



APPROVED

## KITTERY PORT AUTHORITY

March 6, 2014 Meeting Minutes  
Council Chambers, Town Hall

Members Present: Bob Melanson, Chairman, Barry Bush, Ray Grenier, Steve Lawrence, Kelly Philbrook, Dan Arbo (7:10 p.m.)  
Members Absent: Tom Smith  
Staff: Harbormaster Mike Blake

The meeting of March 6, 2014 was called to order at 6:00 p.m.

1. Pledge of Allegiance
2. Minutes  
Mr. Grenier moved to approve the minutes of February 6, 2014 as submitted  
Ms. Philbrook seconded  
Motion carried by all members present
3. Public Segment  
Dick Draper, Kittery Point: Requested limitations on storing traps on floats be removed from the rules and regulations. Mr. Melanson noted this will be discussed later in the meeting.  
Milton Hall: Noted the D'Amico application could not initially be found in the Planning Department, and asked about the ASA charges in addition to the application fees; fairness of usage fee and collection of user fees by the Harbormaster, and recommended it be dropped; mooring fees have gone up and now there's an additional usage fee.
4. Election of Officers- Vice Chair  
Mr. Lawrence nominated Barry Bush as Vice Chairman  
Mr. Grenier seconded  
Mr. Bush accepted the nomination  
Motion carried by all members present
5. Harbor Master Report & Expense/Income YTD  
Expenses to date total 73.7% of budget  
Income totals \$34,000, or 29%. The bulk of income will be received prior to April 15.  
Council has requested the FY15 budget not exceed 1.5%. Proposed budget shows \$118,000 in expenses, with revenue of \$143,000.  
  
CIP Projects: Further meetings will be held (see Item 7)  
Traip Float SHIP project application has been submitted
  - ♦ Bathroom door and lock replacement at Harbormaster shack, estimate cost of \$680 for materials and labor.  
Mr. Grenier moved to authorize replacement of the bathroom door at the Harbormaster shack  
Mr. Bush seconded  
Motion carried by all members present
  - ♦ Marine Patrol boat. No security cameras provided as agreed (cost approximately \$1500).  
Consider using the float space for dinghies or charge DMR a fee for taking the space. Members agreed to charge a fee and retain the presence of the patrol boat.

Ms. Philbrook moved to charge a berthing fee of \$1,000 to the Department of Marine Resources for the upcoming season.

Mr. Grenier seconded

Motion carried by all members present

Mr. Melanson will contact Col. Fessenden at the DMR.

- ♦ New Harbormaster boat: The Eastern is an open boat where the electronics and charts are exposed to rain and salt water spray; the motor is underpowered for towing or rapid, emergency response; not suitable for patrolling outside of the immediate harbor, making trips to the Shoals and further along the coast weather dependent.  
Located a 2004, 25' Seapro Walkaround, 250 hp Yamaha four-stroke outboard, providing safer, more powerful use in rough conditions. Gear, charts and paperwork can be safely stowed. This boat has had only one owner, with no modifications, and includes a trailer with low mileage. The CIP has a \$36,000 budget for boat replacement. The Seapro costs \$22,000; the Eastern could be sold for \$8-\$10,000 resulting in a net expense of \$12-\$14,000. Eliot could share the expenses of maintenance and fuel, and the Eliot boat maintenance fund of \$6,000 would be added to the KPA boat maintenance fund. Requests approval to purchase the Seapro contingent upon engine evaluation, sea trial, and electronics and systems check. Other Seapro's average \$28,000; this is a local boat from Newington. Tom Smith viewed the boat and thought it would be a good replacement. Ms. Philbrook suggested looking further for a more appropriate boat. Mr. Lawrence suggested retaining the Eastern for use by the Assistant Harbormasters, given the larger patrolling area.  
Mr. Grenier moved to have Tom Smith, Steve Lawrence and the Harbormaster evaluate the Seapro and conduct the sea trials, and return to the KPA with a recommendation, no later than the May KPA meeting.  
Mr. Bush seconded  
Motion carried by all members present

- ♦ Kittery Harbormaster website: [www.kitteryharbormaster.com](http://www.kitteryharbormaster.com)  
Links to weather conditions, Town of Kittery website, updates and information for the boating public. Thanks to Councilor Denault for developing with the Harbormaster. Advertising could be included on the site. Cost was \$300 to develop and \$10 per month.

