

**TOWN OF FAIRFIELD
HARBOR MANAGEMENT COMMISSION
SPECIAL MEETING MINUTES OF February 21, 2013**

A meeting of the Harbor Management Commission (HMC) was held on Thursday February 21, 2013 at 4:30 p.m. in the SECOND FLOOR Conference Room, the Honorable John J. Sullivan Independence Hall, 725 Old Post Road, Fairfield, CT.

MEMBERS PRESENT: Mary von Conta, Chairman; James Harman, Nelson North, Louis Schueler, Hugh Smith, John Zygmant

MEMBERS ABSENT: Benjamin Baker, Norman Marsilius, Sandye Mann

ALSO PRESENT: Geoff Steadman, HMC Consultant; Patrick Carroll, Harbor Master; Jeffrey Engborg, Pequot Yacht Club; William Rueckert, Steve Klemenz, and Mr. Mileti, Country Club of Fairfield; Annette Jacobsen, Fairfield Conservation Department; Keith Placko, citizen

The meeting was called to order at 4:30 p.m. by Chairman von Conta.

I. APPROVAL OF MINUTES OF JANUARY 15, 2013 MEETING:
MAY REVIEW BUT MUST DEFER VOTE TO APPROVE UNTIL THE MARCH 19, 2013
REGULARLY SCHEDULED MEETING OF THE HMC.

II. CORRESPONDENCE:

Chairman von Conta reported the following correspondence:

From Harbor Master Carroll to Mr. William Mayer, Fairfield Accounting Office checks collected for 2013 mooring permit fees and mooring maintenance charges:

Jan. 22, 2013:	\$5,610.00	(Permits: \$3600.00	Maintenance: \$2010.00)
Jan. 28, 2013:	\$4,530.00	(Permits: \$2300.00	Maintenance: \$2230.00)
Feb. 3, 2013:	\$8,780.00	(Permits: \$4900.00	Maintenance: \$3880.00)
Feb. 11, 2013	\$2,465.00	(Permits: \$1500.00	Maintenance: \$ 965.00)
Feb. 16, 2013	\$ 540.00	(Permits: \$ 300.00	Maintenance: \$ 240.00)

January 18, 2013: A copy of a letter from Thomas Steinke, Fairfield Conservation Director, to Connecticut Department of Energy and Environmental Protection (CT DEEP) Commissioner, Daniel C. Esty, conveying comments and recommendations of the Fairfield Conservation Commission regarding the CT DEEP National Pollution Discharge Elimination System (NPDES) Permit Application ID No. CT0030651 Exide Group Inc. Mill River water discharge.

January 25, 2013: A letter sent by HMC Chairman von Conta to Ms. Carolyn Fusaro, CT DEEP Remediation Division; Mr. Donald Gonyea, CT DEEP Bureau of Materials Management and Compliance Assurance; and Ms. Tonia Selmeski, CT DEEP Office of Long Island Sound Programs (OLISP) conveying the HMC's questions and concerns about the proposal by Exide Group, Inc. to dredge lead-contaminated sediment from the Mill River and Southport Harbor and requesting a written response to specific questions and concerns before the end of the comment period so the HMC will be able to prepare its final recommendations for transmittal to the DEEP before the end of the comment period. (Appended to the letter from the HMC was a copy of a document titled "Issues and Comments Concerning a Proposal

by Exide Group, Inc. to Dredge Lead-Contaminated Sediment from the Mill River and Southport Harbor” which reflects the thoughts of representatives from the HMC, the Fairfield Shellfish Commission (FSC), and the Fairfield Conservation Commission(FCC) as well as some members of the public who were present at a meeting convened on January 7, 2013 to discuss Exide’s proposed remediation project.)

From end of January through the first half of February, 2013: Documents conveyed by e-mail to Chairman von Conta by Mr. Steinke representing the FSC:

Draft Minutes of FSC’s January 9, 2013 meeting;

Draft of possible discussion topics relevant to Exide’s CT DEEP NPDES Permit Application;

Draft Minutes of FSC’s Special Meeting held on Jan. 23, 2013;

Agenda noticing a special FSC meeting on Jan. 30, 2013;

Agenda noticing FSC’s Feb. 13, 2013 meeting.

January 31, 2013: A letter of Conditional Approval from Patrick Bowe, Director of CT DEEP Remediation Division, Bureau of Water Protection and Land Reuse, to Ms. Hangyan Luo and Mr. James Westwood, Superior Plating Company, Lacey Place, Southport, CT. The Conditional Approval is for Superior Plating’s “Workplan for Soil, Groundwater, and Sediment Testing, Superior Plating Company, Southport, CT” and is in response to a Stipulated Judgment NO. CV-89-0355556 S.

February 9, 2013: In response to a request from the First Selectman’s Office a brief document titled “Responsibilities of the Harbor Management Commission” for eventual placement on the new Town website and also for recruitment purposes.

