

**Board of Trustee Public Hearing
February 8, 2011**

The Board of Trustees of the Village of Cold Spring held a public hearing on Tuesday, February 8, 2011 at 7:00 pm at Village Hall, 85 Main Street, Cold Spring, NY for the purpose of hearing comment on a proposed local law that would amend Section 27-9 of the Village Code to allow for docking of vessels upon issuance of a special permit called a “docking permit”.

Attending: Mayor Seth Gallagher and Trustees Campbell, Falloon, Hustis and Serradas
Also: Stephen Gaba, Village Attorney (arriving after the start of the hearing)

Mayor Gallagher called the meeting to order followed by the Pledge of Allegiance.

The public hearing notice and the proposed local law were read.

The meeting was then opened for public comment.

Michael Armstrong, Chair of the Special Board and resident of 7 Morris Avenue read his personal comments as follows:

The proposed amendment to Section 27-9 of the village code, Docking of Boats, is consistent with the goals and objectives of the draft Comprehensive Plan recommended on December 9, 2010 for Trustee adoption, and with the draft plan as published by the Trustees to be presented at a Public Hearing. In particular, the amendment advances Objective 2.1, “Improve boat access to the Village at the Main Dock” and Objective 4.1, “Encourage businesses in the Village that provide local jobs, convenient services to residents, sustain property values, or provide more tax revenue than the cost of services for them, at a scale that respects the Village’s small town character and the primary needs of residents year-round.”

The proposed amendment is prudent, well crafted and takes care to ensure that the village’s interests are protected. It is consistent with many comments from residents received by the Special Board that the community would like to see improved access to the river. Some controversy has arisen over the perceived “speed” with which the amendment is being considered, but that should be taken in light of the long, four year process of the development of the village’s comprehensive plan, which calls for just such changes. It should also be considered in the light of a proposal received by the village to start a ferry/excursion service this spring. This well-planned and promising enterprise will need the timely “green light” that can only be provided by a responsive government, not one inclined to delay. As anyone who has started a business can attest, such delays can suffocate enterprise, and thereby deprive communities of services that might otherwise enrich the lives of every resident, young and old.

Gordon Robertson, resident of 220 Main Street, partially agrees with Mr. Armstrong. He sees the Hudson River as an asset to the community but believes that a long-term plan is needed. He questioned the board’s expertise and understanding of nautical maneuvers and navigation and asked who the board consulted to open up the dock. He expressed concern about effluent and traffic. The concept is a good idea but he has questions. First, he asked if the board was considering docking or permanent berthing. If a specific vessel

is being considered or a specific organization, then he thinks this is wrong for Cold Spring. We need to think broader and look at the long run. He believes that the passage of this local law is on the fast track and he doesn't understand the reasons. He called for more planning, community participation and consulting people with experience.

Gregory Phillips, resident of 10 New Street, stated that he was speaking for himself and his wife. He pointed out that he would be directly impacted. He sees Dockside as the ideal location to get people in and out of the village via boats. Also, he thinks this law is a way to make a specific vessel work. It is too quick to jump into it. Seasonal berthing would create an undue burden on the residents living in this area and those visiting the dock to look at the water. The existing code calls for a two-hundred foot setback which was there to allow an unobstructed view. If you place a forty foot vessel on the north or south side of the dock and if one is sitting on the south side of the dock, you will be looking at someone's business not a clear picture of the water. He also expressed concern about diesel engine exhaust. In general, there are issues that are not being completely thought of and he would like to see this law voted down.

Tom Rolston, resident of 10 Grove Court, added that this is not a new idea and has been floating around for at least twenty years. The proposed local law is "permission to give permission". By passage of this law we may never see docking of vessels, if the Village Board doesn't give permission. He is unsure about permanent docking but is in favor of boats dropping off and taking away passengers. The argument here is not whether a specific boat is coming in but whether we have the right to give permission.

