

**MINUTES OF A REGULAR MEETING OF THE HARBOR AND COASTAL ZONE MANAGEMENT COMMISSION OF THE VILLAGE OF MAMARONECK HELD OCTOBER 20, 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. Bert Siegel  
Mr. Cary Sleeper  
Mr. Sven Hoeger, Environmental Consultant  
Mr. Keith Furey, Consulting Engineer  
Ms. Christie Derrico, Esq.

**ABSENT:** Mr. Anthony Weiner  
Mr. Peter Jackson

The meeting was called to order at 7:30 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**)
2. Shore Acres Point Corporation – 504 The Parkway – Perimeter Permit and Seawall Maintenance – Daniel S. Natchez and Associates. **Pubic Hearing asked to be adjourned to November meeting.**
3. Paul & Rosa Ferrante – 640 Shore Acres Drive – Shoreline Interface Rehabilitation & Stabilization, Float and Anchor Replacement, as well as Retaining, Reconfiguring and Maintaining the Existing Floating Docking Facility and Establish a Reconfiguration Perimeter – Daniel S. Natchez and Associates. **Public Hearing**
4. Al Nolletti – 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 Barry Avenue – Perimeter Permit. **Public Hearing**

**NEW BUSINESS**

1. McMichael Yacht Yard #1, Inc., a/k/a McMichael Boating Center – 447 East Boston Post Road – Renewal of Respective Perimeter Permits – Daniel S. Natchez and Associates. **Perimeter Permit Renewal**
2. Mamaroneck Beach & Yacht Club – 555 S. Barry Avenue – Seasonal Housing and other renovations – Paul J. Noto. **Coastal Consistency Certification.**
3. McMichael Rushmore – 700 Rushmore Avenue – Renewal of Respective Perimeter Permits – Daniel S. Natchez and Associates. **Perimeter Permit Renewal**

The meeting was called to order at 7:30 p.m.

Chairman Birman explained that, with regard to Mamaroneck Beach & Yacht Club, a public hearing is noted on the agenda, however, upon review of the Village Code, and the LWRP, it has been ascertained that this is not actually a public hearing. Chairman Birman deferred to the Village Attorney, Christie Derrico, who explained that a Perimeter Permit is actually being sought by Mamaroneck Beach & Yacht Club which falls under the heading of a Consistency Review, but this item will remain as a public hearing. This application will be heard under Item #6 of Old Business.

Chairman Birman also made mention of the second item under New Business, Mamaroneck Beach & Yacht Club's request for Coastal Consistency Certification for seasonal housing and other recreations and stated that the representatives were not yet in attendance and that when they do arrive, they may wish to request the status of this application. Chairman Birman explained that the Commission has determined that this application is not complete and finalized and pursuant to the Village Code and State Law that there are only 30 days after receipt of a complete and finalized application to complete the Consistency Review, otherwise, it is assumed by operation of law that they are granted this Consistency determination. Therefore, it was determined that this application was placed on the agenda in error since a full proposal has yet to be received. The intent is to delay this application until the November meeting. However, since the applicant is not in attendance, Chairman Birman stated he would prefer they be in present to explain this point. The audience was requested to defer their questions regarding this application until the representatives are present.

### **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**)
2. Shore Acres Point Corporation – 504 The Parkway – Perimeter Permit and Seawall Maintenance – Daniel S. Natchez and Associates. **Public Hearing asked to be adjourned to November meeting.**
3. Paul & Rosa Ferrante – 640 Shore Acres Drive – Shoreline Interface Rehabilitation & Stabilization, Float and Anchor Replacement, as well as Retaining, Reconfiguring and Maintaining the Existing Floating Docking Facility and Establish a Reconfiguration Perimeter – Daniel S. Natchez and Associates. **Public Hearing**

Mr. Daniel S. Natchez, President, Daniel S. Natchez & Associates, an Environmental Waterfront Design Consulting Company, 916 E. Boston Post Rd., Mamaroneck, NY, presented himself to the Commission and explained that he is representing the applicants, Paul and Rosa Ferrante. Mr. Paul Ferrante is in attendance this evening; Mrs. Rosa Ferrante was not in attendance. Mr. Natchez explained that the application has two parts; one is to take the existing docking facilities' end float off and reduce it from two floats to one float, add piles and remove the chains and anchors and put in a longer gangway since the existing gangway is very steep and, along the shoreline, which is the second part, take the eroding embankment, which used to be rip rap and has disappeared over time, and redo the sloped embankment with a new textile fabric behind it. It would not be mortared and two new drawings have been provided, as requested by the Village's consultant, this afternoon. The proposal is being altered by leaving the base of the rip rap in place, which has some vegetation within it, and coming down behind it on the upland side therefore moving back approximately one foot.

Mr. Natchez offered to answer any questions by the Commission.

Chairman Birman requested Mr. Natchez explain the changes on the current plans versus those plans previously submitted. Mr. Natchez explained that, originally, the base of the rip rap embankment was going to be removed and replaced by a new sloped rip rap embankment extending up the slope. Due to the fact that there is wetland vegetation within the current base, the consultant has requested that the current rip rap not be removed and the new plan is to come from behind the rip rap embankment by approximately one foot, and extend into the upland. The concern was to leave the existing rocks in place along with the existing vegetation.

