

MINUTES OF A REGULAR MEETING OF THE HARBOR AND COASTAL ZONE MANAGEMENT COMMISSION FO THE VILLAGE OF MAMARONECK HELD NOVEMBER 17, 2010 AT 7:30 P.M. IN THE COURTROOM AT VILLAGE HALL, MAMARONECK, NEW YORK

PRESENT: Mr. Carl Birman, Chairman
Ms. Laura Schneider
Mr. Jim Bilotta
Mr. Peter Jackson
Mr. Anthony Weiner
Mr. Bert Siegel
Mr. Cary Sleeper
Mr. Sven Hoeger, Environmental Consultant
Mr. Keith Furey, Consulting Engineer
Ms. Christie Derrico, Esq.

The meeting was called to order at 7:35 p.m.

OLD BUSINESS:

1. Evans Associates – Richard & Caroline Alter – 1000 Taylors Lane – Evans Associates Environmental Consulting, Inc. – Development of a 3-lot subdivision. One of the proposed lots contains an existing single family residence (**No new material received – Table**)
3. Shore Acres Point Corporation – 504 The Parkway – Perimeter Permit and Seawall Maintenance - Daniel S. Natchez and Associates. **Public hearing asked to be adjourned to December Meeting.**
4. Al Noletti – Nolles Ridge Subdivision – 800 Fenimore Road – Proposed Seven Lot Subdivision which includes one conservation lot and six buildable lots; includes an access road, utilities, stormwater pond and retaining walls – Hahn Engineering. **Coastal Consistency Certification**
5. Mamaroneck Beach and Yacht Club – 700 South Barry Avenue – Perimeter Permit. **Public Hearing**
6. Mamaroneck Beach & Yacht Club – 555 S. Barry Avenue – Seasonal Housing and other renovations Paul J. Noto. **Coastal Consistency Certification**

NEW BUSINESS

1. John H. Lese – 208 West Boston Post Road – Construction of five (5) unit affordable housing building – John H. Lese, P.O. Box 577, Mamaroneck, NY 10543
2. Joan Sansone – 895 Port Drive – Replace destroyed 4’ x 116’ pier, reinstall ramp and floating docks and install anchor pilings – Hohn Hilts, P.O. Box 47, Rowayton, CT 06853

MINUTES

September 15, 2010
October 20, 2010

The meeting was called to order at 7:35 p.m.

Chairman Birman called the meeting to order.

OLD BUSINESS

1. Evans Associates – Richard & Caroline Alter – 1000 Taylors Lane – Evans Associates Environmental Consulting, Inc. – Development of a 3-lot subdivision. One of the proposed lots contains an existing single family residence (**No new material received – Table**)

Chairman Birman noted that the first order of business, Evans Associates, has not submitted any new materials for the past six months and requested that the Deputy Clerk of the Village contact the applicant and determine if this application should be withdrawn. Mr. Jackson questioned whether the applicant has been contacted previously regarding the possible withdrawal of their application. Chairman Birman stated that he does not believe they have been contacted previously. Mr. Jackson suggested a letter be sent from the Clerk stating that if a new application is not received prior to the next meeting, the application will be withdrawn. Chairman Birman agreed and accepted Mr. Jackson's suggestion as a motion, which was seconded by Mr. Siegel and passed unanimously.

3. Shore Acres Point Corporation – 504 The Parkway – Perimeter Permit and Seawall Maintenance - Daniel S. Natchez and Associates. **Public hearing asked to be adjourned to December Meeting.**

Chairman Birman noted that the Commission had been contacted by the applicant, Mr. Natchez, who requested this application be adjourned until the December meeting. A motion was made by Mr. Jackson, Seconded by Mr. Siegel and passed unanimously.

4. Al Noletti – Nolles Ridge Subdivision – 800 Fenimore Road – Proposed Seven Lot Subdivision which includes one conservation lot and six buildable lots; includes an access road, utilities, stormwater pond and retaining walls – Hahn Engineering. **Coastal Consistency Certification**

Mr. Jackson recused himself from hearing this application since his wife's uncle is the applicant and Mr. Jackson decided to leave the room during the hearing.

Mr. Jim Haan, Haan Engineering, presented himself to the Board. Mr. Haan stated that there were two issues from the previous meeting which he would like to address:

There were items which were not sent to the Commission from the Village Board; one was a signed SEQR form and the other was something from the Building Department. Mr. Siegel requested more specifics from the applicant. Mr. Haan stated that the signed SEQR form had not been received. Mr. Furey presented a signed SEQR Long Form Environmental Assessment form signed by Mr. Galvin.

Mr. Weiner pointed out the fact that it is unacceptable and unreasonable for anyone to be expected to review and scrutinize materials which are presented at the last minute prior to the hearing. Mr. Weiner stated that the hearing is invalid due to the late presentation of materials. Mr. Haan pointed out that the SEQR form had been signed by Mr. Galvin in January, 2010. Mr. Weiner stated that has nothing to do with the delay. Mr. Haan stated that he was unaware that the Village did not forward the materials to the Harbor Commission.

Chairman Birman reminded the Commission that their job under the LWRP was to do a coastal consistency review within 30 days of receipt of the complete CAF. The issue of the 30 day window was discussed. The CAF in hand is now dated November 15, 2010. Mr. John Winter explained that he believes the application was complete upon its presentation to the Zoning Board. Mr. Weiner disagreed and stated that the Harbor

Commission would determine whether or not an application is complete. Chairman Birman questioned whether the discussion could be continued this evening and have a vote rendered. Mr. Haan stated that he would rather delay the hearing and allow the Commission more time to review the materials rather than have a vote made in haste.

Chairman Birman questioned the Board as to whether or not the Board needed more time to review the newly received materials. Mr. Bilotta questioned Mr. Furey as to whether or not he has reviewed the newly received materials. Mr. Furey responded that he had reviewed them in detail. Mr. Furey explained that the copy which the Commission received at the last meeting did not contain a signature, and the document presented this evening is the exact same document, however, it does contain a signature. Ms. Schneider requested the vote be delayed until the next meeting in order to review the materials. Mr. Weiner stated that the EAF was not reviewed in detail. Mr. Bilotta suggested putting this application over for another month.

