

TOWN OF PROVINCETOWN

Joint Meeting of the

HARBOR COMMITTEE, MA DEP, and representatives from selected town departments

MEETING MINUTES OF NOVEMBER 15, 2001

Meeting Held in Town Hall

Members Present: Harbor Committee: Rex McKinsey (Chair), Joyce Guide, Mel Cote, Al Davis, Jack Joyce, Sheila LaMontagne and Judith Oset, Permit Coordinator, Roger Diaz, Building Department and Magda Pavlak (DEP) and Ben Lynch (DEP)

Members Absent: None

Others Present: Chad Lima, Marine Superintendent, Steering Committee representing waterfront property owners with pending license applications under Chapter 91, Judith Oset, permit coordinator, Cheryl Andrews and Betty Steele Jeffers, BOS members, Carla Anderson, former Harbor Committee chairperson, Dana Ferris , Head Assessor, and other interested members of the public.

REGULAR MEETING

CALL TO ORDER: Chair Rex McKinsey called the meeting to order @ 5:10 PM

Chairman McKinsey began the meeting by reviewing the agenda and the format to be followed by the speakers.

PUBLIC STATEMENTS

Mr. Lenny Enos, representing an ad hoc steering committee formed by property owners impacted by the licensing procedures of Chapter 91, distributed copies of his remarks to the joint boards and members of the audience. (A copy of these remarks and attached photographs depicting an existing town landing and simulated improvements) is attached to these minutes). Mr. Enos then addressed as his first point of discussion the possibility of asking the legislature to exempt Provincetown from the requirements of public access. The number of town landings and the historic right-of-ways existing in the town seemed to the ad hoc steering committee to fulfill the needs of public access making additional access through private property unnecessary. Mr. Enos suggested that Ms. Gomes and Mr. O'Leary be asked their opinions. Other suggestions were to contact the town's legal counsel as to the feasibility of amending the Chapter 91 regulations at the state level. (The number and condition of existing town landings and right-of ways became a constant discussion point throughout the meeting).

It was determined that the next step would be for the Harbor Committee to ask the Board of Selectmen to request opinions from Ms. Gomes, town counsel, and Mr. O'Leary.

The second discussion concerned the Schofield Line, its history, accuracy, and relevancy to determination of jurisdiction between the state and the individual property owners. The consensus was that there had to be some flexibility due to the confusion created by accretion, erosion, and dredging. Mr. Davis explained the difference between natural accretion and erosion and dredged and filled land. It was recognized that the Provincetown Harbor has changed from the historic high water marks because of both natural and man/made activities. Ms. Pavlak and Mr. Lynch both spoke as to their willingness to share with the town the determinations of the Schofield Line. Mr. Ferris said that the assessors' office would have housing for these documents, which would be available to the public.

A third focus of the oral presentation was a reminder of the large percentage of real estate taxes paid by waterfront owners, the lack of input into the Harbor Plan by waterfront owners, and the need to reexamine the betterments outlined in the plan. Members of various town boards spoke to the numbers of public hearings held before and during the writing of the Harbor Plan, which offered opportunities for public input into its creation. The large number of non-resident owners who were not informed of the suggested betterments was raised as an issue.

Mr. Joseph Patrick (403 Commercial Street) discussed the harbor plan's option for lateral access on the beach. Mr. Patrick felt that the large number of access points from Commercial Street onto to the beach precluded the need for uninterrupted lateral beach access. He also referred to the problems created by lateral beach access, problems that are unique to Provincetown's nighttime activities. Additional questions raised by Mr. Patrick included the responsibility of maintaining the town's only beach. Who is going to keep it safe? Whose responsibility is it to keep it clean?

Mr. Enos spoke again as to the ownership of the beach. Both Ms. Pavlak and Mr. Lynch addressed the ownership issue. The state has interest in the rights of the public on state waterways but the property owner must offer public access to that portion of land that falls under the state's jurisdiction.

