

**MINUTES OF THE SELECTMEN/EXECUTIVE
COMMITTEE MEETING
TOWN OF FRYE ISLAND
DECEMBER 15, 2007**

The meeting was conducted by teleconference.

The Public Hearing meeting was called to order at 9:03 AM by John Nun.

SELECTMEN: John Nun, Mark Thomas, Phil Perry.

BIT EXECUTIVE COMMITTEE: Bruce Nisula, Joe Potts, Bob Miner, Debbie Anthony, John Nun, Mark Thomas, Phil Perry.

TOWN MANAGER: Wayne Fournier

TREASURER: Joe Potts

PETITIONS FROM THE PUBLIC

No members of the public called in.

OLD BUSINESS

Project Updates: See Attachment A, Manager's Report, for details.

- **Toomey Appeal:** The Court has scheduled oral briefs (attorneys only, no witnesses) on 17 Jan 08.
- **Frye Island vs State of Maine:**
- **Water System Upgrade:** The Board requested that Wayne provide recommendations for planning by the Feb 08 meeting.
- **Marina Dredging:** Expect to finish NLT 21 Dec at cost NTE \$24K (\$200/hour). John Crosby is watching time sheets.
- **East Pump House:** Exterior still not completed due to materials shortage. Electrical and plumbing underway.
- **Fee Complaint from David O'Grady, Lot # 1112:** No Change; Wayne also reported that Derek Yates had filed a motion to overturn the court's dismissal of his original fee complaint.
- **Admin Bldg Roof Replacement:**
- **Ferry Haul-out Repair:**
- **Island Ferry Gantry Beam:**
- **Winter Office:**

Consent Agreement for 273 Leisure Lane:

Wayne provided a draft Administrative Consent Agreement for Board comments. He also provided a letter from the Maine DEP to the BOS indicating their findings, concerns and recommendations. The Board directed Wayne to make changes to the draft ACA to include DEP [along with PWD and the town of Frye Island] in the remedial approval process and to stipulate a fine of \$10,000, the minimum recommended by the DEP.

Wayne said there is a potential that a 3rd violation – foundation setback from the primary road – has occurred.

Other Old Business: None.

NEW BUSINESS

Municipal Fee Schedule:

Wayne provided a draft fee schedule. It is based on the new costs for CEO, down about 1/3 from previous year, approved in the 2008 budget. It is still higher than most communities but is based on spreading costs over a very small number of residential starts and improvements. It was noted that there are some fees that are not directly associated with Permits and are not shown in the schedule, e.g., water connection of \$500, allocated assessment of \$3500 for water system expansion, transfer station and road usage fees. There are fees associated with satellite dishes that have never been collected [probably because nobody even knew about them] and fees for fences and signs which are prohibited by covenants.

MOTION by Nun to adopt the proposed fee schedule with the following modifications:

- Change the document name to "Permit Fees Schedule"
- Reduce the minimum fee from \$100.00 to \$50.00
- Reduce the Building Permit Fee (living space) from \$3.00/sq.ft. to \$1.00/sq.ft..
- Reduce the Building Permit Fee (non-living space) from \$1.50/sq.ft. to \$0.50/sq.ft..
- Modify the electrical fixture fee from cost per unit to \$0.20/sq.ft. residential, and \$0.30/sq.ft. commercial.
- Reduce the fee for plumbing fixtures from \$20.00/unit to \$15.00/unit.
- Eliminate the fees for fences, signs, and satellite dishes.

second by Perry – UNANIMOUS.

Wayne will present a revised "Permit Fee Schedule" at the next meeting for final review.

Proposals for Purchasing:

There was a discussion on the requirements for and whether town policies were necessary for formal procurement/purchasing restrictions, e.g., RFP, RFQ, dollar limits, etc. Wayne said he was told by MMA that there are no statutes governing this. Since Town officials appear to have applied reasonable procedures in major procurements in the past and there have been no specific issues raised; the Board decided to drop further discussions unless the issue is raised again.

Island Police/Constable Expectations:

Wayne had some discussions with Dana about his performance vs island expectations. Dana is now juggling his time between the island and the town of Norway. That affects his overall availability and timely responsiveness to calls from the island. Wayne also discussed possible availability of Kenny Thurston, particularly in winter months, with John Crosby. Some constabulary time by another person can be absorbed in the current budget. Wayne has the authority to deputize Kenny. The Board agreed that Wayne should take appropriate action within his authority to add some constable time to the current police activity.