Mr. Bilotta questioned where the work would take place. Mr. Natchez stated it would take place on land for the shoreline; the driving of the piles will be done from the water.

Chairman Birman mentioned to Mr. Sven Hoeger, Environmental Consultant, that he was not in receipt of Mr. Hoeger's memo from the previous month and questioned whether Mr. Hoeger had reviewed the new drawings. Mr. Hoeger stated that he had since Mr. Natchez phoned him this afternoon and questioned the issue of fragmitas, which is an invasive plant and is mentioned in the environmental application statement which was filed with the Village. It was noted that there was quite a bit of fragmitas at the site. This could be taken out but, if not, that would suffice as well. Mr. Hoeger also informed Mr. Natchez that it is much more important to retain the existing wetlands and their existing stone wall border in their current, perfect condition, which would then comply with the Coastal Zone policies, particularly, Policies 7 and 44. This is especially true since the little marsh located in front of the Ferrante property can be counted as an extension of the Gayen Creek salt marshes which have been specifically mentioned in the Coastal Zone Policies.

Mr. Bilotta questioned whether any one time of year was better than another for conducting this work. Mr. Hoeger stated it was alright to conduct the work at any time since it is not touching the marsh.

Chairman Birman opened the hearing up for questions. Hearing none, the Chairman noted that in the interest of shaping resolutions, some determinations would need to be made.

Mr. Natchez suggested that, since this is a residential house, qualifying as a Type II action under SEQRA, there would be no need to do a negative declaration or a SEQRA determination.

Mr. Sleeper motioned that the plan, as put forward, is consistent with the LWRP. Chairman Birman felt this motion was premature since topography would first need to be done under SEQRA. Chairman Birman stated that the first issue to be explored was to determine whether this application is, in fact a Type II action under SEQRA.

Atty. Derrico confirmed that this application was, in fact, a Type II action under SEQRA. A structures permit, however, for the docks and the wall would have to be granted.

(Mr. Anthony Weiner arrived to the meeting).

Chairman Birman questioned whether this would become one or two resolutions.

Chairman Birman invited the floor to create a resolution regarding a SEQRA Type II action.

Mr. Bilotta made a motion to declare the action on the application of 640 Shore Acres Drive, by Paul and Rosa Ferrante be declared a Type II action under SEQRA, seconded by Mr. Siegel and passed with Mr. Weiner abstaining since he was not present for the majority of the hearing.

Chairman Birman invited the floor to create a resolution regarding a Consistency Determination.

Mr. Sleeper made a motion for the consistency of the Ferrante application as being consistent with the LWRP, seconded by Mr. Bilotta and passed, with Mr. Weiner abstaining.

Chairman Birman stated that a third resolution would now be necessary for a Structures Permit and requested Mr. Natchez explain what this permit is for. Mr. Natchez explained that a Structures Permit would be for both the rip rap embankment as well as for the docking facility which would be modified with one float slightly larger and slightly closer to the shore as well as a new gangway. The Structures Permit as modified is in the plan by Lewis LaMone, revised through October 20, 2010.

Ms. Schneider questioned whether the two piles for the docking facility at the outer end of the “T” would be new. Mr. Natchez confirmed they would but that there will be no piles for the gangway. The land side would be held together with chain and anchors to the seawall.

Ms. Schneider questioned the environmental consultant as to his preference of either piles or chains and anchors. Mr. Hoeger stated that he would prefer piles over chains and anchors since piles provide attachment habitat for animals and plants whereas anchors and chains can cause disturbance.

Mr. Bilotta made a motion for the Structures Permit as modified in the plan revised through October 20, 2010, by Lewis LaMone, numbers A-07 and A-04. Seconded by Mr. Siegel and passed, with Mr. Weiner abstaining.

**4. Al Nolletti – Nollis 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.**

Chairman Birman explained that this application was originally believed to be heard as a public hearing, however, upon review of the appropriate statutes, it was decided that this hearing does not need to be described as a public hearing since only the Coastal Consistency Certification will be determined this evening. The SEQRA section of this application had previously been reviewed by the Planning Commission.

Mr. Frank Annunziata, P.E., Hahn Engineering, and substitute for Mr. Jim Hahn, introduced himself to the Commission as the representative for Mr. Nolletti this evening.

Mr. Annunziata explained that the application is for a subdivision of six buildable lots and one conservation lot on 3.3 acres, located on the north side of Fenimore Road just east of the Thruway. The Army Corps of Engineers’ permit is in his possession and he also stated that he believes a condition of the permit was that Coastal Consistency Certification be obtained through the Department of State. The application was sent in on October 9, 2010.

Mr. Weiner stated that, as of yesterday, October 19, 2010, the Department of State had not received the application in question. Mr. Annunziata offered to show Mr. Weiner the letter.

