**Minutes**

**Coastal Waters Commission**

**Town Council Chambers**

**Wednesday, October 11, 2023**

**6 p.m.**

**Attending:** Chair Mark Morrissey, Joe Fraser, Jeff Stenzel, Laurie Orlando, Tod Yankee, Greg Myers filling in for Charlie Tetreau and Amy Tchao, Town Attorney

**Excused:** Dayton Benway andScott Gleeson

Chair Morrissey called the meeting to order at 6:05 p.m. He explained that Charlie is coming back from the Allagash and is excused this evening.

1. Approval of minutes from September’s meeting

Mr. Stenzel explained that he read the minutes thoroughly and passed on some spelling errors to Sharon who provided 17 pages. The spelling issues were nothing that changed the meaning of the minutes.

 **MOVED AND SECONDED:** To approve the minutes as amended. (Stenzel & Orlando)

 **VOTE:** (5 Ayes) (2 Excused: Benway & Gleeson)

1. Harbormaster’s Report

Charlie was not in attendance this evening.

1. Old Business

0 Shore Drive

Chair Morrissey advised that Mike Morris has information to share with the commission. Mr. Morris advised that he is here on behalf of Carter Becker, the applicant for the project tonight. He wanted to keep this brief but they finally had an opportunity to provide the commission with a letter late yesterday outlining their responses to the commissioners’ comments at the last meeting as well as public comments taken during the public hearing. He offered to provide paper copies of their response to anyone wanting one. He passed copies out. He noted he is not planning to read through his letter tonight but hopes the Commission has had a chance to read it. He would be happy to read through it, if necessary. He wanted to make a few corrections in the application that are not included as part of the official record. First, he wanted to clarify his comment he made at the last meeting regarding the vessel’s weight at 80,000 lbs. He believes Attorney Cunningham pointed out that it is actually 80 tons and that is correct. The vessel is approximately 80 tons. For the record, he wanted to clarify that. He advised that they had originally intended to launch this vessel in early October or anytime now but that is obviously not occurring at the moment so several sections of the application they submitted will need to be revised accordingly, particularly on Page 3 of the standards, Section F. In their application, construction of the project must be completed within two years of final approval. Their response to that standard is that the project proposes to construct a temporary boat launch in October 2023, etc., etc. They would like to amend the application so that it is clear that the project will be constructed within two years of the final approval of the Commission. They don’t intend to delay the launch any further than they need to but for the sake of the application process, they need to bring these corrections to light. Another is on page 5, Section K. The project will not cause water quality or other coastal resources to be degraded including developed natural beach areas, marshes, grass or wildlife habitat. Again, they mentioned that in addition, the project is closed for October 2023 when the vegetation is dormant for the season. They are amending that to read that the proposed project will be constructed when most, if not all, of the vegetation is dormant. Regardless of when this will occur, it will occur within two years of the date of approval and also it will occur during a time of dormancy of vegetation. The last change is on Page 2, the start of the third paragraph where he indicated in the application originally that the project proposes to launch the Island Rover in October of 2023. He suggested that the Commission scratch the words, October 2023. Other than that, Mr. Morris did not have any other comments. Hopefully, the letter with his responses sufficiently answered all the questions that were raised. He did not feel it was necessary to read the letter into the record. He offered to answer questions.

Mr. Yankee asked if the changes just mentioned will be submitted in new paperwork to replace the letter mentioned? Mr. Morris advised that he would be happy to submit a written version with the changes and Chair Morrissey appreciated his willingness to do so. Mr. Yankee added that it would be good to have everything together should someone pick it up in a year or so.

Chair Morrissey wanted to make a point that he made a statement last month that we know as a Commission, we want to ensure that we are doing our due diligence on this project and we also do not want to really delay this project either so he wanted to make sure we are clear on that. He wants to be sure the Commission is checking all the boxes. Mr. Morris appreciated that and to that end, if they are faced with an approval this evening, he did not mean to sound presumptuous, but it would be highly desirable for them. If the Commission would accept a handwritten change on the application form, he would be happy to do that as well. Chair Morrissey noted that it would be fine. There were no more questions for Mr. Morris.

