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BROAD BAY ALLIANCE AND FREEDOM
PROPERTY OWNERS APPEAL ZBA'S
DECISIONS ON OSSIPEE LAKE MARINA

*****SUPERIOR COURT FILING SAYS BOARD MADE
SERIOUS ERRORS OF FACT AND LAW*****

Freedom, September 25 – Broad Bay Alliance today joined two different groups of Freedom property owners in appeals to state Superior Court of special exceptions granted to Ossipee Lake Marina by the town's Zoning Board of Adjustment (ZBA).

Saying that the ZBA had made serious errors of fact and law the Alliance and the property owners asked the state to overturn the board's July 9th approval of two "after the fact" special exceptions for the Marina to use shorefront residential property for commercial purposes.

In its July decision the board approved parking lots and bathrooms on the shorefront residential property known as Lot 42 just five weeks after denying the same uses. In its May 28th ruling the board found that the applicant had failed to meet all of the criteria required by the ordinance for the use of Lot 42 as part of the pre-existing Marina, including demonstrating that the proposed uses would not have an adverse impact on the nature and character of the surrounding area.

In its filing with the state the Alliance said that the ZBA made a procedural error and violated state law when it ruled on new proposals that were not materially different from what the board had previously denied. According to Alliance executive director David Smith "the bathrooms and parking lots approved in July were the same as the ones denied in May since they already exist, having been built illegally between 1997 and 2001".

In addition to making a procedural error the town also erred in interpreting the ordinance, according to the Alliance's legal brief. The board's July 9th decision granted special exceptions for marina "accessory" uses on Lot 42. That violates the ordinance because by law such uses must be "accessory" to the property's "primary" use. Since the ZBA's May ruling specifically rejected the use of Lot 42 for "marina" use, the town cannot legally approve marina accessory uses on the property.

The appeal to state Superior Court comes on the heels of the ZBA's August 19th hearing at which it denied the Alliance's motion for a rehearing on the July decisions. In its announcement today the Alliance took the ZBA to task for the board's procedures at the August hearing, which lasted just fifteen minutes.

"Our attorneys were not permitted to make oral arguments to the board even though the chairman allowed the Marina's attorney to make extensive oral arguments in July on the Marina's motion for a rehearing on issues stemming from the May ruling. In addition, the board denied our motion without any discussion of one of the two issues of law we raised, that being our contention that the board cannot approve "accessory" uses on Lot 42 that are not accessory to the property's "primary" use."

The appeal to state Superior Court is the latest twist in a story that began when Ossipee Realty Corporation purchased the Marina property in 1997 and Broad Bay residents began notifying town officials that the new owners were violating environmental and zoning laws, including filling wetlands and constructing and expanding buildings without building and zoning permits.

After the town directed the Marina's principal owner, Kevin Price of Londonderry, to apply for "after the fact" special exceptions for the violations, a group of Freedom property owners formed Broad Bay Alliance to oppose such exceptions. The Alliance was subsequently joined in its opposition by North Broad Bay Association, Berry Bay Association, Broad-Leavitt Bay Association, YMCA Camp Nellie Huckins, Green Mountain Conservation Group and individual property owners from Ossipee Village Beach Club and Danforth Pond.

Broad Bay Alliance maintains a website at www.broadbayalliance.org that details the chronology of events at the Marina since 1997. It also contains all of the legal filings and public documents relating to the Marina's legal issues.

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