

**MARION BOARD OF SELECTMEN
WATER/SEWER COMMISSIONERS
MEETING MINUTES
July 12, 2016**

MEMBERS PRESENT: Jonathan Dickerson, Chairman
Stephen Cushing

MEMBERS ABSENT: Stephen Gonsalves

ALSO PRESENT: Paul Dawson, Town Administrator
Jonathan Witten, Town Counsel
Isaac Perry, Harbormaster
Adam Murphy, Deputy Harbormaster/Shellfish Officer
Peter Bourgault, Assistant Harbormaster/Shellfish Officer
Chris Washburn
William Washburn
Vincent Malkoski
Hudson Plumb
Eric Plumb
Leslie Stefanson
James Spader
Shea Doonan
Art Kreiger
Jessica Wall
Sigrid Thorne
Ladd Thorne
Heimart Von Zweck
John Garcia (Standard Times)
MaryLou Newell (Wanderer)
Georgia Sparling (Sippican Week)
Debra Paiva, secretary
Others who did not sign in

The meeting was called to order at 7:00 p.m. in the police station conference room. Mr. Dickerson announced that the meeting would be video recorded by ORCTV and audio recorded by Town of Marion staff and by Standard Times staff.

Approval of meeting minutes – June 21, 2016, June 29, 2016, June 30, 2016

Moved by Mr. Dickerson and seconded by Mr. Cushing to accept the minutes as presented.
VOTE: 2-0-0

Reappointments to Boards and Committees

A list dated July 12, 2016 was read into the record.

Moved by Mr. Cushing and seconded by Mr. Dickerson to move the reappointments. VOTE: 2-0-0

ACTION ITEMS

Water/sewer commitment – miscellaneous run - \$1802.91 (6/22/16)

Moved by Mr. Cushing and seconded by Mr. Dickerson to move the commitment. VOTE: 2-0-0

Water/sewer commitment – final reading & FRMA Sewer - \$2532.82 (6/23/16)

Moved by Mr. Cushing and seconded by Mr. Dickerson to move the commitment. VOTE: 2-0-0

Water/sewer commitment – quarterly water and sewer billing - \$802,967.65 (6/15/16)

Moved by Mr. Cushing and seconded by Mr. Dickerson to move the commitment. VOTE: 2-0-0

Water/sewer commitment – final readings - \$1142.96 (7/7/16)

Moved by Mr. Cushing and seconded by Mr. Dickerson to move the commitment. VOTE: 2-0-0

Water/sewer commitment – second bill run - \$20,327.54 (6/20/16)

Moved by Mr. Cushing and seconded by Mr. Dickerson to move the commitment. VOTE: 2-0-0

Approve and execute contract – Treasurer/Collector

Mr. Carreiro’s contract was reviewed and briefly discussed.

Moved by Mr. Cushing and seconded by Mr. Dickerson to approve the contract of the Treasurer/Collector. VOTE: 2-0-0

APPOINTMENT

7:05 p.m. – Public Hearing – Application for aquaculture – Shea Doonan

The public hearing notice was read into the record. The application is for an aquaculture grant located off of Meadow Island. Mr. Doonan said that a site survey was recently done by the Department of Marine Fisheries (DMF) and it was determined to be a viable site. Shellfish Officer Adam Murphy said he was informed by the DMF that there was no eelgrass at the site. He noted that it is a recreation area for kayaking but not heavily traveled by boats, and the proposed location will not cause navigational issues.

James Spader, owner of Meadow Island, said the channel is used by many people as a navigable channel coming out of the bay, it has been used that way for many years, and the project would have a great impact on the recreation and on the enjoyment of the area.

Mr. Doonan stated the following:

Each oyster filters 50 gallons of water per day, enhancing harbor water quality.

There is no eel grass within 25’ of the area.

It is not considered a viable area for recreational shellfishing.

The site is tucked into the shallows to open up the side closer to Planting Island.

Harbormaster Perry stated the following:

There is a fair amount of recreational traffic that goes through there but nothing of any great size as the area is very shallow with large boulders.

Mr. Doonan has located the site as close as possible to the north end of the channel.

The site’s impact on navigation is unavoidable within the confines of the grant.

The location is a good compromise between recreational traffic and the proposed aquaculture grant.

The project would not prohibit people from using the channel in and out but will prohibit within the confines of the grant.

