

**Horicon Planning Board
Regular Meeting**

**August 15, 2012
7:00PM**

Present at meeting: Doug Paton Chairman
Harry Balz, Vice Chairman
Bill McGhie, Member
Jim Remington, Member
Georgia McMeekin, 1st Alternate
Paul Holmes, 2nd Alternate

Mike Hill, Town Counsel
Gary McMeekin, Zoning Administrator

Also Present: Bob Olson, Town Board Member
Harvey & Herta Leidy
Richard Dwyer
Pat and Deena Petrino

Agenda Items: File # 2012-12CU Tax Map 71.16-1-18 Dwyer, Erickson & Schwaltji

Chairperson, Doug Paton called the meeting to order at 7:00 PM and stated that Georgia McMeekin will be a voting member in Mike Raymond's absence.

Approval of Minutes: Harry Balz made a motion to approve the July minutes , 2nd by Jim Remington, All Ayes. Jim Remington made a motion to approve the August 8th Special Meeting minutes, 2nd by Bill McGhie. All Ayes, except Harry Balz as he was not present for the August 8th meeting.

PUBLIC HEARING:

File # 2012-12 CU
Tax Map# 71.16-1-18
Property Location: Palisades Road
Property Owner: Dwyer Richard and Maureen, Erickson Peter & Carol and Schwaltji, James
Project: Conditional Use for a multiple access dock system.

Doug Paton stated this is a continuation of last months public hearing and asked if anyone in the public had any comments.

Harvey Leidy: emphasized points of previous letters submitted to this board. Outlined criteria for Conditional Use approval, referring to Section 9.61 2 & 3 #2) the use would be in harmony with the purpose of this ordinance taking into account the location character, residential and size of the proposed use, up to 7 boats, contiguous float, encroachment on adjacent swimming area, description and purpose of the district, the nature and intensity, multiple cars parking on Palisades Rd, encroaches on adjacent boundary line.

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#3) use would not create public hazards from traffic, traffic congestion parking of automobiles or be otherwise detrimental to the health safety general welfare to the neighborhood. The Planning Board must consider the parking issue as substantive and integral. This falls under land use concern, not people use concern. There is constant parking on our beach property which create a hazard in the summer season, the road narrows and curves on the side of our beach property, there is limited site distance and I reference the July 16th letter and asked again, in a question to Mr. Dwyer, why are there seven boats docked where there are only 3 parcel owners, If any of the boats are registered individually or at anytime rented out to other persons, we know that some are and were rented out. Question is pertinent, and read the definition of multiple access docks, page 7. "A waterfront facility which provides either docking or mooring facilities for more then 4 boats. The term shall not include the noncommercial docking or mooring of boats which are owned or registered in the name of the owners of the waterfront facilities or their immediate family. The term shall include a waterfront facility which provides either docking or mooring for more than four boats upon property owned by a corporation or association or by two or more individuals not related by blood or marriage". If the docks are rented than the use falls under the definition of a Commercial Marina and read the definition of a Commercial Marina, "A commercial waterfront facility including docks, wharves and moorings which provides accommodation services for boats by engaging in any one of the following: The sale, lease, rental or charter of boats of any type and/or; the sale, lease rental or any provision providing for the docking, mooring or storage of more than 2 boats or for the launching of boats". That's a question that needs to be addressed because it affects the intensity of the use. Section 9.61 special considerations of granting a Conditional Use must take into the consideration the residential character of that neighborhood, the adjoining beach property, where we have the right to use it in a quiet manner, without the intrusion of dogs or cars parking on our property, etc.. That must be taken into consideration. The last point is the dock design and area coverage, referring to Section 11.60 and asking the Planning Board to clarify, or stipulate what steps will be taken to monitor future compliance. We understand that the applicant has moved the dock back and removed an 8' section to bring it into compliance and agreed to move the pontoon boat to the other side of the dock, adjustments have been made, but compliance needs to be adhered to each season. It is not clear that the current dock design meets any one of the criteria of T, L, U, F, or straight line, (pictures were distributed) .I made a suggestion, in a previous meeting, that one fingers be removed to meet the requirements of 11.61. (Photos submitted to the board). And in summary, there are requirements that need to be looked at, the most important is parking, you cannot separate out beach parties and boat docking, it's all part of the land use of the property. Land use requirements are there for a purpose and needs to re recognized. Regardless of the people, parking and safety are an integral part of that section in granting a Conditional Use. The question about rentals, as stated in the July 16th Planning Board minutes, when asked, do you currently lease boats, the answer was no. I am under the impression that Mr. Dwyer rents boats at that dock system, and we need to verify that. It may be up to the Zoning Officer to request verification so it is not intended as a commercial enterprise, and also on the side to the north with a shared slip arrangement is, as was discussed in the last meeting. Looking at all of the issues, the intensity of use, the residential character of the neighborhood, the proliferation of boats either for rent or use, all of this impacts

