

**VILLAGE OF MAMARONECK
HARBOR AND COASTAL ZONE MANAGEMENT COMMISSION MEETING MINUTES
December 18, 2013 – 7:30 PM
169 MOUNT PLEASANT AVENUES, COURT ROOM, MAMARONECK, NY**

Attendees:

PRESENT:

**Chairperson Nick Allison
Cindy Goldstein
Alice Pernick
Nick Allison
Clark Neuringer
Jim Bilotta
Brian Glattstein
Kevin LaFollette**

**Also Present: Les Steinman, Counsel to the HCZMC
Sven Hoeger, HCZM Environmental Consultant
Anthony Carr, Village Engineer
Robert Galvin, Village Planner**

CALL TO ORDER

1. The meeting of the HCZMC was called to order by Chairman Nick Allison at 7:30 P.M.

A. Annual Reorganization for HZCM: Nomination and Election Of a Chair and Vice-

Chair Chairman Allison opened the meeting by asking for nominations for Chairman Position.

Kevin LaFollette nominated Cindy Goldstein and was seconded by Clark Neuringer.

Jim Bilotta asked Chairman Allison if he would like to stay on as Chair. He responded that he would. Mr. Bilotta made the nomination and was seconded by Ms. Pernick.

Chairman Allison asked for a vote on the nomination of Cindy Goldstein as Chair.

Voting in favor (4): Mr. LaFollette, Mr. Neuringer, Mr. Glattstein and Ms. Goldstein.

Chairman Allison stated that there are four (4) members in favor, which is a majority of the Commission. He indicated that Ms. Goldstein will be the new HCZM Chair starting with the January 15, 2014 meeting.

Chairman Allison asked Vice-Chair Pernick if she would like to stay on in the position. She agreed if no other member wanted the position.

Mr. Bilotta nominated Ms. Pernick for the position of Vice-Chair, seconded by Mr. Allison.

Voting in Favor (7): Mr. Allison, Mr. Bilotta, Mr. Glattstein, Ms. Goldstein, Mr. Neuringer, Mr. Lafollette and Ms. Pernick.

Ms. Pernick will remain as Vice-Chair

2. Old Business

A. Work Session on Mamaroneck Beach & Yacht Club - Amended Wetland Permit and Site Plan Application for Seasonal Housing and Other Improvements- Review Of Draft Scope for a Supplemental Environmental Impact Statement for Proposed Site Sanitary Sewer System Upgrade. Update from counsel regarding the status of HCZMC previously submitted SEQRA Comments to Planning Board and discussion of HCZMC submission of additional SEQRA Comments.

Chairman Allison asked Mr Steinman for an update

Mr. Steinman responded that when the agenda was prepared it was anticipated that the Planning Board would re-open the public hearing on MB&YC on December 11, 2013 and begin looking at a draft Scope. It was anticipated that the Planning Board would then refer the draft Scope to this board and other involved agencies for comment. However, the matter was removed from the agenda. It is now scheduled to go back on the January 8, 2014 agenda. The matter has not been referred to the Commission since the Planning Board's SEQRA Declaration has not been completed. Mr. Steinman indicated that he anticipated that the Commission will have the draft Scope for your January meeting.

In addition, there was a question raised regarding the status of the Commission's previous SEQRA comments during the environmental review process. Those comments are still being considered by the Planning Board. The comments were submitted as part of the Planning Board's process to determine a Finding Statement. That process has been interrupted due to the problems surrounding the sewer line system. The Planning Board is opening up a new phase of the environmental review. A Supplemental Environmental Impact Statement will be prepared so the process will be ongoing. It is not likely that this matter will return to this Commission for several months but, the comments that were made by the Commission are still with the Planning Board and will be considered when the Planning Board gets to the point of making findings. Additionally, with respect to the draft Scope related to the sewer system investigation, the Commission will specifically have the opportunity to make comments on the draft Scope. As the environmental review process continues, once the Scope is finalized by the Lead Agency, the Planning Board will have a draft Supplemental Environmental Impact Statement prepared which will also be circulated for comment.

Mr. Steinman indicated that the draft Scope will be circulated to HCZM. Ultimately the Planning Board will do a final scope which will include comments from HCZMC, any other involved agency, and comments from the public. All of these comments will be blended into the final document that the Planning Board will approve as the scoping document.

Mr. Neuringer asked if the January 8, 2014 Planning Board meeting was a public meeting? Mr. Steinman responded yes

Mr. Neuringer stated that for the meeting that didn't occur the notice that went out was very close to the time of the meeting and that notice advised that it was the Planning Board's intent to open up a limited public hearing. Furthermore, anyone who wished to address the Board had to stipulate in advance that they wished to appear and address the Board on the matter. Mr. Neuringer indicated that it appeared unusual especially since all of the information pertaining to the matter would not be available until during the meeting. This is very confusing, is that going to be the same procedure for January 8, 2014 hearing.

