

NORTH BERWICK, MAINE, 03906

MINUTES OF PLANNING BOARD JUNE 24, 2010

Present: Chairman R. Todd Hoffman, Julie Fernee, Shaun DeWolf, Barry Chase and Lawrence Huntley, CEO.

Absent: Christopher Karcher and Patrick Raftery

Also Present: Wayne Whitten, Anne Whitten, Ralph Guptill, Nancy Guptill, Neal Meltzer (Waban), Ina Brother, Nicole Brother, Earnest W. Santosuosso, John Kelleher, Karen Moreshead, Elaine Hatch, Jane Barnum, Steven Barnum, Nick Livesay (Attorney), Justine Farley, Peter Farley, Roger Bisson, Ray Smith, Anthony Lombardi, Jason Claffey, Todd Goldenberg, Mary Blood, Sheila Jordan, Bruce Jordon, Steve Gray, Sandra Gray, Claire Creteau, Richard Lovejoy, J. Robin Lovejoy, Jennifer Tooley, Eric Baron, Richard DeMario and Thomas Lovejoy.

1. Call To Order:

Chairman R. Todd Hoffman opened the Planning Board Meeting at 6:34 p.m.

2. Current Business:

A. Wayne & Anne Whitten---Applicant proposes to place a Temporary Seaplane Landing Ramp on the south shore of there property on Bauneg Pond. 121 West First Street. (Map 13, Lot 43)

Wayne Whitten spoke that I put in an application for a ramp for a float plane on the south side of Bauneg Beg Lake in a little cove.

The dimensions are 14 feet wide by 16 feet long with a flat surface to let the float planes come in so that they are off the sandy beaches, so it does not erode the bottom of the floats.

Chairman R. Todd Hoffman asked how high out of the water is the high spot is.

Mr. Whitten replied that when the water table drops just the end of it is up on the shoreline sticks out. It may be out 3 or 4 feet but the depth of it is.....

Chairman R. Todd Hoffman asked but the height above the waterline is between.

Mr. Whitten replied no higher than a foot.

Chairman R. Todd Hoffman asked that your application is for a temporary ramp.

Mr. Whitten replied I can remove it. It can stay in or it can be removed, but I can remove it.

Lawrence Huntley, CEO spoke that this is being reviewed under:

Table 4 - 11 E. as a use similar to a Conditional Use.

The Conditional Use is required at **5.2.17**

Article 5 - Performance Standards
Page 5-38 North Berwick Zoning Ordinance
Revised 4 April 2009

5.2.17 Shoreland Districts Standards

These standards are in addition to all performance standards of the underlying districts. Where these standards are in conflict with any underlying standards, the more strict shall prevail.

a. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.

This would be Other Structures not a Pier, Docks, Wharves or a Bridge. This is a temporary structure and is to be removed from the lake after the boating season. This structure was existing on the other side on what is known as a swim beach. This is an application is to move the position of this existing structure. It was or is in the water at this point. The issue is they are allowed to repair and replace existing structure. They are not allowed to move things without a permit.

Conditional Use Permit - Article 6.9.6 - page 6-16 are the articles that need to be reviewed.

I have been in touch with Joe Ingles from the FFA in Portland, Maine. The issue is that sea planes are regulated as boats when there on the water but as soon as they leave the water, they are a plane again. They are regulated as boats of Inland Fisheries and Wildlife so they need a milfoil sticker. That is why there is one Mr. Whitten's plane. I don't know about the other two planes there. The discussions are on the ramp and the surrounding area, whether it is conducive to put the ramp where he wants to put it or he needs to put it back were it was.

Chairman R. Todd Hoffman read into the record:

5.2.17 Shoreland Districts Standards

These standards are in addition to all performance standards of the underlying districts. Where these standards are in conflict with any underlying standards, the more strict shall prevail.

a. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.

- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.

Chairman R. Todd Hoffman asked how long the existing ramp has been there, this is grandfathered.

Mr. Whitten replied that the original one has been there for quit a few years. I can't tell you when the original one was put in. The one I just put in has been a couple of months.

Shaun DeWolf asked you just put one in now.

Mr. Whitten answered there is one in there now.

Shaun DeWolf asked so you have two.

Mr. Whitten answered the other one is gone. Its face is still there. There are even pictures of it there so.

Chairman R. Todd Hoffman spoke but it is gone. How long was it there, one year, two years, five years?

Mr. Whitten replied were talking way back; 14, 15, 16 years.

Shaun DeWolf spoke that you had one in, removed it and put another one in.

Mr. Whitten replied that I never put the first one in. The one that is there now is the one I put in not the original one.

Shaun DeWolf asked where was the original one.

Mr. Whitten replied just to the right.

Shaun DeWolf spoke so you put one in right next to the old one.

Mr. Whitten replied no within ten to fifteen feet of it.

(5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

(6) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

(7) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

(8) Except in the General Development Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

Chairman R. Todd Hoffman read into the record page 3-19:

ARTICLE 3 - CONSTRUCTION OF LANGUAGE AND DEFINITIONS

3.2 Definitions

Structure: anything built for the support, shelter or enclosure of persons, animals, goods or

property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes. Structure shall not include shipping containers.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland:

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Chairman R. Todd Hoffman is there a State of Maine time when the boating season starts and ends?

Mr. Whitten spoke that a lot of insurances usually end around November 15th.

