

SPECIAL SELECT BOARD MEETING

July 10, 2017 7:00PM

Appeal of Harbor Master Hearing

Quorum noted

A. 7:00 PM: Meeting called to order by Chairperson Davis.

B. Roll Call: Ms. Davis, Mr. Murphy, Mr. Pomerleau, Mr. Hughes.

Absent: Mr. Donhauser (excused).

7:01 PM Ms. Davis said that this meeting was called to hear an appeal of the Harbor Master decision. This application was submitted on June 6, 2017 by Mr. Lee Emery of 207 Pleasant Street, Eliot, Maine and falls under the old ordinance because it occurred before the vote on the newest ordinance. The appeal is directed to the Select Board per Section XVI (1) Appeal Procedures: *“Any person aggrieved by a decision of the Harbor Master involving the interpretation and/or application of the provisions of this Ordinance may appeal that decision directly to the Board of Selectmen by following the appeal procedure.”* She added that she believes the complaint is directly related to Section VIII Mooring Usage Regulations (3) Unused Mooring Sites: *“Mooring sites unused for one calendar year shall be reviewed by the Harbor Master and may be revoked or reassigned. Burden of proof shall be on the mooring assignee.”* Ms. Davis said that we will start with the Harbor Master and any witnesses he wishes to call; that we will then hear from Mr. Emery and any witnesses that he wishes to call and, then, any member of the public that has any information that bears directly on this situation. She added that the entire Select Board will listen to this and weigh in on anything they feel does not directly bear on this situation. Ms. Davis asked the Harbor Master to read his decision he sent to the mooring owner so we would know where we are starting from.

7:02 PM **The Public Hearing was opened.**

Mr. (Richard) Philbrick, Harbor Master, said that he doesn't have that paperwork; *that what he has is a letter back from Mr. Emery saying,*

“See attached letter from Town, Paragraph 2

**The other two moorings (#60 and #253) have been confirmed as unused for at least 365 days. Our ordinance requires that we deem the two moorings “unused”, and they are now subject to reassignment. This is an untrue statement and can be proven.*

**As part of my appeal, I want the Harbormaster to tell me who supposedly “confirmed as unused”.*”

7:03 PM Mr. Philbrick said that he is in the boat at least three times a week looking at the mooring field. He added that they aren't the only moorings that aren't used but, being down in the cove and, also from the road, he can see that they are unused;

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and all we ask is, if it's unused, register with him (Mr. Philbrick) and maybe he can put somebody on temporarily that needs a mooring or whatever the case may be. He said that, however, one of the problems he has is the communication line is never opened up; his phone never rings; that if somebody has a problem they can call him, he'd be glad to, instead of wasting time with this, he would have gladly talked about it and said, "Gee. What can we do to resolve this?"; but, now we're here. He said that Mr. Emery has a right to his moorings, absolutely, and he isn't questioning that; all he said was that you have to put a boat on it, you have to use it within 365 days; that the third mooring, which is, he thinks, is the middle mooring, he's not quite sure if that's still in testing here because he thought that was a private mooring that belonged to his son, Noah, and Noah's moved out of Town; however, he's not questioning that. He said that he just would like everybody that has a mooring to mark them properly, tell him what's going to be on them, give him a list, then he can control it – and the reason for that is not because he is...he is doing two things: he is building a map of the harbor, for one thing, we've never had; number two, the boat breaks free, he has the registration numbers and he can say, "Okay. That was on so-and-so's mooring. I'll call them to see if they know their boat's drifting."; that that's the reason for doing it. He said that it's not to be controlling, it's just because it's part of the system we're trying to work out to make it more efficient, should he say.

7:05 PM Ms. Davis said, to restate that, you have been in the boat at least three times a week and you can see these moorings also from the road.

Mr. Philbrick said that he drives by there every day with his dog.

Ms. Davis said that it is your contention that you have not seen these moorings used in one year's time.

Mr. Philbrick said no; no, he hasn't; and it's not the only one, there's other ones he's dealing with too.

Mr. Pomerleau asked Mr. Philbrick if he could be a little more specific – the ordinance says 'calendar year', which would be 2016 he assumed this would be under. He asked, during that calendar year 2016, what your actions were to confirm that this mooring was unused; was it throughout the whole year that Mr. Philbrick drove by three times a week, is it on the prime season when most of the boats are out there.