Mr. Steinman replied that the language that is in the notice is taking "precisely" from the Wetlands Law. The Wetlands Law provides what the notice should state, so all that does is repeat what is in the Wetlands Law but the Planning Board is clearly more liberal in terms of allowing public comment and if people don't specifically provide an advance indication of what they would like to state to the Board, Planning Board will still allow them to speak.

Mr. Galvin commented that we have received approximately 40 - 45 emails. These have been date stamped and placed in the MBYC file.

Chairman Allison asked for any comments or questions

There was none

3. New Business

A. Notice Of Intent for Board Of Trustees to be Lead Agency for PLL-S2013 amends Chapter 342-75 of the Zoning Code related to actions related to actions requiring Site Plan approval.

Mr. Galvin explained that this is legislation that emanated from the Planning Board. The Planning Board has been receiving a number of applications primarily in the downtown area. These applications essentially are a change of use with only interior work. There is no increase in parking, no increase in the intensity of use, no increase or change in lighting. The Board performs a pro forma review with little comment. It costs the applicant money and time as well as staff and board time. The proposed legislation represents a text change that will have the Board review only change of use applications which result in an increase in the intensity of use. Any change of use or intensity of use that would affect the characteristics of the site in terms of parking, loading, circulation, drainage, utilities, landscaping or outdoor lighting would then be subject to site plan review. If the proposed action is a simple change of use with just internal work, with no other changes to site characteristics, it would be handled administratively. A number of communities handle change of use in this manner.

Mr. Neuringer responded as both a past member of the Planning Board and a local practitioner, this is probably one of the most significant changes that can be done and should be done.

Ms. Goldstein asked if there was anyone approving the signage

Mr. Galvin responded that the signage would still be approved by the B.A.R.

Mr. Steinman stated that this will ultimately come back to this board for consistency. The only thing on the agenda for tonight is notice of the Board of Trustees to be Lead Agency.

Chairman Allison asked for any objections

No objections from the Board

B. First Three Year Renewal Of Perimeter Permit for Nichols Yacht Yard (Perimeter Permit #09-0762 due to expire on 12/24/2013

Dan Natchez appeared for the applicant. He indicated basically nothing has changed; we are requesting that the perimeter permit be renewed for another 3 years in accordance with the code. Everything is as it has been, there were conditions that were part of the original resolution. We are in compliance with all of the conditions. None of the docks with boats are in any areas that have not been previously dredged by permit. That was a condition of the original perimeter permit and noted on the plan.

Chairman Allison asked if Mr. Galvin had the conditions

Mr. Galvin read the conditions:

- Measures to avoid impacts to the New York State DEC Tidal Wetland mudflats or any hazard to navigation (designated SM on page A-02 06/12/09.
- No boats shall be docked in areas of vegetated wetlands or mudflats to avoid disturbance to Harbor bottomlands

Mr. Natchez indicated that both these conditions have been met.

Mr. Bilotta asked Mr. Natchez to explain the agreement between Nichols and Spadaro

Mr. Natchez explained that the agreement between Nichols and Spadaro allows the in water area to be used by Nichols as part of the reconfiguration of the Village's Perimeter Permit provided that no access for the Nichols 'docks would be from the Spadaro property. At the time of the original review of the perimeter permit, the Commission's concern was that it would allow the expansion to existing docks for Nichols for commercial purposes but the access would not be from the Spadaro upland which would be residential.

Mr. Bilotta asked did the docks change with this current renewal application.

Mr. Natchez responded no, one change was that one pile got relocated to allow the gangway to be replaced due to Sandy.

Mr. Bilotta stated that this basically allows commercial expansion in front of residential property. Is this the only place in the Harbor that has that condition?

Mr. Natchez replied that the other area that has been done is Mamaroneck Boats and Motors which was allowed to expand in front of Indian Cove. There is an agreement between Mamaroneck Boats and Motors and Indian Cove. Depending on how one looked at it, you could say the same for McMichael's Rushmore except they have the underwater lands.

Mr. LaFollette asked Mr. Natchez if he could provide an example of how the Spadaro property would be used by Nichols

Mr. Natchez replied using a diagram where the docks would be connected between Nichols and Spadaro.

Mr. Bilotta asked how many spaces would Nichols pick up and what it would leave Spadaro

Mr. Natchez replied conceivably there could be (9) leaving Spadaro with none and that would assume that you are turning all of the Spadaro docks for Nichols use.

Mr. Bilotta asked if Spadaro has six spaces and if Nichols took all they could turn them into (9) spaces.

Mr. Natchez responded that, as a designer, one could do this. We discussed the concept with the Commission at the time of the original application that they could put (1) boat on (he pointed to the left side of diagram) with a locked gate. This means that the only way that anyone could get to or from would be access through the locked gate which would have to be coming from the commercial property.

