

**TOWN OF KITTERY  
PLANNING BOARD MEETING**

APPROVED

Thursday, March 10, 2005

Council Chambers

Meeting called to order at: 6:20 p.m.

Present: Ron Ledgett, Doug Muir, Chairman Russell White, Scott Mangiafico, Jerry Solich, Megan Kline, Janet Gagner

Also Present: Planner Jim Noel, Mark Eyerman, consultant

**1. ROLL CALL**

Roll call noted.

**2. APPROVAL OF PREVIOUS MEETING MINUTES**

Deferred.

**3. DISCUSSION 6:30 to 8:30 p.m.**

Commercial Zone(s) are ready for Town Council's second look and scheduling of public hearing.

Mixed Use Zone is ready for Town Council's second look and scheduling of public hearing.

Kittery Foreside Zone is revised and ready for Town Council's first look.

Local Business Zone(s) received some discussion, but no revision was completed.

**4. PUBLIC COMMENT**

Roger Cole, a resident of Kittery Point, hands out some information on the Safford School Building on the corner of Cutts Island Lane. This is in the suburban residential zone. In Fall 2004, the Town Council established an ad hoc work group to develop recommendations as to what to do with the school. It is currently being used as a private art studio, and has been for over ten years, but the tenant will be vacating it in June. The Kittery Comprehensive Plan says that the school has the potential for community use. The Town has limited resources for repairing the school for a community center type use. The work group is interested in exploring uses for the school that would free the town of the financial burden of the school and provide a use that is fitting for this area of town. One of the uses that is believed to be a reasonable re-use is professional offices and/or art studios. These are currently not permitted in this district. The current private art studio has operated as a nonconforming use. The members of the work group request that small professional offices and/or art studios be adopted as permitted uses in the suburban residential district. The size and degree of activity would be regulated by parking and

other standards. The school was built in 1871. In 1993, when the artist studio was originally leased, it was not a permitted use. If the Board could give him guidance as to how this process would play out with the Planning Board, he would appreciate it.

Chairman White says that suburban residential is not on our plate yet, but we should get started on it within the next two months and looking at the uses is one of the first things we do.

Mr. Cole will get back to us in the next couple months.

Ms. Gagner asks if Kittery Art Association owns or leases it.

Mr. Cole says they own it.

That is a nonconforming use and could be a rationale for changing the use.

Alex Trent of 373 Haley Road is here in regard to a project he presented back in August last year - a six-lot subdivision. He has a couple questions. He completed and presented a conceptual plan on August 12 and scheduled a site walk for August 19. Due to inclement weather, the site walk did not happen, and the following week, the moratorium went into effect. Should the site walk have been rescheduled? He wants to know where he is in the process. He has completed everything to have the public hearing and the site walk. He submits a letter as well. He understands there are others in this gray area.

Chairman White asks if there is an application in the Town Hall.

Planner Noel says there is, but the application fee has not been paid. He has had the sketch plan presentation. The next step is the scheduling hearing. Planner Noel has not looked at it as of late.

Chairman White suggests that Mr. Trent meet with Planner Noel as soon as he can to review the completeness of his application and request to be put on the agenda for a scheduling hearing. The ordinance gives the Planner discretion and authority to get the package together and put it in front of us. Once that happens, we also have to determine whether it is substantially complete. Once that happens, it starts the time clock and once that's done, the applicant has to have his public hearing within 30 days according to the ordinance. That hearing could be continued if we did not have information, or if something came up, or he could be heard over several meetings. There is no moratorium right now, but there will be one in effect again shortly that will go for 180 days. This is RR, but it will become RC, or may become LD.

Mr. Solich asks if it is Norton Road.

Chairman White says it may be in two zones.

Mr. Solich says it starts in LD and goes into RC.

Chairman White says it is RC in the back. We will get to work on LD soon.

Mr. Trent asks about the site walk. Does it need to happen before he meets with Planner Noel?

Chairman White says that at the scheduling meeting, we also set up the site walk at that point.

