

Waterways Commission Meeting
Wednesday July 10th, 2013
Scituate Maritime Center
7:15 pm

- I. **Meeting Called to Order** – by Chairperson Eckhouse at 7:17pm. In attendance: Robert McHugh, Harbormaster Patterson, Brian Cronin, Ethan Maass, Mike Gibbons, Chairperson Eckhouse, Brad White, Pete Toppan, Keith Walo, Tom Muzyka and John Vigilante.

- II. **Acceptance of Agenda** – The agenda was unanimously accepted.

- III. **May 1st and June 5th minutes** – Motion to approve these meeting minutes made by Brad White, 2nd by Keith Walo, the WWC voted unanimously in favor.

- IV. **Opening remarks**
 - A. **General comments** – Chairperson Eckhouse reminded the WWC that each year they vote on who holds the position of Chairperson and invited any members interested to please let the WWC know.
 - B. **Recycling** – Harbormaster Patterson said the program is going well. It has been more effective on the SMP side so far. Someone asked about the bottle deposits? Ethan Maas said he thought the recycling company gets them.

- V. **Old Business**
 - A. **Marinas** – Harbormaster Patterson thanked everyone involved in the Touch-a-boat Show. He said 250–300 people attended. There were demonstrations on knot tying, sail making and wood carving along with harbor tours on the boat launches and a raffle. Brad White volunteered to write a letter to the BOS thanking everyone involved.

 - B. **SMP landscaping** – Harbormaster Patterson said that the Buffer zone is the last remaining part. He has received two quotes so far. This project should probably be done next spring to ensure the survival of the plants. Chairperson Eckhouse asked about the fragmites near the SMC. Harbormaster Patterson said that they needed to be cut and treated by a licensed applicator.

 - C. **Mooring insurance considerations** – The WWC reviewed concerns, including: How to handle transients on moorings? What happens when a boat breaks loose and damages someone else? What about hit and run? Brad White brought up when too big of a boat is on too small of a mooring (this happened Sat.)? Keith Walo asked who's responsible in all of these scenarios? Someone brought up that the town requires insurance for slips, why not moorings? Chairperson Eckhouse stated that Plymouth insures all

moorings under their Town's umbrella policy. He then introduced Mr. Muzyka, an Admiralty lawyer.

Mr. Muzyka began by saying that from a harbor commission or town's point of view: once the town takes authority for the location, size, etc. of the moorings, they are responsible. However, in Massachusetts the Sovereign Immunity limit is \$100,000. That being said, in his opinion the smartest thing to do is for the town to have insurance. A marina operator's policy may offer enough coverage, or the town's general liability; the town's broker should be contacted. If a mooring is leased for the season, or to a transient, the town can require that the boat owner prove insurance. Mr. Muzyka said that in his experience most towns, when leasing for the season, ask to be put on the boat owner's policy as additionally insured. In this case, any claim would go to the boat owner's insurance first, then the town's insurance.

Mr. Muzyka gave New Bedford Harbor as an example of what can happen. During Hurricane Irene 20 boats came loose, got tangled, damaged lots of other boats, damaged docks. This was deemed an Act of God but even in that case, they are still paying lawyers. So, any insurance money could have gone toward paying the legal fees, which can be very substantial.

Further scenarios were discussed. Mr. Muzyka said that the presumption made is that if one boat is not under way when hit, the other boat is negligible. Also, a pollution incident can be a huge problem. P&I insurance would be the best option. He recommends the town get \$5million in coverage, primary \$1million and excess \$4million. If a wreck and owner are indigent, the Coast Guard will move it if it is a danger. If not, the town would want insurance to cover their cost.

Personal injury liability is another concern. Often a person will dive on their mooring chain, sustain an injury, and then there is a lawsuit. Three possible parties are liable depending on how/why/what happened. It is possible that it would end in everyone suing everyone else.

Another example given by Mr. Muzyka was: if a boat breaks loose and another boat brings it back, that's not towage it's salvage. A salvager gets 10% of the value of the boat. There are specified aspects to the settling, but Mr. Muzyka said that he has never seen less than 7% awarded and that was for 15 minutes of work by the 'salvager'. Brad White asked if a salvage person has to identify their self? The answer was, no. So, when accepting 'help' from someone the boat owner needs to say, "let's go into a contract and I will pay you time and materials" before any assistance is given. This is another reason boat owners should have insurance.

Under maritime law, a vessel is considered a person. A marshal can 'arrest' a boat until the owner posts a bond of 120% of the claim. Then there are fees on top of that. This is further evidence pointing to the need for insurance.

Mr. Muzyka advised that the town use a good independent broker who will go to numerous underwriters and compare costs. Harbormaster Patterson asked if the town could say 'you have to have insurance'. Yes, the town can require anything they want if it is in the regulations. The town can specify the amount of insurance they want boat owners to have, ask that they name the town additionally insured and require that they show their certificate of insurance before the start of the season. **The town needs to get a waiver of subrogation from boat owners**. This prevents the boat owners insurance company from going after the town since named additionally insured.

Harbormaster Patterson asked how much this would cost the boat owners? Mr. Muzyka said on average, probably 1% of the value of the hull. Brad White asked what other towns require. Mr. Muzyka answered that New Bedford didn't require this in the past, but they do now! He suggested the town tell their broker what the town wants. And be sure to ask for the **waiver of subrogation**. Because the town says what can be put where, their liability is increased. Also, "does the Harbormaster have the right to ask private clubs to require insurance?" Yes, and for the town to be named as additional insured doesn't cost the owner any more. The key is the waiver of subrogation.

