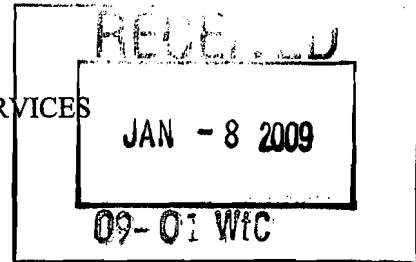


The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



In re:)
Kevin Price, Appellant)
d/b/a "Ossipee Lake Marina)
)
Wetland File Nos. 1988-01437/2007)
-0922)

NOTICE OF APPEAL OF ADMINISTRATIVE
ORDER NO. 08-050 WD
December 9, 2008

Pursuant to NH CODE ADMIN. RULES Env-WtC 200, Kevin Price d/b/a Ossipee Lake Marina and Ossipee Marine Corp. ("Appellants"), by and through their attorneys, Scott & Scott P.A. and Michael J. Scott submit the following Notice of Appeal of Administrative Order No. 08-050 WD entered on December 9, 2008 (the "Order"):

1. The Appellants in this case are Kevin J. Price d/b/a Ossipee Lake Marina having, mailing address of P.O. Box 154; telephone: (603) , and e-mail: marinalife@msn.com; and Ossipee Marine Corp. having, mailing address of 65 Marina Road, Freedom, NH 03836; telephone: (603) 539-8456, fax number: (603) 539-7435.
2. Appellants' representative in this Appeal is Michael J. Scott, Scott & Scott, P.A., mailing address: P.O. Box 1055, Londonderry, NH 03053; daytime telephone: (603) 434-3426; fax number: (603) 437-0022 and e-mail: mscott@scottandscottpa.com
3. This Appeal arises from the Order relating to Wetlands Permit #1988-01437 (the "Permit") of which Appellants are the recipient and/or persons who are otherwise aggrieved by the Order and have standing to challenge the Order.
4. The Order involves a commercially zoned marina located at 65 Marina Road, Freedom, New Hampshire, originally and more particularly described as Tax Map 31, Lot 41, 41-1, 41-2 and 41-3, Freedom, New Hampshire (the "Marina Property"). The Order also involves a rural zoned property described as Tax Map 31, Lot 42 ("Lot 42"). The Marina Property and Lot 42 were consolidated for administrative tax purposes by the Town of Freedom Planning Board on

October 17, 2002. A condition of the consolidation was that Lot 42 retains its zoning designation of "rural". The deed reference for the Marina Property as consolidated with Lot 42 is Book 2080, Page 159, Carroll County Registry of Deeds.

5. The Department of Environmental Services Administrative Order No. 08-050 WD references only Kevin Price d/b/a "Ossipee Lake Marina" as respondent and relates to Permit #1988-01437 contained in Wetland File Nos. 1988-01437/2007-01922.

6. A true and correct copy of the Order is attached hereto as Exhibit A and incorporated herein by reference.

7. Appellants seek the following relief:

(a) A ruling that the Order is defective and therefore unlawful and unreasonable as it is based on the 1988 Permit which ceased being applicable to Appellants when it was modified and superseded by a permit dated December 11, 1993 (hereinafter "1993 Permit") (A true and correct copy of the 1993 Permit, which is in letter form, is attached hereto as Exhibit B and incorporated herein by reference and states in pertinent part: "this letter shall service as your permit").

(b) A ruling that the Order is defective and therefore unlawful and unreasonable as it is based on plans received by the Department on October 25, 1988 (hereinafter referred to as "1988 Plans"), in conjunction with the 1988 Permit, while the 1993 Permit is based on the plan received by the Department on May 8, 1992 (hereinafter referred to as 1992 Plan). (True and correct copies of the 1988 Plans are attached hereto as Exhibits C and D, and incorporated herein by reference). (Appellants have been unable to obtain a complete copy of the 1992 Plan, but have attached hereto as Exhibit E, what they believe to be a reduced copy of the 1992 Plan).

(c) A ruling that the Order is unlawful and unreasonable as it conflicts with a ruling by the Department memorialized in a letter dated May 23, 2002 from Rene Pelletier indicating that following May 9, 2002 Compliance Site Inspection it was determined that "[t]here was no evidence of docking facilities that exceed those allowed by the state permit." (No

dimensional or location changes were made to the docking facilities by Appellants between May 9, 2002 and inspection precipitating the Order). A true and correct copy of the May 23, 2002 letter ruling is attached as Exhibit F.