Expenditure of Funds:

MOTION by Nun to approve expenditure of \$14,830 from the Ferry Reserve for repairs to the island ferry haul-out and \$10,982 from the Island Improvement Reserve for repairs to the administrative building roof, second by Thomas – UNANIMOUS.

Abatement Application from Paul & Lorraine Lyons, 1737 High Point Drive:

The Board agreed to defer action on the application until the next meeting because of possible inconsistencies in the application that needed clarification.

Great Northern Dock Proposal for New Docks in Long Beach Marina:

Wayne has requested a proposal from Great Northern for additional docks at the east end of the Long Beach Marina requested by the Marina Committee. Wayne is also looking at accommodating over-length (>24 ft) boats and Personal Watercraft.

Joint Meeting with Raymond Selectmen:

Wayne had received a letter from Don Willard, Raymond Town Manager, requesting a joint meeting with the Raymond Selectmen regarding public safety and emphasis on shared safety services. Wayne will contact Don and set up a meeting early next season.

Other New Business:

Workman's Compensation:

From Wayne, the annual report on Workman's Compensation showed Frye Island factors as going down. Noted that Volunteer Fire Departments, nationwide, are experienced increasing numbers of heart attacks. Wayne questioned Chief Persson whether we had a physical capabilities program; the answer was "no", his suggestions to firefighters to have an annual physical have not been well received, mainly due to costs. There is an agreement with Bridgeton hospital but it has not been used. While we have breathing equipment, we really do not have sufficient firefighters to perform entry operations – requires minimum of 4 qualified persons.

REVIEWS and REPORTS

November Financial Report:

Joe discussed the Balance Sheet and the General Ledger report. The Bank of America was closed out in May; there were errors which Joe has noted to Calvin for correction. There are numerous complications in town accounting which lead to errors and time to correct – among these the shift to Merrill Lynch and Gorham Savings consolidated accounts, making it difficult to allocate interest, etc. Credit card transactions are hard to break out by account.

Meeting Minutes:

MOTION by Nun to approve minutes of 13 Oct 07 Board meeting, previously provided; seconded by Thomas – UNANIMOUS.

Treasurers Report:

Joe reported that account reconciliation is running way behind, e.g., checking not since August, doubts that savings and investments have ever been done. Job description set up for accountant last summer set 10 days as an objective to do reconciliations. He and Wayne are working this with Calvin.

Phil asked if some work could be off-loaded from Calvin, no conclusions here. Joe said that Merrill Lynch and Savings accounts should be relatively easy; checking not so simple and credit card accounting was even tougher – Calvin often has to go back to POs to resolve.

Smaller warrants more often vs fewer larger warrants has helped the timely payment of bills.

Joe said that we have not implemented accounts receivables in TRIO because we don't currently issue invoices. He asked that Wayne develop procedures, especially ferry receivables.

Golf Report:

Bruce reported on the November financials; cash flow was positive for the year. The tractor will be paid off. \$3K approved for the truck was not needed since a truck was donated. Driving range clearing has resulted in a lake view.

Marina Report: None

Other Business:

Complimentary Ferry Tickets:

Mark noted that the Board had tabled the question of complimentary ferry tickets at the Oct meeting. Phil requested that we take up at Feb 08 meeting.

Ferry Fees:

Ferry fee incurred by Harry Zea, while doing private work, has not been resolved; Wayne said he does not intend to waive that fee.

MOTION by Nun to adjourn at 12:23 PM, seconded by Thomas – UNANIMOUS.

Respectfully submitted,
John B. Nun

Attachment – A. Manager Report

1. **Toomey Appeal:** Both the State of Maine and Frye Island Shoreland Zoning Ordinances prohibit the construction of a structure within 100 feet of the high water mark of Sebago Lake. During the 2005 Frye Island season Mr. Toomey filed a variance application requesting a reduction in this required set back from 100 feet to 75 feet for his property at 225 Leisure Lane. The Frye Island Board of Appeals (BOA) heard the variance request as presented by Mr. Toomey's attorney and after much discussion voted to grant Mr. Toomey a variance to 80 feet. This was based on the argument offered by Mr. Toomey's attorney that Mr. Toomey could not realize a reasonable return on his investment without being able to build a dwelling on the property. When reviewing an application for a "hardship variance", which this is, the applicant must provide answers to 4 very specific questions. One of these questions addresses the financial burden imposed on the applicant if the variance is denied. In this case, Mr. Toomey's attorney convinced the majority of the BOA (vote was 3 in favor, 1 opposed) that the property would be unable to afford Mr. Toomey a reasonable return on his investment without his ability to construct a dwelling.

