

The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

In re:)
Kevin Price, Appellant)
d/b/a "Ossipee Lake Marina") REQUEST FOR WAIVER
) Pursuant to Env-Wt 204
) April 30, 2009
Wetland File Nos. 1988-01437/2007)
-0922)

Pursuant to NH CODE ADMIN. RULES Env-Wt 204, Kevin Price d/b/a Ossipee Lake Marina and Ossipee Marine Corp. ("Applicant"), by and through his attorneys, Scott & Scott P.A. and Michael J. Scott requests a Waiver of compliance with the "less construction surface area over public submerged lands than the current configuration" requirements of Administrative Rule Env-Wt 402.21 (the "Rule"). This Waiver will ensure Applicant's continued compliance with Administrative Order No. 08-050 WD entered on December 9, 2008 (the "Order"), which is on appeal. The grounds for this Waiver are as follows:

1. The Applicant in this case is Kevin J. Price d/b/a Ossipee Lake Marina having, mailing address of P.O. Box 154, Londonderry, NH 03053; telephone: (603) 434-9248, 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. Applicant's representative in this matter 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.

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3. The location of the property to which the Waiver relates is 65 Marina Road, Freedom, NH 03836 (the "Marina").

4. On December 9, 2008, the Department of Environmental Services ("DES") issued an Order requiring Applicant to conform the length, width and surface construction area of his seasonal docks with the restrictions set forth on Wetlands Permit #1988-01437 (the "1988 Permit").

5. The 1988 Permit allowed the following dimensions for Docks I, II and III and the fueling dock at the Marina:

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 26 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 feet 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.

6. The 1988 Permit allowed Docks I, II and II to have a construction surface area of 1,664.80 square feet, and the fueling dock to have a construction surface area of 663 square feet. The 1988 Permit allowed the Marina to have 66 boat slips. The 1988 Permit required all portions of the constructed surface area of Dock III to be no less than ten feet from the closest abutter's property line.

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7. It is proposed that Applicant's be allowed to make the following modification to Docks I, II and III and the fueling dock at the Marina:

a. Dock I will measure 159 feet 6 inches long by 4 feet wide with fourteen 14 foot long by 1 foot wide finger piers providing 26 boat slips.

b. Dock II will measure 108 feet long by 4 feet wide with ten 14 feet long by 1 foot wide finger piers providing 18 boat slips.

c. Dock III will measure 118 feet long by 4 feet wide with six 10 feet long by 1 foot wide finger piers and five 14 feet long by 1 foot wide finger piers providing 21 (slip number 1 on south side of Dock III will be removed) boat slips.

d. the fueling dock measures approximately 15 feet wide over the water on the southern end, 21 feet over the water on the north side and 46 feet along the eastern, lakeside.

8. Docks I, II and III will have a construction surface area of 1,996 square feet. The fueling dock will have a construction surface area of 966 square feet. Docks I, II and III 64 boat slips and Dock III will be fastened to a permanent mooring so that any and all portions of its construction surface are no less than 10 feet from the closest abutter's property line.

9. Applicant's proposed modifications to the existing Marina's Docks I, II and III and Marina's fueling dock comply with requirements of the Rule in the following respects: (a) the modification is "less environmentally impacting" because Docks I, II and III and the fueling dock walk-ways contacting lake surface were originally constructed of pressure treated wood, but will now be constructed of light weight aluminum and (b) there is one (1) less boat slip than originally allowed by the Permit.

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10. Applicants proposed modifications to the existing Marina's Docks I, II and III fail to comply with requirements of the Rule because these Docks have a proposed 1,996 square feet of "construction surface area over public submerged lands". This surface area is 331.20 square feet more than 1,664.80 square feet allowed by the Permit.

11. Applicants proposed modifications to the existing Marina's fueling dock also fails to comply with requirements of the Rule because the fueling dock has a proposed 966 square feet of "construction surface area over public submerged lands". This surface area is 303 square feet more than 663 square feet allowed by the Permit.

