

Rivers and Coastal Waters Commission

MINUTES

May 26, 2021 6 p.m.

Members Present: Marko Melendy (Chair; Marine Resources), Bill Good (Citizen Rep.), Helene Harrower (Commercial Rep.), Doug Niven (Citizen Alt.), Cory Theberge (Vice Chair; Citizen Alt.)

Town Councilors Present: Kathy Wilson

Staff: Dan Devereaux (Coastal Resource Manager), Dan Sylvain (Harbormaster), Fran Smith (Town Clerk)

Town Attorney: Kristin Collins

Attorney for the Commission: Jim Katsiaficas

Guest: appellant Dennis Coyne

Chair Melendy introduced the agenda, moving item #1 to before the Harbormaster Report.

Attorney Katsiaficas brought up the issue of commission jurisdiction over the application before the commission. The RCWC has the authority to hear appeals of decisions by the Harbormaster. What is before the board is a decision by the town clerk. Attorney Collins asked Harbormaster Sylvain if the decision under appeal was his. Sylvain answered that it was and that he had reviewed the decision. The town clerk issued the decision administratively only. Katsiaficas asks if it would be the same document if the decision had been remanded back to him and Sylvain answered in the positive.

Melendy stated that he is comfortable proceeding. Stableford asked if town legal council had been involved. Collins identified herself as town legal council and stated that she had reviewed the case.

1. Mooring Appeal (see supporting documents) (1:54)

- a. Dennis Coyne Four Wheel Drive Rd.

Attorney Katsiaficas clarified that he will be advising the Commission during the hearing while Attorney Collins will be representing the Harbormaster.

Mr. Coyne read a statement laying out the ground for his appeal. (See statement included in packet.) In summary, he and his wife bought a property on Williams Island in West Bath that

included an easement on property in Brunswick that they believe allows a mooring. The Town of Brunswick denied the Coyne's mooring application. The Coyne's believe they should be granted a mooring and are appealing the Harbormaster's decision to deny.

Melendy asked for clarification about the amount of shoreline included in the property. Coyne answered that they own more than 100 feet of shoreline on Williams Island in West Bath and the deeded access is on Four Wheel Drive in Brunswick.

The Town of Brunswick presented their rationale for the decision, with Officer Sylvain answering questions from Attorney Collins. Sylvain explained the history of the mooring and its grandfathered status. Under the current ordinance (updated in February 2015), grandfathering didn't happen unless it was a commercial mooring. Transfer of ownership was discontinued; a new mooring owner has to go through all the steps of completing the application. The mooring under discussion was listed under two different addresses with the same GPS coordinates and last registered by Mr White in 2019. The lot with the easement has over 100 feet of shoreline but the easement area is only 15 feet wide.

Attorney Collins stated that her opinion is that the easement is for a 15 foot roadway and access to the river but that it doesn't give any shore rights. The purpose might have been to include a mooring or access by a dinghy, but it is not written in a way to provide access to shore rights in a general sense. She cites the possibility of having six or seven roadways over a property with rights to a mooring at the end of each, which is clearly not the intent of state law or the local ordinance. The town needs to be careful to maintain that shore rights are shore rights, not just road or walking rights, otherwise it could result in an over concentration of moorings.

Coyne asked if he can cross examine after being questioned by Collins. Katsiaficas replied that since this is really a de novo proceeding because they are a board of appeals and, absent rules for this commission, cross examination is okay but should be done at the discretion of the the chair.

Collins asked Coyne when he bought the property. Coyne answered that it was on August 12 2020. She then asked if he could ask the owner of the property on Four Wheel Drive for expanded shore rights. Coyne stated that he has not done this. He believes that property is more valuable without easements and that by asking for such rights, the owner may extinguish his current easement. He does not believe he needs to do so since he believes he already has such rights based on 35 years of past practice with no objections or danger.

Collins stated that her opinion is that this is an old easement from a time when there were no restrictions on moorings. There would not have been a focus on giving shore rights since these were not required. Under Brunswick ordinance, each owner has the responsibility each year to register their mooring and moorings are not transferable. The prior owner had a mooring based on older standards; the new owner gets evaluated based on the new standards. The better thing would have been for the purchaser to ensure that he had the rights so he could get the mooring.