Planner Noel says this does fall under the moratorium and as the zones are taken out of the moratorium, those particular applications that have to do with those particular zones are put on the agenda. The agenda is full through April and it is highly unlikely that by the time the moratorium is back in place, this application would move forward.

**5. PUBLIC HEARING: Paul Bonnacci and Lucinda Schlaffer, 172 Pepperell Road. Applicant is proposing to establish a 40' pedestrian Right of Way at 24 Foyes Lane.**

**This proposed ROW is to access conservation property. Map 36, Lot 40, zoned Suburban Residence.**

**A. Public Comments**

Chairman White introduces the application.

Mr. Bonnacci has some photos. The property in the proposal is 15 acres, plus or minus. The primary feature in this proposal is Deerings Pond, bounded by two wooded areas and also residential property, designated as Parcel A. The purpose of the proposal is to protect Parcel A and leave it as it is. The Right of Way is a private, pedestrian Right of Way, with no roads, parking or structures. They also intend to have no signage identifying it. The approval would allow them to consider adding additional, adjacent watershed property into conservation easement. They appreciate the Board's consideration.

There is a question as to whether they are working with Agamenticus to the Sea.

Mr. Bonnacci says that they have had numerous discussions with the Kittery Land Trust and they are a partner. One of the concerns of the Land Trust is how much work they would have to do. It is the applicants' desire to leave the parcel pretty much as it is. There is a little bit of clean up. The property is pretty special and does not need a lot of attention.

Chairman White asks if there are any members of the public here to speak on this.

Dick Emery, 175 Pepperell Road, lives adjacent to this and supports it 100%. Deerings Pond is a very unique area.

John Waldron, of Foyes Lane, says this was his playground throughout his life. He was worried in the past about it being developed. He thinks it should be saved. The only thing was the pedestrian Right of Way. You would need scuba gear or to ride a beaver to walk to the pond using that Right of Way.

Rebecca Este, 10 Foyes Lane, is really happy to understand this is what they are trying to do. She'd be happy to go out and clean trails.

**Board Deliberation**

Chairman White asks how the Board feels about this.

Mr. Ledgett would like to be clear as to what we are approving. The plan before us has a prospective subdivision. The Proposed Parcel A has not been split off, right?

Ms. Schlaffer explains that is part of this application. The Right of Way would create frontage for Parcel A.

Mr. Ledgett wants to know if the Right of Way makes that parcel containing Deering Pond into a legal lot.

Ms. Schlaffer says that is correct and that would allow them to define that parcel in its entirety and put it into a conservation easement.

Mr. Bonnacci says that because they are buying the parcel below it, they do have a deeded access to the parcel as well.

Ms. Schlaffer says this would allow them to work with the parcel and put it into a conservation easement without having to retain ownership of the home on the property which will stay a legal

residence there. No other development would occur, so this parcel as a whole would have no further change to it.

Mr. Ledgett asks if we are acting to create a Right of Way only.

Chairman White says we are dividing out Parcel A also. What is left between Parcel A and the sideline of the existing house next door is the Right of Way that provides a way to get from a public street into this property so that you don't have a landlocked piece of property.

Mr. Ledgett says that we normally would not get involved in the way a piece of property is split. If we approve the Right of Way, once we approve it, the property will be divided?

Chairman White thinks that a single house lot out of this would not fall under subdivision review and is a permitted activity, so we don't need to approve the subdivision itself, we just need to approve the Right of Way. It is a good clarification.

Ms. Gagner asks them to run through it one more time. Parcel A is being subdivided because it doesn't exist now, right? So it's Parcel A and the conservation land, or is their house also part of this lot?

Mr. Bonnacci says there is only one house.

Ms. Schlaffer says they want to be stewards of the land part of it.

Chairman White does not think it is developable because it does not have the street frontage. He does not know that the sideline would qualify as street frontage. That is not being proposed, so he is not worried about it.

Mr. Ledgett says that if we approve this as a subdivision, it has all kinds of implications for them in the future if they want to do anything with it.

