

TOWN OF FAIRFIELD  
HARBOR MANAGEMENT COMMISSION  
MEETING MINUTES OF MARCH 16, 2021

A Meeting of the Harbor Management Commission (HMC) of the Town of Fairfield was held on Tuesday, March 16, 2021 at 4:45 p.m. via teleconference.

**MEMBERS PRESENT:** Kim Taylor, Chairwoman; Ted Schwartzman; Jacob Herschler; Doug Metchick; Libby Tritschler; and Eric Sundman. **ABSENT:** Harry French; Mark Foster; Sam Cargill. **ALSO PRESENT:** Geoffrey Steadman, HMC Consultant, and Harbor Master Edward Billings.

**CALL TO ORDER:** The meeting was called to order at 4:45 p.m. by Kim Taylor.

**APPROVAL OF MINUTES:**

HMC meeting on January 19, 2021: Ted Schwartzman moved and Eric Sundman seconded to approve the Meeting Minutes of January 19, 2021: Passed unanimously.

HMC meeting on February 16, 2021: Jac Herschler moved and Eric Sundman seconded to approve the Meeting Minutes of February 16, 2021 with the following correction: the motion in the last sentence in the Harbor Master's Report is revised to read: "Following discussion, Ted Schwartzman moved and Eric Sundman seconded to approve expenses up to \$7,500.00 to equip/repurpose the donated vessel by the PYC to the HMC, together with a one-time contingency maintenance expense up to \$2,500.00, with the funds to be expended from the Southport Harbor account, and expenditures to be preapproved by the HMC Chair. Motion passed unanimously." Motion passed unanimously.

**CHAIRMAN'S REPORT:**

Chairwoman Taylor reported the following correspondence:

1. 2/19/21: Zoom meeting organized by Mill River Wetlands Committee with Fairfield Conservation Department and several other groups such as Trout Unlimited, Soundkeeper about Aquarion application to divert water from Hemlocks Reservoir system and potentially affecting the Mill River
2. 3/3/21 email to Representative Leeper outlining HMC concerns with 1) Cohen v. DEEP Superior Court decision affecting harbor management commissions' authorities and 2) pending Aquarion Water Company's application to divert water from the Hemlocks Reservoir system and potentially affecting the Mill River
3. 3/5/21 Letter from Attorney John Casey representing Mr. Owens in his application for a mooring permit as a littoral owner and requesting that the full HMC review the Harbor Master's decision in this matter
4. 3/7/21 Forward letter from John Casey to Town Attorney, Jim Baldwin outlining generally the Rules and Procedures, and their application to the Owens' application.
5. 3/14/21 Email from Representative Jennifer Leeper stating her intention to work with her colleagues to support an effort to address the harbor management issues concerning the Superior Court's decision in Cohen v. DEEP.

**HARBOR MASTER'S REPORT:** Harbor Master Billings reported that the mooring stickers have arrived and they will go out by April 1<sup>st</sup>, together with a letter. The Harbor Master reached out to approximately 10 individuals who still need to provide the necessary documentation and he received an excellent response. Following inquiry by Chairwoman Taylor, Harbor Master Billings indicated that the Southport Harbor annual report can be distributed electronically through the online mooring system and hard copies can be provided to those individuals requesting the same.