(d) A ruling that seasonal Dock Nos. I, II and III on the Marina Property do not exceed the length restriction set forth in the Permit; that the access ramps to seasonal Dock Nos. I, II & III shall not be considered in connection with the measurement of the length thereof; and that consideration by the Department of the access ramp length in measuring the overall length of seasonal Dock Nos. I, II and III, is unreasonable.

(e) A ruling that the Order is unlawful and unreasonable in requiring Appellants to reduce the length of seasonal Dock Nos. I, II and III, as it will essentially eliminate a portion or all of the leased slip spaces that paragraph 4 of the 1993 Permit requires be maintained for a period of thirty years, and make it impossible for Appellants to comply with the 1993 Permit.

(f) A ruling that requiring Appellants to reduce the width of Dock Nos. I, II and III from 48 inches to 28 inches (as required by the Permit), is (i) unlawful because it violates the safety requirements imposed upon Appellants by Env-Wt 402.11 and handicapped access laws codified in Section 15.2 Boating Facilities of the Americans with Disability Act of 1990 Accessibility Guidelines for Buildings and Facilities (“ADAAG”) (See attached as Exhibit G an excerpted portion of Section 15.2).

(g) A ruling that to reduce the dimensions of the seasonal Dock Nos. I, II and III is unreasonable because despite any variation in the length and width of Dock Nos. I, II and III, from the applicable permit (1988 Permit or 1993 Permit) those docks do not exceed the surface area allowed by the applicable permits.

(h) A ruling that the dock located at Lot 42 is not controlled by the Permit and therefore the Order is unlawful and unreasonable to the extent that it pertains to or contemplates the Dock located on Lot 42.

(i) A ruling that seasonal Dock Nos. I, II and III have not changed in location or dimension since Appellants acquired their interest in the Marina Property in May of 1997 nor since those docks were deemed in compliance by the Department in May of 2002, and that Appellants were entitled to rely on the Department's May 2002 indication of compliance making this subsequent Order unreasonable under the circumstances.

(j) A ruling that, contrary to the Order, the Appellants have not exceeded the number of boat slips allowed by the Permit, and that any reference to the access ramps or dock on Lot 42 by the Department support of the Order relative to number of slips is both unlawful and unreasonable.

(k) A ruling that although the non-seasonal fueling dock dimensions exceed those allowed in the Permit, that the increased width and length of the fueling dock is dictated by compliance with safety requirements imposed upon Appellants by Env-Wt 402.11 and handicapped access laws codified in Section 15.2 Boating Facilities of the Americans with Disability Act of 1990 Accessibility Guidelines for Buildings and Facilities ("ADAAG"), and for the Order to require a reduction of these dimensions is therefore unlawful and unreasonable.

8. Appellants submit the following statement of the facts and statutory provisions upon which relies for the granting of the relief requested in Paragraph 7 of this Appeal:

(i) Appellants have, in accordance with the Order, timely caused all seasonal docking structures and their supports to be removed from Ossipee Lake and Lot 42. Photographic documentation of the removal has been supplied to the Department.

(ii) Appellant Price purchased the Marina Property from Robert Mazzeo d/b/a Bayview Marina in May of 1997. At the May 1997 closing, Mr. Price was given a packet by Mr. Mazzeo's attorney which referenced 1988 Permit, and contained a copy of the 1993 Permit with the 1992 Plan. Despite diligent effort, Appellants have been unable to obtain a complete and accurate copy of the 1992 Plan and have only recently obtained copies of the 1988 Plans.

(iii) On June 26, 1998, Appellant Ossipee Marine Corp. purchased Lot 42 from Constantino and Mary Evelyn DiPrizio. At the time of this purchase, Lot 42 had two (2) existing docks.

(iv) On October 17, 2002, the Town of Freedom Planning board approved the consolidation of the Marina Lot with Lot 42 for administrative tax purposes only. A condition to the consolidation was that Lot 42 would remain a rural zoned parcel of land.

(v) From the time that Appellant Price purchased the Marina Property the “foot print” dimensions of the seasonal Dock Nos. I, II & II nor the permanent fueling dock have been altered. In 2006-2007, however, Mr. Price renovated these facilities replacing the wooden dock materials that were warped and cupped with light weight aluminum. These renovations were performed for safety reasons pursuant to Mr. Price’s obligations under Env-Wt 402.11.