#### 6. Marinas Piers & Floats -

- ♦ Conduct Public Hearing Frisbee Holdings, LLC, 88 Pepperrell Road, Map 27, Lot 49 in the LB Zone. Proposal to add a 8x50 foot seasonal float attached to the existing 6x72 foot fixed pier, gangway and float to provide deeper water access. Agent is Zach Taylor of Riverside Pickering Marine. Public Hearing opened at 6:48 p.m.  
Zachary Taylor, Riverside Pickering Marine, summarized the application, explaining that low tides negatively impact the ferry service schedule. It was estimated the boat could bottom-out 10-20% of the time during the upcoming season. The proposed extension would provide deep water access at all times.  
Milton Hall: Read a letter from former Harbormaster Bion Pike (Attachment 1).  
There was no further testimony.  
The public hearing closed at 6:55 p.m.  
Ms. Philbrook stated she believes the area is too congested, making the use of the hoist system nearly impossible, the proposed length is too long and believes it will be, overall, a hazard to navigation in the area.  
Mr. Melanson concurred with Bion Pike and Ms. Philbrook.

Mr. Taylor stated the mooring holder most impacted stated he would be willing to move his mooring somewhat. He was not able to reach Mr. Tobey about his mooring.

Ms. Philbrook stated Mr. Tobey told her he does not want to move his mooring more than a few feet. Harbormaster Blake stated moving a mooring a few feet may not be an issue, but more than that impacts additional mooring holders down the line. If one person is moved from the area, one mooring site must be removed from the wait list. Discussion followed regarding the number of mooring sites impacted in the area. Mr. Bush noted the public float would be available if needed. Mr. Melanson noted the proposed float encroaches on Town property and would require a letter of no objection from the Town Council. Mr. Lawrence stated he spoke with a number of individuals concerned about congestion and lack of maneuverability in the area. He read from the lease: *Captain & Pattys LLC will be responsible for dock and gangway insurance for tour boat patrons only and will not be responsible for restaurant guests or any other persons using the dock.* He does not believe this agreement can be upheld. Also, if you have to move one mooring it creates a domino effect, and believes this would create a hazard. Mr. Taylor suggested the eastern side of the proposed pier could be restricted in deed language. Mr. Lawrence did not believe this could be enforced. There was no further comment. Ms. Philbrook read the Findings of Fact:

#### G. Performance Standards

1. All applications for permits under this section must comply wholly with the requirements of the Kittery Land Use and Development Code, Chapter 16.3.2.17 (Shoreland Overlay Zone), and Title 38 M.R.S.A., and any other applicable federal or state requirements. These requirements apply to all development within 250 feet, horizontal distance, of the normal high water mark of any river or saltwater body. These requirements also apply to any structure built on, over, or abutting a dock wharf or pier, or any other structure extending beyond the normal high water mark of a water body or within a coastal wetland shown on the Official Shoreland Zoning Map.

##### Findings:

*The proposed application does not include any upland development within 250 feet of the normal high water mark, and there will be no structure built on, over, or abutting the proposed pier. The Kittery Port Authority concludes Performance Standard #1 is not applicable to the current application of Frisbee Holdings LLC.*

Vote 6 support; 0 against; 0 abstaining

2. The construction of any piers, docks, wharves, and other structures and uses extending over or beyond the normal high water mark of a water body or within a wetland must comply with all applicable requirements of the Kittery Land Use and Development Code.