Ray Fusco is a resident of 25 Market Street and sits on the board for the Harbor Operations Navigation Committee. He represents all recreational boating to the Captain of the Port of New York whose waters extend up to Albany. So he feels he can speak to some of the questions about some of the more specific terms. He stated that the proposed law was prudently written and will be very beneficial for Cold Spring and will increase the amount of boats that could potentially come. There is already a very strong mechanism for control in the law. He recommended a timeline on the issuance of a permit and also something that speaks to the duration. Docking is extremely different from berthing and the waters around the pier are not deep enough for berthing anything of significance. Over the course of time, with the current moving back and forth, it would actually start to get silted in and then we would have significant issues. No one wants to speak to the DEP, DEC or Army Corps of Engineers about dredging. He asked if the Village Code Officer was a police officer. In the case of a specific emergency, you need to rally the troops to find someone to move a vessel that is inappropriately berthed or someone that made a bad maneuver and needed to be moved out. To be able to get people there with some quickness to take care of the problem would be interesting. The only other recommendation is to get some detailed drafting of how deep the mean low water is close to the shoreline and take a look at the structural ability, as you start to work with that dock, as different boats have different needs such as cleats and bollards. The dock would have to hold up to the bumping and pushing and pulling of the different vessels. However, these guys are Hudson River professionals and the dock would be a lovely place for folks to bring it.

Mayor Gallagher pointed out that the application has guidelines and criteria and a hold harmless agreement. The application speaks about the depth of water.

Mr. Fuso thinks that one hundred feet is fair. Two hundred feet is overreaching and puts a vessel into water not worth berthing.

Peter Henderson resident of Marion Avenue understands that the driver behind the change is to allow the former Coast Guard boat, now a tour boat, to dock there on a semi-permanent basis. The owner's presentation made it clear that she was looking for a home for that boat. He thinks it would be great to have that boat but has concerns about enacting a law without addressing a few issues. Mr. Armstrong mentioned the draft Comprehensive Plan. Let's forget that it is a draft and has not been through the public hearing and adoption process yet. What it actually says is, "to assure that the Main Dock has the improvements necessary to make it accessible for temporary docking of ferries, passenger boats, water taxis, historic and other special boats." So there is an acknowledgement that it does require improvements to make it accessible. Surely these will take a while to plan and implement and it seems that we should be doing this first. Put the dock before the boat rather than the boat before the dock. There are people who know a lot more about the construction of the dock and have expressed concern about its suitability for docking vessels. He spoke with Pamela Tames yesterday and she is the EPA Officer responsible for this area and the Marathon Battery clean up. She told him that he was the first person to speak to her about this change of use. The board has a resolution before them that gives a negative declaration on environmental impact. He thinks it would be prudent to consult with both the EPA and DEC before making such a declaration. I know some of the history of that location with regards to waste from the former battery plant. The plant was using the village sewer system to get rid of the cadmium polluted effluent from the plant. My understanding is that it went down the sewer line down Main Street and went right off the end of the dock along with all the other household wastewater until the pipe deteriorated to the point that they were told that they could not do that any more and they started dumping the pollution into the Foundry Cove instead. So both the cove and the dock were highly contaminated. During the cleanup that took place in the late eighties and early nineties they did dredge around the dock, they didn't go underneath so they dredged to a depth of about a foot which they had calculated would remove 90 percent of the contamination. They didn't go beneath the dock; they put the sheet piling there to contain the contamination. That is what Pam Tames emphasized to me yesterday. The need for bumpers to protect the sheet piling that contains the contamination beneath the dock. Jan Thacher has a photo he took a few years ago of the sheet pilings and you can see that it is deteriorating. We just want to be sure that people take proper measures to ensure that the dock is safe and that we are not going to have boats crashing into this sheet piling and causing problems.