(vi) the two docks on Lot 42 are not subject to either the 1988 Permit or 1993 Permit since, as a condition to consolidation with Lot 42, the Town of Freedom required that Lot 41 remains zoned “rural”. The consolidation was for tax administration purposes. Hence, Lot 42 could not become part of the commercially zoned marina and the two docks on Lot 42 were “grandfathered” because they existed prior to both the Permits and consolidation.

(vii) The 1988 Permit incorporates the 1988 Plans showing seasonal Dock Nos. I, II and II to have lengths (inclusive of ramps) of 139.6 feet, 88 feet and 108 feet, respectively.

(viii) The 1993 Permit incorporates a Plan received by the Department May 8, 1992, which Appellants have been unable to locate but which Appellants believe is represented by the facsimile of the 1992 Plan dated June 14, 1989, attached hereto as Exhibit E. Appellants cannot ascertain the length dimensions of seasonal Dock Nos. I, II and III from the 1992 Plan. However, from an appearance standpoint the seasonal Dock Nos. I, II and III depicted in the 1988 Plans and 1992 Plan appear to differ in location and dimension.

(ix) The width of the seasonal Dock Nos. I, II and III and the permanent fueling dock exceeds that allowed by the 1988 Permit, but cannot be readily determined that it exceeds the permissible width allowed by the 1993 Permit.

(x) Appellants do not currently maintain at the Marina Property more than the 66 boat slips authorized by the 1993 Permit.

(xi) Appellants have reduced the number of slip “fingers” on seasonal Dock Nos. I, II and III. Appellants have also reduced the length of slip “fingers” at the seasonal Dock Nos. I, II and II from the 14 feet allowed by the Permits to 12’ in length on Docks I and II and 10 feet in length on Dock II. Since the number and length of fingers is less than allowed by the Permits, Docks I and II each actually take up approximately 2 feet 4 inches less in surface area and Dock III takes up approximately 4 feet 4 inches less in surface area than allowed by the Permits.

(xii) The 1988 Permit place a width restriction on seasonal Dock Nos. I, II and III of 28 inches. It further limits the width of the permanent fueling dock to 14 feet on the southern elevation, 17 feet on the northern elevation and 39 feet on the eastern elevation. Since Appellants do not have the 1992 Plan it is unclear what width restrictions are placed on the Marina Property by the 1993 Permit.

(xiv) The current width of the seasonal Dock Nos. I, II and III is 4 feet as it was when Appellant Price purchased the Marina Property. The current width of the permanent fueling dock is 15 feet on the southern elevation, 21 feet on the northern elevation and 46 feet on the eastern elevation. The increase in width on the permanent fueling dock is attributable to an expansion of the walkway performed prior to Appellant Price purchasing the Marina Property.

(xv) The expansion of the width from 28 inches to 4 feet on seasonal Dock Nos. I, II and III and the expansion of the width of the walkways surrounding the permanent

fueling dock were likely performed to comply with Env-Wt 402.11 and handicapped access laws codified in Section 15.2 Boating Facilities of the Americans with Disability Act of 1990 Accessibility Guidelines for Buildings and Facilities (“ADAAG”)(See Section 15.2 attached).

(xvi) On May 9, 2002, Jack Chwasiak of the Department of Environmental Services performed a Compliance Site Inspection at the Marina Property. A May 23, 2002 decision, in letter form, was rendered by Rene Pelletier indicating that “[t]here was no evidence of docking facilities that exceeded those allowed by the state permit”. It is unclear which “permit” the May 23, 2002 letter decision refers to. However, no changes have been made to the dimensions or location of seasonal Dock Nos. I, II and III or the permanent fueling dock at the Marina Property since the May 9, 2002 Compliance Site Inspection.

(xvii) The Order references the June 14, 2002 Ossipee Lake Marina Accessory Use Special Exception Plan prepared by White Mountain Survey Co. (“WMS Plan”) which depicts the current dimensions and location of the docking facilities at the Marina Property. A copy of the WMS Plan is attached hereto as Exhibit H.

9. Appellants do not have knowledge of the volume of the file in the possession of the Department. Appellants, with the exception of the 1992 Plan, have attached much of the record necessary to decide this appeal. In Appellants best judgment, the issues to be presented in this appeal have moderate complexity

10. Appellants will suffer the following direct and adverse affect(s) or injury(ies) in fact as a result of the Order that is being appealed in a way that is actual and imminent and is particularized to Appellants and that is/are more than any impact of the decision on the general public:

(a) The Order will force Appellants to violate applicable state safety laws and federal handicapped accessibility laws for which they would become immediately liable at law and in equity. The violation of these safety and handicapped accessibility laws would have a greater impact on the general public than the minor expansion of the docking facility dimensions particularly since those increase in dimensions do not cause the docking facilities to occupy a greater surface area.


