

To The Freedom Board of Selectmen:

The property owners of Broad Bay need your help on an issue of great importance to us and, ultimately, to the Town.

During the past three years Ossipee Lake Marina has substantially expanded its grandfathered non-conforming use within the Shoreline Zone of the General Residential District. We believe much of this expansion violates State and Town laws.

The commercialization of Broad Bay threatens the value of our properties, many of which have been in the same family for generations. In addition, the continued debasement of the Bay's natural habitat should concern all Town residents. It threatens to spoil a scenic part of our community, and it undermines respect for the laws that make Freedom a desirable place to live.

We respectfully request that the Board consider the following issues:

- On August 11, 1998, the Freedom Conservation Commission filed a complaint with the New Hampshire Wetlands Bureau charging that the Marina violated Wetland Bureau regulations by constructing a new 75' x 75' gravel parking lot in wetland. This complaint has languished in Concord for more than two years. In the meantime, there has been additional filling in the identified area.
- In the same complaint document, the Commission alleged to the State's Shoreline Protection Program that the Marina violated the Shoreline Protection Act by constructing a new 10' wide, 250' long road running parallel to the shore, less than 10' from the water. It further alleged that vegetation had been removed from the shoreline and that new boat moorings had been installed. After more than two years there has been no action on this allegation.
- In the same complaint document, the Commission alleged to the Chairperson of the Freedom Zoning Board and to the Freedom Building Inspector that the Marina had violated Town zoning. The new parking lot, shoreline access road and boat moorings are on property (Map 31, Lot 42) that was purchased by the Marina from Constantino DiPrizio two months prior to the Town's complaint. This property is zoned Shorefront in the General Residential District. We also believe that zoning was violated on this land, yet there is no evidence that there has been any follow-up to the Commission's allegations.
- In 1999 the Marina constructed a second, larger parking lot on the former DiPrizio property. The construction of this lot resulted in a major alteration of the landscape including the removal of a substantial amount of topsoil. We do not believe that a commercial parking lot is a permitted use within the Shoreline Zone of the General Residential District. Moreover, the excavation of this land may violate the provisions of the Shoreline Protection Program.

- In October, 1999, the State, apparently with prior Town approval, issued a Septic Permit (# 1999020992) for the Marina to construct a minimum size, 300 GPD septic system and field to accommodate a new commercial bathroom facility on the former DiPrizio property. A cinderblock building containing two bathrooms was subsequently built and put into operation for the 2000 summer season.

The bathroom facility raises a number of issues and questions. First, we do not believe a commercial bathroom facility is a permitted use in the Shoreline Zone of the General Residential District.

Second, it is possible that the bathroom building was constructed without a building permit. Mr. Paul Dorian has stated that he did not issue one in 1999, and his initial check of Town records in November, 2000 (acting on behalf of Mr. Phil Matton, who is out of state) failed to turn up a permit in the Marina's file at the Town Office.

Third, the facility appears to have operated all year without final State approval of the septic system. A State inspection in June, 2000, revealed that changes had been made to the approved design, including relocating the building and septic system from what was originally specified. The State inspector instructed contractor Lawrence Edwards to obtain an amended plan and re-submit it to the State for final approval to operate. To date, neither the State Department of Septic Services nor the State's chief inspector has received an amended plan.

- On October 24th, 2000, the Marina applied for a permit to build a 10' wide, 20' long "addition" on Map 31, Lot 32, the former DiPrizio property on which the bathroom building is located. The Town approved this application and a building permit (#00139) was issued on October 30, 2000. Mr. Dorian's search of the file on this application uncovered only the top sheet, which does not specify what the "addition" is or what it is being added to. Moreover, the required general plot plan was not attached.

Despite the lack of clear information, we believe there is a possibility that this is an *ex post facto* application to construct a building that already exists – the bathroom facility.

The following facts support that belief. The building application has a hand-written note stating "Septic Application # 1999020992" which is the permit for the existing bathroom building. Second, neither the State nor White Mountain Survey has any record of a proposed "addition" which would jointly utilize the septic system designed for the existing bathroom building. Third, Mr. Dorian reports that Mr. Matton's notebook on Town permits has the notation "bathhouse" listed with the entry for this permit.