Mr. Robert Seaver (449 Commercial) reaffirmed that the steering committee and the property owners in general are not against the Harbor Plan. There are other concerns such as a proposed beach walk. However, such a walk will adversely affect the quality of life of the property owners.

Mr. Robert O'Malley (145 Commercial St.) pointed out that his process began in 1993 not after the Harbor Plan was approved. At that time, the belief was that only structures below the line would be affected. In 1993, Mr. O'Malley believed that the state was saying either the property owner made on site benefits or paid a fee. Now according to the state, both benefits and fees are required. The fees, themselves, have increased to something "astronomical". Some calculations have increased from \$2,000 to \$30,000. Mr. O'Malley continued by saying that most voters did not know about the individual descriptions for property owners. He felt the voters would never have passed a plan with such restrictions.

Mr. Enos in summary felt that the number of public accesses should eliminate betterment fees.

The following issues were identified as needing additional clarification:

1. Beach walk...What is it?
2. Liability....Whose liability:
3. What steps are necessary to amend the Harbor Plan
4. Are any of the decisions made prior to this meeting or future decisions open to revision?
5. Are the expenses incurred to obtain the license deducted from the fee?
6. If the property is land courted, does the state take precedence if the line is drawn through the property?

Mr. Francis John Santos (Flyer's Boatyard) raised the issue of beach nourishment. He asked when is it done? How is it maintained? Who is responsible for cleaning the beach?

Mr. Gordon Peabody (Box 275) asked to speak as a former Harbor Committee member and former member of the Conservation Commission. He wanted to remind everyone that Provincetown used to be ruled by the law of the sea; now it is ruled by the law of the land. Boaters need access to the land. The town needs to reacquire rights of way that have been lost to public access. Signage is needed as well as small amenities. The document requires lateral access. However, a boardwalk will sabotage the access of boats back and forth.

Mr. Ben Lynch (DEP) said that he knows of no instance where the state has made a town exempt from the requirements of Chapter 91. The Department of Regulatory Management cannot exempt Provincetown.

Chairman Rex McKinsey suggested the steering committee consult with town counsel.

Mr. Robert Seaver asked if anyone was exempted?

Selectperson Cheryl Andrews spoke to the emotional impact a proposed beach walk has had on her constituents. Ms.

Andrews said that the voters are more upset about such a walk than they were about the proposed sewer, the issue of the “Manor”, and any other issue in her memory.

Mr. Dana Ferris (6 Central Street and Town Assessor). Mr. Ferris spoke about the enormous amount of misinformation circulating. He says the town recognizes 10 Town Landings and some additional right-of-ways. The Commonwealth gave the town the land in 1893. This makes Provincetown unique; there is no other community like Provincetown. The formula in the plan was not to be in excess of 20% of the annual taxes on the property.

Both representatives from DEP made the following points:

There are no plans for a BOARDWALK. There is a plan for a ten-foot wide stretch of dry sand, which is referred to as a BEACHWALK.

Judith Oset (permit coordinator and recorder of the issues raised ((see attached list))) stated that there are three mini loops planned for the center of the business district.

Mr. Joseph Patrick (403 Commercial St.) asked if this ten foot walk was a state idea or in the Harbor Plan. DEP replied that this was in the Harbor Plan.

Mr. Ben Lynch (DEP) said that the state does not claim ownership but that the state does have residual rights. There is a process by which a determination can be made.

Chair Rex McKinsey said that the Harbor Committee has many other responsibilities itemizing such issues as water quality, MacMillan pier, beach management, dinghy docks, storm drains, signage

Through a grant, the town has identified two rights-of ways that are presently not open to public access.

Previous members of the Harbor Committee (Al Davis and Dana Ferris) nodded in agreement that the Harbor Plan was intended to be flexible. Mr. Lynch (DEP) agreed that the plan has to have some inherent flexibility. It should be regarded as a blueprint.

