

Present at Meeting: Harry Balz, Chairman
Bill McGhie, Member
Teri Schuerlein, Member
William Siegle, Member
Dan Freebern, Alternate
Mark Schachner, Esq.-Town Counsel

Also Present: Matt Fuller, Esq.
Bob Olson

Don Butler, Tracey and Rob Boutelle, John Crupi

Chairman Harry Balz called the meeting to order at 7:00M and announced that the meeting would be adjourned no later than 9:30 PM

Pledge

Approval of minutes: Bill McGhie made a motion to approve the January meeting minutes. 2nd by Teri Schuerlein. ALL AYES

Chairman Harry Balz introduced our new Planning Board Member Dan Freebern as the Alternate #2 and announced that our Alternate William Siegle had been promoted to by the Town Board as a full voting Member.

Correspondence: Brant Lake Heights Homeowners Assoc. Dock Application correspondence from Meyer and Fuller, attorneys at Law dated 2/14 and 3/14 attached to the agenda for the Planning Board Members to review and entered as a matter of record.

Agenda Items: File # 2013-11CU Tax Map 72.13-2-48 Brant Lake Heights Homeowners Assoc.

Chairman, Harry Balz made an announcement to recuse himself and read a prepared statement for the record, Referencing file# 2013-11CU as follows:

Upon advise of Town Counsel I have been advised that in the best interest of the Town of Horicon that I, Harry Balz recuse myself and take no part in any and all public meetings or advise or consult with any Planning Board member who may serve on the above stated file.

I hereby recuse myself at this time with the understanding that if a Court changes the existing Condition I will resume my position on the Board. I further state that I spoke with two senior Board members to advise them of my proposed action and if they have any questions to contact Town Counsel. To the Planning Board junior members I am sorry that I will be unable to be part of the proceeding on this file.

Teri Schuerlein, Member also recused herself as well from application 2013-11 CU since she rents a dock space to Frank Noon, Brant Lake Heights Association President. Alternate Dan Freebern took her place to review application 2013-11CU.

Vice Chair, Bill McGhie took the place of Chair, Harry Balz to conduct the Planning Board meeting upon the Chairman's recusal and announced that the Planning Board would be considering this application under sections 9.61 and 9.7 section 10b of the zoning and project review book.

Attorney, Matt Fuller appeared before the Board to present an application for his clients the Brant Lake Heights Homeowners Association for a conditional use application for a multiple docking system. He began his presentation by recognizing the Planning Board Members that had recused themselves stating he knew it was a difficult decision and thanked them. He then proceeded by giving a background of the prior history of events, starting with the summer of 2006 when Wes Butler, Bill Owen and Bob Olson came into Matt Fuller's office to get his

assistance with dock permits, 18 docks for the Brant Lake Heights Homeowners Association and 10 docks for the Butler Loop. The goal was to get the total number of docks up to the number deeded out by Olson Development. The Butler Loop docks were deeded out by Bob Olson's predecessor Sinkora and Salluzzo who acquired the property from Brant Lake Shores in the 60's. In the 70's, Sinkora and Salluzzo conveyed 9 lots with easements for a NE beach corner and also formed the BLH Subdivision. Olson Development acquired the development, beach, common property and land under the lake in 1988 (**discussion about litigation in 1970 that determined that title to the bed of the lake was in the beach parcel owned by Brant Lake Shores, later purchased by Sinkora and Salluzzo**). In 1988, Olson Development applied to the Horicon ZBA for dock permits and was denied. In 1990 Olson Development returned to the ZBA for approval for 28 slips with an application that had a different dock configuration and ultimately received approval from the ZBA despite the controversy the neighbors and public projected in the hearing and meeting process. An Article 78 was commenced and filed by a neighbor to the West, the Webster's. In 1990-91 the ZBA's decision was reversed by Judge Dyer of the Supreme Court ultimately overturning the ZBA's decision for approval. In 1989-1990 litigation broke out between Olson Development, Brant Lake Heights Homeowners Association and the Butler Loop owners. Mark Schachner represented Olson Development and the Brant Lake Heights Homeowners, that lawsuit dealt with access rights and basically a battle over the docks and similar rights, and to this day has never been settled or a final decision documented. There is about a 10 year gap in the Town's records and files until about 2008. In the meantime, Olson Development had installed and maintained docks and no enforcements actions had been taken despite letters from the Webster's attorneys. The docks just existed. By 2004-05

