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Abutters voice loud opposition to expansion of Ossipee Lake marina

ZBA continues consideration of special exception request to May 28

By Jacqueline Pottle

FREEDOM - March 30 - More than 50 Freedom property owners braved the freezing rain and icy roads Tuesday night to express their strong, often heated concerns regarding a special exception that is being applied for by Ossipee Lake Marina owner Kevin Price. Approval would permit a 32 percent increase in the marina's acreage and construction of new buildings.

The meeting culminated four years of controversy surrounding the marina and officials opted not to make a final decision and instead scheduled a continuation of the hearing for May 28. Three hours of comments from abutters and the public general focused on environmental and safety issues, and the expansion's effect on the overall character of the bay.

The marina, located in Freedom's general residential district, was built in the 1960s before enactment of the Freedom zoning ordinance and is on a grandfathered non-conforming area. Under current zoning laws, approval from town officials is necessary before any changes can be made to the original site.

In the winter of 2001, it was established by the town that a large boat storage building, which collapsed under the weight of snow, had not been reviewed by the ZBA. After numerous allegations were expressed from abutters and environmental associations that Price was violating additional zoning laws, selectmen wrote him three letters detailing possible violations and directed him to take action.

In the most recent letter, sent out in October of 2001, town officials request Price to apply to the ZBA for approval of parking lots, a work road and bathroom building that had been constructed on shorefront residential property not part of the original marina site. Price had purchased the land (Lot 42) from Constantino DiPrizio in 1998. The letter also said allegations have been made that the marina is not in compliance with conditions imposed by a special exception for boat storage granted to Price in 1997, and that food sales have expanded in contravention of the ZBA's 1998 rejection of such an expansion.

Price and his lawyer met with town officials in January to discuss possible expansion of the marina, said town lawyer Peter Malia at the start of Tuesday's meeting. The plans involved obtaining approval for what had already been done at the site, as well as for future changes. Malia went on to explain that since the ZBA has original jurisdiction over special exceptions, they could approve or disprove both past and future actions of the marina.

As Price stood quietly in a corner, his lawyer Randy Cooper presented the marina's application, which included permission to use Lot 42 for commercial purposes, increase parking spaces and boat storage capacity as well as additions to one of the residential buildings.

Cooper proceeded to go through each of the criterion that has to be met under the special exception from article 3, section 304.6.2 of the Freedom zoning ordinance, and explained how they would be satisfied with the current proposal.

He emphasized the point that officials should make their decision with a disregard for any previous actions on the part of the marina and that Price is simply asking for a special exception to do some "special things." There should no consideration as to whether those "things" have already been done, he said. "If an applicant is entitled to a permit, he is entitled to a permit and if he is not entitled to a permit then he is not entitled to a permit," he argued.

Board members announced a continuation of the application shortly after Cooper's presentation, set for May 28, on the basis that amendments need to be made to the plan and additional information provided. Because of the large turnout however, officials said comments from the public and abutters would be heard that night.

The first to speak up was fire chief Gene Dow, "My big concern is for the safety of people in the surrounding areas," he said. "If one of those buildings caught fire where would it go?" He went on to explain that hundreds of homes surround the marina and camp Huckins — a summer camp for girls—is located behind it. He suggested installing a firewall or several hydrants.

Donna Cupka wife of the marina's manager, remarked that fire hazards are minimal however. "All batteries are disconnected and there is no electricity in any of the buildings," she said. Other safety issues raised included the work road constructed on the former DiPrizio property. According to abutter Kathie Guckert, her son was almost hit by a truck while riding his bicycle. Also, with increased parking she is worried about getting out of the area if there were ever a fire. "What would I do - leave by boat?" she asked. "I'm scared to death." Guckert said the value of her home has gone down as well. "It's just not right - they are trying to move onto residential land."

Camp Huckins director Judy Snell cited concerns for the safety of campers in the summertime, claiming there has been increased boat traffic that has lead to noise pollution and problems with rowdy behavior. Consequently, the two-week waterfront activity period for her campers is now reduced to 10 days, she said. "For someone to say that this expansion won't have an effect on the character of the area is laughable—it's ludicrous." She also remarked that in the past Camp Huckins and the Ossipee Lake Marina have coexisted, without problems, "but now, it seems every law that can be broken has been broken."

Cupka said it is the choice of abutters to live near a business and that people should expect commercial operations or expansion to take place there. In addition she said the marina cannot be blamed for increased boat traffic on the lake, or people's rowdy behavior. She also said that the marina provides tax income for the town and is a convenient place for people to get their boats registered.

Possible adverse environmental effects of the expansion including oil and gasoline run-off from vehicles, erosion and destroyed vegetation - were cited by many. Blair Folts, director of Green Mountain Conservation Group said the bay has highly unusual environmental characteristics—including a large aquifer—that may be threatened by the expansion. Also, the bay is a primary water source.

Cooper said at the start of the meeting that all environmental issues had been resolved. The marina's proposed wetlands restoration plan—which had been requested by the NH Department of Environmental Services—was accepted recently and is now being enacted, he said.

Near the end of the hearing, David Smith introduced himself as the co-founder of Broad Bay Alliance—a citizens group composed of abutters and organizations that are opposed to commercial development of Broad Bay and said many of the speakers tonight were part of the organization.

Smith first requested that Price be required to give the location of above and below-ground storage for gas, oil and toxic substances in light of the hazards which were explained by Folts. After running through a long list of events leading up to the special exception, Smith remarked "if the ZBA were to grant, after the fact, approval of such a large and disturbing list of what appears to be willful violations of zoning, it would establish a devastating precedent that will be exploited by all future developers who want to subvert the intent of Freedom's zoning." The group has posted pictures, a timeline and related public documents at www.zoningissues.org he said.

Fay Melendy, a lawyer representing abutting property owners, made one of the final speeches. She said that under the NH case law, expansion of this type can only take place if there is no adverse impact on the surrounding area and, she argued, speakers tonight have shown that there will be such an effect. In addition, she said the 20 percent rule, under the Freedom zoning ordinance limits expansion of the marina to 20 percent of what it was originally and that when the town granted a special exception in 1997 for two boat storage buildings to be constructed, the limit was exceeded.

Cooper disputed Melendy's case in a closing presentation, reiterating the idea that under the special exception sought by his client, all activity being applied for would be permitted. He further argued that the criteria which have to be met in order for that special exception to be granted are all satisfied.

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