

Present: Frank Fenner, Warren Doty, Riggs Parker, Tim Carroll, Jonathan Revere, Lynn C. Murphy II, Lynn C. Murphy, Susan Murphy, Dennis Jason, Richard Williams, Jen Clark, Jeff Lynch, Chuck Hodgkinson, Tom Osmers, Charlie Shipway, Jonathan Mayhew, Matt Mayhew, Julie Rappaport, Norbert, three others.

Called to order at 7:30 PM

Minutes of May 20th 2008 approved with two changes.

Peaked Hill

Mr. Doty reported on his May 30th meeting with the USCG at Peaked Hill. The site meeting was to discuss landscaping a site plan. The fenced enclosure would be moved back 17 feet, be 8 feet tall and made up of chain link with green plastic panel strips to look like a solid wall. There will be no barbwire. The antenna tower will be a monopole with no guy wires, all cabling will be run inside the pole, and there will be two triangular antenna platforms on the pole. The antennas will be 8 foot whip style with the exception of the RDF at the top. The USCG will pave 1,600 feet of 12 foot wide road, above and below the newly paved section at Stone's.

Mr. Doty proposed to close off the top of Peaked Hill to vehicles, grass it over and make additional parking on the Land Bank property. He reports that he and Mr. Carroll are working with the MV Land Bank on a site plan.

Mr. Fenner said that before the lease is signed, he wants to talk about the road and the USCG paying for the cost of moving the county radios to the new hut.

7:40 PM Public Hearing on Establishing Two Off Shore Aquaculture Zones

Rick Carney presented a proposal for the town to designate two off shore aquaculture zones that would total 25 acres for the growing of mussels in cooperation with the Marine Biological Laboratory under a NOAA grant. They hope to have two demonstration farms in place for 2009. A 10 acre site would be centered at Lat: 41-17-17.94813 Long: 70-52-26.67810. A 15 acre site would be centered at Lat: 41-24-48.24578 Long: 70-43-54.37011. Mr. Carney said that they were pursuing another two sites as well, one in Aquinnah adjacent to the Chilmark site and another in West Tisbury near the other Chilmark site.

The marketability and quality of the mussels was discussed. It was expected to have high quality product in only 12 to 15 months of farming. There was discussion about the controversy on ocean fin fish farming. The Selectmen recognized a letter received from Food Wise in support of the bivalve aquaculture project and opposed to any fin fish farming. There was discussion about local lobster boats being employed to service the farms. Mr. Doty discussed a June 18th visit to Salem and a July 15th visit to UNH to see

how these types of farms work. It was said that lobstermen can continue to set their gear in the same areas around the mussel farms.

Due to the cost of fuel, the North Shore sites are exciting prospects to the fishermen. It was agreed that sites were needed that would avoid conflict with other area users. There was a discussion. Dennis Jason stated his support for the project and questioned the locations. He was concerned that mobile gear fishermen (draggers) would have the available area to fish reduced by these sites. It was determined that the proposed site was below the "880" line, but Mr. Jason still asked to see it pushed further south. This could work for the Chilmark site, but it would separate it from the Aquinnah site to the north instead of clustering the two together for safety and convenience.

The Selectmen closed the public hearing at 8:18 PM, took the comments under advisement and agreed to reconvene in two weeks after posting the maps at Menemsha Texaco and seeking further input from fishermen. The deadline for comments was set as June 13th.

Commercial Moorings

Mr. Fenner opened the discussion with an introduction of the town attorney's opinion letter dated March 28th 2008. He said that the town and the commercial mooring owners should go to the Massachusetts DEP to seek clarification of the regulations. He said that he had no problem with the current uses of commercial mooring in Chilmark and said that they provide a needed service to the public. Mr. Fenner said that the situation here is not the same as was the case in Chatham. He said the town should write a letter to the DEP asking for direction. Mr. Fenner said that he sees no need to change things unless they tell us to.