7:06 PM Mr. Philbrick said no; no, he goes by at least twice a day because it's a beautiful road to go on when he's going through; that he brings his dog for a ride; he goes down through our waterfront so he can look at the water without being on the boat, especially in the winter, and it's a nice little loop to take; that he does that

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and he goes to the landing twice a day, and look out and see what's going on with those moorings.

Mr. Pomerleau asked if we were clear that you are specifying the calendar year 2016; that that is what we are dealing with here.

Mr. Philbrick said yes.

Mr. Pomerleau said that, just for clarity, the mooring numbers are #60 and #253.

Mr. Philbrick said that he believed.

Mr. Lee said yes.

Mr. Philbrick said that he had them in here, somewhere, he believed; yes.

Mr. Pomerleau asked him if he remembered, or knew, the date of the decision that you sent Mr. Emery.

7:07 PM Mr. Philbrick said that he did not.

Mr. Pomerleau asked if Mr. Lee had the date.

Mr. Lee said June 6, 2017.

Mr. Pomerleau said that the first thing he was looking for was the timeliness of the appeal.

Mr. Lee said that he believed it was filed in a very timely way.

Mr. Pomerleau asked if there was anybody here, besides yourself (Mr. Philbrick), that you asked to call to confirm.

Mr. Philbrick said that Tommy lives on that street; that he knows, he sees it all the time, he lives right there. He added that Tommy is his Assistant Harbor Master.

Mr. Pomerleau asked if we could hear from him, if that is going to be your witness.

Mr. Philbrick said sure.

7:08 PM Mr. (Tom) Phillips, Assistant Harbor Master, concurred with what Mr. Philbrick is saying.

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Ms. Davis asked him to state his name, address, and position.

Mr. Phillips said yes; that he is Thomas Phillips, III and he lives at 248 Pleasant Street in Eliot.

Ms. Davis asked if he was the Assistant Harbor Master.

Mr. Phillips said that that was correct.

Ms. Davis asked if he lived within sight of these moorings.

Mr. Phillips said that that was correct.

Mr. Pomerleau asked what would make him focus on these particular moorings that you would be able to know, over the course of a calendar year, that they were empty.

Mr. Phillips said that he looks out on that mooring field...he goes out on his neighbor's dock and he looks around and he looks, you know, over the whole cove; that over a year's time you get to know what moorings are used all the time and which ones aren't.

7:09 PM Mr. Pomerleau asked Mr. Philbrick if there was any effort to contact Mr. Emery during the course of the year to see if you could rectify this or what was happening; that there are provisions in the ordinance where you can temporarily assign if the owner knows that they are not going to be using it, and so forth.

Mr. Philbrick said no. He said that he doesn't want to spend his time on the telephone, he doesn't need to; that if they're vacant, you can tell him; that, in fact, one person contacted him today and said, "I'm not going to be using my moorings", and he has commercial moorings, and he said, "If you need to put somebody on, please do."; and that's what he will do. He added that he has a lot of people do that to him when they say they are not going to be using them, he puts someone on temporarily.

7:10 PM Ms. Davis said that, generally speaking, the procedure is that, if it's going to be unused, the mooring owner contacts Mr. Philbrick, you do not chase down mooring owners to find out if they are going to be vacant for any length of time.

Mr. Philbrick said right, exactly.

Ms. Davis said that, even though you're not questioning the third mooring at this time, you also haven't seen anything on the third one.

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7:11 PM Mr. Philbrick said no; that all the paperwork filed this year was under Mr. Emery's name and, in the last two years, it's been Mr. Emery for the commercial and his son and daughter were on there for a while on the private mooring; that this year it's all Mr. Emery, which he guessed, somehow, the mooring got passed around, but it shouldn't be; that that is something else he will deal with later, he's just saying, there are three moorings in question but the two we are talking about tonight are the commercial moorings.

Ms. Davis asked if he had any other witnesses to call this evening, so far.

Mr. Philbrick said no.

Ms. Davis asked if there were any further questions from the Select Board.

7:12 PM Mr. Murphy said that he would like to verify, for the record, whether the rules, or the ordinance actually specifies how much or how often or how frequently a mooring has to be inhabited in order to preserve...

Mr. Philbrick said no, it doesn't.

Mr. Murphy confirmed that it does not say anything about that.

Mr. Philbrick said nothing in writing.

Mr. Murphy asked if the new ordinance does.

Mr. Lee said no; that he doesn't believe that it does, either.