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very negatively for us as beach owners, that are entitled to 2 docks, that we have never put in and would never would rent them. The question is, if we go by the definition of a commercial docking system, because we need to verify if they are rented now or in the past and we are sure of one that is rented now. That has to be addressed and we have to follow in the zoning regulations. The Mr. Leidy asked the board: Is part two impact assessment to be completed? Refers to the environmental impact. Question that was not answered correctly within 500' of Palisades Road. Part II applies.

Doug Paton: The application was sent to the County and the County responded with "No County Impact".

Discussion regarding Part II SEQRA review process.

Richard Dwyer: I haven't heard anything new from him (referring to Harvey Leidy), since he went over this all before, we are in compliance, the boats that are there, there are three owners, I have no right, as far as invasion of privacy, to ask them what they do with their dock, what they do with their three docks is totally up to them, to clarify things, they have four kids, one in a wheelchair, another one has Cerebral Palsy, when the boys come up they put them in the slips, and use them as they see fit. Who else they let use their docks, that's their business, it's an invasion of privacy, I cannot do anything about it and neither can anyone else. As far as the parking, they failed to mention that they did go to the council about the parking, Bob is on the council, Kenny is on the council, I have a copy of the report that they gave, we do not park illegally, when there was a problem with the parking, I made corrections for the parking, I have approval for across the road, with a fellow that lives there, when we have a party, to park all our cars, across the road on his property, we are within the yellow line, they do not own any property out to the yellow line, we are legally parked, so far this year, except for one instance, I don't think we've had five cars parked out in the road for any kind of instance or a party.

Doug Paton: Asked Mr. Dwyer: Is there any overflow on your property, off the road?

Rich Dwyer: No, we have cars pull in this way (gesturing), as do people next to us and they pull off across the road, and we have my wife's car and my car behind those cars and they are still well off the road. I spoke with DOT - they said there were no instances there in over 35 years. Docks have been that size since 2003, the wooden ones were there since 1983, Gary has said he measured the docks square footage with three fingers and we are in compliance with the size lot we have, we have done everything the board has asked, plus move it another eight feet when I didn't have to. We measured from their float, which is not their beach, I am also a member of that beach, from their float they are eighty-three feet to the nearest dock, that's a building lot, how much more do you need.

Doug Paton; After removing the ramp section are you within four hundred square feet allowance for a dock system?

Gary McMeekin: that would be three hundred square feet. Three hundred square feet of dock surface area is what is allowed for his property.

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Paul Holmes: Posed a question to Richard Dwyer stating that the issue of having the docks into compliance is only one component of this application, this board must take into account the intricacies. Question, how would you demonstrate that you will be in harmony with the intent of the ordinance. I don't think there is a harmonious situation over there. That is as important as where your docks are sitting etc. How are you going to assure, your groups, your meetings, your usage of this land is going to be in harmony with those people around you.

Richard Dwyer: The problem is not the people at the beach, there is a contentious situation between them and us and it has nothing to do with the boats.

Paul Holmes: How is this going to be resolved.

Richard Dwyer: I don't know, we have to work on that but as far as the people down there all the time, they are talking, laughing, eating that's what people do at a party.

Paul Holmes: Have you made any effort to improve the harmony in the area.

Richard Dwyer: I've moved the cars, moved the boats, moved the docks, we've done everything we can do, if you go there now, there are only four boats there now, it's not like there are seven boats from one end of the season to the other.

Paul Holmes: Are you renting out spaces?

Richard Dwyer: No we're not.

Paul Holmes: Are you sure?

Richard Dwyer: Yes, like I said, I have no idea what they are doing with their docks, cause it's illegal to find out, it's an invasion of their privacy.

Paul Holmes: Doing so wouldn't be illegal, it's bad judgement, and bad judgement is not illegal, only unethical, that doesn't advance your cause.