12. Compliance with the requirement under the Rule that the proposed modifications to Docks I, II and III and the fueling dock have "less construction surface area over public submerged lands than the current configuration" will cause severe hardship to the Applicant in the following respects:

a. The 311.20 square feet increase in construction area surface for the proposed modifications to Docks I, II and III and the 303 square feet increase in construction area surface for the fueling dock are due entirely to a widening of the walkways on those docks from the 28 inches originally allowed by the permit to 48 inches required by Section 15.2 Boating Facilities of the Americans with Disability Act of 1990 Accessibility Guidelines for Buildings and Facilities ("ADAAG"). Thus strict enforcement of the construction area requirements of Administrative Rule Env-Wt 402.21 would mean that Applicant would either have to violate Section 15.2 of the ADAAG (and in so doing violate Administrative Rule Env-Wt 402.11), by reducing the

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walk-way width, or Applicant would have to substantially shorten Docks I, II and III or eliminate entirely one of docks allowed by the Permit.

b. Reducing the length of Docks Nos. I, II and III would eliminate a portion or all of the leased slip spaces Applicants are required to maintain for a thirty-year period under conditions 4 and 9 of the permit issued by the DES on December 11, 1993 (the "1993 Permit"). Thus, although Applicant would then be in compliance with the 1988 Permit, he would be in violation of the 1993 Permit.

c. Reduction of the length of Docks I, II and III or elimination of one of those docks would cause severe economic hardship to Applicant. This economic hardship would arise from: (i) a six month business lapse representing the amount of time it would take for Applicant to order shorter aluminum docks (the present docks could not be cut to size without voiding warranty). This business lapse would more than likely cause the financial demise of the Marina's business; (ii) the loss of slip income from reduced number of slips; and (iii) the cost of defending potential litigation from disenfranchised slip owners and/or lessors.

13. There is no feasible alternate that Applicants can propose to be substituted for the requirements in the Rule.

14. Granting this Request for Waiver will neither result in an adverse effect to the environment or natural resources of the state, public health or public safety nor result in an impact on abutting properties that is more significant than that which would result from complying with the rule.

a. Prior to 2006, Applicants' docks were constructed from pressure treated wood. In 2006-2007, Mr. Price replaced the wooden docks with aluminum docks,

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which better protect the water quality of lake and surrounding natural resources.

Granting the requested waiver would allow Applicants to place the aluminum docks back in the water, which would result in no adverse effect to the environment or natural resources of the state or public health. Furthermore, granting the waiver would protect public safety by allowing the docks to remain at their current dimensions which comply with Env-Wt 402.11, Section 15.2 Boating Facilities of the ADAAG for Buildings and Facilities and allow for people to safely walk up and down the docks. Denying the requested waiver would force Applicants to replace the current docks with docks that would pose a risk to public safety and would make access to people with disabilities difficult or impossible.

b. As explained in the preceding paragraphs, compliance with the Rule will cause Applicants significant economic hardship and pose a risk to public safety. The impact on abutting properties that would result from a waiver of the rule, however, would be negligible. From the time that Mr. Price purchased the marina property in 1997, the "foot print" dimensions of neither the seasonal docks nor the permanent fueling dock have been altered. Moreover, on May 9, 2002, Rene Pelletier and Jack Chwasiak of DES inspected the Marina and found "no evidence of docking facilities that exceed those allowed by the state permit" and that "there was no evidence of the inappropriate disposal of oil, gasoline or old boat parts on the site."

c. Strict compliance with the Rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant. In fact, strict compliance with the Rule will harm the public, especially the Town of Freedom, by reducing the Town's tax base and economic opportunities provided by the Marina.

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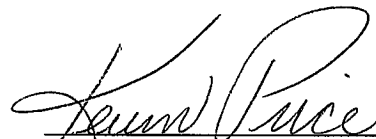
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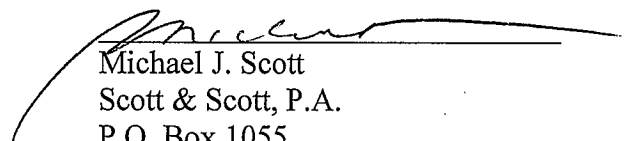
Residence of and visitors to the Lake Ossipee area will be negatively impacted by the reduction of available boat slips and related services. As discussed above, strict compliance with the Rule may also cause harm to the public by forcing Applicants to construct new docks with unsafe walkways that are non-compliant with Env-Wt 402.11 and the ADAAG. As discussed in Paragraph 5 above, strict compliance with the rule will also cause Applicants severe economic hardship, likely forcing the Marina to end its business.

Respectfully Submitted.

Date: 5-6-09


Kevin Price d/b/a "Ossipee Lake
Marina"

Date: 05/06/09


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