

## MINUTES OF WATERWAYS MANAGEMENT COMMITTEE MEETING

JANUARY 30, 2007

A Meeting of the Waterways Management Committee was duly called and held on Tuesday, January 30, 2007 at 7:00 p.m. The meeting was called to order by the Chairman, Roger Race. The following people were present: Mr. Race, Robert Metcalf, Norman Peloquin, Warren Hathaway, Gerald Hickey, Chris Hemingway and Ira Perry. Also present was Mr. Steven Melo, Harbormaster.

Mr. Race announced that there was no printed agenda for the evening. The only agenda item was the status of Concordia's Army Corps permits for rental moorings. He said that they invited Concordia to this meeting for an update on their Army Corp of Engineers application.

The following people were present from Concordia: Brody McGregor, Stuart McGregor, Carol Hill, Steve Lima, Atty. Peter Corbett, and John Simmons.

Mr. Corbett gave an update on Concordia's situation. He said that it started in 2003 when the WMC asked Concordia to get a commercial license. He said that Concordia contacted Culligan Engineering and they did alot of work to get the permit. In the fall of 2003 Concordia contracted certain work with Culligan Engineering and himself. His review of the situation and opinion is that Concordia is already permitted under the grandfathering provision of 1977 nationwide permits the ACE issued. Under this statue ACE started in the 60's and 70's by first issuing different nationwide permits for certain categories, such as moorings, etc. Then they issued General Permits that are focused. Under the 1977 nationwide permits, any structure in place prior to December 1968 needed no further permits; they are already permitted. He said Concordia's moorings were in place prior to this date, so that they would already have the permits that are needed. They asked ACE to review the information and to confirm that their position is correct. ACE started a review of the information and considered whether the moorings interfere with navigation. Until they hear that they are not in compliance, Concordia feels they are permitted. They submitted this information in May, 2004 and have had the Corps visit the sites. At the conclusion of this, the only other piece of information they felt was missing was that they needed the placement of all the other moorings in the harbor surrounding the Concordia sites. They heard that the Town Harbormaster was in the process of gathering this information and they choose to wait for the information from the Town since they felt that they already had the necessary permits. He understands that they now have the Town information and they are reviewing it and will add it to their plans and also submit it to ACE. He feels that once this is done, they will have submitted all necessary information to ACE.

Mr. Race opened it to questions. Mr. Peloquin asked if Mr. Corbett has seen the October 14, 1989 letter regarding Concordia's moorings. Mr. Corbett said that he has seen it, which states they have unauthorized rental moorings but no enforcement action was to be taken at that time; he has no idea what initiated that 1989 letter. He did not think to bring that letter with him tonight. He said that he would give a copy to the WMC. He feels that the 1977 permit predates the enforcement letter. Mr. Peloquin asked if an after-the-fact application was ever submitted. Mr. Corbett said that Culligan did one, but it was not pursued. Mr. Peloquin asked what Concordia has submitted to ACE to support that the moorings were in the same locations prior to 1968. Mr. Corbett said that they have affidavits from people that had moorings at that time. Mr. Brody McGregor said that the WMC had copies of this information. One affidavit was from Mr. Peter Nickolson who has been a resident for many years and worked for New Bedford Yacht Club and he remembers Concordia having approximately 250 moorings. Another from an employee of NBYC stating similar information. Also, an affidavit from Mr. McGregor stating the information he remembers.

Mr. Hathaway asked if there was any discussion with ACE about moorings being considered structures. Mr. Corbett said that no one has raised that question before. He pointed out that the 1977 permit refers to moorings as structures. He also said that Karen Adams' e-mail refers to moorings as obstructions for navigation. He said that that a section of the 1977 permits states that obstructions in water are considered structures.