Chairman R. Todd Hoffman spoke this plane would then go over to Sanford.

Mr. Whitten replied this one where talking about, he is out of here probably July then comes back for a couple of weeks.

John Kelleher spoke that just for reference; we drop the water Columbus Day weekend usually two feet yearly.

Chairman R. Todd Hoffman spoke isn't that usually the second weekend in October.

Mr. Whitten spoke that in that case; a lot of times on the other side we push the ramps out and we still can remain on them.

Chairman R. Todd Hoffman asked is there a date that the Lake Association where docks often come up.

Ray Smith spoke that I'm the president of the Bauneg Beg Association and the first week in October the Noble Wrestling Team come around and pulls out most of the docks as part of a fund raiser.

Shaun DeWolf asked what are the joist of the deck sitting on.

Mr. Whitten replied right on the ground.

Shaun DeWolf spoke right on the ground, there isn't going to be concrete structure in the soil.

Mr. Whitten replied that right where it is now there are concrete blocks standing upright to hold up right now.

Shaun DeWolf spoke the concrete is not sunken into the ground.

Mr. Whitten replied there just lying there, they come up; there are ropes to pull them up. There are also weight bags on the back of them and the way the ramp is designed they hold the down so it doesn't stick up.

Shaun DeWolf asked did you have to do any earth removal or grating to get this in.

Mr. Whitten replied the shoreline or anything like that has no issue for a floatplane.

Chairman R. Todd Hoffman asked Mr. Whitten that after the boating season where will this ramp be.

Mr. Whitten replied I can either pull it straight up right there. I talked to the CEO and there is a big stump right there that I could take it out and bring it up over there or the other ones I could bring over to the Sanford side and actually on the Sanford side I can leave it in. There are sorts of ways I could do it.

Shaun DeWolf asked Mr. Whitten that you might leave them in or you may not.

Mr. Whitten replied if I have to pull this one out. I will take it out.

Shaun DeWolf spoke it has to be taken out after seven months or it is considered a permanent structure.

Barry Chase asked just to be clear on this. So this is just if he can move it to where he wants to or it has to stay where it is or where it was. The whole application is so he can move it from one spot to another.

Julie Fernee spoke which he has already done.

Lawrence Huntley, CEO spoke that he is not using it right now.

Shaun DeWolf asked will this be use for personal use only.

Mr. Whitten replied for one of my friends to put his plane in.

Chairman R. Todd Hoffman spoke it is not for commercial use.

Shaun DeWolf asked how many planes will be on the pier or dock at period of time.

Mr. Whitten answered just my friends plane will be there, my plane is on the Sanford side.

Shaun DeWolf asked how often will your friends plane be there

Mr. Whitten answered he won't be back until the end of the week, he is being trained out of Peases; basically he needs a place to park while he is here. He has a home in Greenville.

Shaun DeWolf asked what does your permit say for your FFA requirements for a landing strip, is it not for personal use only. What I'm getting at is if you have your boat out there and what ever concern is having 5, 6, 7, and 8 planes what ever amount, coming in, getting pulled up, and docked.

Mr. Whitten replied again I cannot stop aircrafts from landing in that water.

Shaun DeWolf spoke so the maximum amount will be your plane and your friends.

Mr. Whitten replied yes pretty much.

Shaun DeWolf spoke so it won't be a guy flying in from Arizona and landing unless he is a friend of yours and has prior notification.

Anne Whitten replied that we don't need prior notification for someone to land on the lake; anyone can land on the lake.

Shaun DeWolf spoke that why I came up with the prior notification is because I did some research on seaplanes. Everything that you have for a seaplane base is for private use only and prior landing notification is required. I don't know if that means pulling up to your shore.

Mr. Whitten replied that was put in because of emergencies. This is the only Seaplane base in Southern Maine and I am the only AMP mechanic at a Seaplane base.

Shaun DeWolf asked how far is this ramp from your property line.

Mr. Whitten replied it is maybe 30 or 50 feet something like that.

Chairman R. Todd Hoffman opened the meeting to the public at 7:04 p.m.

Nick Livesay spoke that I am an attorney with Pierce Atwood and I am here on behave of Ina Brother and her daughter they have property across from the area in question.

I am going to explain to you tonight that there are more questions than answers raised in this application that we have before us. It is not just the Shoreland Zoning Standards that we ran through earlier, but also the Conditional use standards that apply through the approval of a conditional use. When those are looked at, why what is proposed tonight does not meet those standards. There are three categories: The first I am going to focus on the proposed ramp. What is actually being proposed and that is an expansion of an airport and I want to talk about the standards that apply to the proposed ramp in isolation.

Lawrence Huntley, CEO spoke excuse me. We are not here to listen to a proposed airport. We are here to listen to a relocation of a ramp. That is all we are doing tonight.

Nick Livesay replied I appreciate that. I will proceed and hope this will address your questions. What is being proposed is a 14 foot by 16 foot structure. It is actually in the water now and was place in May of this year. This not a long term structure.

Lawrence Huntley, CEO spoke that this structure has been existed at Bauneg Beg Lake for a number of years, probably 15 to 20 and he wants to move it. Again I am going to make this point is to review an existing ramp for relocation and that is the only thing we are here to review.