Mr. Parker agreed with Mr. Fenner that the commercial moorings have been a service in the past. He said that it was a matter of legal questions under state law. Mr. Parker said that the Inspector General's opinion of how to use a waiting list is in conflict with what we have been doing. Mr. Parker would like two questions resolved. One is that the opinion does not appear to prohibit the commercial tending of private moorings and two that the regulation does appear to prohibit commercial holding of the mooring permits. Mr. Parker said that nevertheless, not having those mooring permits in their pocket will change their businesses. Mr. Parker said we should write a letter to the DEP to ask the question, to see if the town can issue multiple mooring permits to commercial operators, with the cooperation of the commercial people involved.

Mr. Doty said that he does not see the argument clearly that the town is doing anything in violation of the law. Mr. Doty did say that he sees two state agencies saying conflicting things. He said that it was obvious that the Inspector General's office was annoyed with the egregious violations that occurred on the cape. Mr. Doty said that we need clarification, but that the town appears to be operating within the fuzzy definition of the DEP rules.

It was discussed how the town gives out 200 mooring permits a year, 160 of them to individuals and 40 to two commercial operators that have been in business providing this service for longer than the town has been in control of the mooring permits. Mr. Doty said it was a good idea to draft a letter through Legal Counsel.

Mr. Fenner recognized that some people that have been renting from the commercial operators over the past 5 to 10 years should be honored in some way. He asked for that information to help draft a letter to the DEP. Mr. Doty suggested that people from the commercial moorings as of 1998 be placed on the mooring waiting list as of that date. Mr. Parker said that whatever we do for these people is effecting those people on the waiting list already.

Jonathan Mayhew said that Mr. John Furst made it to the top of the mooring waiting list in 2006 and because of statements made by town officials, he did not avail himself of a new permit of his own at that time. Mr. Mayhew asked the Selectmen to not suggest answers to the questions in the letter to the DEP.

Dennis Jason said that he would not question the DEP too much as only one part of the Inspector General's opinion was submitted for clarification. He said that other Massachusetts towns do things differently. Mr. Doty said that he did not care how other towns do this, he would just like clarification from the DEP that Chilmark can keep doing what it has been doing.

Susan Murphy read a prepared statement.

The commercial use of the waters of the Commonwealth of Massachusetts pre-dates recreational boating by hundreds of years. Lynn's commercial use of these moorings pre-dates the permitting system in the town. Every Harbormaster since Herbert Flanders has sanctioned his use of these moorings - historically to get boats away from the dock that were broken down and in the way; in some years to keep boats that were for sale; more recently to berth transient boaters who came to town with a boat but had no mooring on which to lay. In 1998 he incorporated Menemsha Boatworks, a Massachusetts corporation that rents boats to summer visitors who wish to have access to the waters of the Commonwealth. Those rental boats laid on those moorings while they were being used.

His most recent use of the moorings has been to handle the overflow of people on the waiting list for moorings. The harbormaster refers people to us when they have a boat and no place to put it. We advise everyone to make sure his name is on the waiting list for a mooring. The only "assigning" of a mooring we might do is accommodate a customer from one year to the next until he gets his own mooring permit.

In 2005 the mooring assignment committee, which then consisted of Riggs Parker, Alex Preston, and Dennis Jason, told us that, because we rent these moorings we needed to have them federally permitted by the US Army Corps of Engineers. We applied to the Corps of Engineers last year for the General Programmic Permit, Category II, and are waiting to hear from them regarding our permits. We engaged the services of civil engineer Richard L. Barbini of Schofield, Barbini and Hoehn to help us navigate the permitting process with the Army Corps.

Chilmark town counsel concedes that the situation in Harwich is nothing like what happens here in Chilmark. He says the circumstances in Chatham may appear to be somewhat like Chilmark's, but town counsel failed to cite one paragraph of the Inspector General's Chatham opinion that does pertain to our situation:

p.7 "Unless S9.07 (2) (d) is interpreted to mean that private entities can assign moorings to their patrons only if they are at the top of a publicly controlled waiting list it stands in contradiction to the broader provisions of c.91 s 10A and 9.07 (2) (a)."

