

**KITTERY PORT AUTHORITY**  
March 3, 2016 Meeting Minutes  
Council Chambers, Town Hall

**Members Present:** Kelly Philbrook, Mark Alesse, Steve Lawrence, Peter Johnson, Bruce Crawford, and Peter Whitman

**Members Absent:** Mark Drummond

**Staff:** Harbormaster Derek Jacobs

Meeting began at 6:00 p.m.

- 1. Call to order**
- 2. Pledge of allegiance**
- 3. Minutes: February 4, 2016**

**Ms. Philbrook moved to approve the minutes of the February 4, 2016 meeting.**

**Mr. Lawrence seconded**

**Motion Carried: 6-0-1 with Mr. Whitman abstaining**

**4. Harbormaster's Report: Derek Jacobs**

**a.) Budget Report**

- Derek said revenues are climbing.
- Derek told Ms. Philbrook he did look into the high water charges at Pepperell Cove she inquired about last month. He said the back flow valve was tested and that charge went onto the bill.

**b.) Mooring renewals**

- Derek noted they are a little of over a third of the way through mooring renewals. The dead line is March 15<sup>th</sup> for the waitlist and April 15<sup>th</sup> for the moorings.

**c.) HMA Training**

- Derek said Harbor Master Association Training is next Wednesday, Thursday and Friday all day in Castine at the Maine Maritime Academy. Mr. Whitman asked if any board members would be interested in attending. Mr. Crawford and Mr. Alesse expressed interest. Derek will be sending out an agenda for the days of training.

**d.) Other**

- Derek sated regarding the time use time spent reports the largest amount of his time is spent on mooring renewals and record keeping. The remainder of his time is spent on administrative duties such as payroll and monthly meeting preparation. Patrol is pretty much nonexistent this time of year. Derek said he currently keeps this information in a journal and inquired how the board would like this time to be kept going forward. Mr. Whitman stated the objective of having Derek keep his time is to see where his time is being allocated and see where it could be reallocated to other more important things. Derek continued that obviously in the summer his time will look very different than it

does now. Mr. Whitman stated that Derek should continue to advise the board of his time on a monthly basis. Derek further stated he will be implementing a log keeping system on the boat as well this summer.

## **5. Chair Report**

Mr. Whitman stated he would like to make people aware they have put together a working group between the KPA, the Navy and the Port Authority of New Hampshire. They held the first meeting today and it was a very productive. The group will meet on a quarterly basis.

Mr. Whitman stated the town council has approved the CIP plan. It appears there will be enough funding to do the lighting and railing project at Pepperell Cove. The board also received funding for paving at Pepperell Cove. These improvements will take place after July 1<sup>st</sup> which will give the board time to discuss how these improvements will occur.

Mr. Whitman announced that the meeting for the town of Kittery comprehensive plan will be held on March 12<sup>th</sup> from 10am-12pm at the community center. He further stated the comprehensive plan is basis for all of the zoning for the town of Kittery. Mr. Alesse stressed the importance of this meeting adding this is the blue print for the town for the next decade and encouraged the public to attend.

### **a.) Discuss the Use of Executive Session**

Mr. Whitman said the board going into executive session should happen very rarely. The board's meetings are public. There are only 9 specific items that cannot be discussed in front of the public. He said the KPA can only go in to an executive session with a motion that cites a statutory citation. Mr. Lawrence noted that an executive session is no longer listed on the agenda.

## **6. Updates**

### **a.) PA & Town Council Working Group update**

Mr. Whitman said the council as well as the KPA have approved going forward with working group. Councilor Thompson and Spiller will be representing the town council. Mr. Whitman said Mr. Lawrence has agreed to be to a part of the group. Mr. Lawrence said he believes the board has to hold a vote.

**Mr. Crawford moved to go forward with the working group and Mr. Lawrence and Mr. Whitman be a part of that group.**

**Mr. Alesse second.**

Mr. Alesse inquired as to what is the goal of the working group. Mr. Whitman responded that he came up with the idea and Chairman Beers agreed that it would be a good idea to have a dialogue between the 2 groups. There was a memo put together a few months ago that outlined some of the issues between the 2 groups. Derek will provide copies of this memo to Mr. Alesse and Mr. Johnson. Ms. Philbrook asked Mr. Whitman if the working group meetings will have agendas, be public and televised. Mr. Whitman responded that the meetings will have agendas and be public but he is unsure if they will be televised.