Mr. Hickey said that we have letters from ACE asking if we have any correspondence from ACE to the Town or Concordia on whether any reference was made to the moorings being grandfathered. His biggest concern is the importance of this and what will happen if ACE says that Concordia is not grandfathered and what will happen in the harbor. He is concerned about the other commercial mooring companies. He has serious doubts if the Harbormaster should give out permits without the ACE approval. Mr. Corbett feels that within a month the plan will be ready to submit to the ACE. It would be

another month at the earliest before a decision is made. If it is unfavorable, Concordia will have to decide what to do. The choices would be to file litigation, do nothing and give up the sites, or then file for an after-the-fact permit. He said it is a recognized process and no one should require that the moorings be removed yet. He feels that Harbormaster should issue the permits since they feel that their application will be approved. They have not heard anything negative from ACE. He feels that ACE is respectful of the local process and does not want their permit situation to determine the outcome of the local officials.

Mr. Hathaway said that when the WMC wrote the letter in 2004 to support Concordia for the ACE permit, we felt that Concordia's field didn't interfere with the navigation of the harbor. He feels that ACE should give an answer soon. He said that what was the situation in 2004, and thinks for the most part still is now. He would like to see this cleared up as soon as possible. He would like ACE to state what they have a problem with and what they don't have a problem with. He said that now there is no confirmation of anything. He said that the WMC has to be accountable to all the people in the harbor, including Concordia's clients. He said that the few moorings that are not plotted should not hold up the process.

Mr. Race said that another problem is that there are other commercial companies that have applied for ACE permits and have received them, and Concordia still hasn't. Mr. Melo said that Concordia has 30% of the moorings that are on the south side of the Harbor. Mr. Melo asked if there was any precedent whereby the ACE has recognized moorings as structures in any other harbor. Mr. Corbett said that moorings were referred to as structures both in the 1977 permits and by Ms. Adams e-mail. He said that ACE told him they have done it before, but the largest field they found exempt was only 12 moorings – he said that the army corp. told him that Concordia is a unique situation. Mr. Melo asked why Concordia pursued the after-the-fact permit before now. Mr. Corbett feels that they would be facing the same time frame. He feels that the other companies received approval because of the size of the company, smaller than Concordia. He feels that it would have been easier if all Concordia's moorings were in a single field.

Mr. Peloquin said that maybe regriding the harbor may make it easier. Mr. Hickey said that we look at moorings as not being structures because they can be moved, especially if the harbor is regridded. Mr. Corbett said that the Harbormaster could only approve moorings that will be in the grid fashion causing Concordia to move their moorings. Mr. Hickey said that they haven't pushed to regrid because of the upset it will cause the boating community and the wait for Concordia's status.

Mr. Melo asked if the moorings are considered structures, wouldn't moving them into a new grid destroy the argument that they are structures? Mr. Corbett said that a regrid of the harbor and moved all the moorings, then that would end their grandfathered claim and they would have no choice but to apply for a new permit. This would happen at any point, before or after the Corps acts on their exempt status, should a regrid be done. He said that if Concordia moorings were grandfathered, that would not interfere with any WMC plans to change their locations in a new grid pattern. Mr. Melo asked about the number of Concordia moorings that had moved during the two hurricanes since Mr. McGregor had bought the company. Does the Corps know of that movement in their determination of the structure issue? He recalls several moving in Hurricane Gloria and over one hundred moving in Hurricane Bob, including some that crossed the bridge and roads. Mr. McGregor said that Concordia lost moorings during the hurricanes. He said in 1981 when he brought Concordia there were 305 moorings.

Mr. Hathaway asked if ACE has the 2004 letter from the WMC that states that Concordia didn't interfere with navigation in the harbor at that time. Mr. Corbett said that the letter was submitted and they discussed the letter with them. He feels that ACE considers navigation in the harbor their principal responsibility and that is why they are involved in this decision. Mr. Hathaway said that ACE said that Concordia has been sending them a lot of information. Mr. Corbett said he was confused because they submitted the initial package and will now send in the map of the moorings; other than that he has just send e-mails. Mr. Hathaway said that ACE asked for confirmation that the WMC agrees with Concordia; he feels that the letter in their package was an answer to that. Mr. Corbett said that since 2004, ACE has been waiting for the map of the other moorings, Concordia waited to get that map from the Harbormaster database because they felt they were operating under the grandfathered permit. In retrospect, he said they did that at their own peril, and probably shouldn't have done that.