- In March, 1998, the Marina requested a special exception to sell "sandwiches and soda," as the petition document specifies. The Zoning Board of Adjustment unanimously rejected the petition as "an unreasonable expansion of a pre-existing non-

conforming use," and their rejection was subsequently upheld in an appeal. Nonetheless, for the past two years the Marina has been openly selling sandwiches, spit-cooked hot dogs, pizza, canned goods and beer to its customers from a refurbished shorefront building. We believe this activity not only violates the Town's 1998 ruling, it goes well beyond the scope of what was originally requested and denied as "unreasonable".

- In October, 1997, the Town granted the Marina a special exception to store boats on the property subject to the following conditions: "(1) Limit of 225 boats stored inside and no more than 10% additional boats or trailers outside on all six...lots; (2) Strip between Bay Road and the nearest building to be dedicated to vehicle parking, (3) Trees to be planted to screen buildings from Alvino Road within the 50' set-back. No additional cutting; and (4) 50' setback at Marina Road to be maintained as green space."

Three years later it appears that the Marina has violated virtually all of the conditions attached to the ZBA's approval of a special exception. There may be more than 225 boats stored on the property and there clearly is more than the Town's limit of 23 boats (10%) stored outside the buildings. There are boats stored in the "strip between Bay Road and the nearest building" which the Town mandated for vehicle parking. There is no evidence that trees have been planted to "screen buildings from Alvino Road" or that a 50' set back is being maintained as green space.

- In 1997 the Marina's new owners replaced the outdoor pole light with high intensity lighting directed at the bay and operating dusk to dawn, year-round. When Bay residents asked that the amount of light be reduced, the Marina re-directed the light sideways but did not change the intensity or the hours of operation.

After Broad Bay residents opposed the Marina's 1998 application to create a sandwich shop, the light was again directed out on the Bay and a second light – more powerful than the first and higher on the property – was installed. It too was aimed directly at the Bay and set to operate dusk to dawn, year-round.

We believe the level of lighting at the Marina is intrusive and far in excess of the level established by the grandfathered non-conforming use.

We note also that in 2000 the Marina added a third light aimed at the bay and placed an illuminated soft drink machine on the shoreline where its colored lights reflect across the water all night. The level of artificial lighting at the Marina is now as intense as any commercial property on Route 16.

We believe Ossipee Lake Marina has illegally expanded the scope of business that is allowed under its grandfathered non-conforming use within the Shoreline Zone of the General Residential District. In doing so, it appears that they have violated State laws, as the Town itself has alleged, as well as Town zoning and building regulations.

The Marina's increased commercialization of the Bay includes the destruction of natural habitat; the construction of possibly illegal parking lots, public bathrooms, boat slips and a snack bar, all of which have increased car and boat traffic; the unregulated storage of boats and round the clock high intensity lighting.

These activities would be disturbing in any community but they are especially so in Freedom, which is known for its commitment to preserving its essential character through zoning and conservation. That commitment has much to do with the Town's continued ability to attract residents and visitors alike.

Broad Bay has been host to generations of summer residents whose love of the area and support of the community have been steadfast. In addition, each year hundreds of campers, counselors and young adults flock to Freedom's summer camps – including Huckins and Robin Hood – and leave with an appreciation for our Town that sustains successive generations of campers and visitors.

Broad Bay's property owners want to work with the Town to ensure that our property is protected and that the rule of law is imposed fairly and evenhandedly. We all have something to lose if we do not work together to assess and address this situation. We have attached a partial list of potential remedies that can serve as a discussion document.

After you have a chance to review this letter and its attachments, we would like to meet with the Board to discuss the issues and what might be done about them.

Respectfully,

POTENTIAL REMEDIES

For discussion purposes, the following is a list of potential remedies to the violations alleged in this document.

- Removal of the shoreline gravel parking lot and additional fill material from wetland on the former DiPrizio property. Restoration of the area to its previous natural condition.
- Removal of the shorefront road and boat moorings on the former DiPrizio property. Restoration of the natural habitat by planting trees and shrubs.
- Removal of the second, hillside gravel parking lot from the former DiPrizio property. Restoration of the natural habitat, including replenishing topsoil.
- Removal of the cinderblock bathroom building from the former DiPrizio property.
- Enforcement of the prohibition of the sale of prepared food, canned food and beer on the premises. Food sales limited to the established use of packaged snacks and soda.
- Enforcement of the provisions of the special exception for boat storage, including a limit of 225 boats with no more than 10% stored outside buildings; a strip between Bay Road and the nearest building dedicated for vehicle parking; trees planted to screen buildings from Alvino Road within the 50' set-back; 50' set-back maintained as green space.
- Removal of all lights installed since 1996, and a return to the level of light established by the grandfathered non-conforming use.