Chairman R. Todd Hoffman replied and that is all this Board has the authority to do. I also know about free speech and public hearing. However let's be clear there is a conditional use permit. We only have one permit out front of us. It is not for a commercial operation, it is not for an airport. What we have before us is the permit for one ramp and it is a temporary structure. We have read the ordinance to you and that is what we have to make decisions about.

Nick Livesay spoke what I want to talk about is the structure in isolation and actually was a part of. For instance if someone was to have an auto garage in a large parking lot that expands two towns (like the property the gentleman has) and they wanted to expand the parking lot. That would be not just adding addition of space, it would be an expansion of what ever use is there now or if wanted to expand my residential pier, it is an expansion of a residential use. This is why I am talking of just not the pier but also for the ramp but also the use. The Town Zoning Ordinance, both in section 1.3 and 1.4.3 talk about the need that uses are subject to this Town's Zoning Ordinance as are expansion of a use. I have been criticized for suggesting that this is an airport for that addition of that dock or ramp at an airport that is extension of an airport. Let me tell you why that is.

Exhibit number 4: This is an application that was submitted to the Town of Sanford.

On page 4- 3 is a certificate authorizing operation of this airport.

It is issued to Wayne & Anne Whitten. This is for 2009 and it is for a commercial airport registration certificate. It authorizes the Airport/Seaplane Base for gain or hire within the limits. Mr. Whitten recognizes the airport and this certificate is required under State Law.

Under State Law the definition of an airport which this certificate was applied for an obtained.

Exhibit 3: The definition of an airport: airport means any area land or water which is used or intended for use in the landing or take off of aircraft or any other impertinent areas that are used or intended for use airport buildings or other aircraft facilities for rights of way together with all airport buildings and facilities located thereof. This certificate is for Mr. Whitten's airport be applied for and obtained it.

Exhibit 4: Pages 4-2 are notes by Mr. Whitten:

It is a Seaplane Base with a license mechanic. Work performed mostly for emergencies.

Seaplanes with floats cannot land at airports. That qualified basically means that some planes can't land at airports. They go there for maintenance.

Page 4.4 we have a Water Landing Directory for 2006-2007: There is an arrow in the directory that points to North Berwick and that there are services there. Fuel incases of emergencies but it also says that a mechanic lives there and is available by appointment.

So what do we know: we have an airport, it was licensed by the State in 2009, there may or may not maintenance activity going on at this airport.

There are maintenance activity going on in Sanford, but the parking of planes is noted on page 4-2;

Notes: 2. Town line divides property between Sanford and North Berwick. Aircraft based at the facility are parked in North Berwick, except for my personal aircraft are parked in Sanford. There are multiple aircraft at this airport.

What is proposed now is an expansion. We have conflicting testimony about whether or not this ramp has been there 10 years or a matter of months since May.

I have been told this is the forth ramp; there are a couple that have been added in the last few years. These ramps that are said to be temporary have actually spent the winters in the water. All of this speaks is what is going on at this lake or pond. What does this mean for you folks? What standards apply and what is being applied for here in the ordinance.

In regard to an airport, maintenance activities, the other ramps that's there. I don't know whether that stuff has been properly permitted either by this Town or by Sanford, by DEP, by the Department of Transportation.

I want to focus on is the ramp. As preliminary matter, this is a point that you noted earlier for a ramp.

There is a side limit for piers, docks and wharves that is contained in the Town's Zoning Ordinance.

Section 5.2.17:

a. (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.

What is proposed here is 14 by 16. This is in aquifer protection overlay district.

In the Zoning Ordinance – Tables: 4-9B

There is a use: Automobile Service station, Motor Vehicle sales and Auto Repair Garages, Car Washes.

If there is actually maintenance going on at this airport an expansion of that in the Town of North Berwick.

In the Zoning Ordinance - Tables: 4-9E

Here we have Conditional use: Piers and docks

Commercial & Industrial facilities which by nature of their operation require shore front location, such as boatyards, marinas, etc.

5.2.13-page 5-31 Aquifer Protection with the Aquifer Protection District

Zone B. It talks about uses prohibited and conditional uses.

5. Boat and motor vehicle service or repair facilities.

This is an expansion of something that is prohibited.

Definitions: Page 3-4

Conditional Use: A conditional use is use that would not be appropriate without restriction but which, if controlled under provisions of this Ordinance, would promote the purposes of this Ordinance.

The purpose of this Ordinance and the Conditional Use section of this Ordinance have not been addressed anywhere in the application the Planning Board has before them.

Chairman R. Todd Hoffman spoke that we are not talking about the expansion of an airport. What this Conditional Use Permit is for a temporary structure.

Nick Livesay replied that there is an airport there now, whether it is legal or not. He has obtained a permit from the State for it.

What he is seeking to do is add a structure that allows more airplanes to come to this airport. That is an expansion of that particular use, whatever category use you put it in.

Anne Whitten spoke that the piece of paper that he has from the State that says it's an Airport/Seaplane Base. Sanford Regional Airport also has that same certificate and it says Airport/Seaplane Base. Sanford Regional Airport is obviously not Seaplane Base. The State of Maine gives that certificate to anything that has airplanes that is registered in the State of Maine. The reason why it has both because that is the certificate the State gives.

Nick Livesay replied that Exhibit: page 3-4
2. Commercial airports; seaplanes

They do not have a Utility airport.

They have a commercial airport; it is advertised in the seaplane guide.

Sanford doesn't know what is going on over there, whether it is commercial not commercial or whether it is permitted or not permitted.