Mr. LaFollette asked if there are plans to put up a locked gate

Mr. Natchez replied that this would be allowed under the agreement but it is a business decision on the part of Nichols and Spadaro.

Mr. Glattstein stated that the Harbor Master asked specifically about a lobster boat that was at the Spadaro docks. Would the Perimeter Permit there, would this entitle this boat to use the docks commercially?

Mr. Natchez replied that conceivably it would be no different than any other marina.

Mr. Glattstein stated that it seems different. This would be running a full profit commercial enterprise as opposed to what Nichols is currently doing which is purely renting slips.

Mr. Natchez stated that Nichols rents slips, and has sailing schools and fishing boats.

Mr. Galvin indicated that he had spoken with the Harbor Master regarding several items on the plans. The plans now include the piles and the as built conditions. He specifically followed up on the lobster boat with the Harbor Master. The Harbor Master indicated that the gentleman goes out about (5) times a year. There are not many lobsters out there anymore and the boat is being removed based on input from the Harbor Master.

Mr. Neuringer asked Mr. Natchez to point out the separation between Nichols property and the Spadaro property. He asked is it to the right of the hatch area on the plan?

Mr. Natchez indicated that it is right of the hatch area. It actually goes through their docks and that is how this concept came about originally.

Mr. Neuringer stated that everything to the right is Nichols property and is in an M-C Zone and everything on the left is Spadaro's in an R-20 residential zone. He stated that certain things are permitted as of right in terms of use in an M-C Zone, and with respect to a residential zone. To your knowledge are there any limitations as to what uses can be put forth in water?

Mr. Natchez responded that if the access is from the land, I believe the code allows a residential docking facility as an accessory use. I do not think it prohibits a commercial docking facility but, if the access is from land, the zoning code would deal with the connection to the land.

Mr. Neuringer asked Mr. Natchez, does zoning code apply to what can be done on the water?

Mr. Natchez responded that I don't believe we have actually zoned the water. When the zoning came about, it was to the land and the appurtenants to the water

Mr. Neuringer replied that in theory there is no number of watercraft that can be parked at a residential docking facility

Mr. Natchez replied no, but you can't rent out docking space at a residential docking facility to someone. If you have a waterfront piece of property and a friend asked to rent a spot so as not to go into a boat yard, which would not be allowed.

Mr. Neuringer asked if Mr. Natchez could explain to the Commission, why then the Perimeter Permit for Nichols extends beyond an M-C zone into an R zone

Mr. Natchez responded that it doesn't extend into the R zone. It extends into the water. We are not going on the land

Mr. Neuringer stated that he thought residential property doesn't stop at water's edge but continues to some point into the water

Mr. Natchez replied that he did not think that actually works because if that were so then you couldn't have the Village moorings being rented out to residence and non-residence in front of residential properties. He indicated that the upland property has the ownership rights to it. I don't believe the Village has zoned the underwater lands.

Mr. Neuringer asked if there was an understanding, contract or agreement between Spadaro and Nichols giving Nichols use of Spadaro's water

Mr. Natches responded yes and the associated water rights.

Mr. Bilotta asked if the associated water rights would be for residential use and not commercial use.

Mr. Natchez responded that was correct. However, I don't believe that is zoned if it is underwater.

Mr. Bilotta stated that he has an issue with this; specifically what we are discussing here is that you are taking a commercial use and putting it in front of residential property. Does this set a precedent that could continue throughout the Harbor considering that Indian Cove doesn't even use their docks?

Mr. Natchez stated that Indian Cove does use their docks and that's not part of Nichols. However, Nichols does have an agreement with Indian Cove to use part of their underwater land area for access and for some of their docks to extend over that line.

Mr. Bilotta stated that Mamaroneck Beach & Motors are extending their use but not getting more docks.

Mr. Natchez replied that it depends on how you configure it. You're allowing it to be used for a commercial use in front of a residential property and there is no access. Indian Cove's access is not allowed from the upland. If you are using it, there must be access from the water.

Mr. Bilotta responded by saying that he understands the access part but is there an issue with the whole harbor becoming a commercial enterprise.

Mr. Natchez stated that in front of almost every residential property, the village is renting moorings and that is not a residential activity; it is a commercial activity.

Mr. Neuringer inquired if that was out in Federal channel.

Mr. Natchez replied that it is between the Federal Channel and the Shore. Nothing is in the Federal Channel. The LWRP was designed to increase water dependent uses. So the issue was if we could increase water dependent uses without detriment to the adjacent property, this was something that was deemed reasonable.

Mr. Neuringer asked if there has been any change in the configuration or usage between 2009 and this renewal application.

Mr. Natchez stated that there have been a few changes within the marina in terms of docks being replaced.

