

**Harbor Committee Minutes**  
**January 17, 2012**

Members present: Jerry Smith, Chair; A. Nelson, Gary Russell and Tim Eldred, Alternate  
Members absent: Tab Butler, Charles Meech, Gary Krubsack, Michael Childers and Bob Kron, Alternate.

Town Board Member present: Greg Nelson, Town Chair (11:40am)

Ex Officio present: Keith Sowl, Town Foreman (11:05 am and 11:40 am) and Michael Anderson, Police Chief, (11:45 am)

DNR present: Mark Little, WDNR Recreational Safety Warden (11:40 am)  
Amie J. Egstad, DNR Conservation Warden (11:40 am)

**1. Call to order.**

Harbor Committee meeting called to order on Tuesday, January 12, 2012 at 11:05 a.m. by Chair, J. Smith. A quorum of the committee is present as reflected in members listed above.

Consensus to move agenda item #7 Regulation of La Pointe Harbor to the top of the agenda.

**7. Regulation of La Pointe Harbor**

K. Sowl said about a month ago Gary Russell came to a Town Board meeting with a drawing Tom Nelson had dropped off at the Ferry Line office. The drawing was of an anchor and chain which was supposedly lying off the breakwater that Tom Nelson had used to tie his barge the "Iffy" to the breakwater last summer.

Now Tom Nelson has moved the "Iffy", which is about 35/50 feet long from the breakwater, closer to shore. The "Iffy" looks as if it could become a hazard to boat navigation, so the Town Board directed K. Sowl to contact various agencies to see how to get the "Iffy" out of there. K. Sowl called the Coast Guard, the Army Corp of Engineers and the DNR. The DNR was willing to help. Two DNR wardens will be on the next boat along with John Spangberg of the DNR to meet with K. Sowl over this issue. The DNR would also like to have a member of the Town Board present at their meeting. K. Sowl will ask the DNR if they would like to attend this harbor meeting.

K. Sowl said the DNR was disappointed that the Town did not issue Tom Nelson a trespassing ticket for tying up the "Iffy" to the breakwall; however, the Chief of Police (Mike Anderson) received a letter from Attorney Matt Anich that said attorney Anich did not know how to go about enforcing a trespassing ticket on something that is not on land.

K. Sowl has a copy of the harbor ordinance Attorney Scott Clark drafted in 1984 after A. Nelson built the breakwater. The grant awarded to the Town from the DOT to construct the breakwater required that there be nothing but commercial use of the breakwater for 25 years. The thought at that time was that an ordinance would be needed to enforce that requirement. For some reason, and perhaps that reason was that a bulkhead line had to be established before there was an ordinance, the ordinance was not completed.

K. Sowl has sent Attorney Matt Anich's opinion to the DNR in regards to the trespassing issue but has not received a response. The statute John Spangberg of the DNR used in regards to trespassing is in §30.16 which deals with navigational hazards. The statute states that an ordinance or resolution by the municipality is needed for enforcement. J. Smith suggested that instead of spending a lot of money on an ordinance and attorneys why not look at other

municipalities with a harbor ordinance in effect that the DNR approves of and copy that ordinance?

Short discussion if the DNR or the Coast Guard has jurisdiction in this case and if a mooring permit is valid if the permit is not signed by the Chair of the Town Board and if there is a regulation to keep someone from dropping an anchor and staying as long as they want.

Question that if the Town passes an ordinance, will the DNR back away and say these are now the Town's problems. Agreement the DNR should be a partner and the Town needs a clear definition of what the Town can do.

J. Smith said this committee needs a directive from the Town Board in regards to developing a harbor ordinance.

## **2. Review and approve the following Harbor Committee minutes:**

### **A. November 17, 2011.**

Le Sueur Street was spelled incorrectly on page 3.

Motion by T. Eldred to approve the November 17, 2011 Harbor Committee minutes with typo corrected. Second, A. Nelson. All in favor, G. Russell abstains, motion carried.

## **4. Discussion of Harbor Feasibility Study**

### **A. Presentation of Final Report to Town Board**

#### **B. Priorities for the Future**

J. Smith made 50 copies of the JJR Final Report and will present the final report to the Town Board at the January 24, 2012 Town Board meeting. J. Smith will also include a copy of the harbor budget and will ask the Town Board how to proceed in regards to contacting JJR to begin the search for funding.

At this time the Yacht Club members are not interested in the plan for the marina area.

## **5. Grant Review**

### **A. Wisconsin Coastal Management**

Bills have been paid and a 60 day extension has been granted to submit bills that relate to the JJR final report.

**B. Island Matching Fund.** Many of the pledged amounts will not be forthcoming due to the economy.

11:40 am. Greg Nelson, Town Chair and K. Sowl, Town Foreman and two DNR wardens are now present.

