

**Town of Kennebunkport
Board of Selectmen/Assessors' Meeting
Village Fire Station-32 North St.
February 27, 2014**

Minutes of the Selectmen Meeting of February 27, 2014

Selectmen present: Selectman Barwise, Patrick A. Briggs, Allen A. Daggett
Edward W. Hutchins, and Sheila Matthews-Bull

Others present: Maine DEP Commissioner Patricia Aho, Ray Billings, Michael Claus, Michael Davis, Werner Gilliam, Sandra Guay, Andrew Hyland, David James, Arlene McMurray, and Laurie Smith, Rick Roberts, Craig Sanford, Roger Seavey and others

1. Call to Order.

Chair Barwise called the meeting to order at 7:01 P.M. He took item 10 out of order and placed it second on the agenda.

10. Consider annual request from the DEP to locate the ozone monitoring station on town-owned property located off of Ocean Avenue beside St. Anne's church.

Town Manager Laurie Smith introduced Maine DEP Commissioner Aho. She said that Commissioner Aho was present because of the relationship the Town has with the DEP in regard to ozone monitoring. Commissioner Aho thanked the Town for the opportunity to place an air monitoring site in town and presented the Town with a plaque commemorating the 30 years that the Town and DEP have partnered in the collection of this data. She also requested locating the ozone monitoring station beside St. Anne's church again for this year.

Motion by Selectman Daggett, seconded by Selectman Hutchins, to approve the request from the DEP to locate the ozone monitoring station on town-owned property located off of Ocean Avenue beside St. Anne's church.

Vote: 5-0.

2. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda).

There were no comments.

3. Consider a renewal liquor license application for Coastal Breezes, L.L.C. d.b.a. Kennebunkport Inn, one Dock Square.

Motion by Selectman Daggett, seconded by Selectman Hutchins, to approve

the renewal liquor license application for Coastal Breezes, L.L.C. d.b.a. Kennebunkport Inn, one Dock Square. **Vote:** 5-0.

4. Consider a special amusement permit renewal application for Coastal Breezes, L.L.C., d.b.a. Kennebunkport Inn, one Dock Square.

Motion by Selectman Hutchins, seconded by Selectman Sheila Matthews-Bull, to approve the special amusement permit renewal application for Coastal Breezes, L.L.C., d.b.a. Kennebunkport Inn, one Dock Square. **Vote:** 5-0.

5. Consider a renewal liquor license application submitted by Alisson's/Dock Square LTD, d.b.a. Alisson's Restaurant, 11 Dock Square.

Motion by Selectman Matthews-Bull, seconded by Selectman Hutchins, to approve the renewal liquor license application submitted by Alisson's/Dock Square LTD, d.b.a. Alisson's Restaurant, 11 Dock Square. **Vote:** 5-0.

6. Consider a renewal special amusement permit submitted by Ashley Padget d.b.a. Alisson's Restaurant, 11 Dock Square.

Motion by Selectman Matthews-Bull, seconded by Selectman Hutchins, to approve the renewal special amusement permit submitted by Ashley Padget d.b.a. Alisson's Restaurant, 11 Dock Square. **Vote:** 5-0.

7. Consider a renewal liquor license application submitted by Peter W. Ciriello, Edgewater Hospitality, d.b.a. The Edgewater Inn, 126 Ocean Avenue.

Motion by Selectman Hutchins, seconded by Selectman Matthews-Bull, to approve the renewal liquor license application submitted by Peter W. Ciriello, Edgewater Hospitality, d.b.a. The Edgewater Inn, 126 Ocean Avenue. **Vote:** 5-0.

Selectmen Daggett mentioned that all of these applications have been approved by the fire inspector, police chief, and code enforcement officer.

8. Consider the following proposed Warrant Articles for the June 10, 2014 Town Meeting Warrant.

Director of Planning and Development Werner Gilliam explained the following proposed Land Use Ordinance amendments.

- **Proposed amendment to the Land Use Ordinance concerning tents.**

For an explanation of this item, see Exhibit A.

- **Proposed amendment to the Land Use Ordinance concerning accessory apartments.**

For an explanation of this item, see Exhibit B.

- **Proposed amendment to the Land Use Ordinance concerning disability variances.**

For an explanation of this item, see Exhibit C.

- **Proposed amendments to Dog Ordinance.**

Town Manager Laurie Smith explained that the Beach Advisory Committee recommended these amendments which deal with protecting the piping plovers. The Town Attorney reviewed the amendment and said that a 150 ft buffer is sufficient instead of the 300 ft the Beach Advisory Committee recommended.

(See Exhibit D).

- **Kennebunk River Ordinance Revisions.**

For an explanation of this item, see Exhibit E.

Selectman Daggett had a question regarding **Section X – Definitions** under **Commercial Fishing Vessel**. To that section was added: Commercial fishing is defined as fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

He questioned whether lobstering should be added since it requires a different license. Mr. Gilliam said he would find out.

- **Proposed amendment to the Land Use Ordinance concerning expiration dates of conditional use approvals.**

For an explanation of this item, see Exhibit F.

