

# TOWN OF PROVINCETOWN - BOARD OF SELECTMEN

## EXECUTIVE SESSION - MONDAY, FEBRUARY 9, 2004

### JUDGE WELSH HEARING ROOM

Acting Chairman Cheryl Andrews convened the executive session at 6:05 PM noting the following attendees: Board of Selectmen members: Cheryl Andrews, Michele Couture, Sarah Peake, Richard Olson. (Mary-Jo Avellar left the room earlier due to conflict. Her husband is Asst. Harbormaster.)

Other attendees: Town Manager Keith Bergman, Town Counsel John Giorgio

The following are meeting minutes, in brief.

#### 1A. TOWN COUNSEL; LITIGATION STRATEGY

MacMillan Pier Floating Dock System: December 2003 Storm Damage

Finger Piers - Keith says Childs report says AGM is liable. Not sure about FS&T. We will look at it.

John Giorgio says claim would be Breach of Contract. They were supposed to submit plan. FS&T approved it. It had a stamp by the manufacturer.

Sarah Peake asked why not name everybody? John Giorgio says it's better to consider bringing them in later. "Statute of repose" - 6 years limit max.

John says that David Guertin feels "Childs" would not make a great expert. So we need to hire another.

We will be looking towards 1) their performance bond and 2) their manufacturers warranty.

What kind of damages do we expect to go for? 1. Cost of replacement (identical). We will not pay the bill to AGM to haul out.

Job one - Hire new expert - get them to agree to when we can move the damaged pier.

One month - will plan to get our report.

John Giorgio - We will send demand letters. Rought target, get piece off pier by April 1.

The design was OK - but they didn't built it to the design.

Plan - one month a) Update from counsel re: Litigation Strategy. B) Update from Keith Bergman and staff re: this summer.

**MOTION:** *Move that the Board of Selectmen vote to authorize Town Counsel to bring suit against contractor AGM Marine, Inc. regarding the failure of the floating dock system for MacMillan Pier in the December 6-7 storm event.*

**Roll Call:** Sarah Peake - Yes      Michele Couture - Yes  
Richard Olson - Yes      Cheryl Andrews - Yes

**Motion by:** Richard Olson      **Seconded by:** Michele Couture      Yea 4    Nay 0

**MOTION:** *Move that the Board of Selectmen vote to have the Town Manager bring us an update in one month for coping strategy for Summer '04*

**Roll Call:** Sarah Peake - Yes      Michele Couture - Yes  
Richard Olson - Yes      Cheryl Andrews - Yes

**Motion by:** Sarah Peake      **Seconded by:** Michele Couture      Yea 4    Nay 0

Mary-Jo Avellar returned to room at 6:36 PM.

Gay Marriage - John Giorgio says absent State action the Town Clerk can issue licenses.

1913 Law said - Residency - John Giorgio says if person checks the box saying "No impediment".

DPH answers to Governor,

Kopelman & Paige would have to get special counsel for us / Conflict with K& P member.

Big question is what will happen if a couple from state that doesn't recognize same sex marriage applies?

March 22 - 60 days - till May 17<sup>th</sup>.

Motion to adjourn and reconvene in open session by Michele Couture at 7:05 pm.

Minutes transcribed by: Vernon Porter  
February 12, 2004