Chairman White says we need to make it clear on the plan that what is being approved is the ROW and not the subdivision of the lot. Would you agree?

Ms. Gagner thinks the division of Lot A is part of it.

Ms. Kline says they don't need our permission to do it.

Ms. Schlaffer says to put whatever condition you want on it. We want to give the ROW.

Chairman White says we can add note 9 that indicates the Planner will submit it to the Planning Board for approval of the ROW only.

Mr. Bonnacci says they need to submit a mylar.

Chairman White agrees.

Planner Noel will tell them what to write in the note.

Ms. Gagner asks if we want a note on there that says it is a pedestrian ROW.

Mr. Solich says that since it goes through a wetland, it can't be much more than that.

Ms. Gagner says that if you approve a ROW, you might be suggesting that it could be.

Mr. Bonnacci and Ms. Schlaffer say that is acceptable to them.

Mr. Ledgett thinks the pedestrian ROW is a good idea because to do anything else, they would need to apply for a wetland permit.

Chairman White says to put the word "pedestrian" in Note 9.

*Mr. Mangiafico moves to approve a ROW plan for property owned by Paul D. Bonnacci, 172 Pepperrell Road, Kittery Point, on a plan drawn by Easterly Survey, map 36, lot 40, dated 11/22/04, revision date 2/16/05, as presented with an additional note number 9 be added to the plan, that the plan presented to the Planning Board for approval of a pedestrian ROW only.*

*Mr. Solich would second that if the revision is dated 3/3/05.*

*Mr. Mangiafico amends his motion to note the revision date is 3/3/05.*

*All in favor on the motion.*

Chairman White says the parties may appeal this decision to the Superior Court within 45 days and asks them to accept the minutes as the findings of fact.

Mr. Bonnacci thanks Planner Noel for helping them.

Janet Gagner steps down for the next two items. She is a relative of the first one and an abutter of the second one.

**6. PUBLIC HEARING: Civil Consultants, So. Berwick, ME for Raymond Gagner. Applicant is proposing to construct a private Right of Way for access and to provide frontage for one additional lot. Map 65, Lot 17, and 17B, zoned Rural Residence.**

Chairman White introduces the application and notes that Janet Gagner has stepped down.

Tom Harmon of Civil Consultants says there is nothing new to tell. This is the same plan they have had here before. He thinks the first time Charlie Marchese was here. They are looking for approval of a ROW to service a lot. Ray Gagner has a building permit and is well along on construction of a house on the large lot. The ROW would provide access and frontage for the additional lot. What he has are some colored plans that show the wetlands on the site. The information which they have is a compilation of information taken in 1988 and 1992 and by some other firms which they superimposed on their plans.

Chairman White asks if there are any members of the public here on this. No one raises their hands.

Chairman White asks the applicant to approach.

Chairman White asks who was on the site walk.

The Kittery Conservation raised the issue of putting a ROW in a different area to make it less intrusive.

Mr. Harmon shows where the house construction is taking place.

Ms. Kline says that last September, we looked at the aerial photographs. It was prior to 1987 that the road was existing.

Mr. Ledgett says there was substantial improvement of the ROW before we got there.

Mr. Gagner says he did not do anything to it except where it ended and he put his driveway in. He shows where the new one is. He thinks it was a total of 770'.

Chairman White asks if there will be an intensification of use.

The applicant says no.

Chairman White asks if the increased use as a result of the other house warrants any additional protection.

Ms. Kline thinks we talked about that last fall.

Mr. Ledgett says one of the key questions the last time we looked at this is what the requirement is, if any, for improvement of the road and, if any, does it encroach on the wetlands, and if so, whether a wetlands permit is required. And then there was the ancillary question as to whether there was a violation of wetlands.