Mr. Murphy said that it seems to be negligence in simply saying what can be done and what can be not; if you are going to demand that they be occupied, then how much and how frequently ought to be there. He said that your (Mr. Philbrick) statement is really saying that it wasn't occupied, at all, for the year.

Mr. Philbrick said that it was for a short period of time; that there was an aluminum boat on it for about, oh, maybe half an hour and it went away. He added that he doesn't believe it was really occupied with vessels, as far as actual boats; that he doesn't call a 12-foot boat a vessel, he calls that a tender, which is much different.

7:13 PM Mr. Murphy said that it was a boat that you hadn't been notified about so it was kind of a strange boat appearing there.

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Mr. Philbrick said, well, it was Mr. Emery's boat; that he put it on there for whatever reason and then he took it back off; however he doesn't know. He added that, normally, if you don't have your own vessel on a mooring, you're supposed to contact him with the numbers on it, and that way he knows who it is.

Mr. Murphy asked, in this case, you received no such contact.

Mr. Philbrick said no; and if it didn't have an on-board on it then it doesn't even have to have any numbers. He added that he thinks this had an on-board on it so there might have been a number on it, yeah.

7:14 PM Mr. Murphy said that this is the first time, in his experience, that an appeal like this has come to this Board; and, of course, the ordinance has been changed.

Mr. Philbrick said that that makes two of us.

Mr. Murphy commented that it's hard to know anything specific to ask; that the question is inhabiting the mooring and how long and what makes it legal and when is it not, and when should action be taken, or not. He added that he doesn't have the answers to those, asking Select Board members if they had the answers, yet.

Ms. Davis said not yet.

Mr. Pomerleau said that Mr. Philbrick did see a boat there for a short period of one day.

Ms. Davis said for one half hour.

Mr. Philbrick said yes.

Mr. Pomerleau asked if he was saying that was not...

Mr. Philbrick said no, he didn't see it, Tom saw it and Mr. Brickett saw it, who lives right on the block there; that it was placed there and it was there.

7:15 PM Mr. Pomerleau asked Mr. Philbrick if he was saying that this was not the vessel assigned to those moorings.

Mr. Philbrick said that he had no clue because, when you have a mooring...

Mr. Pomerleau asked what the vessels where that were assigned to them; that you must know that.

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Mr. Philbrick said no; that he doesn't have that. He explained that, if you register your mooring and give him a vessel registration with it, then it's fine; that with his (Mr. Emery's) moorings, they are commercial, and the private mooring, there wasn't a boat on it; that he put the boat on it and he doesn't know what the numbers were on it, he didn't have a clue. He added that that happens quite often; that there are two other boats in the cove, right now, that haven't got numbers on them that are on moorings and he doesn't know who they belong to; that they're small boats – tenders, he calls them. He said that there's an awful lot of gray water out there that he is trying to deal with, believe him.

There were no more questions from the Select Board and Mr. Philbrick had nothing more, at this time.

7:16 PM Ms. Davis invited Mr. Emery to speak.

Mr. (Lee) Emery, 207 Pleasant Street, said that he assumed you people, the Select Board, didn't receive the letter that he got from the Harbor Master (He gave copies to the Select Board.) He said, first, he kind of wrote his notes, his facts, in chronological order; hopefully, he can read it all, and it does pertain to the letter he got from the Town. He said that he should not be here; that this is a waste of your time and his time; that he feels like he is being harassed by these actions, and others. He added that it started with issues between himself and the Chairperson of the Harbor Commission; that he was Chairperson with both the Town Manager and the Harbor Master; that he knows this isn't going that direction with the appeal but he needed to say that just because what he is going to read later on. He said that he is going to stick to that; that it's going to be lengthier than just showing you a picture to prove that he's right that there was a boat on his mooring. He said that he currently has one personal mooring, #70, and two commercial rental moorings, Army Corps of Engineers approved, since October of 1997, reiterating that they were approved by Army Corps of Engineers as rental moorings. He added that, when he received his letter, the one you have there, on Thursday, June 8th, he immediately went to the Town Hall to see the Town Manager; that he told him that this wasn't right and these moorings are commercial rentals and did not need to have a boat on them. He said that he told him (Town Manager) that they are the same as a marina mooring and Mr. Lee told him that it did not matter, the ordinance requires usage in 365 days. He said that, at that point, he told him (Town Manager) that he had rented one of the moorings, in question, last year and had pictures on his phone to prove it; that his (Town Manager) reply was that it's too late, now, you'll have to appeal it; so, here he is. He said that the first issue he wants to discuss is the first sentence in that letter. He added that, as the Harbor Master said, he has a private mooring but the sentence there is, *"You have three moorings registered to you. One of the moorings, we understand, you briefly hooked a small boat onto Mooring #70 (that's his*

