

# Broad Bay Alliance

June 10, 2002

Board of Selectmen  
Town of Freedom  
Freedom, NH 03836

Gentlemen:

In light of the ZBA's denial of Ossipee Lake Marina's application last week, we were stunned to read Town Counsel's quote in the June 6<sup>th</sup> Conway Daily Sun that the applicant has the right to "scale down the plan and resubmit it".

Since the ZBA found that the Marina's plan would have an adverse impact, it cannot be "scaled down". As one ZBA member stated during the hearing, the zoning ordinance calls for the board to determine whether or not there will be adverse impact, not to determine the degree of adverse impact. Adverse impact is not scaleable.

Town Counsel appears to be signaling the town's willingness to consider a new plan. If so it would be the **sixth** plan presented to the town and would it start the clock ticking again for a period of review and assessment, new hearings and appeals that would extend through the summer and well beyond. This cannot be permitted.

In January 2001 the Selectmen on Town Counsel's advice mandated that **five years** of unenforced violations at the Marina be put before the ZBA. The Marina received **16 months** to prepare a plan to address the existing violations and meet the terms of the ordinance. Attorney Cooper was allowed to present the plan over the course of two hearings that were 60 days apart. The board allowed changes to be made to the first plan based on board feedback and concerns expressed at the initial hearing.

The result of all of this time, effort and town expense was a plan that was rejected by the ZBA in its entirety for an array of reasons. Those reasons include the failure to meet **five separate criteria** – two in Section 304.6.2 and three in Section 306.1 – including **the most basic criterion of all – the adverse impact standard.**

The Selectmen mandated the process and the ZBA has ruled. Why is Town Counsel signaling that the decision in this matter may not be final? Who has authorized him to do so?

Attorney Cooper's client has the right to request a rehearing if he believes the ZBA has misinterpreted or misapplied the law. But he does not have the right to substantially change the application, to request piecemeal reconsideration of some aspects of it or to

continue to submit new plans while the town withholds enforcement proceedings as an accommodation to the applicant.

The administration of the zoning ordinance involves issues of law, common sense and fairness. In this highly public matter, the process is just as important as the decision that is rendered.

The town has already established two unfortunate precedents in this matter – five years of no enforcement of publicly documented zoning violations and an extraordinarily generous period of time to accommodate the Marina in the creation of its plan.

The town will be making a grave error if it establishes a third precedent by undermining its own legal processes by not embracing and acting on the ZBA's decision in order to accommodate additional variations of what has already been judged to be unworkable.

We expect the Selectmen to act swiftly to enforce the outstanding zoning violations on the pre-existing Marina property and expedite the removal of all Marina operations from Lot 42, including the bathrooms, parking lots, stored boats and boats berthed on the shoreline.

If the Selectmen fail to act and if enforcement is delayed to accommodate yet another set of plans presented to the ZBA, we intend to pursue immediately all available options to protect our property rights. Those options include a professional independent appraisal of properties on Broad Bay and the surrounding area to establish the financial harm that has been caused by the actions of Attorney Cooper's client and the town.

Once again we remind the Selectmen of the dangerous precedents that are being established in this case – precedents solely to the benefit of the applicant and to the detriment of the community. This matter must be brought to a close.

Respectfully,

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