Chairman White says that if the road was previously existing before 1987, then it's not a

violation and he would think the Board could find it is not a violation  
Mr. Ledgett thinks the Planner could go and answer that question.  
Chairman White asks if this is in our purview.  
Ms. Kline says that this whole wetland has been mowed.  
Mr. Ledgett says this whole wetland has been crossed and the question is when did it get crossed.  
Ms. Kline says that we looked at the aerial photographs.  
Mr. Ledgett says that the next question was whether anything more needed to be done to improve the wetlands crossing and then, if so, whether it meets the threshold for needing a wetlands permit.  
Mr. Harmon says that with one residence, there are no standards for that ROW.  
Chairman White asks whether it will actually be serving two residences.  
Applicant says that this is the frontage for this. The frontage for the first lot is satisfied.  
Chairman White would be more concerned with the traffic going over it.  
Chairman White says that our road standards are always safety-oriented. Would this trigger a larger road standard? He does not think it does yet.  
Applicant agrees.  
Ms. Kline says the road is over 400'.  
Mr. Ledgett says the applicant needs a waiver.  
Ms. Kline says they did 400' and then he does a driveway.  
Mr. Ledgett says it's a 700 foot Right of Way.  
Chairman White asks if he thinks we need a length waiver.  
Mr. Ledgett thinks we need a length waiver.  
Ms. Kline asks why she is not finding the length requirement.  
Mr. Ledgett asks why he remembers 400' can't find it. Here it is right here.  
Chairman White says that if it preexisted those requirements.  
Ms. Kline says we all knew 400, we just couldn't find it.  
Mr. Mangiafico thinks 350' will get you there.  
Ms. Kline says 359'. Well, he's got the Y intersection at the beginning of his property. And he's got a 40' wide Right of Way there. What do you think? We have to come up with either... at 400 feet, he's got to have some kind of T-intersection or...  
Planner Noel says that he didn't hear all of the discussion over there but he would suggest to the Board that this falls below the threshold for any private way. This is only servicing one home, 9.15 trips per day, and the road standards do not take effect until it's 12 trips per day.  
Mr. Mangiafico says but it's going to be used for a second lot.  
Ms. Kline says he's selling, or developing a second lot right now.  
Planner Noel says the frontage is on the lane, not on the right of way.  
Chairman White sees that as a technically correct statement, but if the actual traffic will go over the right of way, we need to look at the traffic it will serve.  
Mr. Ledgett says we would have to approve a waiver of the length of the right of way.  
Chairman White says we need a waiver for the length. Any other issues?  
Ms. Kline says we have two ways of doing this. He either has to have a waiver for length or he has to provide for a T intersection when he goes for a permit for the second house.  
Chairman White says he can have a waiver for length now.

Mr. Mangiafico says he has to have something, whether it's a driveway or something, for a turnaround.

Ms. Kline agrees. If a fire truck gets in there, it needs to be able to turn around.

Chairman White asks if he can make a wide gravel spot in the road.

Applicant says that where he turns into his driveway, he can make it so that they can turn around.

Ms. Kline says that is probably all he needs for the fire chief.

Chairman White says to get Dave O'Brien out there and show him what you've got and we can make that a condition of approval.

Mr. Mangiafico says it asks for a 40'x40', but he'd go by what the fire chief wants.

Ms. Kline says the fire chief is good if the land is open.

Applicant says the land is open.

Ms. Kline knows and she thinks that will make it easy for the applicant to comply.

Applicant asks about other standards on the road looking to having it be a private way.

Ms. Kline says a private way is 18 foot gravel. Right now, he says that he doesn't have that.

Applicant says that right now he has no intention of building a second or third home. There is a natural culvert. The water never came over it. There is a french drain. He can do a culvert.

Ms. Kline says to leave it the way it is now. If he sells the lot, he should look at it again to see how the use is doing.

Mr. Ledgett says not to disturb it because he couldn't put a culvert in without ripping this up.

Mr. Muir asks whether we would be going toward a future where that lot could be the only one using this right of way without upgrading the road.

Ms. Kline says pretty much.

Mr. Muir says it might force him to build a second driveway on the property for his own house.

Ms. Kline says his house is over here.