Mr. Neuringer asked if there has been any fundamental change between whatever agreements there are between Spadaro & Nichols.

Mr. Natchez responded that there couldn't be since there is not enough area.

Mr. Neuringer asked that in 2009 did the Nichols Perimeter Permit only exist within the Nichols property, because this application has it expanding into the Spadaro property.

Mr. Natchez responded no, that in 2009 the actual Perimeter Permit was for the entire thing and what happened was when we started looking at surveys we found that some of the Nichols docks were slightly over the Spadaro property. Therefore we entered into agreements with both in order to be able to maintain that. If we couldn't maintain it, we would have to take them away and change it. Both parties were willing to do it. Basically between 2009 and today, there has been no change.

Mr. Neuringer stated that the Commission understands that there is an agreement between Nichols and Spadaro for Nichols to use a portion of the “water” that is not on Nichols property. To your knowledge can Nichols enter into an agreement with another waterfront property owner not contiguous with Nichols?

Mr. Natchez responded that, in theory, the answer has to be yes. However, the only way they can get there is by water. In other words, you would need to create a water taxi service. They would still need to come before the Commission for approval.

Chairman Allison asked how that would work, if there are houses in between. It’s not a perimeter any longer unless you are encompassing the houses in between.

Mr. Neuringer responded that is why I’m asking if the perimeter means contiguous or not.

Mr. Glattstein responded that he believes that what Dan is saying is that the Perimeter Permit really doesn’t dictate necessarily how those docks are going to be used. If I have a dock in front of my house, as long as someone doesn’t come onto my property, I can rent it out.

Mr. Natchez responded that he would not be able to rent it out. Spadaro is not renting it out to you as a user; he is renting it to the boat yard who is allowed to rent space.

Mr. Neuringer asked doesn’t the building department only have jurisdiction on privately mapped property?

Mr. Natchez responded that I think the answer to that would be no. The building department has jurisdiction over many things and enforcement over many things.

Mr. Neuringer responded that if you want to do something on your private property you go to the Building Dept. if you want to do something in the street you go through DPW. When you are in the water, does the Harbor Master have jurisdiction?

Mr. Natchez responded that the Commission should refer to counsel. The Building Dept. has jurisdiction through numerous sets of Village and NYS regulations and laws.

Mr. Glattstein asked it’s not the Perimeter Permit which is giving the Spadaro property the ability to be used commercially but, because there is a Perimeter Permit, Nichols will be able to build an access to it and because Nichols is a commercial property it can then be used commercially, it that a correct representation?

Mr. Natchez replied that is correct but the perimeter permit that is front of you is a renewal of that which is already been approved so the concept of whether to do this or not do this has already been done. The question is has there been any substantial change to the permit which there has not been and all points of the code have been met for renewal.

Mr. Glattstein responded that the Commission is getting an education on perimeter permits. Could Spadaro with an agreement with Nichols rent out those slips through Nichols and have a little ferry service over to Nichols?

Mr. Natchez responded no, because the agreement between Spadaro and Nichols is that Nichols takes over the docks and the running of the docks.

Ms. Goldstein asked what are the terms of the original agreement and when does it

expire. Mr. Galvin responded that the agreement runs with the Perimeter Permit.

Mr. Steinman responded that the resolution from 2009 states that the applicant is required to advise the Commission immediately if the written referenced agreements are amended or voided in any way because this perimeter permit would also be void.

Mr. Glattstein asked what is the duration of the agreement because we are trying to renew this based on what they could possibly be doing in the next few years

Ms. Goldstein stated that the agreement must have had a term on it

Mr. Natchez responded that to the best of his knowledge it doesn't have an end. Its goes on as long as the perimeter permit is in existence or until either party terminates it. The perimeter permit is a ten year long permit

Ms. Goldstein responded that what the Commission is struggling with is the fact that because of the common boundary between Nichols and Spadaro they are afforded this opportunity to use this property in front of Spadaro's subject to an agreement which isn't available to any other waterfront homeowner to rent out or allow someone else to use their dock.

Mr. Natchez responded that was not true because Mamaroneck Boats and Motors have an agreement with Indian Cove. There is more than one of these that is in effect presently and has been approved by the Commission.

Mr. Glattstein responded that the Commission should have all the paperwork including the original agreement. A different question is building (A) on the diagram built on land or over the water and is it in the perimeter. In viewing the property, the pilings are in terrible shape and the deterioration of the foundation of that building is significant and does Nichols have any plans to fix it.

Mr. Natchez replied that he can't give an answer to that. Over the years, Nichols has replaced them and you need a permit for that. That work is not within the perimeter permit.

Mr. Neuringer asked Mr. Natchez to point out where the Perimeter lines are.

Mr. Natchez said that the notes on the plans were incorrect and from 2009.