**Motion Carried: 7-0-0**

**7. Applications**

Mr. La Pierre approached podium seeking approval to move forward on his application for a replacement in kind.

Mr. Whitman commented that there had been a site visit and asked Mr. Lawrence to give his report. Mr. Lawrence stated the pier replacement will be an in kind replacement and there's no issue with that. However, given that the piles were done prior to getting approval he would like all 7 board members to perform a site walk to be sure the piles are matching up with the old ones.

Mr. Johnson commented that he was surprised to see that the piles were driven the second week in December however the permit is date January 20<sup>th</sup>.

All members of the board were in agreement to do a site walk at 3pm on Monday March 7<sup>th</sup>.

Mr. Whitman added this will be a public site walk.

**8. Appeal**

**a.) Suzanne Ilsley Mooring #717**

Mr. Whitman said this appeal was to be heard last month but upon further review of the appeal the KPA rules state that the appeal must be made within 30 days of the harbor master's written decision. Mr. Whitman referred to page 28 of the rules and regulations which deals with appeals. The appeal was not heard last month since Derek had not done the written appeal letter. Derek did issue the letter however the letter wasn't dated. Derek did provide an email addressed to attorney Bedard dated February 16<sup>th</sup>. Mr. Whitman asked with Mr. Bedard's approval they will use that date moving forward. Mr. Whitman stated he did speak with attorney McEachern about the appeal but he was conflicted out and there is no money in the budget for outside council. The board will be dealing with this matter themselves.

Attorney Patrick Bedard approached the podium as representative for the owners of the property. Attorney Bedard stated the owners inherited the property a number of years ago from their dad. Their family has owned this property probably 50 to 60 years. Attorney Bedard held up a photograph of the property. The owner purchased the water access property around 1982. Attorney Bedard said the issue at hand is whether this is a riparian mooring. He stated the mooring permit was issued in 1982. There are not a lot of records from the town. Attorney Bedard said he met with Derek and Derek explained the records aren't kept by property ownership or by lot. Derek was not able to locate this application. Attorney Bedard stated that his presumption would be it's a riparian mooring because it goes with the land. Attorney Bedard asked Derek what were the rules that were in effect in 1988. Derek provided Mr. Bedard with the 1976 rules and regulations. The 1976 KPA rules and regulations do not say anything about riparian moorings. Attorney Bedard said a mooring would simply be identified as a mooring nothing else. Attorney Bedard continued that the rules changed in 1989 however the rules still don't include riparian moorings Attorney Bedard posed the question to the board what has the town done about transferring moorings

since 1988. Attorney Bedard pointed out that he has pulled 10 deeds of properties that have now transferred moorings since April 1, 1988. Attorney Bedard said if those properties are treated as riparian than harbor masters in the past have treated any mooring that goes with a piece of land as riparian. Attorney Bedard stated Suzanne and her Dad's position has always been this mooring is riparian. Attorney Bedard continued Suzanne and her sister want to sell the land with the mooring that's transferrable.

Attorney Bedard continued the 2<sup>nd</sup> part of his argument is simpler, which is a mooring is a marine related structure. The pitch to the board is if this doesn't get granted with the first argument is, if the mooring is treated as a marine related structure the board has the ability to wave the rules. Attorney Bedard stated it doesn't hurt anyone to have this mooring transferred.

Attorney Bedard offered the emails to and from his client, the 2015 Mooring directory and the 1976 KPA Rules and Regulations as part of the record.

Derek responded that he has not been able to find any original applications from 1983. Derek stated that when I made the decision regarding this mooring it was based on his immediate records and the information he had available. Derek said he does have Invoices for that mooring which only go back to 2009. The invoices flip flop from pleasure and commercial. Derek said he printed out a 1998 data base record which is the only complete record he was able to locate. This data base lists what is riparian and what isn't and #717 isn't.