Chairman Birman suggested a motion be made to accept the materials received this evening and make a consistency determination at the December meeting. Mr. Sleeper stated that a full review has already taken place and that a vote should take place at this time. Chairman Bilotta agreed, however, he did not believe a full review has taken place. Mr. Weiner stated he is unsure as to the completion of the application.

Mr. Haan requested consideration be given to the process which has already taken place. A very strenuous review has already taken place. Mr. Haan stated that he believes this application is complete.

Chairman Birman polled the Commission to determine who would like to consider this application complete and move forward with the vote. Chairman Birman, Mr. Bilotta and Mr. Carey agreed; Mr. Siegel, Mr. Weiner and Ms. Schneider disagreed. Chairman Birman explained that his own experience is being weighed in his mind since it is important that the entire Commission feel comfortable with the completeness of the application.

Mr. Nolletti presented himself to the Board. Mr. Nolletti stated that he believes there has been ample time to review the materials, however, he is willing to wait another month but feels that the Board is intentionally lingering on this application. Chairman Birman expressed his disappointment that an applicant believes the Board is intentionally lingering on this application.

Mr. Haan stated that Mr. Galvin will be leaving the Planning Board in December and he would like this to be approved prior to Mr. Galvin's departure from the Board. Mr. Weiner stated that entire approval process has been done backwards. The Consistency Review with the LWRP by the Harbor Commission should have been done first and Mr. Weiner did not want to be pressured as a result. Mr. Furey disagreed with Mr. Weiner and stated that the first thing to be done is a SEQR review, for which the Planning Board is the lead agency and this was properly done in that order. Mr. Weiner stated that, regardless, the Consistency Review should have followed the SEQR review. Mr. Furey stated that until the Stormwater Pollution Prevention Plan was finalized and in a state where it could actually be reviewed, this application would have been deemed incomplete and continually put over. Mr. Weiner reminded Mr. Furey that he was present with Mr. McCaffrey who stated that that level of detail was not required in order to do a Consistency Review for the LWRP.

Chairman Birman stated that the above issue should be part of the LWRP review and again questioned the Board as to their desire to adjourn this hearing until December for continued review for Coastal Consistency. Mr. Weiner stated that since there are Federal permits involved, there is a Department of State consistency review required. Chairman Birman stated that he understood that the DOS would do their review on their own time, not in conjunction with the Harbor Commission.

Mr. Weiner made a motion to adjourn the hearing and review the application at the December meeting, provided the application is complete. Seconded by Mr. Siegel and passed by a vote of 5-1 with Mr. Carey voting nay.

Mr. Jackson returned to the room at 8:07 p.m.

5. Mamaroneck Beach and Yacht Club – 700 South Barry Avenue – Perimeter Permit. Public Hearing (Continuation)

The Board adjourned at 8:08 p.m. for an Executive Session to discuss pending litigation regarding the Mamaroneck Beach and Yacht Club. Mr. Weiner questioned whether the Executive Session would be in regards to the Perimeter Permit or the Seasonal Housing. Chairman Birman mentioned that there is a notice of claim against the Commission, therefore, the Executive Session will address both issues.

A motion was made by Mr. Siegel to adjourn to Executive Session to address pending litigation. Seconded by Mr. Sleeper and passed unanimously.

The Board returned from Executive Session at 8:17 p.m.

Mr. Weiner recused himself from the hearing and left the room.

Chairman Birman mentioned that some progress had been made between the Village and applicant towards an amicable agreement.

Atty. Paul Noto, 650 Halstead, Mamaroneck, NY, for the applicant, Mamaroneck Beach and Yacht Club presented himself to the Board. Atty. Noto mentioned that three meetings have taken place to discuss this application, which was filed in August, 2010. At the end of the last meeting, the Board advised the parties involved to communicate between themselves regarding the perimeter line closest to the Golub property. Atty's Kass and Noto did have an amicable discussion and it was decided at that time it was agreed that the application would be amended to reflect the recommendations from Mr. Furey which would bring the perimeter line inside the alleged **red** bearing line of Mr. Golub and two fingers would be added to the dock in order not to lose any dock space and the Club has made a conscious decision to make this work. Atty. Noto believes that this should solve the problem since Mamaroneck Beach and Yacht Club is not longer allegedly encroaching on Mr. Golub's side and the permit is well within the Club's lease agreement from the State and from a navigational standpoint, it works for the Club.

Atty. Noto requested the Board's approval for a perimeter permit based upon the above-mentioned concessions.

Chairman Birman and the Board reviewed drawing P-1 and P-1A, dated 11/4/10 as submitted by Mr. Furey. Mr. Furey reminded the Board that at the October meeting, discussion ensued regarding maintaining the offset from the common fairway past the marina at 20 feet instead of 10 feet and also, relative to being able to allow the fingers added to the southern most dock, reducing the offset from the rock reef from 80 feet to 60 feet. Mr. Furey stated that he did prepare another drawing based on Mr. Natchez's sketch regarding the proposed perimeter. It is labeled CD-1 and is a comparison drawing. The Board reviewed the comparison drawing.

Mr. Natchez presented himself to the Board and stated that they had not yet received the CD-1 drawing as of 5:00 p.m. yesterday and it had not been looked at until this morning and stated that the drawing did not satisfy all of his concerns. Chairman Birman suggested Mr. Natchez review the drawing at this time.

Mr. Natchez stated that the Commission has not yet had a chance to discuss drawing CD-1 and, therefore, cannot respond to all of his concerns. The following issues were brought up by Mr. Natchez:

- 1) The question of whether or not the application was valid and complete. Mr. Natchez stated that the application has not been stamped in by the Building Department. It was, apparently, submitted through the Clerk Treasurer's Office. Mr. Natchez also stated that there is an abundance of information which was received this evening and Mr. Natchez urged the Board not to make a determination in haste.

Mr. John Winter, Building Inspector, presented himself to the Board and explained that the application came through the Village Clerk's office to him and not directly to him, as the code dictates. It was reviewed by Mr. Winter and then referred to the Board. Mr. Natchez stated that many of the requirements were not included on the original application. The new drawing which was submitted this evening is a complete application according to Mr. Natchez. Chairman Birman questioned the necessity of the application argument since there is a suggested plan, namely drawing CD-1, which was developed for the applicant with the assistance of Mr. Furey. Mr. Natchez stated that the application has not come directly from the applicant, but, rather, through the Village with Mr. Furey's assistance.