(b) The Order will place Appellants in the untenable position of having to choose between violating the dimension restrictions of the 1988 Permit and the leasehold boat slip requirements of the 1993 Permit, and will further subject the Appellants to immediately contractual liability to the leasehold slip owners.

(c) The Order will make Lot 42, a rural zoned lot, unmarketable as it will require a new private noncommercial owner of Lot 42 to comply with restrictions imposed upon a commercially zoned marina relative to the two private docks that have existed on Lot 42 prior in time to both the 1988 and 1993 Permits.

Respectfully Submitted.

KEVIN PRICE D/B/A "OSSIPPEE
LAKE MARINA" and
OSSIPPEE REALTY CORP.
By Their Attorneys,
SCOTT & SCOTT, P.A.

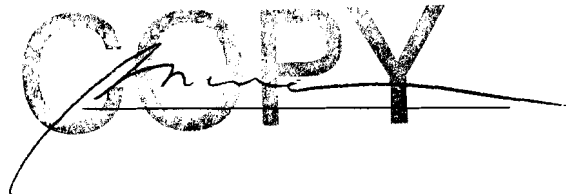
Date: January 8, 2009

By: 
Michael J. Scott
P.O. Box 1055
Londonderry, NH 03053
(603) 434-3426
NH Bar ID. #4123

CERTIFICATE OF SERVICE

The Appellants, through their attorneys, Scott & Scott PA, certify that a true and correct copy of this Notice of appeal (exhibits excluded) was delivered this 8th day of January 2009, by first class mail, postage prepaid, to the following persons as required by Env-WtC 203.01(c):

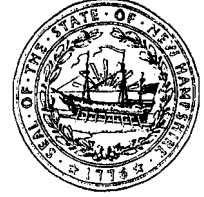
Amy Sampson, Appeals Clerk
Wetlands Council
29 Hazen Drive
Concord, NH 03302



The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



Kevin Price
d/b/a "Ossipee Lake Marina"
65 Marina Road
Freedom, NH 03836

ADMINISTRATIVE ORDER
NO. 08-050 WD

December 9, 2008

Re: Wetlands File Nos. 1988-01437/ 2007-01922

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Kevin Price pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Kevin Price is an individual having a mailing address of 65 Marina Road, Freedom, NH 03836. Kevin Price is apparently doing business as "Ossipee Lake Marina," a trade name that was forfeited in 2002 according to records maintained by the New Hampshire Secretary of State.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III, provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. Pursuant to Env-Wt 101.28, "dock" as a noun means "a structure intended for securing of watercraft and/or to discharge and load passengers, freight, and other goods whether the structure is in the water or not."

5. Pursuant to Env-Wt 101.79, "seasonal dock or seasonal structure" means a "dock and any associated supports designed to be completely removed from the water during the non-boating season and includes pipe docks or floating docks."

6. Pursuant to Env-Wt 402.02(a)(2), "dimensions" means "in lakes and ponds of less than 1,000 acres, for all docks a deck width of 6 feet and a deck length of 30 feet, measured from the normal high water mark."

7. Pursuant to Env-Wt 101.55 "Marina" means "a commercial waterfront facility whose principal use is the provision of publicly available services such as the securing, launching, storing, fueling, servicing and repairing of watercraft."

8. Pursuant to Env-Wt 402.15(a) "Any new docking facility or additional docking or similar improvement, excluding repairs or replacements without expansion, that has any portion under commercial use shall comply with all local landuse controls for marinas, or appropriate non-residential land-use classification."

9. Pursuant to Env-Wt 402.15(b) "The applicant shall submit a copy of the local permit or approval, or a letter from the applicable local land use board or local governing body indicating that a permit or approval is not required under local regulations, to the department with the application or otherwise prior to the department making a decision on the application."

10. Pursuant to Env-Wt 402.21 "Modification of Existing Structures" means "The department shall not approve any change in size, location, or configuration of an existing structure unless the applicant demonstrates, and the department finds, that the modification is less environmentally-impacting or provides for fewer boat slips and less construction surface area over public submerged lands than the current configuration."

