

July 14, 2015

Via E-mail/Hand-Delivery

Ms. Luly Massaro
Division Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, Rhode Island 02888

In re: Rhode Island Fast Ferry, Inc. – Docket No. D-13-51

Dear Luly:

On behalf of Rhode Island Fast Ferry, Inc. (“RIFF”), please find an original and four (4) copies enclosed for filing in the above docket:

- 1.) RIFF’s Supplemental Response to the Town of New Shoreham’s Additional Data Request at the Deposition of Charles A. Donadio, Jr.

Please let me know if you have any questions.

Very truly yours,


ALAN M. SHOER
ashoer@apslaw.com

Enclosure

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

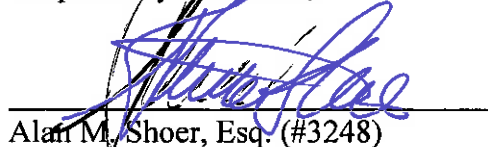
IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No.: D-13-51

**RHODE ISLAND FAST FERRY, INC. SUPPLEMENTAL RESPONSE TO
THE TOWN OF NEW SHOREHAM'S ADDITIONAL DATA REQUEST AT THE
DEPOSITION OF CHARLES A. DONADIO, JR**

At the deposition of Charles A. Donadio, Jr. the Town of New Shoreham, through its attorney, requested that RIFF produce the document relied upon by Mr. Donadio in his Answer to Question numbered 8 in his Rebuttal Testimony. The documents Mr. Donadio relied upon are attached hereto as Exhibit "A".

Respectfully submitted,



Alan M. Shoer, Esq. (#3248)
James A. Hall, Esq. (#6167)
ADLER POLLOCK & SHEEHAN, P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
Tel: 401-274-7200
Fax: 401-751-0604

Dated: July 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2015, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

A

1

June 20th 1877
Town Council Meeting according to Government Members
Present: Robert C. Mellickin John G. Thayer John H.
Wheeler George J. Kelly and George B. Mett.

Resolved that Oliver C. Mitchell be and he is hereby
appointed as Supervisor with the privilege of employing
an assistant

Rolls of Land
Kept and Carried Bill #9153

Resolved that the bills of Frederick C. Rose and Joshua D. Hoop
for Surveyors fees for work he received and
returned to July Meeting.

Resolved that Wm. P. Lewis be and he is hereby
appointed as a committee to investigate the road
that runs through the Town of Concord in
regard to widening the West road and report
at the next meeting.

Resolved that Joseph D. Mellickin the committee
appointed be granted the full power to
consult our Honorable Representatives in Congress
and other persons as may be necessary to find out
how some like the North work at the inner harbor
at the basin and to see if the same cannot
be done not already done, and turned over to the town
Meeting however ~ ~ ~ ~ ~ to Row
C. C. K.

1877 Meeting on July 1st 1877
Town Council Meeting
Members present Robert C. Mellickin
John G. Thayer George J. Kelly and George B.
Mett.
Nov. 11 1877

The Great Salt Pond

It is ordered by the Town Council of
the town of Newborough as follows

c 1 Minor shell like and shell fish except mussels
from the bottom of the Great Salt Pond or from the shore
of the said Great Salt Pond at any time from the passage
of the ordinance to December first 1879 shall be fined
under penalty and all costs of prosecution for each and
every offence the fine to save one half to the use of the
corporation and the other half to and for the use of
the town

c 2 This ordinance shall take effect immediately
D. W. Newborough - 1st Dec 2^o 1879

John C. Thompson & Co	\$17.35
John C. Sheffield	40.95
John C. Champion	49.00

Motion and Resolved, that your Senator and Representative
be requested to use their influence in securing
for the town of Newborough the South Pond
back its basin

Motion that Messrs. Row & Co and is hereby
appointed in my position for the year ending in
making the regular income

Motion, George Wells & Co and is hereby appointed
a committee to examine the town records and
to give council if necessary to find out what right
the town of Newborough holds under the deed given
by Henry Southfield to the town of Newborough
Valid April 27th 1790