## **6. Budget review.**

J. Smith said the Harbor Committee started with \$30,000. There is \$27,000 left plus what will be reimbursed by the Wisconsin Coastal Management grant.

### **C. WI DNR Recreational Boating Grant**

No discussion.

## **3. Discussion and/or recommendation to the Town Board of vouchers submitted for approval.**

Printing Plus in the amount of \$420.00 for 50 hard copies of the La Pointe Harbor Long Range Plan Feasibility Study. This amount will be reimbursed *in part* by the Wisconsin Coastal Management Grant.

Motion by G. Russell to approve the invoice from Printing Plus in the amount of \$420.00. Second, A. Nelson. All in favor, all aye, motion carried.

## **7. Regulation of La Pointe Harbor**

K. Sowl introduces Mark Little, WDNR Recreational Safety Warden and Amie J. Egstad, DNR Conservation Warden.

Mark said the best way to proceed is to draft a harbor ordinance because an ordinance is a permanent fix. The State will not take over because this is a local issue. Law enforcement has the ability to issue citations on an ordinance and the Town has jurisdiction, according to DNR legal staff, half a mile out from the land the Town owns, all the way around the Island.

Question if riparian rights go to a depth of six feet. Mark said he has not heard of that.

Mike Anderson, Police Chief is now present (11:45am).

Mark said if the riparian owner does not want you to be there, you cannot be there.

Question if the DNR gave the "Iffy" a license so now the "Iffy" is a registered vessel.

Mark said the "Iffy" is registered to operate on water by the State but that does not necessarily mean that the "Iffy" can be where it is at the present time. The registration just covers the fact that there is a motor on the vessel. If the "Iffy" is anchored in violation, it is a violation. Mark said that right now where the "Iffy" is, there is no permitted mooring.

K. Sowl said the Town has an area that needs to be protected for transportation and some of that area would be under the riparian rights of the Beach Club and the MI Ferry Line.

T. Eldred asked if any vessel can drop anchor. Mark said, temporarily, yes, but a moored vessel, no. Temporary would be defined as to fish, to recreate, but not to leave the vessel anchored and unattended. Once you leave a vessel that vessel is considered moored and cannot be there without the protection of a permit and there is no permit for that.

Question if Tom Nelson had been issued three permits in 1988 by the DNR. Amie said those permits were never approved by the Town or the Coast Guard. Mark said he has the actual 1988 permits and they are invalid.

Question if the town could establish a no anchorage area. Mark said he will get examples. Mark suggested starting the ordinance from ground zero, looking at examples and sending drafts of the ordinance to him for his review. Mark said there are no local examples of harbor ordinances.

Question if establishing a bulkhead line would be the best. Mark said you do not need a bulkhead line but maybe the Town should establish a bulkhead line. K. Sowl said there is a bulkhead line that was described with the bulkhead by the Post Office. That bulkhead is often referred to as the bulkhead line.

Mark asked if there were problems with people tying up to the breakwall. Greg Nelson said the Town had to create a transient docking ordinance but that ordinance did not include the bulkhead. Mike Anderson said when this issue started last summer Attorney Matt Anich said, according to a past issue, that the "Iffy" was a structure that was not tied to land; the structure was embedded to the lake bottom and therefore technically owned by the state, so trespassing citations could not be issued.

Question if the town owns the structure (breakwall) and the town has a permit to place that structure on the lakebed then the town should have the authority to put up signs notifying people that they cannot tie up at the breakwall. Amie said yes.

Question if the State owns the structure because the state owns the lakebed, then the State will have to put up signs and repair the structure. Amie said you would need a letter from John Spangberg (DNR) to give to Mike Anderson and K. Sowl clarifying that if the town owns the

breakwater, the Town has the authority to control trespassing just like the Town controls the town dock.

Mike Anderson said the agreement states that the Town would take over the breakwall 25 years after the final payment was made.

Mark said trespassing deals with land but you can develop an ordinance to address this issue. There are riparian rights but those rights are not exclusive rights. If, for public safety reasons the town wants to say this is what we want to do, then that is what the Town can do which may or may not tread upon riparian rights. So, when you draft your ordinance make sure everything is in there – if you want to prohibit certain activities, etc. make sure those are in the ordinance. That is up to the Town and public input.

Greg Nelson asked that since there have been mooring issues in the area across from the church, not just by the Town dock/Middle Road area, would you put in your ordinance constraints that deal with an area that goes all the way from the town dock to the Marina entrance?

Mark said in your ordinance you can say from point A to point B and list the activities that are prohibited and if you want to moor your boat, the Town will have to approve and if you want a mooring permit that has to be approved by the State, which is another process. Yes, encompass everything. Mark has sample ordinances.