Richard Dwyer: If you want to go up and down this lake, and see how many people are renting their boats. This is something that going on all over. But we are not renting, I am not renting any boats.

Paul Holmes: You've never rented out any dock spaces.

Richard Dwyer: Not there, no, never have.

Harvey Leidy: You've never rented a boat.

Harry Balz: I understand this application is strictly for the docks, nothing to do with the parties,

Doug Paton: Conditional Use for a dock application

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Richard Dwyer: We are in compliance, we gone more.

Paul Holmes: Asked Harry how you deal with that section of 9.61

Harry Balz: Strictly talking about the docks, use for the land for other purpose has nothing to do with the docks, you have to say to me that those six boat stalls are causing another problem.

Paul Holmes: I'm not a voting member tonight. I can't agree that we can pick and choose which parts of the approval process that weighs heavier then another and things should not be ignored.

Harry Balz: A lot of conversation about things that transpired, cars parked, etc. and we are only talking about the docks, if there are three or four cars there, gone through there at east once, I don't see any people on adjacent property, I haven't seen cars parked.

Paul Holmes: I have had a different experience.

Bill McGhie: Have you made arrangements for additional parking spaces

Richard Dwyer: Yes, across the road

Bill McGhie: Parking, that is something we should be taking into consideration

Doug Paton: One of the three points under the requirements for Conditional Use. Page 41, item 3 , this board must consider, but this is about the docking system.

Gary McMeekin: They have met the necessary criteria for the dock system as far as the square footage of the surface area, setback requirements and requirement from the mean high water mark of forty feet.

Harry Balz : Clarified with Richard Dwyer: this was first established in 1983 - with the wooden docks.

Richard Dwyer: Then in 2003, I went to Gary with the design for these new docks, I wanted to put in, and that's where everything got misplaced, or got lost, because it was in there, he said they are ok, so we went out an purchased the docks.

Gary McMeekin: I don't agree with that statement. Richard came into my office about 2003 asking about multiple access docks, no formal application was ever presented to the zoning office, that's where we ended up, that is why in the past couple of meetings, I have asked numerous times, for anything in the past that shows what the multiple access docks were in the 1980's and we haven't had anything return on that. But as far as Mr. Dwyer coming into my office in 2003, and asking questions about multiple access system, that is where it ended, there was never any application or paperwork presented to my office at that time, that is not to say that the paperwork presented now does not meet our criteria, it does, as for the statement that you made that something was done in 2003, it was only back and forth verbal statements between him and myself as to what was

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required, never any paperwork established or presented to my office.

Doug Paton: Thank You

Richard Dwyer: There was a drawing that I put in for my docks and that was it, and you looked at it and said it looked ok, (illegible)

Harry Balz: When was that property established.

Harvey Leidy: The HOA the Brant Lake Pine Ridge HOA was established 8/14/87 in a zoning variance which makes us the exclusive owners of the Brant Lake Pine Ridge HOA, we incorporated, we have a declaration, and bylaws, we are the exclusive property owners of that beach front property.

Harry Balz: Trying to get the time sequence

Doug Paton: 1983 before 1987

Gary McMeekin: This is a pre-existing multiple access dock system, if these systems are changed in any way, they still have to come back before the Planning Board as a new application.

Harry Balz: That why it is here.

Richard Dwyer: I wants to clarify some things, this is part of the problem, I have been on that beach, I have deeded rights, with my house as they have, and that's all they have, there are six people with deeded rights to that piece property.

Herta Leidy: That's the house, not your....

Richard Dwyer: No, the deed's got that beach on the deed for the house.

Herta Leidy: Not on your other property, what we are discussing

Richard Dwyer: No I'm not talking about.

Illegible talking

Richard Dwyer: We've been there since 1977, in 1977 it was a swamp, we made it into the beach, what it is today, we been there since 1977 and used it since 1977, as the way we want to use it, they do not own it, they have an HOA, they can not tell anyone else there what to do, there is another person that has deeded rights besides them, which is Pat who lives on the other side of John Palmer. But they cant seem to understand that, if we want to use it, we use it, they don't own it, cause, I know who owns it, I know where the deed is who owns it and it's not them.

Herta Leidy: About the ownership on the Pine Ridge Association, Bernie Bolton created

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that , it came before this board, and that became a four owner beach property, Bernie Bolton made the beach what it is, you might have seen minutes of meetings when that happened.

Jim Remington: Bernie Bolton didn't build that beach.