##### Findings:

*The proposed application does not include any upland development, and the proposed structure is not in a wetland area. Title 16, Article XV and Title 16.11 of the Land Use and Development Code requires:*

*Article XV.F. The facility must be located so as to minimize adverse effects on fisheries;*

*- the proposed addition increases the length of the pier to 212 feet into Pepperrell Cove and poses a potential hazard to navigation;*

*Article XV.G. The facility must be a water dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing conditions, use and character of the area.*

*- Approval was granted on April 5, 2012 for a 6' x 72' fixed pier with a 4' x 50' ramp, and a 8' x 50' float. This existing structure provides sufficient docking facilities for the intended use. When necessary, the Frisbee Town Pier may be utilized for ferry docking, as in prior years. Extending the structures into Pepperrell Cove would impact the safe navigation of pleasure and commercial craft.*

*- The proposed extension of the structure would require the relocation of up to three existing moorings, negatively impacting future mooring holders currently awaiting placement.*

*Article XV.K. Applicants proposing any construction or fill activities in a waterway or wetland requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit issue.*

Vote 6 support; 0 against; 0 abstaining

3. Non-commercial private piers.

Findings:

*The proposed application is not a private pier. The Kittery Port Authority concludes this is not applicable.*

Vote 6 support; 0 against; 0 abstaining

a. Commercial piers shall be limited to the minimum size necessary to accomplish their purpose. They shall not extend beyond low water mark except with credible proof by the applicant that the extension is necessary for the water-dependent use of the pier. The maximum height of the pier deck shall not exceed six (6) feet above mean high water mark and the handrails shall not exceed 42", without a showing of necessity and specific approval of the Port Authority. Documentation required for an application for a commercial pier, in addition to all other requirements of these Rules and Regulations, shall set forth credible proof of the commercial usage.

Findings:

*3a. The proposal is for a commercial pier. Title 16, Article XV and Title 16.11 of the Land Use and Development Code requires:*

*Article XV.F. The facility must be located so as to minimize adverse effects on fisheries;*

*- The proposed addition increases the length of the pier to 212 feet into Pepperrell Cove and poses a potential hazard to navigation;*

*Article XV.G. The facility must be a water dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing conditions, use and character of the area.*

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*- The proposed extension of the structure would require the relocation of up to three existing moorings, negatively impacting future mooring holders currently awaiting placement.*

Vote 6 support; 0 against; 0 abstaining

4. Piers, wharves, and pilings shall be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high water line and not owned or controlled by the applicant unless a letter of permission is granted by abutting or other controlling property owner. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, which does not interfere with navigation, is practical and is consistent with the intent of these regulations, that setback may be authorized by the Port Authority if the applicant agrees to record any ensuing permit (which will have that agreement as a condition) and the abutters' letters of no objection, with the Registrar of Deeds, or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property in the Town of Kittery.

Findings:

*The proposed addition of an 8-foot x 50-foot float encroaches onto Town property (Frisbee Town Pier) and, as such, may pose a hazard to navigation. The Port Authority does not support the granting of a letter of 'no objection' by the Town Council.*

Vote 6 support; 0 against; 0 abstaining

Ms. Philbrook moved the Kittery Port Authority accept the Findings and Conditions as read for the application of Frisbee Holdings LLC, 88 Pepperrell Road, Map 27, Lot 49 in the LB Zone, to add a 8x50-foot seasonal float attached to an existing 172- foot pier, gangway and float structure, to provide deeper water access. Based on these findings, the application is denied.

Mr. Grenier seconded

Motion carried unanimously; Vote 6 support; 0 against; 0 abstaining

The applicant has a right of appeal according to the Kittery Port Authority Rules and Regulations, Section VII.B and VII.C.

- ♦ Traip Launch Float Project for the KPA- Replace three aging floats with new configuration funded by MDOT SHIP Grant. Presented by the Harbormaster. Schedule a Public Hearing.

