MINUTES
PUBLIC HEARING
May 5, 2008

The Town of Manteo Planning and Zoning Board met in Called Public Hearing on Monday, May 05, 2008 at 6:00 p.m. at the Manteo Town Hall, 407 Budleigh Street.

The following members were present: Chairman Bill Parker
Member Bebe Woody
Member Phil Scarborough
Member Christine Walker
Member Beth Storie

Chairman Parker called the meeting to order at 6:05 p.m.
SUBJECT: Roanoke Marshes Light Development expansion of the marina.
Chairman Parker gave a brief history of the development of the Marshes Light and recognizes the importance of the development to our Town. We are hoping to hear the public's input and that the Board of Commissioner's will make the final decision of changing the conditional use and the Planning and Zoning Board will make their recommendations to the BOC at their regular meeting. Planner Trebisacci gave a brief history of the conditional use permit: The Town of Manteo issued a conditional use permit for Marshes Light on April 7, 2004 and was signed and recorded on January 5, 2006. The CUP had specific language regarding docks that read as follows:

a. All docks shall be designated as recreational. No commercial boats shall be allowed unless additional parking is provided and permitted in accordance with the zoning ordinance.
b. All docks attached to the boardwalk, while privately owned and maintained, shall be accessible to pedestrians at all times.
c. To provide for the safety of sailing students at the NC Maritime Museum and other users of municipal docks in the vicinity and to protect the sound side view shed of the Roanoke Marshes Lighthouse reconstruction, no docks shall be constructed in an area within a radius of 400 feet from the lens of the lighthouse nor within the vision cone determined by extending a line tangent to the circle extending sound ward parallel to the lighthouse pier and by extending a line tangent to the circle sound ward parallel to the gazebo pier, and the dock shown closest to the lighthouse shall be eliminated from the plan.
d. Dock slips for which parking has not been provided on the site plan shall be assigned to either hotel suites or dwelling units. Assigned

dock slips shall be deeded with the unit and restricted in the deed such that they cannot be conveyed separately, rented, or used commercially.

e. A sewage pump-out facility shall be provided for marina use

The potential for up to 188 docks in the marina is considerably higher than the number of existing docks in the adjacent Waterfront Marina and Shallowbag Bay Club Marina. At other marinas in Town there are ongoing parking conflicts between the boaters and the home owners. During this planning process the town was very mindful of the conflicts; and in this case it is more likely for parking problems to spill over into the already congested streets of downtown Manteo. There is no question that the intent of the language from section d was that each dwelling unit and hotel suite would have a dedicated and deed boat slip and that the remainder of the slips may be sold if parking were available. The way the site plan was approved the developer stated that there is parking available for 100 slips. There can be no question that the plan anticipated the residents and hotel guests already on site to be using a majority of the docks and not generating more traffic and parking for people driving to the docks.

Current Request

August 2007 The developer applied to CAMA for an alteration and expansion of the Marina without prior consultation with the Town. The Town received word of this alteration through a required adjacent property owner notification.

Fall 2007 After receiving the required notification the Town responded immediately to CAMA opposing all of the proposed changes. There was lengthy discussion between Marshes Light and Town staff regarding the changes and whether they were a minor change requiring no additional review by the Town or if it were a major change requiring an amendment to the CUP.

January 10, 2008 Staff issued a letter following a presentation to the Planning and Zoning Board stating that the proposed changes were not minor as they would have an affect on neighboring properties and the an effect on those reside at *or* use the development and would require an amendment to the CUP

January, February, and April 2008 Planning and Zoning Board Meetings Representatives from Marshes Light presented the changes that are proposed for the marina.

March 27, 2008 Public Hearing date for the Board of Adjustment to review the requested marina expansion. This hearing was canceled at the request of Marshes Light and instead they requested to go through the Amendment Process.

Other Requests

Since this amendment process began staff has received requests for other changes.

a) Fuel Docks
b) Above Ground Fuel Storage Tanks
c) Fuel Control Building/Dock Master's Shed

d) Floating fuel platforms
e) Also on the site plan reflecting these changes is a "proposed new property line" reflecting a subdivision not shown on the master plan.

