

PRESENT: Vadney, Chairman; Sorell, Vice-Chairman; Bayard, Secretary; Flanders, Selectmen's Rep.; Kahn; Finer; Touhey; Dever, Alternate; Edgar, Community Development Director; LaBrecque, Town Planner; Harvey, Clerk

Finer moved, Sorell seconded, THAT WE APPROVE THE MINUTES OF JANUARY 8, 2008, AS PRESENTED. Voted unanimously with the exception of Flanders who was not present at the meeting on 1/8/08.

APPLICATION SUBMISSIONS

1. **PETER E. & KYONG C. LEECH AND HEALD FAMILY REV. TRUST:** (Rep. Dave Dolan) Proposed Boundary Line Adjustment between Tax Map R02, Lots 34M and 34N, located at 16 & 18 Christy Lane in the Forestry/Rural District.

LaBrecque – Mr. Chairman, we have a proposed Boundary Line Adjustment application to convey 2,258 sq. ft. of land from Lot 34M to Lot 34N. The two parcels are the result of a 1991 cluster subdivision. Both have existing single-family dwellings on them. There is a waiver request for topography and soils data given that both have existing dwellings and that information isn't necessary because they both already have septic in place and the waiver would be needed to accept the application as complete.

Finer moved, Sorell seconded, THAT WE ACCEPT THE APPLICATION OF PETER E. & KYONG C. LEECH AND HEALD FAMILY REV. TRUST FOR A BOUNDARY LINE ADJUSTMENT. Voted unanimously.

PUBLIC HEARINGS

1. **PETER E. & KYONG C. LEECH AND HEALD FAMILY REV. TRUST:**
Dave Dolan for Applicants - As stated in the reading of the application, it's a Boundary Line Adjustment transferring about 2,200 sq. ft. between two existing dwellings that were created as part of the Ridgefield Subdivision. There are 14 lots in this subdivision; the density is not going to be affected at all by the BLA. Mr. Leech's property has an existing dwelling on it and the driveway that accesses his property crosses a portion of the Heald property. There is an existing easement in place and the purpose of the BLA is to move the property line far enough so that the Leech driveway is entirely on its own property. We do have to set the pins and we will submit a mylar which will indicate where property corners have been set. A draft deed and either evidence that there is no mortgage or evidence of a mortgage release would be handled administratively. LaBrecque – I would just like to draw your attention to the two photographs on Page 28 & 29. Page 28 shows the house on Lot 34N that has the driveway that encroaches partially onto Lot 34M so that portion of the driveway that you see where the turn is at the end that will be completely within Lot 34N following the adjustment.

Flanders moved, Bayard seconded, I MOVE WE GRANT THE PROPOSED BOUNDARY LINE ADJUSTMENT REQUESTED BY PETER E. AND KYONG C. LEECH AND HEALD FAMILY TRUST BETWEEN TAX MAP R02, LOT 34M AND 34N LOCATED AT 16 AND 18 CHRISTY LANE IN THE FORESTRY/RURAL DISTRICT AND THE APPLICANT SHALL PROVIDE A DRAFT CONVEYANCE DEED FOR STAFF TO REVIEW. THE EXECUTED DEED SHALL BE RECORDED WITH THE MYLAR. THE APPLICANT SHALL VERIFY IN WRITING WHETHER A MORTGAGE EXISTS ON LOT 34N, IF THERE IS A MORTGAGE A SATISFACTORY RELEASE SHALL BE RECORDED IN CONJUNCTION WITH THE CONVEYANCE DEED. THE SURVEYOR OF RECORD SHALL PROVIDE WRITTEN EVIDENCE THAT ALL PINS HAVE BEEN SET PRIOR TO RECORDING THE MYLAR. Voted 6-0 in favor of the motion.

1. **DEEP WATER MARINE MANAGEMENT, INC.:** (Touhey stepped down, Dever sitting) Continuation of public hearings held on October 9 and December 11, 2007, for a proposed Site Plan Amendment to create a family recreation facility in an existing building for boat slip customers, Tax Map U35-8A, located on Lovejoy Sands Road in the Shoreline District. Application accepted October 9, 2007.
2. **DEEP WATER MARINE MANAGEMENT, INC. –** Continuation of a public hearing held on December 11, 2007, for an Architectural Design Review of proposed improvements to an accessory structure, Tax Map U35, Lot 8A, located on Lovejoy Sands Road in the Shoreline District.

Johnson – After the last public hearing the staff requested the applicant submit a revised site plan showing some additions incorporating some of the checklist items as well as a waiver formally asking the Board to waive some of the site plan review checklist items that were not necessarily relevant to the application before them. The items to be waived are termed to be not pertinent by my particular interpretation of the items. If the Board wanted items added to the plan or if the abutters felt there was anything important that they wanted to have added to the plan, we want to make it clear we would be willing to add those items within reason. I went down through the list and asked for waivers on some of the items that are not necessarily pertinent to the discussion, however, again if the Board needs any additional information on the plan that goes above those items we included, please let us know and we'd be happy to provide that information. The staff review has a couple of items highlighted, one of which is to verify that the lot coverage has not changed and we stated before that essentially the cars that are parking out there are not parking on a paved parking lot situation, there are no stripes, there are signs. We located where the front end of the vehicles would be when we did the original mapping and estimated where the back end would be and during the analysis of the existing site plan of record and the conditions out there I thought it would be prudent to try to reorganize the parking in a more efficient manner and that's what we did. We weren't necessarily required by the Board to do that, we were required to demonstrate we would have no net loss in spaces as a result of the reconfiguration of the building and we've done that. The tree

mapping indicates all of the existing trees that are on that site and we have accommodated parking spaces in between those trees and we do not anticipate the cutting of any vegetation on the site as a result of the parking reconfiguration. We do have a couple of areas we want to make sure are left free and that's the main traveled way coming into the site. We do have an existing ROW that goes out to Tall Pines Condominium Association and that is left clear. We also have an area here which was a ramp that was previously used by Mason Marine and they were using that as a quasi-permanent base of operation with some storage of equipment and so forth on either side. Staff would like us to clarify what the existing situation is there and Mason Marine is no longer operating permanently out of that site, it's a ramp that's used frequently to allow construction type access to the islands without tying up the public docks which are down here and as you know in the summertime can be quite busy so Mr. Littlefield has left this area open to be used by the barge type and Island Service boats and vehicles so they may have a safe access out to provide services to the island. There will be no permitted storage of construction equipment in that area. The question came up about the lighting, there's very minimal lighting on the building, there's one light that's actually inside the entryway shining down. Any lighting on the building would be of a cutoff nature and we do not anticipate there's going to be any spotlight type lighting on the building only the cutoff type fixtures that are demonstrated on the architectural drawings. I believe that Chief Palm has through the Certificate of Occupancy process the means to sign off on the outside propane tank and maybe make suggestions as to its location and bollard protection and we would certainly be willing to do whatever the Chief recommended. As we mentioned in our previous presentation, we do not anticipate any outside storage of solid waste, it's all internal, people have dumpster access somewhere else that is off of this site and there will be no dumpster on this site. Mr. Littlefield also spoke a little bit about the type of foundation this building's on and it's essentially not a dug-in poured foundation. The building is up on supports and during the application process to the State of New Hampshire DES, there were erosion control measures that were required and those will be carried through to this plan as well. There are some other items I think the staff would probably want to go over themselves on the review sheet and the only other comment that I'd really like to make is in discussing the last public hearing with the applicants, I just want to make sure the members of the audience, the Board and the staff are understanding that this building in this facility is for the exclusive use of the so-called cabin cruiser spots that exist in the docking system. It's not a place that's available for all of the docks, for all of the people that have boats in this facility. Currently right now, the breakdown is there are approximately 14 cruiser-type slips that are currently rented out so at the instant if that were to hold true for the next season, only those 14 people would have keys to the building and the access would be restricted to only those people. The maximum amount of cruiser slips that can be accommodated in the docking system is 20 so the breakdown Mr. Littlefield gave you in terms of the 58% of the dock slips as being island and the lower percentage as being other uses. The current position is 14 cruiser slips with a maximum of 20 would have access to the building. I just wanted to make it clear that it's not everybody that

has a boat slip has access to the facility. Edgar – As you know, it was brought to the Board's attention at our last meeting by Attorney Callen that the determination the Board made on October 9, 2007, to accept the application as complete was not done so in accordance with the Site Plan Regulations. Historically, as you know the Board accepts applications as complete based upon having sufficient information to make an informed decision and uses the checklist as a guide towards that end. Waivers have not been required in the past for each checklist item not appearing on a plan, however, a waiver request at our suggestion has been submitted by the applicant to waive those items that do not appear on the application. It is recommend that the Planning Board vote to waive the application checklist items that have been requested by the applicant and find the information provided at present is acceptable for completeness recognizing of course as Carl has indicated you can always require additional information in the future so I'd ask the Board to consider voting on that particular matter and then I'd be happy to proceed with the substantive aspects of my review.