Mr. Neuringer asked to have a copy of the agreement and the drawings given to the Commission. Also the Harbor Master is here and we would like to ask him a few questions. Could you clarify for us who has jurisdiction over areas within a property not on land but on water

Mr. Russo responded, if someone is building a dock at their home, they submit plans to the building department. I will review them and if they don't interfere with the Federal Channels or buffer zone, they will get their permit.

Mr. Neuringer responded that's for structures what about uses

Mr. Russo responded, on our maps that we have for the Harbor, we have designated mooring areas, anchorage areas, and dock space that's what we usually go by now

Mr. Neuringer asked if there is unlimited opportunity for use on the water. What about residential docking facilities, how many boats, what size boats

Mr. Russo responded, residential docking usually come through the building department, we get a copy of it and review it. Currently we are in the process of hopefully with the LWRP of putting limits on the size of these docks, how far they extend out into the waterway. The only limits right now is if they are hitting the Federal Channel, we can hold the permit back.

Mr. Neuringer asked in terms of use can a commercial fishing boat be tied up at a residential docking facility and who would say that you or the building department?

Mr. Russo responded, not to my knowledge, I believe the building department would have jurisdiction because it is in a residential area. My only concern is if this is granted I think we are opening a loophole for people who live next to a marina to get included in a perimeter permit that they could not get on their own.

Mr. Neuringer responded that before Mr. Russo came down there was a question that was raised by this Commission, would it be your understanding that if there is an agreement in existence now between Nichols and Spadaro, is it required that such an agreement only be between contiguous properties or can Nichols negotiate an agreement with a waterfront property five houses down and is there anything in our code to prohibit it

Mr. Russo responded, not that I know of, nothing in the code that I've read.

Chairman Allison asked aren't we reviewing a permit that was opened four years ago. Has anyone else approached this board to do something similar, is there precedent of anyone trying to take advantage of it. Where are we in the permit in its lifespan, we are four years in, could we allow this now since it exists and when it comes back in three years.

Mr. Galvin responded that you have two, three year renewals. The Code indicates that renewals are as of right if there have been no changes in the original underlining resolution. At the end of that ten year period, they would have to submit a new application for a Perimeter Permit and the Commission sitting at that point can make its own determination.

Ms. Pernick responded that perhaps Les Steinman can clarify something for us because it says as of right unless denied, what would be the grounds on which we could deny it. Is it the same as if they are coming for the first time, what does the "as of right" mean when you have that "unless" clause after it. Also, Mr. Natchez could you clarify something for us. This application is from Nichols not from Spadaro, does this Perimeter Permit give the Spadaro's the right to make changes in the perimeter. Spadaro came before us to make changes just last month and my understanding is that this doesn't give the Spadaro's the right to do anything.

Mr. Natchez replied that it only gives the rights to Nichols.

Chairman Allison asked if it restricts them from doing anything.

Mr. Natchez responded no more than Spadaro is restricted presently

Mr. Neuringer asked with the agreement in place with Nichols and Spadaro, is Spadaro under an obligation to deliver vacant (6) slip spaces

Mr. Natchez replied that the agreement basically says the in water docking facilities in the waterfront area would be allowed to be used by Nichols exclusively. There is a reservation for Spadaro to maintain one dock space. It does not give Spadaro the right to lease out or rent out any of the slips

Mr. Glattstein expressed his concern over other people being able to rent out their residential docks and asked Mr. Steinman to read the resolution again

Mr. Steinman responded, getting back to Ms. Pernick's question, the wording to some extent is contradictory. It speaks of the permit remaining in effect for (4) years and may be renewed, and it uses the term "As of Right" for (2) additional (3) year terms unless denied by the Harbor Coastal Zone Management Commission. To give effect to all the words that are used, it would seem to me that one of the permissible ways to construct this is there is a right of the applicant to apply for (2) three year extensions, but if you are going to provide that there is no jurisdiction for the Commission not to grant the permit, then why have this provision in the first place and why say "unless denied by the Harbor Coastal Zone Management Commission". It seems to me that effectuate all these terms, it has to give the Commission some ability to review the application and determine whether it is appropriate to renew it considering what has gone on in the last (4) years of the Perimeter Permit and if the Commission identifies jurisdiction issues that may not have been identified in 2009 then they'd be fair game as well. There have been a number of issues raised here tonight, and I've been taking notes diligently. I don't have the answers for them but I will certainly try to get the answers for you, or for as many of them as I can, for the next meeting.

Mr. Glattstein responded by suggesting that the Commission get a copy of the agreement to look at to understand the scope of the effect that renewing this permit could possibly have.

Mr. Steinman replied that it is certainly appropriate because it was part of the application of 2009.

Mr. Neuringer asked if he could raise a practical question, this Perimeter Permit is due to expire on December 24, 2013, upon expiration, it is my understanding that nothing significant is going to change in the nature or operation of Nichols especially in the middle of December, I don't know if it critical if this Commission comes to some sort of conclusion this evening

Mr. Natchez stated that was not the case. Because Nichols has docks that were damaged in the storm and it was only temporary, they are slated for replacement this winter and actually next month. Mr. Natchez went on to explain the detriment of not having the Perimeter Permit.

Mr. Neuringer asked Mr. Natchez who is responsible for the damage of Spadaro's dock due to the storm.

Mr. Natchez responded that Spadaro made the request to move and re-drive the pile and to move the gangway. The major structure that was damaged was the seawall which is not covered under any Perimeter Permit. That is what the Commission approved.

Chairman Allison replied that there is dock repair scheduled for January and our next meeting is scheduled for January 15. I think we would like to see the agreement and understand a little bit more about some of the questions that have been opened. How would it affect the repair schedule for the dock repair, do we have any dates.

Mr. Russo responded by saying that Nichols repaired most of his fingers last year that were torn up in the storm, he's looking to replace some docks. I know that measurements have been taken but I don't know of any date where they are going to start tearing out docks

Mr. Steinman stated that one of the options that the Commission can consider is this is a permit that has been in existence for four years, it came to the Commission on the eve of its expiration. There is information missing; there are questions that the Commission has that are unanswered. On the other hand, I don't think the Commission is interested in disrupting what has gone on for several years. Therefore, one of the options that is available is that the Commission could grant a temporary extension of the existing permit pending its full resolution of the current application.

Mr. Bilotta asked if it could be limited to just Nichols property

Mr. Steinman replied that at this point you would be extending what they have now at least for 30 days or whatever it takes to determine this particular application then you decided what you will do on this application. He indicated that he believes given the circumstances here they would maintain the status quo which would allow what currently exist to continue to go on and allow the Commission additional time to get some answers to questions raised.

Mr. Natchez mentioned that docks have been ordered and they were waiting for this meeting to take place before they took the docks out. Nichols would start right after the first of the year taking docks out.

Mr. Neuringer replied that there is no intent in stopping them.

Ms. Pernick asked how long will the project take from start to finish.

Mr. Natchez replied that it would probably take about a month to complete the project.

Chairman Allison asked where are the docks that are going to be

replaced. Mr. Natchez responded not in the Spadaro area.

Chairman Allison responded that the discussion is really focused on the Spadaro Perimeter Permit regardless where we land. It is not going to change the Nichols ability to fix docks that are in the other side of the perimeter.

Mr. Glattstein responded that without a perimeter permit, they are not going to be able to make any repairs whatsoever unless they do a whole application to the Commission. If we, in fact, change this

Perimeter Permit to negate the Spadaro portion, would you have to come back from scratch with a whole new application?

Mr. Natchez responded that if there is a denial we'd have to come back for a new facility.

Chairman Allison responded, I think we need to see the agreement, get some other questions asked and answered.

Mr. Neuringer asked that it appears that the entire rationale for the perimeter extending beyond the property of Nichols is to permit Nichols to have more water area to use, is that correct?

Mr. Natchez responded that there are two aspects to it, one is that some of their docks are over their property line. To be clear what a perimeter permit allows, it allows you to maintain, change, upgrade all within the envelope.

Chairman Allison stated that we don't have much of a choice here except to see the agreement, grant an extension and if Nichols decides to fix his docks, so be it.

Mr. Neuringer stated that he doesn't think this Commission in any way wants to prevent or prohibit Nichols from improving what they want to improve, I think 30 days maybe too short let's make it 60 days. It doesn't matter.

Ms. Goldstein asked if they could see the minutes from the 2009 meeting to see what that Commission discussed.

Mr. Galvin stated that he has those minutes and will find the agreement and send both to the Commission. Clark's point is well taken, 60 days would be better.

Mr. Russo stated that he spoke to Dennis (Nichols) and in 2009, he had a full house in the Marina. At that time, he had no slips available. The economy turned and he has plenty of slips now. The idea was to utilize Mr. Spadaro's and what I was told from Dennis, Mr. Spadaro was going to get one dock and they would maintain the docks. My point is in the 4 - 5 years, there has never been a boat there from Nichols and I believe Mr. Spadaro only owns one boat. There have been three there for the past 4 - 5 years. I don't want to open a loophole that says I have a perimeter permit and all of my friends can come and dock here. I believe that in our harbor none of the homeowners with a private dock has a Perimeter Permit.

Mr. Neuringer replied that I think your concern is valid; this is an unusual situation in which there is an M-C zone expanding into a residential zone.

Mr. Steinman replied that, at this point, a motion could be made to extend the current Permit for 60 days pending the Commission's consideration and determination on the pending renewal application.

On motion of Chairman Allison, seconded by Mr. Bilotta.