11. Pursuant to Env-Wt 101.53 "Major docking system" means "a large and complex docking facility that requires utilization of more than 100 feet of waterfront or provides a total of 5 or more boat slips, including those previously existing and proposed."

12. Kevin Price is the owner of property more particularly described on the Town of Freedom Tax Map 31 as Lot 41 (the "Property") The Property was previously identified on Freedom Tax Map 31 as Lots 41, 41-1, 41-2, 41-3, and 42. The identified lots were merged on October 17, 2002 as approved by the Town of Freedom Planning Board and recorded in Carroll County Registry of Deeds on November 6, 2002, at Book 2080, Page 159 under the name of Ossipee Realty Corp. with the signature of the landowner identified as Kevin Price.

13. DES records show that on July 12, 1988, Mr. and Mrs. Barnickel, d/b/a Bayview Marina submitted to the Wetlands Board a petition requesting a declaratory judgment pertaining to 66 boat slips located on the Property. Wetlands File #1988-01437 was assigned to the matter. DES approved Wetlands Permit #1988-01437 (the "Permit") on December 27, 1988, to retain 66 seasonal boat slips and a fuel dock on the Property per plans labeled "Plan of Dock I" and "Plan of Dock II & III" prepared by Horst Barnickel as received by DES on October 25, 1988.

14. The Permit approved the following dimensions and configurations for docks on the Property:
 - a. Dock I measured approximately 127 feet 6 inches long by 28 inches wide with twenty five 14 foot long by 1 foot wide finger piers providing 25 boat slips.
 - b. Dock II measured approximately 80 feet long by 28 inches wide with seventeen 14 foot long by 1 foot wide finger piers providing 18 boat slips.
 - c. Dock III measured approximately 94 feet long by 28 inches wide with twenty one 14 foot long by 1 foot wide finger piers providing 22 boat slips.
 - d. The fueling dock measured approximately 14 feet wide over the water on the southern end, 17 feet over the water on the north side and 39 feet along the eastern, lakeside.

15. On July 31, 2007, DES received a complaint alleging that the docking structures on the Property did not conform to the Permit.

16. On August 24, 2007, DES received a Wetlands Bureau application from Kevin Price d/b/a Ossipee Realty Corp. (the "Applicant") requesting to construct retaining walls along the shoreline integrated with planting vegetation to manage stormwater runoff. Wetlands File #2007-02038 was assigned to the matter. According to records obtained from the New Hampshire Secretary of State's Office, Ossipee Realty Corp. was administratively dissolved on September 1, 2006.

17. On October 25, 2007, DES issued a Request for More Information to the Applicant requesting among other things, accurate plans of the docking structures on the Property.

18. On February 15, 2008, Zachery Berger Associates, Inc. submitted information to the Wetlands Bureau to address DES' Request for More Information on behalf of the Applicant. This information included a stamped survey plan of the Property prepared by White Mountain Survey Company dated June 14, 2002 which documented three existing wooden docks and one fueling dock with the following dimensions:
 - a. Dock I measured approximately 159 feet long by 3 feet wide with fourteen 12 foot long by 1 foot wide finger piers in a modified "t" configuration providing 28 boat slips.
 - b. Dock II measured approximately 108 feet long by 3 feet wide with ten 12 foot long by 1 foot wide finger piers in a modified "t" configuration providing 20 boat slips.
 - c. Dock III measured approximately 118 feet long by 3 feet wide with twelve 12 foot long by 1 foot wide finger piers in a modified "t" configuration providing 22 boat slips.
 - d. The fueling dock measured approximately 15 feet over the water on the south side, 21 feet over the water on the north side and 46 feet along the eastern side.

The three wooden docks and fueling dock documented by White Mountain Survey Co. did not match the Permit and the approved plans.