- 2) Mr. Natchez stated that the first issue has to do with littoral rights. Mr. Natchez expressed his delight that the applicant agreed to the common property line as extended and confirmed with Mr. Furey that the CD-1 drawing reflects the common property line which extends from the upland between the Golub property and Mamaroneck Beach and Yacht. Mr. Furey confirmed this and specifically stated it was North 55, 26, 30 West.
- 3) Another issue has to do with the use of the rock reef which has been removed without permits in 2006. Mr. Natchez stated that in 2006, the reef as shown on the pictures distributed to the Board, was removed from the Southwest corner. It was very shallow water prior to the rock reef removal. Mr. Natchez referred to the photographs, particularly the aerial photos, which showed the reef in relation to the docking facilities. Mr. Natchez stated that the aerial view confirms that the average depths are below mean low water, with a 2 ft. differential. Therefore, the boats hit the reef and the reef should be removed to eliminate that problem. This was reported to the DEC who issued a Notice of Violation and Mamaroneck Beach and Yacht paid a fine.

Chairman Birman stated that the process must have been completed if a fine was enacted and questioned the relevance of Mr. Natchez's argument. Mr. Natchez stated that the process was done illegally. Mr. Natchez questioned the Commission for rewarding illegal activity. Mr. Bilotta stated that the application at hand is for a perimeter permit and failed to understand the reason behind Mr. Natchez's argument. Chairman Birman stated that the applicant has come before the Board in good faith.

- 4) Mr. Natchez stated the problem with Keith's drawings, is that there is no indication of the entranceway and soundings and the issues of navigation. On the "T" floats can accommodate 90 – 100 ft. boats, however, larger boats frequent this area and there is not enough room. Mr. Natchez suggests changing the line with a 20 ft. offset from the south and a 25 ft offset from the middle. There will then be ample room for larger boats. Mr. Furey stated that the Harbor Master does not believe there are any navigational issues with the proposed CD-1 drawing. Mr. Furey stated that the width of the channel is 6-9 ft.

Mr. Siegel referred to the Design Guide by the Army Corp. of Engineers and it states that the width of the channels must be much larger than the 6-9 feet which is being proposed this evening and questioned whether there could be potential litigation for the Village if there were to be an accident. Mr. Furey stated the channel is not being approved tonight, that it does exist, however, the issue this

evening regards the offset from the channel of the marina. Mr. Siegel stated that the Design Guide states that the channel width is determined by the size of the boats in the marina.

Mr. Natchez stated that the perimeter line memorializes two different channel widths; on the south side and on the east side along the breakwater. There is 80 ft. on the south and 50-60 ft. on the east. Mr. Natchez suggested the 50 ft., since the boats need to turn to get out, is deficient. It should be wider or a minimum of 60 ft.. Mr. Natchez stated that once inside the breakwater and the reef, the boats need to be turned. If there is any wind, the boats will need additional room to navigate.

Mr. Natchez stated that the lease with the OGS is for 54 slips and he is requesting, based upon what the Board currently has, there are actually 63 slips and also stated that once a perimeter is established, the slips can be reconfigured.

Atty. Steven Kass, representing Mr. Golub and Mr. Natchez, mentioned that Mr. Golub is very pleased with Mr. Furey's drawing and the applicant's agreement with this drawing. Mr. Kass also mentioned that Mr. Golub had not, previously, seen the bulge. Mr. Golub has continuing concerns for safety since large vessels may pose some risk and recommends that the bulge not be carried out as far as it currently is. Additionally, with regard to the number of slips, Mr. Kass does not think offset compensation should be granted to the applicant.

Mr. Noto stated that this application has been ongoing since May, 2010. The application was filed in August, 2010. There was never any notification of problems with the application. With regard to the rock reef, this issue is fictitious according to Mr. Noto. Mr. Noto does not feel that anything will satisfy Mr. Natchez.

Mr. Noto, therefore, stated that his application process has been completed at this time and requested a decision be made and the process be finalized this evening based on Mr. Furey's latest drawing.

Mr. Siegel stated that he finds it strange that the applicant has not submitted an hydrographic data. Mr. Natchez's hydrographic data indicates that there is .9 ft. of water and .3 ft. of water (at mean low water) for the docking of a boat and requested Mr. Noto state whether he felt this was a safe level of water. Mr. Furey stated that there was hydrographic data on all of the drawings which came from two different sources; one from Mr. Natchez and one from Mr. Ludwig of Ocean Coastal. Mr. Furey explained the drawings to Mr. Siegel.

Chairman Birman requested Mr. Noto explain the safety issues. Mr. Noto stated that the Harbor Master has stated the area to be safe. Mr. Furey dismissed himself to obtain a copy of the Harbor Master's e-mail of approval.

Ms. Schneider (inaudible). Mr. Hoeger responded that the DEC had responded to her query.

Mr. Michael Ludwig presented himself to the Board. Mr. Ludwig stated that the DEC currently has no water depth criteria for the placement of a structure. Mr. Ludwig has spoken to the DEC and looked at the authorized permits for Dock A. The DEC would like the structures to stay off of the dock. Mr. Ludwig stated that the Yacht Club would suffer a loss if the docks were to hit against the rock reef. Mr. Hoeger stated that a dock scraping against the rocks would destroy the habitat living on the docks.

Ms. Schneider stated that in viewing the proposed perimeter line there is a split between the dock and the reef of approximately 2 ft. and questioned whether there was any benefit to increasing this distance. Mr. Hoeger stated the distance does not matter as long as the dock does not touch the rock.

Mr. Ludwig mentioned there is also a large breakwater which houses the same type of habitat.

Mr. Furey presented an e-mail from the Harbor Master dated Tuesday, after reviewing the drawings, which stated that “I do not see any problems with what they have now with one dock to be removed.” Chairman Birman stated he was satisfied with that e-mail.

Mr. Ludwig explained to Mr. Siegel that the only addition will take place on the Long Island end of a dock. Everything else remains as currently exists.