Flanders moved, Dever seconded, I MOVE THAT WE GRANT THE WAIVERS AS SUGGESTED BY JOHN EDGAR AND LISTED IN SECTION B ON THE STAFF REPORT, ALL THE ITEMS THAT HAVE BEEN IDENTIFIED WITH A CHECK MARK. Voted unanimously.

Edgar – Checklist is included in packet on Pages 70 & 71, items with a – are the ones requested to be waived. Flanders – Do we need to go over the base line survey as well? Basically, the partial plan we have is not a complete survey so for purposes of proceeding we would go with the plans as presented. Here again, if you needed a lot line survey, we could always come back to that if you found it necessary. I just think by referencing this in the motion just as a general matter, you don't need to enumerate all of them but that's the backup. As a result of the last meeting we had asked Carl to add a couple items that were not appropriately on the list to be waived so we made some changes to the plan to include the sewerage and water line information, zoning district and a couple other odds and ends but essentially there's a cross-reference to the Shoreline Waiver permit and the associated erosion control requirement of that state issued permit so the plans have been revised in minor fashion based upon that communication from Angela to Carl. With respect to the road and access to the site, I know that was an issue that was raised at the last meeting, Herb, you had raised some concerns about safety in and around the traveled way. From the Fire Department's point of view, Chuck has expressed a concern about maintaining adequate emergency access through the site. Currently, if you look at the way the parking is configured which is pretty much an existing condition today in terms of right-angled parking on either side we're down to approximately 15' and Chuck's concern is he can live with that provided that is maintained clear and that we don't inadvertently find ourselves with cars parked along there and then choke that down to a point where it would be difficult to get into the site. As you know when we've been out there on previous inspections, either side of that ramp has had staging area materials or perhaps employee parking that would be going out on the construction activity. Those

areas in this parking plan are pretty much laid out to include parking associated with the boat slips and given the reorganization that's been done to accommodate the loss of parking from the storage building in question, we just felt it would be important to make it clear if we're relying upon that for parking then that necessitates it be available for parking and it's suggested we note the plan accordingly. Carl, in looking at the architectural plan, it's not abundantly clear that we have a light in the atrium area but essentially if that's all we're talking about, that would be satisfactory. We just wanted to make sure if there are concerns about lighting if it were on the end or the sides of the building facing the lake, whether or not that would affect anything and if the answer is simply that we have kind of a traditional lighting around the doorway that's fine. We just wanted to know if there was going to be any other floodlighting on the building or something like that then we would look at it and make sure we try to encourage cutoff fixtures wherever possible. Johnson – I think the important point we were making is that there would be no floodlights or spotlights on the building, they would be cutoff fixtures primarily associated with the entries. We have received just a small number of new letters from a couple different folks. There are basically no new issues that have been raised. A couple which were from folks that have written previous letters, one from Tall Pines Condo reiterating their concern. One of the fellows that testified in favor of the application at the last meeting reiterated his support for the proposal and there may have been another late entry at 5 o'clock tonight but not the landslide you've experienced in the past. Nothing I saw were any particularly new issues that were raised. We have received a letter dated January 18th, 2008 from Attorney Jed Callen. This follows his letter of December 11, 2007, in which the attorney represents many different things, the long and short of it is he has a particular view as to how the laws apply to non-conforming uses and he's laid out his analysis in both those 2 letters. Basically, as it relates to non-conforming uses generally and the issue of accessory uses that we brought up at the last meeting, we did receive that and that has been reviewed by the Town's attorney. The short version of the Town attorney's view and Lou certainly could jump in and reiterate if necessary but the Town attorney does not agree with the position held by Attorney Callen and it's not a close call, it's something that the Town attorney feels that it's a much too narrow view of how the law of accessory uses works. Needless to say both letters have been carefully reviewed and the short version is the Town's attorney does not subscribe to the view articulated by Attorney Callen. With respect to one other follow-up we did following the last meeting, there was testimony from Bill as to the Police Department's records and we've asked Kevin to come tonight to address the issue of complaints or the absence of complaints on the one hand specific to the marina and on the other hand whether we've had any other complaints relative to the Town property. We have a lot of letters that speak to a lot of issues relative to noise coming from this facility and we got some of that perspective from Bill Littlefield and Kevin, Chief of Police, is with us tonight and there's a Memo in your packet as to what they have on record relative to any noise complaints or the whole plethora of issues and violations and citations and anything that the Department's involvement is relative to Shep Brown's area and perhaps Kevin could give us an overview of your Memo.

Kevin Morrow – On 12/10 of last year Bill had called my office to ask me about some complaints that we had on record for Shep Brown's and he had asked me for about 5-6 years so from January of '02 to December of '07 we did some research with some noise complaints, alarms and parking issues at Shep Brown's and the surrounding areas and Town property. We found out there were 28 alarms at Shep Brown's that we responded to, one car alarm on Town property and one disturbance on Lovejoy Lane and there were also 35 motor vehicle complaints that were called into the Police Department during those times. After that I spoke with John and he had said during the whole process there were a few abutters that had some noise concerns down there and according to the records, I don't see that we received any noise complaints, not that there haven't been noise problems down there but they haven't been calling the Police Department so we can investigate those complaints so I wanted that to be known. Also for the parking issues, I hope we all can agree that its very congested down there in the summertime. You have 190 to 200 homes on Bear Island and 100 parking spaces that the Town has plus the overflow parking for the trailers. In the summertime we hire parking enforcement to go down there and take a look and during that time we gave out 225 vehicle parking tickets for various reasons in the no parking zone, the 72-hour parking limit down there and also for the boating violations, we gave out 308 boat tickets during that time. Those are some of the things we had on record that I wanted to share with you. Vadney – On the 308 boat violations, these are all overtime docking down there. Sorell – Are the overtime violations at the Town docks? Morrow – Correct. Vadney – How many boats do we put at the Town section? Morrow – I think there's maybe 12, I'm not sure on that answer how many boats we can actually fit on there. Littlefield – 12-16. Vadney – That's a pretty high number, 308. Flanders – Mr. Chairman, has anybody applied turning radius to this parking lot, it looks like it might be a little tight to get a piece of fire apparatus through in a couple areas and the other thing is I think it would be appropriate to have a plan note to limit the use of that building as represented specifically only for those boat slips. Vadney – Good question, Bob. Edgar – With respect to the radius issue, the layout of that parking is essentially what happens today and what we're trying to do, the main issue from Chuck's point of view if he's got to come in through the Town parking lot he can get in and make the swing up to Tall Pines, he just wants to make sure the ROW is not compromised with more parking that may result from more activity. No, we have not put a turning radius to it but essentially it's existing conditions, maybe Carl has but from Chuck's point of view he knows he has to get in there and his main concern is just to make sure we work with the marina to ensure that the traveled way being limited to about 15 feet remains open for any response we would have to make to the docks for an emergency services call or to a fire on the facility or to a service call into Tall Pines so that was the main concern but to a large degree it's all existing conditions in terms of what's out there. Johnson – Mr. Chairman, I can tell you the 3 things I looked at when I was doing the reconfiguration of the parking, one of which was the fire access to the building which is to keep the lane getting to the building clear, the second of which was the access to the existing storage building here which is essentially 3-sided access for fire fighting purposes and in terms of