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personal one) to prevent it from being deemed 'unused'." He asked if this was illegal to do – it's not; that he renewed all his moorings on May 15, 2017; on Sunday, 5/21/2017, he replaced the mooring line and ball. He said that this is probably what Tommy and Mr. Brickett saw him doing; had his wife in the boat with him. He added that, at that time, he placed that boat, a 15-foot aluminum Grumman with a 40-horse motor on it, on the mooring; that it was on there for four days – fact – until 6/1/2017; at which time it was raining; so, at 10 PPM at night, he rowed out to the boat because he doesn't have a workable bilge pump on that boat; that he didn't want to see it sink, out there, so he rowed out with his skiff, hauled the thing back, and tied it up to his dock. He said that, on Saturday June 3rd, he pulled the boat out of the water because, on June 5th, he was to have hernia surgery. He added that he knew this was getting kind of personal but this is facts; that he was having hernia surgery on a Monday, supposed to be out of work for four to six weeks; that it ends up he is out for seven weeks, so, let alone that fact, he wouldn't be able to bail the boat out; so, he pulled the boat out of the water and it's sitting in his yard at his house, right now, because he still hasn't put it back in. He said, but, it was on there. He again questioned whether it was illegal to do this, why was this sentence even in the letter; that it's got nothing to do with these two moorings that are supposedly unused. He said that he guessed now that you can see a little bit why he feels like he might be being harassed; that it kind of sounds like they are insinuating to him that he's doing something underhanded or immoral by what the letter says and he really kind of takes offense to that. He said, truthfully, he should have an apology, he feels, but, will probably never happen. He added that, now, to prove his usage of his two commercial rental moorings; first, he's never had to prove usage in the past 20 years, so, why now; did the Harbor Master check with the marinas because, supposedly, his rental moorings is supposedly the same as the marina rental moorings – the one they have out there or, in front of him, there's a limited marina that has rental moorings; that he doesn't know who else up the river is, if any, rental; he doesn't know; but, did you check with them to see whether they verified had an unused mooring all year.

7:22 PM

7:23 PM

Mr. Philbrick said that he gets a list from them every year with the folks that are on there.

Mr. Lee asked him to direct his comments through the Chair, please.

Mr. Emery said that he guessed that was the question – did they confirm that they were being used...unused; example is if a marina had a slow year didn't have all their moorings rented, and you operate on this basis that commercial moorings fall under this 'if they're not used, they lose it', then, they're going to lose it next year when they go to reassign it; doesn't make sense, commercial moorings shouldn't have to have a boat. He added, number two, he was told by the Town

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7:26 PM

Manager, in his meeting, there were two others that got letters – there was a Cabot Trott and a Charlie Rankie; that it's odd that the only three people who got the letters were also members of the Harbor Commission. He said, again, that letter in front of you (Select Board) says "confirmed as unused". He said that he wanted to know, and he guessed he found out, who the person is that confirmed it because, when he shows you the pictures of the boat that's on there, somebody's going to look like an idiot; now, this is just him. He added, so, just kind of as a little addition, the newest, revised 12/2016, is the mooring application that you fill out when you register a mooring and, if you notice down 'here' – the boat information; a little asterisk and it says ***Not required for marine related transient mooring**; that he thinks that's what he falls under; so, if you need to put a boat name on there, does he need a boat on the mooring. He added, #5, seeing that these are Army Corps rental moorings, and he doesn't use them himself, how would he know if somebody came back from a daytrip after dark, tied up to the mooring instead of tying up to, say, his dock or somebody else's, but yet, they're saying he's supposed to show burden of proof; which is in the Harbor Ordinance, the new and the old, but it doesn't define whether it's for private moorings or commercial moorings and, again, we're talking his commercial rental moorings. He added that that's no different than the marina having to watch out there, put a camera up 24/7, to say if every mooring's been used; it's ridiculous to him. He said, #6, he renewed his moorings on 5/15/2017, his letter was received on 6/8/2017; on 6/12/2017, the new Harbor Ordinance was voted in, asking why they wouldn't wait to see if the new ordinance was voted in before sending these letters out if we were only that far away – less than a week. He said that he feels like, again, that he's being harassed or picked on or whatever you want to call it; that he just had to throw that out there. He said that, as you brought up, his letter says 365 days and the ordinance says one calendar year; well, there is a difference; that it seems like it should have been at least quoted what the Harbor Ordinance said, instead of just saying hadn't been used in 365 days; that there is a big difference, if you look up the legal description of calendar year. He added, so, his #8...he only had one set of these (pictures); you can keep it, they are on his computer; with his daughter's help, he got the dates put in on the pictures because he is kind of illiterate with a computer. He explained that the dates are over on the left side, and he wrote at the top the dates – 'this' is Mooring #60; that on a couple of these you can make out the mooring ball with his name, Emery, on it; that these are the ones that was unused and didn't have a boat on that they confirmed. He said that there are four dates, here, five pictures, one picture is taken twice on the same day; so, you (Select Board) can take every one of those. He said that he doesn't see how anyone driving by on that road twice a day, sometimes more, somebody that lives on that road, could look out and not see that boat on there for five or six months; the name on the back of the boat shows, his mooring shows, everything. He added that the other mooring that's commercial rental that he has that supposedly doesn't have a boat on it, which probably 99%