**APPLICATIONS:** No new applications.

**OLD BUSINESS:**

1. Lower Wharf Project: Mr. Steadman: Mr. Steadman reported that Mr. Sternberg of RACE Coastal Engineering is reviewing with DEEP representatives the requirements for submitting a new permit application for this project; input from DEEP is needed for RACE to provide the HMC with an informed cost estimate for preparing the new application.
2. Sand Management Project: Mr. Steadman and Mr. Foster: Mr. Steadman reported that it was clear from the survey responses that this project is most important to the community. The HMC discussed safe navigation concerns, the status of the ACOE planning for maintenance dredging of the channel, and possible funding for this project. Mr. Steadman will continue to keep the HMC apprised of his communications with the ACOE and DEEP, including the anticipated upcoming site visit.
3. Mooring Committee: Commissioner Herschler reported that the Mooring Committee met on March 11<sup>th</sup>. Two to four mooring locations may become available for re-assignment. The acquisition details for the patrol boat for the Harbor Master are being worked out through the Purchasing and Risk Management departments.
4. Harbor Management Plan Update: Chairwoman Taylor reported that Mr. Steadman is preparing a summary report of the survey which will be distributed to the HMC and uploaded on the HMC website. The complete survey and responses will also be provided to all Commissioners. Chairwoman Taylor also indicated that they will begin updating the policies portion of the Plan; Mr. Steadman is working on the updated version of the policies for committee review.
5. Proposed Changes to Rules and Procedures: Mr. Herschler: Commissioner Herschler noted that although he had received two comments subsequent to the last meeting, he is still welcoming HMC input. The two comments received included the following proposed changes: documents required by the Harbor Master should include the Safe Boating Certificate (as required by the State of Connecticut); all owners of docked vessels – either privately owned or by the PYC – should submit the necessary paperwork to the Harbor Master for inclusion in the Online Mooring system; and a required annual fee in the amount of \$10.00 should be paid by the individuals on the waiting list, noting that this fee is justified since they also benefit from management of the harbor. Chairwoman Taylor indicated that it is best that the HMC move forward to finalize its Rules and Procedures, and this matter should be discussed at the next committee meeting.

6. Budget Request: Mr. Schwartzman: Commissioner Schwartzman reported that the HMC budget was reviewed at the Board of Finance March 11<sup>th</sup> meeting. The Fees and Professional Services account was discussed, and Mr. Schwartzman provided the Board of Finance with more detail in the types of services which are paid under this line item, including the level of expertise provided by Mr. Steadman and Harbor Master Billings. Chairwoman Taylor thanked Commissioner Schwartzman for his representation at that meeting and time expended on behalf of the HMC.

**NEW BUSINESS:**

1. CT DEEP public information meeting on January 6, 2021 in connection with DEEP Notice of Tentative Determination to Approve Aquarion Water Company's Application for Consumptive Diversion of Water Permit and Notice of Informational Hearing: Mr. Steadman: Mr. Steadman reported that a status conference was held on January 6<sup>th</sup>; the date of the public hearing has been set for May 4<sup>th</sup>; this will be a "Zoom Meeting". The Town of Fairfield has filed for intervenor status. A site visit with the hearing officer is scheduled for April 22<sup>nd</sup>. Mr. Steadman noted that it is necessary to learn more about the potential impacts. HMC questions will be directed to the Hearing Officer who will make a recommendation to the DEEP Commissioner concerning the pending application. Mr. Steadman noted that the HMC may wish to establish a list of questions for consideration at the April HMC meeting; Chairwoman Taylor asked Commissioners to submit their questions to her prior to the April meeting so that they can be distributed accordingly.
2. Decision by CT Superior Court in Susan Cohen vs. The State of Connecticut DEEP on January 27, 2021: Mr. Steadman, Mr. Cargill, Ms. Tritschler: Chairwoman Taylor noted that it had been established at the last meeting that Commissioners Cargill and Tritschler were going to reach out to the State Representatives concerning this matter. There is not update to present at this time. Chairwoman Taylor noted that Mr. Cargill did speak with Laura Devlin who agreed to work with the HMC on this matter. Mr. Steadman noted other harbor management commissions are also reviewing this matter and he will keep the HMC apprised.
3. Owens request that the Commission consider the Harbor Master's actions in response to his mooring application asserting littoral rights: Chairwoman Taylor advised the HMC that Mr. Casey will provide discussion on this matter, and that the HMC has 60 days to consider this. Mr. Casey advised the HMC that he represents Mr. Owens and 789 Harbor Road, LLC in their request for a mooring permit. His client has been denied a mooring permit for several years, but in his opinion, the reason for denial does not "hold water". The issue of property ownership has been raised by the Harbor Master, both current and prior. Mr. Casey indicated that there are rights provided to Mr. Owens in his occupancy agreement with the owner and further indicated that the prior owner of this property had been issued a mooring. Commissioner Libby Tritschler noted that as a realtor, she is aware that LLC's are formed for privacy reasons, and expressed her concern that the HMC may not be following protocol, and that it appeared that every year Mr. Owens and the LLC had been denied a mooring permit for a different reason. Commissioner Tritschler further indicted that the former owner, Andy Hall, is her client, that he had two homes, both of which were owned in the name of the LLC, and had a mooring. Commissioner Tritschler further indicated that there are several