Mayor Gallagher initially spoke to Pamela Tames when he worked on the bollards. By email she referred him to the engineer who oversaw the dock construction. We do have the as built drawings of the dock. R. Cameron of Putnam Engineering was in touch with the engineer who oversaw the dock construction when he drew up the plans for the installation of the bollards. P. Tames saw no problem as long as we stayed within the dock but recommended having an engineer design the footings.

Stephen Geiger lives at 1 North Street. He agrees with almost everything that everyone has said. He thinks the dock is a good idea but thinks that consideration of diesel fumes should be added to the list of illegal effluent from the boat. Diesel fumes are hazardous to us all. People go down to the riverfront to have a quiet, hopefully pollution-free experience. He chased away a tour bus that was running for over an hour. The second point is about noise. This is one of the quietest corners of the earth. He likes Cold Spring as a quiet place. He hears party boats from Newburgh and they are a half mile out there. Mayor Gallagher pointed out that the noise was in the application and other stipulations can be added.

Stephen Etta, resident and Chairman of the Recreation Commission pointed out that the new law states one hundred feet off each side and the old law 200 feet. Why was this deleted? A section of a memo prepared by S. Gaba was read aloud as follows: The reason that the "and 200 feet etc" language was omitted from the proposed local law is that I believed that the Village intended to use only the dock as an anchorage/embarkation point for vessels. I did not think that the Village was interested in offering dock permits allowing use of the shore of the Waterfront Park north and south of the dock.

S. Gaba thinks it is unlikely that you will have people docking 200 feet onto the river and then trying to land on the park shore. If they do and you don't want it, you could prohibit it in one of two ways. You could either include a specific prohibition in the Village Code which could be written into the draft local law or you have control over the Village parks and could adopt a resolution prohibiting it. The difference would be that with the resolution you couldn't actually prosecute people. He doesn't foresee this as being a real problem.

Trustee Falloon clarified that the confusion that the space between the dock and the boat club was remaining open for was visual purposes. The Recreation Commission thought the 200 feet was there to keep the straight visual from the shoreline out. S. Gaba questioned if the village owned the land under the river between the boat club and the dock. If we own the land then certainly we could prohibit people from anchoring. If we don't, the Hudson River is a navigable river and you can't prohibit people from anchoring.

G. Robertson pointed out that the village does have riparian rights.

R. Fuso added that the Hudson was a navigable river so ultimately if anyone wants to come ashore with a dingy from a sailboat or a recreational boat that there is plenty of shoreline from Constitution Island all the way up to Little Stony Point where they are going to come ashore. One hundred or two hundred feet is really, at a certain point, negligible. If you are talking about something for the boat club, I would actually like to see someone go out with a tape measure and see if (the distance) from the end of their docks to the pier is two hundred feet. He would suspect that it is much lower than that. Trustee Falloon stated that there are two separate issues and S. Etta added that the point was the unobstructed view.

Mayor Gallagher stated that this is something that could be established with the boat club itself.

G. Robertson asked Attorney Gaba if anyone has investigated with the Army Corp of Engineers what he learned from the Peekskill boat club. If the Army Corps dredge their facility, they are perpetually required to do that. Peekskill has had the Army Corps maintain their channel because they did it in the past.