Chair Morrissey advised the Commission that he would like to come up with specific items of concern that we would like to have the Third-party Reviewer address. We talked about this last month and got a recommendation from Mike and a gentleman. He sent it to Charlie and he was going to ask Tim if we could get a recommendation from him. He thinks the Commission will have to decide who to go with and he was leaning towards getting the Commission’s thoughts on he and Charlie going over both recommendations with the assistance of Attorney Tchao on selecting one of the persons to do the review. He asked if the rest of the Commission would be okay with that decision? He asked Attorney Tchao if she sees any pitfalls with him and Charlie doing that if the rest of the Commission is comfortable? Attorney Tchao feels that if every Commission member is able to articulate what their issues of concern are, she thinks it is an appropriate process for Staff to actually go out and try to find a peer reviewer or peer reviewers, to address those issues. It could be more than one person. She has seen that happen before without it necessarily coming back with the entire Commission having to approve who that is. That keeps the process moving forward and it can be done through a process like accepting recommendations from both parties as well as Staff doing their own due diligence once they understood what the Commission’s issues of concern are. She thinks it can be done that way unless the Commission feels very strongly that they would like to weigh in on who the ultimate reviewers are. Chair Morrissey noted that he would like to get some thought on that. His thought was that we could potentially get that person or persons selected and get the process started and hopefully maybe get something in writing to us by the next meeting and deciding at the next meeting and pushing it to help Carter move his project forward. He asked if anyone has any thoughts, objections or concerns?

Attorney Tchao pointed out that that may be the best-case scenario. We just don’t know the availability of reviewers so it may not be something that could be reviewed by the next meeting but the Commission could shoot for that goal. Chair Morrissey agreed.

Chair Morrissey advised that the Commission spoke last month about some concerns. He would like to start making a list of concerns we want the Third-party Reviewer to look at. We touched on some last month but he wanted to open it up to the Commission to establish an official list this month and then we can go from there. He asked if anyone wanted to fire away the first one?

Chair Morrissey mentioned that the Commission established the marsh impact by this launch and we wanted a third-party input on that. He asked if he is correct? Commission members agreed and added it was also the soils and vegetation.

Mr. Fraser added that he wants to know if the boat will float? Is this a reasonable approach to getting a boat that draws 8 feet to get out of the water in 4 feet? Ms. Orlando mentioned the number of airbags and Mr. Yankee mentioned the design of the hull. It is an engineering assessment. Mr. Fraser pointed out that we have Ross’ report on the vegetation area and asked if that is acceptable or do we want someone else? Mr. Yankee added that we are looking for a third party because they are hired.

Chair Morrissey mentioned other than the soils and vegetation, is there any other items with respect to the third-party environmental opinion? Mr. Yankee advised that he has some questions that are not necessarily for the Third-party Reviewer but is more for our attorney to provide some direction on. At the last meeting there was some discussion about doing a pre-site survey of the vegetation so we will have an idea of what the baseline is so we can get back to whatever it was before or within some boundary. There is also who from the Town is going to play the role that the Codes Enforcement Officer typically plays for projects like this that are on terra firmer and are not in the water. Is it the Codes Enforcement Officer or the Harbor Master? Who from the Staff is going to be playing that point to make that determination of yes, it does, no, it doesn’t from the Town’s perspective? We are certainly not technical experts and if it were a building, the Codes Enforcement Officer would be the person to do that. Attorney Tchao asked if he means monitoring it during the actual launch? Mr. Yankee explained that it would be to do the inspection and monitor. It is different than a building or structure but he thinks someone from the Town has to play that role. Attorney Tchao added that it is depending upon how specific the issues are and she thinks the Commission has identified a fair number of those and it might be a question for a peer reviewer. The options are the Harbormaster or the Codes Enforcement Officer as Town Staff. With something like this, the Commission might decide there is a level of expertise beyond regular staff that might need to be involved in the inspection of the ongoing work. Mr. Yankee added that it would not be on the onus of the applicant. That inspection would be on the Town. Attorney Tchao asked if it would be part of the peer review process? Mr. Yankee advised that he thinks the peer review process would be to review the application and to review the calculations and numbers behind the application but not to administer similar to what the Codes Enforcement Officer does. Attorney Tchao thinks potentially it could be a combination but it would be driven by Town Staff as a compliance matter. Mr. Yankee agreed and he noted that he appreciated Attorney Tchao addressing in her submittal the discussion about escrow. He does not know enough whether it is escrow or it is a bond for potential damages if there is remediation, that sort of thing involved so he asked Attorney Tchao. She thinks the Commission can place, if it feels it is necessary or warranted, reasonable conditions on an approval if the Commission is inclined to grant an approval. She thinks any reasonable condition of approval is some kind of performance guarantee for the work being conducted. How that is measured can be an open discussion point. Mr. Yankee mentioned that he does not know what sort of financial instrument would be appropriate or not appropriate and he is not sure the Commission does but maybe it does. Attorney Tchao noted that if there is going to be a discussion of that at some point, she does not think this is the right time to do that. She thinks the Commission can talk about what are the concerns you would want to guarantee for or insure against rather than what is the appropriate instrument. She thinks there can be input from the parties on what might be the appropriate instrument. She does not think it is an inappropriate or unreasonable concern but it is something the Commission can consider as a Commission. Mr. Yankee added that he would add to the third-party review that this party also perhaps assist the Commission in determining the amount of what we should be asking for and from their perspective, what would be appropriate in the context of what it could be used for.