all of the lots had been deeded out by Olson Development with varying degrees of dock rights. The deeds were not artfully drawn and were not clear. There were 4-5 series of wordings of dock rights. All of the homeowners purchased lots in the development with dock rights. The interesting thing is that many of the homeowners were represented by pretty reputable attorneys, one being the Chair of the Real Property Section of the NYS Bar Assoc. These attorneys reached out to the Town, the APA and with due diligence made sure this was a lawful subdivision with no wetlands and the right for docks, and the Town's files didn't say anything else to the contrary. Again, Matt Fuller reminded the Planning Board that the Town's files were missing from this time period. The need for the ultimate number of docks is 26 down from 28; this is going to be a phased approach because the Association has not been fully built out. This number of docks has been reduced by 2, and the dock configuration changed to eliminate a "finger" because Bob Olson deeded back to the Association or released the dock right because of property that he owned in the Association. Matt Fuller continued on to say that this is not a scenario where homeowners are looking for more than they deserve; they are basically looking to make right for those conveyances of dock rights. Where this application has gone awry is the developer has deeded out dock rights that they did not have permits for. This is a past issue that should not have existed. Homeowners in the Association have purchased these properties and have been taxed with rights of lakefront. Matt Fuller began working with Gary McMeekin dealing with the issue of deeded out dock rights that didn't exist and at that time in 2006 Matt Fuller told Bob Olson that he needed to hire an attorney to apply for dock permits because of the legal issue of deeding out dock rights to homeowners that didn't have approvals and that he could not represent both parties. Olson Development retained Attorney Dan Hogan of McPhillips, Fitzgerald and Cullum, because of FOIL requests it took a

while for Dan Hogan to prepare the dock application for Olson Development. The first hearing was held in the summer of 2008 the Webster's' attorney, John Caffry was present at that hearing and produced original paperwork on the Article 78 that the Town did not have. No one was aware at that time of the existence of the Article 78 or that Judge Dyer had overturned the ZBA decision in 1990-91. The only paperwork that the Town's file contained was the ZBA approval for the docking configuration for 28 boats. Attorney Matt Fuller continued on to state that the Town, given this information pertaining to the Article 78, took the position that there would only be a total of 18 boats, 8 BLH Homeowners Association and 10 for the Butler Loop. Feelings were running strong and again several lawsuits broke out. Atty. Matt Fuller took another look reexamining the zoning and began working again with the APA and Gary McMeekin on the Conditional Use permit. The APA developed its position that the underwater growth out to certain depth was emergent wetlands. With this development it was apparent that more needed to be done so the BLH Assoc. hired VanDusen and Steves to have the bottom of the lake reviewed, mapped and soundings were taken. Mary O'Dell, biologist and Deb Roberts, wetland biologist worked with the APA to flag the wetland. It was determined that the NW corner does have emergent wetlands and deemed this a Class A regional project. In zoning law if a project is deemed Class A, no conditional use permit is required and the APA and Gary McMeekin issued letters stating that fact. While Mary O'Dell and Deb Roberts were out examining the beach front area there were deep scars in the wetland area where boats were beaching. There are no regulations or laws prohibiting beaching of boats but it became clearer the importance of getting the boats out of the wetland area and into the floating water. In addition to the APA, BLH Assoc. also needed DEC approval and wharf registration, therefore Atty. Matt Fuller worked with both organizations to work through those processes. In the