homes along the harbor who have the title of their homes in the name of an LLC. Chairwoman Taylor clarified that this was the first year that Mr. Owens had filed an application; in previous years he had submitted a letter to the Harbor Master. Because additional documentation was required, a determination had not been made. According to the Rules and Procedures the littoral property owner is entitled to apply for a mooring, not employees, property managers, or representatives. Commissioner Herschler inquired whether Mr. Owens had an ownership interest in the property or whether he was an employee and whether Mr. Owens had a financial interest in and to the property. Mr. Casey replied that the ownership organization is complex, and the entity had granted the mooring rights to Mr. Owens.

Mr. Herschler stated that the HMC's goal is to provide fair access and proof of ownership is required. Mr. Casey indicated that Mr. Owens has a duty to keep up the property, maintain it, and that the boat is registered to him personally which is sufficient, and that the HMC should not undermine the littoral rights attached to this property.

Mr. Steadman reiterated that the HMC must balance the public's right of access to the harbor with the littoral rights of the property owners and has an important responsibility for managing the harbor fairly and for the benefit of all users, not just littoral property owners. The State of CT also has important interests, including ownership of the underwater land and the responsibility to protect the public rights pursuant to the Public Trust Doctrine. It was noted that not all properties are suitable to have a mooring. Mr. Steadman further indicated that the Harbor Master is a State official, and the HMC cannot override any decision made by the Harbor master, but can try to resolve certain issues that may arise.

Chairwoman Taylor indicated that she is in agreement with Mr. Steadman concerning the issue of ownership, and that this property currently has reasonable access to the harbor through an existing dock that apparently has been used by Mr. Owens for enjoyable access to the harbor.

Mr. Casey indicated that the rules have not changed – that the prior owner had a dock and a mooring, and that the HMC was being unfair in this circumstance. Mr. Casey further asserted that Mr. Owens has an interest in a trust which makes up the LLC, and considerable money is spent to acquire waterfront property which includes littoral rights to a dock and mooring.

Upon inquiry by Commissioner Tritschler, Chairwoman Taylor indicated that the property owner has just recently been put on the wait list. Commissioner Tritschler noted that she was concerned about the legality of the denial.

Commissioner Schwartzman indicated that there was a letter from former Harbor Master Louis Schueler which clearly outlines that the reason Mr. Owens had not been placed on the wait list was because he did not comply with the terms of the application. It is important that we have integrity of the rules relative to the wait list. It was noted that Harbor Master Schueler's letter was clear – that additional documentation was required.

Following considerable discussion, including clarification as to the HMC's role to provide a recommendation to the Harbor Master and the need for additional information relative to the ownership interest that Mr. Owens may or may not have in and to the property, Jac Herschler *moved* and Ted Schwartzman *seconded* to table this matter to the April 20, 2021 HMC meeting. *Motion passed unanimously.*

**ADJOURNMENT:** There being no further business to come before the Commission, Jac Herschler *moved*, and Ted Schwartzman *seconded* to adjourn at 6:52 p.m. *Motion passed unanimously.*

The audio recording can be found here: [Harbor Management Commission - 3/16/21 - YouTube](#)

Respectfully submitted,

Betty Gabriel