

PROVINCETOWN HARBOR COMMITTEE - Ch. 91 work session

September 29, 2021

Committee Members:

Susan Avellar, John Santos, Michelle Stefani, David Gluck, Pier Corp liaison Jamie Staniscia. By phone: Ginny Binder, Barbara Dyett, Wendy Loughlin.

Town Staff:

Don German - Harbor Master, Rex Mckinsey - Emergency Management, Tim Famulare - Conservation Agent, Anne Howard - Building Inspector, Thandius Soule - Town Planner.

Public:

Jim Vincent- Ch. 91 consultant, John George. By phone: Chris Snow

Call to order at 5:05, quorum roll call

R. Mckinsey introduces Jim Vincent, stresses need for better understanding of Ch. 91, informs HC that Jim Vincent's contract is over after this review, suggests hiring him on project-by-project basis.

Jim Vincent's presentation:

1. History and purpose of Ch. 91 - started in 1866 to assure public access to and lateral movement across the harbor as well as preservation of natural resources.

J. Vincent hands out Ch. 91 licenses for review.

2. Important terms like private tideland, commonwealth tidelands, water dependent structures, non-water dependent structures were introduced, defined, examples were given and shown.

3. Proper Public Purposes - To preserve and protect the rights in tidelands for the inhabitants of the commonwealth by ensuring that the tidelands are utilized for water-dependent uses or otherwise serve a proper public purpose.

4. Harbor Plan Goal - Improve open space, increase perpendicular access to Harbor, improve lateral access, establish beach-walk, make physical improvements to harbor.

5. Chapter 91 licensing - Outlines 12 step process to get license from DEP, required to anyone "privatizing" commonwealth land.

6. Harbor Committee's Role - J. Vincent reiterates that DEP will defer to Harbor Plan if HC doesn't give site specific suggestions to the DEP

7. HC review process - public notice, HC site visit, HC discussion, public hearing, recommendation letter to DEP.

J. Vincent uses Ch. 91 plans for 463 Commercial street, discusses history of public benefits, rights to cross private land to access harbor, adds that governorship of betterments is given to licensee, then refers to map detailing the status of every property requiring a Ch. 91 in town.

T. Famulare asks if the map continues east to the town line. J. Vincent says there is.

R. McKinsey adds about the Schofield Line that sets the Historic High Water Mark represented on the red line on Vincent's map. J. Vincent adds that DEP has final determination based on two maps, one from 1840 the other from 1939, but it's usually the most landward line - Schofield Line

S. Avellar opens floor up to HC questions:

D. Gluck asks about what the rectangles that jut off the "red line" on the Ch 91 map and how they affect Ch. 91 determinations. J. Vincent explains that those represent historic structures. D. Gluck questions whether it shows all historic structures. J. Vincent reiterates that DEP makes final determination but usually goes back to Schofield Line.

G. Binder asks the a Determination of Applicability process. Can HC determine applicability? J. Vincent mentions his checklist, but reiterates that all determinations are made by DEP.

6. Role of HC. DEP depends on HC personal involvement to help process, otherwise it depends solely on Harbor Plan.

7. Harbor Committee Review Process - 5 steps: public notice, site visit, HZC meeting, MASS DEP Public Hearing, Recommendation Letter to MASS DEP.

D. Gluck asks about public benefit vs donation into Harbor Access Gift Fund. J. Vincent says that is worked out by DEP and licensee. Rex adds Seaman's bank is still trying to figure it out.

Santos adds: Post office closed access to the Harbor.

G. Binder asks how do we get people to comply with Ch 91. IS there is any way to bring properties into ch. 91 compliance when they change hands?

J. Vincent says it's something to think about but there are no enforcement plans in place with the DEP. Rex opens up the Ch. 91 map still in development on <http://www.provincetown-ma.gov>. goes property by property, explains how it will show public benefits and access across town. J. Vincent: every license is unique.

J. Staniscia asks if public can report uncompliant properties. J. Vincent answers only DEP can address violations.

S. Avellar brings up town staff working with HC to get people complaint. How do we deal with private obstruction of beach access? Tidelands belong to the public. Asks for public comments.

John George reads letter urging HC to reclaim beach access ways that have been swallowed up by private development on the far east end of town.

T. Famulare asks about Orders of Compliance; wonders if Ch. 91 compliance can be a part of the conservation commission's permitting process.

J. Vincent answers; Ch. 91, filed in registry of deeds to be valid, show details of all licenses.

G. Binder: Invite realtors and lawyers into the discussion, pull people in that way

S. Avellar and T. Famulare talk about the two maps, inconsistency in where the high water mark is located. J. Vincent says DEP makes final determination.

John Santos leaves the meeting at 6:36pm

Rex adds that there is limited liability for licensees who offer betterments.

S. Avellar had to get Ch. 91 in order to sell a property 7 years ago.

Discussion on how to get people into compliance. J. Vincent adds compliance component is off the table, no enforcement, wraps it up.

S. Avellar opens floor up to call-in public comments.

Chris Snow talks about 221 Commercial, Seaman's bank; they've been working on their ch. 91 since 1993, says they want to do the right thing, invites HC to help resolve the issue and address the attractive nuisance behind marine specialties.

R. Mckinsey talks of town's limited involvement in licensing. We only get one section.

S. Avellar: start with Seaman's.

A. Howard adds 323 commercial street need help too.

S. Avellar asks if there are other questions.

B. Dyett asks for digital copy of ch. 91 manual. J. Vincent will send them out as soon as they are done.

W. Loughlin looks forward to reading the manual. BD thanks Jim and Rex. GB thanks Jim and Rex. SA thanks everyone.

M. Stefani makes a motion to adjourn. Binder seconds it.

Meeting adjourned: 6:58pm

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