- **Proposal to extend Dock Square Zone.**

Attorney Sandra Guay was present to represent Muriel (Deering) Christopher who owns property at 1 Elm Street. The Christopher property has a long history of retail use as an art gallery which sold paintings, prints and

postcards; and as an art studio which provided summer painting classes, all of which are not permitted uses in the present zoning designation. The gallery and studio have not operated for several years, and this property is surrounded by existing nonconforming business uses. Mrs. Christopher has been trying to sell her property for the past two years and would like to have the zoning change to put it in the Dock Square zone which would be appealing to potential purchasers who would be interested in it for commercial use.

David James spoke against extending the Dock Square zone. His concern was that others will also want to be included in this extension.

Chair Barwise explained that the Board will have the proposed Warrant Articles on the agenda for several meetings for discussion.

9. Meet as Assessors to consider the following abatement requests:

Property Owner	Location	Map	Blk	Lot(s)	Abatement Amount
William F. Casey, Jr. Trustee	272 Mills RD	37	2	2-C9	Denied
William F. Casey, Jr. Trustee	272 Mills RD	37	2	2-1D	Denied
William F. Casey, Jr. Trustee	272 Mills RD	37	2	2-2B	Denied

Motion by Selectman Matthews-Bull, seconded by Selectman Hutchins, to deny the abatements for William F. Casey, Jr. Trustee for three properties located at: Map 37, Block 2, and Lots 2-C9, 2-1D, and 2-2B per Assessors Agent Donna Moore Hays recommendation. **Vote:** 5-0.

11. Discuss the approach to construction of police emergency operations' center.

Selectman Briggs requested that this item be placed on the agenda. He explained that the current police/communications center is lacking in needed space for conference rooms, storage for the nursing department medical supplies, and access to the communication/data systems. He said two years ago, the Town Manager gained approval to set aside \$50,000 each year to build an Emergency Operations Center (EOC) as an addition to the existing building. Port City Architecture reviewed the present building plan and came up with a design for a multifunctional facility that could accommodate approximately 40 people arranged in three to four working groups. Each group would have access to the communications/data center. The total cost of this project is approximately \$636,000, and Peoples United Bank is offering the Town an interest rate of 3.45% for a 10-year loan on \$500,000. If approved at Town Meeting, the Town would have this addition in eight to ten months.

Ms. Smith commended Selectman Briggs on the work he did on this project.

She thinks this is a good project, and asked the Board where this project fits in on its priority list.

Discussion followed. Selectman Hutchins does not think it is as high a priority as fixing roads and schools.

Selectman Daggett is in favor of the EOC, but just not right now. He is concerned about what will happen with the school renovations and Goose Rocks Beach lawsuit. He suggested increasing the \$50,000 in reserve to perhaps \$75,000 and discussing this in the budget process.

Police Chief Craig Sanford supports this plan, but he also understands there are other priorities.

Selectman Barwise supports the EOC. He said the Town already has funds in reserve and building costs will most likely increase if they wait, and the Town will have use of the building now.

David James agreed with Selectman Barwise. He said they all agree the building needs to be expanded.

Selectman Briggs said it makes good business sense to do it now. The Town is in excellent financial condition. The Town just paid off a sewer bond, so they no longer have that to pay off.

Selectman Matthews-Bull said this project should also be discussed with the Budget Board.

Chris Perry added that 3.45% it is a good interest rate on a 10-year loan.

Chair Barwise said they will leave the proposal on the agenda as they go through the budget process.

12. Request for reemployment from retirement according to section 11.5.1. of the Personnel Policy adopted September 12, 2013. Possible executive session per MRSA 1, §405-6A to discuss personnel at Police Department.

Ms. Smith said the Town's Personnel Policy allows for the reemployment of staff for up to five years for those who can retire under MainePERS and meet certain criteria. It requires approval of the Town Manager and Board of Selectmen.

This employee meets the requirements, and she recommends reemployment.

Motion by Selectman Hutchins, seconded by Selectman Matthews-Bull, to approve the request for reemployment from the Police Department. **Vote:** 5-0.

13. Acceptance of funds from the estate of Marjorie C. Picavet for the purpose of purchasing needed equipment for the Police Department, public Health, and Nursing Services.

Ms. Smith reported that Marjorie C. Picavet left 50% of her funds (interest only) to the Town of Kennebunkport for police, public health, and nursing services. The principal is \$375,000.

Motion by Selectman Hutchins, seconded by Selectman Matthews-Bull, to accept this most generous gift of funds from the estate of Marjorie C. Picavet for the purpose of purchasing needed equipment for the Police Department, public Health, and Nursing Services. **Vote:** 5-0.

14. Other business.

Selectman Briggs thanked Andrew Hyland, of Port City Architect for his services with the EOC project.

Ms. Smith said the Town is closing on the McCabe property tomorrow and the remainder of the taxes due is \$486.71.

Motion by Selectman Matthews-Bull, seconded by Selectman Hutchins, to authorize the Town Treasurer to write off the taxes. **Vote:** 5-0.