Mr. Kass again stated his belief that regardless of the Harbor Master’s e-mail, the bulge is unnecessary. Chairman Birman stated his belief to agree with the Harbor Master. Mr. Ludwig responded that the navigational fairway that is there is approximately 50 ft. wide and was dredged in partnership with the three principal property owners within the cove. The 50 ft. width was believed to be appropriate. At the time of the dredging, since the water depth off shore rises very slowly and the boats approached at an angle. Now that they need to turn the corner, the Corp of Engineers and others stated that it must be 3 times the navigational water depth, offset back from the side of the channel and also mentioned that Mr. Natchez was the one who generated the channel knowing what the surrounding neighbors needed and the channel was dredged in partnership with Mamaroneck Beach & Yacht Club. By adding the 20 ft. offset, the channel width is increased by approximately 40%.

Mr. Siegel questioned the size of the largest boat in the Yacht Club of Mr. Ludwig. Mr. Ludwig stated that most are 50 ft. and below with the occasional transient boat being 52+ ft.

Mr. Natchez made the suggestion that a meeting be held with Mr. Furey, the Harbor Master and the Mamaroneck Beach and Yacht Club with the detailed hydrographic information and stated that a resolution could be made in 20-30 minutes. Mr. Noto strongly disagreed.

Mr. Natchez stated that a suggestion was received by the Board from the Village Engineer for the first time at this meeting and suggested a decision not be made in haste.

Mr. Noto stated that the applicant has accommodated Mr. Golub and again requested the hearing not be adjourned.

Mr. Joseph Russo, Harbor Master, stated he received a copy of the perimeter permit yesterday and expressed his concerns to Mr. Furey. Drawing P-1A was viewed and Mr. Russo stated that the area by the “T” dock could pose a problem for larger boats since it is a little tight, however, he left the decision up to the Board. Chairman Birman requested if large boats would need to be placed by the “T” dock.

Ms. Rosenshine, representing the Mamaroneck Beach & Yacht Club, stated that the “T” dock had been reviewed very, very carefully and they did not think it would present a problem for larger boats. She stated she is not going to say a 90 ft. boat will never be there, however, it would be very rare. She stated that when the marina was designed it preceded the HZCM and she stated the Yacht Club is comfortable with the proposal as it now stands.

Mr. Siegel stated that the only two interested parties are Mr. Golub and Mr. Flick and they are the ones who will be impacted by this proposal.

Chairman Birman mentioned that the Board should either move forward on the agreement which has been proposed by the Village and the Consulting Engineer or make their own proposal.

Mr. Bilotta stated that the new proposal (CD-1) seems better than the proposals which had previously been submitted and stated that he is happy with tonight’s proposal.

Mr. Sleeper questioned Mr. Russo on any recourse he might have if there are multiple accidents as a result of tonight's potential approval. Mr. Russo stated that it is out of his hands once the Board votes.

Atty. Derrico stated Mr. Sleeper's concern is warranted and reminded the Board that the permits are renewable and Mr. Russo's opinion will be sought at renewal time.

Chairman Birman polled the Board on their desire to draft their own perimeter or their willingness to approve Mr. Furey's perimeter line. Chairman Birman did mention that conditions could be added to the proposal, if so desired. Mr. Jackson confirmed with Mr. Noto that the proposal at hand is the applicant's final proposal. Chairman Birman suggested that, in recognition of the fact that there may be safety issues regarding large boats at the "T" dock, a condition may be added to the proposal that Mamaroneck Beach & Yacht Club communicate with the neighbors to avoid any potential safety issues and that the Club's members be mindful of the narrow width of the breakwater and act in a safe manner. Ms. Schneider requested a condition be added stating that the rock reef shall not be hit by the dock or boats, disturbing the habitat.

Mr. Siegel questioned the finger on the southwest portion of the dock in red on diagram P-1A and questioned whether this finger should be shortened to accommodate smaller boats that would increase the turning radius available for boats and diminish the size of the boat which could dock there, however, it would not be a significant diminution in the abilities of the Mamaroneck Beach & Yacht Club to generate income. Mr. Jackson stated that would change the perimeter. Mr. Furey stated that would require a change in the perimeter and a jog would need to be put in the perimeter. Mr. Siegel questioned if this was difficult to obtain. Mr. Furey questioned Mr. Russo on whether this would make a significant difference. Mr. Russo stated he did not think shortening the last finger would accommodate the situation.

Chairman Birman requested the public hearing now be closed. Mr. Sleeper made a motion to close the public hearing, seconded by Mr. Jackson and passed unanimously.

Atty. Derrico mentioned that three actions were going to be required. One would be to note that this is a Type II Action under SEQRA, therefore, no further action is required; two, a consistency resolution will be made or a vote for how the project is deemed, i.e., consistent, inconsistent or not inconsistent and, three, provided everything passes, a perimeter permit will be issued since the Board is the permitting authority on this application.

Mr. Siegel questioned whether any Commission members can discuss concerns among themselves. Mr. Weiner stated that the motions should be addressed as they are made.

Mr. Jackson made a motion to deem this action a Type II under SEQRA and that no further action needs to be taken. Seconded by Mr. Sleeper and no discussion was undertaken and the motion was passed unanimously.

Mr. Jackson made a motion stating that the application was consistent with the goals and requirements of the LWRP, seconded by Mr. Bilotta, with no discussion undertaken and passed unanimously.

Chairman Birman explained that he is putting forth a resolution for the issuance of a perimeter permit pursuant to Section 240-24, Sub A of the Village Code to the Mamaroneck Beach & Yacht Club with respect to drawing P-1A by Keith Fury, Village Engineer Consultant, dated 11/4/10, drawing number 4 of 4, with the following four conditions:

- 1) The applicant will communicate with its neighbors as to any boats that will be docked at the middle dock and any safety concerns that might arise from the docking of boats at that location.

- 2) The applicant will abide by all reasonable safety concerns as raised by the Harbor Master inside the area of the breakwater, outside of the perimeter.
- 3) No boat or dock shall make physical contact with the rock reef.
- 4) The water be measured at mean low water by an authority in the Village to be provided to the Commission by the applicant.

Mr. Jackson stated that he did not want to see any boats which will exceed the length of the “T” dock. Mr. Siegel agreed. Chairman Birman stated that only safety issues could be addressed by the Board.