February 14, 2013: An e-mail from Chairman von Conta to Mr. Donald Gonyea, CT DEEP, requesting an extension of the NPDES comment period. (Mr. Gonyea responded that he was sending the request to his management team at CT DEEP.)

January 10, 2013: Notice of a Permit issued to Anthony Casola for work to be done at 1871 Fairfield Beach Road, Fairfield. (Not under the jurisdiction of the HMC.)

February 14, 2013: From FCC (Thomas Steinke, Director) to Mr. Donald Gonyea of CT DEEP Bureau of Materials Management and Compliance Assurance citing the FCC’s additional comments and concerns about the Exide NPDES water discharge permit application. The comments and concerns relate to the monitoring of the water discharges from the de-watering “tubes” and at the dredging sites to ensure that they meet TMDL standards/requirements. The FCC is particularly concerned about excess amounts of bacteria and nutrients that might occur in the water discharges.

February 19, 2013: From Thomas Steinke representing the FSC to Mr. Donald Gonyea of CT DEEP Bureau of Materials Management and Compliance Assurance citing the FSC’s concern regarding Exide’s NPDES permit application being filed prematurely which makes it “inconsistent with and, contrary to, the intent and the specific terms and conditions of the enabling enforcement action, Consent Order #SRD-193 sections B.2.d.(6) and B.2.f.(1) and (2) and should therefore be withdrawn by Exide or be rejected by the CT DEEP.” Mr. Steinke supports this statement with illustrations of potential deficiencies, noted by the FSC, in the Remedial Action Plan (RAP) application which the FSC believes should be addressed prior to DEEP’s approval of the RAP. The FSC believes it would then be appropriate for Exide to file an NPDES permit application and any other permit applications that pertain to the proposed remediation project.

February 19, 2013: From 33 private citizens of Fairfield, CT (who are also members of Fairfield's Representative Town Meeting) to Daniel C. Esty, Commissioner, CT DEEP, requesting that Commissioner Esty intervene into the permitting process for the "Mill River Fairfield Cleanup" and ensure that CT DEEP adheres to the permitting sequence set forth in its Consent Order dated October 20, 2008, which states that the RAP was to be approved prior to applications being filed for various other required permits.

III. OLD BUSINESS:

Lower Wharf Report: Chairman von Conta reported that an FOI request was made by concerned neighbors regarding this project. Chairman von Conta reported that a meeting was held to discuss the neighbor's issues. Attending were Joel Green, attorney for the neighbors; Stanton Lesser, Town Attorney; Eileen Kennelly, Town Risk Manager; Gerry Lombardo, Director of Parks and Recreation; Joseph Michelangelo, Director of Public Works; Geoff Steadman, HMC consultant; Mary von Conta, HMC Chairman and Virginia Cargill, Harbor Road resident.

Chairman von Conta also reported that construction costs for aspects of the Lower Wharf project may be higher than anticipated due to the presence of ledge that has been identified in the vicinity of the Lower Wharf through the soil borings recently conducted for the HMC. This will be discussed in more detail during the HMC's March meeting.

Mooring Report: Mr. Carroll reported that the Mooring Committee did not meet as scheduled on February 8, 2013 due to the snow storm. Mr. Carroll asked the HMC members to continue to review the HMC's "Rules and Procedures for Mooring and Anchoring Vessels in Southport Harbor" since this document will be discussed at the next meeting of the Mooring Committee and the March 19, 2013 meeting of the HMC.

Mr. Carroll also reported that some boaters have not yet sent in their payment for the new season (15 for waiting list renewal and 8 or 9 for mooring permit renewals). Mr. Carroll reported there should be two mooring locations available for small boats for the coming season.

Sand Management Report: Mr. Steadman reported that he is working with the DEEP and the HMC's engineering consultant Roberge Associates Coastal Engineers (RACE) on this project and RACE has completed the first draft of the plan drawings to be included in the Certificate of Permission (COP) application to the DEEP. Mr. Steadman also reported that, with the assistance of the Town DPW, it has been determined that the FEMA reimbursement (approximately 75% of costs) will cover the removal of approximately 4,300 cubic yards of sand attributed to Storm Sandy. Mr. Steadman reported that FEMA has informed the Town that projects eligible for FEMA reimbursement may be conducted up to 18 months following the event that triggered the disaster declaration. Mr. Steadman also reported that the DPW has informed him that it will be possible to prepare the Town beaches damaged by Storm Sandy for this year's summer season without using the sand to be excavated from the Southport Harbor channel.

Budget Report: Chairman von Conta reported that the budget request for the HMC will remain at the same level as last year at \$24,260. Chairman von Conta also reported that the HMC has about \$150K in capital project funds previously allocated by the RTM for the Lower Wharf Project, and about \$100K in the HMC's revolving account. The revolving account consists of income from Mooring Permit Fees which is designated for making improvements to the harbor. In addition the income from the Mooring Maintenance charges is placed in this account and is used to pay for the Mooring Maintenance costs. Mr.