Mr. Muzyka also explained that maritime law has something called comparative fault, where each party can be deemed X% responsible, and the judge will spread the loss.

Brad White asked what amount of pollution insurance is recommended? The answer was \$5million; oil cleanup is a windfall! Mr. White asked, 'what if the boat is an LLC'? Mr. Muzyka said there are ways to get thru that too. He suggested that if you have liability insurance on your house, you could name the boat as secondary under the umbrella policy (note, this is not the same as home owners insurance).

Pete Toppan asked Mr. Muzyka if he was saying that boat owners should get insurance for their boat or for any potential damage to other boats? Mr. Muzyka answered that while the Statute says a boat owner's exposure is limited, the State can still come after you. What assets are you protecting? Are you wealthy? Is the boat in your name? In personal injury cases, you could go through \$1million of insurance, in legal fees alone. If you have personal injury with excess, you can put your house, car, and boat under that umbrella.

Keith Walo asked if he, as manager, would automatically be liable in these cases? Yes, and the judge will award what % (under comparative fault). Mr. Walo asked, "what about in the case of a trespasser?" No, he would not be liable. Finally, "what about if the launch puts a boat on a mooring w/o his permission?" They would both be liable.

Brad White said he thought the WWC should make proposals to the BOS. Also, perhaps the WWC could host a group to educate the townspeople.

In conclusion, Mr. Muzyka reiterated that when Hurricane Irene went thru New Bedford, it resulted in a lawsuit against the city as well as the harbor commission for inviting boaters into the harbor before the barrier closed.

Chairperson Eckhouse invited members to think about who wants to work on this subcommittee?

D. Harbor and Marina Management – Chairperson Eckhouse began by stating how many different things the Harbormaster is responsible for. He commended Harbormaster Patterson for doing such an excellent job. The WWC is interested in finding out how other harbors are managed.

Chairperson Eckhouse introduced John Vigilante, the owner of MooringInfo.com. Mr. Vigilante said that he agrees with what was said earlier about Plymouth's insurance regulations. He works with Plymouth and has written a transient agreement for them as well as for other towns. Plymouth is very conservative in regard to insurance because of the mix of uses in their harbor. In Falmouth, it is next to impossible to find out whether transients have insurance. Because of this they have adjusted the transient cost to cover the cost of additional insurance for the town. Edgartown has the same type of umbrella insurance discussed earlier by Mr. Muzyka, a primary policy for \$2million, with an excess of \$5million. Edgartown is very careful in managing logistics as well.

Mr. Vigilante has created a computer system that makes it very easy to manage and track much of the business occurring in a harbor. He has implemented it in Plymouth and Falmouth will be using it soon. Falmouth is a conglomeration of many marinas and he is just sorting it out, the system is evolving. Ethan Maass asked if Mr. Vigilante provides the software to manage harbor business. Yes, the town would license the software and everyone would be able to use it. Harbormaster Patterson said that he has a database that he currently uses. Mr. Vigilante said that his software could be accessed by any department in town, used for bookings, and to manage mooring waiting lists. There is zero cost to the town for the license. Mr. Vigilante is compensated with a small percentage on each transaction, similar to the fee a credit card charges. His program can do all of the administration, mailing, etc.

One WWC member asked how Mr. Vigilante got into this business? Mr. Vigilante stated that he is a software and business expert. He noticed that Falmouth, for example, hires 6 additional officers in the summer, some of these just for management. He realized that his system could eliminate much of this need. This system also works on mobile devices. It is a way for all parties to communicate and the harbor to limit liability. For example, since all info would be in the system, when boaters sign up they would be placed in an appropriate mooring. This also enables you to maximize the mooring field.

Brad White asked about the transient agreements Mr. Vigilante has drawn up for other harbors. Mr. Vigilante said that Scituate needs one! Mr. White said that he thought the WWC should recommend this to the BOS. Keith Walo asked if a transient agreement is worth anything? Mr. Muzyka said no, because anybody can sign anything.

Mr. Vigilante said towns are looking for different things. His system can be customized to meet individual needs. For example, Plymouth had a number of incidents occurring and his system can tie into the environmental police, etc. Another example is the Town of Falmouth who supports a lot of aquaculture. They want messages to go out to everyone impacted by red tide, dredging, etc. Also, when boaters are filling out forms online at home, the towns are able to get more complete information than they currently do. This is good in the case of an emergency.

Brad White asked what Mr. Vigilante would charge to set up his system in Scituate. Mr. Vigilante reiterated that he is paid per transaction but perhaps \$10K up front would be needed for consulting fees. He also stated that this is a useful tool when applying for grants, dealing with environmental issues, homeland security issues, etc. Chairperson Eckhouse asked Mr. Vigilante if there was a link that he could show to Harbormaster Patterson? Yes, he can meet with the Harbormaster individually. A member of the WWC asked what stage Mr. Vigilante was at with Edgartown? Mr. Vigilante answered that he is going to get them online this year. Finally, Mr. Vigilante pointed out that his system could be used to boost the business ecosystem in the harbor. For example, in Plymouth, the town, as well as the yacht club, have transient moorings. The boater is able to decide where they would like to be based on the information within the database.

VI. Discussion Items

- A. Shallow water around AtoZ bridge** – Harbormaster Patterson said that this area would be marked ASAP.
- B. Maritime Center** – The SMC now comes under the jurisdiction of the Harbormaster.

VII. Adjournment – Chairperson Eckhouse adjourned the meeting at 9:02pm. There will be no August WWC meeting.