Mr. Weiner appreciated this gesture but reiterated that the application had not yet been received by the Department of State. Additionally, Mr. Weiner explained that the Army Corps of Engineers’ permit is not issued until a Consistency finding is found by the Department of State and suggested Mr. Annunziata re-read his paperwork since he cannot possibly possess a Army Corps of Engineers permit, and the Department of State has assigned Mr. Steve Restler to deal with this issue. Mr. Weiner felt that the letter that Mr. Restler wrote requested concurrency, and it would be necessary to work with this Commission to come to an appropriate consistency application. Although the application has been in front of the Planning Commission for several years, unfortunately, the first thing which should be done is the matter of consistency.

Mr. Keith Furey explained to Mr. Weiner that the permits are actually issued, however, “permits are not authorized until consistency is received” and further stated that those are the exact words as indicated in the letter from the Department of State dated 2007 to the Army Corps of Engineers. Mr. Weiner reiterated that, nevertheless, nothing can be done and the permit cannot be valid until consistency is received.

Mr. Annunziata stated that other permit requirements which have had to be dealt with regarding this project include compliance with the Phase II Stormwater regulations. The applicant has also been working with the Planning Commission regarding these issues and believes that the project will be in full compliance when filing a Notice of Intent with the State DEC to gain coverage under the latest General Permit for Construction Activities. The required stormwater techniques would be incorporated when dealing with stormwater quality and quantity and erosion and sanitation control aspects of the proposal.

The intent is to have the runoff from the newly disturbed area collected in a pocket pond. Soil tests have been done in the area and it has been determined that the soils are appropriate for that type of practice. There are extensive planting and wetland mitigation items incorporated into the plan. Other permits have been filed to address these issues, however, the water quality benefits are part of the practice, however, there are also vegetative and habitat benefits to be achieved by the mitigation planting when done in association with the design of the basin.

Chairman Birman requested clarification from the Mr. Annunziata on the issue of habitat benefits and questioned whether the applicant was referring to what the subdivision would look like without those plantings compared to what it now looks like. Mr. Annunziata stated that the intent was to compare the proposed improvements to the existing “scruffy” nature of the area. The area would be cleaned and wetlands and upland plantings would be done. The appropriate wetlands information filings have been made with the Army Corp.

Mr. Annunziata stated that standard soil erosion and sanitation control practices will be built into the design as part of the stormwater pollution and prevention plan information which has been filed with the Town. There will be a culvert which will pass under the Town which will be large enough to handle all of the upland flow. There should not be any erosion associated with the culverting. The stabilization of the existing channel has been analyzed and the applicants believe it is satisfactory. However, if supplemental stabilization is required, it can be addressed.

Chairman Birman questioned the term “supplemental stabilization.” Mr. Annunziata explained that stabilization of rip rap from some of the potential overflow into the channel is being shown on the plans. Although there is some stabilization at the outlet of the culvert, more of that existing channel could be stabilized, however, it may not have a natural appearance.

Mr. Hoeger noted that he has discussed the application with the Building Inspector, Keith Furey, and has expressed previously his concerns with erosion controls since that is what matters most to the Coastal Zone policies and stated that it is a very tiny, difficult site and that the stream which goes through the site, crosses the site and is no more than a gully of approximately 1 to 2 ft. deep and 6 ft. wide. It is essentially an active erosion site for 100 feet and carries sediment from road maintenance. It is a stormwater conveyance channel. It churns up the soils that it goes through and enters a culvert on I95 and empties into the Sheldrake River. The Coastal policies specifically refer to erosion controls as being a desirable element of development. Mr. Hoeger requested the engineers agree to stabilizing this conveyance channel not just on their own property but beyond to Village land on the northerly side. This would help keep the sedimentation in the West basin of the harbor diminished.

Ms. Schneider questioned the location of the gully. Mr. Hoeger explained the gully starts at the property line and goes back into a culvert at I95. Ms. Schneider stated she could not understand how putting rock downstream would capture some of the sediment which gets eroded. Mr. Hoeger explained that this would also help prevent the erosion off the stream channel. Both the applicant’s property and the property below will need to be stabilized, according to Mr. Hoeger.

Ms. Schneider questioned the overall impact of the entire project on mitigating water from the project as well as upstream from the project in terms of sediment and runoff. Mr. Hoeger explained that the quantity of runoff would remain unchanged. The impervious surface would enter into the ponds which can handle up to a 25 year storm.

Mr. Furey explained that the benchmark under the Phase II Regulations is attenuation of the 100 year storm. The flow coming off of the site can be no greater than the pre-development flow coming off of the site for the 100 year storm. All of the water from the imperious surfaces will be routed into the pond.

Mr. Bilotta confirmed with Mr. Furey that the pond itself would handle the 100 year storm, not including the drywells. Ms. Schneider confirmed with Mr. Furey that the upland water would also be handled by the ponds. Mr. Furey explained that the maximum amount of benefit from upstream has been obtained. While the gully could not be routed through the ponds, since in the heavier (50-100 year) storms, it washes out the pond and the water quality benefit is

lost. Therefore, the overflow from the pond which goes back into the gully originally had a tide water gate on it to prevent the backflow from the gully into the pond. If the gate is removed, a tail water effect may be realized. Some of the flow will backflow into the pond.