While these issues are certainly related to the expansion of the Marina they are not what is being reviewed tonight, but a pertinent because they reflect additional changes that developer is proposing. The issues being decided upon tonight are the expansion of docks into Shallowbag Bay and construction of a wave attenuator in public trust waters. Chairman Parker took a 5 minute recess to allow the audience to review the plans that were on the wall.

Keith Johnson-attorney for the developer and handed out to the Board what was said in the original conditional use plan and did a redline to show the change they are requesting to the document. It illustrates the limited nature of what is being requested, the only change to the document is the reference to the site plan, we are going from the plan in 2004 to the current plan in 2007 which is the one that was submitted with the CAMA permit application which is pending. Mr. Johnson commented he wanted to correct one thing the Planner said; there was an attenuator from the beginning and part of this plan it is relative to what it was in the beginning, as proposed now it is longer and is not a new feature to the plan. "We are not requesting any other changes to the conditional use permit; the conditional use permit says there will be no commercial boats allowed, unless additional parking is provided." We are not requesting any change, additional parking, or any changes to the architectural historic preservation conditions in the conditional use permit or anything else. Mr. Johnson wants to remind the Board the original standard that applies to a conditional use permit applies to a change and the two key parts of that standard are: is the site plan in general conformity with your land use plan and is it compatible with the area in which it is going to be developed subject to the conditions in the plan. There is a concern on the part of the developer that there is a lot of misinformation about this marina and the potential commercial aspects of a marina and hopefully this public hearing will be the opportunity to deal with some of that misinformation about what the operation will be like. We have some folks here that will be a part of the operation who can answer any questions that may come up. Mr. Johnson also commented it is time to move on, and he understands the need for a Public Hearing and people here to answer the questions, lets move on to the formal review of this application to the Board of Commissioners.

Mickey Hayes-developer handed out some exhibits and asked the Board review the 5 points; it is a simple chart with 5 categories and that is the marina structure and these are the things that have changed since the start , the middle of the page is conditional use permit marina configuration this was what was approved in 2004 and we had 188

slips; the new marina design we asked for a CAMA permit has reduced the number of slips to 173; the public trust water impact allowed in the original use permit was 1.83 acres, the current configuration reduces that to 1.71 acres. Linear feet of docks in the original conditional use permit 1153, in our CAMA application plan we now have 969 linear feet of docks. The area of secondary nursery necessary to be dredged in the original conditional use permit allows for 3.42 acres, the current configuration requires zero area of secondary nursery dredging. In our original conditional use permit we had a wave attenuator of 267 feet and it has increased to 425.

Warren Eadus-environmentalist scientist and licensed geologist with Quibble explained the evolution of the marina expansion. There were environmental issues from the beginning and they had to go through the State Environmental Protection Act which is 14 State and Federal agencies to review what is proposed and make their comments and help you shape the project to have less impact on the environment. What is not shown are the several layouts that were administratively approved by the Town that included much greater impacts than the one proposed tonight. The marina was not just a whim of the developer, under the direction of the wildlife Resource Commission and Division of Marine Fisheries is where we are now. He will be here to answer any technical questions tonight.

Luther Daniels-lives on Shallowbag Bay in Manteo and attended a meeting about clean water on the bay several days ago at the Town Hall. People who were surveyed want cleaner water; he lives on the water and sees what is being dumped. He understands from one of the local fisherman the practice is when boats come in through Oregon Inlet they start pumping their holding tank. The more boats you have the worse it is; he can understand having some marina facilities but if it keeps going on "where are the kids going to play."

Bill Godley-lives on Uppowoc and Fernando-he agrees with the concept of Marshes Light and thinks it is beautiful and be in our best interest; wants to challenge this Board to challenge the Commissioners to monitor very closely the parking issues that we are dealing with at Marshes Light. He knows for a fact that friends of his who have property at Shallowbag Bay the parking is an atrocity; with the restaurant, commercial boat slips and with visitors and everything else. Someone needs to monitor the parking issue and keep in mind that there is a skateboard park and on a good day there are 25 cars there that were not considered initially, because this project predates that. If parking isn't addressed then parking will end up in downtown Manteo and he has a personal interest in that and if the parking is monitored appropriately he is in support of what is being done.