15. Consider the February 27, 2014, Treasurer's Warrant.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to approve the February 27, 2014, Treasurer's Warrant. **Vote:** 5-0.

16. Adjournment.

Motion by Selectman Matthews-Bull, seconded by Selectman Hutchins, to adjourn. **Vote:** 5-0.

The meeting adjourned at 7:59 PM.

Submitted by Arlene McMurray
Administrative Assistant

Exhibit A-February 27, 2014**PROPOSED AMENDMENT TO THE KENNEBUNKPORT
LAND USE ORDINANCE CONCERNING TENTS**

Shall an ordinance entitled "2014 Amendment to the Kennebunkport Land Use Ordinance Concerning Tents be enacted? (A true copy of which is on file in the Town Clerk's Office and is incorporated by reference.)

[Note of Explanation: This amendment would clarify permitting for temporary tents as well as create a definition for a tent.]

Note: Underlined language is proposed to be inserted and words ~~stricken out~~ are proposed to be removed. All other portions of the ordinance are proposed to remain unchanged.

Amend Article 2 Definitions as follows:

Tent: A portable shelter made of fabric or other like materials which is supported by one or more poles and stretched tight by cords or loops attached to pegs driven into the ground.

Amend Article 6.1 General Provisions as follows:**6.1 General Provisions**

- A. No structures shall be erected or used, and no lot shall be used or divided, unless in conformity with the provisions of this Ordinance. All structures and lots, and uses of structures and lots, which fail to conform with the provisions of this Ordinance are prohibited, except as provided herein.
- B. All structures, as defined in this Ordinance, shall be required to meet dimensional setback requirements unless exempted as set forth below: (Setbacks and/or restrictions may differ in the Shoreland and Resource Protection Zones.)
 - 1. The following structures shall be exempt from meeting the front, side and rear property line setbacks except where prohibited in the Shoreland and Resource Protection Zones:
 - a. Any combination of materials covering less than ten (10) square feet constructed or erected above, below or upon the surface of the ground or water such as mailboxes, light poles and the like;
 - b. Walls or fences;
 - c. An awning or tent for a specific event (s) 80 square feet or larger (limited to six (6) days) (Not to exceed 30 days per any calendar year per parcel

for which a Town permit has been issued;

- d. A retractable awning or shade used solely to screen a door or window;
- e. Backyard tent used for sleeping;
- f. An enclosed, self-contained portable toilet, such as a "Portapotty" by Portables, Inc. and the like placed on a site for less than six (6) months per calendar year or as long as necessary for approved construction.

Amend Article 11.2 Permit Required as follows:

11.2 Permit Required

L. Temporary placement of an awning or tent(s) for a specific commercial or mass gathering event(s). Such events include but are not limited to weddings, fundraisers or similar events held on commercial, municipal, or nonprofit controlled properties. This requirement is applicable to tents that are 80 square feet or larger in size. Temporary placement not to exceed 30 days per any calendar year per parcel unless specifically approved by the Planning Board as part of a conditional use application.

Exhibit B – February 27, 2014

PROPOSED AMENDMENT TO THE KENNEBUNKPORT LAND USE ORDINANCE CONCERNING ACCESSORY APARTMENTS

Shall an ordinance entitled "2014 Amendment to the Kennebunkport Land Use Ordinance Concerning accessory apartments be enacted? (A true copy of which is on file in the Town Clerk's Office and is incorporated by reference.)

[Note of Explanation: This amendment would allow accessory apartments to be further than 75' feet away from the principal dwelling.]

Note: Underlined language is proposed to be inserted and words ~~stricken out~~ are proposed to be removed. All other portions of the ordinance are proposed to remain unchanged.

Amend Article 7.1 Accessory Apartments as follows:

7.1 Accessory Apartments

J. An accessory apartment located in a detached accessory structure that conforms to property setback requirements is allowed as a permitted use subject to all require-

ments

below. An accessory apartment constructed within an existing structure that is legally non-conforming due to setbacks ~~that does not meet property setback requirements~~ is allowed as a conditional use subject to Planning Board review per Article 10 of the Land Use Ordinance. The following requirements must be met, in addition to the requirements of Article 7.1.A-I above:

1. Calculation of floor area for the detached accessory apartment's living space is based

on forty (40%) percent of the living space of the primary structure to include the basement and attic spaces that have a ceiling height greater than seven (7) feet.

~~2. The entire detached accessory structure must be located no further than seventy-five~~

~~(75) feet from the nearest point of the principal structure.~~

3. 2. If the primary dwelling is located on a non-conforming lot, at least fifty (50%) percent of the floor area of the detached accessory structure must be devoted to uses other than living space which are accessory to the principal structure, such as storage or parking, and must be available for use by the occupants of the principal structure.

Exhibit C – February 27, 2014

PROPOSED AMENDMENT TO THE KENNEBUNKPORT LAND USE ORDINANCE CONCERNING DISABILITY VARIANCES

Shall an ordinance entitled "2014 Amendment to the Kennebunkport Land Use Ordinance Concerning Disability Variances be enacted? (A true copy of which is on file in the Town Clerk's Office and is incorporated by reference.)

