is also important to point out that the projected future rent payments by the Pier Corporation *will* cover the entire cost of the debt service over 40 years in nominal dollars, but *not* when adjusted for inflation.

Rent payments from the Pier Corporation to the Town, as defined in Exhibit C of the Lease Agreement, “Rent Determination Schedule”, are as follows:

FY 2005	\$10,000
FY 2006	\$79,000
FY 2007	\$92,000
FY 2008	\$106,000
FY 2009	\$120,000

The Lease Agreement was signed and approved by the Board of Selectmen, the Town Manager, the Town Accountant and the Provincetown Public Pier Corporation Board of Directors on March 29, 2005.

To date, the Pier Corporation has met or exceeded the agreed rent payments to the Town.

Marine Management Fee

Charge: Monies from the Waterways Fund are being illegally used to pay the Provincetown Public Pier Corporation for providing Marine Management services.

Conclusion: FALSE

Massachusetts General Law, Chapter 40, Section 5G, “Municipal waterways improvement and maintenance funds”, states that any city, town or district in the Commonwealth “may appropriate monies in said fund for (1) maintenance, dredging, cleaning and improvement of harbors, inland waters and great ponds of the commonwealth, (2) the public access thereto, (3) the breakwaters, retaining walls, piers, wharves and moorings thereof, and (4) law enforcement and fire prevention.”

Under this law, the use of monies from the Waterways Fund partially to fund Marine Management services provided to the Town, in accordance with the “ Agreement for MacMillan Pier Marine Management Services”⁸, are clearly appropriate and legal. Monies for this purpose are transferred out of the Waterways Fund annually by a vote of Town Meeting.

The agreement between the Town of Provincetown and the Pier Corporation specifies the following annual payments to the Pier Corporation for providing Town Harbormaster and Marine Management services:

FY 2006	\$135,000
FY2007	\$137,000
FY2008	\$139,000
FY2009	\$140,000
FY2010	\$141,000

By comparison, in 2005, the last year that the Marine Management/Harbormaster services were included in the Town budget, the comparable amount was \$133,924.

Mooring Fees

Charge: Mooring Fees are not all being collected and paid to the Town in full. There are questions about the accounting for both credit card payments and cash.

Conclusion: FALSE

Since 2006 all credit card payments for Mooring Fees go directly into the Town’s General Fund. Cash payments, which are less than 20% of the total, are collected at the Harbormaster’s Office and turned over to the Town on a weekly basis, at a minimum. In addition, each cash payment is recorded on a triplicate, serialized cash receipt book, as recommended by the Pier Corporation’s auditor.

⁸ See “Agreement for MacMillan Pier Marine Management Services” , dated March 29, 2005 (available on the Town’s website)

The Mooring Fees are initially recorded in the General Fund when received by the Town and then transferred to the Municipal Waterways Fund along with ½ of the Boat Excise Tax.

The Mooring Fees collected by the Town in recent years are:

FY2005	\$66,000
FY2006	\$53,000
FY2007	\$77,000
FY2008	\$72,000

The amount collected annually can fluctuate for a variety of reasons, including market demand; the timing of the payments (before or after year-end close) and rate changes.

All monies have been properly accounted for.

Staffing Levels

Charge: Staffing levels on MacMillan Pier have ballooned since formation of the Provincetown Public Pier Corporation.

Conclusion: FALSE

Attachment A to the Marine Management Services Agreement defined staffing levels on MacMillan Pier, as negotiated and agreed to by the Town and the Pier Corporation, and quoted below.

- **Harbormaster/Pier Manager (Department Head)** – Year-round position acts as supervisor, board liaison, enforcement, grants, financial, business, maintenance and staff development. Serves as the Town’s harbormaster.
- **Radio Dispatch & Office Administration** – Year round bonded position, dispatch & coordinate service calls, internal transaction control, bookkeeping, maintain and staff office hours. Assistant harbormaster covers off hours.
- **Assistant Harbormaster** – Two year round positions provide line staffing with patrol, enforcement, service and emergency response, maintain facilities & vessels.
- **Seasonal Assistant Harbormaster** – 2 or 3 seasonal positions provide line staffing with patrol, enforcement, service and emergency response, maintain facilities & vessels. Anticipated from April to November with staggered starts.