The motion was seconded by Mr. Bilotta, with no discussion undertaken, and passed unanimously.

6. Mamaroneck Beach & Yacht Club – 555 S. Barry Avenue – Seasonal Housing and other renovations
Paul J. Noto. **Coastal Consistency Certification**

Chairman Birman stated that Mr. Weiner has rejoined the Board after his recusal from the Mamaroneck Boat & Yacht Club perimeter permit hearing and Mr. Weiner explained his reasoning was that he had fallen into a cleverly laid trap that he had walked in to for the perimeter permit hearing. As far as the seasonal housing hearing, there were a number of issues which made him unsure of what to do.

One was the issue of which corporations are applying and whether they actually exist or not and what corporations are paying the various consultants. Therefore, at this point, Mr. Weiner has not reached a decision as to whether or not to recuse himself but stated he intends to fully participate in these hearings this evening and, perhaps, by the next meeting a resolution can be made as to whether or not he should recuse himself. Apparently, the Village has a settlement with non-existent corporations.

Atty. Derrico questioned Mr. Weiner as to whether or not he intended to recuse himself from this application and he replied that he did not intend to recuse himself. Atty. Derrico then stated that if Mr. Weiner had an issue on recusal that he phone her ahead of time. She also stated that the issues which were previously addressed still exist and that the Ethics Board had given their opinion, which should be respected. Mr. Weiner stated that although he appreciates Atty. Derrico’s comments, she was not in the room during the time of his first recusal this evening and suggested she might like to leave the room at this time, also. Atty. Derrico defended herself by stating that she resented his insinuation. Mr. Weiner stated that he is the only one who can decide upon his recusal or non-recusal and only he can judge whether he will or will not be biased.

Chairman Birman was not sure whether only Mr. Weiner can make the recusal decision since the Ethics Board decided that Mr. Weiner should not be permitted to un-recuse himself. The question now becomes whether the Board can take his comments under advisement during deliberations and whether or not his vote will count.

Ms. Siegel questioned Atty. Derrico as to the fact that since Mr. Weiner will be deliberating this evening, will this have any bearing on the legal process. Atty. Derrico explained that the purpose of recusal and leaving the dais is so as not to color the Board with any potential prejudices. The recusal issue was discussed previously and the grounds for so doing could be debated, however, the Village Code clearly states under 21-4 from Standards of Conduct that a Village officer or employee or board or committee member shall promptly recuse him or herself from acting on a matter before the Village when acting on the matter or failing to act on the matter may benefit the person financially or otherwise or give the reasonable appearance of a conflict of interest or impropriety.

Atty. Derrico stated that it is her position that the recusal be continued in light of the decision from the Ethics Board and suggested that Mr. Weiner comment as a lay person from the audience.

Chairman Birman stated he did not want the recusal issue to become a spectacle in any way but requested Mr. Weiner not vote this evening.

Mr. Weiner requested the discussion continue and stated that the recusal issue is up to himself and he also requested the discussion of the LWRP proceed.

Atty. Noto, representative for Mamaroneck Beach & Yacht Club stated that he opposes the de-recusal.

Atty. Noto 650 Halstead Avenue, representative for Mamaroneck Beach & Yacht Club, presented a copy of Mr. Weiner's letter to the Ethics Board, along with the opinion of the Ethics Board, to the Commission, recommending Mr. Weiner's recusal.

Atty. Noto gave an overview of the proposal which is an application under 240-30 of the Village Code for a consistency determination for a renovation project at the Mamaroneck Beach & Yacht Club which includes a number of renovations to the cabanas, seasonal residences and other improvements.

The application was submitted on October 7, 2010 to the Board and the applicant appeared at the October 20, 2010 meeting and at that time advised the Board that the plan would be modified pursuant to Planning Board suggestions where site plan review is currently taking place. The Commission suggested an adjournment which was consented to, since the plans were being changed. On October 22, 2010 the new plans were submitted to the Building Department and a referring letter was sent to the Chair indicating that they were so filed, and they had been deemed complete by the Commission.

This evening, a consistency determination is being sought for the following: The project includes 23 seasonal units; 19 free-standing and 4 in the existing club house. The 19 units are divided with 11 on the beach side of the property and 8 on the great lawn side. A recreation building, a yacht master's building, new cabanas and lockers will be added, with retention and renovation of the existing cabana buildings and reconfiguration of the existing pool. All of the uses on the site are accessory to the principal use of the site as a Club. This property is zoned as marine recreation and is a single use zone. There is no other use permitted in this zoning district. This Club has been operating as a Club since 1955 and continues to do so and these renovations will enhance and improve the Club facility, which is in need of an upgrade.

In the submission package, the applicable policies of the LWRP have been identified which Mr. Noto believes are relevant and consistency has been met in all ways. Mr. Noto referenced two important court decisions; one dated 1/24/07 which adjudicated that the issue of accessory uses being appropriate under the existing Village Zoning Code. Under the cases, the underlying litigation resolves the issue of which zoning is applicable and it was determined that that zoning was pre-2006. Therefore, any zoning modifications enacted after 2006 are not applicable to this site.

Since the Club, by its very nature and its existing utilization, which is a club facility, is consistent with the LWRP by definition, the accessory uses are therefore consistent with the existing use of the Club. A particular use of a club site cannot be separated.

With regard to the lateness of submitting documentation to the Commission, Mr. Noto mentioned that an e-mail was received by him at 5:00 p.m. from Mr. Steven Wrestler, of New York State, and Mr. Noto reviewed Mr. Wrestler's comments, which Mr. Noto felt were very generic in nature and totally inappropriate with regard to seasonal housing.

Chairman Birman reminded Mr. Noto that the responsibility of the Commission is to determine consistency under the LWRP and that Mr. Noto is to frame his application within the policies of the LWRP.

Atty. Derrico mentioned the issue of validity of the corporations named in the lawsuit, as previously referred to by Mr. Weiner and mentioned that this statement was made at a previous meeting of either the Planning or Trustees Boards and she wished to address this concern. Atty. Derrico stated that her office immediately sent correspondence to Steve Silverberg and Chris Fusco, the two Village attorney's, who responded that, after checking with the Department of State, all corporations who are named in the lawsuits are in fact New York State corporations, therefore, this is not an issue.