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of the time it doesn't, this is a letter from the woman that rents it from him; she signed it, she wrote it, you can have these copies (her letter). He said that he guessed this is all the proof he can give you. He said his couple of last things to you, as a Select Board; that his one question is does he have to go through this every year – to have this tenant write a letter saying they might use it or, somehow, take pictures when he shouldn't have to; does the new Harbor Ordinance cover commercial rental moorings; as Mr. Lee told him, this one didn't – the old one; that he didn't see that the new one is really much different. He asked if he was the same as a marina; Mr. Lee told him he wasn't the same – commercial rental mooring, Corps of Engineers-approved not the same. He asked what was the difference; that he went through the same process that that marina did to rent, the limited marina in front of him. He said that that ain't all he wanted to say but it's all he's going to say. He said thank you, asking if there were any questions for him.

7:31 PM Mr. Pomerleau said that, your letter from Ms. Duvall, she doesn't specify using it in 2016, specifically.

Mr. Emery said right.

Mr. Pomerleau asked why she didn't.

Mr. Emery said, well, we're talking for last year because this year isn't up, yet, so it isn't an issue for 2017.

Mr. Pomerleau said no, he knows, but she's saying, here, she's used this since 2009 – "most of the time I use the dock...occasionally tie up". He said if the purpose is to provide them with evidence of somebody saying they use the mooring, they didn't say that here.

Mr. Emery said that she used it all that time since 2009.

Mr. Pomerleau said on your behalf, with this case, it seems to me she could have said 'during 2016, I tied up to that mooring', but she doesn't.

Mr. Emery said, when he's asking somebody for some proof, he doesn't know what the ordinance says; you know, you got to show him you used it for X amount of time, a day, a week, or you got to show him dates; that he asked her for the letter to prove that she used the mooring; that's basically all he can do for somebody that he rents to, he thinks; she's in Maine; that he did receive new paperwork; that everybody probably knows about it that the State passed some new ordinance about it's for New Hampshire boats that we have to notify for excise tax purpose. He added that he doesn't think that's really changing anything

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from the past but he did receive that. He said that, in the Harbor Master's letter, it is dated June 6, but it doesn't really refer to it other than the last unused for 365 days; that that's almost no different than that; what year are we talking about – 2015, 14 – so, all he's got.

7:33 PM Mr. Pomerleau asked, May 17th and all that activity, if that was this year.

Mr. Emery said yes.

Mr. Pomerleau said that that was Mooring #70, the one that is not in question.

Mr. Emery said yeah, the one that he was out there with his wife, he redid the mooring and, then, he put the boat on it, and left it there for four days.

Mr. Pomerleau asked if he personally hook up a boat to those moorings in 2016.

Mr. Emery asked to the rental ones.

Mr. Pomerleau said yes.

Mr. Emery said no; that he rents them out, they aren't his.

Mr. Pomerleau asked if they were rented out and hooked up by somebody.

7:35 PM Mr. Emery said yes, yes, the pictures...

Mr. Pomerleau asked if those pictures are the ones you mean.

Mr. Emery said yes.

Mr. Pomerleau asked Mr. Philbrick if he can identify, from these pictures, that these are the moorings in question because he has no way of knowing that, looking at a picture of a boat in a harbor.