Harbormaster Blake summarized the application to replace 3, 10'x10' floats with 3, 8'x20' floats which will increase the safety of the launch area as boats will not have to circle to await removal, provide room to add and remove gear from boats, and provides better access for dinghies utilized by fishermen. The Town Council voted in favor of the SHIP grant to fund the project with a 50% Town match, and all necessary permit applications have been submitted to the state and the ACOE. The KPA now needs to schedule a public hearing.

Ms. Philbrook asked if the application should have been signed by the Town Manager, not the Harbormaster. Mr. Melanson will follow-up with the Town Manager for correction if needed.

Ms. Philbrook moved to accept the application for the Traip Launch Float project and schedule a public hearing.

Mr. Lawrence seconded

Motion carried unanimously

7. Peter Walsh provided a Pepperrell Pier Project Status report (Attachment 2)

Closure of Bellamy Lane for trench work will be noticed on the Harbormaster website and the Harbormaster will prepare notice signage to be placed on Bellamy Lane. Mr. D'Amico has been notified of the closure.

- Dick Draper asked if the existing float and ramp could remain on the pier rather than hauling equipment via the new ramp. Ms. Philbrook noted commercial use of the new ramp would negatively impact any transient boats tied to the pier. Peter Walsh will contact the designer to determine if the old float and ramp can remain in some way. This will be further discussed at the April meeting.
- Reserved dinghy space reserved for commercial use. Mr. Draper and the Harbormaster will develop a plan for reserving dinghy space for commercial use.

- ♦ Wave Attenuation Project-Chair

- ♦ CIP 2015 Requests include:

- Outboard motor for Harbormaster skiff - \$5,600
- Government Street ramp rails and float - \$12,500
- Ramp and float repair and replacements, General - \$12,500
- Frisbee Wharf and Pepperrell Pier improvements following project completion - \$12,500
- Kayak and canoe launch at Rice Avenue - \$12,500
- JPJ Facilities - \$12,500
- Harbormaster boat

Some items in the CIP have been moved to the BIG project, including re-paving at Pepperrell Pier.

♦ Shore and Harbor Plan Status

Revisions to the Plan have been completed and is under review by the Town Manager. Planning Board and Council review will follow.

8. Moorings- Isles of Shoals, Tidal Moorings

- Isles of Shoals - According to the ACOE, no law addresses lease holders having rights to mooring sites. The KPA Rules and Regulations would need to be changed to eliminate reference to lease holders, though existing mooring holders would be grandfathered. Mr. Hall explained the land and lease holder designations came about in order to keep the area open. Ms. Philbrook moved to continue review of moorings at the Isles of Shoals to a future meeting. Mr. Lawrence seconded  
Motion carried unanimously
  
- Tidal Moorings - Harbormaster Blake is offering 'mud moorings' to individuals who are willing to take a chance rather than trailering their boat in for each use. The minimum fee is \$150. It was agreed the Harbormaster will handle these moorings on a case by case basis.

9. Pier Hoist- Mr. Lawrence suggested letting this rest for now.

10. New & Old Business

- Rules and Regulations:
  - ♦ To be consistent with \$25 fine in Section X (approved 12/6/12):  
Ms. Philbrook moved to change water harbor usage fee fine in Section II.H from of \$50 to \$25 to match the usage fee in Section X.  
Mr. Bush seconded  
Motion carried unanimously
  
  - ♦ Storage of personal property on town piers, floats and landings has been included in the Rules and Regulations as approved at the April 5, 2012 Port Authority Public Hearing.
  
- Port Authority Review of Harbormaster:  
Ms. Philbrook and Mr. Bush will develop a review questionnaire for an Executive Session in May.
  
- Government Street Railings - Harbormaster Blake will get a quote for repairs.
  
- Mr. Melanson noted he will not be in attendance at the April meeting. Mr. Bush will be the Chair.