Mr. Crawford asked who has maintained the mooring over the years.

Ms. Ilsley approached the podium and stated she has kept up with all requirements and maintenance for the mooring.

Ms. Philbrook stated she consulted with Mr. Hall on this issue and asked him if he remembered any issues like this in the past. Mr. Hall provided Ms. Philbrook with the minutes from 1997 with a similar case, regarding 104 Pepperell Rd. The former owner had a mooring and the new owner wanted to acquire the mooring. The board had a vote and granted a grandfathered mooring to the owner. Ms. Philbrook stated she feels this is a grandfathered riparian mooring and it should be treated as such.

A board discussion ensued regarding granting a grandfathered riparian mooring to Ms. Ilsley. All board members were in agreement that Ms. Ilsley's should be granted grandfathered riparian right for the mooring she owns.

**Mr. Alesse moved that we reverse the decision under review and grant Suzanne Ilsley of 17 Island Ave Kittery grandfathered riparian mooring rights.**

**Mr. Lawrence seconded.**

**Motion Carried: 7-0-0**

## **9. Schedule Public Hearings**

### **a.) A. Fee Structure change**

Derek reviewed the change in fees for the transient slip, dingy, seasonal and launch fees. Derek stated that transient slip rental fees were \$2.50 per foot for overnight will now be off season float in to June 14th and Labor Day to float out \$40 a night. In season June 15th-Labor day Mon-Wed \$40 a night and Thurs-Sun \$60 a night. The \$15 per receptacle fee and the dock must vacated by 12pm the following day will remain the same.

Derek did look into the transient slip hourly fees. Right now the town only has 30 min tie up free. Derek was thinking \$5 an hour tie up might be a good way to gain some revenue. Derek said this would be at Pepperell Cove transient facility. Ms. Philbrook strongly stated she will not support an hourly tie up fee. Ms. Philbrook said Frisbee Pier cannot service all the boat traffic charging an hourly fee would bring in.

The board held a discussion regarding changing the hourly fee charge.

All board members were in agreement that a change to an hourly fee should not be happen at this time.

Derek reviewed the dinghy seasonal tie up fees. Derek stated the dinghy tie up fee will be raised to \$50 for resident and \$100 for non-resident for all town piers, floats and ramps.

Derek stated the launch fees for Kittery residents will \$50 residents, \$100 for non-residents and senior citizens 65 and over and active duty military will be \$40 payable to town hall. The day launch will be \$5 non-motorized and \$10 for motorized for Kittery residents and \$20 motorized for non-residents.

Mr. Alesse and Mr. Johnson stated they were opposed to raising the dinghy tie up fee for Kittery residents.

All board members were in agreement to put the dinghy tie up fee for residents back down to \$45.

Mr. Johnson inquired regarding the \$100 fee for dinghy removal fee after due notice from the harbor master. Mr. Johnson felt this fee should be raised to \$250.

All board members agreed to raise this fee to \$250. Derek said he will make this change.

**Ms. Philbrook moved to hold public hearing on April 7, 2016 to increase the fees for transient rental moorings, dinghy tie up, launch ramp fees and removal of a dinghy by the harbor master.**

**Mr. Johnson seconded.**

**Motion Carried: 7-0-0**

**b.) Pier use fee language**

Harbor water usage fee

Derek stated under harbor water usage fee the language for pier use fee is new. Derek said placing pier use in this section eliminates moving everything in the rules and regulations to include this. He continued there will be 3 types of pier use permits, industrial commercial

facility fee which will be \$400 a day, non-resident facility fee \$10 a foot seasonal and not for profit facility fee will be no charge.

Derek read the new language and defined the 3 types of pier use permits.

Mr. Johnson inquired if a stipulation should be included for the industrial commercial facility fee so it doesn't discriminate whether it's a resident or non-resident. Mr. Johnson added the board may also want to include if they are putting in equipment that could damage Kittery properties they are responsible for that.

The board agreed to change the language to non-resident commercial facility fee.

Mr. Johnson inquired if this included embarking and disembarking passengers. He added the board needs to look at what the all the potential non-residential commercial facility users could be.