All unfinished business referred
to
Ambrose & P. Row
Council Clerk

2

- Sandy Bay, Mass. Improving national harbor of refuge at Sandy Bay, Cape Ann, Massachusetts: Continuing improvement, one hundred and fifty thousand dollars.
- Manchester, Mass. Improving harbor at Manchester, Massachusetts: Continuing improvement, five thousand dollars.
- Martha's Vineyard, Mass. Improving Martha's Vineyard inner harbor at Edgartown, Massachusetts, for dredging, two thousand dollars.
- Salem, Mass. Improving Salem Harbor, including South River, Massachusetts, fourteen thousand dollars.
- Stage, Mass. Improving Stage Harbor at Chatham, Massachusetts, five thousand dollars.
- Westport, Mass. Improving Westport Harbor and East and West Branch of Westport River, Massachusetts, one thousand dollars, to be applied in extending the jetty on Horse Neck Point and to dredging in Westport Harbor.
- Block Island, R. I. Improving harbor at Block Island, Rhode Island: Continuing improvement, fifteen thousand dollars; and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels.
- Conveyance to New Shoreham of wharf. Wharf tolls, &c.
- Newport, R. I. Improving harbor at Newport, Rhode Island: Continuing improvement, twelve thousand five hundred dollars.
- Greenwich Bay, R. I. Improving harbor at Greenwich Bay, Rhode Island: To complete, two thousand dollars.
- Coaster's Harbor Island, R. I. Improving cove near southeast extremity of Coaster's Harbor Island, Rhode Island, and water-way between said island and Rhode Island, to complete, five thousand five hundred dollars.
- Point Judith, R. I. Constructing national harbor of refuge at or near Point Judith, Rhode Island: Commencing construction, seventy-five thousand dollars.
- Bridgeport, Conn. Improving harbor at Bridgeport, Connecticut: Continuing improvement, twenty thousand dollars, of which fifteen thousand dollars shall be expended in constructing breakwater between the Tongue and inner beacon, and five thousand dollars to complete improvement above the bridge.
- Black Rock, Conn. Improving harbor at Black Rock, Connecticut: Continuing improvement, five thousand dollars.
- New Haven, Conn. Constructing breakwaters at New Haven, Connecticut, in accordance with the plans submitted by Chief of Engineers in report for eighteen hundred and eighty-nine, page six hundred and seventy-eight: Continuing improvement, one hundred and twenty thousand dollars.
- Improving harbor at New Haven, Connecticut: Continuing improvement, fifteen thousand dollars.
- Norwalk, Conn. Improving harbor at Norwalk, Connecticut: Completing improvement, four thousand dollars.
- Wilson's Point, Conn. Improving harbor at Wilson's Point, Connecticut: For widening and deepening channel, thirty thousand dollars.
- Stonington, Conn. Improving harbor at Stonington, Connecticut: Continuing improvement, twelve thousand five hundred dollars.
- Stamford, Conn. Improving harbor at Stamford, Connecticut: Completing improvement, five thousand dollars.
- Five Mile River, Conn. Improving harbor at Five Mile River, Connecticut: Continuing improvement, five thousand dollars.
- Milford, Conn. Improving harbor at Milford, Connecticut: Completing improvement, two thousand five hundred dollars.
- Duck Island, Conn. Improving harbor of refuge, Duck Island Harbor, on Long Island Sound, Connecticut: twenty-five thousand dollars.
- Clinton, Conn. Improving harbor at Clinton, Connecticut: Continuing improvement, three thousand five hundred dollars.

3

10/11/11

HARBOR OF REFUGE AT BLOCK ISLAND, RHODE ISLAND.