Mark Johnson-Marine consultant with Sound Marina and specializes in wave attenuators and is here to answer any questions they might have about wave attenuators. There are several ways to do this by width, depth and mass and usually a combination of all three that works; they are not large structures or obtrusive structures and with the exposure that you do have especially from the northeast it is a very critical part to this development. As you can see all protection from the northeast will be from the attenuator. He also commented that with just a moderate 30 mile hour a wind for 45 minutes can produce up to a two foot wave, so we are talking about public safety, safe dockage and the difference between a good project versus one that does not work as well. The attenuator is extremely important and critical part of the project. He also supports the project and thinks it will work well with the community.

Joe Chambliss-wanted to say looking forward to operating the marina; he operated Pirates Cove marina for 7 years, Shallowbag Bay for 5 years and Manteo is his favorite spot and we will operate the marina with care and respect and in a safe manner.

Sybil Ross-102 Grenville Street and a neighbor to the project and has been following it along with the public involvement and has no problem with the project. Does not have too much of a problem with the docks except for what happened at Shallowbag wherein the docks were sold and a lot of party boats and things in there now, they come in folks are three sheets to the wind, jump in there cars and zoom out of here, as long as it is going to be neighborhood docks for the neighborhood people thinks it is a wonderful thing. She would be very upset to find out that these things were being done and to later become a commercial enterprise. For the record "I am totally against anything going in that marsh, especially fuel tanks and the marine store." Mrs. Ross also had a question on the proposed major CAMA expansion layout they have listed a proposed relocation of the ship store and fuel tanks.

Michael Steiner-313 Fernando and has been happy with the project and if this is the only 5 things they considering he has no problem with them. He does want the parking to be monitored and against the marina being commercial.

John Wilson-lives on Fernando-how did a project that once so excited our townspeople go so wrong and how may we make it right. He came tonight because he worked on the project on behalf of the townspeople since 2002; it appears to him that the developers are trying to amend the conditional use permit do to the very thing they told us they had no intention of doing; developing a commercial marina further out in the public trust waters of Shallowbag Bay. Lets not be fooled by the slight reduction in number of docks 173 docks is more than Pirates Cove commercial docks and all of Shallowbag Bay docks added together. He thinks they are proposing to take a lot more of our publicly

owned bay for private profit. He believes expanding the area of these docks further out in the bay is wrong; the permitted docks were required to be deeded with the residential units. To approve a change that facilitates a commercial marina is wrong; permitting fuel docks over Shallowbag Bay is wrong; storing fuel in above ground tanks is what burned our town 3 times in its 109 year history and that is why fuel tanks are prohibited along our waterfront in the adjoining historic district. Last years clear cutting of the last forest in an upland wetland in the entire town of Manteo was wrong; cutting required natural buffers between commercial buildings and residential streets was wrong. Destroying Fernando Street with heavy dump trucks was wrong. There is nothing wrong with a wave attenuator but there is a lot wrong at Marshes Light. He hopes they recommend to the Mayor and Board of Commissioners that the developers be denied the requested reconfiguration of these docks. There is nothing wrong with their permit it is a very generous permit worked on for a number of years and like everyone else they should be required to comply with the intent and the conditions of their permit. The permit they accepted in 2004 and the one that is registered in the Dare County registry and we should continue to show our long tradition of preserving and protecting our community for future generations, let us never be intimidated by developers or big city lawyers after all it is our town, our bay and it is our civic responsibility to protect it.

Lawrence Belli-Sir Walter Raleigh and was a commissioner when this was approved; one of the most important thing is the parking and wants to make sure there is adequate parking for a marina that is not tied to housing and if it is approved it will the Town accepting the problem, the developers will sell the facility and be gone and thinks parking really needs to be addressed. On the wave attenuator he has a concern about water quality, he thinks a wave attenuator is needed and needs to be designed in a way where water can flow in and out of the marina. You have a dead end and with his experience with marinas in Florida you had some real water quality problems by the water not flowing in and out properly. With the fuel, while fuel was there with the other marina this was basically supposed to be a docking facility and not a full service marina and would like that looked at closely.

All the members had a question about the impact that the wave attenuator would have on the environment, and how the flow of the water would be and asked what negative impacts making the wave attenuator longer would be. Mr. