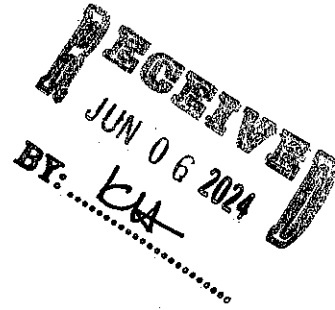


Village of Greenwood Lake Zoning Board of Appeals

Meeting called to order at 7:30 on May 16<sup>th</sup> 2024

Members:

Diane Bramich  
David MacCartney (ZBA Attorney)  
Floyd DeAngelo  
Vic Ludmere  
John Sorrentino (Recused – Applicant, owner of the property)  
Edward Krull (Recused – Applicant, owner of the property)  
Chad Sellier (Village Trustee)  
Danielle Mulqueen (Planning Secretary, Building Department)  
Mackenzie Winne (ZBA Secretary)



Business: Cabin 12, 1177 Route 17A GWL LLC

Diane Bramich: All stand for the pledge of allegiance

Everyone: I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all. Thank you. Secretary of State.

Diane Bramich: I'd like to call this public hearing to order. It is 7.30 on May 16, 2024. Each case before this Board is judged on its own merit based on the evidence received by the Board. No decision made by this Board of Appeals may be used as a precedent in this case or any other before the Board. Has everybody read the minutes of the last meeting?

Everyone: Yes

Diane Bramich: Do I hear a motion to accept?

Bernie Fink: Motion to accept

Floyd DeAngelo: Second

Diane Bramich: All in favor?

Board: Aye.

Diane Bramich: Okay. The Board voted on April 18th to reopen the public hearing and schedule for a re-hearing tonight. On the application of Cabin 12, located at 1177 Route 17A GWL, NY. Do you have proof of mailings and legal notice.

Edward Krull: Yes, here are the mailings and the advertisements.

Diane Bramich: Do I hear a motion to open the meeting and re-hear this case?

Vic Ludmere: Motion to open and rehear this case

Floyd DeAngelo: Second

Diane Bramich: All in favor?

Board: Aye

Diane Bramich: Reading the legal notice

To whom it may concern, legal notice is hereby given to all persons at 1177 Route 17A GWL LLC. The petitioner has applied to the Zoning Board of Appeals for the Village of Greenwood Lake for a variance and or interpretation pursuant to Chapter 120, Section 1, 2, 11, and 16 of the Zoning Law of the Village of Greenwood Lake. The petition for a variance and or interpretation seeks authority for the petitioner to re-hearing 1, reverse the decision of the Building Department Letter of 9623, 2, confirm the permit use of accessory building Cabin 12 as an eating and drinking place, which requires the said Zoning Board to review those sections of said law and stated herein above. The property which is the subject of said action of the Board is identified as Section 306, Block 17, Lot 1 on the tax map of the Village of Greenwood Lake and is also known as 1177 Route 17A GWL NY 10925. All interested parties to be heard on the Board's actions must appear at the public hearing to be held commencing at 7.30pm on May 16, 2024 at the Village Hall and Church Street in the Village Agreement Lake, NY. Documents relating to this application may be inspected by the public during regular business hours in the Village Clerk's Office at the Village Hall.

This is dated the 24th of April. It was in the newspaper on May 1st and May 8th.

Diane Bramich: So that everyone knows what has happened. I recused myself at the first and second meeting on this application because the ZBA attorney, John Ziboro, said I might be called as a witness and that I should not sit as chairman. At this time and after talking to my attorney, I am not recusing myself as I have not owned the property since 2019 and have not received any monies connected to the property since September 2020. Consequently, I have no financial interest connection to this property. Okay. Present your case, sir.

Edward Krull: (Handing out exhibit CC copy of the original building permit application- and going through it) This is a copy of the original building permit that we built the building with.

That building is situated on a portion of the motel's foundation. The motel was approximately 24 by 100. This building is 24 by 40, so it's taking up about 40% of the original foundation. We originally, when we entered the permit on this, it was for the construction of a 24 by 40 metal building on the southeast corner. If you go to the bottom of this where it says for village use, that was filled out by Ed Mateo and signed. The property is an existing mixed-use and this is non-conforming. At the time, I'd asked the question why it was non-conforming because everything we were doing on the property was use, was a legal use. He had said it was non-conforming bulk because this foundation was closer to the side yard than is allowed now, but it was allowed at the time it was built. That's that part of it.

The next page is just the actual permit, then the receipt for the permit. Then the third page shows the original survey that we just plotted the building into. Ed had redlined it and asked us to move it back 40 feet so it would be 100 feet from the shoreline. I'll get to the reason for that, why he wanted that done. That was it. He had five feet on the side yard that we were to maintain the five feet because that's where the original foundation was and that's still what it is today.

The next page is chapter 120-18. If you go to D-1, it talks about the areas that are changing contours and subject to approval and authorization by the planning board for the purposes of protecting the ecology and sensitive areas, scenic assets, and the community. It goes on to say, except that the interior alteration or minor exterior alterations of structures shall not require authorization by the planning board. If you go from there down to number four, it says for the purpose of this section, minor exterior alterations shall be defined as the repair of an existing structure, the replacement of an existing structure with the same or comparable materials originally utilized within the same dimensions of the original structure. That's what we ended up here, we built within the confines of the foundation and swore.

Dennis McCoobrey: I'm Dennis McCoobrey. I'm the attorney for your applicant. That's why Ed wanted you to move.

Edward Krull: That was the purpose of the hundred feet. That's right. If we go to the next page, we have 120-10. If we go down to four, we can talk about the non-compliant mixed-use bulk that we saw on the first page that Ed had written on there. It says non-compliant bulk. A building or structure that is conforming in use but not complying in lot yard height or lot coverage or off-street parking or off-street loading or similar bulk requirements of this chapter shall be deemed to possess non-compliant bulk. No permit shall be issued that will result in the increase of such non-compliance but any building or structure or portion thereof may be altered to decrease its non-complying bulk.

Then we go to the last page. That was our certificate of compliance that we received after the building was complete and it was inspected. It was for the erection of a concession stand and shop. It says storage only, but I just want to make a note that if you go back to the front of the permit application, we say that we're looking for a marina, accessory, concession, and shop. We're not looking for storage. We have a garage there for storage. That's it. If you go to the third page, it says the permit type is an accessory building. It makes note of the red line 100 foot from shoreline and five feet from the property line. That's what I have on that.

I put two plans on the back. The original one is the one with no writing on it. That's in the folder here. That was the original one we gave in with the set of plans that we got from the prefabricator that made the building. This we put in before the building was here or built and it just shows the bathroom. It shows the 10 by 15 room that we had planned to use for food prep and then the main area. The Z-shaped line there denotes where that countertop is. That's what that one shows. This picture was taken on this table from our folder here.

This second plan was a plan that our septic engineer had drawn on October 5th, 2022. About six months, exactly six months before we got our final inspection. This was to show what the septic layout was and how it was oriented to the building. Where the waste water line from the bathroom came out and where the gray water line from the kitchen and the bar area came out and entered into either the grease trap or the septic tank. It was a condition of our approval. It was previous to our certificate of compliance being issued.

That's what I have on that. Does anybody have any questions on that section? On the permit section?

Diane Bramich: Do you?

David MacCartney: No, I don't. Okay.

Edward Krull: (Handout Exhibit DD -Submission to appeal hearing 5/16/2024) It's asking that the two questions that are asked for interpretation are specifically answered. And that if they're answered in the negative, could you give me the comparison to this property from the properties listed here? I added some information that I could gather on these other properties. These other properties are properties that got changes of use with eating and drinking without planning board or zoning approval. And I'm just going to go back to the permit again. If you look on the bottom of that permit once again, it says when it was issued, but it also says ZBA approval date NA, planning board approval date NA. For this application, the permit application, there was no zoning, or no planning needed for that mixed use.

So, I asked in question one, the letter specifically determines and assigns cabin 12's use as a concession stand and shop storage, which in fact is not a listed permitted use in the adopted zoning. 120-1A schedule use requirements. Therefore, the building department assigned cabin 12 a prohibited use violating 120-11.

if we go to the third page, you'll see 120-11. And I highlighted any use not specifically listed on the schedule of use requirements is prohibited. So, if you were to assign a use or try to attempt a use that's not in the schedule of uses table, it would be prohibited. There is no use called concession stand. And that is where the problem lies.

if we go to the next page, we have all the uses for the HC. The permitted uses, there's, you know, like I said, there's nothing that says concession stand, neither in the permitted uses, accessory uses, or specialty uses. Number six is an eating and drinking place. And, you know, we always felt that that best suited a concession stand because you get things to eat and things to drink there. For accessory uses, number six also says any use that is customary, incidental, and subordinate to the principal use, whether conducted in the principal or accessory building on the lot. So, it can be in the principal building or accessory on the lot. Now, mind you, it says any use. It doesn't mean any use you can make up because if you go back to 120.11 on the previous page, it says if it's not a listed use on this list, it's prohibited. So, you know, you can't just make something up. It's got to be something on this list. So, as we all know, there were a lot of these type of food stands, refreshment stands at marinas. So, I felt it was customary. The marina is a lot bigger than the Cabin 12. No comparison size-wise. We end up with under 400 square feet of public space in Cabin 12. So, it's, you know, it's a big, big difference.

The first issue here is the letter says that you're a concession stand, and that's why I said the letter's wrong. I can't be a concession stand because it's not, it's a prohibited use. It's a prohibited use because it's not on the list. So, I ask that I get assigned something that's on the list. And as I said, I think that eating and drinking is the best choice. Also in the letter, we'll go to page 3, they talk about 120-47A3. And 120-47A3 says if you have an application that will use more utilities, more water, more parking, or create more traffic, that you would have to go to planning for that. We had some time after this to look at this. And as I said, the site previously, that foundation previously had an 11-room motel on it. The 11-room motel would have needed parking spots for 12 cars. The square footage of Cabin 12 needs 10. So that would be two less parking spots needed. It went from 11 bathrooms to one. And it went from, size-wise, of course, about 40%. It went from 11 heating and air conditioning units to one. That reduces all of the utility needs and water, and of course the amount of septic sewage being discharged.

if you go to the page after the Zeobro letter, it says TM DePue on it. It has all that information. This is an engineer who designed the septic. He's also been our site engineer for most of the things on the property. These are his findings. The original building was approximately 2,400 square feet. The new building is 960

square feet, like I said, about 40%. The 11 rooms, with one bathroom each, would have produced about 1,100 gallons of water a day. If we were to have 18 seats in that Cabin 12 at this point, and they do it by seats, it's just how they do it, would be 360 gallons. He calculated those seats by the square footage, what would be able to put in there. And then he goes on to write that these are DEC flow standards. He talks about the parking requirements and that we have more than ample parking, that we would have needed 14 spaces, and we have 29 spaces currently.

if we go to the next page, this is from the DEC. We posed the question to them, if we had a 940 square foot counter service only, no drive-through, how would you answer secret question 8A? They have a table, that if it's a fast-food restaurant with a drive-in, that's why the question was posed, and it was under 3,000 square feet, it wouldn't be considered a significant increase in traffic. I still thought that that left a little to be desired, so I asked the specific question on the next page to our area supervisor from the DEC, engineer from the DEC, and she answered it. She wrote; from my point of view, I think the answer would be there would be no increase in traffic. It goes through the instructions on how to work the table, which I went back and looked at, and that it would be applicable to use the fast-food restaurant with the drive-through on the table.

Dennis McCoobrey: She specifically states, therefore I'm positive that your project will not result in a substantial increase to traffic, and you should check no to the answer on the secret question.

Edward Krull: These other attachments are those other properties that I mentioned on the front. Let's talk a little bit about Cabin 12. So if you go to page 2 of my summary I go back to 120.1a, the Schedule of Use Requirements, Accessory Use No. 6, any use that's customary, incidental, subordinate to the principal use, whether it's conducted in the principal building or in an accessory building on the lot, meaning any listed use may be used as an accessory if the circumstances quoted above apply. I go through, you know, the accessory use on this, and if you guys want to read through it and have any questions. I'll just read through this. It says, you know, a prime example of an accessory marina food stand in Greenwood Lake is the stand at the Willow Marina, which is gone now, but it was later known as the Beach Dog Grill, which was there until just the new owners bought it. Sunnyside Landing Marina has a long history of a variety of uses operating simultaneously on the property. There has been motel, marina, tackle shop, engine repair, boat sales, boat rentals, etc. It is always since before zoning has been a mixed-use property, has continued to be a mixed-use property, and will continue to be a mixed-use property. We go on to say that Cabin 12 will greatly complement the marina experience at Sunnyside Landing and will be a much-needed resource for food and drinks and provisions for boaters. All of Cabin 12's utensils, containers, drink vessels will be disposable and recyclable and or biodegradable as possible. Durable enough to be placed in a cooler, we expect the vast majority of our provisions to be sold to go, and most are often on ice in coolers. Cabin 12 is a fraction of the size of the marina, approximately 10%. Cabin 12 is situated far from the road in the center of the marina to better serve the boaters. **Cabin 12 will operate while the marina is operational March through November. Although the marina is open to boaters and fishermen 24 hours a day, 7 days a week during the season March through November, Cabin 12's hours of operation will be 11 a.m. to 11 p.m. with extended hours considered for holidays and special events.** We do expect shortened hours and closed days early and late in the season. And as weather and boating activity will dictate.

Dennis McCoobrey: Now we just want to put in a series of documents into the record. Exhibit A is our prior submission and timeline that we provided to the board on December 21<sup>st</sup>, 2023.

Exhibit AA: This is a letter from a company called Festival Works, which created the Facebook page that caused such a big ruckus at the last hearing. And what this is signed under, before Notary Republic, so it's under oath. And what this says, in essence, is that this company created the website on their own without our authorization in an effort to sell us their services. And that we didn't authorize it, we didn't tell them to make it, and we've never used it. And that it was created on July 28th, 2023, after the May 9th, 2023, letter from Ed Mateo.

Exhibit Z: This is another exhibit related to that Facebook page. It's a screenshot that I actually took that today, and it confirms that it was created, this Facebook page, on July 28th, 2023.

Exhibit K: This is a letter that I sent to Mayor Matt Buckley on April 10th, 2024, requesting that my clients be put on the agenda for the next Board of Trustees meeting.

Exhibit L: It's an email that I received from former Mayor Buckley on the morning of April 11th, 2024, advising me that my clients would be placed on the agenda for the next Board of Trustees meeting.

Exhibit M: that I had written to former Mayor Matt Buckley on April 12th, 2024. The subject of this letter is the Village's failure to comply with this Board's decision of February 4th, 2024, and also addresses the altered and forged Certificate of Compliance that was issued on April 2nd, 2024, by Danielle Mulqueen from the Building Department. We never received a response from the Village to that letter, from that letter.

Exhibit N: another letter that I wrote to former Mayor Buckley on April 15th, 2024. Again, extensively explaining why and how the Village had failed to comply with the February 4th, 2024 letter, in particular, a decision that the Village did not give us the use of a drinking and eating place and refused to give us a temporary use permit, which Mr. Ziboro said in his letter that we challenged we were entitled to obtain, and what Mr. Mateo testified to at the December 21st hearing, that we were entitled to. Even though we complied with all the requirements. Again, no response to that letter.

Exhibit O: On April 16th, 2024, I wrote another letter to Mayor Buckley, this time about the fact that there was no record, apparently, or most of the record from the prior hearing in this matter on December 21st, 2023, was missing, and that deprived us of our right to bring an Article 78 proceeding if we so chose. And it also addresses the fact that we were petitioning for a rehearing based on the lack of the record being preserved, and also on the Village's failure to comply with the prior order that would have allowed us to have a temporary use permit. Also not answered. Never responded to.

Exhibit P: This is an email that I sent to current Mayor Howley on Thursday, April 25th, with the prior three letters attached as attachments, and requesting responses to those letters. I've never received a response.

Exhibit Q: It's a letter I wrote to Village Clerk Kathleen Holder on May 13th, 2024, pointing out that the Village refused to comply with the FOIL request regarding the properties that Ed Kroll had just discussed here. Documents were removed from the files and not produced.

Exhibit R: This is a letter that we received on Tuesday of this week, which I believe was the 14th. This is from the Planning Board. In essence, this letter is saying to us that the Planning Board is not going to tell my clients what documents and information the Planning Board needs to proceed with the application, but that basically my clients are just trying to figure it out for themselves. I'll read you the thing. It says right here. On the advice of the Planning Board Attorney, the Planning Board will not prepare a list of required documents for the applicant, as any such list might be construed to represent a complete list which cannot be known at this time. Additional documents may be required by the Planning Board to complete its review of this application, and a complete list of documents required is already available, as it is to all applicants, in Chapter 120 of the Village Code. So basically, they're saying, go figure it out for yourself. We're not going to tell you what information we need. We know what's going to happen. We'll go back and they'll say, ah, that's not what we wanted.

Exhibit S: which is the forged and altered Certificate of Compliance that Danielle Mulqueen issued on April 2nd, 2024, and that goes along with the letter that I previously submitted. 8As you can see, the letter bears the signature, electronic signature, of Ed Mateo. It was issued on April 2nd, even though it's dated May 2023. At the time that document was issued, Ed Mateo had not been the Building Inspector for over two weeks. See Exhibit A that I gave you can compare them, and you can see what the alterations were. This is the original Certificate of Compliance. That's dated May 16, 2023. It says, for the erection of a concession stand and shop slash storage only. Okay? No storage. That's removed. This handwriting is not there. That's Ed Mateo's signature, okay? That was issued on this date. This document was issued by Danielle Mulqueen, not on May 16, 2023, and not by Ed Mateo, but by Danielle Mulqueen on April 2, 2024, and that's the subject of one of my letters to Mayor Buckley that he just decided not to respond to.

Okay. So, does anyone have any questions for us? We'd be glad to answer any questions.

Diane Bramich: Does the Board have any questions at this time?

Board: No.

Diane Bramich: Okay. Anybody from the public that would like to speak on this application and this application only? Please give your name.

Alyse Terhune (Building Department Attorney): I'm Alyse Terhune. I'm the attorney just hired by the village last night at 5.30 to represent the building department, and I do have some material to submit for the record. All

right. So, I'm going to apologize in advance because I was just literally hired at 5.30 last night. I've done my very best to pull together documents today and for submission to this body tonight. I will start out, however, by saying that with your indulgence, I respectfully request that you do not close the public hearing tonight, that you keep it open for an opportunity for me to meet with my client, which I literally haven't done yet, except asking for documents that they might have, as well as an opportunity for me to respond to the submissions tonight from the applicant, which, of course, I have not seen, and certainly for the applicant then to respond to any submissions that I might have tonight. So, I, again, respectfully request that in terms of fairness and objectivity of this board, that I be allowed to continue before you at the public hearing. So, please continue the public hearing until your next meeting and then close it, if you so wish, and then make your decision. so, assuming that the board doesn't grant my request, then in the alternative, I ask that the board keep the public hearing open and call a special meeting, perhaps before the end of the month, again, giving time for me and the applicant to respond and for members of the public to see what has been submitted on the record, in case they have any comments. Is there any reason, do you think, that that might not happen?

Diane Bramich: I would leave that up to the board members to make that decision.

Bernie Fink: With all due respect, it's just that every time we have a meeting, it seems like somebody's coming in saying, oh, I just got hired. I mean, the village knew that this problem's been going on for way further than it should be, and I understand the position that you're put in, and it's a very tough position, but that's not the board's fault. And the applicant has been coming back and forth so many times, tossed back and forth, this and that, and to be honest with you, I think it's time we get this thing resolved.

Diane Bramich: You're saying that the village contacted you at 5.30 last night?

Alyse Terhune: Contacted me on, let's see, today is Thursday, Wednesday, Tuesday evening, and asked me if I would be able to do this. And my engagement letter was given to me last night at 5.30.

Diane Bramich: This board voted unanimously to rehear this a month ago. The village had plenty of time to hire someone. The village could have hired you before Tuesday.

Danielle Mulqueen: I can shed some light there. The village was under the assumption that Brian Nugent, the village attorney, would be the one here, and it wasn't until this week that we found out, because both Dave McCartney and him are from the same firm, that that couldn't be. The day that they found out was the day that they contacted Alyse.

Alyse Terhune: So, the village itself was not aware that there would be no representation, and that's why I was contacted so late in the day.

Diane Bramich: I've just got questions about that. I mean, the village knew that they both came out of the same firm when they were both hired.

Alyse Terhune: I can't speak for the village. I can only say that I think it would be fair and honest and just, and it would give this board the appearance of objectivity, if you provided the village building department an opportunity to respond to what's been submitted tonight, which we haven't seen, for me to sit down and go through the file with my client, reach out to Ed Mateo, who I have not spoken to, so that I can fairly represent the facts and the law to this board before you make a decision on your re-hearing. Is there a reason why that can't happen?

Diane Bramich: Well, let's hear what else you have to say, please.

Alyse Terhune: Okay. What I have here is my best efforts to pull together documents that I wish to submit on the record on behalf of the building department. I have a list here. I did email these to the planning and zoning secretary as soon as I got them together, as well as your attorney. I think it's been circulated to the board in an email

Alyse Terhune: (Handed out copies of the Villages documents packet – **Exhibit A1**) Of course, you're not going to have an opportunity to look in more than I have an opportunity to see that. All right. I do have copies of the documents for you. Now, I'm not going to go through each one of these documents. And, again, I do not know

if this is a complete representation, and I cannot really draw a conclusion because I have not had an opportunity to sit down with my client. I will, however, go through what I have.

The first thing I'd like to talk about, very briefly, is the Greenwood Lake Zoning Law itself. And I submit that there is an enumeration of districts. That this, as you know, is in the HC District, which is a mixed-use district. But that also, under 120.47, as the applicant rightly spoke about, eating and drinking places are allowed in the HC District. Now, if you look at 120.47, however, it also states that except for single or two-family homes, any other use or change of use, which is what arguably this is, requires Planning Board approval. And as far as whether there is going to be any impact to traffic or Greenwood Lake or anything else that has environmental or regional impacts, according to 47, that determination is to be made by the Planning Board. Not the Zoning Board, not the applicant. I submit that that's one of the reasons why they are in fact in front of the Planning Board now.

Exhibit A2: All right, so I'm going to add 120.48, which is a flood hazard zone, and 120.49, which are considerations for building in the flood zone. These are considerations, impacts, etc., that are properly before the Planning Board as a Lead Agency or an Environmental Review Board. If you're going to determine tonight or tomorrow or next month that they do not have to go to the Planning Board, then I submit that you should really go through a secret process before you make that decision.

Also, I just want to go through a real quick timeline as far as I've been able to put together with my limited review so far. I think what happened here, at least based on my information, is that a building permit application was in fact submitted on February 10, 2022. It was signed by John Sorrentino and notarized, and it stated that the intended use and occupancy is marine accessory, concession, and shop. Then on February 9, 2022, Cabin 12 LLC applied for a temporary retail permit with the State Liquor Authority, and if you look at the complete application for that, you will see that it includes a floor plan that, yes, there appears to be a concession window, but there's also a substantial... I see at least four tables, 16 chairs, a bar, etc., a prep area. So, I don't know if any of this was actually submitted to the building inspector when he submitted the application. Danielle says it wasn't. I will have to go through the board to the file and talk to Ed, but I take Danielle at her word, and I don't have it. But it was given to the State Liquor Authority.

Something else that Ed did put together, a note. It was not allowed to be submitted into the record because apparently the public hearing had been closed, but in that note, he basically says the floor plan that was submitted to the SLA, which he did not have when he issued the building permit, showed a bar, food prep area, 16 stools, 16 seats, 4 tables, and no storage at all. So, whether there was ever supposed to be storage again, I don't know because I haven't had time to really research that. However, that was the first indication to Ed, that what was being done on the property was in fact not what the building permit was issued for, nor was it what was said that was going to be done. I would also submit to you that if the building inspector issued a building permit in error, whether because it was in violation of the zoning law or simply because it didn't... I take that back. If it was issued in error because, as the applicant has stated, it couldn't be issued because it was in violation of the zoning law because concessions aren't allowed, then by law that building permit is null and void. So, it was never effective at all, if in fact that's what happened. Or perhaps what was submitted to the building inspector to get that permit was in fact not really what the planned use was going to be. Or the planned use changed. As what I think might have happened, and this is a bit of speculation because I can't read the mind of the applicant, but they then applied for a liquor license and when they applied for the liquor license they decided, well, let's get our liquor license, fine. Let's also have indoor dining. Let's have a deck around the outside and seat people there. And let's just do that. And so, at that point in time, your building department, through John Ziboro and Ed Mateo, began to issue letters basically saying, stop the work. You have to go to the planning board. So that's what happened there, as far as I can tell.

So those letters were issued on May 9, May 16, July 28, September 6, September 20. All of those are in the submission that I gave to you as exhibit A1. Now, I also submit that this applicant has already applied to the planning board. And if you look at that application, they state specifically as an eating and drinking place, change of use, no construction. Eating and drinking, change of use. Under 120.47, change of use requires them to go to the planning board. It requires, your zoning law requires it.

So whatever Ed didn't or did or didn't do, the fact is for whatever reason, either the building permit was issued in error and is null and void or it was issued under false pretenses, or the applicant changed his mind, which

happens. That's fine. Change your mind. Go to the planning board and get your site plan. Go through SEEKER. Find out, is it going to impact the lake? And if so, how? Are we going to have more or less traffic? And if so, why and how? All of those questions are best answered by your board, an excellent board I might add, who's been doing this for years and has the engineers and the consultants on board to answer those questions.

As for, well, it was a hotel, so now it can be an eating and drinking tapas bar or whatever that is. The fact is, as I understand it, and you probably know better than I, how long it could have been since that hotel was operational. Do you know? The last demo permit was 1999. So, you can't say that, oh, just because 25 years ago or 30 years ago or whatever, it was a hotel, it's okay now. The lake has changed. The traffic patterns have changed. You can't even put a new septic system at your house within 100 feet of the lake unless you go to the planning board. Why should this be any different? So, all of that was in Ed's mind, in the mind of the building department, and that's why the stop work issue was ordered, and that's why, as far as I understand it, as I sit here today, they have to go to the planning board and get approval before they can get their C of O. And that's really all I have to say.

But I do want to say that I'm going to add some things to the record.

Exhibit A3: The certificate of compliance, application and the building permit.

Exhibit A4: By reference from the applicants Exhibit CC page 4 - A picture of the original red line survey, that I am not going to submit but would like to note for the record that I would like to include by reference.

Alyse Terhune: Okay, so there was mention of a forged document, forged by the building department clerk, Danielle. It was the Certificate of Compliance, allegedly? Would you like to explain to this board what happened?

Danielle Mulqueen: Nothing was forged. What was asserted to be a clerical error was corrected at their request. I would say more demand with them standing at my window yelling, screaming, demanding it with witnesses around. Something I endure quite often with this group. And after talking to the mayor at the time and him wanting to do something in good faith to quell this idea that there's some conspiracy by the village, is this something we can do? I went through the file in their writing, on their application, as you can see, that John Sorrentino filled out. It doesn't say storage. Now Ed Mateo asserts that there was a conversation about that, but I don't have record of that. So, I went through and I said, I'm comfortable changing that error because the documents support the fact that they never asked for that. And so, I took out, the same as if I spelled somebody's name wrong, and reprinted the same document. It's not a forged document. I've checked with others. There's nothing illegal about it. But these are the kinds of things. They actually tried to press charges, criminal charges on me. That's it. But thank you. There's no forgery.

Alyse Terhune: Okay, so I believe that's it for me. Let me just take one last look. And again, I would just note that this is not about the bulk. It has nothing to do with the bulk. It's all about the use. I didn't really follow or understand all the conversation about the bulk but this is about the use. It's in a mixed use zone. Under your own code, it requires approval by the planning board. If the building permit was issued in error, then it's null and void. If it was not issued in error, however, it was issued under false pretext, or the applicant changed his mind and now wants a change of use, which is what the applicant says on his application to the planning board, Marina and Eating and Drinking Place, retail, that's definitely mixed use. But just because there was a hotel there decades ago doesn't mean that they just get to change the use.

Diane Bramich: Let me clarify. It was not a hotel. It was a motel.

Alyse Terhune: Motel. I stand corrected.

Diane Bramich: Okay, and the second thing I want, so that you know, there was an eating and drinking place there. There was a restaurant on that piece of property. The main house was made out of a restaurant. So there was a restaurant on that piece of property. I'm just mentioning that so that you know that was always a mixed-use piece of property for as long as I can remember.



Alyse Terhune: However, I will say that just because you have mixed use, if a mixed use, if one of those uses changes, you're required to go back to the planning board. You can't just add infinitum, change the uses on a property. Because each use has an individual impact.

Diane Bramich: I understand, and I believe one of the pieces of paper, I just want to find something out. One of the sheets, one of the things that was handed in by the plaintiff is that according to the code, it's allowed in that district. It's not prohibited.

Alyse Terhune: It is allowed. I agree with you 100%. Eating and drinking places are allowed, marinas are allowed. It's a couple of uses, it's mixed use. However, this is a change of use. The marina's there, but now there's going to be, according to their application to the SLA, there's going to be indoor dining for the restaurant. Okay? So that's not what the application to the building department said. So that really concludes what I had to say.

Diane Bramich: The other thing is, have you been able to, have you gone through this building?

Alyse Terhune: No, I just got hired last night.

Diane Bramich: Okay, this board made a walkthrough of the building. There is no way there is the accessibility for a full restaurant there. They'd have to rearrange everything in the building. There's a tiny little bathroom and there's a little prep area. There is no kitchen. What would you consider that?

Alyse Terhune: That is something that the planning board would determine when they review the application under 120.47. The planning board would determine that. This board is asked whether the building inspector was wrong when he told them to go to the planning board. You originally said, no, he wasn't wrong. They have to go to the planning board.

Now they've asked you to rehear based on the information they provided to you tonight. I submit that you were right the first time, and you should uphold the building inspector again. That concludes my remarks.

Dennis McCoobrey: Can we just briefly be heard on a few short issues as a response?

Diane Bramich: Okay.

Edward Krull: As Alyse said, 120.47. Deals with changes of use. Yes, my planning board application does say change of use. And it was filled out that way, filled out exactly how it was supposed to be for the directive that this board gave me. They told me to go to the planning board and get a change of use so you can use the building that was built correctly and inspected correctly and was certified correctly and that they had said they were going to issue a CO on and we gave them everything. They never issued it. But there was never a question to the validity of the permit and the building of the building ever. The question came in was whether we could use the liquor license or not. And Ziboro's letter says it. Ed Mateo's letters say it. You're good to go. Just don't use that liquor license until you go to planning. So when I left here from the ZBA last time, our plan was we'll go get the CO, we'll open the concession stand, no liquor license. We'll get that temporary use permit that they said we could get, and we would use that and use the liquor license until we were done with planning. But it was never a question that there was a problem with the permit. Now we're hearing we heard it at planning this week, last week, and then we just heard it again now that all of a sudden there's some new thing that there was a problem with the permit. And as I spelled out to you guys with that permit page, Ed did it right. He had the right to say, and she talked about the 100 foot, Ed moved us back the 100 foot. Ed marked no planning, no zoning, because he had the right to by code. And I'm not guessing at the code. The code is attached here. We have 120.18, D1. "Accept that interior alterations and minor exterior alterations of structures shall not require authorization by the planning board." Go to D4. "For the purposes of this section, minor exterior alterations shall be defined as the repair of the existing structure or the replacement of an existing structure with the same or comparable materials originally utilized within the same dimensions as the original structure." So same as or less, as long as you're in the confines of the location of the original structure. And they use this code all the time. They just used it at 42 Linden. They have a complete rebuild there with no foundation that they're allowing it to be built, and it was approved. But that's not the question. My question isn't, do I go to the planning board or not? That's where it got messed up last time. My question is, this says I don't, but my question is, so up until the time that we got that certificate of compliance, we're good, right? We

got a bunch of letters from Ed and from Ziboro saying the building's 100% correct, it's code compliant, it was built correctly, you're all good, just don't use the liquor license.

But when you talk about 12047, as Alyse said, she's saying the development or redevelopment of a piece of property or structure for a new use, this isn't redevelopment. This is a minor alteration. It says it in the code that if it's on an original foundation, it's a minor alteration. We've long used this in this village. That's why people retain and repair the foundations and they put a house back up on it. I mean, in New Jersey, you have to leave one wall up, but here you don't. You can go right to the foundation as long as you stay within, that's it. I mean, there's other things that we know we're going to be at the planning board for. We have to talk about ADA stuff and we have to talk about shielding and that type of thing, but that's not what we're here for. Now I'm here, to make sure that there's not a new story being written about this permit not being valid, not being correct. The other thing that they're talking about with the liquor license diagram, that's not an accurate diagram of the building.

Dennis McCoobrey: And that's not what the SLA is going to make the decision on. The SLA comes and inspects, and we have to conform it to whatever design we have, they have to approve it. So that has nothing to do with this at all. And second, Ed Mateo was aware that we applied for our liquor license because we gave the town notice, as we were required to do under the SLA regulations and law, on February 10th, 2022, two weeks before the building permit was issued by the building department. Mr. Mateo's two letters on May 9th, all about the liquor license. His letter on July 28th, 2022, all about the liquor license. Mr. Ziboro's letter from September 6th, all about the liquor license. Oh, an also, council stated there was a stop work order. There has never been a stop work order. We have a certificate, valid certificate of compliance, issued by the building department from this town.

Edward Krull: But if I could just say this, second sentence of this letter. As discussed, the structure has passed its final inspection and is suitable for the use for a storage concession stand. I don't know why it says storage, but it was concession stand and shop is what it should have said.

Dennis McCoobrey: Mr. Mateo testified, expressly testified here for this board on December 21st that we should be able to, we should apply for and obtain a temporary use permit so we could open and operate while we went through the planning board process. We've complied with all the requirements for the temporary use permit and the village refuses, without even telling us why, to issue that temporary use permit. That's one of the reasons why we came back to this board for a re-hearing.

David MacCartney: Can I just ask a quick question, I just wanted to follow up on something that you said. You mentioned we know we need to go back to the planning board for certain things. Could you just elaborate on that? What do you, what's the method? You're saying, Mateo's got it wrong. Why would you have to go back and what for?

Edward Krull: Well, there were some questions raised at the planning board when we were there. So, obviously, if there's ADA requirements or anything like that, that supersedes this code. Those limited issues.

David MacCartney: I'm sorry to interrupt, but I'm trying to understand because I think maybe I've got what you're, the relief you're asking for this board wrong. But let's make sure that we're talking about the same thing. My understanding is that what you were asking for is that you do not have to go back to the planning board for any purpose if this board reverses the decision.

Edward Krull: Like I said at the first meeting, I wanted those two questions answered. If you read the first page on that, there are many other establishments that opened before us and after us that are doing the same thing that did not go to the planning board. I'd like to know why I'm different, but there are some items that either the building inspector or the planning board can weigh in on. That ADA issue, you know, caught my ear. Not the use. But the big problem is the use and that's what I'm here for. I want the correct use assigned to the building and it is an accessory. As an accessory use. That's what we want. And it is an accessory. That's what I'm here for. We're not here to decide whether I'm going to planning or not. The code will decide that.

Dennis McCoobrey: The issue here is we should be given the use as an eating and drinking place, as an accessory to the marina. That's what should be on the table and that's what we should have. We want to be

determined to be an accessory use as an eating and drinking place, as an accessory to the marina. And whatever the consequences of that, we'll live with. That's what we want. And that's what we think we're entitled to under the code. And that's it.

Vic Ludmere: May I ask a question? I'm not sure that I understand this correctly, that that the only reason why you were to go to the planning board Ed Mateo said this and Attorney Ziboro who's representing the village board. The only reason why you're going to the planning board according to Ed and according to Ziboro was for the use of the liquor license.

Edward Krull: Correct.

Vic Ludmere: Otherwise, you could open up. And that's what you're saying tonight. If you want to open up if you want to deal with the liquor license, then you go to planning. Other than that, you want permission to open up a concession stand.

Dennis McCoobrey: That's what we asked for and then they told us that we could with the correct use.

Vic Ludmere: One more quick question. You're making changes to your application so that you're only going to operate for nine months of the year instead of 12. According to what you submitted tonight you're only going to operate from 11 a.m. until 11 p.m. instead of 7 a.m. until midnight. And the vast majority of your provisions will be sold to go and none of them will be under the authority of a liquor license until you go to planning.

Dennis McCoobrey, Correct, except for the last part is not accurate. And the reason why we say that part's not accurate is that we submitted case law in December that indicates that zoning boards and planning boards cannot regulate the sale of alcohol. So if we're deemed a drinking and eating place which is what we want we will be able to utilize the liquor license. That's the way it works. The point that we were complaining about initially and still have complained about is that what is happening here was what Ed Mateo and John Ziovo were trying to do was regulate our use of the liquor license. If we have a valid use as an eating and drinking place we can utilize the liquor license. Now if there's some so that is basically what the issue is. And so we're saying we are an eating and drinking place. I think everyone could pretty much agree on that. We've been to this place. You know it's not a restaurant. There's no cooking equipment. It's just a place to sell beverages and prepared foods. So that's what we're planning on doing.

David MacCartney: So, I'm sorry I'm still hung up on the relief. Let me just articulate what my problem is and then maybe you can help. The relief is the interpretation. It's an appeal of what Ed Mateo and John Ziboro said. They said because of because it's a change of use or a new use again you say because of the liquor. The liquor license was the issue that brought this to a head. So, you're saying that they got that wrong that it's not a change in use or it's not a new use. So therefore we don't have to go to the planning board. So, you say that they said that because of this liquor license it is a change of use or it is a new use. And you say they got that wrong it's not a change in use or it's not a new use and so therefore we don't have to go to the planning board. And that's the issue that was before the board at the first hearing. And that's the resolution that was drafted was all about the interpretation of the two code sections which is, I don't have the citations, but there's the two is the one that says for mixed-use premises if you have to go you have a change in use or a new use you need to go to the planning or you should be referred to the planning board and then 47 is the one where it says the planning board will determine if it's a new use you have to have site plan if it's a change in use the planning board has to look at it in a way whether there's going to be increases in traffic and sewer and such that those site plan criteria should be applied. And so, what the board decided last time was they upheld that that all things considered it was a new use or a change in use and so therefore you needed to go to the planning board. So, I thought that the relief so I'm getting to my question so the relief that I thought you were asking for here on the rehearing was to reverse that and have a finding that it is not a new use it is not a change in use so that you don't have to ever go to the planning board. Can you clarify that?

Edward Krull: You got it wrong. So we went through the permit process Ed told me I filled this out that's my handwriting to put concession stand on there I had food stand on the on the survey when I first showed it to him told me to put concession stand in case I wanted to sell like retail stuff like that right so that's what he said was the reasoning in that so we do it we get done I take the food and beverage paper and I take this and I go and I turn it in to the board of health and the board of health said hey there's no such thing as concession

stand as a use agreement and that's when this whole thing started and I came back and I said hey it can't be concession stand it's got to be something else and he said well maybe fast food then I looked at it looked in the table and there is no fast food even though it is in the definition there's nothing in the table so the only thing I could find in the table was eating and drinking place. This whole thing was bout assigning the wrong use.

Diane Bramich: Is there anyone else that wants to speak?

Bob Krahulik, 46 West Cove Rd, Greenwood Lake.

Bob Krahulik: I'm here to speak in support of this application. I am a lifelong resident of Warwick and lived on Greenwood Lake most of my life. I have to say this is a tough town to do business in. We see business come and go, we've seen the demise of the rainbow Inn, Greicks, and other ones are struggling. The only reason that the other establishments are successful are because they are mixed use. They succeed because we have become a tourist destination. I applaud the applicant for what they've done as I drive by, I considered it nothing short of a miracle. I also appreciate how difficult it will be for them to be profitable and they will need to compliment the marina with additional revenue sources, whether is a concession stand, restaurant or alcohol sales. They need it all in order to succeed. I would hope the board can give the applicant a clear path tonight and when they walk out the door they can open. Perhaps a concession stand should be permitted at this point, perhaps food and service at this point, but enough to allow them to operate successfully, to have a viable business that will allow them to succeed, and maybe another important consideration to encourage other people that come to Greenwood Lake and try to make the same investment. Whether it's whether it's the Rainbow Inn, whether it's going to be Bob's and Marina, we need to encourage investment, adaptive use of older buildings, and we can't make it prohibitively expensive, and we can't allow the process to become so difficult that nobody wants to take a chance. And I thank you for your time.

Vic Ludmere: Did I understand you to say that that they have not been allowed to reopen as a marina? Did I misunderstand you?

Bob Krahulik: Well, I don't know the answer to that. From what I heard when they appeared before the planning board, so there was a concern about whether or not they'd have to get approved for the marina use before the planning board.

Vic Ludmere: They've been open for three years now.

Bob Krahulik: I agree, but they expressed the concern that when they went to the planning board, the planning board said we're going to look at all of this. I don't know, correct me if I'm wrong.

Edward Krull: They said they wanted to look at the docks, the slips, the parking lot, all the buildings. They said they were going to evaluate the whole site, and our concern was, I said, we got sent here, we got sent here as a change in use from the ZBA. It shouldn't be the whole site, it should be the one building. It's just not fair. I said, I understand the ADA stuff and stuff like that, but other than that, no, and that's where we left off.

Vic Ludmere: I really repeated my question. You've been in operation for three years, and now you're, from what you heard, you're in doubt whether you can open for this fourth year, even as a marina?

Edward Krull: We're open. They said they were going to evaluate the whole site and possibly require development for the site. So, I asked for a list because I wanted to bring the list with me to show you guys. They sent me a letter saying, we actually entered it, we're not giving you a list. You would have to win the book and get your own list. So, I don't know, I can't tell you exactly, but they said they wanted to look at the whole project, not just the building with the change of use.

Dennis McCoobrey: So, to answer your question, they haven't said we can't open for a marina, but what the issues they were raising seriously puts in doubt whether or not we can continue operating. That's the problem. I think that's it.

Diane Bramich: Let's discuss. How do you feel? What do you want to do? We have two things. One, Alyse Terhune's requests to hear it at another time, continue it again, or make a decision.

Bernie Fink: Make a decision.

Vic Ludmere: I respect the attorney wanting to have more time. Having been hired 48 hours ago, it's not fair to her. But more basically is the applicant who has been here and who is sitting with a decision that had been in existence for a long time. It's not the new attorney's fault at all. No, not at all. She submitted voluminous papers tonight. But the village seems to me waited for the last minute to act, and I don't think we're in our season now, that is Greenwood Lake and tourism, and I don't think it should be delayed.

Floyd DeAngelo: I have to agree with Vic. The only reservation I have is this book that at least, I'm really curious to go through.

Diane Bramich: A lot of it has already been, we have it

Bernie Fink: What I got to say is, what bothers me the most is, and what caused a lot of this whole thing, was the lack of a better term mudslinging going back and forth between Danielle being accused of stuff and then the new attorney coming in and suggesting that they might have filled out the thing improperly. That just turns it from a business or a village decision into personal. But it's true, these guys have been through a lot. I've been to every meeting. They deserve to get a break. I'm asking you as an attorney, the evidence that he proposed to fit in between, you know, that all the things that fit under the 120 is part of the law, correct? So, if it fits all underneath there, there's no reason why he shouldn't have it. Whether you've been here for 10 years or you've been here for 20 minutes, okay? And going to the planning board like they did, and from what I understood, they weren't treated very well. So, if we have the decision right now to get these guys open, I think we have to do it. And it's not your fault you don't have the time. It's the fault of the village, not hiring you sooner.

Alyse Terhune: The minutes from the planning board are in what I submitted to answer your question. I would just say they filed the certificate; they filed the business application for the permit. They wrote down what they wanted. They got a certificate of compliance for the erection of a concession stand and shop and storage. They submitted the plans to the SLA for the liquor license. That precipitated the question of whether what they submitted, whether they filled it out wrong, whether they changed their mind. I'm not accusing them of anything because I haven't had time to research that, and I'm not accusing them. I'm simply saying that they filed the documents, not only to the village building department, but to the SLA. The building department, the building inspector, determined that this was a change of views under 12047-A3. There is a letter that I submitted, and they submitted, I hope you'll read it. That said, they needed to go to the planning board because it was a change of views.

Diane Bramich: I can't tell you what to do. What I can say is you can either make a motion to keep this public hearing open for further consideration because of the new attorney being appointed by the village, or you can make a motion to reverse or stand by what the village building inspector did at the time. So you can either reverse it or you can go along with it, what he said was correct, or we can make it another night. So, I mean, it's up to you. You have to make that motion. I cannot do it.

Bernie Fink: I make the motion to reverse it. I make the motion to reverse it so that they can operate.

Vic Ludmere: I'm gonna second it, but I need an opportunity to speak. The last time I voted that this was a new use and it had to go to the planning board. At that time, the bar was going to be open from 7 in the morning until midnight, a lot longer than the marina. If the bar was going to be open for 12 months a year in a marina, it doesn't do much in December, January, February. The operation and as far as a restaurant and bar service was concerned, it was going, it didn't limit itself to the vast majority of what they sell at that concession stand, that food service place would be sold to go. It could be sold to go or it could be eaten on-premises and drank on-premises. This is a different application. Tonight, we received an application indicating that the vast majority of the provisions would be sold to go, including sale of ice for coolers. That's different than a complete eat-in establishment.