[Note of Explanation: This amendment would allow the code enforcement officer to issue building permits to the owner of a dwelling for purposes of making the dwelling accessible to a person with a disability who resides in or regularly uses the dwelling without the need to obtain a variance from the Board of Appeals.]

Note: Underlined language is proposed to be inserted and words ~~stricken out~~ are proposed to be removed. All other portions of the ordinance are proposed to remain unchanged.

Amend Article 9.2E Disability Variances:

E. Disability Variance

The Board of Appeals may authorize the Code Enforcement Officer to act on their behalf without the need for a separate hearing or application in the granting of a variance from setback or lot coverage requirements only to an owner of a residen-

tial dwelling, for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board or the Code Enforcement Officer shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board or the Code Enforcement Officer may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

F. Granting of Variances to be Handled Strictly

The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

G. Copy of Application to Department of Environmental Protection

For any application within the Shoreland Zone, a copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the Board of Appeals or its designee to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals, or the Code Enforcement Officer as anticipated in Article 9.2E. Any comments received from the Commissioner prior to the action by the Board of Appeals or the Code Enforcement Officer shall be made part of the record and shall be taken into consideration by the Board of Appeals or the Code Enforcement Officer.

Exhibit D – February 27, 2014

Dog Ordinance

Adopted at a Special Town Meeting on June 9, 1976

Amended June 10, 2014

1. It shall be unlawful for any person owning, keeping or harboring a dog, whether licensed or unlicensed, either to bring such dog onto or to permit such dog to remain on any beach in the Town of Kennebunkport between the hours of 8:00 AM and 6:00 PM, from June 15 through September 15. This section shall not apply to ~~seeing-eye dogs~~ use of a service dog by a person with a disability when the dog is required to perform work or tasks directly related to the person's disability.

- (a) Shorebirds protected by the Federal and State Endangered Species Acts, including piping plover, are known to nest on beaches in Kennebunkport. The Town of Kennebunkport and/or State or Federal Agencies may erect signs indicating the delineated nesting areas of threatened or endangered shorebirds, which may also be marked by stake and twine

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fencing. Under State and Federal law, the State or Federal government may impose civil fines or criminal penalties, including jail time, for damage to the nesting area or injury or death to these protected birds. During nesting season of threatened or endangered shore-birds, including piping plover (which usually nest from early April to mid-September), it shall be unlawful for any person owning, keeping or harboring a dog, whether licensed or unlicensed, to permit such dog at any time to be on a beach in the Town of Kennebunkport within 300 feet of the delineated nesting area of a threatened or endangered shore-bird. Violation of this subsection is subject to increased penalties as described in Section 4.

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2. It shall be unlawful for any person owning, keeping or harboring a dog, licensed or unlicensed, to allow it to run unleashed in the Village Residential, Village Riverfront, Village Dock Square, Cape Arundel, Goose Rocks, Cape Porpoise West, Cape Porpoise East and Cape Porpoise Square zones, as defined in the Kennebunkport Zoning Ordinance as amended.

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Comment [DK1]: 300 feet is a larger buffer than we see in other coastal Towns, several of which use 150 feet. This is a policy decision to be made by the Town.

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3. "Person" shall mean any individual, firm, association, or corporation owning, keeping or harboring a dog.

4. Whoever violates this ordinance shall be punished by a fine of \$25.00 for the first offense, and \$25.00 for each subsequent offense. Whoever violates Section 1(a) of this ordinance shall be punished by a fine of \$100.00 for the first offense, and \$100 for each subsequent offense. Fines shall be paid to the Town of Kennebunkport and may to be recovered by complaint before the District Court.

Deleted: During piping plover nesting season (usually April 1 to September 15), no dog may be allowed closer than 300 feet from the nesting area as approached from the east or the west and from the uplands of the beach to the low water. Damage to the nesting area or injury or death to the plovers will result in a severe fine and/or jail sentence as defined in the Inland Fish and Wildlife Service regulations. Signs will be erected by the Town of Kennebunkport each year indicating the approach to the plover nesting areas and will be removed when the last plover has left the nest. Stake and twine fencing may be installed to delineate protected areas. Individual dog owners may be fined \$100 for violation of the dog free zone during the plover season.

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**Exhibit E – February 27, 2014
THE KENNEBUNK RIVER ORDINANCE**

**Adopted July 10, 1971
Amended March 16, 1985, March 21, 2000, June 18, 2005 and November 2, 2010
November 2013**

Section I – Purpose

The purpose of this Ordinance is to provide for the just and orderly operation of marine activities on the Kennebunk River.

Section II – Authority

This ordinance is adopted pursuant to Title 38 M.R.S.A. sec.1, et seq., and the Home Rule Provisions of the Maine Constitution.

Section III – Conflicts with Other Ordinances and Laws

Where there is conflict between this ordinance and any other Federal, State, or Local law, statute, regulation, rule or ordinance, the more restrictive provisions shall apply.