Mr. Muir says he might have to if he doesn't want to go through the wetland process and we don't allow access over the road as it's presently built.

The road as it's built now can support three.

Applicant has no intention of putting more than 3 there.

Mr. Muir is satisfied. He guesses we're OK.

Ms. Kline says it would be better if it were on the other side, and at some point, it may be two, but it may not be. The date is 1987.

Mr. Solich says September 15, 2004.

Mr. Mangiafico asks if Mr. Solich wants to make the motion.

Chairman White says Mr. Solich should do it.

Mr. Mangiafico says to put down the condition of the waiver.

Planner Noel says there is a second request for a waiver and that is that the plan be accepted at 1" for 100 feet, as the plan of record for the parcel already exists and a larger scale would require this plan to be on additional sheets. That is in your packets. The waiver has been requested already.

Chairman White asks for a motion to accept the waiver as presented.

*Mr. Solich moves to accept it as presented.*

*Mr. Mangiafico seconds.*

*All in favor.*

*Mr. Mangiafico moves to accept a second waiver for the length of the right of way, which is 700' existing as depicted on the Plan, over the 400' maximum for a private way.*

*Mr. Ledgett seconds.*

Chairman White asks if there are any additions to that motion for conditions to approval.

Mr. Ledgett asks where we are going to put the turn around.

Mr. Harmon was going to put it on the plan.

*All in favor.*

Mr. Mangiafico says the presumption is that he will have all the other required information.

*Mr. Solich moves to approve a right of way for Raymond Gagner of 7 Martin Road, Kittery, Maine, on tax map 65, lot 17 and 17B with the following conditions: as depicted on the plan dated Sep 15, 2004 drawn by Civil Consultants, that the applicant depict a turn around on the plan after gaining the fire chief's agreement.*

*Mr. Ledgett seconds.*

No discussion on the motion.

*All in favor.*

Chairman White says that any party may appeal this decision to the Superior Court within 45 days and we ask the applicant to accept our minutes as findings of fact.

Chairman White says to depict on the final mylar what the turn around will be.

Mr. Ledgett says we need to give the Chairman permission to sign.

*Mr. Solich suggests a motion to allow the Chairman to sign both plans that were approved for the Board - items 5 and 6. He so moves.*

*Ms. Kline seconds.*

*All in favor.*

Mr. Muir asks if he needs to have two visits with the fire chief, one to get dimensions and one to show him what has been done.

Chairman White will leave that to Fire Chief O'Brien.

**7. PRELIMINARY PLAN: Darren LaPierre, Badgers Island Marina. Applicant is proposing to construct a seasonal awning and security fence around an existing dock. Applicant is also proposing to locate an ice machine and lobster tank on the existing dock. Map 1, Lot 30, zoned Badgers Island.**

Chairman White introduces the application.

Darren LaPierre says he will do a quick recap on what he's proposing. It's pretty much what Chairman White said. Two comments were made at the sketch plan discussion. What kind of noise could the ice machine make? The company sent him something that compares the noise level to that of a household refrigerator. The other question was the overall height issue. They can alter the height 5", if it works, knocking it down to 12'. One of the reasons that it's 12'5" is that they took into consideration the size of the fence, the space needed for the seasonal awning, but they can alter it if needed, and he stated that on the new drawings he gave. Everything else is the way the sketch plan was.

Chairman White asks if there are members of the public here. This is not a public hearing. It is a preliminary plan hearing and a possible scheduling hearing. He wants to ask if there are any

members of the public that have any issues that have not been mentioned before at previous hearings and he is saying that with the proviso that at the public hearing, he is not going to say don't say what was said before, but say it in a time-sensitive way. So is there anybody that wants to give two sentences of public comment at this point?

Attorney Danielle West-Chuhta says she will.

Chairman White says again this isn't a public hearing and this is to help both us and the applicant be alerted to what issues may be out there.