11. Adjourn

Ms. Philbrook moved to adjourn  
Mr. Grenier seconded  
Motion carried unanimously

The Kittery Port Authority meeting of March 6, 2014 adjourned at 8:30 p.m.  
Submitted by Jan Fisk, March 10, 2014

Attachment 1

*Pls read on  
KPA Public Comment*

Bion Pike  
(Former Kittery Harbormaster)  
112 Clay Hill Rd.  
Cape Neddick, ME 03902  
February 26, 2014

RECEIVED  
FEB 27 2014

Kittery Port Authority  
200 Rogers Rd,  
Kittery, ME 03904

To the Members of the Kittery Port Authority,

I am writing to express concern regarding the request to expand the pier and float system belonging to Al D'Amico located in Pepperrell Cove, Kittery Point, Maine. It is my opinion that such an expansion is inappropriate and should not be approved by the Kittery Port Authority (KPA). I was serving as Kittery Harbormaster during the initial permitting phase of this project.

At the time of Mr. D'Amico's original application for a pier and floats adjacent to his patio restaurant I determined that the requested pier and floats would extend into the existing mooring field in Pepperrell Cove and interfere with several moorings. Assuming that those same moorings are still in place the expansion would again interfere with existing moorings and the removal of the same would be necessary. Removal of a single mooring in a harbor with a mooring waitlist that extends beyond a decade would seem inappropriate. Even if a new location for the removed moorings is identified a strong argument can be made that any new spots should be used to satisfy persons on the waitlist for a mooring spot.

The KPA also approved a transient boating facility at the town owned Pepperrell Cove pier funded by a grant through US Fish and Wildlife with matching funds from Kittery residents. This new facility will be located immediately next to the D'Amico property and in fact both share parking area. The stated purpose of this facility is to provide tie-up for transient boaters to access the amenities in and around Pepperrell Cove. The store and restaurant featured prominently in the grant application and figured as one of the main draws to the area. Inspection of the application will reveal a photo of the store, clearly a vital part of the submission for funding.

Any argument that a pier in front of the D'Amico property was or is necessary for the financial survival of the store and restaurant rings hollow. In fact it would seem an unnecessary and fiscally wasteful given that the town already approved and funded a facility that Mr. D'Amico's customers would have access too at zero expense to himself or his business. There is no need for this expansion.

I would entreat the KPA to carefully consider whether crowding out mooring holders and potential mooring holders for a pier for which there is no clear need is appropriate and best for the Kittery boating community.

Respectfully,  
Bion Pike  
Mooring Holder

Attachment 2



## ***Town of Kittery, Maine***

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 439-0333 Fax: (207) 439-6118

March 6th, 2014

### **Department of Public Works**

#### **Re: Pepperrell Pier Improvement – Project Status**

##### **January:**

- Town Manager signed the construction contract Jan 28<sup>th</sup> with Prock Marine, of Rockland, Me
- A pre-construction meeting was held at Kittery Town Hall with the Maine DOT, Town of Kittery; Town Manager, Public Works, Port Authority, Harbormaster, Water District and Baker - Project Engineer and Prock Marine and associated subcontractors.

##### **February:**

- Prock Marine ordered construction materials Pepperrell pier improvements: gangway, timber and steel piles, timber and material for pier and floats. Materials are being delivered to Prock's facility in Rockland, Me.
- Construction of the gangway and floats will take place at the marine yard

##### **March :**

- A pre-construction Utilities meeting was held Mar 4<sup>th</sup> at Pepperrell pier with Project Engineer, Kittery Public Works, Port Authority, Harbormaster, the Water District and Central Maine Power and Comcast. Also Prock Marine, Regan Electric and Yates Electric Companies.
- The Bellamy telephone pole easement was signed.
- Depending on the weather the Bellamy Lane trench work will begin March 17<sup>th</sup>. The trench will carry underground utilities to Harbormaster shack on the Town wharf.
- Bellamy Ln closures can be expected during trenching work. Vehicle access to the Town wharf and piers will be closed during that work.
- Work on Bellamy Lane utilities work is expected to complete around April 1<sup>st</sup> weather permitting!