Mr. Robertson thinks that the law that was recently enacted to open the dock is a wonderful thing but he doesn't understand the wording or content of the proposed law or what the board is attempting to do. He doesn't understand why, at this time, the board is looking to tighten this language up when we haven't put a commission together a harbor plan to develop the Village, to move forward. He recently read a copy of the report from our engineer and he addressed that the bollards are not to standard to handle using them as capstans to allow vessels of this size to swing out in the current to handle when it has full sail. He's not saying that the concept is bad but saying wrong time, wrong place and why are we doing this right now. We have possibilities of approaching the state with dockside and why if we are talking about one vessel why aren't we looking to see if additional vessels are willing to put a spud dock in. We've had numerous talks with a local resident who came very close to implementing and purchasing a ferry with the concept of attempting to reach out. We reached out to the Mayor of Highland Falls and he was looking to open up and connect West Point, Constitution Island and possibly Banterman's Island. This is a great thing and we could be doing moorings for the village and making money for the village. When this dock was constructed started and planned, under Mayor Chirico, it was designed as a promenade. The community at the time along with the DEC came out and said this was a promenade; it is no longer a dock. There is no longer interstate commerce coming off of this. At this point, we have opened it up and it is a very good thing for the village and he is glad to see the Clearwater back in town. Mayor Gallagher responded that initially when the dock was being rebuilt- he does have a copy of when it was being rebuilt. In the description it was envisioned that it would be used for docking. It does mention the Clearwater coming. Also, in the old Master Plan it does talk about promoting businesses at the waterfront. So the dock is designed to handle boats and we had it checked out with the Engineer from the original Army Corps of Engineers and two other engineers who did the design of the bollards. If you pull on the bollards, any strong boat can pull a bollard off of anything. So that's why it's important that we put the language into our permit to let them know that they can't be using them in that way and that would negate their being able to use the docks. We put that in there for our own protection. You spoke of the need to rewrite the local law. That was designed for boats of public interest very specifically.

S. Gaba offered that the dock has been in place for sometime. In 2000, the Village adopted a law which blanket prohibited all docking along the waterfront park including at the dock. In 2009, the board amended the law to provide that under special circumstances, it invested some discretion in the board under limited circumstances, to allow docking at the waterfront. The law as it exists right now lists the criteria for determining what the special circumstances are. You look at the nature of the boat. Is it of special interest or importance? Does it serve an educational purpose? If the board can make a finding of special circumstances then the board can allow, it is not required to, but has the discretion to, to dock at the waterfront park. This revision to the law vests more discretion in the village board. It takes away the special circumstances requirement. In

place of the special circumstances requirement, it puts into place criteria: the physical availability of dock space - the consideration of other vessels that might be there. Second, whether the presence of the vessel asking to dock presents any hazards to the health, safety or welfare or would otherwise be detrimental to use of the waterfront park. It can be anything from the physical appearance is unpleasing to diesel fumes, noise. If an event is occurring and it might interfere. The board has discretion to grant or not to grant the permit based upon the criteria. The board can do it; it doesn't mean they will do it. It will be a case-by-case finding whether or not the boat should be allowed to dock.

Gordon Robertson thinks that the law takes discretion away from the village.

Mayor Gallagher added that it is difficult to talk to people about having a business here if the law says that they can't. What we are trying to establish is whether we are going to allow people to apply.

Betsy Pugh, resident of Rock Street, hears a great deal of negative and would say if I were interested in bringing a boat in, that Cold Spring doesn't want one. I think a boat that would dock on a specific schedule to bring passengers to the village, and would then enjoy the village and the shops, would be a very good idea. She would love to hear the conversation turned more towards we think we would like to do this, how can we do it, not all these specific reasons on why its bad or wrong or smelly or whatever. She would really like to see it in a more positive tone.

Anne Impellizzeri of High Street, speaking as an individual, has thought for sometime that an active living riverfront is in the interest of everybody in the community. It improves the experience of the river, makes it more real and in fact increases security when there is positive activity on the riverfront as opposed to excessive quiet and failure to pay attention. It sounds as if you have considered a lot of the potential issues: the noise the pollution, the disturbance. The idea of reviewing each one through the permitting process makes a great deal of sense. She thinks it is a very positive idea to enhance the living riverfront.

Gordon Robertson asked for another reading of the language from what we currently have on the books. S. Gaba read aloud the current language and explained that we are taking away the first two criteria that limits the board's ability to issue these permits. No longer does the boat need to be unique, unusual or distinguishing or a matter of public interest. It could be a commercial boat. It doesn't have to be there for a purpose of public display, inspection or other means of appreciation. This proposed law takes away the limitation of special occasion, special boat.