The first person on Chilmark's mooring waiting list is Malcolm Walsh. He has used one of our mooring permits since 2005. There are more people on the waiting list who currently use our moorings. If you like, I can list all of the people whom the harbormaster has referred to us, who now have permits of their own - people who used our permits while waiting for their names to get to the top of the mooring waiting list.

Chilmark's 200 mooring cap is arbitrary. Its implementation has created a feeding frenzy to get on the waiting list, which virtually anyone from anywhere in Massachusetts can do, regardless of one's need for a mooring. In fact, there are many people who now have mooring permits but have no boats, and this has created a bizarre system of swapping mooring stickers among those who have permits but no boats, with those who have boats but no permits.

*We do not advertise that we rent moorings, nor do we seek to use these moorings for this sole purpose. Indeed, we have pre-empted our use for these moorings for our boat rental business and our marine repair business **IN ORDER TO ACCOMMODATE THE WISHES OF THE HARBORMASTER** in providing mooring space to those on the waiting list.*

Here is where we take issue with town counsel's opinion:

*"Multiple mooring permits may be issued to an individual and utilized by the permit holder or immediate family members for **PERSONAL** use..."*

By "personal use" does he mean personal business use? If not, this constitutes changing the use of those moorings that pre-date any regulations. Historically they have been used commercially. The commercial use of those moorings has provided a service to the town that otherwise would not exist. He can say that no one is entitled to a mooring, and that all moorings become "new and vacant" at the end of the year, and that the harbormaster is not necessarily obligated to reassign mooring permits to the previous year's permit holders, but he must take into consideration that the commercial use of the waters of the Commonwealth is historic, and that the existence of a waiting list for mooring permits, one to which absolutely anyone can add one's name, should not trump the commercial use of the moorings that have been used with the approval of many harbormasters for more than fifty years.

Nowhere in either of the Inspector General's opinions does he state that there should be no commercial use of moorings. We satisfy the Inspector General's condition that the harbormaster's waiting list is used to fill our moorings.

Finally, I want to address the issue of using a town asset for personal gain. Since the Inspector General's issuance of the Chatham opinion in December of 2006, the harbormaster has warned us that this is the core issue here - that we are using a town asset for personal gain. Lynn has used moorings in a commercial manner for more than fifty years. But calling making a living "personal gain" somehow demeans the act of working for a living.

Explain how our use of this town asset (in this case, a mooring permit) is somehow different from the town's granting leases to private individuals for lots of town real estate. The gas station leases a lot from the town. Both fish markets are on town leased lots. Every other lot around the harbor controlled by the town is leased to a commercial fisherman. Although it may be argued that all of Dutcher Dock is deed restricted to support commercial fishing, both the gas station and the fish markets would be out of business in one day if they only sold fuel to commercial fishermen, or only bought and sold the catches of local fishermen. The town charges \$25 annually to the lease holders who are commercial fishermen. The town charges \$900 annually to both the gas station and the fish markets. No one would argue that these figures represent such a variance from the going real estate fair market rates that they constitute a subsidy by the town for these commercial enterprises. Are these businesses not using town assets for personal gain? Our mooring fees have increased tenfold in the last ten years, from \$10 per permit to \$100 per permit. We actually pay the town more in fees than does the gas station or either fish market.

The Inspector General found fault in both Chatham and Harwich regarding gross abuses of mooring assignments. Is the Board of Selectmen so quick to pass judgment on one of the oldest businesses in town without a closer look as to what its business practices actually are?

We have complied with every single request that has been made by the harbor master in order to adhere to the rules and regulations of the waterways of this town. The Board of Selectmen has been very pro-active in seeking an opinion from town counsel regarding town regulations pertaining to commercial moorings. Instead of taking these moorings from us, you should be vigorously supporting this small but still vital commercial enterprise in Chilmark, just as you support other town businesses, one that has continuously provided marine services to the boating public for more than fifty years.

