

MELENDY & LEE, P.A.

ATTORNEYS AT LAW

481 White Mountain Highway

P.O. Box 2046

Conway, New Hampshire 03818-2046

Fay E. Melendy
Susan H. Lee*TEL. (603) 447-1700
FAX (603) 447-1116*Admitted in
NH and Maine

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Mr. Les Babb, Chairman
Freedom Board of Selectmen
P.O. Box 227
Freedom, NH 03836-0457

In re: Ossipee Lake Marina

Dear Mr. Babb,

I am writing as a follow up to the public meeting with the Board of Selectmen concerning activities at the Ossipee Lake Marina regarding boat storage and boat docking. As this Board is aware in 1997 the Marina applied to the Zoning Board of Adjustment for a special exception to construct two building for storage of boats. As a part of that approval the ZBA imposed the following condition: limit of 225 boats stored inside the two buildings, and no more than 10% additional boats or trailers stored outside. Outside storage has historically been accepted to be 23 boats. During the storage season of 2005/2006, the Marina had as many as 143 boats stored outside the storage buildings at the Marina.

Apparently this Board on its own has decided to interpret the clearly stated conditions imposed by the ZBA concerning outside storage to only apply to boats stored for others and not to storage of boats owned by the Marina. Nothing in the ZBA ruling makes such a distinction. Additionally the Board has taken the position that the numerical limitation only applies for the period December 21 to March 21. Because actual storage of boats is done by the Marina for months either side of these dates, the utilization of this artificial "winter" storage period as the enforcement months by the Selectmen is also not supported by the ZBA decision.

What my client is specifically requesting of the Selectmen is that they enforce the exterior boat storage by the Marina to 23 boats from November 15 to April 1 in accordance a letter to Mr. Price dated November 4, 2002 signed by Selectmen Krebs, Bossidy and Babb. This period is the factual duration of the boat storage activity by the Marina and it is the period when the exterior boat storage limitation must be enforced. My client is not asking that the boat storage limitation be enforced against the Marina during the high activity months for the marina. It is understood that during the spring, summer and fall months when the marina is actively dealing with the comings and goings of patrons' boats the exterior limitation should not apply. However, when the marina is primarily providing storage services, exterior boat storage must be limited to 23 boats in order to be in compliance with the ZBA imposed condition of the special exception.

The second concern is the very specific finding by both the ZBA and the trial court concerning the use of Lot 42. As you will recall Lot 42 was a residential lot which was not a part of the grandfathered marina. The Marina constructed a bathroom facility and parking area on Lot 42. In upholding these uses as accessory uses to the marina lots, after the fact, both the ZBA and the trial court stated that this lot, even once merged with the marina lot, could not be used for general marina use.

Last summer the Marina docked boats all along the shore line of Lot 42 and stored boats on this lot. The boats were not moored off the shore of Lot 42, but rather were docked on the shore itself. The docking of these boats and the storage of boats on this lot are general marina uses and an impermissible expansion of the marina uses onto the residential lot. The Board of Selectmen should view these uses as contrary to both the ruling of the ZBA and the trial court as applied to Lot 42 and consistently enforce those rulings concerning the impermissible expansion of marina uses onto this lot.

The issue concerning the docking of boats on Lot 42 was brought to the Board's attention in the fall as a result of a letter I sent to Town Counsel. I was troubled by Mr. Breslin's statement at the last meeting that no action was taken because he did not believe that the Selectmen had jurisdiction to do so. I would respond in two ways. First, this is a zoning issue. The limitation on the use of Lot 42 has been made clear by the Freedom ZBA and the Superior Court and the Selectmen should be fulfilling its enforcement obligations regarding those limitations. Second, I would draw the Board's attention to NHDES Wetlands Rule Wt 402.14 which specifically states that any docking facility must comply with local land use controls. Thus where, as in this situation, the docking would be contrary to a local land use ruling, Town officials have not only the right but the obligation, to enforce its land use rulings concerning that docking.

Finally I would also request that the use of Alvino Road by the Marino be limited to "emergency vehicles only" as noted in Town Counsel's letter of March 20, 2006.

As you can see from this letter, my client is not trying to impose new restrictions on the marina or to request any action designed to impair the operation of the marina. Rather, my client is merely seeking enforcement of the specific limitations that have properly and legally imposed on the marina by the Town of Freedom's Zoning Board of Adjustment. Simply stated, my client seeks the enforcement of the limitations that during the boat storage period exterior boats be limited to 23 boats and the necessary oversight of Lot 42 to assure that it not be used for docking or storage of boats because doing so is an impermissible expansion of general marina uses onto this lot. I would also request that if the Marina continues to disregard the limitations imposed by the ZBA on storage and use of Lot 42, that the Board consider the imposition of fines for failure to comply.

I hope this provides the Board with information needed to give these concerns a full hearing at the Board meeting on May 1. Thank you for your consideration in this matter.

Yours very truly,

Fay E. Melendy

cc: Peter J. Malia, Esq.
Randall F. Cooper, Esq.