In the days that followed one of the BOA members questioned the decision and approached the Chair with a request for options if, what the board member thought, a wrong decision was reached. One of the options is for the BOA to vote to reconsider the previous decision which is what the BOA decided to do but only if the Town attorney was present at the reconsideration hearing. This reconsideration hearing was conducted with the Town attorney, Larry Clough, Present and at this hearing the BOA reversed its previous decision and denied the variance. Mr. Toomey immediately appealed the reversal to the Cumberland County Superior Court based on the belief that procedurally, the BOA didn't reconsider the hearing in the allowed time frame. The Superior Court Justice agreed with Mr. Toomey which would in essence void the reconsideration and grant Mr. Toomey the variance. However, the response from the Justice implied that the Town had appealed the decision, which it did not do, and the appeal was not processed within the time constraints of the statutes.

The Town attorney suggested the Town appeal this decision because it appears that the Superior Court based its decision on the incorrect opinion that the Town had appealed the BOA decision as opposed to the fact that the BOA voted to reconsider its original decision. In addition, the Town was concerned with the precedent that establishes the necessity to build a structure on a piece of property as the only way a property owner can realize a reasonable return on that property. Therefore, the Town appealed the Superior Court decision to the Supreme Court, a five justice court.

All written briefs have been submitted. The Court opted to decide the case based on review of the written briefs alone but after appeal from our attorney, agreed to here oral arguments. We are awaiting the date for these oral arguments. It is very doubtful we will hear anything before the new year.

2. **Frye Island vs. The State of Maine:** The Town filed a complaint in Superior Court against the State of Maine questioning the constitutionality of the Legislatures decision to **not** allow Frye Island to withdraw from a School Administrative District, a constitutional right that every other community in the State has. In addition, the complaint also identified the fact that in more recent legislation, the State Legislature also singled out Frye Island and one other community, Newry, to exempt us from the current formulas that include student population in the calculation of school taxes. Upon hearing of our complaint. SAD #6 filed an application for intervener status which was granted by the Court. Our complaint was not with SAD #6 but their argument was anything that changed Frye Islands status with SAD #6 could have a significant impact on the school district.

The Superior Court ruled for the State, essentially saying that the Legislature created the Town and it could set the rules by which we had to operate. This decision was not unexpected. It was doubtful that a single judge would overrule the legislature on this issue.

We have appealed this decision to the Supreme Court. All briefs have been submitted and we are waiting for the Courts next move. It is very doubtful anything will happen before the new year.

3. **Water System Upgrade:** Camp, Dresser and McKee have completed their initial review of our system and made their recommendations for improvements. Their report was presented at the October '07 Town Meeting. We have received component proposals on labor and materials to replace and upgrade the distribution system based on CDM's recommendations. We will need to make decisions on the following:
 - Does the Town want a full engineering plan at a cost of \$65k to \$75k or will the Town purchase all materials and install the new system using subcontractors under Town oversight?
 - How will we phase the project?
 - How will the project / phases be financed?
 - When is the best time to do the phases?
 - What size replacement lines should we use?

4. **East Pump House:** The new pump house is essentially complete. The structure is done, all the equipment has been relocated and installed, the electrical work is 99% complete, the new generator has been installed, the inlet piping from the lake has been re-routed and the discharge piping has been connected. There is still work to be done on the control system, which will be completed in the spring, but this does not prevent operation of the equipment.
5. **Marina Dredging:** This project is turning into something worse than expected. When we applied for the DEP permit, we thought our best approach would be to use Del Wescott, a known entity, to dredge the entrance to the Marina. His equipment consists of a barge and an excavator with a clam shell bucket. Accordingly, the permit was issued understanding that type of process would be used. Del got a new barge and excavator which delayed the start of the project significantly. He wasn't able to start until the end of November. By that time the water level was so low he had to dig his way into the Marina. In addition, he has had trouble with his excavator and winter weather has arrived. Through the end of November he had only been able to remove about 40 yards of an estimated 625 yards. Kenny Thurston has been driving the Dump Truck to remove the spoils. We had to plow the roads last week in order to continue. I have asked John to get an estimate for the dredging. At the rate they are progressing I don't think the original estimate of \$5K-\$6K is going to work.
6. **David O'Grady Fee Complaint:** David O'Grady filed a complaint in Superior Court claiming that our municipal building fees were excessive and illegal. Written brief have been submitted to the court. We are awaiting further instructions from the Court. It is very doubtful that we will hear anything before the new year.
7. **Administration Building Roof Repair:** We had experienced a number of leaks in the roof, not only around the dormer windows which had suffered significant rot but also in the main body of the roof. The old shingles, 3 layers of them, were stripped off and new shingles replaced. The rot around the dormer windows was repaired and the windows were replaced with new windows that can be opened to allow some of the heat to escape in the summer. During the repair process it was discovered that some of the 2" X 8" tongue and groove roof deck was also rotten above the book keepers office. This was also repaired. The quoted price for the job was \$10,982 plus an additional \$447.00 for the planking and repair of the rotted sections.
8. **Haul – Out Repair:** When we attempted to lower to the carriage to put the ferry back into the water in October we were unable to get it down enough to float the ferry. We ultimately had to get the backhoe to push