the access, the turning radius to Tall Pines Condo I actually improved that slightly from the existing condition that's there now to allow a wider turning radius going through there. I believe the Chief likes to have a minimum of 50' radius for his fire vehicles to get in and around parking on roads. As John mentioned on this site the existing turning radiuses that were there as we speak right now do not meet that requirement, however, the access to the building is pretty much a straight shot coming out of the bottom of the Town's parking lot coming into the building and he wouldn't be any more than 20' from the building with the firefighting apparatus. Flanders – I think a plan note should be added making it clear that the use of the building is restricted in the way its been represented here. Johnson – Mr. Chairman, if the comment is that the note would say the access to the building would be limited to 20 spots as represented, would that be sufficient for Mr. Flanders? Flanders – I think what I was looking for was a note that would preclude 10 years down the road if the marina's owned by a different individual or whatever from just all of a sudden turning this into a clubhouse and having parties there that are beyond what would normally be generated by the boat slips or maybe renting the thing out as a source of revenue. Johnson – During the prior public hearings we pretty much described the use of the building and it does not have size or capacity for a wedding, it's a pretty tiny area and that's not the purpose of it. The purpose of it is for the exclusive use of those customers so we'd certainly be willing to limit it to a number and the note can be clear that its not a facility that's to be used by any other than the up to 20 cruiser spots available at the current docking system. Flanders – Mr. Chairman, I think that would be sufficient. I just want to make sure there's clarity on the plan. Vadney – Are you specifically designating parking spots for those 20 boat slips? Johnson – No. I'm still concerned as was mentioned at the last meeting that this is going to become an attraction, possibly an attractive nuisance with kids playing around it when it becomes a rec center and I'm concerned that at a minimum the few cars that still stick out into the road there, when cars are coming through there to park up toward the previously Mason Marine area or just going as an accessway into the Tall Pines and there are kids running and playing around that building, they can't play behind it unless they are on the dock because there's not much space and if they run out the front door it's 2 steps and they are right in the traveled way. The reason I bring this up here is because in the past it hasn't been a problem because they weren't playing around there, it was just an old shed and now its going to be a rec center which attracts kids even if they don't belong to these 20 slips. Johnson – Mr. Chairman, one of the things I looked at in terms of the parking, if you notice the entryway there comes out a little bit from the building, the distance from the most northerly portion of the entryway to the end of the parking space which is to the right is probably about 16' or so and we specifically did not put any parking to the side as you're coming out the door so that's a free and clear sight distance going that way. The circuit of the cars coming in is this way and there would be very few cars coming in the other direction so there is about 16'. If there were a car parked there, you'd have about 16' of the car to your right before you enter out onto the traveled way. You wouldn't necessarily be stepping right out onto it and then looking to the left, you'd have a clear line of sight and you would not be in the

traveled way and have a view to the west. Vadney – How about the child who comes around the east end of the building and runs along beside that car and then darts out into traffic. We haven't had that situation before because kids weren't playing there. I'm saying this, if this was a clean site on 2 acres and somebody said we want to put a rec center and we're going to park the cars like this and the kids are going to be playing around here, we would probably say no so I'm hesitant to make any special allowance just because this happens to be the way its laid out there. Those 3 or 4 cars or whatever seem problematic to me. Johnson – If the concern is these 3 spaces immediately to the right of the entryway, am I reading that correctly? Vadney – Those 3 for sure and possibly the next 2 so when anybody is around that building, there will be a clear sight of them. Is that being unreasonable fellows? Response – No. Johnson – Every space that's shown there now is an existing space. Dever – Those 5 spaces he's talking about immediately to the right of the entryway are not going to be there once the building's in place, right? Johnson – That is not correct. There are some existing spaces underneath the building to the left currently; those are going away because that is now going to be building. Every place on this site plan that you see a symbolic car is going to be a parking space so if Mr. Vadney's concern, if I'm reading it right, is those 5 spaces which are essentially the spaces that coincide with the building. Vadney – I'm just saying I think we should make sure there's a clear sight line. If the driveway was wider than 15' you might not need it, but it's a narrow driveway and you've got cars parked and you're now going to have kids hanging around the building and to me that's something the Planning Board should be concerned about. Bill Littlefield - I would like to add at this present time there is not one person there that has kids but that doesn't mean it won't happen in the future but at the present time there is nobody there with children. There is also at the end, we're cutting the size of this building back 15' to put a grilling area in there which would probably be more, if there were children, the area they would be hanging out and at this point right now this isn't a road this is a ROW, a car coming down through there is doing 2-3 MPH I would hope, it's a ROW. Actually from the building on it's certainly not tarred, previous to the building it is tarred. Johnson – We have more spaces than what's required on this plan and if the Board sees those spaces as being problematic, we're not going to stand here and obstruct that line of thought. If the Board says please remove those, I would say if they were problematic, it would be the first 3, I don't see the last 2 on that building being problematic because that gives you 30' or more of additional sight line looking to the east and you can see well into the traveled surface after you come out of the entryway. I wouldn't see those 2 being problematic but if the Board would care to have us remove the first 3, we would be more than happy to do that. Vadney – I would negotiate for the 3 positions if that's copasetic with the Board. Flanders – Mr. Chairman, since every one of these parking spaces should be viewed as a little gold nugget down here because of the congestion in that area, how about if we compromised with those 3 spaces where you head in going away and at least one parallel space be put in there, it would cut the distance the vehicles would stick out about in half. That way you would have a net loss of 2. Vadney – That might help a bit but if you park one there, how are you going to keep everybody from doing it.

They said they've got enough parking spaces elsewhere to spot 3. Johnson – I think one of the important things to remember is we did some observations during Memorial Day and 4th of July last year and without question, there are a lot of cars at the Town parking lot. It's a little bit misleading to show a car in each spot, I did that for demonstrative purposes to show the layout. To Mr. Littlefield's remembrance there's never been a case where every single spot had a car in it at the same time, it just doesn't happen. Not everybody uses their boat at the same time during the same day in the same week so the fact that we would be losing those spaces is not a big problem and we would be happy to eliminate them. Vadney – I think it would be a good idea and I think the Board would be remiss if we didn't do that. Kahn – The only thing I had was I'm a little concerned about our trying to set up rules for the use of this space. At the last meeting on this subject, I asked the applicant and I'm only one member of the Board but I asked the applicant to come up with proposals as to how they were going to manage this thing to keep it under control and keep it quiet and the applicant's came up with nothing. I don't think we should sit here tonight as Bob is trying to do to come up with rules as to how this space is to be governed to keep it under control. I think that's the applicant's problem and the applicant should come back to us with proposals as to how they are going to manage this thing and then we can pass on those proposals and the public can pass on those proposals but I don't want to sit here tonight and say there shouldn't be more than 35 people here at any time and there shouldn't be any more than 2 guests per boat, I don't want to get into that tonight, I want you to come up with a proposal, I asked you to do it, you didn't do it so I think you should go back and do it. Flanders – I agree with Lou's comments with the exception that I feel a plan note restricting the use of that building to those boat slips as represented is appropriate. Kahn – Bob, where I'm headed is that plan note may be a lot longer when we're done with it. Vadney – We did talk about that last time and Lou made the statement but I think several members of the Board nodded their head so you're not alone in that thought. Johnson – During the presentation, we've been consistently making or presenting the opinion that the concerns of noise, congregation, aggregation, partying have been greatly exaggerated and that we didn't feel it was necessary because the size of the building and the fact that its limited to the cruiser customers only and we did explain quite thoroughly to the Board that these customers are issued keys to the building, the building is locked, it's not available to be accessed by anybody that doesn't have a key. The people who have the use of the building are not going to duplicate keys so more people can have use of the building that's a self-controlling prophesy. We don't think it's going to be a problem so we did not come up with a game plan to address a non-problem. If the Board feels it is a problem and wishes to make restrictions on the facility, then we would have to take those at face value. The representation was that it would be beneficial to have the bathrooms available 24 hours and the building itself would have limited hours of operation and we said we would agree to have a termination of 11:00 p.m. as to the hours of operation of the building. Now if you need to have a plan note that says hours of operation, 6:00 A.M. – 11:00 P.M. for the non-bathing and restroom portion of the facility, we would be more than happy to do that. Beyond that, we don't think there's a need