Coyne commented that commissioners should consider that if property can be reinterpreted based on settled expectations, they're going to come take your property. He says that sole

purpose of his easement is to access the island property. The town's reading is overly technical and formalistic.

Melendy asked Coyne if he can launch his boat from a public facility. Coyne responded that he lives in Massachusetts and he bought the property because he needs to park his car somewhere. In West Bath, he's been told he'd be ticketed and towed if he parked at the public site. He has a boat in the water, which he'd have to sell and buy a little dingy for his family. For practical purposes, the decision has made his property worthless.

Niven asked about a dock application, and if this is something that could it be done. Sylvain commented that a dock application would have to go through the planning board for approval and there's a good chance that the boat would be sitting on the flats which happens with many boats in Brunswick. Coyne stated that the previous owner got an estimate and that it was very expensive.

Harbormaster Sylvain stated that he advised Coyne that he could park at Sawyer Park overnight. Coyne replied that hauling his boat in and out is very inconvenient especially given that he has an easement with the sole purpose of providing for access to his island property. Sylvain asked why he didn't register the mooring immediately when he bought the property. Coyne responded that he told it was good for two years. He had never owned a property like this before but called immediately once he thought it had to be renewed.

Coyne asked when the system switched to an online mooring system from paper. Sylvain answered late winter/early spring 2020. When he called, did Sylvain do research about Mr White's records? Sylvain says that he didn't find anything and discovered that two separate GPS numbers were given to this location. Coyne asked about renewal notices being sent out and whether the previous owner had gotten one. Sylvain stated that he sent out notification to all mooring holders.

Fran Smith (Town Clerk) explained that prior to the current system, the town had an access data base which was given to a new company in 2019. She verified that Mr White's information was in the system. In response to questions about this case, Smith contacted the company to see if they can pull up historical information for this mooring and the company responded that it was not possible. They have reason to believe that his information was brought over but cannot answer as to what happened to the record. Coyne asked if there was proof that a reminder email was sent out to White's wife's email. Smith responded that the company could not confirm this. Melendy stated that even if the email went out, the position is that the mooring is not transferable. Coyne replied that the denial letter specifically states that the predecessor didn't pay the previous year as part of the rationale for not granting the mooring.

Coyne asked about the history of granting moorings to Mr. White and if there was evidence that owners of property on Four Wheel Drive forbade previous owners from using the shore. Sylvain answered that he does not have that information; it is up to the applicant to provide this information.

Without further questions, Coyne stated that this is a fairness issue. The property has had shore rights from the easement in practice for almost half a century. He is only asking for one mooring and is asking for consideration of what not granting it would do for their modest property value.

Collins gave a quick summary, saying that she doesn't see this as an issue of grandfathering but rather as an issue of transferability. Under the town's ordinance and state law, non commercial moorings cannot be transferred. Each application for a mooring registration is evaluated under the standards of the ordinance, which is the same as state law. It is required that each person have 100 feet of shorefront and shore rights to that property; fifteen feet does not meet this requirement. There are ways Coyne could address this problem — he could expand the shore rights with the Brunswick property owner to 100 feet. Katsiaficas asked about an allocation system in Brunswick for moorings other than those for owners of shore line. Sylvain answered there is no such system locally.

Harrower asked Coyne about getting a slip at New Meadows Marina. Coyne responded that New Meadows doesn't have any access this year and that the wait list is very long. Also, it is costly to keep their boat at the marina. Harrower stated that her marina has many people who live on Birch Island. Many of those people don't have access; they put their names on the waiting list and rent spots short term until a permanent spot becomes available.

Melendy asked for a motion to approve the decision by Harbormaster Sylvain. Theberge moved and Niven seconded the motion.

Katsiaficas asked that the Commission explain the rationale for affirming the decision by the harbormaster prior to the vote. Melendy said that while he's generally sympathetic to anyone having a difficult time accessing the coast, this is a case of transferability of the existing mooring and thus the correct decision was made. Stableford asked Collins to clarify the solution she previously suggested whereby Coyne could approach the owner of the Brunswick property to request expanded shore rights for the mooring privilege. Coyne reiterated that this puts him in a tight spot and likely in a worse situation. Some discussion followed about the location of a new mooring for a neighbor and the improper siting of the previous mooring used to access the Coyne island property.

