

## **Government Study Committee Minutes January 7, 2021**

**Present:** Gary Champion; Craig Saline, chair; Tammy Jones, Diane Young. Also present: Police Chief Paul Nikas, Town Counsel George Hall, Lt. Jon Hubbard, Chris Murray. Also: Bill Fabri, Paul Conboy, Tom Burgess, Diane Halverson, Scott Finlay, Wayne Castonguay.

**Call to order:** 7:01pm.

**Citizens queries:** None.

**Minutes:** Review of the minutes of December 10, 2020 was deferred.

The chair acknowledged an email from Jones, with an intention to add her concern to the next meeting's agenda.

**Waterways regulations:** Chief Nikas (Harbormaster) and Town Counsel joined the meeting to answer questions from the GSC on the Harbormaster's proposed amendment to Chapter 118 of the Town Bylaws, Boats and Waterways, for the Annual Town Meeting.

It was acknowledged that every town handles their waterways regulations differently, and that what they have in common are the relevant state laws.

Question: Re the proposed additional wording to Sec. 118-9: "The Harbormaster shall approve the Harbormaster Office Rules & Regulations of the Waterways," would the Harbormaster be required to hold a public hearing on those Rules and Regulations and any future amendments under Bylaw 15-13, Public hearing required? Or do you believe the Harbormaster Office Rules and Regulations fall under Bylaw 15-14, Exception for rules internal to Town operations?

Answer (Town Counsel): Changes to the regulations would require a public hearing, with a summary of the text provided before the hearing and the full approved text posted after adoption, including changes that may have been made due to public input.

Comment by GSC: Bylaws are approved by Town Meeting; regulations are approved by boards, officers, etc. Referring to "Rules and Regulations of the Waterways" in the waterways bylaw may be confusing. For clarity, the bylaw may want to identify the Rules and Regulations as "Mooring Rules and Regulations."

Comment by GSC: According to Bylaw 15-13, the complete text of proposed changes must be made available 14 days in advance of the hearing.

Comment by GSC: Was there a public hearing in 2011 on the Harbormaster's Rules and Regulations dated 2011?

Question: Has Town Counsel's opinion evolved on MGL Chapter 91 Section 10A, 310 CMR 9.07(2)(a) and MGL Chapter 102 Section 21?

Answer (Town Counsel): 91 and 310 direct the Harbormaster to adopt a process for morning regulations. Town Counsel has in the past spoken to existing bylaws, not hypothetical bylaws. Allegation has been made that the Harbormaster's regulations are not valid because they were not approved by Town Meeting or the Select Board. He has not suggested that a bylaw requiring such approval would be inappropriate. Bylaws of the town of Situate, cited by GSC, requiring approval by Select Board, push the boundary of who has the authority.

Comment: The Attorney General and the DEP must approve waterways regulations to make sure they are aligned with state law.

Answer (Harbormaster): Yes, and that confers legality. Currently, MGL Chapter 91 Section 10A, 310 CMR 9.07(2)(a) and MGL Chapter 102 Section 21 confer authority to the Harbormaster. The Town can change that, but there is no need.

Question: MGL Chapter 91 says “whomever is empowered.” What is the empowerment mechanism that gave the Harbormaster the authority?

Answer (Town Counsel): The key word is “or.” The default is the Harbormaster. “Or” allows Town Meeting to designate another body to issue permits.

Question: Why does the proposed Bylaw include articles that duplicate the Harbormaster Office Rules and Regulations of the Waterways? (Articles IV, V and VI? Is the intent to remove the existing Bylaw 320 on mooring permits and fees? What would be the criteria for deciding whether a regulation/rule would go into the Bylaws or the Harbormaster Office Waterways Rules and Regulations? Given that the language already exists in the regulations, adding it to the Bylaws makes changes more difficult.

Answer (Town Counsel): The Harbormaster does not have the authority to impose fines in his regulations, only to pull a mooring. Overlap here between bylaw and regulation provides an alternative set of enforcement options. This is not unique to waterways; see wetlands protections, for example. A guiding principle is to not get so granular in a bylaw that you can't make reasonable changes. Best practice is that all regulations not related to moorings should be in the bylaws.

Answer (Harbormaster): If there is a bylaw establishing fines, the money goes to the Town. Some towns have civilian harbormasters; Ipswich uses sworn police officers who are allowed to issue tickets under MGL 90B. On the other hand, if a change was sought to have no more cinderblock moorings, that could be debated without going to Town Meeting. Existing Bylaw Chapter 320 gives the Select Board authority to set mooring fees. That would remain.

Comment: If it's dealing with moorings or fees, it can be in the Harbormaster's Regulations. If it's dealing with fines, it has to be in the Bylaws.

Question: There should be public vetting of increased moorings on public tidal lands. Is it best for the Town that the Harbormaster be allowed to increase moorings or designate them to commercial boating facilities, for instance?

Answer (Harbormaster): Authority for designating moorings should be under the Harbormaster as allowed by state law, as long as it is not arbitrary or capricious. If anyone is denied a mooring, they can appeal. He will make sure that appeal information is on the Harbormaster website.

Comment: Should the bylaw include information about appeals? It would help citizens be aware of the checks and balances in the system.

Question: When has the Harbormaster ever gone to the Select Board concerning number of moorings?

Answer (Harbormaster): It is discussed 2-3 times at year during departmental updates to the Board and at budget times.

Question: The approval authority of shellfish regulations, traffic regulations and parking regulations is the Select Board, as advised by the Shellfish Advisory Board, and Chief Nikas and his Police Department staff, respectively. Why should Harbormaster Office Rules and Regulations of the Waterways approval be different? What is the advantage to the Town to have just one municipal position (Harbormaster) approve waterways regulations within the Harbormasters jurisdiction?

Answer (Town Counsel): MGL Chapter 130 explicitly gives approval for shellfish regulations to the Select Board. Local circumstances determine what is best for waterways.

Question: Why shouldn't the waterways regulations be left out of the Town Bylaws and simply be included in the town's regulations?

Answer (Harbormaster): Because of safety issues, e.g., jet skis. You want to be able to enforce them through normal police activity. The Harbormaster takes no position on whether the Harbormaster's regulations are reviewed by the Select Board, another officer, etc.

Comment: Select Board approval provides transparency and enhances the lawful capacity of the Harbormaster and his department to enforce the regulations. Public hearings allow for more discussion and consideration than Town Meeting. GSC may suggest adding to the bylaw that proposed changes to the bylaw receive a public hearing run by the Select Board so that the interest group can have the advantage of a focussed hearing.

The Harbormaster asked that any changes be sent to him by the end of January/first week of February. Chair Saline asked that all three bodies be represented when it comes time to present to the Select Board.

Next meeting: January 21, 2021.

Adjournment: 8:53pm.

Respectfully submitted,

Diane J. Young, Secretary