Chairman Birman expressed his concern that this design may compound the existing problems in the Village. Mr. Furey disagreed and stated that this design would actually improve the existing problems. Mr. Furey stated that the 2007 storm levels were in the 150-200 year flood level. This development is designed to improve stormwater flows. Since these designs allow for getting the early flow out quicker, the severe storms' early water will be reduced quicker to eliminate problems with the later, heavier waters.

Mr. Siegel questioned the benefits of placing rocks in the gully. Mr. Furey explained that the banks of the gully would be lined to prevent erosion. Erosion contains sediments and a buildup of sediment will decrease the effectiveness of the gully.

Ms. Schneider concluded with Mr. Furey that, basically, the applicant is trying to fix the channel. Ms. Schneider expressed her concern for the design of the gully which basically sends the water downstream rather than retaining it in the land. Mr. Furey explained that the ponds retain the water on site and the rip rap is not an impermeable surface. Whether or not the rip rap actually gets approved is up to the Commission.

With regard to exacerbation of flooding, erosion, water quality, and degrading down the stream from the additional impervious areas on the site, these are addressed by the Phase II Stormwater regulations. The current storm water program also addresses these issues. The water quality is also being improved.

Mr. Furey explained that due to the location of the gully, the upstream water bypasses the site during 100 year storm. Ms. Schneider questioned water coming in from adjacent sites on the impervious surface. Mr. Annunziata stated that the water will not flow across the property since the rear of the proposed development is at a higher elevation than the surrounding properties. Chairman Birman viewed drawing #2, with the proposed grading and agreed with this conclusion.

Ms. Schneider confirmed with Mr. Furey that the net result was being calculated and that the upland water flow was included in the calculations.

The following comments were heard:

Ms. Doreen Ronnie presented herself to the Commission and stated that she has sent two letters, one with a copy to the Planning Commission and one which was dated September 10, and expressed her concern regarding Lot #7 to the right on plans previously issued and specifically referred to as Sheet 1 of 9, regarding the topography and entitled preliminary plat. The topography on Highview Street contains two rock outcroppings which are identified by the elevations of 105, 104, 100, etc. A waterfall flows through this area and Ms. Ronnie stated she has previously contacted the Planning Commission and the Department of Water (DEC) and that it is her understanding that when this type of development is constructed, this type of stormwater should be considered in the plans and she is unable to identify the rock outcroppings in the plan. She expressed her concern that water from this area may enter onto the proposed site's pocket pond.

Chairman Birman noted that Mr. Furey had previously responded to Ms. Ronnie's letter of September and requested that Mr. Furey elaborate on that response. Ms. Ronnie stated that she never received such a response. Mr. Furey stated that the runoff from Highview does not enter the site; it takes a southerly course around the site and flows down to the Village property and into the pond. Therefore, it does not need to be included in the calculations for storage in the pond. Ms. Ronnie again stated that she is referring to the topography located on the applicant's property since the property line edge of Highview (N 4,5) and if you look down in the corner there is a waterfall located on the applicant's property. Mr. Annunziata again explained this water would be entering the pond and Mr. Furey agreed with this statement. Lengthy discussion ensued regarding the path of the water.

Mr. Weiner referenced Part 2 of the Full Environmental Assessment Form entitled Impact on Land, it states “any construction on slopes of 15% or greater” indicates a small to moderate impact and mentioned he has concerns with this statement. Additionally, Mr. Weiner mentioned that the application which has been submitted to the Commission in neither certified nor stamped, therefore, it is considered to be an incomplete permit. Also, it has not been updated in dealing with State agencies and Mr. Weiner has not seen a CAF either.

Chairman Birman located the CAF in his packet, yet Mr. Weiner did not receive his and noted that it has also not been stamped or certified.

Mr. Weiner expressed his concern that the rules were not followed. Mr. Weiner explained the ramifications of holding a consistency vote. Chairman Birman suggested the applicant resubmit the proper forms at a later date. Mr. Annunziata agreed and stated his desire to have the application heard again next month.

Sharon Kapus, 1 Country Road, Mamaroneck, introduced herself to the Commission and expressed her concern regarding the possibility of the pond overflowing on to her property. Mr. Furey stated that the pond will overflow to the stream bed.

Ms. Schneider questioned the type of top on the culvert. Mr. Furey stated it will be closed from Country Road and will be open when it runs down stream. He stated it is enormous. Mr. Furey stated there are no limitations based on its size.

Ms. Schneider expressed her concern of the total effect on the down stream flow of this project and suggested looking beyond the 100 year storm scenarios when considering this project’s impact.

#### **5. Mamaroneck Beach and Yacht Club – 700 Barry Avenue – Perimeter Permit. Public Hearing**

Chairman Birman explained that there are two applications on the agenda for Mamaroneck Beach and Yacht Club. The application for Coastal Consistency Certification for the seasonal housing application has been indicated on the agenda under New Business as a public hearing also. However, due to the fact that there is not a finalized submission regarding the seasonal housing application, the application will be tabled until the November meeting.