19. On March 21, 2008, DES denied Wetlands Permit application #2007-02038 for failing to document that the docking structures were legally constructed on the Property.
20. On April 2, 2008, Kevin Price submitted a letter to DES, in which he demonstrates knowledge of the Permit and the approval for 66 boat slips and a fueling dock.
21. On June 5, 2008, DES personnel inspected the Property and documented the following:
 - a. Dock I measured approximately 159 feet long by 4 feet wide with fourteen 14 foot long by 1 foot wide finger piers in a modified "t" configuration providing 28 boat slips; and
 - b. Dock II measured approximately 105 feet 6 inches long by 4 feet wide with ten 14 foot long by 1 foot wide finger piers in a modified "t" configuration providing 20 boat slips; and
 - c. Dock III measured approximately 118 feet long by 4 feet wide with twelve 14 foot long by 1 foot wide finger piers in a modified "t" configuration providing 22 boat slips; and
 - d. The fueling dock measured approximately 21 feet 8 inches on the south end, 22 feet on the north end with a width of 46 feet 3 inches along the eastern, lake side; and
 - e. Along the southeasterly shoreline on the Property, DES documented 8 boats secured to the shoreline. There were two docks, one measuring approximately 3 feet 4 inches wide by 30 feet long and the second measuring approximately 3 feet wide by 12 feet long with a 16 foot by 7 foot 8 inch wide platform on the lakeward end providing four boat slips. Four additional boats were anchored or otherwise secured to the shoreline at the time of the inspection.
22. DES has no record of an application or approved permit for the alterations to the seasonal docks, the fueling dock or the addition of boat slips on the Property.

D. DETERMINATION OF VIOLATIONS

1. Kevin Price violated RSA 482-A:3, I, by expanding a major docking facility to provide for 78 boat slips without a permit from DES.
2. Kevin Price violated RSA 482-A:3, I, by modifying a major docking facility by changing the location and configuration of seasonal docks without a permit from DES.
3. Kevin Price violated RSA 482-A:3, I, by modifying a major docking facility by changing the configuration of the permanent fueling dock without a permit from DES.

E. ORDER

Based on the above findings and determinations, DES hereby orders Kevin Price as follows:

1. **Within 10 days of the date of this Order** Kevin Price shall remove all seasonal docking structures and their supports from Ossipee Lake and the lakebed on the Property.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.

~~COPY~~
Harry T. Stewart, P.E., Director
Water Division

~~COPY~~
Thomas S. Burack, Commissioner
Department of Environmental Services

CERT: 7007 3020 0000 5320 6814

cc: DES Legal Unit
Freedom Select Board and Conservation Commission
Freedom Planning Board and Building Department

ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau

SCHEDULE 1
TO EXHIBIT B



State of New Hampshire
WETLANDS BOARD

DEPARTMENT OF ENVIRONMENTAL SERVICES
64 North Main Street Post Office Box 2008 Concord, NH 03302-2008
603-271-2147 FAX 603-271-6588
TDD Access: Relay NH 1-800-735-2964



Director Water Resources Division • Director W.S.P.C. Division • Director Waste Management Division • Director State Planning
Director Fish and Game • Commissioner Dept. of Safety • Commissioner Dept. of Transportation • Commissioner D.R.E.D.
Municipal Conservation Commission • Soil and Water Conservation District • Municipal Official • Construction Industry

December 11, 1993

James W. Latshaw, Esq.
Wiggin & Nourie, P.A.
The Parish House
20 Market St., PO Box 808
Manchester, NH 03105

RE: File #88-01437 - Bayview Marina/Hilco Realty Corporation
Danforth Brook/Ossipee Lake, Freedom.

Dear Mr. Latshaw:

On September 14, 1993, the Wetlands Board, in lieu of revoking permit 88-01437, voted to approve the retention of seasonal docking structures and the fuel dock at Bayview Marina, for a total of 66 boat slips on 280 feet of frontage, as shown on plans received 10/25/88 to be used as a marina, with the following specific conditions:


1. The permitted boat slips shall be used in accordance with the conditions of this permit, and violation of any of the conditions of the permit shall be grounds for revocation of this permit and removal of all docking structures on the property.
2. This permit (this letter shall serve as your permit) shall be effective upon recording with the Registry of Deeds Office by the Permittee. A copy of the registered permit shall be provided to the Board.
3. The owner shall file a restrictive covenant in the Registry of Deeds, which specifically notes condition #4, dedicating the shore frontage and 66 boat slips on property identified as Lots 41, 41-1, and 41-2 on Freedom Tax Map 31A, per Wt 402.02, to be maintained as a marina as defined in the rules of the Wetlands Board. Publicly available services must be provided, and no separate ownership of slips in the marina shall be allowed.
4. Boat slips identified on the plan received 5/8/92 as numbers 6, 7, 14, 20, 25, 26, 32, 34, 37, 38, 41, 42, 47, and 64 may be leased by the boat slip "buyers" identified in Wetland Board's files 93-254 through 93-266 for a period of thirty years from the date of the "deeds". The leasehold interests may be assigned within the period of the lease agreement. At the conclusion of the 30-year lease, the slips shall be made available for public use, either by annual lease or rental for a shorter period of time.

