

TOWN OF FAIRFIELD
HARBOR MANAGEMENT COMMISSION
SPECIAL MEETING MINUTES OF AUGUST 10, 2021

A Special Meeting of the Harbor Management Commission (HMC) of the Town of Fairfield was held on Tuesday, August 10, 2021 at 4:45 p.m. in the Second Floor Conference Room of the Honorable John J. Sullivan Independence Hall and via teleconference.

MEMBERS PRESENT: Kim Taylor, Chairwoman; Ted Schwartzman; Jacob Herschler; Harry French; Mark Foster; Eric Sundman; and Libby Tritschler. **ABSENT:** Sam Cargill and Doug Metchick. **ALSO PRESENT:** Geoffrey Steadman, HMC Consultant, and Attorney John Casey, Counsel for Mr. Tom Owens.

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

SPECIAL MEETING BUSINESS:

1. Consideration under Rule 23 of the Harbor Management Commission Rules and Procedures the request by Mr. Owens that the Commission find that the Harbor Master discriminated against him when he denied Mr. Owens a priority mooring permit: Chairwoman Taylor indicated that this Special Meeting was being held this evening to continue discuss and consider the June 17, 2021 letter by Mr. Casey in which he asserted that his client had been discriminated against and subject to unequal or discriminatory treatment in denying a mooring permit, and requested that the HMC make a finding that the denial by the (former) Harbor Master was contrary to the Harbor Management Plan, and that his client was entitled to a priority mooring permit. Chairwoman Taylor indicated that the HMC cannot make decisions about stationing vessels in Southport Harbor, and further noted that this is the first year that Mr. Owens had actually put his name on the waiting list, and that the HMC Rules and Procedures require that only those on the waiting list are entitled to mooring permits even if they are littoral property owners asserting their rights to a priority permit. Chairwoman Taylor further indicated that on July 13, 2021 Mr. Casey sent another letter which included new information. One was a 2011 letter from former Chairwoman Mary vonConta relative to the construction of the dock at 789 Harbor Road which specified that the purpose of the dock was for loading and unloading the vessel at the property. The 2nd piece of new information was a screen shot of the Army Corps of Engineers survey of the area surrounding the dock which showed 4 to 5 inches of water at mean lower low water. Chairwoman Taylor indicated that page 6-39 of the Harbor Management Plan provides that if the Commission is unable to resolve concerns about a harbor master's decision through the Rule 23 process, it can bring those concerns to the DEEP's predecessor for corrective action.

Geoffrey Steadman indicated that when that Section of the Plan was written, it initially provided that the HMC would act as an "Appeals Court", but was re-written as a result of the DEEP's clarification that the HMC did not have the authority to act as such, but could hear and review the actions of the Harbor Master and make recommendations. The DEEP further indicated that the HMC had no authority to over-turn a decision by the Harbor Master. The DEEP is currently aware of the present issue, and although the HMC has not requested its formal confirmation on the HMC review and understanding, it could submit a written request for the same.

Mr. Steadman indicated that the allegations that the applicant had been treated unfairly or targeted are not accurate, and that the HMC and Harbor Master have never disparaged or treated an applicant unfairly. Properties have different circumstances, and the Harbor Masters review each application, treats everyone fairly, and makes decisions based on the guidelines which have been established in the Harbor Management Plan.

Mr. Casey spoke on behalf of his client, and indicated that he had considered the history of Mr. Owens' interactions with the former Harbor Masters. Mr. Casey indicated that his client had been asked to provide information that other applicants had not, and was requesting that the HMC make a finding that the Harbor Master's decision was wrong. Mr. Casey noted that he had provided the HMC with information evidencing that the existing dock was not suitable for berthing a vessel of any size, that the Harbor Master had denied the request for a priority mooring on the basis that the dock was suitable for a vessel of any size, that the Harbor Master's reasons for the various denials had shifted, and further noted that he had communications with Kevin Zavoy of the DEEP. Mr. Casey reiterated that he was requesting that the HMC make a finding that the applicant is entitled to a priority mooring permit in accordance with the Harbor Management Plan.

Mr. Steadman indicated that the Harbor Master had a responsibility to review the policies in place relative to fair and reasonable access, and by asking questions relative to this application, was not illegally targeting Mr. Owens. Mr. Steadman further indicated that the HMC may wish to request that the DEEP confirm the HMC's understanding and interpretation of fair and reasonable access. Mr. Steadman clarified that he did speak with Mr. Zavoy's Supervisor, who was the appropriate person to review the matter, and was advised that the HMC can submit written questions; Mr. Steadman replied that the HMC may wish to do that after the August 10th meeting.

The HMC discussed this matter at length in an attempt to find a resolution including alternatives, such as dredging options at the property, while recognizing that it cannot overturn the decision of the Harbor Master or direct that a permit be issued. The HMC also discussed fair and reasonable access, the history of the dock constructed by the former owner who had utilized the same for docking a 30' vessel during his possession of the property.

Following considerable discussion, the following findings were suggested and considered:

1. That the Harbor Master performed his duties in good faith and in a manner consistent with the Harbor Management Plan.
2. That the HMC strongly rejects the assertion that the HMC and Harbor Master targeted Mr. Owens and subjected him to discriminatory treatment.
3. That the HMC does not accept (a) the assertion that littoral rights guarantee 24-hour access to navigable water during all stages of the tide, (b) the assertion that littoral rights include the right to a dock and mooring under all circumstances. In addition, the HMC reiterates its understanding that littoral rights provide for reasonable access to navigable water subject to certain restrictions and are not absolute rights.
4. That the HMC will request that the DEEP confirm the HMC's understanding of littoral rights as reflected in the Harbor Management Plan.
5. That the next Southport Harbor Master, once appointed by the Governor, in a timely manner will consider the following information when reconsidering the application by Mr. Owens for a priority mooring permit:
 - (a) The pertinent information recently provided to the HMC relative to the water depth at the subject property;
 - (b) The documents recently submitted to the HMC by Applicant's Counsel, Mr. Casey, including the letter by former Chairwoman Mary von Conta concerning a previous application to DEEP for work at the subject property; and
 - (c) DEEP's updated guidance in response to the HMC request for confirmation of the HMC's understanding of littoral rights principles.

Libby Tritschler stated her disagreement with the third finding.

Mark Foster moved and Harry French seconded to approve the HMC's findings discussed above. Motion passed unanimously.

ADJOURNMENT: There being no further business to come before the Commission, Mark Foster **moved**, and Jac Herschler **seconded** to adjourn at 6:12 p.m. **Motion passed unanimously.**

The audio recording can be found here:

Respectfully submitted,

Betty Gabriel