Mr. Paul J. Noto, representative for the applicant, argued to the Commission that the Village Code states the right of an applicant to make a filing, and the Coastal Assessment Form was filed on October 7, 2010. The Code does not refer to completeness. The issue regarding the changes filed with the Planning Commission should be considered irrelevant since the project is consistent with the LWRP. Mr. Noto stated that the revised plans will be submitted to the Commission on Friday. The Club use is consistent with the LWRP. Accessory uses are being proposed which should not pose a problem since the primary uses are consistent with the LWRP.

Chairman Birman stated that since the revised plans have yet to be received, it would be speculative to entertain a complicated proposal without the plans. Chairman Birman stated that the application was placed on the agenda in error.

Mr. Noto mentioned that the applicant followed the Code and filed a CAF, at which time the 30 day period begins. Mr. Noto agreed to return to the Commission in November.

Atty. Derrico clarified the fact that the State’s guidance was relied upon by the Commission. In viewing the CAF form it does not appear to be stamped by the Building Department. Additionally, this application is being governed by the 30-day timeframe for full submission. Chairman Birman expressed his concern regarding incomplete applications when dealing with the 30-day timeframe. Mr. Noto questioned when the 30-day timeframe will actually begin. Atty. Derrico explained the application has been deemed fully submitted, however, once the plans are received on Friday, the 30-day timeframe will begin.

Mr. Weiner attempted to comment on a procedural issue for the application. Mr. Noto expressed his concern that since Mr. Weiner would be recusing himself from the hearing, he should not be entitled to comment on any issues regarding this application. Chairman Birman stated that the Ethics Commission had ruled that Mr. Weiner's recusal prohibited him from commenting on the application. Atty. Derrico advised Mr. Weiner that if he is recused from hearing an application, he must remove himself from the dais. Mr. Weiner explained that the opinion of the Ethics Commission was purely advisory and the decision as to being recused or not can only be made by Mr. Weiner himself since he is aware of his bias or non-bias toward this application.

Mr. Weiner read the following statement:

"The question before me is whether I recuse myself from this application for a Perimeter Permit for the Mamaroneck Beach and Yacht Club. As most of you are aware, I brought the question for advice to the Commission of Ethics and they released a very carefully worded advisory. They parched the decision as to what I said and how I said it as recorded by LMC TV. They expressed concern about the timing of hiring Mr. Salanitro and indicated that had I not said what I said, it would have been a different thing entirely.

"So, I close with the following: An applicant should never take actions to create conflict with the applicant and the Commission or Commission members. Just as an applicant should not bribe an official, similarly, an applicant should take no action that will disqualify an official from participation. I will follow the Ethics Commission's advice and recuse myself, but not without noting that the Mamaroneck Beach & Yacht Club's actions to hire Benedict Salametro in order to fabricate a conflict were unethical and inappropriate."

Mr. Alan Wood, 727 Soundwood Drive, expressed his unhappiness with the entire recusal situation.

Atty. Steven Kass, counsel for Mr. Ben Golub and the Shore Acres Property Association, delivered the following procedural concern. Mr. Kass expressed his belief that the perimeter permit hearing is not appropriate. They do not believe there was an appropriate filing and review. Additionally, he expressed his personal regret that Mr. Weiner remains recused. Based on there merits, there was no proper reason to recuse himself. Mr. Kass believes the Ethics Commission was wrong in not allowing a recusal reversal and stated he believes the decision is wrong for the process at hand.

Chairman Birman requested a short break at 9:10 p.m.

Chairman Birman returned at 9:18 p.m.

Mr. Paul Noto, 650 Halstead Avenue, Mamaroneck, NY, representing Mamaroneck Beach & Yacht Club, stated that the application was for a perimeter permit for an existing docking facility and was reviewed by the Commission at the prior meeting, deemed the application complete and was scheduled for tonight's public hearing. Mr. Noto stated that an application, a memorandum of law, an Army Corp of Engineers permit as of today and plans have been submitted. Highlights of the application included previous discussions with the Commission as well as a tangent to a prior application for the repair of the docks, which took place last May, that the permitting process was adhered to and they are now here for the hearing. A memo has been received from Keith and the issue of the rock reef has been resolved. Keith's recommendation is that a permit be issued; however, he is recommending that the lines can be drawn on the Golub side of the property thus eliminating one dock and four slips which cannot be voluntarily done. Mr. Noto endorsed Mr. Furey's recommendation on the rock reef.

However, there is a standard of balancing test to determine whether someone's access to the water is being blocked. It is Mr. Noto's position that the current docking facility does not interfere with Mr. Golub's access to the water now or in the future. The issue is whether anything near his property extends over the "imaginary" line in the water. The Commission must undertake a test and look at the facts since no two properties are identical. Mr. Noto questioned the



accuracy of the submission which Mr. Golub used for a permit which shows the property line. Mr. Noto stated his client is not interfering with Mr. Golub's littoral rights or access to the water.

The submission which Mr. Golub had previously submitted for a permit, and was received from Mr. Natchez, was presented and reviewed by the Commission and all other interested parties at the dais. Inaudible conversation ensued.