Richard Dwyer: No he did not

Herta Leidy: He bought that beach

Jim Remington: Maybe he bought it but he didn't build it, cause I helped build it, Clayton Bolton filled that in.

Richard Dwyer: And Clayton is the one that owns it.

Herta Leidy: That was formed and added on to the Pine Ridge Association.

Richard Dwyer: And your not the owner.

Herta Leidy: Then what are we! So, we bought that from Bernie Bolton, from the Pine Ridge Association, we came here before the board, there are minutes of meetings, that, that beach which was a fraction smaller for four owners, Dwyer doesn't own it, nor does Farrell. We are talking going back to the boats, you had a question between Pine Ridge Association and formally Palisades Association, they have nothing to do with each other, they are two separate parcels, and the parcel of the formerly Palisades Homeowners Association, where the dock problem is now, has nothing to do with us, they no right to come from that beach to our beach, we are two separate parcels. To the Docks: I think there might be pictures on file, the wooden dock was U shaped, it is not clear, but we have seen it, that was the dock and because they needed so many boats, we know of four people who rent the docks. We met two renters, we know of another one and Ron Gersten knows of the fourth, that a commercial use, and that's why I think this multiple dock permit should not be permitted. The Parking: is a continuous thing, yes, it has been very quiet the last two weeks ,we took pictures, (handed out photos to the board) it was not on a holiday weekend, and this is what we contend. Our land goes five inches to the white line

Richard Dwyer: Does not

Herta Leidy: All these cars, and he knows it full well, is not legal, nobody parks across the street from the lands because they have a very limited space because they added a road to go up, so you could park two cars, that is not our problem. He owns 52' on the road, and parking in these, there is another one, minutes, not just this piece of paper, that would help, he has only 52' of road front property and that cannot accommodate all the cars, it should be looked at not just as people but of land use. With 52' of road side frontage that doesn't give him enough parking, nothing wrong to have lots of friends. I have to walk on the street and cannot use my property and that is not right. The place is used commercially, and never mind, serves him really well that he doesn't know what the others do, he's at the beach, we don't even know the other two owners well by site, we might know the people from the pontoon boat.

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Doug Paton: We are not here this evening to discuss whether or not you get along as neighbors or whether he parks on your property, we are only here to discuss the docks on his property.

Herta Leidy: And because it's being use commercially, that is not permitted in the first place.

Harry Balz - what day is the 11th.. The calendar.

Richard Dwyer: She gave you pictures of the Lange's property, we don't use the Lange's property for the parking, if you down next to the Lange's, Danny Madden's house, he's got all that property from his house up to the Lange's house with a fence in front. That's where all the cars are parked, they're not parked on Wanda's property at all. Not a one, if she knows that she's not telling you that for good reason.

Doug Paton: well, maybe the dates are wrong, this says July 4th of this year. With these caes. The pictures I'm looking at says the 4th of this year.

Harvey Leidy: I have here an approved variance Sept 1987, and read the minutes of the meeting of the ZBA 1987. "The Land in question is owned by Berness Bolton and LeoGrande, goes on to say the property consists of 250' of shoreline, describes the acreage and the tax map number, stating that there are in pre-existent two deeded accesses to the lot in question for swimming only, owned by Bonita Hayes which is now Patrick Farrell and Richard and Maureen Dwyer. August 14th 1987 the application is approved for the variance. Referred to the lot area. Want to make clear that there are not 6 owners, but 6 people that use the beach for swimming, we have the recreational use. Mr. Dwyer received a letter from our lawyer and he dismisses that letter. Getting back to the dock situation and the boat etc., as mentioned in Aug 15th letter, one has to not divorce the parking issue from the dock issue, they are coincident and integral and as such, and I have pictures, not of July 4th but of a recent situation there were more than just 1 or 2 cars parked there, it's been a continual situation that has affected us, our quiet enjoyment of the beach, very few people use the beach because three of them are not here, you have to look at the situation at hand as we know it.

Richard Dwyer: He's talking about maybe three, four, five, cars parked there on different occasions, we have two cars, I have three children who have cars, and my two grandchildren each have a car, now he's going to tell me I can't have my family there? You go up the lake on July 4th I guarantee you will see people parking all over having July 4th parties, that's the nature of the beast. Like I said, the DOT has said there has not been a problem, there is no need for parking signs, there is no need for anything, they've called the police before and the police have come down while the cars are all there and the police have said there is nothing we can do about it.