Attorney West-Chuhta represents several of the Badgers Island Condo owners. There are just a couple issues she noticed in regard to Mr. LaPierre's preliminary list of items he had to submit: She has a concern in regard to 3.g. vehicular traffic. He requested a waiver in regard to that. He stated in his waiver that he doesn't feel any additional traffic would be a problem in that area or cause any parking problems. That's a concern they have. They aren't really sure how he would prohibit other public members from coming down to use that or buying lobster there and they ask that the Board consider that when it is considering that waiver. In addition, they are concerned with 2.s. which is with regard to the noise levels regarding permanent machinery, as the ice machine is going to be permanent. She does not feel that the letter he received is adequate. It specifically states in the letter that additional information will be sent, but no additional information has been provided and they are concerned with the noise levels of any salt water pumps as well. Her other objections are on the record from the previous meeting.

Chairman White says that we will probably want her to summarize them again when it gets to public hearing. Chairman White asks Mr. LaPierre if he has any thoughts on those issues.

Mr. LaPierre says that as he stated before in perhaps another letter, these are to be an amenity to the marina itself and only open during the business hours of the marina, which is 10-6. Is it open to the public? The public is the marina. It is on the closed side of the security fence. He's not going to stop anybody if they're walking around. They do have public access in front of the marina. It's open for sales.

Chairman White says that our ordinance probably has requirements we can consult on this issue.

Mr. Ledgett asks whether we should refer the applicant to them now. On page 347, 16.32.850 are standards for piers, docks, etc. projecting into the water. In particular, d. a facility shall not be larger... which shall be a water-dependent use. Also, page 317, 16.32.490N3, and there are a couple subparagraphs that are applicable - d - and he reads from it - and e would also apply. And of course underlying requirements for Badgers Island also apply here. And he has some questions based on these requirements.

Chairman White asks him to introduce them now. This is a good time to put it all out.

Mr. Ledgett says as he reviewed the record on this, one of the points made is security. The question would be whether security is a necessary improvement to an already approved use that requires access to the water as an operating business. It would seem that it is, but he thinks that's a question that has to be answered. Another point that's been made in the application is that shelter on the dock is needed, but shelter on the dock is not an operational necessity. There are marinas that don't have shelter on the dock. You can seek shelter in the boats that are moored at the dock. He is not sure what the strength of that argument is and thinks we need to examine that. A third point is what's going to go in this thing, which is an ice machine and lobster tank and ice machines don't require cover or awnings, they can stand the weather. The lobster tank

does not require direct access to the water as an operational necessity, but there is a related requirement here in the Badger Island use requirements, the prime zone, and that prohibits outdoor sales and storage at b.6. And the question is, if you are going to start selling lobsters, is that a new use and would that be interpreted as outdoor sales and would the tank be interpreted as outdoor storage? He does not have an answer to that, but he thinks we need to look at it.

Chairman White says it must have an ordinance definition. The first place to look is the definition in the ordinance.

Mr. Ledgett says yes. What is that use and is it a new use?

Ms. Kline says the Port Authority mentioned it was a change of use from what it is currently.

Mr. Mangiafico says it is an accessory use.

Ms. Kline says that is what the application said.

Chairman White says the marina use continues and this application is positioned as an additional use that is dependent on the marina.

Ms. Kline says the June 7 minutes of the Port Authority says the plan should be brought before the Planning Board as a change of use.

Mr. Mangiafico says if we determined it was a change of use.

Chairman White does not see it as a change of use.

Ms. Kline says currently the dock is there. If you are saying that the commercial sale of lobster is an accessory use...

Mr. Mangiafico says yes because it is not open to the public.

Chairman White reads from the definition of marina. He remembers up until a few years ago there were boats stored in the middle of Badgers Island.

Ms. Kline says they are there now.

Chairman White thought he quit leaving them there.

Mr. LaPierre says he has gotten squeezed off.

Ms. Kline says no, the boats have gotten bigger.

Mr. Ledgett says the question is whether the sale of lobsters falls inside the definition of marina.

Chairman White does not think it's clear that it falls in it and he does not think it's clear that it is excluded. It's not a completely tight definition. It says "accessory services such as..."