Mr. Noto stated the applicant's position is that the docking facility, as is now in existence, does not interfere with Mr. Golub and is consistent with his deed. Secondly, there is no hard and fast rule regarding the drawing of lines. Mr. Golub has stated that he may wish to construct a new dock in the future; however, Mr. Noto believes that there is no reason for Mr. Golub to put a new docking facility on top of the proposed docking facility. Although the proposed docks can be moved in slightly, there would still be a boat which extends over the proposed line.

Chairman Birman stated that the cases relied on for Mr. Noto's argument seems to be disputes between municipalities and private entities. Mr. Noto defended his cases in terms of the standards of review involved. Chairman Birman went on to state that with regard to the hypothetical new construction on Mr. Golub's part, the Commission cannot assume at this time that the potential new construction will not be approved at a future date and, therefore, defer to Beach & Yacht.

Lastly, in his brief, Chairman Birman referred to Mr. Noto's statement that Mr. Golub has acquiesced and mentioned that this may imply the issue of adverse possession. Mr. Noto clarified that there is no adverse possession on the water. Chairman Birman found the argument quite striking but that those sorts of issues do not factor into the court's analysis of littoral or imperia rights.

Mr. Noto defended the concept of acquiescence due to the totality of the circumstances and the positive previous behavior of the two neighbors over the past 16 years. Until recently, no previous problems have existed regarding the docks between the two neighbors and Mr. Noto does not believe this is a coincidence; it is more a matter of Mr. Golub's dislike of the potential seasonal housing.

Mr. Kass responded that he takes exception to the unjustified comments that Mr. Noto has made against his client, Mr. Golub. Mr. Golub has done everything possible to care for his historic property in a careful, responsible way. Mr. Kass went on to state that the Club violated the law when they built the breakwater and improperly filled Nescuana Creek and felt that for Mr. Noto, a representative of that Club, to throw out libelous comments about his client, Mr. Golub, is unacceptable.

Mr. Siegel confirmed with Mr. Noto that he was amenable to modifying the docking. Mr. Noto did explain that the dock could be moved over slightly, however, a boat or two may extend over the line. Mr. Siegel stated the proposal was not clear without a drawing or a sketch to view. Mr. Siegel was presented with a drawing, dated July 27, 2010 to view and the line was explained to Mr. Siegel. The drawing is part of the submission, according to Michael Ludwig. Lisa Rosenshine explained that the proposal as indicated on the drawing in question, will keep the perimeter line unchanged. Lisa requested the perimeter lines as approved by the Army Corp., DEC, DOS, OGS and reconfirmed many times, be confirmed.

Mr. Furey confirmed that the line in question is the OGS line and appears on the drawing by Spinelli. Mr. Furey requested drawing P1 be viewed by the Commission and explained his proposal regarding the perimeter line. Mr. Furey also presented drawing P1-A and explained that a viable alternative is being presented which takes into account the possibility of gaining back the two slips, but also four slips on the end of the dock.

Mr. Golub discussed the potential problems regarding the presence of rocks during low tide. Mr. Furey stated that an offset from the fairway has been maintained. The fairway actually runs into the breakwater.

Mr. Noto requested being able to address Mr. Furey's proposals and expressed concerns regarding a modified facility in terms of the necessity of new perimeter permits and approvals being required.

Mr. Ludwig expressed the following three concerns regarding the proposed design:

- 1) The fact of the regulatory constraints as indicated by Mr. Noto.
- 2) When you view the perimeter line as drafted by Mr. Furey, you notice a central black line which is the fairway access to both the Golub and Flick properties and it is at an offset from the facility. Once you move to be within 10 feet of that line, a boat is now allowed to be within 10 feet of a narrow channel. Large vessels will need to pass through that channel. The standard for this location is 18 ft.
- 3) Extending the dock further to sea removes it from the protections afforded it by the breakwater.

The floor was opened for questions.

Mr. Steven Kass, noted that there is not a God given number of slips to which this applicant is entitled. Mr. Golub has allowed additional slips to be added in the past, however, at some point it has become inappropriate. Mr. Kass introduced Mr. Ken Nobicof, from the Rifkind Ratner firm, who addressed the issue of littoral rights.

Mr. Nobicof filed his response to the Memorandum of Law, which he received approximately five days ago, and asked that this be incorporated into the record. Mr. Nobicof then mentioned that he will be filing a Reply Memorandum of Law which addresses the acquiescence issue as well as the littoral rights issue, an affidavit from Mr. Golub, and an affidavit from Mr. Finkbeiner, representative of Earth Image.net, a licensed surveyor, which also address the littoral rights issue.

Mr. Nobicof stated that with regard to the line, he is very comfortable that the deed line should be extended; that Mr. Furey has followed what he believes to have been past practices and extends it in a much better manner than Mr. Noto and his client have done. Mr. Nobicof requested the Commission accept one of the lines. An encroachment issue is what needs to be addressed regardless of which line is approved.

The definition of encroachment is defined as extending over the boundaries of the property line, according to Mr. Nobicof, and is akin to trespass. The issue of acquiescence has now been brought up by Mr. Noto to establish lines and rights and there should be no issue of acquiescence regarding this proposal.

