

REYNOLDS, RAPPAPORT, KAPLAN & HACKNEY, LLC

COUNSELORS AT LAW

JAMES F. REYNOLDS
RONALD H. RAPPAPORT
S. FAIR HACKNEY
MICHAEL A. GOLDSMITH
CYNTHIA G. WANSIEWICZ
ISABELLE LEW

P. O. BOX 2540 • 106 COOKE STREET
EDGARTOWN, MASSACHUSETTS 02539
TEL. (508) 627-3711
FAX (508) 627-3088
www.rrklaw.net

OF COUNSEL
KATHRYN R. HAM
JENNIFER S. RAKO
KAREN D. BURKE

August 8, 2017

VIA E-MAIL

Board of Selectmen
Town of Chilmark
P.O. Box 119
Chilmark, MA 02535

Re: Bradley Carroll Lease for Menemsha Boat Slip

Dear Members of the Board:

You have requested advice as to whether Bradley Carroll is eligible for a slip on the floating dock in Menemsha. The Town requested information about Ms. Carroll's place of residence. Once the Town obtains the applicant's long-term residency information (the Town set a deadline of August 1 for receipt of this information), we will be able to ascertain whether the applicant meets the necessary requirements.

A. Residency Requirement:

To comply with the Chilmark Waterways Rules & Regulations, the slip lease holder must be a "Year Round Resident" of Chilmark. See CWRR VI(F) (this section of the regulations provides "the purpose" of the slip leases for the "small boat floating dock" is to accommodate boats owned by Year Round Residents). It is reasonable for the Harbormaster/Board of Selectmen to interpret the "purpose" as a "requirement" - the purpose cannot be achieved without making this a requirement. "Year Round Resident" is further defined as "a resident of the Town who resides at least 9 months a year in Chilmark". See CWRR II(M). Thus, in order to obtain a lease for a slip at the small boat floating dock, the Lessee must live in Chilmark for

at least 9 months a year. If the applicant is a student who spends a portion of the year living outside of Chilmark to attend a college or university, the Town may still consider the applicant as an eligible Year Round resident if the applicant's fixed address continues to be in Chilmark.

B. Household Limitation:

The CWRR further provides that "only one slip may be leased to any household". CWRR VII(H). If the applicant's residence is the same as that of an existing Leasee, the applicant may not secure an additional lease, assuming the household already leases a slip.

Marshall Carroll inquires whether the household limitation in CWRR VII(H) permits leases to be granted to a resident of a guest house and a resident of a main house that are located on the same property (i.e. the same assessed parcel), where a resident of a main house presently leases a slip. The simple answer is no: either a principal or a secondary dwelling unit on one parcel is entitled to a lease, but not both.

C. Conclusion:

Even though Ms. Carroll has a signed lease with the Town for a slip on the floating dock, the Town has the authority to revoke the lease under CWRR VII(V) if the requirements of the regulations are not met ("violation of any of these regulations may result in the revocation of the current slip lease and/or loss of slip in subsequent years"). Once the Town obtains the necessary residency information, they may determine if such revocation is necessary.

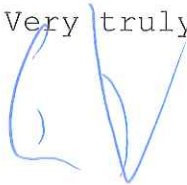
I note that the application for a slip lease does not request information about an applicant's place of residence. I suggest that the Town revise the application so that the Town receives the relevant residency information with the application, i.e. *before* entering into a lease.

Finally, the CWRR defines the "Mooring Waiting List" and the "Slip Waiting List" as "a chronological listing of qualified applicants". Thus, to obtain a lease for a slip or mooring, an applicant must be qualified (i.e. be at least 18 years old, meet residency and household requirements): 1) at the time the applicant is added to the Waiting List, and 2) at the time the applicant's name reaches the top of the Waiting List and a slip or mooring becomes available. If the applicant is not eligible

at the time he/she reaches the top of the Waiting List and a lease becomes available, the applicant may reapply to the Waiting List when that person again becomes an eligible applicant. Upon submittal of a new application, a qualified applicant will be added to the bottom of the Waiting List.

Please do not hesitate to call if you have any further questions.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'R. Rappaport', written over the typed name.

Ronald H. Rappaport