

## MEMORANDUM

To: Ron Rappaport  
From: Isabelle Lew, Michael Goldsmith  
Re: Gifting of Shack to the Town  
Date: May 2, 2017

---

### 1. Background

John Armstrong, who leased a bulkhead lot in Menemsha from the Town of Chilmark (the “Town”), is going to terminate his lease **and would like to donate a shack that sits on the town’s bulkhead to the Town**, under the condition that it be used by a commercial fisherman for commercial fishing. Tim Carroll has asked for your opinion regarding the Town’s authority to accept this conditioned gift.

### 2. Governing Law

Massachusetts General Laws c. 44, §53A ½ provides that “a board of selectmen, or prudential committee or town council may, in its sole discretion and authority, accept gifts of tangible personal property on behalf of the ... town or district from...[an] individual...and may in its sole discretion and authority, use said gifts, without specific appropriation thereof, for the purpose of such a gift or, if no restrictions are attached to the gift, for such other purposes as it deems advisable.”

### 3. Analysis

The shack in question sits on land leased from the Town and is treated as the lessee’s personal property; therefore, the Selectmen of the Town have the statutory authority to accept the gift of the shack from Armstrong without approval at a town meeting. The acceptance of the gift is consistent with the Chilmark Master Plan and current Lease, both of which emphasize an effort to keep all existing fishing shacks in Menemsha, and suggest that ownership of the shacks should transfer from lessees to the Town for commercial fishing.

The Town is required by statute to use the shack as conditioned by Armstrong; it may be in the best interest of the Town to negotiate the condition of the gift so it explicitly permits the Town to remove the shack or rebuild the shack when its useful life ends. To accomplish this, the condition would state that the shack will be used for commercial fishing until the Selectmen, at their sole discretion, determine that the shack is no longer structurally sound.

The Town’s prior treatment of fishing shacks (i.e. requiring removal of shacks located on leased bulkhead lots, or requiring approval of similar gifts at annual town meeting) does not dictate what the Town may do moving forward; rather the Town is governed by current statutory language and the current Town regulations relating to the bulkhead lots.

#### **4. Conclusion**

The Selectmen have the authority to accept the gift of the shack as conditioned by Armstrong without approval at town meeting -- previous contrary Town action regarding similar shacks is not binding. Before accepting the gift, it is in the best interest of the Town to request that the condition placed on the gift specify that the shack will be used for commercial fishing until the Selectmen determine that the shack is no longer structurally sound.