The issues addressed during the discussion included:

- Impact the project would have on the community.
- Industry of the community (housing, boating, recreation).
- Large rocks in the area.
- Fees - The State sets fee at \$25 per acre, local grants are half acre, resulting in \$12.50 per grant per year.
- Process after tonight's hearing – The Division of Marine Fisheries has surveyed and approved the site. Review is required by regulatory agencies including Department of Environmental Protection, Natural Heritage, Army Corps of Engineers, and Marion Conservation Commission.
- Ownership - Vin Malkoski, Marine Resources Commission, explained that the Town of Marion does not own the harbor, it is considered Commonwealth tideland owned by the State, and aquaculture is an authorized activity in the same vein as a dock on a property. He noted that legitimate questions are being raised and the Town will not profit either way.
- Other locations - Mr. Dickerson stated that he had some concerns about navigation through the area and asked Mr. Doonan if other locations had been considered. Mr. Doonan explained that he had examined areas throughout the entire harbor and there were always problems including eelgrass, shellfish density, and freshwater runoff, and this was the best site.
- Appeals process.

Mr. Dickerson said he has concerns about navigation and in his opinion this is not the best location.

Mr. Cushing said he has been to the proposed grant and it is tight, but he does not believe it detracts from the navigability of the area. It will detract from anybody in a canoe or kayak but a decision needs to be made based on fact and he is inclined to allow the application to go to the next step.

Moved by Mr. Cushing to approve the application. The motion was not seconded and did not pass.

Mr. Doonan agreed to allow the selectmen to open a new public hearing in order to allow Mr. Gonsalves to participate.

Moved by Mr. Dickerson to schedule a new hearing at 7:05 p.m. on August 16 at the police station.

7:25 p.m. – Public Hearing – Appeal of Harbormaster decision to revoke Mooring Permit #93

The public hearing notice was read into the record. Attorneys Arthur Kreiger and Jessica Wall were present on behalf of Ladd Thorne. Attorney Witten explained that the appeal is of the Harbormaster's decision to not renew mooring permit #93 and in effect the failure to not renew becomes a termination of an existing mooring permit. Mr. Thorne took an appeal pursuant to Town of Marion Waterways Regulations and also with the Department of Environmental Protection (DEP). The DEP appeal has been stayed by agreement between Mr. Thorne and the Town to allow the Board of Selectmen to make a decision.

The information provided and statements made by Attorney Kreiger included the following:

- Mr. & Mrs. Thorne have residences in Dedham and Marion; they became Marion residents in June, 2013.
- In June, 2013 Mr. Thorne submitted an application for a mooring, listing 28 Guild Road, Dedham as his residence and mailing address, and was placed on the waiting list for a mooring.
- In August, 2015 Mr. Thorne completed a mooring registration application, listing 28 Guild Road, Dedham as his mailing address, and was given mooring permit #93.
- An incident report dated August 31, 2015 incorrectly lists the mailing address as 26 Guild Road, Dedham.
- On June 3, 2016 the Harbormaster canceled the Thorne's mooring permit for failure to pay the renewal payment by May 30.
- On June 10, 2016 the Thornes filed an appeal.
- According the Town of Marion Waterways Regulations, re-registration invoices are mailed to all mooring permit holders on April 1 each year. Completed invoices are due May 15; if the invoices are not received by that day the Harbormaster may impose a late charge of \$100. Second notices are sent by certified mail on or about May 16. If the completed invoice is not received by May 30 the mooring permit may be canceled. The regulations allow the Harbormaster to authorize noncompliance under extenuating circumstances.
- In early spring of this year Mr. Thorne had not received the re-registration invoice, called the Harbormaster office, and the incorrect mailing address was discovered. He requested that the error be corrected and that a re-registration application be mailed to him.
- Mr. Thorne did not receive a re-registration application in March, April, or for most of May.
- In late May, 2016 Mr. and Mrs. Thorne had two family members with significant health issues.
- On June 3, 2016 Mr. Thorne was informed by the Harbormaster by telephone that the mooring permit had been canceled and the boat had to be removed. Mr. Thorne offered to pay for the permit and was told no.
- Mr. Thornes called his daughter and asked her to check the mail at the Dedham address and she found a late notice that had been sent by regular mail.
- On June 6, 2016 Mr. Thorne went to the Harbormaster's office at Town Hall and was told that the late notices were mailed on either May 20, 2016 or May 23, 2016 by regular mail.
- The Harbormaster has allowed the Thornes to leave their boat at the mooring until a decision has been made by the selectmen.
- If the Selectmen vote to overturn the decision of the Harbormaster the appeal filed with the DEP will be dropped.
- The selectmen should reinstate the mooring permit for three reasons:
 1. Mr. Thorne did not receive the reregistration notice because the Harbormaster records had an incorrect mailing address.
 2. The second notice was defective in two ways as it was supposed to be sent out by certified mail by May 16; it was sent out on either May 20 or May 23 by regular mail.
 3. The extenuating medical issues of two family members.