Harvey Leidy: Let me rebut that answer about the DOT, on January of this year presented to the Town Board a request to have a no parking sign put up. I spoke with Tod Beadnell, Deputy Superintendent of the Warren County DPW, and he said that he will put it up, but needed a resolution from the Town Board to do so. At the Town Board meeting I presented the facts, even a resolution and a proposed sign, I didn't get much further then one person on the town board saying, you have a personal problem with someone etc., etc. That colored

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a decision that was never made at the Town Board whether they accepted or rejected it. What happened is, Frank Hill was (asked) charged to go to the DOT to get further clarification of what can be done, subsequent meetings show that there was nothing done about that, I have nothing in the record nor is there in the town board minutes of meetings a final resolve on that matter that I presented back in January. I try to do things with a certain degree of consciousness and implication on how to proceed along the straight and narrow path, and I think I've taken that approach about filling all requirements and spoke at length with Mr Beadnall, he said he has the same problem in Bolton Landing. He said the way to resolve that is to have the Town Board pass a resolution authorizing the DOT to erect a sign at no cost, since it's a county road and it did not go anywhere. I have all the documentation if you need that.

Deena Petrino; owner on 21 Pine Ridge Dr. When we bought our property in 2005 we were shopping for a kayak, this is before we know all of these things were going on, on the lake, and went to Bernie Hill's shop and on the door there was a computer generated sign, saying dock for rent \$300. Contact Richey Dwyer, we thought it was curious, we didn't know the rules and regulations on this lake.

Richard Dwyer. Let me just rebut that. There is a marinas, John Palmer's marina and other places that call me about dock rentals. It's not for me, it's for other people who say if you know anybody's looking for a a dock, call me, so they have my name, if and somebody's looking for a dock and I know where there is dock available I tell them where the docks' available. That's all is what that is about. Period.

Doug Paton: That segment of the debate is clear, under the definition of multiple access dock systems, shall be limited to 7 boats per 100 feet of shoreline, I drove past there today and there are 7 boats in the water.

Mike Hill: posed a question to Gary McMeekin: Been a lot of questions of Mr. Dwyer, if the docks are rented, does that change the way this would be treated under the zoning?

Gary McMeekin: I would have to look into the Commercial Marina aspect, we have asked Mr. Dwyer and he has said the he does not rent or knows of anyone associated with the docks are renting. That's where my authority ends, If you need to go further, the Town Board can request the Sheriff's Department to check the registrations.

Mike Hill: If any of the docks are rented then the proposed dock system would come under the commercial marina - that is a possibility. Then posed a question to Richard Dwyer: you have indicated that you do not rent dock spaces, but I'm not clear if you are saying if the other owners who have dock space there do not rent.

Richard Dwyer: I don't believe they do, because there so many people in the family that come up with their boats, that they would be able to use their dock if they did, right now there are only 4 boats there, they have taken their boats and gone home.

Mike Hill: As a practical matter, am I correct that you are here as a representative of all of the owners.

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Richard Dwyer: Yes.

Mike Hill: But you are not making any statements on their behalf whether any of their docks spaces have ever been rented or whether they are rented now, or anything like that, your statements here are on your own behalf with regard to rentals and not on behalf of the other owners.

Richard Dwyer: I would have to say know on behalf of them, they don't rent, because they have too many kids in the family.

Mike Hill: Mr. Holmes asked the question earlier and it's important to the board needs to be clear on that question, there might be other provisions of the code that could apply if they are rented. If I understand correctly what you are saying that on behalf of the other owners, no one is renting any dock spaces there at your dock system?

Richard Dwyer: Not to my knowledge.

Mike Hill: Have you specifically asked the other owners that question?

Richard Dwyer: Don't need to because I know the family boats and know who's boats are there.

Georgia McMeekin: So this is a homeowner's association.

Richard Dwyer: No it is not.

Georgia McMeekin: it's not a HOA, you don't have any talk amongst yourselves, even though you are all on the one dock system three different owners, no one has any concerned at all about what the other ones are doing, the question has never come up in any kind of meeting.

Richard Dwyer: We don't have any meetings, we don't have a reason to question it.

Georgia McMeekin: But even in friendly conversation when you are all there. No one has said to you, these boats don't look familiar.

Richard Dwyer: illegible.....the boats that I know are theirs are there, we have never had any occasion to even discuss that.