This island is a part of the State of Rhode Island; it is 14 miles east of Montauk Point, the eastern end of Long Island, and its nearest point is about 10 miles from the mainland. Besides the wants of the mackerel-fishing fleet and the general coast navigation the island is an important point on our shores for ocean navigation. It has a signal station connected by submarine telegraph with the mainland. Vessels are passing the island at all times and on all sides of it, and its position renders it of national importance. The object of the improvement is to furnish a harbor of refuge for vessels engaged in foreign and coastwise commerce. The mean rise and fall of the tide is about 8 feet.

ORIGINAL CONDITION.

Before the construction of the present harbor of refuge Block Island had no harbor which afforded protection for decked vessels. The only ones used were open boats, which, on the approach of storms, were hauled up on the beach by oxen. The largest of these boats were of about 10 tons burden.

PLANS OF THE WORK.

The original project and its subsequent modifications provided for a harbor of refuge on the eastern side of the island, consisting of an inner harbor or basin for small vessels and an exterior harbor for large ones. The basin was to be about 350 by 800 feet in area, and inclosed, with the exception of an opening 80 feet in width. The exterior harbor was to be formed by a riprap breakwater, which has been built. About 300 feet from the sea end of this breakwater, which is 1,000 feet long, a gap 200 feet long was left for the convenience of vessels. The present project contemplates the enlargement of the inner harbor. A plat of Block Island, showing the position of the harbor of refuge and a plan of the works, may be found in the Report of the Chief of Engineers for 1885, vol. 1, pages 612, 613.

AMOUNT EXPENDED AND RESULTS TO JUNE 30, 1890.

The total expenditure up to June 30, 1890, including liabilities outstanding at that date, was \$264,123.50.

The inner harbor and the main breakwater, built in prolongation of the eastern side of the inner harbor, and extending 1,900 feet from the shore, were constructed in the years 1879 to 1877, inclusive. The utility of the work at once became apparent. In stormy weather the inner harbor especially was filled with fisherman and coasters, and it soon became necessary to increase its depth from 7 feet, to which it had been dredged in the first instance, to 9 feet at mean

low water. A strong jetty had been built out from the cliff to the eastward of the inner harbor and a masonry wall constructed on the inside of the crib work forming the eastern side of the inner harbor. The filling of the gap in the main breakwater had been completed. The timber jetty filled with stone, forming the shore end of the western wall of the enlarged inner harbor, and about 100 feet of its north wall east of the opening built to the level of mean high water. The shore west of the breakwater had been dredged to 9 feet at mean low water from the steamboat wharf to within 100 feet of the north wall.

OPERATIONS DURING THE LAST FISCAL YEAR.

At the beginning of the last fiscal year no work was in progress. By act of September 19, 1889, Congress appropriated \$15,000 for the continuation of this work, and a project for the expenditure of this sum was prepared and was approved by the Chief of Engineers. The project contemplates continuing the construction of the riprap walls of the enlarged inner harbor.

Advertisements for proposals for riprap granite were issued December 6, 1890, and proposals opened January 6, 1891. But one bid was received, and this was rejected.

An abstract of the proposals received will be found in the appended table.

Work was resumed on the north wall of the enlarged inner harbor and 3,711 tons of riprap granite were placed in it. The result was the extension of the north wall of the enlarged inner harbor to the westward, the foundation reaching to within 60 feet of the end. The stone delivered was taken from Mason Island Quarry, which is operated by the Government.

Mr. F. I. Angell was the local superintendent of the work.

WHARF AT BLOCK ISLAND.

By act of September 19, 1890, the wharf on the land side of the inner harbor was conveyed to the town of New Shoreham "for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels."

WORK REQUIRED TO COMPLETE THE EXISTING PROJECT.

The work required to complete the existing project is the completion of the filling of the gap in the main breakwater, the restoration of the breakwater to its original dimensions, and the enlargement of the inner harbor.

4

3rd Indorsement.
U. S. Engr. Office, Newport, R. I. Jan. 19, 1894.

Respectfully returned to the Chief of Engineers, U.S. Army, with remarks as follows:-

After some special investigation, I am of the opinion that the claims of the petitioners are somewhat exaggerated and that the use of the basin as claimed by them is neither as extensive nor as detrimental to them as claimed by them.