- The mooring is particularly valuable to the Thornes due to its close proximity to their dock.
- Attorney Kreiger explained that the Thornes are not asking for special treatment but are asking to be treated like everybody else (who received the first mailing.)
- If the permit is reinstated there would be no impact to the Town
- The board should acknowledge that the regulations were not followed.
- The Thornes are willing to pay the permit fee and late fee.

Harbormaster Isaac Perry stated the following:

- The chronology is accurate with the exception of the address mistake and the incorrect date listed on the incident report (the correct date is August 30, 2015.)
- At some point in December or January he corrected the error in the database, the form was mailed to the correct address on or about March 1, and it did not come back.
- The second notice was mailed to the correct address on or about May 23.
- He checked at Town Hall and the second notices have not been sent out by certified mail for approximately five years.
- On June 3 he spoke with Mr. Thorne regarding the cancellation of the permit.
- Ten permit holders, including Mr. Thorne, did not return their reregistration forms; the 15 day appeal period has lapsed and nobody else has appealed.

Attorney Witten explained that the DEP's review gives deference to the board's decision unless the decision is arbitrary, capricious, or an abuse of discretion. He recommended that the board determine if the decision of the harbormaster is arbitrary, capricious, or an abuse of discretion. Attorney Kreiger said the board needs to find that they disagree that the regulations need to be applied so strictly. He said Mr. Thorne has sworn that the call regarding the incorrect mailing address was made to the Harbormaster in the early spring and he did not get the first notice.

Mr. Cushing asked why the Harbormaster office deviated from the regulation regarding sending the late notice by certified mail; Mr. Perry said the reason he was given was cost. Attorney Krieger noted that that was what the \$100 late fee was for.

Mr. Cushing asked if the nine other canceled mooring permits will be assigned to people on the waiting list; Mr. Perry said he is waiting for this to be resolved before taking action and he will treat them the same way Mr. Thorne is treated. Mr. Dickerson noted that the appeal period has gone by and the nine other permit holders have lost their moorings.

Sigrid Thorne said if a late notice is sent out May 23 it most likely did not arrive until May 26 or 27; she also added that if it was sent certified she would have immediately gone to the post office. Mrs. Thorne said she has lived at the address for 30 years and she does not have a post office box.

Mr. Cushing said the regulation states that the second mailing should be certified mail and certified mail does get people's attention. He added that Mr. Perry did not do anything wrong, he did exactly what he needed to do, but if the Town is not going to be sending the second notice letters by Certified Mail then the regulations should be amended.

Moved by Mr. Cushing to overturn the decision of the Harbormaster pursuant to the Marion Waterways Regulations and based upon the evidence contained in the record in this matter, including the evidence presented during this evening's public hearing I move that the Board of Selectmen vote to overturn the decision of the Harbormaster with respect to mooring permit number 93, and reinstate, subject to the payment of all required filing fees and related charges, mooring permit number 93 retroactive to June 1, 2016 for a one year period. The motion was not seconded and did not pass.

Mr. Dickerson said he believed that, under Mr. Thorne's own testimony, that he did receive the second notice.

Moved by Mr. Dickerson and seconded by Mr. Cushing: Pursuant to the Marion Waterways Regulations and based upon the evidence contained in the record in this matter, including the evidence presented during this evening's public hearing, I move that the Board of Selectmen vote to uphold the decision of the Harbormaster with respect to mooring permit number 93, wherein the Harbormaster determined that the required filing fees were not paid in a timely manner and thus the mooring license had not been properly renewed and was therefore cancelled. VOTE: 2-0-0

Subsequent to the vote, Mr. Perry stated that Mr. Thorne's son is number 2 on the waiting list and while he could not guarantee where it would be the family would have a mooring.

Attorney Kreiger requested that the selectmen allow the Thorne's to keep their boat at the mooring until the DEP issues a decision. Mr. Perry said he has 170 names on the waiting list and he does not want to see the entire season go by

Moved by Mr. Dickerson and seconded by Mr. Cushing to allow the vessel to remain on the mooring until August 1, 2016. VOTE: 2-0-0

ACTION ITEMS

Discussion – Letter from Peter Napoli regarding Cross Neck Road

Joseph Napoli was present for this discussion. He and his son, Peter Napoli, own three contiguous lots (38 A, B, C) on an unimproved portion of Cross Neck Road. When they purchased the lots they were told that the developer had left \$50,000 deposited for improvements and extension of services; however, at some point in time the \$50,000 was used for the installation of water lines on the road. The Napolis are asking if the road is approved, if the Town is responsible for improving it, if it should be a two lane road, and should it be suitable for safety provisions including Fire, Police, and Emergency Medical Services.