Mr. Philbrick looked at the pictures presented and concurred they were Mr. Emery's moorings.

Ms. Davis said, so, there's just no way for you to keep track of, if you're renting these, if somebody is actually using them.

Mr. Emery said, well, again, for how long; does the marina keep track of it, do they have the guy in charge of the marina sit there and "Oh yeah. He's gone." or "He's back." He said that you rent them out; that the idea is not, when you're

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renting out moorings, you want them used because, if you don't rent them you're not getting that little extra money; so, the purpose is, kind of, to rent them out, not to let them sit vacant just to take up space.

7:36 PM Mr. Pomerleau asked if he had receipts of the rentals, documentation that you rented them.

Mr. Emery said that he does but he didn't feel he wanted to divulge money issues.

Mr. Pomerleau said that your question, how would you prepare to defend yourself, rental receipts would be proof that you rented them.

Mr. Emery said that, if he was before a legal thing, he guessed he would bring them out; that he didn't think money issues was the place, here.

Mr. Pomerleau clarified that we aren't talking about money.

7:37 PM Ms. (Christina) Blair, 15 Cross Street, said that she was Mr. Emery's daughter; that she has watched her dad for years and years and years go out there and dive on his moorings, work on the chains, work on the ropes, put the balls on there, and bring them out there. She added that he's gone through multiple surgeries in the last few years and probably shouldn't be doing it, but he keeps doing it every year. She said that, when he mentioned about money receipts, that doesn't have anything to do with the ordinance; that they're saying that a boat has to be on it, so, if he rents it out for money and they don't put a boat on it, then that doesn't follow the rules, right; that that just doesn't make any sense. She said that she just wanted to say that.

7:38 PM Mr. Philbrick said that he just wanted to add that the marinas, and Jim Allen next door to him, annually give him a list of all the boats that are on their rental moorings, with the registrations, so that he knows who is on there and where they are if that boat breaks free; that he can track it and say that (to person) boat #_ on Mooring #__ was adrift. He added that he just had one that was adrift and they found it down in Portsmouth; that that's the reason why we do that, it's not so we can watch people and see where they're going, it's just if we have that information, we can use it to our advantage; that it's been very helpful that way.

Mr. Murphy asked that that also had a factor in boat safety, doesn't it; shore safety, people safety; that if they're just floating around with no one on them, that's not a good thing.

Mr. Philbrick said yes; that he got a call from the Coast Guard that someone's boat was on their pier because it had torn its mooring ball off and had drifted

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down that far; that he was able to get hold of the owner and the owner took care of the situation.

7:39 PM Mr. Emery said that he was not disagreeing with him that that's not a good thing to do; however, the ordinance does not require that unless it's a New Hampshire-registered boat and, then, Maine State statute, it has to be notified so that the Town can collect the excise tax; if it's a Maine boat, it doesn't have to be done; it's not in the old ordinance, it's not in the new ordinance.

Ms. Davis said that he is, however, as Harbor Master, encouraging good practices.

Mr. Emery said that he wouldn't disagree, and, he agrees it's probably a good thing to have. He added that there's a lot, in his opinion, and this isn't the place, but there's a lot left to be desired on this Harbor Ordinance; that there's a lot of issues that need clarifying.

7:40 PM Mr. Pomerleau said we're dealing with the old one; that the new one's not in question; that we're dealing with the old one tonight.

Mr. Emery said yes.

Ms. Davis asked if the Board wished to request proof of rental or request...

Mr. Pomerleau said no; just a point that that ordinance said that the applicant would have the burden; it doesn't prove a boat was hooked up but it would prove that it was rented and would likely be used, asking how many people spend money to rent moorings and don't put boats up to them. He added that it wouldn't be solid evidence but, if nothing else were presented, it would be more evidence than anything else; that that would be the benefit. He said we don't need it, tonight, we have pictures.

7:41 PM Ms. Davis asked, if the date is wrong on the camera, is there any concern that these dates aren't aligning.

Mr. Pomerleau said that we have to accept it as face value unless somebody wants to challenge, examine the camera and the authenticity of the picture and the date.

Ms. Blair said that that isn't an actual like stamp, like you would take on the old cameras, that is the actual properties of the photos that were taken from his phone; that it's not something you can change.

Ms. Davis asked if there were any other questions from the Board.

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There were none.