The basin to which they undoubtedly refer, is a small basin about 270 feet square and from 6 to 9 feet deep, originally built (about 20 years ago) by the United States as a place in which to lay up its own plant during the construction of the large breakwater at this place (For map of harbor, see page 844, Ann. Report Chief of Engineers for 1893). After the completion of the breakwater, and by Act of 19 September 1890, the wharf on the land side of this basin was conveyed to the town of New Shoreham (Block Island) for the public use of said town; no tolls or charges to ever be exacted however for the use of said wharf by public vessels of the United States. Owing to the small size of the basin, this conveyance practically gives to the town of New Shoreham the control of the use of the basin; no boats, except those of the United States having any rights at all to the use of the other three sides of the basin.

There has been in the past almost every year a few complaints by a few persons (not always the same) that they have been kept by others from using this basin or its surrounding wharves as they would have liked to use it. Such complaints may be expected to continue yearly until the town of New Shoreham (as do other seaport towns and cities of this State) shall appoint a harbor master to look after and control the use of its harbor by public and private boats. The completion, during the past season, of the enlarged harbor (about 700 feet wide and 1000 feet long) makes more important than ever the need of such a harbor master.

I have therefore to recommend that this and all future complaints of the people of this neighborhood as to the improper use of its harbor by public and private vessels, be met by a recommendation to the complainants to lay the matter before their local authorities with a view of securing for their harbor the appointment of a local harbor master under local State laws.

Respectfully submitted,

A. J. ...
Captain, Corps of Engineers, U.S.A.

WHE-CIC.

*Copy also filed in ...
"Record 15 ..."*

5

Report on wharfage conditions at Block Island, R.I.

U. S. Engineer Office,

Block Island, R. I., June 27, 1904.

Brig. Gen. Alexander Mackenzie,
Chief of Engineers, U. S. Army,
Washington, D. C.

General:

1. In compliance with indorsement dated June 24, 1904, on E.D. File No. 51746, I have the honor to submit the following report:

2. The river and harbor act of September 19, 1890, contained the following: "Improving harbor at Block Island: Continuing improvement, fifteen thousand dollars: and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels."

3. On the inclosed blue print is shown the wharf in question and it is at this wharf that the steamer "City of Haverhill" is prevented from landing by the fact that the steamer "George W. Danielson" is held there by the owners, although she is not now in commission.

4. The town of New Shoreham, the corporate name of the town on Block Island, is the owner of the two steamers, the "George W. Danielson" and the "New Shoreham". The New Shoreham cannot use the old harbor owing to there not being sufficient depth in the inner basin, so she uses the wharf in the Great Salt Pond. At this season of the year, great quantities of fish are shipped from Block

Island and as the greater part of the fishing fleet use the old harbor and the packing is done at this locality, it is the better point for shipment. I am informed that shipments made from the wharf at the Great Salt Pond cost the dealers 25 cents per barrel for cartage. It was in order to save this expense that the petitioners secured the running of the steamer "City of Naverhill" between Block Island, Providence and Newport, R.I.

5. As the harbor at Block Island was constructed by the United States and the wharf was ceded to the town of New Shoreham for the public use of said town, it would seem as though the holding of the steamer "George W. Danielson" at the public wharf, thereby preventing other boats from using it, makes the said "George W. Danielson" an obstruction to navigation, under section 15 of the River and harbor act of March 3, 1899. If section 4 of the river and harbor act of August 18, 1894, is applicable in this case, I would respectfully recommend that the following regulations be issued by authority of the Secretary of War:

Regulations regarding obstruction of navigation in the harbor at Block Island, R. I.

The river and harbor act of August 18, 1894, provides as follows: "Sec. 4. That it shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require.

Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall knowingly and wilfully violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court in

the United States within whose territorial jurisdiction such offenses may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.