Ms. Philbrook added under harbor water usage fees under section 1b the language all fees shall go to a dedicated KPA account for maintenance should be removed. She said no such account exists. The board was in agreement to strike out this entire section.

Mr. Whitman inquired regarding the harbor water usage fees for vessels in Kittery waters for 14 days or more. The board held discussion on how to change and enforce this rule. The board was in agreement to leave this rule as is for this year.

Ms. Philbrook inquired about 16 d, colored stickers issued for harbor water usage fees for vessels not on town owned moorings. The board agreed to strike the language not on town owned moorings and change it to every vessel that has paid their harbor water use fee will be issued a sticker.

Mr. Whitman asked Derek to amend the language for the harbor water usage section and look into raising the penalty fees for harbor water usage. The board was in agreement this section was not ready to be schedule for public hearing.

## **10. Public Segment**

Mr. Hall approached the podium. He stated that he believes \$50 is the maximum that can be charged for the dinghy removal fee.

Mr. Hall inquired regarding the harbor water usage fee. He asked the board if he has 10 boats how many fees does he have to pay.

Mr. Whitman replied 10 fees would be his interpretation.

Mr. Hall also asked how the board will charge the ships and tugs that use Kittery waters.

Mr. Johnson replied that he believes tug boats are exempt from the fees because they are operating within the federal water way.

Mr. Hall responded that the KPA rules state only Navy.

Mr. Hall said to enforce the harbor water usage fee the harbor masters would have to be on patrol 24 hours a day.

Mr. Whitman agreed that enforcement is a real challenge.

Mr. Hall said that there needs to be some preventative maintenance on the floats up at Traip. Mr. Hall stated the floats haven't been pulled out in about 5 or 6 years. He said the floats need to be pulled out and have skids put on.

Derek said will look into this.

Mr. Hall also wanted to mention the chains are tight on the anchors and they need to be slacked off.

Mr. Hall added the fisher man float out there is also beating on the pilings.

Mr. Hall stated regarding the appeal of the mooring #717 back in 1997 the KPA had put in the rules that the harbor master should declare all prior moorings riparian. Mr. Hall said the lawyer was unable to find anything about this because it didn't exist until 1997.

Darren La Pierre approached the podium. Mr. La Pierre inquired as to why the KPA will not be charging per foot on the transient rentals.

Mr. Whitman responded that the KPA is really trying to encourage people to use the facility.

Mr. La Pierre stated that he thinks raising the fee \$2 a foot would be a better change to the fee.

Mr. La Pierre stated he feels as if his company is being targeted by the harbor water usage fees. He said this is just another tax on the boaters that use his marinas. Mr. La Pierre agreed that he shouldn't have put in the pilings without permission but he is paying the price for that. He stated he is taking the harbor water usage fee personally as he feels owning 2 of the 3 commercial marinas in Kittery he is easy money. Mr. La Pierre said he feel ticketing boaters for violating no wake zones would be more profitable than the harbor water usage fee. Mr. La Pierre said he would be willing to give a spot right on the river to the harbor master for ticketing violators.

## **11. Schedule for future work sessions**

**There will be no work session this month.**

## **12. Board Discussion**

Ms. Philbrook asked Derek if the issue regarding moorings with double names had been resolved. Derek answered that the mooring names will be reverted back to their original names.

Ms. Philbrook stated she agreed with Mr. Whitman that there's plenty of time for discussing the lighting and railing project at Pepperell Cove. She said where there currently are no railings the project will either need to go through the planning board or the KPA will be

holding public comment once the details of that project are made so that people who rely on that pier will have their say. Ms. Philbrook said the board will need a scope of work and plan regarding this project.

Mr. Crawford and Derek will be looking into the scope of work on this project.

Mr. Crawford stated he agreed with Mr. La Pierre regarding the harbor water usage fee. Mr. Crawford said the board needs to be fair in their approach of this fee. Mr. Lawrence stated he was in agreement as well.

### **13. Adjourn**

**Motion to adjourn the meeting was made by Ms. Philbrook**

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**Mr. Johnson seconded.**

Meeting adjourned 8:30 pm