RE: File #88-01437 - Bayview Marina/Hilco Realty Corporation
Page 2 Danforth Brook/Ossipee Lake, Freedom.

5. The marina shall maintain the docking structures in a manner consistent with Rule Wt 402.11.
6. During the term for the lease of the 14 slips identified in condition #4, 52 slips shall be made available for general public use. At the expiration of the 30-year period, 66 slips shall be available for public use.

On December 1, 1993, the Governor and Executive Council approved Hilco Realty Corporation's request to amend permit 88-01437 to retain docking structures with a change from marina to private use on 14 of 66 slips at Bayview Marina as specifically conditioned by the Board as listed herein.

Respectfully yours,


Delbert Downing
Chairman

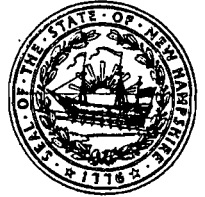
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cc: Public Information Coordinator
Freedom Conservation Commission
Freedom Board of Selectmen
Leslie J. Ludtke, Senior Asst. Attorney General, D.O.J.
Gretchen Rule, D.E.S. Enforcement Coordinator
Attorney Brian R. Barrington, Coolidge Professional Association
Attorney Allen Dublin
Attorney Ellen Saturley
Attorney Arnold Rosenblat
Attorney Eric E. Nord
William Barnes
Freedom Marine Enterprise Corporation



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2982



May 23, 2002

Kevin Price
PO Box 154
Londonderry, New Hampshire 03053

RE: FREEDOM, Ossipee Lake Marina, 65 Marina Road, Environmental Compliance Site Inspection
Dear Mr. Price:

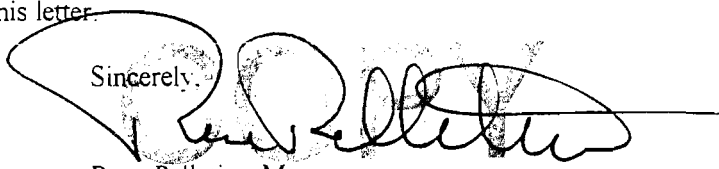
On May 9, 2002, Jack Chwasiak and I visited the subject facility and met with Mr. Tim Cupka, manager of the Ossipee Lake Marina, regarding alleged environmental issues/violations. These issues involved the compliance status of the Snack Shop and the alleged wastewater discharge, and shoreline structure improvements, boat ramp repair, and retaining wall construction and repair without appropriate DES approvals. The status of compliance relative to the aboveground gasoline storage tanks was addressed in Mr. Chwasiak's letter to you dated May 16, 2002.

According to Mr. Cupka, the small amount of wastewater that is generated by the snack shop sink is being discharged into a grandfathered septic system that has been on site for many years. It is my understanding the previous owner repaired the boat ramp with the existing prefabricated concrete structures. Mr. Cupka informed me that the required restoration of the site, which impacted wetlands, is scheduled to begin the week of May 27, 2002. A review of the wetlands file revealed that the existing docks were in compliance with the wetlands permit. There was no evidence of docking facilities that exceeded those allowed by the state permit. It is also important to note that there was no evidence of the inappropriate disposal of oil, gasoline or old boat parts on the site.

In closing, after spending several hours at the site it appears that the operation of the marina is conducted in conformance with environmentally sound management practice. We thank Mr. Cupka for his courteous cooperation and the anticipated timely completion of the wetlands restoration project and ask that you contact me at (603) 271-2951 or via email at: rpelletier@des.state.nh.us if you have any questions or comments regarding the contents of this letter.

NOTE →

Sincerely,


Rene Pelletier, Manager
Land Resource Programs

Enclosures

cc: Dana Bisbee, Acting Commissioner DES
Jack Chwasiak - DES, WMD
Harry Stewart, DES Water Division
Tim Cupka, Ossipee Lake Marina
Wetlands File

15.2 Boating Facilities.

15.2.1 General. Newly designed or newly constructed and altered boating facilities shall comply with 15.2.

15.2.2* Accessible Route. Accessible routes, including gangways that are part of accessible routes, shall comply with **4.3. Appendix Note**

EXCEPTION 1. Where an existing gangway or series of gangways is replaced or altered, an increase in the length of the gangway is not required to comply with 15.2.2, unless required by **4.1.6(2)**.

EXCEPTION 2. The maximum rise specified in **4.8.2** shall not apply to gangways.