for any type of a massive game plan of how the building's going to function, it's just not going to be that big a problem. Vadney – We certainly need to add some hours of operation to something in writing, just agreeing to it here probably isn't enough so that's one of the things we definitely have to do. Kahn – Mr. Chairman, I don't think it's a satisfactory response to say we don't think it's going to be a problem therefore go away. I think I want to see house rules, I want to see the rules you're going to print up and give to the owners of each of these boats and I want to see how you propose to enforce it and I am not going to approve a site plan here unless I see such a thing. I'm not saying all the members of the Board are going to agree with me but that's how I feel about it so get your house rules together and come back to us and that means you've got to agree to a further continuance here. If you don't want a continuance, I'm perfectly prepared to vote to turn you down. Sorell – Is the bathroom going to be open 24 hours a day and you don't need a key to get in, you do need a key to get in? Johnson – Yes. As a matter of fact, just to point out to the Board in one of the original configurations of this operation that did not appear on the state plan so it does not appear on this plan was to have a chain link fence that cordoned off the building from the dock area so that only the people who had the keys could even come near the facility and for one reason or another was not included on the state plan so it's not approved, therefore, its not included on this plan but that's something that was considered to demonstrate to the Board that the intent is for this building to be for the exclusive use of those cruiser people. Gerry Whiteleather – Resident of Meredith since 1971 - Bear Island It has been my observation that the Board in discussing culverts, wetlands and ditches and everything else has a very big concern not for just what's happening right now but what happens next year, 10 years, 20 years and 30 years down the road. The Board seems very concerned with how something will look in 10 or 20 years from now. The applicant has represented that there are 20 slips with electricity suitable for a boat to overnight. As an electrician who has actually installed pedestals in marinas for boats to use, its very, very easy and very cheap to add electricity, telephone, cable TV and the internet to a boat slip so the 20 slips could easily become a whole lot more than that. There are 90 some odd slips in the marina. Some of them probably are pretty marginal for overnighting although I have seen marinas put in electrical facilities on walkways literally a foot wide between boats that you would think would be pretty marginal but they do it and get away with it so we are now looking at 13 boats that stay there and I have to say going in and out of there at night quite a bit, I don't see very many boats overnighting, there are some but we don't know where this marina has changed so much over the years, we have an applicant we prefer to the previous but we don't know who's going to buy it next. We don't know what's going to happen down the road. There's a big move to condominiumize marinas around the lake where they become campgrounds basically and we see it all through the Gilford area and other places, its kind of where the money is and these owners may have no intention of doing that at all but this center is perhaps the first step in that direction for maybe a future owner. So along with Mr. Kahn's indication about limitations about what goes on in the facility, I think the Board needs to consider that this may become a 30, 40, 50, 60

overnight slip facility at some point. Edgar – Mr. Chairman, I think the general concern about what might happen under different ownership in the future is a fair one but it's not in front of us. What's more important is for us to know exactly what we're relying upon when we render a decision. We have been looking at this as an accessory use and by definition that puts parameters on it and if we had a high percentage of those slips tying into this rec center, you start getting more and more closer to what might arguably be a second principle use in which case the whole plethora of special exceptions and all that good stuff comes into play. To the extent it is a clearly incidental related subordinate use the way it's been presented, the Town attorney's view is that it is an accessory use so these kinds of stipulations if you will that this is what's represented and then building that back into plan notes and decisions is important to make sure any subsequent owner understands the premise upon which this even began to occur and recognizing that its this accessory use relationship that has to be maintained. Whether or not its condo'd in the future would raise a whole other set of potential questions I'm not prepared to speak to as to whether or not that accessory use is severed in the event there's a condo subdivision or not. That's an interesting question that I haven't thought through at this point so I think its appropriate at the end of the day to make sure we can reiterate what the premise is based upon, if the Board were to decide to approve this. The septic system, for example, is tied to I think 25 overnights, the applicant has represented a maximum of 20 and that certainly would be built into some kind of decision so we're looking at 20 slips in the context of 80, 90 or whatever the total headcount was. That puts it in some context and if that were approved as such and if the applicant or any subsequent owner wanted to go beyond that, that raises up the whole issue back again and we go back into the record and at that point we would know exactly that this was premised upon a very limited number of units to maintain that accessory relationship and its not a guarantee that you can just go banging that number upwards so I think those kinds of safeguards would be in everybody's best interests so there is clarity as to what you're doing and perhaps what you weren't doing. There's an awful lot riding upon our view of how it does qualify as an accessory use and I think at some appropriate point in time relative to a decision that it would have to get memorialized. Vadney – I appreciate your comments but to a degree your comments just inferred that 20 is OK, 30 might not be OK. If its an accessory use I don't know why it couldn't be argued if its accessory for one, its accessory for 88 of them. Edgar – Essentially, the whole accessory use argument has to be done on a case-by-case basis. They are not specified and we've talked about hairdressers, movie theaters, restaurants and all the rest of it so there is no magic formula other than a reasonable application of the facts and what the understanding of an accessory use is and at some point you would have to deal with it if it were to come back. Vadney – If none of these had electricity, but they said they wanted to make this rec center for all 88 slips, would you still look at that as an accessory use? Edgar – I can't answer that but I know that's not the question we've asked our Town attorney, we framed it in the context of what's been proposed and I'd say that if it were looked at as 100% available to all 88, then there's a possibility the answer would be different. Vadney – The other part, I don't want to get into a long

discussion here about it but certainly has me concerned, if this were to be condo'd, example, if this site gets sold, they condo 20 spaces and the building, try to sell it to a condominiumized group and then the rest of the marina goes away and turns into residential which its zoned for residences, do we now have a grandfathered accessory use with no parent. How do you make that transfer? Flanders – If this were to go condo that's a clear change of use and would have to come back and go through all the approvals. Vadney – I want to make sure we've nailed that down. Kahn – I don't know that its that clear but it's a good question, more so than even your question, Herb, the question is whether or not if the rec center and the 20 slips were sold off, is that an accessory use to the rest of the marina that's under different ownership. We can't prevent a change to condominium ownership but it seems to me you have a real good question there as to whether or not its an accessory use to the marina when its been sold off and condominiumized. I don't know, that's not before us, I don't think we should worry about it but when the time comes, we'll have to deal with it. Vadney – There needs to be enough information in the record and recorded on the plan so if somebody calls up and complains about the number of boats used in this facility, the Code Enforcement Officer can pull the documents out even 30 years from now when nobody that's here today is around can look at it and say there should be 20 boat slips that have access to this period and then its clear, if there's 25 that's a violation. We've got to be careful not to create something that's not enforceable. Littlefield – I would like to add that Jerry stood up and talked about his definition of an overnight boat slip as a boat slip with power to which I totally disagree. I am coming up with my number by the size of the boat that could fit into an area. A minimum boat that you're going to stay over on is a 25' boat and I certainly have docks set up that can handle that but I have docks set up that can't that also have power to them. There are boats that have shore power, fishing style boats it doesn't matter, I'm not going to limit my overnight boats to a boat that doesn't have power. Ed Touhey – John, how many accessory uses could a commercial operation like this have. Edgar – I don't believe there's a formula or a number in the ordinance, I think its case-by-case. Touhey – So a future owner of the operation could want to have an ice cream stand down there at some point and call that an accessory use and come before the Board with that and then there could be perhaps some other accessory uses too that could be attached. Edgar – Conceivably yes and that's why there is a body of law that defines what those accessory relationships have to meet so that's why we're doing the review of this particular accessory use because of the potential effects on the ground whether its parking, lighting or whatever the case may be. I'm not aware personally of a statutory limit or limit that's been defined in case law or limit that's defined in our zoning ordinance that places an absolute pre-determined number of how many accessory uses any commercial use could have or industrial or residential use, you have accessory uses all over your property in a residential context and there's no law that defines how many of those you can have so I'm not aware of a limit per se. Touhey – I think the neighbors have expressed time and again that there has been increased incremental growth in the commercial operation here over the last 30 years and I want to speak to that. First of all, I want to remove some myths that as a result of the last hearing regarding an

