



Town of Southwest Harbor Harbor Committee

March 29th, 2010 at 6:00pm
Special Meeting RE: Appeal

Attendance

Committee Members: Ken Hutchins, John Seavey, Weldon Leonard, Shawn Clements,
Corey Pettegrow, Harold Hall, Jim Snow, Cameron Frothingham, Vaughn Clark, Jeff Reed
(Weldon will not be included in any vote during this meeting as he is the appealing party.)

Harbor Master: Dennis Dever

Selectmen: Trudy Bickford, Ralph Dunbar, JR., Skip Wilson

Public: Tom Lawson, Gene Thurston, John Stanley

I. Call to Order

Call to Order at 6:00pm. Everyone introduced themselves.

Chairman, Ken Hutchins, proposed a schedule for the evening of the following:

- Appealing party to be heard
- Harbormaster to be heard
- Each Harbor Committee member will be given a minute to speak or ask questions
- Appealing party will have an opportunity to speak again
- Harbormaster will have an opportunity to speak again
- Chairman will summarize what has been said
- Secret Ballot vote on a Motion to approve the Appeal

Questions or Comments regarding this proposed schedule-

Committee agrees with the exception of the secret ballot vote. Consensus was to vote by show of hands as has always been done.

Motion to accept the proposed schedule with the amendment that the vote be taken by show of hands, not secret ballot.

Seconded.

All in Favor – 9

All Opposed – 0



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Discussion regarding if the Committee can vote not to hear the appeal. Questions regarding timeliness. The Harbor Ordinance does not mention a time limit, however, the Town Appeals Board uses thirty (30) days from the action as a deadline to appeal.

-A summons was issued February 26th, 2010. This is what has prompted the appeal.

Action by this committee may or may not have any bearing on the court proceedings that have begun.

Motion to hear the Weldon Leonard's Appeal of Docking Violation Fines.

Seconded.

All in Favor – 6

All Opposed – 3

II. Appeal Hearing

Appealing Party-Weldon Leonard

I have been a commercial fisherman/boat builder in Southwest Harbor 44 years. I have never received a citation from any other Harbormaster. "I feel I was unfairly singled out when other boats were present that were not ticketed." "I did what I have always done."

I Tried several times to work this out with the Harbormaster directly with no resolve. I have spoken out against the Harbormaster when I have felt it necessary and feel this is a contributing factor for my being singled out.

The Manset shore is not safe in bad weather. The Town dock has always been a point of refuge. I have not abused the privilege.

The Town Manager supports the Harbormaster 100% in any decision. It did not seem that my concerns were worth being heard. The position of Harbormaster is being treated more like a 'Harbor Cop'.

The second part of the appeal allows for the ability to pay for and obtain 2010 Mooring Permits whether or not this matter is resolved.



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I feel that when the Harbormaster presents items from the Committee to the Selectmen, he does so with a personal agenda and not the agenda of the Committee. Items discussed at length by the Committee are debated and rehashed again in front of the Selectmen with disregard for the Harbor Committee.

This is very important to those of us who make our living directly from the harbor. ‘There is no effort by the Harbormaster to understand and cooperate with those who depend on the Harbor.’

The Harbormaster and the Town Manager have been trying to change the Harbor Committee through both rulemaking and member composition for about a year.

Selective enforcement is much worse than no enforcement.

“Please look objectively at the evidence.”

Harbormaster-Dennis Dever

3violations in 08

7 in 09

- 9-27-08 Warning for overtime tie up at Upper Town Dock
- 10-17-08 Written warning gear left unattended on a float at Manset for 2 days
- 8-29-09 Violation Overnight tie up at Upper Town Dock 8-28 / 8-29
 - Note on paper bag refusing to move
 - Class E crime failure to obey the order of the Harbormaster

Photos presented.

When I made my initial rounds the boats were not there.

- 8-30-09 Second Violation for Overnight Tie up at Upper Town Dock. Boat arrived well in advance of the predicted storm.
- 8-30-09 Written warning issued to Lost Airmen and Freedom II for overnight tie ups at the Lower Town Dock.
- 9-27-09 & 9-28-09 Violation for overnight tie up on the Upper Town Dock.
 - Incident report presented.
 - No notification received by 9am that he would be tying up there.
 - Phone message received at 9:10am did not get until 5pm.