Mr. Ledgett references what it says in B.I., this is 16.12.140, section B permitted uses: retail business and service establishments, but excluding those with any outdoor sales and/or storage.

Mr. Mangiafico says as a primary use.

Mr. Solich says that then we can't have a marina in Badger's Island.

Mr. Ledgett says a marina is permitted.

Chairman White says what we need to do is raise the issues and not debate them to the finest point.

Ms. Kline says another issue is page 219 with functionally water dependent uses. Mr. Mangiafico's been mentioning this as a functionally water dependent use but then when you get down to the end of paragraph one, it goes to the last sentence: "and uses which primarily provide public access to marine or tidal waters" so this sounds like functionally water dependent needs to include the public. This is either all private or it's not. The other issue that arises is that I know we have a lot of lobster in the river, but how are these being delivered?

Mr. LaPierre says Taylor Lobster.

Ms. Kline asks if he would have a truck deliver.

Mr. LaPierre says yes.

Ms. Kline says the boat delivery would be easier.

Ms. Kline asks where Taylor Lobster makes their landings, since they are on Route 236.

Mr. LaPierre says they land over on 236.

Ms. Kline says they are not currently using the marina. That means we have a delivery where the only opening is the ramp or in front of the garage.

Mr. Mangiafico says that is the same with any other delivery to the marina.

Chairman White says the fair thing to do is to make sure these citations are in the minutes so that the applicant is aware of our concerns.

Ms. Kline has one other comment. There are two other places nearby that are using framing that is located on a pier - Warren's and a small commercial area on the mainland, but facing the back channel, and they also have piping as supports for a canopy and both of those places are located below the site line for anyone looking out from land. When she sees the current structure and the wood posts that are up, when you look from either the water or the deck level of the other condominiums, that already is right at the top and anything above that is going to be a big obstruction either from the water or from the land. She will take under advisement the comments he made tonight as to what is best for him. She will also make the comment that prior to this, when this property was under development, there was a lot of obstruction of view and discussion by the Board about it. It got removed and she does not want to contribute to reestablishing something that everyone worked really hard to remove.

Mr. LaPierre asks to say something.

Mr. Mangiafico asks what the largest boat slip there is.

Mr. LaPierre says the largest boat is a 58' boat. You have boats approximately 3 stories high. They are talking about bringing in some house boats that are 3 stories high, way higher than this awning. This past season, they lost a boater, an elderly woman. She would not get out of her car on bad days. When they designed this, they made it very friendly for the condos and the marina was last. The awning is there to shelter people waiting. The dock office is small – 8 and a half feet by 12 feet. The overhang at the garage is residential. When people come to unload their goods, they have no place to put them in bad weather.

Chairman White says not to forget those points for public hearing. He asks the Planner if the application is substantially complete.

Planner Noel says it is.

Chairman White asks for motion.

*Mr. Mangiafico moves that, having taken the advice of the Town Planner and his review of the checklist for site plan approval, that we find the preliminary plan presented by Darren LaPierre, Badgers Island Marina, Tax Map 1, Lot 30, zone Badgers Island District, substantially complete and that we have the Town Planner schedule it for public hearing.*

*Mr. Solich seconds.*

*All in favor.*

Chairman White says that the applicant needs to work with Planner Noel to reschedule.

## 8. OLD BUSINESS

Planner Noel says Mr. Brandt is here from the Coastal Woods. He has been here waiting.