unfortunate remark made by an individual here as the hearing opened and the remark had to do with the neighbors wishing for Shep Brown's to be wiped off the face of the earth. I want to make it very clear that is not where the neighbors stand and never was where the neighbors stand, that did not come from a neighbor and was a most unfortunate remark. The second myth I want to remove is one that Bill presented and that is there are one or two neighbors that are making this a big issue. I speak to this because many of us were talking about a similar expansion proposed by Shep Brown's now Deepwater Management back in 2002 when the same group of neighbors that are being spoken for by a few individuals here showed up in extremely large numbers to present their opinions to the Board on a viciously cold night in February and that I think points out the same group is still out there but this is January and the few that speak here are not the one and two but representative of many others we've heard tonight perhaps well over 100 out on Bear Island alone and then neighbors of Lovejoy Sands, Soley Lane and so forth so to imply that its one or two neighbors was most unfortunate. To say this is a personal attack against the Littlefield family is extremely inappropriate. There's a history of concern expressed by the neighbors with regards to incremental growth of the commercial operation at Shep Brown's long before the Littlefields happened on the scene so to turn around and say today that this is a personal attack against the Littlefield family is most inappropriate, most unfortunate and as far as I'm concerned, unspeakable. I want to move on to speak about the concerns the neighbors have. The Board speaks about existing conditions, the Board is well aware of existing conditions at Shep Brown's from 2003, but we're not going into existing conditions, conditions are going to change. To say this recreation facility is not going to put further pressure on existing parking seems to me to be a poor conclusion. To say there is not going to be increased noise when we have a facility that is now going to be in part open 24 hours/day when the operation there has been a 10-hour day operation doesn't compute in my opinion so things are going to significantly change there and existing conditions are not the best way to judge what its going to be like. I think you have to look ahead and say what will it be like when the family recreation center is complete and I think Herb was stepping in the right direction when he was concerned with children running out and stepping out into the line of traffic. Where are the residents coming from and why are they so concerned? This is the 21st century now, the summer residents here are much better informed than they were many years ago, you didn't hear from them, the spokespeople here were not permanent residents at that time so now we're more aware of the protections provided to us by the zoning regulations, we're more aware of the hard work the Board does so we are more vocal, we are more concerned, no we're not attacking the Littlefield family, we are exercising our rights to be heard at a public hearing and our right to interpret regulations as we see it. We would ask the Board to very carefully look at this proposal, very carefully understand that the residents in this area and I will outline the residential part of this neighborhood has changed minisculely in 30 years, there are very few residences within a quarter mile of this site that are new but over that 30 years I would venture to say that the commercial operation surrounded by this residential area and which surrounds a public parking lot that so many islanders

depend upon has virtually tripled. The island residents speak to parking just briefly, this is not parking here in this public lot to go to the bank or to go to the Post Office, this is parking for these people to go to their homes that takes on a much greater importance than parking on Main Street in Meredith. Vadney – Just to make sure Ed understands, I for one pretty much ignore any comments that talk about the existing conditions and try to focus only on what the changes will be. It may not always appear that way but its certainly the way my mind works and I do know that many of the letters we've received have referenced, the attorney's letter covered both the Clark and Kasten that group they formed, Tall Pines and others have come in as groups so we do recognize it's a wider range of people than just the one or two neighbors. Warren Clark – I want to talk tonight about what I see as an inconvenient truth but it seems to me how some of our citizens think of our zoning ordinance. I view our zoning ordinance as something there to protect all of us. It allows us to invest in our properties with a reasonable feeling that our neighbor will abide by the same rules that we do and therefore will not do anything on his property that will seriously detract from the value of our property but apparently some view the zoning ordinance as a rather pesky little thing or at least a serious inconvenience. At the last meeting Bill Littlefield told us that several years ago he wanted to add 3 boat storage buildings to his property and he said he wanted to do boat storage buildings because these would have the least impact to the area. What he did not remind us of was that this was the first phase of a four-phase project that would have added 5 huge buildings to the marina, one of which would have been bigger than anything currently on the site and very close to the water. He did not mention that he made no effort at all to comply with Meredith's Architectural Design requirements, he did not mention that this would greatly increase coverage on a property that already exceeds the maximum allowed for the District and he did not mention that this would have removed parking places from a property that already has a shortage of parking so this Board very rightly voted to deny this application and I would remind you that you voted twice to deny it, once because it did not comply with the area restrictions of the zoning ordinance and another because it did not comply with the architectural standards. Somehow he left us with the feeling that it was unfair to him that the Board did this and I was amazed to hear that. Is it unfair for him to have to comply with the zoning ordinance the way everybody else does? In a letter last year to the Town attorney, his lawyer said they did not want to bring this clubhouse to the Planning Board for site plan approval because he wanted to avoid the unpleasantness that occurred the last time Shep Brown's came before this Board. Is that what it is, unpleasantness? Is that what you call it when you try to do something that violates the zoning ordinance and you don't get away with it? Apparently they want to avoid the same unpleasantness with this attempt to do something that is not permitted by the ordinance. Soon after the Town denied his application to build a boat storage building, he built a boat storage rack anyway. When we asked our Code Enforcement Officer why this was allowed, he told us this was a "temporary" structure. This temporary structure was put up 2½ years ago and we see no hint of it going away. We're not objecting to that structure but it's just an example of what we've referred to in the past as development creep and last year, I believe

another structure and this appears to me to be a boatlift of some sort appeared on the property and this too was done without benefit of site plan review or special exception. A year and a half ago, Shep Brown's obtained a building permit to build this clubhouse, again without applying for site plan approval or special exception and they almost got away with this as well until the neighbors got wind of it so now we're back at the Planning Board and dealing with that pesky zoning ordinance. Bill tells us he's just moving an existing use from one building to another so let's look at this more closely, is this an existing use? I'm not asking if they're already doing it, I'm asking if from a legal point of view it is an existing use. What's been explained to me and the way I understand this is from the perspective of the law, Shep Brown's is operating their marina as "a non-conforming pre-existing use". Yes, its true our zoning ordinance allows for operation of a marina in this district by special exception but apparently Shep Brown's has never obtained a special exception so it is left as a non-conforming, pre-existing use and there's nothing at all wrong with that but what this means is he can operate on the footprint existing as of 1971 for as long as he wants to without a special exception, that's completely legal and nobody has a problem with it as long as he does not change the use to which the buildings are put, however, if he wants to expand or change the operation, he needs a special exception so the relevant question is, were there showers in the boat showroom in 1971, were there cooking facilities on the docks in 1971, I don't think so. The word around the neighborhood is that these showers were installed by a previous owner sometime in the 80's. Were there gas grills there in 1971, I don't think so given that gas grills were not in common use back then. I can tell you that these showers are not on site plans from the 80's, these showers and the gas grills are not there legitimately, they were not there in 1971 and they have not subsequently been approved thus they cannot constitute an "existing use" from a legal point of view so clearly this use is something that needs to be approved by special exception. This is something that has to go to the ZBA. At the same time, I believe this Board should not approve a site plan that would include a use outside what is permitted by the zoning ordinance so let's look at the zoning ordinance and start with the statement of purpose for the Shoreline District. This district provides housing and recreation for a substantial number of seasonal and year-round residents who prefer to live in single-family detached housing with access to lake waters. The purpose of this district is to preserve the water quality and adjacent shorelines and maintain privacy and tranquility of residents. Allowing this clubhouse would be contrary to this purpose. How does this clubhouse serve to maintain privacy and tranquility? Having a high density of boat owners even 40 people living in close proximity is certainly contrary to maintaining privacy and turning Shep Brown's into a 24-hour/day campground type of facility could easily hurt tranquility in spite of Bill's promises. Forty (40) people can throw quite a party and we've talked about a number of constraints, we're going to limit the number of boats to 20 which I think limits the number of people to 40 or more and I can tell you that before Bill bought the property, there was an annual party there and I don't know how many people were there, I don't think there were more than 40 or 50 people, but let me tell you that I live 4/10 of a mile from Shep Brown's and my outside areas were unusable