Additionally, with respect the issue of the ½ acre which was raised with regard to ownership, the parties have submitted correspondence which is a last owner search conducted by Benchmark Research, LLC and this correspondence indicates that the rightful owners of this parcel are Mamaroneck Beach & Yacht Club. The validity of the document was confirmed.

Thirdly, a memorandum received from the law offices of Silverberg and Zelantis, was submitted to the Commission which addressed the issue of the Commission's requirements and obligations to confirm ownership.

Mr. Greg DeAngelis, architect representing Mamaroneck Beach & Yacht Club, presented himself to the Board and gave a brief overview of the proposed project.

Atty. Noto reviewed the following policies as referred to in his October 6, 2010 submission:

Policy #1: Restore, revitalize, redevelop deteriorated underutilized water front areas. This project will allow the Club to renovate and upgrade its existing physical plant. The current facilities are in need of upgrade and renovation. The alterations will be a significant improvement with minimal environmental impact with renovations of the cabanas and the construction/renovation of the pool areas and the children's areas and the recreation building.

Chairman Birman stated that the term "compatible" is in question since policy #1 presumes that all of these uses which will be restored, revitalized and redeveloped are actually compatible with the waterfront. Some individuals feel that seasonal housing this close to the waterfront is not a compatible use.

Atty. Noto responded that the seasonal housing is only one aspect of the total project. Also, housing for members and guests is not incompatible for a Club since it is a Club use and the zoning code allows for this. Additionally, Atty. Noto stated that LWRP contains proposed legislation to implement the LWRP and permits for seasonal housing for members and guests and employees of the Club. Therefore, the proposal is consistent since it tracks the LWRP proposed legislation, the actual legislation of the Village adopted in 1986 and the policies. The clubs are very important to the waterfront for economic and recreational reasons. The Village has already made the determination of consistency by virtue of the LWRP and the legislation and the creation of the MR district. Since a zoning variance is not being requested, this is a totally compliant application, according to Atty. Noto.

Policy #2: Facilitating the starting of water dependent uses and facilities under adjacent and coastal water. Atty. Noto stated that since the Club is a water dependent use, the facilities are adjacent to the coastal waters and the renovations will allow the club greater flexibility to improve its plant and maintain viability and attract new membership.

Chairman Birman questioned how seasonal housing was water dependent and stated he believed it to be water related.

Atty. Noto responded by stating that the Club is a water dependent use and the seasonal housing is an accessory use to the principal use of the Club. Everything which goes on at the club is an accessory to a primary use of the Club, which, by definition, is consistent with the LWRP.

Policy #4: Strengthening the economic base of the smaller harbors by encouraging the development and enhancement of traditional uses and activities which have provided areas with unique maritime identity.

Atty. Noto stated that the property is a yacht club and is limited in its land use to provide only club related activities. These improvement will enhance and improve the club related functions in order so it can get continuous traditional activities which will provide waterfront recreation and water dependent uses of the harbor.

Policy #11: Buildings and other structures with be cited in the coastal area to minimize damage to property and the endangering of human lives caused by flooding and erosion.

Atty. Noto stated that this project will continue to minimize damage to property and the endangering of human lives caused by flooding and erosion and will be FEMA compliant.

Policy #18: To safeguard the vital economic, social and environmental interests of the State and the Village. The proposed major actions in the coastal area must give full consideration to those interests and to the safeguards which the State and Village have enacted to protect valuable coastal resource areas.

Atty. Noto stated that he believes this project is not a major action and is compliant with the Village open space requirements, as it is zoning compliant and the floor area ratios. It is a very restrictive zone.

Policy #22: Development when located adjacent to the shore shall provide for water related recreation as a multiple use wherever such recreational use is appropriate in light of anticipated demand for such activities and the primary purpose of the development.

Atty. Noto stated that in the Village this applies to the redevelopment of waterfront property. The renovations are consistent in that the Club is used for water related recreation, which is by definition a water dependent use; the proposed recreational uses are appropriate in light of the demand for such activities and the increase in membership which they hope to generate by completing these renovations.

Policy #23: To protect, enhance and restore structures, districts, areas or sites which are significant in the History, architecture or archeology of the culture of the Village of Mamaroneck.

Atty. Noto stated that the proposed renovations will be consist with and maintain the architectural design and character which was originally used by the architect Sanford White. These structures will maintain the unique maritime character which is important to the Coastline of the Village.

Policy #33: Best management practices must be used.

Mr. Noto stated that this project must be and will be compliant with New York State Stormwater Pollution SWPP best management practices and will obviously will need to be approved by the Village Engineer prior to any building permits or site plan approvals.

Policy #37: Same response as to policy #33.

Policy #39: The transport, storage or treatment of disposable solid wastes within coastal areas will be conducted in a manner as to protect ground water and surface water.

Mr. Noto stated that he did not anticipate transporting or storing any solid or hazardous wastes.

Policy #44: To preserve and protect tidal and freshwater wetlands and preserve the benefits from these areas.

Mr. Noto stated that these renovations will not impact tidal and freshwater and wetlands and will protect same. Best management practices will be utilized to ensure the protection of the harbor and freshwater wetlands.

Mr. Noto stated that he does not believe the remaining policies are applicable to this project. He also stated that he believe the above-mentioned policies are consistent with the project.

Atty. Steven Kass, counsel for the Mr. Golub and **Sippola**, presented himself to the Commission and stated that he challenges the basic premise of the applicant through Mr. Noto's presentation and written submission which underlies his entire argument, which is that we are a water dependent use as a club and that we comply with the LWRP as a club, that everything is a ancillary use permitted by for zoning and, therefore, once it is a permitted ancillary use it is by definition consistent with the LWRP. Atty. Kass stated that the argument is simply wrong. It is true that the Supreme Court did hold that this project was consistent with the zoning, in the sense of seasonal uses being permitted ancillary uses, however, they are not zoning compliant in terms of the floor area coverage. Atty. Kass believes that the so called **Bud Grant** did not include his property. He does not think the applicant has title to the ½ acre and he does not believe that the Harbor Commission or the Zoning Board should be deciding this issue. A process is in place in Town to identify what the proper parcel is to be considered in application, which is the tax map or the filed subdivision plan. If these documents are viewed, the ½ acre is not included. Therefore, this application is not a zoning compliant proposal. However, the question of zoning compliance for an ancillary use is completely different. It is independent and is an overlay issue for zoning.