North suggested that the Chair have a list of projected expenses for all of the available funds for presentation to the Board of Finance during its budget hearing on March 19, 2013.

Review the “Remedial Action Plan For Lead Impacted River Sediments/River Study Areas I-V/The Former Exide Battery Facility Project/2160 Boston Post Road, Fairfield, CT

Chairman von Conta reported that a meeting concerning this project has been scheduled at the request of the Town’s State legislators. This meeting will be held at Senator McKinney’s office on February 28, 2013 at 10:00 am to discuss comments by Town agencies concerning the proposed remediation project, including the HMC’s previously submitted comments, concerns and issues. Representatives of the HMC, FCC, and FSC have been invited to attend this meeting, along with DEEP representatives, First Selectman Tetreau, and Representatives Fawcett, Huang, and Kupchick.

Mr. Steadman reviewed the history of this project involving the HMC. Mr. Steadman reported that in January 2012 a letter was sent to the DEEP asserting the HMC’s jurisdiction to review all projects affecting the Harbor to determine their consistency with the Harbor Management Plan. Mr. Steadman also noted that in July the HMC wrote a letter to OLISP regarding this project and in January 2013 the HMC sent a letter to the DEEP listing the HMC’s issues, concerns and comments and requesting a written response from the DEEP. A written response to the identified issues was deemed necessary by the HMC in order that the HMC may properly complete its review of the proposal and determine its consistency with the Harbor Management Plan.

To date, the HMC has not received any response to its January 2013 letter to the DEEP. Mr. Steadman stated that the letter should form the basis of today’s discussion. The HMC considered the section of the General Statutes that specifies that recommendations pursuant to a Harbor Management Plan are to be binding on State regulatory decisions unless the State shows cause otherwise. Mr. Steadman reported that the DEEP’s public comment period on this proposal is scheduled to end on February 28, 2013.

Several Commissioners expressed concern that the DEEP might take action on this proposal prior to providing a written response to the HMC’s comments. Mr. Steadman noted that, in the consent order, there is a clause that apparently states that the RAP must be approved by the DEEP before the applicant may apply for the other approvals needed to undertake the remediation project.

Ms. Jacobsen stated that it is the opinion of the Conservation Department that the RAP currently does not include sufficiently detailed information to enable the DEEP to make a final decision.

Mr. Carroll stated that it is his understanding that representatives of Exide Group, Inc. have been in contact with Dr. Kueffner to discuss matters concerning the Tide Mill Dam.

The HMC reviewed the list of issues and concerns previously submitted to the DEEP, identified several additional concerns to be added to the list, and directed Mr. Steadman to make the necessary additions for transmittal to the DEEP.

Following significant discussion, Mr. Harman *moved* and Mr. North *seconded* to authorize Mr. Steadman to modify the HMC Comments, Concerns and Issues document as discussed tonight, and to transmit the following comments and recommendations concerning the proposal to the DEEP and applicant. *Motion passed unanimously.*

1. *The HMC hereby asserts its authority and responsibility, pursuant to the Connecticut General Statutes and Fairfield Town Code, to review all proposals affecting Southport Harbor to determine the consistency of those proposals with the Harbor Management Plan which is duly approved by the State of Connecticut and adopted by the Fairfield Representative Town Meeting.*
2. *The proposed remediation project, which affects real property on, in, or contiguous to Southport Harbor and therefore is subject to the municipal jurisdiction of the HMC, requires careful review with full consideration of the needs and interests of the Town of Fairfield.*
3. *Pursuant to Section 22a-113n of the Connecticut General Statutes, a recommendation of the HMC pursuant to the Harbor Management Plan shall be binding on any official of the State of Connecticut when making a regulatory decision affecting Southport Harbor.*
4. *There is currently insufficient information to enable the HMC to make a final determination regarding the consistency of the Applicant's proposal with the Harbor Management Plan. As a result, the HMC recommends that the DEEP should make no decision regarding the proposal until such time as: a) the specific issues identified by the HMC in the enclosed Statement of Harbor Management Issues are addressed in writing by the DEEP; and b) a reasonable and sufficient period of time is provided to enable the HMC to review the DEEP's written response and make a final determination with appropriate recommendations.*

Review the DEEP Consultation Package related to a proposed application submitted by the Country Club of Fairfield to retain and maintain an existing earth berm and lagoon slope at 936 Sasco Hill Road, Fairfield, CT: There was no report on this item.

IV. NEW BUSINESS: Mr. Steadman thanked Keith Placko for his expert assistance in the production of the aerial photo map prepared for the meeting to take place on February 28, 2013.

V. PUBLIC COMMENT: None

VI. ADJOURNMENT:

There being no further business to come before the Commission, John Zygmant *moved* and Hugh Smith *seconded* to adjourn the meeting at 6:00 p.m. *Motion passed unanimously.*

Respectfully submitted,
Deborah J. Garavel
Recording Secretary