Mr. O’Malley asked if there could be a letter to that effect.

Joyce Guide asked if there were other towns with approved plans and if so how their compliance is progressing. DEP said there were 9 or 10 plans that have been approved. However, Provincetown is different because of the tidal lands being owned by the state.

Mr. Bruce McGowan (???Commercial St.) said that compliance for him was a great hardship. That Provincetown was different, as most of the waterfront property is residential. Providing benches, etc. is a tax.

Other issues raised concerned the fact that the amnesty applications came before the Harbor Plan was approved. After 30 years most of the licenses will have to be renewed. East of Howland Street has different jurisdictions. Private tidelands have been “in the deeds” since 1692.

Mr. Patrick (403 Commercial) asked if surveying the town landing wasn’t a public benefit as a survey of the town landings was a benefit to the town. Ms.Pavlak said that surveying the town landing might be a public benefit.

The meeting adjourned at 8PM.

Respectfully submitted by Sheila LaMontagne

15nov Harbor Comm. Flip chart referenced in minutes-

Issues/concerns identified:

1. Request to have Board of Selectmen petition the State to exempt the properties from the Chapter 91 requirements for beach point access from Commercial Street because the Town provides that access.
2. Provide the Committee with history of accretion of waterfront property – how did it appear, 1848-present? Was it natural or through manmade means? How did the land get there? Accrued land vs. filled land. If the property owners are taxed, they want to be taxed on property they own. The Town already provides adequate access to the waterfront; property owners should not have to add to it.
3. Town landings should be improved – that would provide more access to the waterfront. (How many are there? Assessor says 10 Town landings.)
4. Request is through the Harbor Committee to the Board of Selectmen.
5. Identify and open the legal rights-of-way to the beach.
6. The Harbor Plan – is it a flexible or strict guideline?
7. Schofield line issue – not reliable.
8. Harbor Plan was approved after the amnesty licenses were filed.
9. Provide a clear and consistent licensing process.
10. Town is 3 miles long and we have 17 access points already.
11. Problem with beach being used in evenings for “liaisons.”
12. Do we need a boardwalk?
13. Who is going to keep the beach safe? (unleashed dogs)
14. Stopping at Howland – does the jurisdiction stop there? Why does the jurisdiction for high water stop?
15. Unclear as to what the State owns. Do they know?
16. Not against Harbor Plan and not against beach access. All concerns have not yet been identified. Example: the beach walk. The effects of this are not known yet. The statement tonight was not all-inclusive and was not hostile or combative.
17. How “things” have changed over time. Old set of rules said only structures in jurisdiction were involved – now all areas are involved.
18. Now asking for on-site betterments in addition to fees.
19. Voters did not know there was a list (inventory) of properties with specific recommendations – would not have passed if people knew.
20. Assumption that if we eliminate the access requirements by property owners, we eliminate the access fees; what would happen to those who already paid into the fund or provided betterments?
21. Amounts spent in complying with licensing – does the State take this into consideration when determining the betterments?
22. If a property is land-courted, does that information take precedence over conflicting surveys with the Schofield line?
23. When beach nourishment occurs do we have a plan of how to maintain the beach? Who sets those parameters?
24. Who is responsible to clean the beach?
25. This is a town ruled by the sea. Law of the land rules the sea? Concern: Don't restrict access of people/boats to the sea. Will lateral access (beachwalk) prohibit access by boats?

Discussion/responses to issues:

1. Q: Is it do-able?
A: Don't know – would require legislative change most likely; DEP does not have authority. Issue is – do we want to do it? Does the Harbor Committee believe it should be recommended? Provincetown's tidelands are unique – until 1893 Provincetown residents were squatters.
A: Re: Beachwalk – 10' wide access landward of current mean high water line that should remain unimpeded – locally mandated through Harbor Plan.
2. A: Most people (other than Provincetown) own to low water line; State doesn't assert ownership but rather mandates that the rights of the public be maintained through licensing.
Q: Would the State use that information?