Mike Hill: Posed a question to Gary McMeekin: There was some discussion about the dock system and their conformity with the dimensional regulations. If I understood everything correctly, the surface area of the docks, the side setbacks, the extent to which they extend from the shore, all the dimensional type of things, the system is in conformity with towns regulations on all those aspects, is that right?

Gary McMeekin: That is correct

Mike Hill: The question was also raised, about the configuration of the dock system, does the configuration conform?

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Gary McMeekin: If you remember going back to the Niskabeach application for multiple access docks, which came before the board, it was determined (*that the const ability*) of the multiple access docks to be in conformity of dock integrations under 11.60, that the board would take it up as far as each application, now, if the board wants to stick to the conformity of 11.60 as far as the F, T,L,U design, that would be up to the board to take care of that, as far as I'm concerned it meets the our criteria as far as the design is concerned, because we discussed it then that multiple access dock systems, it is almost an impossibility to meet these design criteria

Mike Hill: Can you go back to what you said about the impossibility?

Gary McMeekin: If you have seven boats, and you are looking at a dock design of F, the most you can get into that F design, is four. Remember Niskabeach beach had a design for 12 slips, and we went through this discussion of dock design and shape of docking systems.

Mike Hill: I'm not recalling the Niskabeach matter. But it was recognized it as a practical matter, that there is a difficulty when you've got.

Gary McMeekin: multiple access dock situation.

Mike Hill: As a point of clarification, which section, under Section 9.70 special requirements for Conditional Use approval. Subsection 10 on multiple access docks, there are 2 subsections there, A & B, and just to clarify, which section applies to this dock section.

Gary McMeekin: it fall under A

Mike Hill: It falls under A, so when the Chairman mentioned A earlier 7 boats per 100 feet of shoreline width measured at the mean high water mark etc. this dock system is in conformity with that?

Gary McMeekin: yes

Mike Hill: So what you said about the seven boats, if you take the seven boats and look at the available configuration, there is a practical issue under 11.60 with conformity of that configuration provision under 11.60. How do you get seven boats into a T, F, L, U configuration?

Harry Balz: That's why the Planning Board has some latitude with that.

Doug Paton: We did review that and we did recognize that to park the seven boats we needed this configuration and we also wanted it to be in compliance with the square footage maximum which it is.

Paul Holmes: I have a question for Mr. Dwyer: Why would you put a sign up advertising to be contacted if someone was looking for dock space, were you doing this as a community service?

Harry Balz: he just explained that.

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Richard Dwyer: They know I know a lot of people who have docks.

Paul Holmes: How did you know?

Richard Dwyer: I've been here for 30 years

Paul Holmes: You only did this only at EZ marina?

Richard Dwyer: No, Palmer's called me too, a lot if the boats on the other side of the bridge, they can't get out into the lake, so they were looking for other places to go, on the lakeside.

Paul Holmes: Were you receiving benefit, like an agent, compensation?

Richard Dwyer: No.

Mike Hill: Gary, to go back to the dock configuration and you mentioned Niskabeach, have there been other instances for multiple access docks, where the configuration has not been met and the applicants have been given relief from this section of the code, so the configuration could be other than than the T,F,L,U or straight line configuration?

Gary McMeekin: I don't know, would have to look.

Harry Balz. On Schroon Lake, the facility I live in does not conform and was approved by the Planning Board, some time between 1986 and 1987.

Gary McMeekin: The Niskabeach was a twelve slip application, the original configuration went 80 feet out into the lake with the straight line T configuration, the Planning Board reviewed the application and requested they change the configuration to now go along the shoreline.

Mike Hill: Did Niskabeach go to the ZBA?

Gary McMeekin: Unsure, have to look that up, it may have been a surface area situation.

Harry Balz: Don't believe that is a ZBA call.

Gary McMeekin: It's my call.

Mike Hill: We have a provision, as a practical matter that it presents a problem, It would need to go to the ZBA for that relief.

Herta Leidy: This whole discussion might be shortened, as the Zoning Administrator to find out who those boats belong to, because this is a commercial enterprise and they do not have the parking for that.

Doug Paton: Gary, if you got that request, would you?

Gary McMeekin: I would have to ask Ralph.