Chronology of 125 1st Street Bauneg Beg Pond (Map R21, Lot 1)

From 3/07/94 to 6/30/09

12/07/07 Neighbor complained that Mr. Whitten is running a car repair business

01/02/07 Mr. Whitten says he is not running a business, does airplane repair, and repairs his own antique cars there

The reason why the application that is included here from the Town of Sanford was never acted upon for the occupation in the back of that exhibit show is because the Town of Sanford was concerned he was running a commercial operation there that was not permissible. He decided to let sleeping dogs lie and not push it, now he is here.

Wayne Whitten spoke believe me I do not want this as a commercial anything because insurance reasons is a big concern. The State of Maine with these applications all started back to snowmobiles and also 4 wheelers on people's property and that they were liable if these people got hurt. It went through the legislature they changed all this. But they did not include airports and seaplane bases. Recently maybe within a year or so ago, is that they changed that and went back to legislature again and it came back to say, now were going to include aircraft and seaplane bases and airports. So it protected us from attorney trying to sue us if someone got hurt on the property. That is all that was about and you can put it as a condition that if I can. I will see if there is other paper work because I will look it up now because I don't want it commercial.

Nick Livesay spoke that under State Law it is an airport and it is an expansion of an airport. That use and the impact that come with that expansion are what need to be considered under the Shoreland Zone Standards you read through earlier. The Conditional Use approval standards that look at impact the neighbors, the quality of life, the environment and those sorts of factors, none of those factors have not been addressed. And the impacts are not dictated whether it is commercial or not.

Lawrence Huntley, CEO spoke that I would like spread some light on the issue and back to 5.2.17 Pier, Docks and Wharfs the definitions of. This not a Pier, Dock or Wharf it is another structure and it does not fall under Pier, Docks or Wharfs and is not regulated under Pier, Docks or Wharfs. It is regulated other structure. And it can be more than 6 feet wide because it is another structure and that being said I have photographic proof. That this Dock, Pier, other structure existed before than the time where talking about. And it is just a replacement of an existing structure but they want to move the location. So it isn't an expansion, it's a replacement.

Shaun DeWolf replied that it's considered a new structure if you are taking it from one point to the other.

Chairman R. Todd Hoffman spoke that ramp that you have photo documentation, was that a permanent structure or a temporary structure.

Lawrence Huntley, CEO replied it was in the water. I couldn't tell you one way or the other.

Jane Barnum spoke that I m Steve's wife and a primary abutter to this property in question. I m a registered architect, I have a currant Maryland Architectural license.

I have been on Bauneg Beg Pond at this location with my family since 1955. I learned how to water ski on the pond and I still have the wooden water skis in my basement to prove it. With my husband I have expressively asked property owners from Sanford here because North Berwick Comprehensive Plan adopted April 2009 stated on page 227 Regional Coordination the Town should work with the Town should work with the Town of Sanford and other relevant organizations, such as Waban etc.

I was present on my property line on June 2nd 2010 when Mr. Huntley, Mr. Mike Morse of the DEP and Mr. Whitten when Mr. Whitten stated his intentions to place 6 aircraft on the south side of his North Berwick property. I believe this ramp is the first. Mr. Morse was assisting Mr. Huntley in examining the code violation on the Whitten property and came to my adjacent camp that afternoon. I asked Mr. Morse if the Whitten's had broken the law by mowing the bank and inserting the airplane ramp on the pond. Mr. Morse said yes; three times; twice on the bank and again with the instillation of the ramp with out a permit, whether he moved it from some place else. The DEP said it was illegal.

I've brought three charts, which I will submit and explain regarding my objection to this particular permit application.

In regard to the North Berwick Comprehensive Plan guide-page 167; the zoning section 5.2.17 a.3:

The facility shall be located as to minimize adverse effect on fisheries.

This is the Department of Wildlife and Fisheries and it's about loons. It says shoreline development may eliminate nesting habitat or reduce habitat quality by increasing disturbance and predation.

Then it said one of the things you had to do, is keep milfoil and other invasive exotic plants out of Maine's lakes by keeping your boat or trailer weed free.

In addition I have brought and submit the Seaplane Pilot Association landing directory, which list Bauneg Beg Pond, Which I took from the web today. It lists the lakes that Seaplanes can land in Maine. I have also attached the list of contaminated lakes, which I received when I purchased my boat license and milfoil sticker in the Town Office in May.

Note the number of contaminated lakes, which are listed in the Seaplane Pilots Association directory, which are also on the Maine DEP map.

This is the Seaplane directory these are the lakes that list the land and these are the lakes that are contaminated; with particular attention to number 2. On the second page that is where you fuel your airplane. I also have some videos of the adverse effect that these planes have, if the Board is interested in seeing them of these planes taking off this past week and all the loons in that cove. In this picture this is what the cove looked like in 1995, that we are proposing to put an additional airplane ramp; moved from where ever to this particular cove. We have two families of loons that are trying to get territory for nesting. These planes every time they take off you hear the loons scream; I have that on video if you would like to see it.

In this photo are the nine planes that we will have to deal with if Mr. Whitten has the ability and permission by the Town of North Berwick.

Right now these two planes are in Sanford; this one on the end is in North Berwick and he is proposing six more in North Berwick and the Hangar is located in Sanford.

In this photo this was the loons last year; this is the area that Mr. Whitten proposes to move that dock.

In this photo this is the Whitten property in Sanford; the Whitten property in North Berwick and this is where the illegal new ramp sits where he dragged from some were else; I don't know where; this is where he has three planes and he also has a ramp next to this one in Sanford next to his airplane hangar.

This area on his property he has ten docks already. These are the three planes he has here. This one is his and parked in Sanford; this one is on the line but probably in Sanford on R201-1 a or b; and this one is in North Berwick; and this is the flag pole at the end of his property. He already has one of these things in North Berwick and he is proposing to put another one in and we don't know why.

This is what the area looks like now; you saw what it looked like in 2005.

This is advertisement on my tree; it says Bauneg Beg Seaplane Base; he has put five signs on the road for that.

This is from the Seaplane Pilots Association where these planes can have wheels. If they are so desperate to land in Sanford then they should land in Sanford.

Steve Barnum explained that he chart shown here is that the Seaplane Pilots have a guide on where to land and it doesn't match the Maine evasive species map. They say it's ok to land where Maine says you can't land. What we have here is an opportunity to transfer evasive species to our lake.

Jane Barnum spoke that it applies to section 5.2.17 a #3; that is my complaint and that is my stand. Thank you for your consideration and I'd like to show you the video if you are interested.

Wayne Whitten explained that the Seaplane is more concerned with milfoil. We have safety seminars all over the State of Maine; every seaplane owner that I know of, that if they see a yellow buoy in the water to stay out of that area. Brandy Pond is Seaplane Base it is a safety seminar base that the State puts on at Brandy Pond. You can call the warden in that area, he was there last Saturday.

Richard Lovejoy spoke that Wayne mentioned that the existing dock was originally several feet from where it is located now. Is that correct?

Wayne Whitten replied looking into the shoreline it would be further to the left.

Richard Lovejoy spoke that here is a picture that shows that line and here is a picture that shows the new dock. Well the existing dock that was always there; same area; there is no opening on the beach where talking about when the DEP shut him down. DEP said you had no right to clear it; you cannot put anything on the shoreline because on that shoreline you not suppose to clear it or cut anything.

In this photo I do not see any platform for an airplane.

In this photo here is the shoreline today; cleared there is the dock; here is another placed cleared on the left of it; it was not cleared over here.

This is what it looks like today; the same shoreline showing the other dock, which is another dock shown up here; that wasn't there before and now this shoreline is all cleared; and the wharf here to drive a plane up on and the whole shoreline is cleared, which the DEP says you cannot do that.

Wayne Whitten replied that if you look now in your pictures, that dock is here right now.

Richard Lovejoy replied but this here is all cleared here, which now the dock is over here.

Wayne Whitten replied I will take this dock and put it back there. The only reason I moved that dock is because of the sandy beach and the kids. I took this and moved it over there; it doesn't have to be there; I can put it back here; it doesn't matter.

Richard Lovejoy spoke what I'm saying is you can't clear the shoreline because it is illegal.

Chairman R. Todd Hoffman spoke that the shoreline has already been dealt with Mr. Morse and it went before the Selectmen. That is not our purview here.

Richard Lovejoy spoke how are you going to get to this if you can't go up to the shore with his plane.

Shaun DeWolf asked Mr. Whitten how many docks or ramps do you have now for your plane in North Berwick.

Wayne Whitten replied this will be the second.

Anne Whitten replied there are one on the South side and one the North West side.

Sheila Jordan spoke that I look across the lake at Mr. Whitten's property; I have never seen a plane in that cove. I've seen a plane on his 10 foot dock but I have never seen a Seaplane docked anywhere else in that cove.

In 2005 there is a dock but it is a regular swimming dock. It is not a seaplane dock. He couldn't of gotten a Seaplane in there with all the foliage that was growing up around there.

So you are allowing him to replace a regular swimming dock with a Seaplane dock.

Chairman R. Todd Hoffman spoke we haven't allowed anything there.

Sheila Jordan replied well that is my concern though; that's where it sounds like. This is his existing Seaplane dock. If he wants to put in an existing dock to replace the one that was there; I don't have an issue with that. I do have an issue with the noise pollution, the safety issue. Between his property and mine property there 200 feet.

Ina Brother spoke and Camp Waban is right next door with the children in the lake.

Sheila Jordan spoke I don't understand; there was never another Seaplane ramp over there.

Chairman R. Todd Hoffman asked to we have collaborated evidence of that Seaplane dock.

Looking at a photo Barry Chase asked is this it?

Chairman R. Todd Hoffman spoke that is the question and I want to know that.

Wayne Whitten viewed the photo and replied I don't know.

Anne Whitten viewed the photo and replied that is still there.

Chairman R. Todd Hoffman spoke asked Mr. and Mrs. Whitten do you have any visual documentation that shows the old dock.

Julie Fernee asked but does it show that it was a Seaplane dock or does it show an ordinary swimming dock; that is what we want to know.

Lawrence Huntley, CEO replied that definitely not a swimming dock.

Looking at the photo Julie Fernee asked where is the dock here; there is none.

Wayne Whitten replied I can move it back; to that spot; I prefer to have it back there.

Richard DeMario spoke that I lived on Bauneg Beg for four years. I live in York and I have this place for summer and fall and I go there in the winter to check on my house. All these docks that are on his property, they are never removed.

Number 1: So he is trying to replace one of his temporary docks with a new temporary dock, none of his docks are temporary because they are there always.