Attorney Witten explained that the road is a public way, the Town is not responsible for making improvements to public ways to make them more accessible to the public, and an appropriation from Town Meeting is required in order to request funds for improvements to the road.

The process required to present an article to Town Meeting was explained to Mr. Napoli; Mr. Dawson and Mr. Napoli agreed to meet at a future time to further discuss the process.

Discussion regarding storage of antique fire engine at Station 1

An email from Fire Chief Jackvony was reviewed and discussed. The Marion Firefighter Association is requesting that the selectmen consider allowing the storage of an antique fire engine in the storage area located at the rear of Fire Station 1. The storage area will require some improvements and all expenses related to the construction will be paid for by the Firefighter Association. The only obligation of the Town would be to provide electricity for a small heater during the winter. Chief Jackvony has indicated support for the request.

Moved by Mr. Dickerson and seconded by Mr. Cushing to authorize the request of the Marion Firefighter Association to construct the garage bay and also to waive any and all building permit fees. The work will be required to be inspected by the Building Commissioner and the Association is required to work with the Facilities Administrator. VOTE: 2-0-0

TOWN ADMINISTRATOR REPORT

Update – Electric vehicle grant

Three new electric vehicles were delivered on Monday, July 11. Through a competitive bidding process the bid was awarded to BMW Galleries of Norwood. The vehicles were provided through a grant and there will be no expenditure of Town funds over the three year lease. The only costs that might occur at the end of the lease would be fees should the mileage exceed 30,000 miles. The Town is also be responsible for any damages beyond normal wear and tear. At the end of the three year lease the Town has the option to purchase the vehicles or turn them back.

Update – New ambulance

Update – New fire engine

Ambulance – The ambulance is expected to be delivered next week to Specialty Vehicles in North Attleboro for lettering and customized changes and then is expected to be in town and in service by mid-August.

Fire Engine – The work on the fire engine is more than 50% complete; the Town is expected to take delivery in September.

CORRESPONDENCE

The following correspondence items were discussed:

#7 – Letter of resignation from Capital Improvements Planning Committee – Ted North

#9 – Letter of resignation from Zoning Board of Appeals – Eric Pierce

Moved by Mr. Dickerson and seconded by Mr. Cushing at 8:50 p.m. to enter into Executive Session for strategy related to contract negotiations with nonunion personnel and also to update the selectmen on two matters of litigation. The Board will not be entering back into regular session. A roll call vote was taken with both members voting aye.

Respectfully submitted,


Stephen C. Gonsalves, Clerk
Date approved: August 2, 2016



**MARION BOARD OF SELECTMEN
DOCUMENTS REVIEWED AT MEETING – July 12, 2016**

Meeting Minutes – June 21, 2016, June 29, 2016, June 30, 2016
Application for aquaculture license – Shea Doonan
Appeal of Harbormaster Decision to revoke Mooring Permit #93
Letter from Peter Napoli regarding Cross Neck Road
Comments from Town Counsel regarding Cross Neck Road
Water/Sewer commitment – miscellaneous run - \$1802.91 (6/22/16)
Water/Sewer commitment – final reading & FRMA sewer - \$2532.82 (6/23/16)
Water/Sewer commitment – quarterly water & sewer billing - \$802,967.65 (6/15/16)
Water/Sewer commitment – final readings - \$1142.96 (7/7/16)
Water/Sewer commitment – second bill run - \$20,327.54 (6/20/16)
Collector/Treasurer employment contract
Email from Fire Chief Jackvony regarding storage of antique fire engine at Station 1
Photos - new ambulance, new fire engine
Request for appointment to Conservation Commission – Shaun Walsh
Copy of letter from Conservation Commission regarding Clean Energy Collective
Letter from Comcast regarding services
Memo from Board of Assessors regarding Course 101: Assessment Administration Law, Procedures, Valuation
Email regarding traffic speed on Route 6
Letter from Wayne Pina regarding donation of property (0 Point Road, Parcel ID 0011-00098)
Letter of resignation from Capital Improvements Planning Committee – Ted North
ZBA request for comments – 460 Front Street
Letter of resignation from Zoning Board of Appeals – Eric Pierce
Email from SRPEDD Executive Director regarding public transportation needs assessment