Motion was made to provide a 60 day extension to Nichols Yacht Yard Perimeter Permit pending the Commission's consideration and determination of the pending renewal application.

All in favor (7)

Ayes: Chairman Allison, Mr. Bilotta, Mr. Glattstein, Mr. LaFollette, Mr. Neuringer, Ms. Pernick & Ms. Goldstein

Abstain: None

Absent: None

C. Determination Of Consistency for Proposed Harbor Court Project at 108 Mamaroneck Avenue. Project consists Of one story retail on Mamaroneck Avenue, with secure access from Mamaroneck Avenue to a four story residential building with six residential units with vehicular/pedestrian access from Library Lane. Six on-grade parking spaces provided on -site with additional three spaces to be acquired in the municipal parking lot across the street on Library Lane.

Mr. Paul Noto, 650 Halstead Avenue, is the attorney representing the applicant, Elk Homes Partners LLP. Mr. Noto indicated that we are here for a consistency determination for a project on Mamaroneck Avenue. This project is formally the old Bridal Shop at 108 Mamaroneck Avenue. Rex Gedney is the Architect and Tim Allen from Bibbo Associates is the Engineer. This project includes the demolition of a one story retail structure and the construction of a new one story retail structure on Mamaroneck Avenue with access to a four story residential building with six units with vehicle and pedestrian access from Library Lane. We will be providing on-site parking and we will also be providing three off-site spaces. Mr. Gedney provided an overview of the project.

Mr. Gedney addressed the Commission explaining that the property was unusual in terms of its shape. It fronts on both Mamaroneck Avenue and Library Lane. The site is 100% impervious. Mr. Gedney pointed out the new one story retail building facing Mamaroneck Avenue and the pedestrian access and the inner court which will service the core, on- grade parking which is accessible from Library Lane. There will be a large recycling room that will have both recycle and refuse. He pointed out the six parking spaces that will accommodate the six residential units; there are three floors above the open parking which contain two units per floor. On the ground floor, we are providing some accessory items, such as a bike rack, electric vehicle charging stations which will be able to charge four electric vehicles. He pointed out that there will be pedestrian access from both Library Lane and Mamaroneck Avenue.

Mr. Glattstein asked what is the height compared to the surrounding buildings.

Mr. Gedney indicated the height to be 45 feet which is allowable under the C-2 zoning. He showed the Commission renderings of the building from both Mamaroneck Avenue and Library Lane.

Ms. Pernick asked if the residential building would block the view of the Harbor from the Library. Mr. Gedney replied that the view would not be blocked.

Mr. Galvin stated that Library Lane goes up and the Library sits higher than the building.

Mr. Bilotta asked if there was a garden and solar panels on the roof top.

Mr. Gedney responded, yes there will be access to the roof, there will be a roof garden useable to the tenants. There will also be solar array panel which will service the residential side of the building.

Mr. Galvin mentioned that the garden is actually functioning as a 1,700 square foot green roof to help with the water retention.

Chairman Allison asked if the solar panels fully power the entire structure or are they supplemental and also you are going to supply charging station for electric cars, is that becoming a normal thing or is it just an amenity.

Mr. Gedney replied that the solar panel is supplemental and the charging station is an amenity that we want to provide our tenants.

Mr. Galvin stated that there is a New York Sun Initiative by Governor Cuomo to expand 5,000 EV charging stations throughout the state. NYS is encouraging municipalities to change their parking requirements and encouraging these EV stations.

Mr. Neuringer asked what the material of the retail roof is and would the retail tenants have access to the roof.

Mr. Gedney responded that it is an EPDM roof and the tenants would not have access to the roof.

Mr. Neuringer asked if that space will be developed as a terrace or some type of outdoor space.

Mr. Gedney said that it is not currently planned for and if it was to be, we would be back in front of the Planning Board.

Mr. Glattstein asked if the parapet walls go up higher than the solar panels and would anyone be able to see them.

Mr. Gedney responded that the parapet walls are higher and no one could see the panel array.

Ms. Pernick asked if Mr. Gedney could explain about the three extra parking spaces, where are they going and how that will work.

Mr. Gedney explained that the six units will require nine parking spaces; we can provide six on site and immediately behind there is a municipal lot on the corner of Johnson and Library Lane. We will obtain a permit for three spaces.

Mr. Noto mentioned that they will be paying for the parking. The Village code has a provision where payments in lieu of parking can be made. We are working with the Planning Board to do that.

Mr. Tim Allen of Bibbo Associates representing the applicant spoke about storm water. He pointed out the area in back (the parking area) where there would be buried infiltrators in the back of the parking lot. He has been working with Mr. Carr (Village Engineer) in terms of designing that. We are designing for the 25 Year storm. He went on to describe the storm water plan.

Chairman Allison asked what is a 25 Year storm and how much water are we talking.