Number 2: I have been touring around in my boat over the years. This new structure he has there was not there last year. It's cleared, its under water with sand bags and its tied. It was not there last year.

This is not an existing dock and none of his docks I see are temporary. So how are you going to replace a temporary dock with a new temporary dock when I don't see any of his docks temporary because they are never removed they are there all year.

Jane Barnum spoke that I want to clarify these photographs. I believe Richard took these photographs and there is a date on these photographs. It is also quite possible that the dock got put into the water prior to tree being taken down. This photograph proves nothing.

Mr. Whitten says and Mr. Huntley says that the dock was here and this is proof. It is in fact not proof Mr. Chairman.

These photographs were taken on May 14th, 2010.

Richard Lovejoy spoke that the other photos were taken in 2009 it doesn't show anything there.

Jane Barnum spoke that it is very possible that Mr. Whitten dragged the dock over here, put it there and then cleared the bank so that he could move it.

Anne Whitten asked if we wanted to put in a new one and there was never one existing there. There was an old one existing under the water and it's been there for years. Say there wasn't one; are we allowed to come in front of the Board for a structure that hasn't been there before. Is anyone here allowed to put a new? If they want to put a Jet Ski ramp, the pontoon boats go up on these sorts of ramps.

Chairman R. Todd Hoffman replied the answer from the book under 5.2.17:

(6) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

Thomas Lovejoy spoke that my concern is that you can put restrains if you approve this.

Chairman R. Todd Hoffman replied we put conditions on its use.

Thomas Lovejoy replied but looked what happened, this old stuff happened underhandedly and nobody even knew what happened. Why is it now everyone is paying attention? There is this ramp there that was never there and it all happen and someone wasn't doing there job.

Jennifer Tooley spoke that I m a little confused and maybe the Board can clear it up; showing up here to get a permit, when you already have the structure there. Shouldn't the order of events be you get your permit and then you build your structure?

Chairman R. Todd Hoffman replied yes it is. And I can tell you this is a frequent occurrence.

Neal Meltzer spoke that I am the Executive Director of Waban I appreciate the opportunity to talk before you tonight. As you know Waban has a long history of being friendly with Bauneg Beg Lake and a good neighbor to all the citizens. My predecessor Janet Frazier is instrumental in helping save the lake by the rebuilding of the dam. The reason I am here is just to express my overall concern about compatible uses.

I also have some questions that perhaps you can help me understand. Is it possible that the permit to approve a Conditional Use for a dock might be permitted but what the actual use is; what it is used for be prohibited.

Chairman R. Todd Hoffman replied it would be conditioned so that there would be certain restrictions. We already talked about the one that is in the Ordinance and that would have to do with that being a temporary structure it would have to be pulled out. It could also have to do with noise levels and other conditions in the Ordinance book that we could place.

Neal Meltzer spoke that the reason I ask that is that my understanding is around the lake in that area that commercial uses are not permitted in that area. I'll ask the Code Enforcer; is that correct?

Lawrence Huntley, CEO answered that they are permitted with a Conditional Use, such as: Water borne activities; a marina is permitted.

Neal Meltzer asked but if someone wanted to do that they would have to come in and apply.

Chairman R. Todd Hoffman replied that they would have to fulfill the Performance Standards of the book.

Neal Meltzer asked that it is possible that a Conditional Use permit could be approved for a dock, but then if someone wanted to then use that dock to do another activity. That activity was a regulated activity someone would need to come back to the Planning Board to do that.

Chairman R. Todd Hoffman replied that we can place on a condition that this is not a commercial operation.

Neal Meltzer spoke again I thank you for the opportunity to come before you. I think you are all trying to figure out what is a compatible use and what's not. It is a very challenging job. I think people around the lake try hard to be good neighbors to each other. What the individual wants to do for themselves for a plane or a boat. I don't think most people don't have an issue for that but when it starts to have more use than that. I think that's when the concerns come and obviously overriding what you are doing tonight.

I hope you take into account everything that has been said here, there were good comments, obviously there are emotions you have to work your way through that.

Todd Goldenberg spoke I live on Bauneg Beg Pond. I wrote the Planning Board a letter. I want to go back to the dock a temporary structure which has a limit of 6 feet 4 inches.

Chairman R. Todd Hoffman replied that is for a pier. The application is for another structure.

Todd Goldenberg asked I want to know the definition of another structure. We all refer to it as a ramp or a dock. We have a specialized structure for a specialized situation, which is a Seaplane; they can't land to a 6 by 8 dock. So where saying an accessory structure, but we all define dock, pier and ramp.

Another consideration I think you should look at this as a marina; where you have other people's things at your location. They are watercraft and State Law and Federal Law also make it seem like a marina.

Chairman R. Todd Hoffman replied do you have water front property.

Todd Goldenberg answered yes I do.

Chairman R. Todd Hoffman asked do you ever have a friend stop by in their boats.

Todd Goldenberg answered I don't park them there for 8 months. If you choose to put conditions I would like some way to enforce this besides the people on the lake calling the Code Enforcement Officer. What you put there needs to be enforceable in some way.

Chairman R. Todd Hoffman asked do you have a suggestion.

Todd Goldenberg answered yes that all planes using those piers and docks are registered to the applicant.