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Mike Hill: On the question of rentals, Mr. Dwyer has indicated that he doesn't rent slips and other owners do not rent slips, even if the registration numbers were established is not be indicative that commercial rentals are going on. It might raise a question but I would not be proof of a rental situation or a lease relationship. Mr. Dwyer is the representative of all of the owners, the last statement on record on this issue is, to the best of his knowledge, the other owners do not rent any slips and he has said that he himself does not rent slips. Does the board want some further statements or something written from the other owners confirming what Mr. Dwyer is telling you.

Bill McGhie: I am uncomfortable with the (potential) rental aspect on this at this point.

Mike Hill: the rental question,

Herta Leidy: past and present rentals?

Harry Balz: Sticking to Brant Lake. Could you identify where there are docks that people could rent? If you nail them with this you could open pandoras box.

Harvey Leidy: not necessarily because of the unique situation with this property, safety issue with the parking, land use not people use.

Doug Paton: In this instance, personal issues come to the surface. This is just about the dock situation. We don't swear people in, we don't take oaths, we take people at their word.

Paul Holmes: If this board approves it, then information surfaces that this was not accurate, then what happens.

Doug Paton: Nothing in the application that deals with a commercial situation. This board has to deal with the three points that we have discussed and whether these points are met in this application.

Gary McMeekin: I have no doubt there are rental situations on this lake. There may be one or 2 boats on them, once we get to the multiple access dock system, if it is found out that some sort of rental is being done, then we go a step further.

Harry Balz: if I own a dock and I let you use one and charge you, under OGS of commercial docking. If it run it as a business, that is commercial opposed to residential type of setup.

Mike Hill: That question if a use is commercial or non-commercial is the determination of the Zoning Administrator. The definition of a commercial marina was read. **"A commercial waterfront facility including docks, wharves and moorings which provides accommodation services for boats by engaging in any one of the following: [1] The sale or marine products or services and /or; [2] The sale, lease, rental or charter of boats or any type and/or; [3] The sale, lease, rental or any other provision providing for the docking, mooring or storage of more than two (2) boats for the launching of boats. The term 'commercial marina' shall include facilities with or without supply and repair services. See Section 9.70.9"**. If the board is satisfied with the information provided to you we can move on.

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Paul Holmes: I want to give Mr. Dwyer one last chance, anything you want to amend to what you have told us?

Richard Dwyer: As far as I know there is nothing rented there, cause there are some family boats and some friends boats.

Bill McGhie: Your opinion that is not a commercial?

Gary McMeekin: The board has asked Mr. Dwyer. There are three families with seven boats, if someone comes along and can prove there are rentals going on, on this docking space. As of right now, according to Mr. Dwyer, no one is renting.

Georgia McMeekin: question, read paragraph 3 page 44, adequate safety, ingress and egress, do you have any buoys, lights?

Richard Dwyer: we have lights on the docks, no buoys, we don't need buoys.

SEQRA form reviewed by the board.

Mike Hill: Question C1. Discussion ensued

Georgia McMeekin: The existing traffic pattern in regards to the boats, not what is going on with the land?

Mike Hill: For this application you can look at both as both are indicated here, traffic on the water and traffic on the land with comings and goings with the dock system.

Paul Holmes: To answer that question, it would make me uncomfortable to say no. Speaking to Richard Dwyer: If you would re-double your efforts, you have done some, that is good, but there still exists a enough of a problem, try to manage the traffic along there better then there would be a lot less angst among the board members to answer that question.

Richard Dwyer: we actually have, we have a big huge spot for parking for the guests. And that's what they do

Paul Holmes: will you monitor that

Richard Dwyer: we always do. We tell them to go park over there, and they do.

Harry Balz: We are talking about the docks and we are talking about the cars that are generated from the dock use, nothing else that goes on, on that piece of property so it Mr Dwyer has a big family party down there and 15 cars show up, it has nothing to do with the docks. Two different things. No problem answering no to that.

Doug Paton: for the dock system, I would say no also.

Mike Hill: with respect with the docks, the car traffic generated with the docks is not an

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environmental problem.

Bill McGhie: Excluding the parking situation, I would say no, removing the parking from this discussion.

Doug Paton: There is difference between the traffic hazard and an environmental hazard with the docking system. If there is a traffic problem, it's not necessarily environmental.

Paul Holmes: If I understand what you are saying, is that the cars of the boat owners would not cause an environmental problem the only time there is congestion is with guests, then the dock does not generate a problem?

Richard Dwyer: The boats down there, there are no more than two cars there for that dock space at any time because The other people in the dock space live up the road and they come down without their cars.