the carriage down to get the ferry back into the water. It was obvious that there was a problem underwater that was preventing the system from operating properly. We employed Divers Down to inspect and video tape the underwater sections of the haul-out. Their inspection revealed that the no. 9 bent had broken in half. The bents are the 12" X 12" X 20' long wooden timbers that span the pilings and support the steel rails of the haul-out. There are 9 of them total. No. 1 is the first one closest to the post office; no. 9 is the last one that sits on the bottom of the lake. The sheave for the pull down winch is attached to the no.9 bent. To get a ferry on the haul-out, it is driven onto the submerged carriage. The pull-out winch, located in the small building at the top of the haul out pulls the carriage and the ferry up onto the rails. The clutch on the pull down winch, which is mounted under the rails, is disengaged so that the cable will "free wheel" off the drum. We will never know exactly what caused the beam to break but we surmise that when the carriage was being raised to pull the ferry for painting the pull down winch somehow got re-engaged which went unnoticed. This effectively locked the ½' steel cable which runs down around the no. 9 bent and attaches to the back of the carriage. When the pull out winch, which can develop enough torque to pull up the lake bottom, was activated it pulled the carriage up and with the pull down cable locked by the pull down winch something had to give and it turned out to be the no. 9 bent. The pull out winch actually moves so slowly that this could also go unnoticed.

The bent was replaced, the attachment for the sheave was reworked to be more sturdy, and the attachment of the pull down cable to the carriage was moved a little to provide a straighter pull. We discussed a number of possible ways to insure that the clutch on the pull down winch was disengaged during the pull out operation but haven't really come up with a fail proof approach. The clutch handle will be lengthened which will make it easier to operate and better identify its position but the operator will have to insure that the drum on the pull down winch is free wheeling when the ferry is being raised. We had the divers video tape the repaired section so that we would have a bench mark for the future. The repair cost to date is \$14,830. I believe this is the final total but the owner of the repair company is on vacation and I couldn't confirm it. I should know for sure by the meeting.

9. **Island Gantry Cross Beam:** When the ferry gantry on the Island was being painted it was discovered that the horizontal cross beam that goes between the vertical uprights of the gantry was twisted. This beam is underwater so we had the divers that were working on the haul-out facility inspect and video the beam and its connections to the verticals. I am told that when the gantry was being installed the large vertical legs of the gantry could not be driven into the ground as far as was intended so this beam was attached as an after thought to keep the bottom of these

legs from walking. There are two pockets that are attached to the vertical legs and the beam fits into these pockets and is attached to the pockets. The video revealed that the pockets had been damaged. The beam itself appears to be fine but the pocket on the south leg is almost torn off. The one on the north leg isn't bad but does show some damage. Again, we don't know exactly what caused this but a good guess is that when the ramp fell into the water it hit the beam and caused the damage. The beam falling into the water has occurred a number of times so it is hard to say if it is the result of one event or if it is cumulative. If I had to guess I would guess that it happen this past season when the horn on the ramp slipped off the ferry with a dump truck on it. By some miracle the truck didn't go into the lake but the south side of the ramp seemed to go in pretty hard. We have made adjustments to make sure that the Ramp horns are positioned better on the ferries. I have received a plan from the engineer to make the repair. Because this is under water we will need the divers again. We have spoken with Divers Down again to get a price on the repair. I think this will probably be a spring project. It shouldn't have any impact on starting the ferries or opening the Island.

10. **Winter Office:** Everything has been setup in the ferry trailer and for the most part seems to be functioning. We have had our typical issues with Fairpoint but so far the e-mail connections have worked 95% of the time. We are now having issues with the fax connection but they should be in this week to fix it. The water system from the lake has shut down a couple of times so John and Paul Kimball, the plumber, are looking into the problem.