on that night, I would have to pack up and go in. They always shut that party off by 10 o'clock because that's what the noise ordinance says but if you're going to limit activity until 11:00 that doesn't help, all the possible limitations that you've talked about and I do appreciate these limitations, all these possible limitations wouldn't stop those parties we had several years ago before Bill bought the place. I believe as long as Bill's there, there won't be big parties but I can think of 3 things that could contribute to a major change in the future. One is that he sells the marina to a different owner who's not as concerned about this as he is. The other thing that could happen is more of those empty slips are rented and some of the new renters like to party on Friday and Saturday nights and then maybe the quiet folks who currently keep things under control move to other marinas and more people move in that like to party so we end up with the parties. Don't forget that this clubhouse will most likely outlast the current ownership. There's a relatively high probability that problems will result eventually. My understanding of your job as Planning Board members is to anticipate these problems and prevent situations where they are likely to occur. Even if the problem does not happen for 10 years or more, it's still a problem when it does happen. It has been suggested that this clubhouse qualifies as an accessory use; it was compared to the waiting room in an automobile service station. If Shep Brown's wants to put in a room for people waiting to get their boat serviced, this would not be a problem but a better analogy was a service station putting in overnight amenities including showers, cooking facilities and maybe bunk beds for people who want to park at the service station and stay overnight there. I was fascinated by the discussion just now about what happens if they sell the accessory use, what happens if they decide to condominiumize this and they sell this to a condo association and then you have an accessory where the primary use doesn't exist and I will suggest to you respectfully that maybe its because its not an accessory use. Jed tells us that you can't take a use that is not allowed by the zoning ordinance and permit it by calling it an accessory use. Boat washing, boat shrink wrapping, those are both examples of accessory uses. They involve servicing boats and boats fall under our zoning ordinance definition of marina. We have stated that this activity is not included in Meredith's definition of a commercial marina, there are two major factors which place this use clearly outside the definition of marina, first a marina is defined as a facility that provides services for boats and it says nothing about providing services for boat owners. Look at the list of example services none of them have anything to do with amenities for people. Also, a marina is defined by our zoning ordinance as something that occurs during daylight operation, this clubhouse converts their operation into a 24 hour/day activity. Please consider the potential impact to the local area. With a marina next door we can expect certain impacts and it's primarily a daytime impact and it's the impact from the storage of boats. Once you get into accommodating people and into a 24-hour operation, the impact would be very similar to the impact of a campground. It's true a campground is well defined by our zoning ordinance as something that happens on land but really the only difference between a campground and what they are proposing is that one's on the land and one's on the water. In one case you drive the RV, the other case you bring the recreational vehicle in on the water. This activity is inappropriate for the

Shoreline District and that's why campgrounds are not included as a permitted activity in the Shoreline District in the zoning ordinance which brings us back to that pesky zoning ordinance again. I believe this Board should consider both the letter of the zoning ordinance and the intent. The letter of the zoning ordinance defines commercial marina in a way that does not include this clubhouse and it says that any use not listed here is prohibited but our zoning ordinance does permit a clubhouse just not in the Shoreline District. A clubhouse is permitted by right in the Forestry/Rural District and is permitted by special exception in the Forestry/Conservation and Meredith Neck Districts, it is not permitted in the Shoreline District either by right or by special exception, you can't claim that something is "an accessory use" when it is specifically not permitted in the district. This family recreation clubhouse is neither appropriate nor permitted in the Shoreline District. It does not matter that the owner promises not to let his club members make noise. This sort of constraint is unenforceable and his good intentions would be lost were the marina to come under different control. A vague promise is not a reason to allow a non-permitted use to go forward, the proposed plan has a significant possibility of being highly detrimental to a huge neighborhood and highly damaging to privacy and tranquility. Problems in most neighborhoods would affect only a handful of neighbors but because this property overlooks a huge bay hundreds of people would be affected by problems here. It appears to us that Bill Littlefield wants continued growth for his marina and to be unencumbered by the need for following the rules of our zoning ordinance or getting site plan approval from this Planning Board or getting special exceptions from the ZBA. This is why we have seen continued development creep over the years and why we continue to see it all without the approvals required by law and what do the neighbors want, we just want Shep Brown's to follow the same rules that everybody else is supposed to follow. Do the neighbors want the marina to go away, no way, all we want is for Shep Brown's to comply with the zoning ordinance. We want them to stay within both the area constraints and the use constraints. It doesn't matter that Bill Littlefield is a nice guy and tries to be a good neighbor, it doesn't matter that the last time he came to the Planning Board his request was denied for failure to comply with the zoning ordinance, the bottom line is that Shep Brown's should be required to follow the zoning ordinance just like everyone else, that's the inconvenient truth. Please deny this application. Flanders – I would just like to correct something Warren made reference to 3 or 4 times, you said that when he came here for his boat storage thing, it was voted down. That is totally incorrect, he withdrew his application with prejudice and we never took a formal vote. Clark – I was actually fairly clear and I think I said the Board voted to deny, I didn't say it voted it down maybe I did, but I meant to say the Board voted to deny. Vadney – We did not vote on that application, they withdrew the application and we allowed that with prejudice. Henry Buletti, Lovejoy Lane – It concerns me that most of the people that come before the Board asking for exceptions or changes in rules are doing it for their financial benefit which probably isn't wrong. On the other I'm opposed to people that are looking for something to benefit them financially at the cost of the quality of life to other people. I guess one of the main things I'm interested in, it just seems to me I have

to come up to this meeting all the time just to keep the status quo, that's what I'm in favor of, status quo. Carl Johnson, representing applicant – I think the questions of the use, the ordinance and so forth have been brought up before and I think the Board is aware of what the concerns are and its quite evident there is a difference of opinion as to whether or not this requires something in addition to site plan approval. There's nothing we can do about that this evening. The application that's before you has nothing to do with boat racks, the application has nothing to do with previous applications by the owner and to me it really is just a waste of time to have to listen to that over and over again because the application that is before you is this. If there are concerns that are pertinent to this I would be happy to listen to them 3 or 4 times and there are a couple issues and I think we've addressed them, I think the most important of which is this whole idea of expansion and we've gone over that again and reiterated to the Board that this is not going to result in any more people coming to this site. There are a number of boat slips that are available to be rented and whether this building exists in its current form or not is not going to change the number of boat slips that are available to be rented. I think we want to make clear to the Board it's our anticipation that although the concerned members of the public think this is going to be some type of an attraction, my family's lived on the lake since 1957 and I'm pretty familiar with the lake, I'm pretty familiar with Shep Brown's Boat Basin, I used to go there as a kid. People don't come to the marina to be at the marina, they come to the marina to get in their boat and be on the lake. This is really an incidental use of this property and in my opinion it's not going to result in the magnitude of additional noise, people, traffic that's being represented. That happens to be an opinion that I can form, the applicant would be happy to do whatever the Board would feel necessary in order to alleviate some of those concerns by making it be part of the site plan review process. If the Board is in agreement with Mr. Kahn that they would like to see a stated, written set of rules, hours of operation, whether you can do certain things in the clubhouse and whether you can't, if that's important to the Board's decision making process, we would be happy to provide that information. We didn't feel that it was necessary, we didn't feel that this building rose to the level of concern, if that's a difference of opinion that the Board has so be it. We would also be most accommodating to extend the review time to whatever is necessary for the Board to have sufficient time to review that material and to incorporate that into the decision-making process. We would just like to get some direction from the Board where we're heading on that and if there's some way to raise hands or indicate whether it's more than one Board member or the consensus of the Board that would be helpful to the applicant. Vadney – I'll make one statement, you just said people don't come to the lake to be at a marina, they come to the marina to get on the lake. I agree that's what Shep Brown's is grandfathered for but in this case this is a step where people are coming to the marina to stay in the marina. The fact that apparently for a few years at least have been somewhere between 0 and 20 slips used for overnighting was something that was never approved by this Board as far as I know, I know it never came to us since I've been on the Board which is roughly 10 years and I don't think it was ever brought up before so I was surprised to find the level of activity that's already going on out there and I'm

hesitant to say just because it has been going on for 5, 10, 15, 20 years that it should continue going on so I am concerned with the whole idea of us now formally saluting an idea that 20 or more and I don't care if the number is 1 it's a major step where we now will formally salute the idea that it has become a living marina and not a boat fixing marina because once you do that as a number of people have said, that offers a density of living out there that we don't accept anywhere else on the lake in this Town so I think it's a major issue. Johnson – Mr. Chairman, I would like to point out I don't believe the Town Planning Board has the authority to restrict whether or not people stay on their boats overnight per se and I understand that this is an attempt fully open to the Board that this facility is trying to make it more convenient for the people that are already staying overnight, that's not a secret that's what this facility is intending to do. Vadney – If only the people who are currently doing it would be grandfathered and the right went away when they died, that would be one thing but we're making a step here that would apply long after all of us are gone and it is a major step in my book to take that grandfathered use of a marina and add the Planning Board's salute to using it as a campground. To me that's quite a bit different. Kahn – I understand your concern, I just think in this day and age when you're talking about 20 overnight slips although the applicant has told us that the other slips can be slept in also but when you're talking about 20 slips that have the benefit of this structure as opposed to 80 or 90 total slips in the marina, I don't think this is stepping way beyond the pail. Kahn gave an example of a yacht club he was in previously that had rules and regulations and how important it is to have rules and everyone knew the rules were written and knew what they were. Anyone causing problems would lose their space on the dock. I see Herb's concern but I don't really see that the liver board for 20 slips is a killer issue, I really don't think that this building is going to be a major problem if its set up with proper controls so we have limitations that everybody understands in advance as to how this building's going to be used so the legal arguments, Mr. Clark has reiterated Mr. Callen's legal arguments and the Town's counsel simply disagrees with him. Town Counsel does not believe that having bathrooms, having use of a computer and having a place where you can use a computer or having a relatively small space where people can gather has to be specifically listed in the zoning ordinance or approved by special exception. Town Counsel believes that those are all accessory uses to a marina and your views as to what a marina is may change but I don't really see myself that having 20 slips that have access to this building changes the nature of the marina in any way that we ought to worry about. Vadney – What if one of the service stations in Town had a camper pull in and say I've got trouble with my transmission, can you fix it? Dever – Mr. Chairman, I agree with Lou. Mr. Littlefield's in business and by all accounts everybody in the room says he does good business. Vadney – We are not voting on Mr. Littlefield, we're voting on the land use. Dever – I think it's appropriate, I think its providing service to his existing customers, he has a limit on what he can do and if he wants to increase he has to come back. I think he's improving the quality of life for his customers and I know there's people that have said this would run down property values, I've seen that building, I saw that building 40 years ago when I was riding in and out of that marina on my grandfather's boat working on

Bear Island and the rest of the islands, I don't see how that would drive down property values to improve that building. Bayard – I'm leaning a little more towards Herb's point of view personally but one question I have and maybe John might be able to help me on this, the condominium statute seems to give a little weight toward condominiumization, I mean you can't just block something because you don't like condo's and I'm wondering if the boat slips were to go to condominiums, are we allowed to say it's a change of use, I don't think we can. Vadney – That's something I don't think we are anywhere near prepared to talk to tonight, first it's not before us, they haven't said they want to condo to us, it was mentioned by one of the citizens and that led to the discussion. My question, confirmed and improved by Lou, was there would be a question of how you can subdivide, transfer and I guess if you didn't want to subdivide and transfer and still condo that portion, you could have a real argument with your banker who holds the mortgage but those issues would have to be worked out. It would definitely have to come back to the Planning Board for some type of approval. I would think there would be a subdivision separate ownership, how do you have an accessory use that's been sold away from the parent grandfathered use. Edgar – I think what the condo statutes deal with is basically you can't prohibit condominiumization, it's a form of ownership, its not a land use and the statutes basically say that you can't prohibit against forms of ownership and by virtue of a condominium form of ownership you can't say that form of ownership is precluded. There are also elements of that statute that deal with changes of use and that's another ballgame when there is in fact an underlying change of use. The interesting question that would have to be addressed at the time, if and when it becomes relevant, is stated if you sever the primary, the whole notion of accessory uses are the relationship between the uses, between the principle use and the subordinate use and if you legally severed the two, it raises interesting questions as to whether or not you would in fact have an accessory use. I'm not prepared to give you any kind of a definitive answer as to whether or not how that would play, its not before us, its not something we've looked into. Bayard – I think it raises an issue to me that this is way accessory to the marina, it is serving the people and things like that and is a commercial property a collection of accessory uses and I have a problem with that. Sorell (inaudible – no mike). Susan Chinetti, MeredithNeck Road – I would like to add that I want to be sure that people are taking into consideration the noise and the traffic congestion down there is not all Shep Brown's, it's a Town issue and its Town property so I hope when you make your decision you don't take into account the Town launch ramp, the Town docks and the Town parking lot because that is not Shep Brown's problem. Warren Clark – I'd like to make a comment relative to Mr. Kahn's experience in a yacht club, I want to remind Mr. Kahn that this is not a yacht club, this is a marina. We have a yacht club in Meredith, I'm not sure what district it's in and they have a clubhouse and a yacht club is not an allowed use in the shoreline district and a clubhouse is not an allowed use in the Shoreline District. Johnson – To move this along Mr. Acting Chairman, the applicant would like to get a reading from the Board whether or not it's worth us to continue this hearing to provide the additional set of restrictions that Mr. Kahn is suggesting or whether or not it would be worth it at this point to vote on the application before you

and a condition of that vote be that we return to the Board with those conditions because where I'm going with this is we can see this continuing for another month to come back with a set of conditions to have the project fail on the basic aspect of the accessory use and so forth, we'll do what the Board wants to do but I thought I would make that comment because I know the Board's time is valuable, the applicant's time is valuable, the abutters' time is valuable and we may be able to avoid an unnecessary meeting if that was the case. Johnson – The gist of my question is I'm trying to make this application process move along. Mr. Kahn has indicated and the Board generally seems to be in agreement that you would like to have before you a set of rules, regulations and restrictions as to how the facility is going to operate, is that a correct assumption on my part? Vadney – I would say rules are an issue, I won't say they are the biggest issue, if this goes forward we are certainly going to want what Mr. Kahn asked for. I'm not ready to cave in on the bigger question of the legal issues of doing this and why my silly analogy of the camper and the service station isn't somewhat true to the situation and I think we have to think of it and that may not be an exact analogy but its something we need to think about as we analyze what we could be doing and what precedent we could be setting in this grandfathered use as a marina. Edgar – As you know when we received the first letter and then the second letter from Attorney Callen, the publicly stated plan was to have those letters reviewed by counsel and try to get an opportunity to meet with the full Board for a briefing and due to a number of scheduling conflicts, we weren't able to do that so we had kind of a partial briefing so I think if we were to continue it to allow the applicant to respond to the rules, regulations and restrictions notion that would also provide the opportunity for the Board to meet directly with Tim to run all the analogies you want and explore all the idiosyncrasies of why Tim feels as he does and why he feels Mr. Callen has come to an overly narrow and misconstrued conclusion and you'd have the opportunity to meet with your attorney to delve into that at length with as much as the full Board. We had hoped to do that initially, maybe now its more important than ever because you do need to be comfortable with which way you go on this for any number of reasons and perhaps, nobody wants to keep dragging it out, I think you know some of my own personal sentiments that we've been at this a long time, this is not a large project in terms of orders of measure that we're most accustomed with, this is pretty small but we do need to get it right and they've offered a willingness to grant the 65-day extension, they've offered to come back with some restrictions, it doesn't mean you've got to agree to them, it doesn't mean that you have to pre-conclude that they'll be sufficient but it's a step, it's something to work with and meanwhile you can examine the idiosyncrasies of the legal arguments directly with Tim in advance of that meeting and at that point hopefully be in a position to make a decision so I think we can accomplish a couple things with a continuance. As Carl suggested, the applicant needs to have clear direction, that doesn't imply that it necessarily leads to an approval, its just information that you'd like to take under consideration at the next meeting as well as providing an opportunity for the public to comment on the same rules, regulations and restrictions so you have the benefit of that as well as meeting with the Town attorney to more directly address your questions. Kahn – Carl asked us