Mr. Hemingway feels that this situation deserves an answer from ACE. Mr. Race would like to see the answer before the March 31 deadline. He asked Concordia what the WMC can do to help them. Mr. Corbett said that they will forget about the 20 moorings missing coordinates and submit the information they have to the ACE. They will keep the WMC informed of any progress. Also, he said that when they meet with ACE if any member of the WMC would like to be present, he would welcome that. Mr. Hickey

suggested to start the process soon before regriding is started. Mr. Melo asked that since they intend to regrid the harbor, shouldn't that be done first? Mr. Hemingway feels that Concordia should finish the process they started first; he said that some moorings might not be moved during regriding the harbor. Mr. Melo said that he always intended to share all mooring placement information with Concordia but Concordia decided to wait for all of the information to be complete, at their own peril as Atty. Corbett said.

Mr. Metcalf said that he doesn't understand why Concordia wasn't automatically grandfathered within the 1977 law. He said that their moorings have been around for a long time, he rented one in 1967. Mr. Corbett agrees with this and if no one had raised a question, he would have told Concordia that if they get annual permits from the Harbormaster they would be OK. They are now just looking for approval in writing. Mr. Perry said that Concordia has a big asset in the harbor and should have had back-up plans. It's just good business sense to stay on top of something this big. Mr. Race suggested they proceed as soon as possible and keep the WMC informed. Mr. Metcalf feels they should give Concordia the permits like any other year. Mr. Peloquin feels that the WMC should ask Town Counsel first on that matter, unless the letter is received from ACE before the next meeting. Mr. Hathaway said that if we receive a letter that Concordia is grandfathered, they just have to clean up the details; if it isn't grandfathered they will still need ACE permits, and will then need to start a new application process.

Mr. Steve Lima asked about the regrid of the harbor and when it is scheduled to happen. Mr. Melo said it was to start last year, but they are waiting to see if Concordia was going to get the required permits to keep their rental mooring sites. He understood that a regrid would have interfered with the process which he thought was on-going with the Corps. Mr. Melo said that they did the regrid of Salters Point in-house and it was done relatively quickly. Salter's field went from around 32 to 51 moorings and it seems to be working fine. Mr. Corbett said that he hopes Concordia will be able to sit down with the WMC and discuss the regrid process when that happens. Mr. Hickey feels that this process will be done with all parties involved meeting together as with all past changes made by the Commission. He said they will discuss it and get input from all involved, but before Concordia can be included in any grid, they need to resolve the permit issue.

Mr. Peloquin asked if they are concerned that there is not much historical data on the locations of the Concordia moorings. Mr. Corbett said that they have assembled the best evidence that they can, but knows that location and navigation are the two biggest obstacles.

Mr. Race said that they would like to have Concordia present at the February 13 meeting with an update on their progress.

Mr. Corbett asked if the other commercial companies got the ACE permits before or after harbormaster gave the permits. Mr. Melo said that the other companies owned the gear in existing sites, and after 2003 they sought and were given Corp permits for those sites. Mr. Melo said all the ACE permits are subject to local regulations.

#### Town Master Plan

Mr. Hemingway asked about the Town Master Plan. He said that there was a televised meeting on the Master Plan at the Planning Board. He said that a few of the committees spoke of the water access and moorings. He asked if they have spoken to the Harbormaster regarding this. Mr. Melo said that he hasn't been invited to any meetings other than the one reported with services and infrastructure. Mr. Hickey said that he noticed that Mr. Melo was not at that Master Plan meeting. Mr. Hickey moved to have whoever is putting this plan together to have all information on the waterways given to the WMC before any decision is made, he said that the WMC will not sign off otherwise. Mr. Peloquin seconded. So Moved. Mr. Race agreed it is a good idea.

Mr. Metcalf said he has been involved in water access at previous meetings and there is no area available for it. Mr. Hickey feels a master plan could help the plan on the Rogers St. area.

It was moved and seconded to adjourn the meeting at 8:30 p.m. The next meeting remains scheduled for Tuesday, February 13, 2007 at 7:00 pm.

Respectfully submitted,

Diane L. Vieira