EXCEPTION 3. Where the total length of the gangway or series of gangways serving as part of a required accessible route is at least 80 feet (24 m), the maximum slope specified in **4.8.2** shall not apply to the gangways.

EXCEPTION 4. In facilities containing fewer than 25 boat slips and where the total length of the gangway or series of gangways serving as part of a required accessible route is at least 30 feet (9140 mm), the maximum slope specified in **4.8.2** shall not apply to the gangways.

EXCEPTION 5. Where gangways connect to transition plates, landings specified by **4.8.4** shall not be required.

EXCEPTION 6. Where gangways and transition plates connect and are required to have handrails, handrail extensions specified by **4.8.5** shall not be required. Where handrail extensions are provided on gangways or transition plates, such extensions are not required to be parallel with the ground or floor surface.

EXCEPTION 7. The cross slope of gangways, transition plates, and floating piers that are part of an accessible route shall be 1:50 maximum measured in the static position.

EXCEPTION 8. Limited-use/limited-application elevators or platform lifts complying with **4.1.1** shall be permitted in lieu of gangways complying with **4.3**.

15.2.3* Boat Slips: Minimum Number. Where boat slips are provided, boat slips complying with 15.2.5 shall be provided in accordance with Table 15.2.3. Where the number of boat slips is not identified, each 40 feet (12 m) of boat slip edge provided along the perimeter of the pier shall be counted as one boat slip for the purpose of this section. **Appendix Note**

Table 15.2.3

Total Boat Slips in Facility	Minimum Number of Required Accessible Boat Slips
1 to 25	1
26 to 50	2
51 to 100	3
101 to 150	4
151 to 300	5
301 to 400	6
401 to 500	7
501 to 600	8
601 to 700	9
701 to 800	10
801 to 900	11
901 to 1000	12
1001 and over	12, plus 1 for each 100 or fraction thereof over 1000

15.2.3.1* Dispersion. Accessible boat slips shall be dispersed throughout the various types of slips provided. This provision does not require an increase in the minimum number of boat slips required to be accessible. **Appendix Note**

15.2.4* Boarding Piers at Boat Launch Ramps. Where boarding piers are provided at boat launch ramps, at least 5 percent, but not less than one of the boarding piers shall comply with 15.2.4 and shall be served by an accessible route complying with **4.3. Appendix Note**

EXCEPTION 1. Accessible routes serving floating boarding piers shall be permitted to use exceptions 1, 2, 5, 6, 7, and 8 in **15.2.2**.

EXCEPTION 2. Where the total length of the gangway or series of gangways serving as part of a required accessible route is at least 30 feet (9140 mm), the maximum slope specified by **4.8.2** shall not apply to the gangways.

EXCEPTION 3. Where the accessible route serving a floating boarding pier or skid pier is located within a boat launch ramp, the portion of the accessible route located within the boat launch ramp shall not be required to comply with **4.8**.

15.2.4.1* Boarding Pier Clearances. The entire length of the piers shall comply with 15.2.5. **Appendix Note**

15.2.5* Accessible Boat Slips. Accessible boat slips shall comply with 15.2.5. **Appendix Note**

15.2.5.1 Clearances. Accessible boat slips shall be served by clear pier space 60 inches (1525 mm) wide minimum and at least as long as the accessible boat slips. Every 10 feet (3050 mm) maximum of linear pier edge serving the accessible boat slips shall contain at least one continuous clear opening 60 inches (1525 mm) minimum in width (see **Fig. 59**).

EXCEPTION 1: The width of the clear pier space shall be permitted to be 36 inches (915 mm) minimum for a length of 24 inches (610 mm) maximum, provided that multiple 36 inch (915mm) wide segments are separated by segments that are 60 inches (1525 mm) minimum clear in width and 60 inches (1525 mm) minimum clear in length. (see **Fig. 60**)

EXCEPTION 2: Edge protection 4 inches (100 mm) high maximum and 2 inches (51mm) deep maximum shall be permitted at the continuous clear openings. (see **Fig. 61**)

EXCEPTION 3*: In alterations to existing facilities, clear pier space shall be permitted to be located perpendicular to the boat slip and shall extend the width of the boat slip, where the facility has at least one boat slip complying with 15.2.5, and further compliance with 15.2.5 would result in a reduction in the number of boat slips available or result in a reduction of the widths of existing slips. **Appendix Note**

15.2.5.2 Cleats and Other Boat Securement Devices. Cleats and other boat securement devices shall not be required to comply with **4.27.3**.