Mr. Kass spoke regarding Mr. Furey's proposed perimeter line and suggested Mr. Golub's proposed line be considered.

With regard to the completeness of the Mr. Natchez's application, Mr. Kass stated Mr. Natchez have many concerns regarding the application process.

Mr. Natchez introduced himself to the Commission as the President of Daniel S. Natchez and Associates, an Environmental Waterfront Design Consulting Company, representing Mr. Golub. Regarding the line as suggested by Mr. Furey, Mr. Natchez offered Mr. Finkbeiner's surveying services to re-write the line and took the position that the drawings presented to the Commission by Mr. Furey are inaccurate and that no decision should be made tonight based on these drawings.

Mr. Finkbeiner, licensed land surveyor, State of New York, introduced himself to the Commission. Mr. Finkbeiner suggested that a surveyor be employed for the setting of a property line which is given a meets and bounds description. Also, the deeds and prior conveyances should be considered since there are discrepancies in the mapping against the deeds of the property.

Mr. Furey stated that the survey provided by Mr. Spinelli is what he based his property line on. Mr. Sleeper questioned whether Mr. Natchez was suggesting that Mr. Spinelli's survey was "off." (Comments by Mr. Kass are inaudible). Ms. Derrico requested first hand testimony be made by the surveyor as to the accuracy of the line. Mr. Finkbeiner stated that he also worked off of Mr. Spinelli's survey and that he believes the meets and bounds on that survey do not accurately correspond with the gated conveyances.

Mr. Furey noted item #23 on Mr. Finkbeiner's affidavit which states "the final course in the present landside boundary between the parties continues the long boundary at the bearing of 55 degrees, 26 minutes, 30 seconds East, a distance of 88.57 feet to the point of division between Golub and Mamaroneck Beach & Yacht Club." That property line was extended to be the littoral rights boundary line between the two properties, according to Mr. Furey.

Mr. Finkbeiner stated that he misunderstood the drawing and stated that the bearing that Mr. Furey has depicted is the one that he believes is the correct extension of the littoral line, however, there are discrepancies to be addressed. Mr. Finkbeiner further explained that he endorses the extension of that bearing from the point of beginning as indicated on the Spinelli survey which is his position in his affidavit.

Mr. Natchez referred to Mr. Noto's opening statement in which Mr. Noto declared the application to be complete, Mr. Natchez stated that, in actuality, at the last public hearing Mr. Noto stated it was not complete and that discussion would take place at this meeting regarding this issue.

Mr. Natchez mentioned that the application, as submitted, does not comply with the local law which regards filing for perimeter permit. There are requirements which much be included. The drawing submitted is the Spinelli revised drawing through July, 27, 2003. That is the only drawing which has been submitted. There is no indication of anything required which has been articulated in depth, therefore, this application has not been filed with the Building Department or Treasurers office. The Building Department would have checked the application for completeness. There is no topographical survey, additional structures within 400 feet or within the Code. There is nothing indicating navigational issues. On page of 2 of Mr. Natchez's letter, it is summarized which items are not included. The Village Attorney stated previously there is no stamp from the Building Dept. and the Building Dept. stated the application has not been received or reviewed. Therefore, Mr. Natchez does not believe any determination can be made tonight since a complete application has not been received.

Ms. Derrico stated that this application was reviewed prior to tonight's meeting in her office.

Mr. Natchez stated that the Building Dept has not reviewed this application and that there is information missing.

Ms. Derrico stated that there are certain issues which should be flushed out in the application.

Mr. Natchez disagreed with several statements which were made this evening. Mr. Natchez is not in agreement with the rock reef being placed in the rear. In 2006 the rock reef was drilled without permits and specifically to allow for docks and boats to be in that position at low tide without hitting the rocks. Mr. Natchez showed pictures which he had taken. His position is that this is not something which should be allowed since it is illegal.

Regarding the three points Mr. Ludwig made regarding the changing of the line, Mr. Natchez takes exception to the hardship that the Commission would change the lines as presented by Mr. Furey or anyone else. He does not believe that is correct. The applicants do not have a lease from OGS, they have a license which expires next year and will need to be renewed by OGS. Mr. Ludwig is correct that 10 ft. fairway is not safe. Mr. Natchez believes it should be a 20 feet offset. Mr. Natchez suggested his own line and presented the drawing to the Commission.

Mr. Natchez defended the perimeter permit process which allows for marina redesign.

Chairman Birman motioned to take a brief executive session to discuss pending litigation, seconded by Mr. Bilotta and passed unanimously.

The Commission went into executive session at 10:42 p.m. and returned at 10:58 p.m.

Following the Executive Session, Chairman Birman requested the Village Engineer to explain the Commission's position regarding the application and, also, to explain what was going to happen in the future.

Mr. Furey stated that the major issue relative to the establishment of a perimeter is the Northern boundary of the marina between Mr. Golub's property and Mamaroneck Beach & Yacht Club. Were there to be an agreement between the two property owners, the need to establish where the line should be would be eliminated. Mr. Furey cited the Mamaroneck Boats & Motors case. In that case, the docks were allowed if an easement were obtained from Indian Cove. The Commission then extended the perimeter to the exact lines of the OGS license in front of Indian Cove. That option is open and recommended in this application.