Chair Morrissey added if he is suggesting what would be a reasonable cost for restoring the vegetation in the marsh? Mr. Yankee advised that there is some degree of risk but after reading this, he feels there is less risk of the structure going sideways. If they feel there is some degree of risk, and one thing he would ask them about are the mats and the center of gravity of this vessel. If it tips over and the mats sink a bit, will it be stable enough, that sort of thing? Again, looking at the engineering of the temporary ramp, the loading system and maybe the center of gravity for the boat, he does not know how it works.

Mr. Fraser pointed out that we would want something in there if the boat gets stuck, who will get rid of it? That type of thing so some sort of bond. There is a big thing in your note about insurances and it sounds fine but he doesn’t know what the insurance policy says or what they are going to cover. That would also influence any type of bond you would have because if the insurance company is going to be liable, that is fine but if they are not, he thinks somebody needs to look into what insurance will cover if something goes wrong. Chair Morrissey asked if there is a contingency plan? Mr. Morris feels that this design is a belt and suspenders approach already in addition to having insurance should the unexpected occur. As he outlined in his recent letter to the Commission, they are proposing to have a large piece of equipment at the top of the slope to help guide the vessel down slowly so it is a controlled descent into position. They intend to have as needed, a large tug with this setup on the receiving end at high water trying to fetch this thing off the saltmarsh if it even becomes necessary. There has been discussion about what if an airbag deflates unexpectedly. These aren’t kids balloons you would have at a kids’ birthday party. These are industrial airbags that have been used for years and years and years in similar types of projects. They have a high degree of confidence that this design will work. They are not looking at this as a threat to failure. Just in case, the unexpected does occur, they do intend to have the tug available to yard this thing off the saltmarsh mudflat. They will have the piece of equipment at the top of the slope if the brakes should become necessary. Chair Morrissey feels nothing is 100% but for the sake of the Commission in our thoughts, are their contingency plans well thought out? Mr. Becker pointed out that they have twice as many airbags than are needed to do the job. They are industrial bags that you roll barges and ships into the water around the world. This is what they are designed and built to do. He pointed out that a lot of money has been invested in doing it right. Bill Creighton, part of the project engineering team, feels it is worth pointing out that the obstacles that have been put in the path of getting this boat in the water for six years and they haven’t given up yet. If the boat leans on its side, which is very unlikely and they are planning on it not happening. If there was an unforeseen thing given the six- or seven-year track record of them trying to get this boat successfully launched, people really think they are going to quit if it lays on its side. They are going to keep working until the boat is where they want it and they have a six- or seven-year track record of demonstrating that is their agenda. Chair Morrissey mentioned it is duly noted.

Mr. Stenzel pointed out that there was a right, title and interest raised and also addressed in Mr. Morris’ pdf from Attorney Silk. He asked if it has been settled? Chair Morrissey deferred it to the Town Attorney. Attorney Tchao advised that she had not seen it until just now so she will take a look at it while the Commission continues. Chair Morrissey did not see that being a deal breaker tonight. He feels the Commission has other issues to resolve.

Mr. Yankee wanted the third party to take a look at the Operations Plan. Again, it is more for assurance. If it did tip over because boats sometimes have high center of gravities, does that mean that now, there will be some vegetation that will have to be restored? How will they get it upright? Since we are having it done, let’s have some help in addressing the risk.

Chair Morrissey asked Mr. Morris if he would be able to provide a recommendation of someone in this business who could take a look at this plan such as a professional engineer. He mentioned that Mr. Cudlitz’s plan was just for the ramp and not the airbag portion. Mr. Morris agreed. Chair Morrissey personally feels the design was well thought out but we might have some issues with the spanning of different areas. Mr. Becker noted that Mr. Cudlitz did the original calculations on the airbags seven or eight years ago so he has been involved in this project a long time. Yes, he has done the calculations on them. Chair Morrissey asked Mr. Becker to get some kind of documentation such as a letter, plan, his thoughts or something that will help the Commission to know. Chair Morrissey is not an engineer and has not dealt with airbags before other than in his car so speaking for the Commission, we want to have a comfort level here. It is where we all want to be and we have done our due diligence here. Like he said, nothing is perfect but they do want to have a comfort level.