Section IV – Amendments

After public hearing by the Board of Selectmen, this ordinance may be amended at an annual or special Town Meeting.

Section V – River Committee

The River Committee established by the Interlocal Agreement among Kennebunkport and Kennebunk shall be responsible for all Kennebunk River harbor activities as set forth in the Agreement, this Ordinance and as otherwise required by law.

The River Committee shall have the authority to establish and collect fees for moorings and harbor usage. Such fees must be reasonably related to the cost of maintaining and regulating the Kennebunk River Harbor and may include a charge to establish a capital reserve account for harbor dredging. However, before any such fees may be imposed, the River Committee shall hold a public hearing preceded by at least 10 days notice in a newspaper of general circulation in Kennebunkport. The initial fees must also be approved by the Board of Selectmen before becoming effective; thereafter, the River Committee may adopt amendments pursuant to the same procedure provided the Board of Selectmen may veto any changes within 14 days of adoption by the River Committee.

The River Committee is only authorized to spend such monies as are appropriated by Town Meeting.

The Harbormaster for the Kennebunk River is appointed annually by the Boards of Selectmen of Kennebunk and Kennebunkport. Certain duties and responsibilities of the office are prescribed by Title 38, M.R.S.A. He has the additional duty to administer and enforce the provisions of this Ordinance with the authority granted by law and through his appointment as Harbormaster. For purposes of compensation and employment benefits, he shall be deemed an employee of the Town of Kennebunk which may charge pro-rata shares of such expenses to Kennebunkport. However, for all purposes of initial employment recommendation to the Board of Selectmen and subsequent oversight and annual job performance review, he shall report solely to the River Committee which may recommend discipline or discharge to the Kennebunk Town Manager who may take such discipline only for just cause after notice and hearing.

He may utilize the Town Office and the Kennebunk River Committee for assistance in the administrative aspects of his responsibilities.

Section VII – River Limits and Channel

Kennebunk River

For the purposes hereof (and the area regulated hereby) the Kennebunk River is defined as all portions of said River within this municipality which extend and run generally southerly from the prolongation southerly of the Kennebunkport and Arundel town boundary at Goff Brook, including all waters to the high tide levels thereof, extending to a line drawn between the extreme offshore limits of the jetties at the mouth of said River.

Kennebunk River Channel

For the purposes of this Ordinance, the Federally Designated portion of the channel, so called, of the Kennebunk River is defined as follows:

The entrance of the Kennebunk River Channel is 100 feet wide and runs from the mouth of the river to a point beyond the Kennebunkport Marina, where it narrows to 75 feet in width. Thence it extends northerly, continuing at a width of 75 feet, terminating at a line, the end-point coordinates of which are N191412.53, E417265.28 and N191445.83, E417332.48 (NAD 1927, State Plane, Feet). All of said Federally Designated channel is as depicted on plans encaptioned “Kennebunk River, Maine-Maintenance Dredging”, dated July 19, 1984, bearing drawing number 2226, consisting of two sheets, the same being incorporated herein by reference. The northerly limit of the federal channel was established by U.S. Public Law 104-33, October 12, 1996 which amended the above referenced plans of 1984.

The Locally Designated Channel, so called, of the Kennebunk River is defined as fol-

lows:

A 50 foot wide Locally Designated Channel beginning at the northerly limit of the Federally Designated Channel and extending northward approximately 758 feet; thence a 40 foot wide Locally Designated Channel beginning at the end of the 50 foot wide Locally Designated Channel and extending northerly approximately 312 feet to the Mathew J Lanigan Bridge. All of said Locally Designated Channel is as depicted on a plan encaptioned "Kennebunk River Locally Designated Channel," dated August 26, 2004, and prepared by the Southern Maine Regional Planning Commission, the same being incorporated herein by reference.

Section VIII – Rules of River Use

Prudent Operation of Vessels

Vessels shall be operated on the Kennebunk River in a reasonable manner so as not to endanger persons or property or to cause excessive wash. In no case shall speeds exceed five (5) knots while operating on any portion of the Kennebunk River south of the aforementioned Railroad Bridge.

Government Wharf

The intended use of the floats and the facilities of Government Wharf are solely for the loading and unloading of vessels, for the dockage of skiffs used by owners of vessels, and for such other uses as are specifically authorized by the Board of Selectmen.

No vessel may be left unattended on the westerly face of the floats or at Government Wharf for a period of more than one-quarter (1/4) hour; in no event shall any vessel not using said facilities for loading and unloading remain thereat when any other vessel requires the use of said facilities for such purposes, and in no event shall any vessel remain thereat in excess of four (4) hours; in no event, excepting emergencies, shall the facilities at Government Wharf be utilized for any purpose other than loading and unloading without written permission from the Harbormaster. ~~Board~~ **Boat** owners wishing to leave a skiff at Government Wharf on a regular basis are required to notify the Harbormaster of this intention. If in the opinion of the Harbormaster, skiff tie-off space becomes overcrowded, first priority for space will be accorded to commercial users.