Chairman Birman requested that this is something that may be worked out and at some reasonable time, perhaps within one week of next month's meeting, an agreement can be reached by the parties involved. If not, the Commission will make the decision after completing this process.

Mr. Furey also mentioned, relative to the position of the line, the proposed docks which were put out an option to the middle docks, a perimeter could be established at 25 feet off of the fairway, including the area where the docks are located. Also, the option is an option only and not a direction. There are a number of things to look at relative to making this a workable plan while still maintaining an adequate fairway.

Mr. Noto stated that his client has previously met with Mr. Golub to discuss this matter, however, the issue got sidetracked by the seasonal housing. Mr. Noto agreed to attempt to work out an agreement. With regard to the application filing, it was done correctly in August. If there was a flaw in the application, the Village should have notified the applicant by now.

Mr. Kass stated he would be delighted to speak to Mr. Noto regarding this matter. Ms. Derrico also stated she would be available.

Mr. Natchez expressed his thanks to the Commission for their time and welcomed the adjournment. He also stated that requirements for applications are in the law and the Village Attorney had been advised for several weeks that the application was incomplete.

Chairman Birman suggested a resolution be made to adjourn the application.

Mr. Sleeper requested one final agreed upon perimeter permit and stated that the Commission will decide where the perimeter line lies. Mr. Furey stated that he will create one drawing and have it presented as an overlay.

Mr. Bilotta expressed his desire that the applicants work out their differences in a peaceful manner.

Mr. Sleeper made a motion to adjourn the perimeter permit application to the November meeting, seconded by Mr. Bilotta and passed unanimously.

#### **NEW BUSINESS:**

- 1. McMichael Yacht Yard #1, Inc., a/k/a McMichael Boating Center – 447 East Boston Post Road – Renewal of Respective Perimeter Permits – Daniel S. Natchez and Associates. Perimeter Permit Renewal**
- 2. McMichael Rushmore – 700 Rushmore Avenue – Renewal of Respective Perimeter Permits – Daniel S. Natchez and Associates. Perimeter Permit Renewal**

The above applications were submitted simultaneously, per Mr. Natchez, and will be treated as on application this evening. One application is for McMichael Yacht Yard #1 and the other is for McMichael Rushmore, two separate yards.

McMichael's were the first two yards to ever get perimeter permits in the Village. The first permit was acquired in 2007 and the first three-year renewal expires on November 5, 2010. The applicant is requesting the last three years at this time. The new application has been submitted and stamped by the Building Department and there are no substantive changes. Mr. Natchez believes it is a simple request.

Mr. Howard McMichael, President, Michael Yacht Yards, 1 Bryson Street, Mamaroneck, NY presented himself to the Board and explained that he is requesting a renewal of his permits. Chairman Birman stated that the Village Attorney has indicated that there was a 10 year gap in the permits. Mr. McMichael stated that the first permit was requested in 1982, however, upon Mr. McMichael's renewal request, it appeared that the original permit was misplaced and could not be located.

Mr. Natchez stated that the new permit will need to be re-applied for in three years. Chairman Birman could not locate the minutes from the 2007 hearing. Atty. Derrico stated that the minutes needed to be taken out of storage. Mr. Siegel questioned whether the applicant was satisfied with the recordkeeping ability with the Village of Mamaroneck. Mr. Natchez stated that he believes everything is 1000% better than it had been but it still needs a little more work.

Ms. Derrico suggested the applicant compose a short letter to the Village to request that the term "last renewal" not be included with the resolution for this second as of right request for the three year renewal since the law may change in the future.

Mr. Bilotta made a motion to determine the application to be a Type II action, for McMichael Yacht Yard #1, 447 East Boston Post Road, therefore no further action is required under SEQRA, seconded by Mr. Siegel and passed unanimously.

Mr. Sleeper made a motion regarding consistency for the LWRP for McMichael Yacht Yard #1, 447 East Boston Post Road, seconded by Mr. Bilotta and passed unanimously.

Mr. Bilotta made a motion regard a Type II action for McMichael Rushmore, 700 Rushmore Avenue, Mamaroneck, NY, seconded by Mr. Siegel and passed unanimously.

Mr. Sleeper made a motion for consistence under the LWRP for McMichael Rushmore, 700 Rushmore Avenue, Mamaroneck, NY, seconded by Mr. Siegel and passed unanimously.

Mr. Siegel made a motion to renew the perimeter per for 447 East Boston Post Road, Mamaroneck, NY for three years, seconded by Mr. Sleeper and passed unanimously.

Mr. Sleeper made a motion to renew the perimeter permit for 700 Rushmore Avenue, Mamaroneck, NY for three years, seconded by Mr. Bilotta and passed unanimously.

Chairman Birman adjourned the approval of the September 15, 2010 minutes until next month.

ADJOURNMENT

Chairman Bilotta adjourned the meeting at 11:28 p.m.

Minutes prepared by  
Lorraine McSpedon