Operation for only the nine months instead of the 12 months, limiting the hours, this is a different application. I really believe, as better the way I voted last time, which considered this as a new use with a full bar and a full restaurant and 12-month service and operation from 7 a.m. till midnight, this is different. I think that limiting the operation to nine months, limiting the hours from 11 to 11, the vast majority to be sold and provisions sold

to go, and that's going to be the applicant who's going to have to prove that as his business goes on, that based on the vast majority of provisions to be sold to go, I consider that as a beverage and food service that is accessory to the marina and not a new use. It's accessory to the marina, and therefore I agree to reverse what we did last time.

David MacCartney: There's a motion. The motion was just unconditionally reverse. The comment after the second was seeming to have conditions, so let's be clear on what's being voted on before we call it to a vote. Do you want to add the conditions that are already in the paper?

Vic Ludmere: The conditions that are in today's paper are something that we're going to comply with.

David MacCartney: Actually, to that effect, it's good that we have the hearing still open. Typically, you'd have the hearing closed before you make the motion, but you said in what you were, as you were speaking, that you said that's not an eating or drinking establishment to me. So, I want to be clear what the motion, again, what the motion is, because the applicant is looking to have the board essentially declare that it is an eating and drinking establishment.

Vic Ludmere: The definition of eating and drinking means on-premises eating and drinking. The applicant is not asking that they get the approval based on that definition. They're asking that they get an approval to sell the vast majority of their provisions to go, for the benefit of the boat people, to get a cooler, to buy ice, to buy a cooler, or bring a cooler with them, to buy beer in a six-pack, not buy one drink serving, to buy some wine to go, and they have a liquor license. So it's not saying that they can't serve a drink, but they're not asking for the official definition of an eat-in place. The definition that they're asking for is a hybrid where the vast majority of the provisions are sold to go, and as a beverage and food service, accessory to the marina. Not falling in the definition of eating and drinking exclusively on-premises.

David MacCartney: So the definitions in the Code of Eating Establishment and Drinking Establishment, it's your view that they don't meet those, but what they've proposed here, with the restrictions that you've mentioned, with the hours and being open only nine months out of twelve, limiting the hours and such, allows them to operate as such, but not at the level of what the Code defines as an eating and drinking establishment? I know the Schedule of Use says eating and drinking place or places, but there's no definition of that. What there is is a definition of eating establishment and drinking establishment, but nowhere else in the code does it list the eating establishment or drinking establishment in those terms as separate and different from, to my knowledge, from an eating and drinking place. So my understanding is that the reference to eating and drinking place in the table of use regulations refers to an eating establishment and a drinking establishment. It's bringing those in and that's the definitions that are being used.

Vic Ludmere: We're a board of appeals. And so, we don't have to follow, we have the authority not to follow that definition of an eating and drinking place. And it seems to me that if we wish to approve this, if that's what we want to do, then we can approve something that doesn't fall into that category of eating and drinking establishment or an eating and drinking place. This is a place that provides a food and beverage service. The vast majority, I'm assuming that at least 50%, more than 50%, the vast majority of provisions are to be sold to go. And therefore, it's a beverage and food service accessory to the use as a marina. And we're making it very clear that it's not the application that they applied for last time. That's why I'm changing.

David MacCartney: So are you saying approving it not as a, I'm just trying to understand, on the permitted uses, there's an eating and drinking places, right, and it's capitalized and then lowercase. But then as an accessory use, as number six, it's saying any use that is customarily incidental and subordinate to a principal use, whether conducted in the principal or accessory building on the lot. So, are you saying under that category, if they have the restrictions that they've placed, that it's not an eating and drinking place as a permitted use as defined there, but you're defining it as in any other use pursuant to what you're saying?

Vic Ludmere: That's exactly it. With the vast majority of their provisions, sandwiches, food, beverages, alcohol, will be sold to go, and most often on ice and coolers. And so that's the kind of approval. That's a very big change from the definition of food and drinking establishment. And this is more in keeping with an accessory use, which would be food service to a marina, as opposed to what's defined as an eating and drinking establishment.

Diane Bramich: We can add that as a stipulation in the decision.

David MacCartney: Okay. So why don't I make a suggestion? Okay. Bernie made a motion that didn't have conditions on it. I suggest that nobody has to follow it. Withdraw that motion. Somebody makes a new motion that puts the stipulations in.

Bernie Fink: I withdraw the motion.

Floyd DeAngelo: Motion to close public

Bernie Fink: Second

Diane Bramich: All in favor

Board: Aye

Floyd DeAngelo: So, my motion, I'm going to say the whole thing. This is a very different application than we had before when we sent it to the Plenty Board because it was considered a new use. In this case, they're asking for a food concession where the vast majority of the provisions will be sold to go and most often in ice coolers. And it's going to be the applicant's obligation over the years to prove that that's more than 50% is to go of their sales. It's operational for only nine months instead of 12 months. Last time they applied for 12 months. So, this is a lot less. And operation marks through November. Their hours of operation in the last application were for longer than they're applying for now. So, based on their new application, I consider this, I'd like to make the motion to consider this as a food and beverage accessory use to the marina and not a new use.

Bernie Fink: Sounds good to me. Second.

Vic Ludmere: Second. Subject to our attorney's approval.

Diane Bramich: I'm going to poll the board.

Bernie Fink: Yes

Floyd DeAngelo: Yes.

Vic Ludmere: Yes.

Diane Bramich: I will make that motion to have David MacCartney prepare the resolution consistent with the motion and to submit it to the board.

David MacCartney: The question is, there's two ways to handle a motion to that effect. One is to, I will prepare it and bring it to the next meeting for a vote and approval. Another way to do it is to make a motion to include in the motion an authorization for the chairwoman to sign if she finds it consistent with the proceedings here today. That way she can sign it without further review.

Vic Ludmere: I'm going to make a third alternative. That is, prepare it and send it to everybody and we can approve the chairwoman's signature. I don't doubt that it will be accurate and correct and not needing any change, but I think it's necessary that we all read it.

David MacCartney: Here's what I would suggest. And that's a fair way to proceed. I'll prepare it. I will circulate it to all the board members. What I ask that you do, though, is if you have questions about it, you direct them to me for attorney-client advice. Do not deliberate or engage in a back-and-forth with each other about it. If you need to, then we're going to come back in for another meeting. We have 62 days to render a decision. We're going to do it sooner than that. But I don't want there to be a back-and-forth. It's procedurally improper for that to happen.

Diane Bramich: I make a motion for Attorney David MacCartney to prepare it and to circulate to the board only, and if there are any questions, the board is to contact you directly, one person at a time. And to advise individually whether there are requests for changes or if they are in approval. And upon approval of all, the chairwomen will sign it.

Bernie Fink: I second that Motion

Diane Bramich: All in favor?

Board: Aye

Diane Bramich: Okay, I need a motion to adjourn.

Bernie Fink: Motion to adjourn.

Vic Ludmere: I Second

Diane Bramich: All in favor?

Board: Aye