Ms. Davis asked if there were any other witnesses Mr. Emery wished to bring.

Mr. Emery said no.

7:42 PM Ms. Davis asked Mr. Philbrick if he had anything else he would like to mention right now.

Mr. Philbrick said no; that he was all set.

Ms. Davis asked if there were any members of the public who wished to speak directly to this situation.

Ms. (Rosanne) Adams discussed an observation and a concern; that if you're looking to enforce the ordinance for a previous year, it sounds like the letter went out after the applicant already paid his fee for this year and then got a letter saying we are going to reassign your mooring; and there's a timeliness in that, if that is true, and seems unfair to the person who has already paid for a mooring for the present year; that now it's going to be taken away.

7:43 PM Mr. (Jim) Tessier, 57 Johnson Lane, said that he had an observation; that it does seem kind of strange that only three letters got sent out and all three of them just happen to be Harbor Commission members; that he doesn't know if these are facts but it just smells funny.

Ms. Davis said that, first of all, she would question how Mr. Emery might know that only three letters went out; so, that's something that really hasn't been brought forward and contested, one way or the other.

7:44 PM Mr. Lee said that he did want to say that we created, the day he came in to write these, and it was after the fact; that if we could have caught this prior to issuing moorings he thinks, probably, that would have been Mr. Philbrick's preference; but, we also created a blank form that had, also, that your ball needs servicing, that it's underwater, the chain's kinked, and this kind of stuff; that we have a number of unidentified balls out there we don't even know who they belong to, at this point, they've been abandoned for so long and barely above the surface; so, we created one generic one, for anybody else, that you should service your ball because it's barely above water, it's a navigation issue; that there were two or three different options of what they needed to do; number the ball was another one, and so forth. He added that other letters did go out of a more impersonal nature, he thinks about 5 or 6 that people we do know who they are and clearly have not been used in any significant period of time. He added, so, we did create a

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generic form letter to advise some others but, because they were Harbor Commissioners, we felt we should write specific letters, and not just a form letter.

7:45 PM Mr. Pomerleau, addressing the Chair, said that none of this is relevant to the issue before us tonight; it may be interesting in discussion for the administration of the Harbor Ordinance, but tonight, the only thing we have before us is was this mooring unused in the calendar year 2016.

Ms. Davis asked if there was any other member of the public who wished to speak to this.

There was no one.

Ms. Davis asked if we were making a decision tonight.

Mr. Pomerleau said that we can but we have to follow up in writing, no matter what we do.

Ms. Davis asked if everybody was ready to make a decision tonight.

The Board members agreed that they were.

Mr. Lee said that, just as a parliamentary procedure, do close the Public Hearing, first, and then go into making a motion.

7:46 PM The Public Hearing was closed.

Mr. Pomerleau said that the issue before us tonight is whether or not the moorings, #60 and #253, were unused during the calendar year 2016. He (Mr. Emery) has presented unrefuted, non-challenged evidence with pictures of boats tied to those moorings in May and in June of 2016; that as far as he is concerned, we should reverse this decision.

Ms. Davis asked if Mr. Pomerleau was making a motion.

Mr. Pomerleau clarified that he was discussing this with the Select Board members and, when everybody has spoken to the issue, he will then make a motion.

Mr. Hughes agreed that there was more than enough evidence to support for him; that the issue in question is questionable...beyond a reasonable doubt, yeah, he would say that he (Mr. Emery) has been using those moorings.

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7:47 PM Mr. Murphy said that his interpretation of those photographs is the way they were presented; that they showed a boat there during the time period that was claimed that there was no use, and, since there's no limit for how little time it's used, we have to accept that as being used for that period of time.

Ms. Davis said that we did get substantiation from the Harbor Master that those were the moorings in question in the photographs.

7:48 PM Mr. Pomerleau moved, second by Mr. Hughes, that the Select Board reverse the decision of the Harbor Master and return the moorings in question back into the custody of Mr. Emery.

Ms. Davis, after receiving no additional discussion, called for a roll call.

Roll Call Vote:

Mr. Murphy – Yes

Ms. Davis – Yes

Mr. Pomerleau – Yes

Mr. Hughes - Yes

Unanimous vote to approve motion.

P. Adjourn

There was a motion and second to adjourn the meeting at 7:49 PM.

VOTE

5-0

Chair votes in the affirmative

July 28th, 2017

DATE APPROVED

S: /Mr. Richard Donhauser, Secretary