to vote on the legal issue but we're not going to do that so it seems to me the appropriate motion is to continue this to a date specific. Vadney – We'll have to give them some guidance as to what we'll do or what they need to do between now and then. Edgar – I think there needs to be a little bit of direction in terms of what you're looking for just categorically so that can be submitted within the 2 week timeframe and its clearly not a one meeting continuance, at a minimum it would be a month's cycle. Johnson – If the submission of the rules, regulations and other operational information of the facility is subject to the 15-day submittal period, we could certainly have that information available to submit 15 days prior to the second meeting in February. Bayard – Will we be able to meet with the attorney with some days in advance, I'd rather not meet with him at 6:00 or 6:30 the night of the meeting. Edgar – Yes, it depends on everybody's flexibility. Flanders – I think the applicant's made a reasonable request and they are looking for some guidance from the Board and so far we haven't given them any other than comments that were made during the discussion, we haven't responded to that question, I think that's unfair for us to do that. Kahn – Bob, I've tried, I just don't want to write them, I want to know what limitations are going to be on the use of the building? Hours? Who can use it? How many guests they can have? Parking? How many additional cars can be there? How long can they be there? What can they do in the rooms? Can you have a party there? Can you bring in a band? Can you bring in a caterer? What can you do, that's the sort of thing I want to know? Mr. Littlefield - To make it so it might get resolved at another meeting, can there be some sort of relationship between Bill and some of the Board members or somebody that could be just looking and saying no that isn't quite far enough, this could go on for another 2 or 3 years if every time we come to a meeting, there's one more thing to talk about. Kahn – Why don't you consult your trade association? Flanders – To answer Mr. Littlefield's question, it would be inappropriate for a Board member outside of a public meeting to discuss this with an applicant or an abutter. The way we handle that is we have a Planner and John Edgar and he kind of sifts things down and assists the applicant in getting the information the Board needs. But for a Board member to discuss it with either you or an abutter would be inappropriate. Johnson – I have sufficient information from Mr. Kahn's comments to put together the information I think will be helpful for the Board and I'll be happy to work with the Town Planner, Angela, and the Community Development Director, John Edgar, to come together with a game plan to come back to you. Edgar – I think for purposes of starters obviously you have the comments at 3 hearings now and if we take in '06 we probably have 5 hearings worth of input. On a categorical basis, you know what the potential issues are, maybe not with the way it would be managed today but potential issues in the future, we have congestion questions, we have parking, we have noise, we have lighting, categorical and so to what extent might the rules, regulations and restrictions address some of those concerns so a reasonable corral could be put around this accessory use. That would be what I would use as a frame of reference to evaluate what you might come back with. Edgar – The other thing too, just make sure we can build into this when we come back is we have a floor plan for the building that the Fire Chief has reviewed to determine public assembly permit loading and in that floor plan we haven't spent a lot of time

talking about it here but the building is a relatively small building and its chopped up into relatively small units within that and the Chief has evaluated the recreation rooms within that building as well as the patio to determine a maximum occupant load so that's just something to be mindful of what we're talking about. We're not talking about a 40' long hall that could be rented out, we're talking about a building that would be chopped up into about 5 or 6 smaller components and it's a relatively small building to begin with so we'll have that information at the next meeting so you can look at the floor plan when you're looking at the restrictions as to how the recreation rooms would be used, you have a square foot right in front of you and you can maybe visualize that more so than you might by just looking at the footprint of the building. Flanders – This meeting was noticed as a public hearing on the site plan and it was also noticed as a public hearing on the architectural design review. In the packet I didn't see anything that showed any elevations or anything else and certainly you can't do an architectural design review unless you know what the building's going to look like. Edgar – Bob, as you know, you weren't there for the prior meetings and we have opened it up, we have reviewed elevations, we have them on file and we can make that part of the packet again. You don't have the benefit of all the handouts from the prior meetings but we have reviewed it, we've already had the hearing and for purposes of trying to bring closure to this, we'll make sure we have that available going into the next meeting. Clark – I would just like to make one comment relative to noise. I heard a number of comments about keeping the building closed so people can't get in there after hours, I'm speaking for myself only and I would like it noted that my fear of this is not so much the people will party inside the building, its that by encouraging people to stay overnight and having more people stay overnight, my fear is that the people will make noise outside the buildings and I'm hoping this thing is denied and I think it should be denied but if you approve it with constraints I hope the constraints are such that they limit the noise outside the building and not just after 11:00 o'clock but during all the evening hours. Finer – Along those same lines I was going to say we've been hearing numbers of 20 boats and that's going to be 40 people, Chuck Palm is looking at 75 occupants and I think that can generate a considerable amount of noise. We've heard a lot of testimony that there's very little noise coming from there now but I think once you build a sense of community by having this building here, you're going to have a lot more people gathering together and to me the noise issue is going to be a big concern because of that. I'm still not convinced that this is allowable based on moving showers from an existing building down to this one because we've never approved the showers going in the other building that's why I'm concerned that this still needs to go to the ZBA. Kahn – Bill, I would say that the opinion of Tim Bates is that the showers are an accessory use and never had to be approved by the ZBA. John and I spoke to Tim this afternoon. Finer – But an accessory use to a marina should be directed at the boats not at the people who live on the boats, then you're getting into yacht clubs and not marinas and you're getting into a waterfront campground. Kahn – To me a yacht club and marinas are the same thing, they are just different ownership. Edgar – One thing's clear to me and that is that will not be resolved tonight and I appreciate the positions regardless of which way it goes, my view is you need the

benefit of a direct dialogue with Tim so you can engage him fully in that line of questioning, Bill, whether you agree with his conclusion or not at least you will have had the benefit of the attorney that will be defending the Board. Vadney – A few comments to summarize what I heard here tonight. As you know, one of my major concerns has been the safety of that road with children playing around this place even though the current owner says there are no children there, etc., we don't make this decision based on the current owner, we make this decision based on the land use, that is becoming a clubhouse, kids hang around a lot of clubhouses and I think we have to look at the safety. One early comment was that and I can't quote exactly but something like Mason Marine is no longer permanently operating out of there. The word permanently concerns me because does that mean they've gone for a few minutes and will be back as soon as this gets approved, I don't know. If they are gone in the wintertime I don't even care, if they are back in the summer that bothers me if there are dump trucks, graders and other things going up there to get on a barge, all the kids playing around this clubhouse so that's something I'd would like defined when we meet again. The issue of the condominiumization, we don't have any input on it, I realize that's not before us but John that's something I do want to get some kind of a hearing from the attorney on where we would go if we ever tried to look at a condominiumization of an accessory use in a grandfathered location. Many of the other thoughts I've already commented on, I do look at this as not just a place where people come so they can get on the lake, this makes it a place where they can come to stay in the marina and that to me is a major difference in the way you think about this problem. I'll be thinking about that for the next few weeks and we'll be talking to the attorney about that as well. The whole issue about whether or not you can call this an accessory use and when does it become an RV campground and change the complexion you might say of the neighborhood so those are the things I'm going to be working on for the next couple of weeks and talking with the attorney and then, of course, the rules issue that Lou has asked for several times. We already talked about the minimum of the 3 parking spaces in front of the building; cleaning up that driveway to go through so if it goes forward those are things I'll certainly be looking for.

Dever moved, Finer seconded, MR. CHAIRMAN, I MOVE THAT WE CONTINUE THIS HEARING TO FEBRUARY 26TH. AND IN THE INTERIM WE MEET WITH THE TOWN ATTORNEY. Voted unanimously.

Vadney - This meeting will not be re-noticed, this is your notification that if you're interested to get comments to the Town before that or be here on that day at 7:00 o'clock in the evening.

Meeting adjourned at 9:10 p.m.

Respectfully submitted,

Mary Lee Harvey

Administrative Asst., Planning & Zoning

The minutes were reviewed and approved at a regular meeting of the Planning Board held on _____.

William Bayard, Secretary