spring of 2011 the APA suggested a few changes that were completed and Atty. Matt Fuller met again with the APA in July 2011 to discuss progress and at that time was told by the APA they had received quite a bit of correspondence regarding this project. A FOIL request was required so that the correspondence could be reviewed. After 3 weeks it was determined that there were many letters received by the APA from neighbors of the BLH Homeowners Assoc., residents from around the lake and letters written by Gary McMeekin from the Planning and Zoning Boards opposing the project. This came as a surprise since an application had not yet been finalized or filed with the APA. A FOIL request was sent to the Town requesting meeting minutes discussing these 2 letters sent to the APA, a majority action had taken place and possible open meeting laws violated. There were no minutes available and it became apparent that some behind the scenes action were taking place to the detriment of the Association, which has led us to the latest litigation. Atty. Matt Fuller stated that we have worked through this latest issue and that is why they are before the board with a conditional use application. The reality to where we are is that the APA has determined that they have jurisdiction up to where the water is 2 meters or 6 feet deep and the Town has jurisdiction after that. Atty. Matt Fuller stated that they would continue on working with the APA on the Class A regional project up to that 6 foot depth of water. The goal in this scenario is to benefit the homeowners and keep boats out of the wetland area. He continued on to state, in the conditional use application there are several dock alternatives; Alt #4 is the preferred, it is an L shaped dock extending into the lake 167 feet from the mean high water mark. Atty. Matt Fuller handed out a packet of information detailing the history he had just elaborated on with photos as evidence depicting the dock systems lengths and layout using people with brightly colored clothing. The photos were taken in several locations on the lake. Despite previous arguments with the previous Zoning Administrator, Atty. Matt Fuller reminded the Planning

Board members that they needed to evaluate this information by reviewing the criteria for the general health, safety and welfare of the public with considering section 9.70 of the Zoning Law and not section 11.6. He continued on an emphasis on maintaining acceptable navigation. In order to ensure this, the Planning Board shall consider the following general dock design parameters:

- 1.) Any dock design parameters specific as part of the subdivisions original approval; there are none
- 2.) Width of shoreline in relation to the size of the proposed dock; there is adequate room within the property lines for the location of the docks. No dock extends beyond any property line, and the entire structure is located over Lake Bottom lands owned entirely by the BLH Homeowners Assoc.
- 3.) Dock locations on adjacent parcels; the closest dock is the dock on the Webster property. That dock is at least 250+ from the proposed dock. To the north, there are no docks that would be impacted.
- 4.) Lake bottom conditions; the reason for the extension into the lake is to get boats out of the wetlands. There are no regulations prohibiting the beaching of boats; however that comes at environmental cost. The better plan is to have those boats in open water, not along the beach where the vegetation is most likely to grow. The APA agrees with this concept which is how the plans have been developed.
- 5.) The impact the proposed dock will have on general navigation; the docks do not extend out into the general area of the lake. The docks are tucked into the bay. The end of the dock will be appropriately lighted for safety purposes.

The environmental characteristics required by the APA is that the first 100-125 feet of docking is pass through decking with see thru design so that the sunlight can filter thru. They had to provide a photo analysis to the APA so that they could

see seasonally how the vegetation was impacted. These docks are not permanent they are low to the water floating docks. The remainder of the decking is not see-thru design and perhaps a bit sturdier. They could pull the dock closer to shore but this design allows decking to pass over the hardest portion of the wetlands. Atty. Matt Fuller reiterated that this project has been controversial for a long time and the reality is that the homeowners in the Association have been caught in the crossfire. The homeowners have innocently and in good faith purchased property with docks and dock rights. They didn't do wrong, dock rights have significant value. In one of the letters sent to the APA by a neighbor it states there will be an additional number of boats on the lake. The truth is that anyone can use the public boat launch, the Association is not year round and the homeowners boats are already being utilized on the lake, wouldn't it be better to have docks than to have boaters dock boats in the wetland area? Atty. Matt Fuller continued on to say that they have been through multiple appeals, been litigated and this dock design seems to make the most sense for everyone involved, reiterating the APA jurisdictional requirements. Ultimately they would like to have the public hearing scheduled and the conditional use application heard. At that point of the discussion questions were opened to the Planning Board. Dan Freebern asked for clarification referring to litigation that had taken place between the owners in the Butler Loop and the homeowners to the west. Atty. Matt Fuller responded by saying, although he is not in agreement, a synopsis of that litigation is that the Butler Loop homeowners feel that they have certain rights because they pre-exist or pre-date the Association. This litigation has not been resolved to date. The litigation involving the Webster's has been settled, the action taken with the Article 78 overturned the ZBA decision through Supreme Court in 1991. This action prompted the Zoning Code to be changed by the Town Board 12 years later.

Dan Freebern asked about the property line to the south only 20 feet from

the docks and inquired whether it would be a potential problem with the swim area. Atty. Matt Fuller responded by saying that it was a requirement of the APA which required 20 feet for navigation reasons. The swim area is located between the Butler loop docks and the BLH Homeowners proposed docking system. . Tracey Boutelle added that no boats on the lake travel within the cove unless visiting homeowners in the Association.

Bill McGhie asked if DEC permits would be required and was answered by Atty. Matt Fuller by saying he was in discussion with the DEC. If permits are needed they will get them.

A conversation ensued between the Town's Attorney Mark Schachner and Attorney Matt Fuller regarding DEC requirements, permits and coordinated review between the involved agencies and involvement with the completion of the SEQRA form. The time frames were discussed regarding SEQRA completion.

Bill McGhie asked Atty. Matt Fuller if the dock structure could be moved an additional 10 feet away from adjoining owners to allow for boats to swing. Atty. Matt Fuller said that they could look into that and reminded the Planning Board that those 20 foot setbacks were requirements of the min. 40 foot navigable way rule. Atty. Matt Fuller stated that the next closest dock was 100 feet away and that the shoreline between the proposed dock and that point is unusable, it becomes instantly vegetative. Bob Olson added that it is 120 feet of absolutely unusable shore frontage.

Dan Freebern asked where the beach was located because he could not determine from the map alternatives provided, and was answered it was in the sandy area in front of the bathhouse between the proposed docking system and the Butler Loop docks.

Don Butler stated that there is a floating dock in front of the swimming area to protect the swimmers and will be roped off. Tracy Boutelle stated that presently

this is a safety issue. There are young children swimming in this area and boaters are beaching their boats because of inadequate docking space.

Bill Siegle asked about speed limit signs and was answered yes by Atty. Matt Fuller that they. In restricting the size of boats and was answered 20 feet was the size limitation.

Atty. Mark Schachner asked what is the source of information regarding boat length limitation.

Atty. Matt Fuller answered it was in the Association regulations and went on to state that source was the covenants and restrictions of the Association private contracts and the Town Zoning Law. Law on one side and contracts on the other. There were three dock amendments prepared by different attorney over time and that remedial documentation needs to be redone. There needs to be new specific regulations redrawn.

Atty. Mark Schachner reminded the Planning Board that they could require that these deed provisions could be updated as a condition of approval for the proposed docking system and explained the range of alternatives available to them.

Bill Siegle asked if they could visit the site where this proposed docking system would be placed and was encouraged to do so by our Town Counsel, Mark Schachner but reminded not to discuss the merits of this application with other Planning Board Members or members of the community outside of the Planning Board Meeting forum.

Don Butler volunteered to place the docks on the ice so that Planning Board Members could get a visual of what the proposed docking system would look like and would report to the Zoning office when that action had taken place.

Jim Steen asked Atty. Matt Fuller about docking additional boats inside the proposed dock configuration closer to shore and was assured by Matt Fuller that would not take place. Matt Fuller continued on to say that it was a part of the application but if they needed to put in writing they would to insure compliance. In addition Jim Steen asked Atty. Matt Fuller to provide the Butler Loop docks on his larger scale drawing for the Public Hearing.

Bill McGhie asked why the Association was asking for dock alternate #4 and was answered by Atty. Matt Fuller that the decision was driven by the APA through discussion of the wetland.

Dan Freebern asked realistically how many boats would be docked there at present and was answered by the homeowner Rob Boutelle, who prepares the Association rotation schedule, that there would be 17 boats. No additional slips would be added until needed if the proposed docking system was approved. The 17 slips are strictly Association homeowners. There are no additional claims to dock rights.

Attorney Mark Schachner asked for clarification on the 17 slips and was told by Atty. Matt Fuller the immediate need was 17. The addition of docks would be on a gradual as needed basis fully documented.

Bill Siegle made a motion that Conditional Use application 2013-11CU Tax Map 72.13-2-4 Brant Lake Heights Homeowners Assoc. was deemed complete and a public hearing scheduled for April 23, 2014. 2nd by Dan Freebern. A vote was taken. Siegle, Freebern and McGhie-Yes.

Teri Schuerlein and Harry Balz returned to the meeting.

Public Comments: None

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Horicon Planning Board

March 19, 2014

Regular Meeting

7:00 PM

Next Meeting: April 23, 2014

Being no further business before the board Chairman, Harry Balz made a motion to adjourn the March meeting 2nd by Bill McGhie. ALL AYES

Respectfully submitted,

Dorothy Johnson, Secretary