Atty. Kass stated that several years ago the Commission expressed grave concerns regarding the consistency of the applicant's then application with the LWRP. A final determination was never rendered, however, the concern that the plan was not consistent with LWRP. In the old plan, the applicant proposed 32 units of which 12 were to be interior and 20 were to be exterior. The 12 interior units were to be in a fully renovated clubhouse. Additionally, a proposal included a new marina and 20 seasonal units which were intended to finance the major clubhouse renovation, a new pool, new cabanas and a variety of other improvements.

Since that time, the applicant has stripped away, bit by bit, all of the water dependent benefits and have left 95% of the seasonal residential units. The clubhouse, as proposed, will no have only 4 units and they are not going to rebuild it in the same way. The drawing are very different from the originals. The new marina has now been dropped.

Mr. Bilotta questioned Mr. Kass as to whether he prefers the old application. Mr. Kass stated that the old doubts of the Commission last time should be magnified by this application, which is even more inconsistent. Mr. Kass stated that there will now be a condominium development on the waterfront, according to the new plan. Mr. Kass urged the Commission to keep in mind that the LWRP clearly distinguishes between water dependent uses, such as the marina and the beach and the clubhouse on the water versus water enhanced uses which take additional value to the owners by being near the water.

Chairman Birman reminded Mr. Kass that the proposed units will be seasonal housing and not condominiums. Mr. Kass stated that the units will be present 12 months of the year, they have changed the extent of the season from 6 to 8 months occupancy; the occupants are no longer restricted to members only, they can also be guests, and they can be leased or rented but other than that they will function as condominium units. The building will be three stories high and 240 feet long. It will look like a shorefront condo facility.

Ms. Lisa Liquori, Fine Arts & Sciences, representing Shore Acres Property Owners Association, Sippoa, Bennett, Golub, presented herself to the Commission and went through the policies as follows.

In reviewing the site plan, Ms. Liquori stated that it is her professional opinion that it is not consistent with the LWRP or the Harbor Management Plan, specifically regarding the Development Policies, #1, #2 and #4; the Significant Habitat and Wetlands Policies, #7, #7A, #8 and #44; the Public Access and Recreation Policies, #9, #20 and #21; The Historic Resources Policy, #23 and the Scenic Resource Policy, #25.

Policy #1: Ms. Liquori stated that the site plans fails to meet the following standards: Priority is to be given to uses which are dependent on a location adjacent to the water. Additionally, the action should enhance existing and anticipated uses which lead to development which is compatible with the character of the area. Another standard is the action should improve adjacent and upland views of the water.

Ms. Liquori stated that while some of the existing and proposed uses clearly require waterfront site to exist, including the marina, the beach cabanas and the boat storage, the proposed seasonal residences do not require a waterfront site. The Mamaroneck Zoning Code allows seasonal residences as an accessory use to a beach and yacht club but, as proposed, residential units are water enhanced rather than water dependent components of the Club and are proposed to occupy 48% of the floor area of all of the buildings on the site.

The team is not arguing that all of the residential units or free-standing residential units proposed For the site should be denied. Alternative layouts including a lesser number of residential units Have been submitted and are consistent with the LWRP and provide an economic return to the Club.

Chairman Birman stated that Mr. Noto had pointed to the provision to the local law which specifically states that a Club should be allowed to have and develop residences for caretakers and staff, seasonal residences for club member and guests and questioned Ms. Liquori as to the meaning of this provision.

Ms. Liquori stated that her team is not saying that they can't have any free standing buildings or seasonal residences, however, this particular proposal, with 48% of the floor area of all of the buildings on this site being residences is inconsistent. It should be less than almost 50% of the total use.

Ms. Liquori continued to state that, as proposed, the three-story accessory buildings are neither compatible with the character of the area nor with the Mamaroneck Beach & Yacht Club site itself. The proposed beach seasonal residential building is configured as a three-story, 230 ft. long wall of buildings with some of the roofs rising to 9-1/2 feet and some of them within 75 feet of the Long Island Sound will detract from the character of the site as viewed from

the waterfront.

The architectural plans were scrutinized by Ms. Liquori. Ms. Liquori also criticized the proposed housing as taking away from the delicate balance of mixed use buildings at the Club.

Policy #2: There is a finite amount of waterfront property in the Village and all of it has already been developed for specific uses. With the current demand for waterfront property, there will be pressure for redevelopment. Since seasonal housing is not water dependent but, rather, water enhanced, they are allowed as an accessory use for a Club which does not make it a water dependent use.

Regarding the Department of State Division of Coastal Resources letter dated March 23, 2007, Ms. Liquori read an excerpt which states that the Mamaroneck Village LWRP never envisioned that seasonal residences in the MR Zone would be anything other than guest rooms as existed at the other yacht clubs at the time the LWRP was adopted and stated that this was her position.

Policy #4: Development and enhancement of the Village's maritime uses and activities can only be accomplished if local land use controls are implemented to prevent the displacement of water dependent uses by water enhanced uses.

Ms. Liquori stated that some of the land that the site plan has proposed to use, approximately ½ an acre of land for which the Club has not demonstrated it owns, and if the ½ acre is subtracted, then this plan exceeds the maximum code floor area ratio. However, even if the Club does demonstrate it owns this land, the FAR is maxed out by this plan, therefore, these seasonal residences will preclude the addition of any truly water dependent components of the Club which could reasonable be expected to serve and support the Beach & Yacht Club in the future.

Additionally, the proposed seasonal residences will displace land currently used for water Dependent uses. The number and square footage of proposed beach cabanas is proposed to be Reduced by approximately 50% from 20,477 sq. ft. down to 10,444 sq. ft. The area for the Winter boat storage is proposed to be reduced and displaced. The site plan is not consistent with The LWRP Policy #4.

Policies #7, #7A, #8 and #44:

The consistency application for this site plan does not identify the proximity of the project to Otter Creek which continues to be identified as critical habitat.

The parking issue was discussed with the concern for additional paving taking place.

The site plan is not consistent with the LWRP Policies #7, #7A, #8 and #44, according to Ms. Liquori.