Mr. Allen explained that it is a storm that occurs in frequency in theory once every 25 years, dumping about 6 inches of water.

Mr. Bilotta asked if they are holding the water on the property.

Mr. Allen responded that until it exceeds six inches and then it will overflow to the catch basin.

Mr. Neuringer asked if it goes through some type of system before it leaves the property.

Mr. Allen stated that it goes through a pre-treatment system before it goes to the infiltration system then it overflows so it's already treated before it leaves the site.

Mr. Neuringer asked if all the water from the parking area would be pre-treated. Mr. Allen said yes, both the parking area and the roof.

Mr. Glattstein asked if it is held on the property in the catch basins until it reaches six inches, what happens during normal rain and there is only an inch, would it sit there for an undetermined amount of time.

Mr. Allen replied that it infiltrates, we've done perk testing on the property which shows that the back side of the property does infiltrate. All of this information is included in our Storm Water Report.

Mr. Bilotta asked that when the self storage was up last month, it was the opposite where they wanted to get rid of the water quicker and they had no in infiltrators, why is this different?

Mr. Carr responded that the previous application was Murphy Brothers, which has their entire site in a flood zone, hence water quantity requirements are waved under our current code.

Mr. Glattstein asked if that had anything to do with the distance to the water table.

Mr. Carr responded, no. The reason is that on the previous application, they were required to do water quality, not quantity and the ground water table was relatively high. It was considered by definition an industrial hot spot so infiltration was discouraged. They intentionally choose not to use chambers, as Mr. Allen is proposing here. The reason why those requirements were waived was that the entire site is inundated.

Mr. Neuringer asked if borings on the site have been done and if so what have you found as substrata where the cultic chambers will go?

Mr. Allen stated that they dug to nine feet; it was dry with permeable soils. We did hit rock in the central corner of the building but out in front we had successful testing.

Mr. LaFollette asked Mr. Carr if we are adding six units I would assume that the sewage hook-up is a pretty straight shot and can be handled.

Mr. Carr replied yes and as part of the application the applicant will replace the catch basin immediately outside. It's an old brick and mortar catch basin. It is deteriorating. We will put a precast which is the current standard that we use for the Village.

Mr. LaFollette asked if the storm water catch basin is a straight shot into the Harbor or is it going through the sewage treatment plant first?

Mr. Carr responded that this is a storm sewer which travels down Library Lane. Mr. Carr explained in more detail what a 25 year storm was.

Mr. LaFollette asked where the sanitary sewers for this property will hook-up?

Mr. Carr explained that they are requiring the applicant to obtain a letter from the Westchester County DEF indicating that the Mamaroneck Waste Water Treatment Plant has sufficient capacity to handle the additional flow. Once we get the letter from the DEF, which we are requiring many applicants to get now, I will have to write a letter stating that our conveyance system has the capacity.

Chairman Allison asked Sven Hoeger for his comments.

Mr. Hoeger commented that the applicant should give themselves credit for the roof. It even makes the system more effective and, as far as the LWRP policies are concerned, he does not see any problems or inconsistency. The project is consistent with all of the LWRP policies and improves the environment.

Chairman Allison asked for any public comments. There were no comments. He stated that a draft resolution for consistency has been drafted for the Commission member's review. The Commission is simply doing consistency. The Planning Board was Lead Agency and issued a Negative Declaration for this unlisted action at their last meeting.

The Chair asked for a motion for consistency for the Harbor Court project. The motion passes.

On motion of Ms. Pernick, seconded by Mr. Glattstein

Ayes:	Chairman Allison, Mr. Neuringer, Mr. LaFolette, Mr. Bilotta, Ms. Goldstein, Ms. Pernick & Mr. Glattstein
Nays:	None
Abstain:	None
Absent:	None

Chairman Allison asked for a motion for the approval of the HCZMC Minutes from October 16, 2013 Motion Passes

On motion of Ms. Goldstein, seconded by Ms. Pernick

Ayes: Chairman Allison, Mr. Neuringer, Mr. LaFolette, Mr. Bilotta, Mr. Glattstein,
Ms. Goldstein & Ms. Pernick

Nays: None

Abstain: None

Absent: None

Mr. Neuringer spoke to Chairman Allison, stating that he wanted to express the appreciation for the work you've done under some extremely difficult, hard circumstances. You've done a really, really good job and I just want to say thank you and recognize it. Again, Thank You!

Chairman Allison thanked the Commission and asked for a motion to close the hearing Motion Passes

On Motion of Ms. Pernick, seconded by Chairman Allison

Ayes: Ms. Pernick, Mr. Neuringer, Mr. LaFolette, Mr. Bilotta, Mr. Glattstein,
Ms. Goldstein & Chairman Allison

Nays: None

Abstain: None

Absent: None

Meeting Closed at 9:30 PM