Tom Rolston spoke about an incident that occurred five years ago. The Chamber of Commerce wanted to pick up people to take on one of their typical excursions on the river. It is a four hour excursion, everybody has a good time and it raises money for the Chamber of Commerce. An eighty-three and an eighty-five year old man were required to go to the end of the boat club on a dock that goes like this and it took three people to hold them up and they were trying to get on this boat which they had to walk up the gang way which was ridiculous. Get to the facts, I think most of the residents want us to be able to have the ability to bring in a boat that we can take the Chamber of Commerce out on a Sunday afternoon for a ride on the Hudson. We are probably the only village up and down the Hudson River that doesn't have a working dock. You can go to NYC and all the way to Albany and they all have docks where boats can attend. We have been talking

about this for years for having a boat that would go up and down the river and stop in Cold Spring on its way from Albany to New York and people could get off and give Cold Spring some business and go on its merry way and that's all we're talking about here. The law should say if you're a boat and a responsible person and you want to pick people up on our dock and you think they are responsible then give them the right and charge them for it. Maybe we'll make some money. The current law is so specific.

Jan Thacher distributed photos to board members. His concerns are about process. He lived on the waterfront for twenty-five years and lived at 25 Market Street and knows the area like the back of his hand. He is absolutely for bringing boats to our waterfront. It is critical and it would hopefully add to the economic benefit of our community and thinks it is something that is unique. But he is concerned as to the process and how quickly we are doing this. About five or six years ago, he worked on a committee to bring boats in and he called the Army Corp of Engineers who said that this dock in particular was not designed to handle boats. It was designed number one to encapsulate Cadmium and the pollution according to the EPA and it was designed as a passive use dock. It was not structurally built or bunkered to accept boats bumping up against it. If we wanted to have boats come visit we had to set up a spud dock where you put in the pilings and put in a floating dock because we weren't supposed to have boats banging up against our dock. Perhaps that's all changed but I don't know. The color set of photographs were taken at extremely low tide and I was able to photograph along the waterfront. As you can see the seawall there is rotting out. Now those photographs were taken at least ten years ago. I can imagine what it looks like now. I also took some photographs looking straight down off the end of the dock at the foot of the dock and it is even worse than the boat club. What you are looking at is the boat club there. I don't know if the engineers have come to look at this dock and gone underwater to see if the piling and sheet metal is intact or not. Number two, he asked who filled out the EAF. He asked if they dug into any of the archeological aspects. If there were any flora or fauna? Mayor Gallagher pointed out that we stayed within the dock and that's what Pamela Tames was talking about. Mr. Thacher stated that you can't –you're having a boat come up to it. According to the second sheet he distributed and this comes from the Grossman report 1991 of the archeological artifacts of significance in our waterfront. It is in depth and interesting to read and we have two wrecks right there and I know that SHIPPO would be very concerned about. Having boats come in and sit on top of those. They need to look at them and sign off as to whether they are significant or not. Tom Rolston stated that Mr. Thacher did the soundings. Mr. Thacher added that he went around with a stick. Mayor Gallagher stated that at low tide, off the end, is about eight feet. Mr. Thacher thinks that the SEQR needs to be looked at in more depth. Mayor Gallagher stated that that's not what the DEC said and we also had our engineering firm check on these matters. The construction was within the dock. Mr. Thacher stated that if the ship coming in is going to jeopardize the wrecks, I think you need to look at it. Peter Farrell, 191 Main Street, supports this idea. His kids had a great opportunity this summer. In the previous years of experiencing the boats that did come down to the dock and the waterfront, he thinks it is a great opportunity for the village. He isn't sure of all the issues around the dock and the construction of the dock but just wanted to lend his support.

Kathie Kourie lives in Garrison but works in Cold Spring at Houlihan. She thinks it is a great idea that more people can have access to the river, not just people that belong to the boat club. I would love to be able to go out on the river and anything that can get me there would be appreciated.