Skiffs tied to Government Wharf must be properly maintained, be kept bailed and must be secured so as to keep Government Wharf clear for operations and not interfere with vessels landing and departing.

Users of Government Wharf are responsible for properly cleaning up any spillage or untidiness resulting from their operations.

Failure to observe these regulations may result in loss of permission to use the Gov-

ernment Wharf facility and floats and a penalty as set forth in Section VI.

Traps in the River

No operation of fixed traps of any kind will be allowed in the Kennebunk River southerly of the Railroad Bridge. Storage cages shall be permitted if attached to a vessel or to a vessel's mooring.

Record of Moorings

The Harbormaster shall maintain a written record of the basic information on each mooring including assigned location, identifying number, vessel description, owner, mooring specifications and details and any additional data deemed useful.

The Harbormaster shall maintain the aforementioned plans of the Channel and a chart of the harbor showing current mooring location assignments.

Each mooring location will be assigned an identifying number which must be marked in a legible fashion on the marker buoy or log in at least three inch (3") numerals.

Mooring Authorizations

No mooring shall be permitted, and no mooring shall be placed, utilized or allowed without written authorization from the Harbormaster for the mooring of a specific vessel therein. Each day that a mooring remains in place or is utilized in violation of this section shall be deemed a separate violation hereof.

The Harbor Master shall have the authority to determine the total number of allowed moorings based on available Mooring Sites. The Harbor Master may consult with the Kennebunk River Committee and any other appropriate authority to determine mooring areas and their capacity. Commercial Moorings shall comprise at least 50% of the total number of Mooring Sites within the Kennebunk River. If an existing Commercial Mooring becomes available within the Kennebunk River, it may not be assigned for use as a Recreational or Transient Mooring if such assignment would cause the number of Commercial Moorings to constitute less than 50% of the total number of available mooring sites within the Kennebunk River.

The Harbor Master may change the location of assigned Mooring Sites when the crowded condition of the river, the need to conform with Title 38 M.R.S.A., §§ 3, 7-A, or other conditions render the change desirable.

The Harbormaster shall have absolute authority over all moorings and mooring locations in accordance with the terms of this Ordinance and the laws of the State of Maine.

Any mooring location which is not utilized by the holder of the mooring authorization therefore, or by an assignee approved by the Harbormaster, for a term of thirty (30) consecutive days during the months of June, July and August of any year shall be declared vacant and shall thereupon be available for reassignment by the Harbormaster except where the holder of the mooring has sent advance written notice to the Harbormaster showing good cause.

No Vessel greater than forty feet (40ft) shall be assigned a mooring space, except that should there be space available outside of the Federally designated Channel a commercial **Fishing** Vessel of up to forty four feet (44ft) may be eligible for a mooring provided that it does not conflict with any existing moorings and/or create any hazards or obstructions to navigation.

1) Mooring Precedence for Mooring Locations”.

The rules contained in this section are intended to comply with the requirements of Title 38 M.R.S.A. Section 3, 7-A, 8 and 11.

The Harbormaster shall maintain a chronological list, according to the date and time, of all vessel owners requesting mooring location assignment or reassignment to a new location.

Except as otherwise required by law, the Harbormaster shall assign spaces as they become available from the waiting list in accordance with the following priority guidelines:

- a. To shorefront owners who request for one mooring location immediately adjacent to frontage, and who have no other current shorefront moorings, so long as the assignment of such a mooring is practicable and so long as neither the mooring nor any vessel tied to the mooring encroaches upon the federal navigation channels or anchorages or upon the natural channels established by the Board of Selectmen. The assignment of a mooring site under this priority guideline shall not prevent the shorefront owner from receiving additional mooring assignments under the allocation system for other moorings set forth in this ordinance.**

Under this provision, a “shorefront owner” is an owner of shore rights of at least 100 contiguous feet of frontage.

- b. To resident commercial vessel owners, unless less than 10% of the moorings are currently assigned to non-resident commercial vessel owners, in which case the next mooring available shall be assigned to the first non-resident commercial vessel owner on the list.**
- c. To resident pleasure vessel owners, unless less than 10% of the moorings are currently assigned to non-resident pleasure vessel owners, in which case the**

next mooring available shall be assigned to the first non-resident pleasure vessel owner on the list.

- d. To non-resident commercial vessel owners.
- e. To non-resident pleasure vessel owners
- f. A dedicated continuous run at the end of the Kennebunk River adjacent to Government Wharf running northerly shall be kept specifically for commercial fishing vessels only.(Exhibit A)

Future mooring assignments will be on an as available basis in accordance with the chronological listing of requests and the foregoing priority guidelines. These priority guidelines shall not apply to the assignment of moorings located within the area dredged pursuant to the Kennebunk River Federal Navigation Project, as delineated by the U.S. Army Corps of Engineers also defined as the Kennebunk River Channel.