Policies #9, #20, and #21:

The protection and expansion of public access to the waterfront.

Ms. Liquori stated that the coastal application which was submitted dismisses these policies

by stating that while the club does provide recreation, it does not provide public access to the waterfront.

Policy #23: The mere fact that the site plan is proposing to restore the clubhouse does not mean it is consistent with the LWRP since the land is directly contiguous to a site that is listed in the Village Historic Code as a historic landmark property and building, 710 Taylor property, also known as the Old Mill and it is one of only 11 protected sites and structures within the Village of Mamaroneck for something along the order of 1% of the total residential lots within The Village.

This Club site is not listed on the local register of historic places; the immediately adjoining property is. The Old Mill property is recognized as a protected site and the residential protected structure is recognized for its architectural qualities. The proposed seasonal housing structure does not preserve this property.

Policy #25: Prevent impairment of scenic resources of statewide or local significance.

Ms. Liquori presented photographs which showed the current views and the proposed changed views.

Mr. Kass took the podium and distributed the statement which Ms. Liquori submitted to the Planning Board last week to the Board. Mr. Kass stated the runoff potential for Harbor Creek is very significant due to the parking situation and there has not been any showing of adequate pollution controls.

Mr. Kass also presented to the Commission, David Helper, architect's, submission which had been given to the Planning Board, a group of alternative plans which he feels will be far more consistent with the LWRP. Copies of Mr. Helper's statement were also presented to the Commission, setting forth his concerns for visibility with the proposed plans and the location of significant bulk along the waterfront.

Chairman Birman questioned why alternative plans needed to be submitted.

Mr. Kass stated that the plans are significant with relation to economics since the Commission is an involved agency for SEQR and among the findings to be made are that among the reasonable alternatives, the matter for which the consistency determination is being made, minimizes or voids adverse environmental impacts to the maximum degree feasible. Additionally, the Planning Board was furnished an economic analysis indicating that a project which does not put 11 units against the property line of Mr. Golub is economically feasible and is far more consistent with the Commission's LWRP policies.

Mr. Kass stated that the proposed plan is a step backwards and many of the policies are violated by the plan and encouraged the Commission to consider the alternative plans.

Mr. Kass gave an overview of the economics of the project and stated that the proposed plans would generate a 13% return and that his project would generate an 8% return which is an ample return and is more consistent with the LWRP.

Mr. Kass presented an affidavit from Michael Finkbeiner, who researched the Benchmark decision, which shows that the Bud Grant does not include the Otter Creek area which is in dispute.

Mr. Kass stated that the question could be definitively determined by either to wait for litigation or look at the tax maps or the filed subdivision plans. Ms. Derrico stated that the taxes on this parcel are paid to the Town of Rye, however, tax maps do sometimes have errors.

Mr. Sven Hoeger, Environmental Consultant, stated that his opinion is that a decision cannot be made on this application's compliance since it does not contain all of the relevant information. The site is bordering Otter Creek as well as **Curstine Cove, Bottonwiser Island, which is mentioned in the LWRP and also the Van Emrich Mill Pond** and these policies must be reviewed very carefully. Consideration should be given to the maximum extent possible of protection with regard to erosion control, sedimentation, fish and wildlife habitat and water quality and pollution. Upon review of the plans, the sediment erosion controls were taken almost directly from the State Stormwater Manual, however, those guidelines are meant for statewide applications and this is a special site.

Mr. Hoeger did not think the developer did not consider the importance of the site when preparing the plans.

Ms. Derrico stated that Mr. Hoeger's comments should be forwarded to the Planning Board by the Commission.

Mr. Sleeper requested closure be completed today since it is now 12:15 a.m. Chairman Birman stated that a vote will need to be taken tonight.

Mr. Noto stated that the last scheduled meeting of the Planning Board for this application is November 29th, therefore, they cannot give final approval without a consistency determination.

A straw pole of the Commission was taken in lieu of a formal vote this evening:

Mr. Sleeper did not think it was Consistent with LWRP at this time but did not want to go into default with relation to the 30 day rule.

Mr. Siegel was troubled about the statements made by the opposing party regarding development on the site and is troubled by the feeling that the judge is pressuring a vote. He preferred to have another hearing since he is now exhausted.

Chairman Birman did not find there was a satisfactory answer with regard to consistency and was uncomfortable with the present proposal and was not sure that any other materials presented at a future meeting would change his mind.

Mr. Weiner's concerns regard Policy #2. The LWRP is designed to limit residential development within the Village since residential development is not public access to the water. The development of the extensive housing within the Mamaroneck Beach & Yacht Club is in his mind residential housing, which is counter to Policy #2. Also, in terms of the Club usage, there is very specific language within the Village Code regarding the usage of Clubs and between 12-14 rooms that can be rented by members, can be used by employees and not specific to any other things. He stated he is not aware of other clubs with multi-story developments. Mr. Weiner stated he did not believe that the current application, as it now stands, is consistent with the LWRP.

Mr. Bilotta felt that there were too many questions to determine consistency at this time and would agree to a special meeting.

Mr. Jackson agreed with Mr. Bilotta and wanted to make sure that the questions were addressed in the draft EIS and would like to adjourn to a special meeting.

Ms. Schneider stated her concerns (inaudible).

Chairman Birman requested Mr. Noto's agreement to the adjournment and ensured that he would not hold the Commission as ineffective and take this as a determination of consistency. Mr. Noto agreed assuming the special meeting were to take place the week of November 29th.

The Commission agreed to hold the special meeting on either December 1st or December 2nd.

Mr. Noto agreed to waive the 30 day rule, which commenced on the 22nd of October, up to and including either December 1st or December 2nd.

Mr. Jackson made a motion to adjourn the Mamaroneck Beach & Yacht Club proceedings, pending the special meeting of either December 1st or December 2nd. Seconded by Mr. Bilotta and passed unanimously.

As far as the previous month's resolutions are concerned, they should be amended to indicate that Mr. Jackson was not present and Mr. Sleeper was present.

ADJOURNMENT

Chairman Birman made a motion to adjourn the meeting at 12:40 p.m. Seconded by Mr. Jackson and passed unanimously.

Minutes prepared by
Lorraine McSpedon