Katsiaficas asked Sylvain if it would be possible for Coyne to obtain a mooring under the solution suggested by Collins. Sylvain answered that if the town is okay with this approach, they will give him a mooring. Collins stated that the town would agree as long as it was stated that Coyne has shore rights and access to 100 feet of their land.

Melendy called for a vote on the resolution to approve the interpretation of Officer Sylvain in denying this particular mooring application on the basis that the mooring could not be transferred to the new owner.

Katsiaficas stated that it is required that the commission issues a written decision stating the reasons and the basis for its decision. As was stated, moorings are not transferable, and the mooring was not current. The question becomes, is Mr Coyne entitled to a new mooring under

the ordinance? Officer Sylvain found that he is not and part of the reason is that there is not 100 feet of shore frontage as is required under state statute.

Katsiaficas explained that the commission can vote tonight and then he could prepare a draft written decision for the commission to take up at its next meeting or the commission could state that its consensus is to deny the appeal and affirm the decision of the harbormaster but actually take the vote and issue the written decision at the next meeting. Collins stated that the town is willing to stipulate that the appeal period will run starting from the date of the written decision. Factoring in the consideration of giving Coyne a quick decision, the board decided to vote at this meeting.

Melendy called for a roll call vote on the original motion to approve the decision of the harbormaster denying the application for mooring. The roll call vote was unanimous of all commissioners and alternates present.

Harbormaster report (1:14:53)

Officer Sylvain gave the Harbormaster report.

All (except at Barnes Landing) of the literature boxes, with at least 20 pamphlets in each, have been put out. Some have been emptied within a few days. Sylvain will keep them fully stocked.

Moorings: 144 approved, stickers for 21 have been sent out, 31 are under review (two owe payments; the others need to update their mooring inspections).

On June 7th, the town council will hold a public hearing about zoning ordinance amendments for accessory parking lots. This includes the Mere Point Boat Launch additional overnight parking.

There is a very large log out in Maquoit Bay. Sylvain warned folks to be cautious; there has been no luck removing it.

Stableford asked about the hearing concerning new parking spaces and reduction of existing spaces at Simpson's Point. Sylvain answered that it will also be on June 7th. Discussion continued about parking issues at Simpson's point and Melendy expressed concern that a lot of money will be spent to greatly reduce access to the area. Access for emergency vehicles is driving this reduction.

Minutes (1:24:11)

Melendy would like to have the minutes in a more timely fashion. The minutes for February, March and April (amended for typos) were approved unanimously.

2. Proposed Zoning Amendments to Shoreline Zoning Ordinance (1:28:42)

Devereaux summarized that changes to the new zoning ordinance were proposed because the ordinance doesn't include accessory parking lots for public boat launches. Under the current

code, the lot purchased by IFW to be an accessory to the Mere Point Boat launch does not meet necessary standards. Due to increased launch usage, IFW is interested in getting this done. The planning board held a workshop and has sent revisions to the council for adoption.

3. Miller Point Project (1:30:52)

a. 5/25 Planning Board Workshop Update

Devereaux explained that the information presented by the engineer at the Planning Board workshop was similar to what had been presented to the commission, but with additional research, site locations and potentials to minimize impacts of the pier. There were no substantial changes to design or construction. The planning board will hold a public hearing on this project. Stableford asked about staff's response to the project. Devereaux explained that staff's current roll is to provide factual information and that the town will be taking a position after the public hearing. Staff has been doing surveys and assessments of that area for years. It has been a productive shellfish area for decades and there are concerns about impacts of the project and its use. Some piers attract shellfish and some attract green crabs so the impact on the resource is unknown. The counter argument is that there are other piers in the area. It is up to the decisions makers to balance those concerns. Stableford asked about the precedence for similar projects and the alternative option of two seasonal piers. The RCWC has taken a position via an email from the Chair and comments by Devereaux. Melendy then asked about the justifications for the size of the pier and the broad rationales for the project. Devereaux responded that this side of the cove is shown by FEMA to be a high velocity zone. He then encouraged the commissioners to reach out to the planning board. Melendy suggested that the commission send another letter outlining their concerns to the planning board since so much time has gone by since the first letter went out. It was unanimously agreed that this letter should be sent. RCWC members were encouraged to attend and speak at the public hearing.