Special Rules for Federal Anchorage Areas

The following provisions are intended to comply with the requirements of the U.S. Army Corps of Engineers for federal anchorages and thus shall apply only to the following Portion of the Kennebunk River over which the Harbormaster has control: the area dredged pursuant to the Kennebunk River Federal Navigation project, as delineated by the U.S. Army Corps of Engineers. Within the area described above (and only within this area) the following rules shall apply:

(1) The priority guidelines under 'Mooring Precedence for Mooring Locations' in this ordinance shall not apply and the Harbormaster shall assign mooring spaces as they become available, from a chronological waiting list, without regard to residency of the applicant.

(2) No priority shall be given to residents if skiff tie-off space becomes overcrowded.

Nothing in this section shall be construed to prohibit the Harbormaster from giving priority to commercial fishing vessel owners in mooring location and skiff tie-off space.

Channel to Remain Free of Obstructions

The Harbormaster shall be empowered to ensure that the Kennebunk River Channel shall remain navigable and free of obstructions.

Section IX – Penalties

Violation of any of the provisions of this Ordinance shall be deemed a civil violation. They are enforceable by the Harbormaster or any other law enforcement officer with jurisdiction in Kennebunkport or upon the waters of the Kennebunk River by an action in the form of a civil infraction in Maine District Court, District Ten, Division of Eastern York, Biddeford; upon determination by said Court on a violation that occurred the violator shall be fined not more than \$250.00 for each violation; each day a continuing violation exists in a separate violation of the provisions hereof. All fines collected hereunder shall inure to the Harbor Committee budget.

Penalties for violations of the laws of Maine with regard to speed restrictions, reckless operation of a vessel, operation of a vessel while under the influence of liquor or drugs and all other violations of State statute shall be as otherwise provided by law.

If the Harbormaster incurs costs in the conduct of his duty as a direct result of the failure of a vessel owner or operator to comply with this Ordinance or the statutes of the State of Maine, the Harbormaster may recover those costs and reasonable remuneration for his time by filing a civil complaint against such owner or operator in the Maine District Court, District Ten, Division of Eastern York, Biddeford.

Section X – Definitions***Vessel***

The word “vessel” as used herein shall include boats of all sizes powered by sail, machinery or hand, scows, dredges, lobster, crab and shellfish cars, and craft of any kind.

Commercial Vessel

A vessel from which the owner obtains in excess of 67% of his earned income. The definition of Commercial Vessel includes Commercial Fishing Vessel, unless otherwise indicated.

Commercial Fishing Vessel

A vessel from which the owner obtains in excess of 67% of his earned income from commercial fishing. **Commercial fishing is defined as fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.**

If any provision or clause of this Ordinance or application thereof to any person, persons or circumstances is held invalid, such invalidity shall not offset other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and to this end provisions of this Ordinance are declared to be separable.

Section XII – Maine Law

Additional laws relating to boating are contained in M.R.S.A. Titles 12, 17 and 38 and the Department of Marine Resources Laws and Regulations.

