

Notes for 4/12/06 BOS meeting

Status of the harbor plan

Contract extended until 2007.

Completed in-depth evaluation of the 1993 plan implementation and determined which of the outstanding tasks to be carried forward.

Conducted research on priority topics and drafting plan sections to address:

1. Dock and piers in the RC district

A priority issue is a recommendation on what should replace the moratorium on docks in the RC district. The project team has considered a number of options from an extension of the bylaw prohibition that exists in other districts to the RC district, to a set of dimensional and locational requirements, to performance standards. We are prepared and propose to conduct a focus group or public meeting to obtain input to inform the policy options we will propose to the town. We have had discussions with NCF regarding this topic.

2. State v Local approval of Harbor Plan

Developed and provided information to the BOS on the approval processes and pros and cons of state v. local approval of harbor plans.

3. Public access

Assessed the input from the public meeting on the topic of public access in order to define actions undertaken as part of 1993 Harbor Plan and ascertain continuing topics of interest/concern. In some instances, suggestions for additional management actions were provided; these are being evaluated as part of the Harbor Plan Update.

Developed a GIS data base of existing public lands and public access points within the two study areas. This data base has been reviewed by Andrew Vorce, Planning Director, to ensure that the details are correct and that all the information from the Rights of Way Committee is incorporated. Collecting information from the various public and quasi-public/NGO land owners to identify restrictions on the use of the land (e.g., is the public encouraged to use the land to access the water?, is there a restriction that would preclude the development of a parking lot or other structural element? , etc.) This information will also be incorporated into the data base. Recommendations regarding further actions on rights of way will be presented to the Planning Board and Rights of Way Committee.

4. Natural Resources Protection

5.

Incorporated the input from the public meeting on this topic into the assessment of actions undertaken as part of 1993 Harbor Plan and to ascertain continuing topics of interest/concern. In some instances, suggestions for additional management actions were provided; these are being evaluated as part of the Harbor Plan Update.

Interviewed town officials about their opinions as to how effectively Natural Resources are being protected and the mechanisms available to do so.

Drafted background section on natural resources section of the plan.

Gathered data on commercial shellfishing and drafted section of plan.

Provided the UMass Field Station with a computer model, developed at the University of New Hampshire, designed to assist in identifying sites most favorable for re-establishment of eelgrass beds.

5. Land Use trends

Gathered data for analysis on construction and population trends on the island over the past decade. Preparing draft of land use section of the plan. Compiled detailed information on existing land use of the commercial area (RC district) of Nantucket Harbor.

6. Transportation trends

Gathered and plotted data for the past decade on passenger and vehicle counts from NPEDC and the two ferry companies. Also gathered similar data from the airport. In the process of finalizing the analysis.

7. GIS Mapping

All data obtained to date has been incorporated into the GIS mapping for this project.

State v. local approval of the harbor plan

We believe Nantucket can accomplish the goals of the harbor plan through local authorities (zoning, wetlands regulations, etc.).

Additional time and process

State approval does take additional time and process: perhaps an additional year. There are a number of consultations and public meetings required at both the scoping and approval stages and the regulations have some specific requirements regarding plan content and documentation that must be produced in support of the state's review and approval process. The scoping process would take four to six weeks and fulfilling the additional plan requirements would take us into mid-late summer. The state's approval process can take many months.

Lack of clear advantages

The opportunities offered through state-approval of a municipal harbor plan to tailor and clarify certain provisions of the Chapter 91 regulations does not seem compelling for Nantucket.

Chapter 91 includes a number of use restrictions and dimensional limits that govern the licensing of nonwater-dependent structures. An approved Municipal Harbor Plan

can modify these standards; substituting locally derived standards for those in the state regulations. An illustration of this concept involves the site coverage limit on nonwater-dependent buildings—Chapter 91 regulations generally call for at least 50% of every project site being reserved as open space (area not covered by buildings). An approved Municipal Harbor Plan may modify these standards to mandate greater percentages of open space in one part of the harbor and allow for greater building density in others. This option has been used in Boston and Salem Harbors to help shape development and use of the overall waterfront; these waterfronts are more urban in character.

The requirements a project must fulfill to obtain a Chapter 91 license include many discretionary standards. The regulations include many phrases such as, “a fair and equitable assignment of moorings”, “shall not interfere significantly with public rights of navigation”, “include reasonable measures to provide on-foot passage.” These terms could be defined by a state-approved harbor plan. The state-approved plan allows a community to establish guidelines for applying these general standards to specific situations.

Lack of state approval does not mean that DEP ignores local harbor plans; DEP will review a local harbor plan for guidance in making its regulatory decisions, particularly when the municipality refers to provisions of the local plan in its comments on a development proposal submitted for Chapter 91 licensing. The planning board’s authority to comment on Chapter 91 license applications is detailed in the regulations at 310 CMR 9.13(5). The planning board recommendation is referred to as a “Section 18 Recommendation” after Section 18 of MGL Ch. 91, the Public Waterfront Act. This provision requires DEP to consider the recommendation of the local planning board in deciding whether to grant a c. 91 license or permit based on the requirement that the project must “serve a proper public purpose which provided greater benefit than detriment to the rights of the public in tidelands.

Where the state-approved Harbor Plan differs is that state approval *commits* DEP to use the standards of the MHP in its regulatory decision making.

State-approval of the plan could be important if the town never translates the plan’s objectives into its own zoning regulations. However, our experience is that the state in issuing its approval of the harbor plan will require that the municipality’s zoning regulations be consistent with the plan’s recommendations.

Local zoning provisions and Chapter 91 may apply to a proposed project, but the project must comply with both—Chapter 91 has no authority to override local zoning or other by-laws and regulations legally adopted.

In fact, DEP cannot issue a license under Chapter 91 for projects on filled Commonwealth tidelands or private tidelands without certification from the Town that the project is consistent with local zoning. (310 CMR 9.34 (1)).

There is no regulatory language to suggest that a Municipal Harbor Plan will lead to greater availability of state funding for implementation or other harbor-related activities. Experience has not shown any measurable difference between types of plans in the gaining state funds.