Mr. Morris advised that they would be happy to provide something from Ross if he is able to do that. Does the Commission anticipate wanting to have a Third-Party Engineer to review that? For the sake of time, he is asking if that will be the case so they can get that ball rolling. Chair Morrissey speaking to Tod’s point, yes somebody can speak to the airbag design. Mr. Yankee added the ramp and if it sinks one side a bit. How far can it sink if there is an issue, that sort of thing. It goes to the soils, maybe it goes to the center of gravity on the vessel. He does not know. Mr. Becker added that the center of gravity of the vessel is 5’ above the bottom of the keel which is the 22’ height. That is less than 25% above the bottom. The chance of the center of getting over too far, she will right herself in the water. On land she has spread legs and is more catamaran going down the land. Mr. Yankee added that along those lines, it is not being launched with full ballast, he assumes. Mr. Becker advised that it is 100% ballast and 50% of its weight is in the keel and 50% is in the rest of the structure. He has no issue with the engineer backing it up. He just feels it is belt, suspenders and then running around the block a couple of times.

Chair Morrissey pointed out that the Commission discussed a third-party review of the engineering plan. He asked Tim to provide him with a name so we can move forward with the third-party review of the soils, vegetation and potential value-based risk if we needed to do some revegetation in that area. Mike has already provided him with a name. Chair Morrissey noted he can reach out to the Town regarding who would be involved in the inspection of the area with regard to vegetation. He suspects it will be Nick Adams doing a pre-launch analysis but he does not know. It will also be part of the Third-party Review, a pre-launch inspection based upon the projected time of launch. Obviously, we are losing steam on this year and we are talking about next year in the same time frame. Mr. Becker agreed if we can get our track shoes going and he is talking about the Commission’s track shoes because they have been six years waiting for this date and they are still waiting. That is his frustration. Mr. Morris added that it is certainly possible if all the approvals are in place, as a team they would consider launching in March or April before the vegetation starts to come out. He is not sure that is an option but they could at least have that conversation. If that is not possible, it would have to be next fall. Chair Morrissey advised that he does not know if there is a window here in the spring and if it is possible. Mr. Morris was also not sure and mentioned that they had not had that conversation. Mr. Yankee asked if it could be during the winter if they get a weather window that is fairly accurate for a week out? Mr. Becker advised that it would take four months to get the wheel on line and he would not be comfortable running the vessel over slippery roads or mud season. He feels safety is paramount and he does not want to be pushed into an unsafe situation.

Attorney Tchao feels the insurance issue should be left so the applicant can provide that information and the Commission can have a further discussion about whether they feel it is adequate. Mr. Morris noted it is something they could weigh in on.

Tim Forrester speaking on behalf of the abutters to the project, advised that he was waiting to hear what the Commission’s questions and concerns were for the areas you were focusing on before giving you a recommendation for a good person or good firm. To him, the key points are the soils and vegetation and the potential impact on the pre-imposed conditions of it and what those impacts may be. He thinks the Commission needs a professional wetland scientist who has more background on coastal resources. In terms of the engineering and the design and whether or not the proposed timber mat access is adequate and what impacts that may have and also the soils it sits on. He thinks it is a pretty complex thing and then you are dealing with the boat and the marine end of it. The people that come to mind for him are first, Matt Arsenault of Stantec who is a wetland scientist and would be ideal for something like this. Stantec also has engineers on board and they are involved in a lot of large-scale projects all over the world. He feels they are more than qualified to look at this. The folks at G.I., the same thing. Everybody knows Marty Baker or a couple of the other individuals there. He does not know if their wetland aspect is as good as Stantec and does not know if they even have a good wetland staff on board. He would lean towards Matt Arsenault at Stantec. Chair Morrissey asked him to e-mail his recommendations to him.

Chair Morrissey asked for any other thoughts on this project before we move forward. He thinks we have a good target of what we want the Third-Party Reviewer to do moving forward with both the engineering aspect and the wetlands vegetation aspect. He suggested tabling the insurance question until we can move forward down the road. Attorney Tchao added that there needs to be a delay in the provision of that information by the applicant on insurance. She assumes the Commission will not weigh in on those issues until the peer review is underway. Chair Morrissey agreed that would be the way to go.