4. Aerial Monitoring of shoreline projects (1:44:39)

a. Authorized uses

Officer Sylvain spoke with the supervisor who runs this program at the police department, the police chief and the town manager. The town will have to change its policy before they can start aerial monitoring. Hopefully such changes can be made within a month or two. Melendy suggested that preprogrammed flight paths could be used to simplify the process for operators. Sylvain responded that their UAS has this capacity and more, but there are issues with photography and satellite connection so Sylvain would prefer to operate it himself. Staff is overwhelmed with current projects, but he'll add it to what he's doing.

5. Summer Projects (1:49:05)

a. Shellfish Resiliency Grant

Devereaux and Sylvain continue to work with the George Mitchell sustainability grant (shellfish resiliency grant received in 2019) to grow out quahogs. The project ends this fall and they hope to plant quahogs into our flats in the near future.

b. Spat Recruitment Project

Staff is working with the University of Maine/Machais and the DownEast Institute of Applied Marine Research doing clam spat recruitment. They are placing clam boxes (traps) in three spots which will be monitored a couple of times a week and then hauled out in the fall. Brian Beal is working on that project. Devereaux will share the report from last year.

c. Quahog Restoration Grant

Staff visited Running Tide Technologies, a relatively new aquaculture company in Mitchell Field in Harpswell that has started a shellfish hatchery that supports their own operations and other restoration projects. They discussed the possibility of applying for a grant to help town shellfish commissions in eastern Casco Bay to restore hard shell clams.

d. Shellfish Development

Staff is also working on a possible shellfish development grant with the town's economic development staff in partnership with the Gulf of Maine Research Institute. The idea is to identify all of the resources in the bay and to map out the intertidal areas to see where shellfish farming could fit in.

e. Eel Grass Mitigation Efforts

Natural Resources Council of Maine recently put out an RFP for eelgrass restoration. A consulting firm reached out to the town to possibly consider replacing moorings in eel grass beds with helical moorings at low cost to owners and to restore the eelgrass. Devereaux will meet with an engineer next week to discuss.

The University of Maine gave the town a free intern for 12 weeks this summer. Doug Niven is lending a few of his crew to help out with the shellfish resiliency grant. One ranger has been hired for the summer so far, and has been shown the areas where he will be helping staff. The town is in the process of hiring the second ranger.

6. Simpson's Point Citizen Advisory Council (1:58:38)

RCWC has a second seat on the CAC that still needs to be filled. Harrower again offered to fill in; Wilcoff has volunteered but he is already on the commission representing the Recreation Commission.

Stableford reviewed the hard work done early in the year by a small group to come up plans for making things go more smoothly at Simpson's point this summer. This work was dropped when the Simpson's Point Advisory Commission was formed. Since the CAC probably won't meet

until June, the work done by the small group is not likely to impact this summer. There didn't seem to be a clear understanding of what authority the small group had, and Melendy and Stableford wish there had been a better explanation of what they were spending their time on. Harrower suggested that the CAC is addressing bigger issues than what the small group talked about and that a wider variety of people are coming together to create something. It was stated that time will tell if what the small group did last winter was worth it.

To summarize, Devereaux is waiting for emails from Tom Farrell about the CAC. Harrower will be added to the list and they'll get an email for the date. Melendy said they will continue to look for someone who has more availability to serve on the commission.

7 & 8. New/Old Business (2:08:50)

Good mentioned that this month is the 7th anniversary of the forming of this commission. He read the names of members who have been on the commission since the beginning.

Officers will be elected at the next meeting.

Discussion about meeting in person will continue at the next meeting.

Motion to adjourn by Niven; seconded by Cory.

Meeting adjourned at 8:17pm.