Discussion of the mooring area across from St. Johns Church which is designated as a special anchorage area. No permits are needed to moor a boat in this anchorage area; the area is just put on the maps so boaters are aware this area exists.

Question if there are permanent moorings in that area that are not permitted - who has the authority/responsibility to move/remove a mooring that has been there a long time? Mark said the State. Amie said the boater would need permission from the riparian owner to moor their boat as there is no permit. Mark said the boater would need a permit to keep a mooring there because the mooring would be within 150 feet from shore; the boater would need written permission from the riparian owner and if there is no written permission from the riparian owner the boater cannot keep the mooring there. This would be expressed permission and on a per day basis.

Question of who would tell Tom Nelson to get the engine block off the lakebed and move the block somewhere else? Mark said that would fall back on the DNR.

Amie said Tom Nelson assumes he has a permit because he applied for a permit. Mark said Tom Nelson does not have a valid permit nor does Tom Nelson have written permission from the riparian owner to moor in that area. The DNR will have to give an order to move the "Iffy", but the "Iffy" is presently iced in. If the Town had an ordinance this issue could be dealt with right now.

Question if an order can be issued to Tom Nelson to remove the anchor and chain? Amie said you would have to go to the DA and see if judge will order to have the anchor and chain removed. Mark said the citation would come first, and then the judge would decide whether or not to issue the order. T. Eldred asked if you can issue a citation for what is on the bottom of the lake. Mark said not for what is on the bottom; for what is there now. If the stuff on the bottom belongs to Tom Nelson, then the stuff can be wrapped into his. Apparently there is a small, permanent anchorage in that area that Tom Nelson hooks on to it but the chain that comes up is embedded in the Town property. The depth of water is about a foot and a half to two feet.

Mark said if Tom Nelson takes out "The Iffy" and leaves the stuff behind the township could send Tom Nelson a bill for picking up the stuff that was left behind.

Question if the Town has an ordinance, would the DNR enforce that ordinance? Mark said the DNR cannot enforce anything in a local ordinance; the DNR can only enforce what is state law so you should make sure your ordinance is reasonable and has teeth behind it so the Police Department can enforce the law. The ordinance has to have clear lines to follow.

Question if the DNR will enforce state law. Amie said yes.

K. Sowl said right now Tom Nelson is not breaking state law. Mark and Amie both replied that the mooring is illegal. Tom Nelson does not have permission from the riparian owner to moor there. Only if Tom Nelson has a letter from the riparian owner that says Tom is ok to moor there within 150 feet from shore can Tom moor his boat there.

For clarification: Tom Nelson does not need a permit for a structure on the bottom of the lake if Tom Nelson is within 150 feet from shore and has permission from the riparian owner. Mark said that is correct.

Mike Anderson asked what is needed if you are more than 150 feet from shore.

Mark said the boater would need a permit from the state for a mooring.

Mike Anderson asked about the boats by Joni's Beach that are more than 150 feet from shore.

Mark said if those boats are outside the designated mooring area those boats would need a permit from the State. T. Eldred said the Coast Guard designed that area as a special anchorage area so those boats might not need a permit. Mark and Amie said the Coast Guard supersedes the State.

Amie said if the boats are within a 150 feet of shore and the town owns that shore the owners of the boats will need permission from the town. If the boats are over 150 feet from shore they have to go through the permit process which means they need approval from the DNR and the town. Amie said she will measure the distance of the "Iffy" to shore and also contact Eric Kodner, the other riparian owner in this area.

The harbor ordinance has to be done right, reviewed by Mark and also by Attorney Matt Anich, who will have the last word as Matt will be the prosecutor. Mark suggested doing a comprehensive ordinance which includes the north side of the dock as well as all the way to the marina. The Town needs to think about the issues there could be 10 years from now. There is no need to include the north end of the island at this time.

Question if this area is to be established by ordinance, would the riparian owners lose their right to place something 150 feet from their property? Mark said that is possible. Amie said you could have in your ordinance that if it were the actual owner then they would be allowed.

Suggestion to have K. Sowl, Mike Anderson and Matt Anich draft a harbor ordinance rather than the harbor committee drafting an ordinance. The draft ordinance would then be presented to the harbor committee who, after review, would present the harbor ordinance to the Town Board. (Several voices speaking at this time, hard to hear what is being said by whom).

## **8. Set next meeting and agenda**

## **9. Adjourn.**

Motion to adjourn by T. Eldred, second, A. Nelson. All in favor, all aye, motion carried.

Meeting adjourned at approximately 12:45 pm.

Minutes taken from recorder and respectfully submitted by Kathy Erickson, Clerical Assistant.

Minutes approved as corrected, correction in italics on April 11, 2012