Twain Braden had a clarification question for Attorney Tchao. He mentioned that both Mike and Tim are providing names to the Commission of folks who may be good Third Parties. He asked if there is interaction with those third parties simply to provide new names or is there going to be any interaction. He feels it would be helpful with guidance from the Commission to say, please send us the name but then don’t have phone calls with them just because it reserves the sanctity of it being a third party independent. He thought the Commission should think about that and that is his recommendation. Attorney Tchao felt it was a good suggestion. She thinks it is now in sort of Staff’s hands with the Chair’s oversight as to who the peer reviewing parties or party may be. There are names of firms that have been exchanged here so she thinks it would be best if no parties had side conversations with those folks. Obviously, when Staff decides who the peer reviewers will be, an announcement will be made and it will be even more clear that parties should not have side conversations with them. She thinks it preserves the impartiality of the third-party review process.

Chair Morrissey asked if anybody has any last comments? There were none provided.

1. New Business

83 Shore Drive, Waterman Marine

Chair Morrissey asked Peter Spencer to walk the Commission through this project. Mr. Spencer advised that they are looking to get access from the upland of this property down to the water. The owners are interested in kayaking from this location. There are two staircases coming down leading to a 5’x 10’ pier. It is a very small structure on the waterfront. It provides seasonal access over the intertidal to a 10’ x 20’ float secured by a mooring. The landing itself will be hand dug 4’ x 6’ posts in the ground. The lower landing is 6’x6’ posts and the stairs will not be attached to the property. They will be bolted at the top from the access landing down to the mid landing and then the lower staircase goes from there down to the pier. The reason they have an offset is because there is a 27’ run down hill and it is a long way to fall. If you have an accident, safety wise, they always think it is good to have an offset. The actual pier itself is pile on ledge. There is significant ledge at the waterfront and this is a small pier and is all you would really need to attach a seasonal ramp to the float.

The float will not be stored on this property in the winter. They will have to find a separate place for it. They are researching where it can be put. Mr. Stenzel asked if that decision could be made fairly quickly? Mr. Spencer felt that it could be dry stored. It will not be sitting on any mudflat. Mr. Fraser noted that for the past couple of years we have had a requirement that people state what the float storage plan will be. Mr. Spencer did not feel that was an issue but could offer a solution right away because he deals with the Chebeague Island Boat Yard all the time. It could be towed there, taken out of the water and stored there and brought back in the spring. Chair Morrissey asked if he could have the applicant sign something advising these are their options we are weighing right now, that would be fine so we are sure the applicant knows it has to be stored somewhere. Mr. Spencer mentioned another option they have is on the Cousins River where there is space to do the same thing. At the earliest, he expects to start this project in the spring.

Mr. Stenzel noted he has a question which is of curiosity, not questioning the engineering, but on Exhibit 6, it looks like the ramp is just hanging by a galvanized chain as opposed to a fixed rod. Mr. Spencer explained that for a seasonal ramp, that is a normal setup for them. They do this to preserve the structure of the pier and the chain is very substantial. They bring lines back from the float. It is highly tensioned so you don’t get any movement other than just wave action coming by. They have been doing this for many years and have found it to be very successful. The ramp sits on a set of chocks on the float. The ramp is a timber ramp. It is pressure-treated lumber, cedar decks and handrail. They have the DEP and Army Corps permits. The application states it is mostly for paddling kayaks and not a motor boat. The topography is pretty rugged.

Chair Morrissey requested that Mr. Spencer send him a picture of the chain setup in a real-life application? He has never seen anything like this. He does not want to delay this but would like to see it because he is used to having a rod go through both sections and it goes up and down. Mr. Spencer added that that is the way most people do it but they do this for the very reason that there is no damage to the ramp. He noted he has lots of photographs that he could send Chair Morrissey. Mr. Stenzel requested photos of the landing and the float and the bottom. Chair Morrissey mentioned he has seen 4” steel channel sliding back and forth. Mr. Spencer agreed and added that the chocks themselves are wood and they have an insert. Then there is a covering plate that get bolted through the metal on both sides so the ramp is fixed to the float. Mr. Spencer agreed to send pictures and Chair Morrissey advised that he would forward them to the commission and that way everybody will see it and there will not be any questions on it and we can move forward on it. Mr. Spencer pointed out that every system they have built in the last 20 years has got that.

Chair Morrissey asked if anyone has any questions for Mr. Spencer? No questions were provided and it was determined that a site walk is not necessary.

1. Adjournment

 **MOVED AND SECONDED:** To adjourn at 7 p.m. (Stenzel & Yankee) **VOTE:**

 (5 Ayes) (2 Excused: Benway & Gleeson)

Recorded by Sharon Coffin