Mr. Parker expressed concern that permit stickers were being "traded" and asked that if be investigated by the Harbor Master.

Mr. Parker moved and Mr. Doty seconded a motion to ask Town Counsel to prepare an inquiry to the DEP to see if our current system is proper and to keep the current system in place in the mean time. SO VOTED: THREE AYES.

Mr. Mayhew asked about issuing a one year mooring permit to the next person on the waiting list when a current permittee was not going to use his mooring for the allowed 1 year grace period. It was discussed that it was difficult to award a mooring permit and then take it away.

Mr. Fenner said that there would be a public hearing on the waterway rules & regulations on June 17th 2008. Charlie Shipway asked who could get a mooring permit. Mr. Parker said that he thought a Massachusetts's resident was the only restriction. Mr. Jason discussed his thoughts on what a Massachusetts resident was. He ended saying that it was someone that owned or rented a home in the commonwealth. Mr. Shipway asked why the mooring permits were capped at 200. Mr. Jason said that it was an arbitrary number from the 2000-2001 period. He mentioned access troubles. Mr. Shipway said

that larger boats take up more space and he asked if any regulations would limit large boats in Quitsa Pond. Mr. Jason and Mr. Parker said no. Mr. Doty said that the town could consider a size restriction on boats moored in Quitsa Pond. Mr. Doty said he would not support more than 200 moorings.

Middle Line Road

The Selectmen reviewed the draft RFP dated June 2nd 2008. They amended Page 11 paragraph 3 section VII. The team was hoping for a June 13th release date, June 30th site meeting, with questions due by July 14th and a submission deadline of August 1st. The Selectmen approved the amended draft with Mr. Parker moving and Mr. Doty seconding the motion. SO VOTED: Three Ayes.

Appointments

Town Clerk

Mr. Fenner introduced the reappointment of the Town Clerk. Mr. Parker said that the board should not reappoint. Mr. Fenner agreed. Mr. Doty said no also. Mr. Doty asked what Mr. Carroll recommended. Mr. Carroll said that this has been in the Selectmen's hands for the past three years. Mr. Parker moved and Mr. Doty seconded a motion to not reappoint Margaret T. Orlando as Town Clerk with an end of employment date of June 30th 2008. SO VOTED: Three Ayes.

Gas Inspector & Plumbing Inspector

Mr. Fenner reported that he had no problem with the reappointment of George Apostolides. Mr. Doty moved and Mr. Parker seconded a motion to reappoint George Apostolides Gas Inspector & Plumbing Inspector for the ensuing year. SO VOTED: Three Ayes.

Committee Vacancies

Mr. Fenner tabled these until June 17th 2008.

Beach

Richard Williams presented a temporary revision to the Beach Superintendent's position description dated 1985 until a completely new description can be written with the cooperation of the Beach Committee by this fall. Mr. Parker moved and Mr. Doty seconded a motion to approve the temporary position description. SO VOTED: Three Ayes.

Beach Appointments

Mr. Doty moved and Mr. Parker seconded a motion to appoint the list of staff provided by the Beach Superintendent at the last meeting. SO VOTED: Three Ayes.

Community Center

Mrs. Lombardi requested that the Drum Workshop scheduled for June 14th be granted free use for their fundraiser. Mr. Parker moved and Mr. Doty seconded a motion to grant free use under the usual rules. SO VOTED: Three Ayes.

MIIA Staff Training

Mr. Carroll reported on the training sessions held May 29th. The staff reviews of the training were overwhelmingly positive.

EXECUTIVE SESSION – Mr. Parker asked that the board go into Executive Session to discuss litigation and land acquisition and not return to regular session.

Parker – Aye Doty – Aye Fenner – Aye 9:35 PM

Meeting adjourned at 9:50 PM.

APPROVED: June 17th 2008