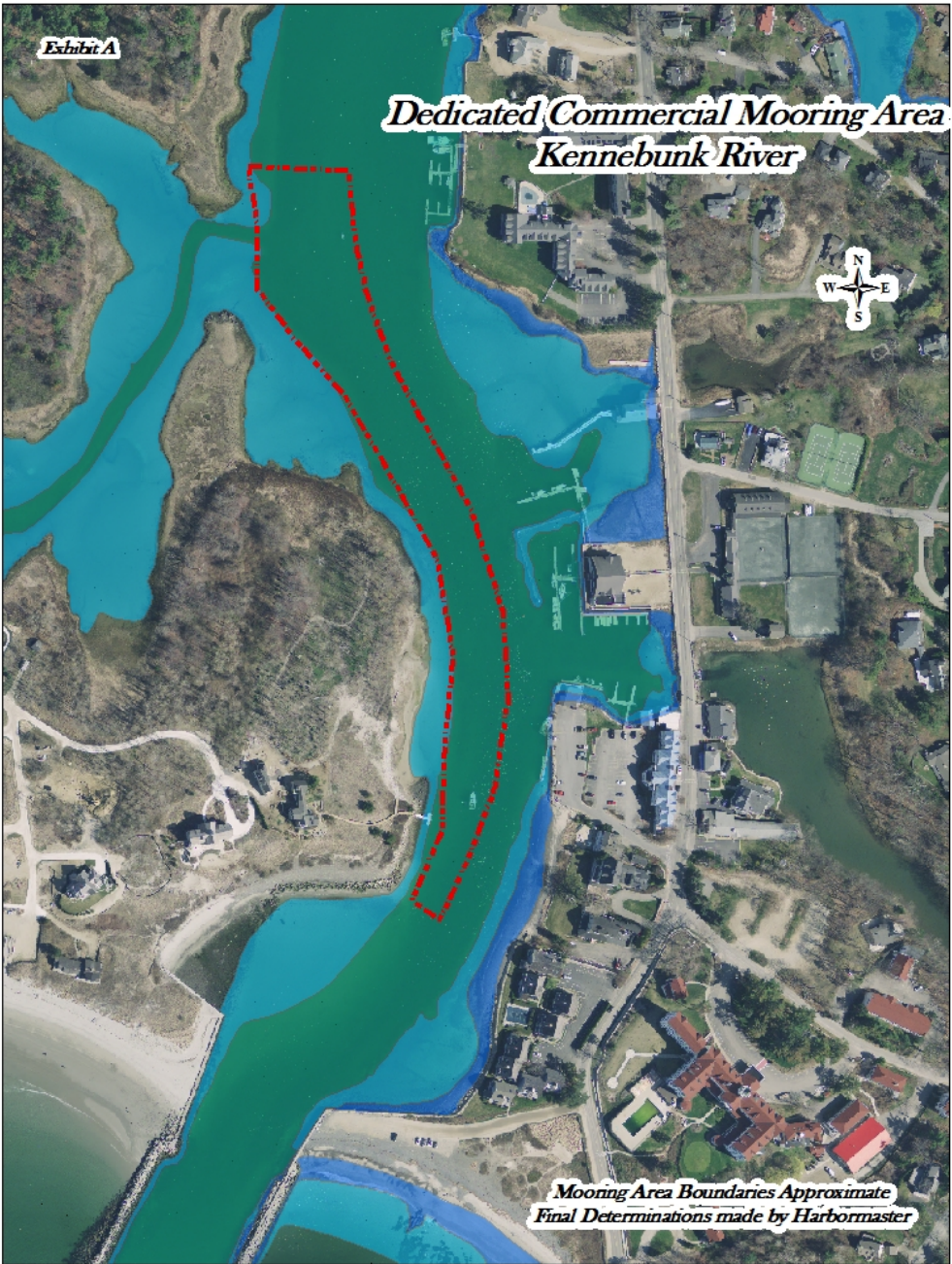


Exhibit F – February 27, 2014

**PROPOSED AMENDMENT TO THE KENNEBUNKPORT
LAND USE ORDINANCE CONCERNING EXPIRATION
DATES OF CONDITIONAL USE APPROVALS**

Shall an ordinance entitled "2014 Amendment to the Kennebunkport Land Use Ordinance Concerning Expiration Dates of Conditional Use Approvals? (A true copy of which is on file in the Town Clerk's Office and is incorporated by reference.)

[Note of Explanation: This amendment would permit conditional uses which have been approved as part of a subdivision to carry the same expiration date as the subdivision approval itself.]

Note: Underlined language is proposed to be inserted and words ~~stricken out~~ are proposed to be removed. All other portions of the ordinance are proposed to remain unchanged.

**Amend Article 10 Planning Board Site Plan Review and Article
11 Administration:**

LUO. (Additions in underline, deletions in strikethrough, all changes in red)

- 10.8. H. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall issue, with conditions prescribed by the Planning Board, or deny a Building or Use Permit.

I. A permit-Approvals secured under the provisions of this Ordinance by vote of the Planning Board shall expire if the work or changes ~~involved is~~ authorized have not commenced within ~~on one~~ (1) year ~~of the date on which the use is authorized or is not or have not been~~ substantially completed within two (2) years of the date on which the building or use permit was issued by the Code Enforcement Officer.

J. An appeal from a decision rendered by the Planning Board under this Ordinance shall be taken directly to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure and no appeal shall lie from a decision of the Planning Board to the Board of Appeals.

- 10.13. When a proposed subdivision includes a conditional use, the Planning Board may review that conditional use as part of the overall subdivision review as guided by the Kennebunkport Subdivision Regulations. The Planning Board review process and Findings of Fact for the final approval of the subdivision will specifically address compliance with the conditions of Article 10.10 for the proposed conditional use. An additional application, hearing and notification process shall not be required when such proposed uses are reviewed in conjunction with the proposed subdivision. For a conditional use approval obtained under this subsection, the time periods for expiration of the approval contained in Section 10.8.I and Section 11.7.B shall not begin to

Comment [DK2]: I've edited this to read their parallel with 11.7, but we should consider deleting in its entirety because it is redundant to 11.7.A and B

run on the date of the approval but shall begin to run on the earlier of the following dates: (i) one year prior to the date on which the Kennebunkport Subdivision Regulations require substantial completion of the subdivision or the phase of the subdivision that contains the conditional use; or (2) any date on which this ordinance is amended to convert the conditional use into a nonconforming use.

- 11.7. A. A building or use permit issued by the Code Enforcement Officer pursuant to this ~~Article-Ordinance~~ shall expire if the work or changes authorized have not commenced within one (1) year or have not been substantially completed within two (2) years of the date on which the permit was granted.
- B. Approvals by the Planning Board and the Zoning Board of Appeals shall expire if a building or use permit is not obtained from the Code Enforcement Officer within one hundred eighty (180) days, provided that the approving Board may at the time of the initial approval or upon a subsequent request of the applicant, grant an extension of up to an additional one hundred eighty (180) days upon a showing by the applicant that, due to circumstances beyond his/her control, additional time is needed to obtain necessary federal, state or local approvals.