Steve Barnum spoke and I am a direct abutter. I have owned this camp for 25 years and my uncle built it 30 years before that. I am very familiar with the cove in question. We look at it out of our kitchen window.

I want to cover are the concerns of **5.2.17 Shoreland Districts Standards**

(1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

The Whitten's we all know have committed an illegal act by clearing the shorelines. So I submit that the shoreline that this ramp is placed is not suitable for the proposed permit. It has been violated and it needs to be nurtured and returned to its natural health.

If you compare the pictures of before and after it has been clear cut.

(3) The facility shall be located so as to minimize adverse effects on fisheries.

Again the shoreline habitat has been damaged the water quality has been degraded. Bauneg Beg Pond is already listed as a water body listed with serious concerns for the State water quality.

This site is located area dense aquatic weed and violates Seaplane protocol for transmission of invasive species.

I have a print out from stop Aquatic hitchhikers and Seaplane Works says the same thing: There are specific procedures that you use for operating a Seaplane and one of the things is to prevent the spread invasive species.

Before take off to not taxi through heavy aquatic plant growth prior to take off. Now this particular ramp is located in a shallow cove which is infested by water lilies and weeds. You cannot access this ramp without going through the weeds to the ramp and going through the weeds out of the ramp.

I submit that this ramp base is poorly sited and is not suitable for the purpose.

Chairman R. Todd Hoffman asked would you have a suggestion for a better site.

Jane Barnum answered yes in Sanford next to the other planes.

Steve Barnum spoke that in addition the road traffic on West 1 dirt road will increase with the growing airport. The dirt road is not designed commercial and heavy supply trucks. It the Town ready to pave West 1 and the noise has increased on the pond from aircraft and visiting planes passengers and supply vehicles. The property values will decrease due to an airport being established on lake front property subsequently a road the tax base of North Berwick and therefore its operating funds. Thank you Mr. Chairman.

Anne Whitten spoke that I would like to address everybody to tell you that my husband did say there were going to be six other airplanes on the lake. The reason why he said that is because when the Code Enforcer came over to talk to Wayne and DEP. Is that Jane was standing on the property line; hollering saying we should have a fine and Wayne said well if I want to I'll just bring in six planes. I m telling you right now, were not going to bring in six planes. We have always tried to be very courteous to people. The FFA and Maine Laws say that we can take off at 7:00 in the morning. I said to people please do not take off until 8:00 a.m. especially on the weekends. I have to sleep and so doesn't everyone else. We have tried to be kind to the people on the lake. We have been there since 1992 and we have never heard any complaints for anything about the Seaplanes. There were two Seaplanes down in Sanford where a man named Roger now lives, Lenny had two Seaplanes down there and we had our Seaplane. These Seaplanes have been on the lake for a long time. Jane has been our neighbor for a long time, we have been friends, they have flown in the plane, and Jane's neighbors have flown in the plane. They have enjoyed the airplane we have never had any problems. The thing I would like to say is if people have a problem with the Seaplane; if we have ever bothered you; if we have ever been unkind; if we have done anything to of any safety or anything like that we apologize. We never heard about it we've been there since 1992. Back in 2008 my husband and I moved a double wide mobile home from the Couture's down to a piece of property that I bought across the street. This is when all these things started. This is when Jane started writing to the Board calling the FFA.

I want everybody to know that we will follow what ever you ask us to do and if anybody on the lake has any problems that we will follow what they ask us to do. I believe this has been all stirred up due to a neighborly issue.

Ina Brother spoke that I live directly across the lake from the Whitten's. We have families on the lake; children on the lake. Camp Waban's pontoon boats are right out front of my house, right in the middle of the lake all summer. No one has brought up the safety issue of what's going to happen. We have nine Seaplanes and these children are in the middle of the lake; like they were last year with 20 children on a pontoon; that got stuck right out front of my house. I could not help them. I got in my car and I drove to Camp Waban to let them know these children stuck in the middle of a lake; 20 of them in a pontoon. Can you imagine nine planes circling trying to get into the lake while

these children with special needs are on there pontoon. No one has brought that up. Where talking about a dock a ramp or what ever you want to call it; it's been there; it hasn't been there, but no one is talking about safety of the families on the lake. There should not be nine Seaplanes; we all want to be a good neighbor; we want to be a good neighbor to Anne and Wayne, but we want them to understand we are there for a purpose. Life is to short to argue whether it's a dock or a ramp or temporary; it's safety for the children and families on the lake.

I am a Daycare Director in a fairly large daycare center in Boston. It is my job to anticipate whether something will happen to these children or whether they won't happen. For example: we have the Farmer's Market in Brooklyn Mass. I would love to take my Pre. K children to the market to get an ice cream cone, but I have to anticipate that some stranger may put their foot on the gas instead of the break. Is it likely to happen probably not, but I have to anticipate that it could happen. That is why we have to hold all of you to a higher standard thinking that your thinking what were thinking. Plan and simple it is not safe.

Chairman R. Todd Hoffman replied I appreciate you raising that issue that is one we haven't discussed as yet!

However in **Article 1 General**

1.2 Purposes

- a. To promote the general welfare of the town;
- b. To establish a fair and reasonable set of standards for evaluating each development proposal impartially, and on its own merits;
- c. To provide local protection from those particular nuisances which are not governed by State law or regulations;
- d. To help preserve the peaceful rural surroundings which make North Berwick an enjoyable place to live;
- e. To balance the right of land-owners to use their land with the corresponding right of abutting and neighboring land owners to live without undue disturbance from noise, smoke, fumes, dust, odor, glare, traffic, storm water run-off, and other nuisances;

Are there any new issues to be raised and I appreciate the one about public safety.