Doug Paton: There may be a time you will have to assume the responsibility of the traffic because of the problem, you'll have to handle it and you can't park in the middle of the road.

Richard Dwyer: They are not in the middle of the road. (Illegible)

Doug Paton: Then these pictures don't tell the truth. It's going to fall on your shoulders at some point in time because of the volume, not the boats but of the cars, and I don't see SEQRA involved in that.

Harvey Leidy: To go back to the buoy markers, this year early on, in the area of our sandy beach area, I waded the guy off. There should be some kind of buoy marker for a multiple access dock system.

Doug Paton: Need to put out a buoy, nobody wants anybody's head cut off.

Harry Balz. If there is a defined swimming area, on the adjacent piece of property he should put up swim buoys, swim ropes, it's required by the board of health.

Mike Hill: We need an answer to this. If in your view the volume of traffic in related to the use of the boat docks, if the use of the boat docks alone is not responsible, doesn't cause, traffic problems or parking problems up on the road then you can move on with a no answer, if the use of the boat docks alone, generates a traffic condition, leave aside any other use of the property, then you need to deal with that in this question.

The answer to question C1 is No - all board members agreed. The board continued to review the SEQRA form.

Question E: Is there or is there likely to be, controversy related to potential adverse impact?
Harry Balz No , Jim Remington No, Bill McGhie Yes, Doug Paton Yes, Georgia McMeekin Yes.

Harry Balz made a motion to declare a negative declaration, 2nd by Jim Remington. All Ayes.

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Mike Hill: Done with the SEQA review and ready to move on to your decision making. Multiple sections applicable here for Conditional Use approve. 9.61 general requirements, 9.70 (10a) and then provisions under 11.60 with respect to docks. Recommend that the board go to section 11.60 and discuss that Section first.

Doug Paton: Lets discuss, page 75 Section 11.60.

Harry Balz: Do we have to discuss the shape? Board has the power to grant the design that it is now.

Mike Hill: Not sure if that multiple access dock system (Niskabeach) had to get a variance. I feel you are saying that this board can offer some sort of relief of that section. I don't believe there is a waiver authority existing to grant relief from the code. That needs to happen before this board can grant conditional use.

Discussion regarding conditions ensued.

Doug Paton: read Docks: Section 11.60 1) 300 square feet of dock surface area and should not exceed six feet in width - the dock meets this regulation 2) side-yard setback 20% of shoreline frontage - the dock meets this regulation, and 3) T,F,L.U or straight line configuration. If there is question on this, we must refer this to the ZBA.

Harry Balz: Why can't paragraph three, be waived?

Mike Hill: I could not find a waiver authority.

Harry Balz. We need to investigate this before we waste anymore time. Instruct the attorney draft decisions, one in affirmative and one in the negative. We have three sections to deal with and conflicts between them.

All members agreed to table this matter until next month.

Doug Paton: I will entertain a motion to close the public hearing. I move to close the public hearing, 2nd by Harry Balz. All Ayes.

Harry Balz made a motion to table the application.

Bill McGhie: We have a limited amount of time to make a decision. If this has to be referred to the ZBA, what happens to this.

Mike Hill: If the applicant is referred to the ZBA then we would as the applicant to waive the 62 day time limit and allow this board additional time to render it's decision.

Gary McMeekin: The Planning Board does not have the authority to waive the configuration of the docks, then every multiple access docks must go to the ZBA for variances.

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Mike Hill: It looks like a variance will be required and suggested that the board rescind the prior motion to close the public hearing.

Harry Balz made a motion to rescind the closing of the public hearing, keeping the public hearing open, 2nd by Bill McGhie, All Ayes.

Mike Hill: requesting a motion to clarify the this application is tabled until the a decision is rendered by the ZBA. Harry made that motion, 2nd by Jim Remington. All Ayes.

Gary McMeekin: Asked Richard Dwyer: There are four boats there now and four boats there for the rest of the year?

Richard Dwyer: yes, unless someone comes up.

Gary McMeekin: Would you be willing to take one out one finger to make it an F configuration?

Richard Dwyer: No, I can't do that.

Mike Hill: that was an interesting idea.

Doug Paton made a motion to adjourn the meeting, 2nd by Harry Balz. All Ayes.

BOARD PRIVILEGE:

Being no further business before the board, the meeting was adjourned at 9:15 PM.

Respectfully submitted

Christine Hayes, Secretary