Ray Fuso: In thinking about the landscaping around the dock, we are just thinking of the western facing front of that pier, both the north and south. We don't have a lot of space to put any sizeable vessel, 60, 70, 80 foot vessel, because the draft is way too narrow, way too shallow close to the rocks.

Mayor Gallagher stated that the River Rose was here at the 4th of July on the north side. It is about 80 feet, a little swung over the outside end but it got in pretty close. The last time we spoke about the former Coast Guard tender, it is about 42 feet long, the draft was about five feet.

There was brief discussion about the depths of the water at different locations around the dock. Mr. Fuso added that the Army Corp dredging only applied to commercial.

Dick Weisberg in addition to the intangibles that Anne and Pete have mentioned is there anyone that has prepared estimates as to what this really means to Cold Spring in terms of charges for docking, increased revenues from real estate taxes because the value of the buildings goes up. Do we have any estimates?

Mayor Gallagher estimated that in the specific proposal that was presented to us during the first year, because of the late start in the first year, it would be six thousand but it would be at least eight thousand a year for that. We may have another boat from West Point or boats coming from Canada that would stay three hours. I don't know how much but we would certainly charge to do that. So I think conservatively ten thousand dollars a year.

Peter Henderson asked about the expense side because there are things that need to be done to the dock before it's ready to receive these vessels.

Mayor Gallagher stated that if someone was headquartered there then they would be taking on the majority of those costs. We received a grant in the past to purchase bollards and we would be looking for other ways to expand that. Right now we can't charge boats as the law doesn't have a mechanism to that. If we can open it up then we can charge and use that to cover the infrastructure.

Peter Henderson inquired about providing electricity to these boats. Mayor Gallagher responded that it would be the boats cost.

Gordon Robertson thinks that everyone is in agreement that it is a benefit to residents by helping with the taxes and to the merchants. One gentleman stated that he wasn't sure if the revenues would exceed expenses.

Gordon Robertson stated that we don't have a viable plan. You need to bring in experts and assign a dockmaster. We have very skilled people in this area. There are a lot of things you need to look at including protecting the dock. We don't have the things in place to do this properly. I think that the village should investigate getting a permanent spud barge. See if you can get vessels to pay for it, community support and grants. We still have railings that are not to code and haven't been addressed. Luckily, we have a donor that has come forward whose hard work will address lighting and other issues down there. We haven't addressed how to even open up the end of the dock without having gating.

Mayor Gallagher stated we have addressed. It was a big effort for the board to get the approval for that so we are working on the fence issue. If you don't say you're going to allow boats to dock there then there is no way you can plan to have boats dock there. We are going about this the right way. First, you have to establish that you want boats down there and then you have to figure out how you're going to do it. It is a huge net benefit as opposed to any kind of loss as we aren't going to put our own money in to do those things. It will only go through revenue from boats or direct.

Tom Rolston stated that this is only permission to give permission.

S. Gaba agreed. The local law that is being considered here does not open up the dock. It modifies the provision slightly that is on the books. If after this is enacted, the village board feels the dock is not ready or more planning needs to be done or they want to talk. They are absolutely free to do that before they issue a single permit. It is not like they adopt this law and it is come one, come all and you get to dock in Cold Spring. It just changes what's on the books now and gives more discretion to the village board. It is not opening it up.

Jan Thacher asked if non-profit boats would be charged.

Mayor stated that there was a provision that would allow them not to be. S. Gaba read the section about waiving docking fees.

Stephanie Hawkins resident of Academy Street thinks the change in the law that expands the board's discretion is a very positive thing. The evidence is that it is promoting all kinds of discussion and we have heard from all kinds of people who want to see more thinking and planning and it's all about opening the riverfront and I think that is positive. By expanding the board's discretion means that our elected leadership gets to speak for us. If we want you to hear from us, we come to the meetings and we tell you what we think and you act on that at your discretion.

With no further public comment, Trustee Campbell moved to close the public hearing and seconded by Trustee Hustis and unanimously approved.

Respectfully submitted,

Mary Saari, Village Clerk