Rather than hire 2 – 3 full-time Assistant Harbormasters during the season, the Harbormaster employs part-time staff to provide more staffing flexibility. This is particularly important now

that night watch staffing has been restored during the high season, at the request of MacMillan Pier tenants.

As stated elsewhere in the Attachment, one of the staffing goals was to “alleviate most calls for assistance to other Town departments”. In the past, MacMillan Pier was understaffed and many expenses related to the Pier were incurred by the Department of Public Works, the Police Department and other Town departments without being tracked as such. By providing the Pier Corporation with adequate staffing to perform most routine maintenance and enforcement, it is easier to track the true expenses of MacMillan Pier.

Commercial Ice Rates

Charge: The Pier Corporation is further subsidizing fishermen by charging below-market rates for ice.

Conclusion: False

The Pier Corporation is not subsidizing the sale of commercial ice. By way of comparison,

- Crystal Ice in New Bedford charges \$56 per ton versus the Pier Corporation’s \$60 per ton for the resident fleet and \$80 for transients.
- Chatham sells ice by the tote for \$6 versus the Pier Corporation’s tote price of \$5.

The Pier Corporation also sells ice to Bass fishers based on cooler size at \$5-10-15. In June of this year this segment has been adversely affected by the beach closures for the Piping Plovers, resulting in ice sales of only \$719 versus \$2,066 last year.

Other Findings & Recommendations

The Committee itself raised a number of other issues during its review of the Pier Corporation's finances. What follows is a discussion of the more significant issues and our recommendations.

Bookkeeping System

Finding:

The Pier Corporation currently uses QuickBooks software for its bookkeeping, rather than the Town's MUNIS system. The two systems cannot "talk to each other" which creates several problems, including:

- Duplication of effort to enter transactions into two systems;
- Greater potential for discrepancies;
- The need to reconcile QuickBooks with MUNIS in addition to the normal cash reconciliation process.

Recommendation:

The Pier Corporation should hire Mark Abrahams, or a similarly qualified consultant, to determine whether and how to convert their QuickBooks accounting system to the MUNIS system that the Town uses. One important requirement will be the ability to produce management reports that meet the Pier Corporation's requirements. This activity needs to be coordinated with the Town Finance Director and the Town MIS Director.

Account Reconciliations

Finding:

As stated in the Pier Corporation's 2007 external audit report – "During fiscal year 2007 we noted substantial improvement in the reconciliation procedures being utilized and in the timing, however (we) recommend Corporation and Town personnel continue to work on improving and streamlining the process."

The Town currently provides the Pier Corporation with monthly expense reports, deposit statements and copies of bank statements. The Town Treasurer and the Pier Corporation's Bookkeeper use these to reconcile cash accounts monthly.

In addition to the cash accounts, there are other accounts that also need to be reconciled on a regular basis, ideally monthly, between the Town and the Pier Corporation:

1110 – Accounts Receivable

1399 – Due from other Governments

2000 – Accounts Payable

2005 – Accrued Expenses

2050 – Due to other Governments

Recommendations:

- A formal and timely process should be agreed jointly by the Town and the Pier Corporation for reconciling all accounts, as appropriate.
- Reconciliation reports should be reviewed regularly by the Harbormaster, the Pier Corporation's Treasurer and the Town Finance Director.

If the Pier Corporation does migrate to the Town's MUNIS software, these extra reconciliation steps may be unnecessary.

Overdue Accounts Receivable

Findings:

The Pier Corporation's May 30th, 2008 Aged Accounts Receivable report shows a total of \$42,537.16 owed to the Pier Corporation that is more than 90 days overdue. (This excludes \$20,947.47 owed by the Town). This amounts to 12% of its entire Accounts Receivable which is too high; and

The Pier Corporation has recently adopted more aggressive measures to collect overdue payments, including the use of Small Claims Court, placing liens on vessels, etc. These are welcome steps, but the Committee would like to see a more aggressive policy on payments overdue beyond 180 days.