Anne Whitten spoke that this is the Maine Boating Laws Safety for the State of Maine. These are all the rules the airplanes have to follow. This is all the safety rules that they have to follow.

When you are an airplane pilot; you not only have to do between 40 and 60 hours to get a Seaplane license. You also have to go again for more hours to actually get your Seaplane license. You have to apply every other year to make sure that you have a Seaplane license. The FFA; when we were asked about last year the FFA has written to one of our neighbors that there has never been anything brought up against Wayne or his Seaplane or his safety and he has no record on his Seaplane license. This just answers something on safety.

Sheila Jordan commented on what Anne Whitten just stated. First of all 2 years ago I called the FFA because one of the Seaplanes came in so fast with so many people in the cove that it scared the daylight out of me. I took pictures of it but not coming in I wasn't there were 10 relatives on the dock. We all went what the hell! They came over the trees into the cove through the middle and I reported it. Now, it wasn't Wayne's plane and I m not suggesting that Wayne was piloting the plane at the time, but that is my concern.

Wayne isn't regulating the other pilots that he is allowing places to come in. Now, he is telling us that he isn't getting anything for storing these planes for the summer. Now, there have been three planes on the lake most of last summer and so far two are there and now there is a third again. I have no issue with Mr. Whitten having his plane.....

Chairman R. Todd Hoffman replied we get your point and it goes back to the original. Is this an airport?

Sheila Jordan spoke that is my concern.

Jennifer Tooley asked if this permit was approved with or without conditions. The permit is just for the dock would they have to go through the FFA to be permitted to house extra planes.

Shaun DeWolf replied that is FFA. I have no clue.

Jennifer Tooley asked is he allowed an airport permit. I understand this is just for the structure but is there another set of regulations that he need to apply to house or.....

Chairman R. Todd Hoffman replied that we have the authority to regulate that in a Conditional Use permit. So when we vote on a permit we decide whether we want to permit it or not, but we would not make that vote if we felt that there were vital conditions that needed to be placed on that permit. So that permit would be passed only with those conditions.

Richard Lovejoy spoke that last fall a car came down my driveway on West 2 looking for the airport to lease a place to put his plane in and then 2 more cars. So that is three cars before this. Also Wayne came to the association and told us the plane had the right of way on the pond.

Nick Livesay asked that earlier there was talk about a dock or a pier. You can have a dock or a pier in the front of your house or business. My question is the pier in front of this gentlemen's house is associated with his residential use. My question is what use this ramp is associated with. I would like the record to reflect when you deliberate and make a decision.

Jane Barnum submitted a letter to the Board from a neighbor that is Florida and is unable to attend the meeting.

Chairman R. Todd Hoffman addressed the letter to the public. This is a person whose grandmother built their camp in 1951, but the concern is this becoming an airport.

Chairman R. Todd Hoffman closed the meeting to the public at 8:23 p.m.

Shaun DeWolf asked Anne and Wayne Whitten how many planes do you have in North Berwick.

Anne Whitten replied I believe there is one plane in North Berwick.

Shaun DeWolf asked how many ramps do you have in North Berwick.

Anne Whitten replied there are two in North Berwick.

Wayne Whitten spoke were getting confused. There is only one ramp I can use in North Berwick until you ok this one. Then there will be two.

Shaun DeWolf asked why do you need to move the existing ramp now over 30 feet.

Anne Whitten replied because there is an area over there that is like a beach area. We have used it forever. Where our dock is it goes from 2 feet to 8 feet. So when my grandchildren want go down that is where we go.

Shaun DeWolf asked did you use this ramp last year for your Seaplane

Wayne & Anne Whitten replied no.

Chairman R. Todd Hoffman read into the record:

5.2.17 Shoreland Districts Standards

(2) The location shall not interfere with existing developed or natural beach areas. If it was a non conforming the intent is to improve.

Shaun DeWolf asked about a comment Anne Whitten made about asking people to leave after 8:00 a.m., where are these people coming from.

Anne Whitten replied that one of the planes have been there for a long time way before us and one of them is ours and one of the is our friend Jacque who has been there for five years.

Shaun DeWolf asked so when people fly in and use this ramp, do you pull it up on shore.

Wayne replied no, the plane stays on the ramp.

Barry Chase suggested a site walk.

The Planning Board will conduct a site walk on Monday June 28, 2010 at 6:00 p.m.

3. Preview Next Agenda

4. Other Business:

5. Review Previous Minutes:

Minutes Tabled: May 27, 2010 and June 10, 2010

6. Adjournment:

Shaun DeWolf moved to adjourn the Planning Board Meeting of June 10, 2010 at 8:30 p.m., Julie Fernee seconded a motion. Vote, 4-0

Lawrence Huntley, CEO
Planning Coordinator

Respectively Submitted
Anita Lambert

Chairman R. Todd Hoffman

Barry Chase

Julie Fernee

Shaun DeWolf

Christopher Karcher

Patrick Raftery

Chairman R. Todd Hoffman
Barry Chase
Julie Fernee
Shaun DeWolf
Christopher Karcher
Patrick Raftery
CEO
Town Manager
Post Inside/Outside
File