In accordance with the above, notice is hereby given to owners, pilots, or captains or others in charge of steamers, sailing vessels or other floating craft using the harbors at Block Island, R.I., that they must not in any way, either by anchoring or tying their vessels to the wharves or piers, obstruct the capacity of the harbors or prevent other vessels from proceeding to the docks: Provided, however, that a reasonable time shall be allowed vessels for the discharging and receipt of passengers and freight.

Very respectfully,

Your obedient servant,

Lieut. Col., Corps of Engineers.

6

5th

OFFICE OF THE SECRETARY OF WAR
WASHINGTON

July 5, 1904.

1. Respectfully returned to the Secretary of War.

2. The river and harbor act of September 19, 1890, in the item making appropriation for improving harbor at Block Island, R.I., contains the following provision:

"and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels."

Since this enactment the said wharf has been in the possession of the town of New Shoreham, and parties engaged in navigation now make complaint that they are prevented from having the free use of the wharf by reason of the fact that a steamer belonging to the town is continuously anchored there; it being alleged that it is the object of the town authorities in anchoring their steamer at the wharf to prevent competition from boats belonging to private parties. Request is made that the town authorities be required to remove the boat from the wharf, so that it may be used freely by the public.

3. The matter has been investigated by Lieutenant Colonel Willard, to whose report of the 27th ultimo attention is respectfully invited.

6. As Congress conveyed this wharf to the town directly, it does not appear that the War Department has any power to interfere with the management and control of the structure, and I therefore see no way in which the Department could afford the petitioners the relief desired. As this is a legal question, however, I recommend that, before final action is taken, the payers be referred to the Judge Advocate General for opinion whether, under existing laws, the War Department can remedy the evil complained of.

By Gen. Chief of Engineers
U. S. Army

61746

Enclos. 1-3 accomp'g.

Handwritten: 70 3000
Handwritten: L

7

(18527) ^{7th} Indorsement. C.

July 13, 1904.

Respectfully returned to the Secretary of War.

The facts of this case are stated by the Chief of Engineers in 5th indorsement hereon as follows:

"The river and harbor act of September 19, 1890, in the item making appropriation for improving harbor at Elock Island, R.I., contains the following provision: 'and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels.'

"Since this enactment the said wharf has been in the possession of the town of New Shoreham, and parties engaged in navigation now make complaint that they are prevented from having the free use of the wharf by reason of the fact that a

2.

steamer belonging to the town is continuously anchored there; it being alleged that it is the object of the town authorities in anchoring their steamer at the wharf to prevent competition from boats belonging to private parties. Request is made that the town authorities be required to remove the boat from the wharf, so that it may be used freely by the public."

After referring to the accompanying report in the matter by Lieutenant-Colonel Willard, the Chief of Engineers says:

"As Congress conveyed this wharf to the town directly, it does not appear that the War Department has any power to interfere with the management and control of the structure, and I therefore see no way in which the Department could afford the petitioners the relief desired."

I concur in these views of the Chief of Engineers. It is not clear, however, that the petitioners are without relief in the premises. By section 10 of the River and Harbor Act of March 8, 1898

the
The
8

3.

(20 Stats., 1101), the -

"creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States is *** prohibited;"

and in section 15 of the same Act it is made unlawful to -

"tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft."

While the wharf was granted to the town, it was expressly stipulated that it was "for the public use of said town;" and it is not believed that it would be lawful for the town to obstruct the use of it by the public in the manner specified. However, as stated above, the Secretary of War is without authority to give the petitioners the relief desired. If the action complained of be a violation of the statutes referred to, it is incumbent on the Department of Justice to conduct the legal proceedings necessary to enforce the statutes. The only jurisdiction the Secretary of War would have in the premises would be to make a request for the prosecution

4.

of the offenders; and such action might be taken by the Department of Justice without such request.

It is, therefore, suggested that these papers be referred to the Attorney-General with request that, if in his opinion the acts complained of violate the provisions of the River and Harbor Act of March 3, 1899, he will cause the U. S. Attorney to prosecute the offenders.

John D. ...
Judge-Advocate General.

JUL 15 1904

4-1000