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Issued a citation and Mr. Leonard refused to take it. Mr. Leonard stated he was only there for one night not two so I agreed to double check the message and rewrite the citation for one night if need be. –Citation was rewritten for 1 night.

Confrontation ensued.

10-15-09 1st notice of delinquent payment issued by the SWH Police Department

2-21-10 2nd notice of delinquent payment issued by the SWH Police Department

Summons to court for April 6th, 2010. March 15th was the deadline to settle before having to go to court.

What was noted on Mr. Leonard's bill was simply that he owed fines. There was nothing that he was not allowed to have a 2010 permit. If so I would not have sent him a bill.

Committee

Vaughn-Does seem like Selective Enforcement-There are others who pay nothing in the harbor or the town who tie up with no consequence. The Harbor does not need this kind of publicity.

John- Asked Gene Thurston how long he was Harbor Master and how many summons he issued in that time. Answer: 17 years and less than 20. They were both right but they were both wrong.

Corey- I thought that this was all ironed out in the December meeting when we discussed it. We voted then (9-0) to change the ordinance so that this type of incident would not be an issue. The Harbor has been a bit of a hornets nest in the last year or so. Seems like Selective Enforcement.

Jeff- Part of our job is to see things go right and raise objections about the way some things are handled and praise on the way other things are handled. I do feel there is a certain amount of recourse if you disagree with the wrong person. Seems like there was an attempt to contact the Harbormaster. Harbormaster does not have a cell phone issued by the Town. We have since rectified this situation by saying Dispatch should be called if you cannot be reached.



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Harold-Both have a good argument. I would like to think they could have resolved this in a more gentlemanly way. Both were wrong.

Cameron-Both well presented cases. A lot of thought went into these statements. Difficult for me to have to make a decision on this. I thought this was resolved in December.

Jim- Well presented cases. Other boats that may not have gotten a ticket and were given warnings-were they on the same schedule of warnings then citations. We were criticized for our last appeal because we did not follow the ordinance.

Shawn-There was a lot of discussion about this in December and came to a 9-0 vote that it should be allowed. I think this should have been dropped after that meeting.

Ken- The ordinance is specific. There has been a precedent for using those docks as a point of refuge.

Harbormaster-Dennis Dever

Everyone can not get a citation when one has been warned twice and the others have not been warned at all.

Appealing Party-Weldon Leonard

Important to note that there were other boats at that dock. There was also a citation written up for the wrong days, I told him that and admitted I was there. I followed the same procedure we always have. To my knowledge, prior to Dennis, no one has ever been refused a spot at the Docks in bad weather situations. Especially those coming from the Manset Shore.

Ken-We did discuss and vote on this in December. You can use that information in making your decision if you choose. I find this extremely uncomfortable. I think this is a good argument for us not being the appeals board.

Cameron-Are we asking whether or not Dennis had the right to write the citation or whether or not he should have done it.

Ken-I think we have to go by whether he had the right.

Audiance

Skip Wilson-The job of the Harbor Committee is to uphold the Ordinance. You have to look at what is in black and white.



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Trudy-The Ordinance is what we have to go by. That is what you take an oath to uphold.

Corey - Motion to approve Weldon Leonards' appeal of the docking violations.

Jeff - Seconded.

All in Favor - **4**

All Opposed - **2**

Abstained - **3** (Ken Hutchins, Harold Hall, John Seavey)

*Note: Skip stated that you must have a reason to abstain. It must be for financial reasons or family ties.

There was a lot of discussion over the reasons and the ability to abstain. The Selectmen felt strongly that everyone should make a vote or excuse themselves and step out.

Ken stated he doesn't believe you can make anyone vote. The abstentions simply count towards a quorum.

Discussion over what the vote actually means. Was the appeal upheld? Does the motion die?

Harbor Committee Quorum is a majority of the current members.

Need only a majority vote as long as a quorum of members voted.

Motion carries in favor of the appeal

III. Adjournment

Motion to adjourn.

Seconded.

All in favor – **9**

All opposed – **0**

Meeting adjourned at 7:35pm.