*Mr. Mangiafico moves to extend the meeting until 10:15.*

*Mr. Solich seconds.*

*4 in favor. Mr. Muir against. Chairman White abstains.*

Mr. Brandt says they have a 6 foot stockade style fence on the approved drawing. It appeared to be a good idea when they proposed it. Now they are seeking the Board's approval to delete the fence. At the last meeting, he gave some background information on this. The Board's concern was the abutter's concerns. The Planner provided him with minutes of the meetings and he looked at 4 meetings. Initially, they approached the ZBA. At that time, a number of abutters brought up the issue of screening in general. They were afraid the site would be clear cut. There is nothing re: screening in general. They came to the Planning Board 5/9/02 for the first time and addressed three issues. They went and tried to minimize the cutting. The intent was to come back and plant. They added over 150 trees and shrubs to the site. The Planning Board meeting 6/13/02 is the first time the six foot fencing is proposed. The architect suggested they introduce this. They decided it would be in the best interest of the residents. At the final meeting on 7/11 at the public hearing, about 1/3 of the way down the first paragraph, Chairman White references a letter from Mr. and Mrs. Drew on Busdick. They are abutters, but down on what would be the west to southwest side of the property, not the area in question. They were concerned about screening, so in their area they designated a no cut area on the plan. There was a good deal of discussion. Mr. McNab was on the board at that time and thought it was a great idea. Mrs. Drew still liked the idea of a fence due to animals - he is not sure whose - but the conclusion of the Board was that the buffer provided was a good and substantial buffer. That's pretty much everything he has been able to come up with in terms of reviewing the meetings and so forth.

Planner Noel has not heard anything from any of the abutters on this.

Mr. Brandt says there are two abutters this directly affects. The lobsterman is fine with this. He still has not been able to make contact with the elderly woman. He has tried again.

Chairman White was ready to approve this request last meeting, but the Board, rightly so, needed to look at the minutes and get the history.

Mr. Mangiafico asks if we could do a conditional approval that if that property owner were to erect a fence, this applicant would share in the cost of the fence at that area. Normally, we would want something like this screened from the neighbors.

Mr. Solich thinks that if it is not the current property owner, then they shouldn't have to because they see the property as it is.

Mr. Mangiafico says a building of this size would normally be screened.

Mr. Solich says but if you have to cut trees down to put a fence in...

Ms. Kline says screening doesn't mean solid, opaque. It's amazing how much space is left between the building and the property line.

Mr. Mangiafico asks if it's by unit 10.

Mr. Brandt says that is the closest point to the property line. The terrain functions as a natural buffer - it is partially obscured by the descending terrain.

Ms. Kline is looking at the area.

Mr. Brandt is pointing it out to her.

Ms. Kline says that they left almost all of the vegetation there. They did not go to the property line. When you go there, you get a buffer area.

Mr. Mangiafico says that in the winter, there is not much of a buffer.

Chairman White is inclined to let it go. As for future property owners, if they wish to shield the property, that is a minor expense they could undertake. He asks if the applicant is selling or renting the units.

Mr. Brandt says the plan is to sell all, but there are some that are currently being rented.

Chairman White says that either the landlord or the condo association could in the future choose to erect a fence if it became a point of friction. Since it's not a point of friction, and the concerns raised were not in that area, and one abutter here does not want a fence, it could be when the other house is sold that the issue could resurface.

*Mr. Mangiafico moves to make a modification to an approved plan for Brandt Development Co., Map 15, Lot 59, zoned urban residence, the modification to be removal of the fence depicted by unit 10 as noted on the plan.*

*Mr. Solich seconds.*

Mr. Muir asks if he is correct that we have no evidence of the opinion of the person closest to the fence.

Ms. Gagner and Ms. Kline say right.

Ms. Kline would make the point that we amend it to say that the existing vegetation be retained as a functional buffer.

*Mr. Mangiafico would accept that amendment. He amends his motion to state that the current vegetation be retained and maintained.*

Mr. Ledgett says that where we are headed with the ordinance changes is a visual screen of natural vegetation. Whatever is there is going to die. We want to maintain that screen.

Mr. Brandt says that what you see now is as thin as it is going to get.

*Mr. Mangiafico amends his motion to say that the applicant will maintain at least a 15 foot buffer of natural vegetation.*

*Mr. Solich seconds.*

*All in favor except Mr. Muir.*

Discussion about meeting 3/17. It will be limited to two hours and will start at 6:30 pm.

## **9. ADJOURNMENT**