- A: Yes, there is a process. To overcome the presumption of the Schofield line – by means of a Determination of Applicability; DEP can provide Town with source information for the Schofield line (Assessor's office will be the keeper of that info).
3. A: Projects the Harbor Committee is doing:
- MacMillan Pier project
 - Dinghy Dock
 - Americorps volunteers – historic rights-of-way
 - Have been planning – beach cleanup (with volunteers)
 - GPS mapping project in works with Coastal Zoning Management to control growth of mooring fields
 - Working on beach management plan\
 - Working on grants for storm drains
 - Signage has been proposed and sent to Board of Selectmen
 - April 2001, current conditions of Town landings identified
4. -----
5. A: Americorps volunteer working on a grant through June 2002 to research the rights-of-way
 Q: Path across from Commercial Street across Bradford up Washington Avenue. How are the Town landings created? Does the Town have deeds.
 A: Yes – Town Meeting created that landing.
6. A: Town's impression is it was flexible – that it was a guideline never meant to be “set in stone.” It was a plan; has “wobble room.” DEP agrees – it has legal weight but has some flexibility; provides a blueprint. The Plan has to respond to times and changes, must be adhered to, “to the maximum reasonable extent.”
 Q: How are other towns handling/reacting to their plans?
 A: Provincetown is different (all Commonwealth tidelands); other towns approved have more industrial harbors. Edgartown is comparable in scope – theirs have worked without much issue; others: Gloucester, Salem.
 - The Harbor Plan tailors the DEP waterways regulations to the town.
 Q: Would there be fewer problems if people owned to the low mean water line?
 A: No, not necessarily.
 A: Waterfront property owners did get involved with the development of the Harbor Plan.
7. A: Addressed earlier, #2.
8. A: Agreed and recognized. The Town wanted to go through this process (the Plan); amnesty licenses – the DEP will use the Plan to the maximum reasonable extent.
 Q: Are waterfront properties taxed more than others?
 A: No, there is a single tax rate.
9. A: Harbor Committee provides recommendation.
- Process: Complete application and plans
 - ↓
 - Submit
 - ↓
 - Public hearing
 - ↓
 - Public comments
 - ↓
 - Incorporate and issue license – must be recorded at registry
- Non-water dependent licenses good for 30 years and are transferable; after 30 years can be renewed.
10. -----
11. A: Recurring problem; should be addressed.
12. A: Everyone agrees we are not interested in creating an urban boardwalk for the entire town.
13. A: Not the State, nor the Harbor Committee, nor the Board of Selectmen.
14. A: Regulatory distinction:
- West of Howland: all property along the water is in Commonwealth Tidelands
 - East of Howland: ruled by Chapter 91, but inter-tidal zone does not have as many public rights (fishing, fowling, navigating allowed, not strolling)
15. A: Deeds dictate what property owners own.
- Rest of state, the State owns seaward of the low water mark

- Provincetown – the State owns seaward of the high water mark
- The State maintains rights seaward of the designated line (Schofield line) for the public to have access for fishing, fowling, navigating, strolling

16. -----

17. A: House and deck landward side – nothing seaward – does the property owner have to be licensed? No. If encroachment occurs, then licensing occurs.

18. Betterments come from guidance of the Plan. On-site betterments can't always be done on-site.

19. -----

20. Once it's a done deal, it's a done deal.

21. A: No.

Q: Could that be taken into consideration? (for specific reasons)

A: Could be made in the Harbor Committee's recommendations.

A: Survey is required by the Harbor Plan to identify Town landings, easements, and rights-of-way.

22. A: Land Court survey is last word of property ownership.

23. A: Town is working on the Beach Management Plan (Assistant Town Manager and Harbor Committee did some work); in process; will be a very public process.

24. A: See above.

25. A: No construction; should not limit access.