

TOWN OF CUMBERLAND, MAINE
Coastal Waters Commission
Meeting Minutes
August 9, 2005

Present: Lewis Incze, Chairman, John Williams, Ken Hamilton, Jim Millinger, and Hartley Brewer

Staff: Town Councilor, Donna Damon and Town Manager, William Shane

I. WELCOME & INTRODUCTIONS

The meeting was called to order at 7:05 pm.

II. APPROVE MINUTES OF PRIOR MEETING

The Board proceeded directly to item III of the agenda.

III. OTHER BUSINESS & FUTURE MEETINGS

Mr. Incze began by requesting an update on the final decision regarding an exception on Broad Cove.

Mr. Shane stated that the item was permitted.

The Commission discussed why the item was handled as an administrative issue and not a planning board issue. Mr. Shane explained that it was due to the way the ordinance is set up today and maybe that should be a portion that the commission reviews.

Mr. Shane explained that the issue with the current ordinance is the process. There are no checks and balances in permitting a float, pier or dock. A goal should be to define a better public process, as well as to protect natural resources and pedestrian access to the shore. He provided the Freeport ordinance as a template for the structure of the Town of Cumberland ordinance. He said that the Freeport ordinance was the most comprehensive of all the ordinances that were investigated. He felt that, at a minimum, all applications should go through the Coastal Waters Commission for review and a recommendation to the Planning Board. The Commission could hold a workshop, which would be a noticed meeting, with abutters within 1500 feet being notified. The items for review would include piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line of water body or within a wetland, as the ordinance currently defines.

Ms. Damon asked, in regard to notification, if it would be possible to include the notice in the Island calendar as part of the public process.

Mr. Shane was concerned about getting the notices into the calendar in time and suggested that notices be posted in public places, such as the library, the store and the boat, as well as in the local newspapers.

Mr. Hamilton felt that both means of notification would work.

Ms. Damon indicated that there were some meetings that she had not seen a notice about.

The Commission discussed where the notices were currently published.

Mr. Williams suggested there be a requirement that the Commission be notified within a certain number of days of the initial application, so that the Commission can make a recommendation to the Planning Board.

Mr. Shane said it should be written into the ordinance that the Coastal Waters Commission review all Planning Board applications related to this ordinance and provide a recommendation. Currently, it is set up informally between the Town Manager and the Planning Board.

The Commission discussed the approval procedures and how the Commission's recommendation would or should influence a final decision.

Mr. Millinger asked if the zone began at the low water mark or the high water mark?

The Commission discussed where zones begin and end and when the Planning Board is involved and that the differences between each piece of property are an important part of the process.

Mr. Millinger asked at what point the Commission's advice would be needed.

Mr. Shane said that the Commission would be heard at the Planning Board review process.

Mr. Brewer stated that the Coastal Waters Commission was an advisory to the Town Council and questioned whether something needed to be changed if the Commission were to make recommendations to the Planning Board.

Mr. Shane felt that the charge of the Commission could be changed at the same time changes are made to the ordinance.

Mr. Incze stated that if the Planning Board deals with the intertidal lands then they would be in a reasonable place to adjudicate recommendations on both the intertidal and submerged lands.

Mr. Shane said that the charge of the Commission was to look at the impact on all the coastal issues of the Town of Cumberland. He suggested that the Commission develop a checklist to decide if applications are in accordance with the ordinance, but the issue is whether there are items that are not in the ordinance that the Commission should be looking at.

The Commission discussed the issue of obstruction of passage.

Mr. Millinger suggested the following language that could possibly be included in the ordinance: Shall not prevent human passage from one side or the other between normal high water and low water.

Mr. Incze said that a person would be forced to trespass if a tide is unusually high. He has seen a structure where there are stairs built to go up one side and down the other and that is the fair thing to do, but not everyone may do it. He agrees with not interfering with passage, but if someone owns the intertidal, are you allowed to trespass on that intertidal?

The Commission discussed protection of access to the beaches for recreation and fishing, fowling (hunting) and navigating.

Mr. Williams felt the wording in the Freeport ordinance was too general in regards to what defines a structure and who determines whether there is an operational necessity?

Mr. Shane reminded the Commission that the issue is not to try to restrict the rights of property owner; it is to protect the rights of those who want access to the beach. He suggested that they define beaches that have historically been used for public access.

The Commission discussed that the plans that are submitted typically do not have elevations included on them and that this might be something that should be required.

Mr. Incze talked about impeding navigation along the shore.

The Commission discussed safe passage over or around structures, as well as maintenance responsibilities and whether public easements over privately owned lands would be required as condition of approval.

Mr. Shane said he would check with the Town Attorney in regards to these issues.

The Commission discussed access by commercial fishermen, how structures may affect this industry and whether the same rules would apply to a commercial structure.

Mr. Shane suggested that the Commission seek the input of commercial fishermen.

Ms. Damon asked about a map regarding marine uses.

Mr. Shane said he would get the Commercial Fisheries Maritime Uses District map out to the Commission members and would put together items for the next meeting to include: Notification; Access; Drawings with proper elevations; Legal and liability issues to be addressed by Town Attorney; Views from fishermen.

Ms. Damon asked that definitions be included in the ordinance so that it is clear what is intended.

The Commission discussed the need to determine the intent of the ordinance.

Mr. Shane said that a purpose statement appears right after the title of the ordinance, so the statement should be defined first such as, "preservation of pedestrian access to historic public use of beaches" and then tying in boat and foot traffic that had been discussed.

There was discussion regarding public right of ways that are not maintained by the Town, so the landowners end up maintaining them.

The Commission talked about identifying where public access has occurred historically and putting it on public record, so that it can be preserved and maintained and that the proper wording of the ordinance would be essential.

The Commission discussed how many structures were located on the mainland shore and how this ordinance would affect the residents on Cumberland Foreside because the ordinance applies to the Town as a whole. Mr. Shane said he could have the Harbor Master photograph the structures on Cumberland Foreside.

Rob Snyder, Vice President of Programs at the island Institute and a member of the Working Waterfront Coalition, said he would forward the State Planning Office definition for commercial fishing that could aid in shaping the ordinance.

a. Next Meeting Date

The Commission will meet on August 18, 2005 on Chebeague Island @ 7:00 pm. and August 25, 2005 at the Cumberland Town Hall @ 6:45 or 7:00pm with the Town Attorney.

IV. ADJOURNMENT

The meeting adjourned at 8:30 pm.

Respectfully Submitted By

Nancy Stroud
Board/Committee Secretary