Recommendation:

The Pier Corporation should hire a Collection Agency to pursue payment for debts more than 180 days old, as is done by various Town Departments.

Mooring Fees Accounting

Finding:

The Pier Corporation acts as the Town's "agent" to collect mooring fees which are income to the Town, not the Pier Corporation. Only income that is due to the Pier Corporation should be reflected in its P&L.

Recommendation:

Any "pass through" monies (i.e. Mooring Fees) due the Town should not be run through the Pier Corporation's P&L Statements. They should be accounted for and reconciled separately from other revenues.

Maintenance Reserve Fund

Background

Section 5 of the Enabling Legislation for the Pier Corporation requires the establishment of a Maintenance Reserve Fund. It reads as follows:

“Notwithstanding the provisions of any general or special law to the contrary, the corporation shall establish a maintenance reserve fund from the pier's lease revenues sufficient to meet the expenses of maintaining the pier in a fully operational state and avoiding any reoccurrence of the pier's obsolete, decadent, substandard and blighted state as described in section 1, including, but not limited to, routine and non-routine maintenance and the maintenance of any and all improvements. The corporation shall file an annual report with the house and senate committees on ways and means detailing all receipts, expenditures and the status of said reserve funds.”

As the end of Fiscal Year 2007 the balance of the fund was \$84,206 compared to \$73,103 at the end of 2006. The Pier Corporation's budget calls for an annual contribution to the Maintenance Reserve Fund of \$50,000. A significant portion of its annual contribution is used to pay for routine maintenance. As a result, the net increase in the year-over-year balance in the fund is relatively small.

Findings:

- As noted in by the Pier Corporation's Auditor in its annual report, policies regarding the appropriate use of the Capital Reserve Fund are not sufficiently clear; and
- MacMillan Pier is not insured due to the prohibitive cost of a policy. This creates a significant financial exposure for both the Pier Corporation and the Town that cannot be covered by the Maintenance Reserve Fund.

Recommendations:

- The Pier Corporation should include routine maintenance and supply costs in its baseline budget. These costs should *not* be charged to the Maintenance Reserve Fund; they should be paid out of the Pier Corporation's annual revenues;
- Capital improvements and replacement of capital assets, based on their anticipated life span, should be detailed in a five-year Capital Improvements Program (CIP). The CIP

should be updated annually and included in the Pier Corporation's annual budget. These costs should also be paid out of annual revenues; and

- The Maintenance Reserve Fund should only be used for emergency repair or replacement of out-of-warranty operating equipment, or to make emergency repairs to the Pier caused by an unanticipated event. Use of these funds should require the approval of the Pier Corporation's Board of Directors, the Board of Selectmen and the Finance Committee. Ideally the Pier Corporation should make annual transfers from its revenues to the Maintenance Reserve Funds until the balance equals 5% of the total cost to rebuild MacMillan Pier.

The Committee recognizes that the last recommendation may be difficult to achieve, but we believe it is worth serious consideration. If a catastrophic event were to occur, such as a major fire or hurricane, it is clear that the Pier Corporation would not be able to fund a complete rebuilding on its own. However, if a serious but lesser event were to occur, it would be prudent for the Pier Corporation to have the cash on hand to defray the cost of replacement or repair. Otherwise, the entire cost will have to be borne by the taxpayers of the Town.

Conclusion

The Provincetown Public Pier Corporation was created to manage and protect MacMillan Pier, one of the Town and the Region's most important economic assets. It is important to remember that the Pier Corporation is not a private enterprise seeking to maximize profit for its shareholders. Nor is the Pier Corporation intended to be a source of funding for Town operations. Its mission is a broader public one – to support the development of commercial, water-dependent enterprises that benefit the Region's economy. This requires a degree of operational independence from Town government, and the ability for the Pier Corporation to use its income for the maintenance and development of MacMillan Pier's infrastructure.

While there have been some shortcomings in the way that the Pier Corporation's finances have been managed, all are correctable if the recommendations in our report are accepted. There is no factual basis for dissolving the Pier Corporation. Quite the opposite – the Town should continue to support the Pier Corporation and its mission.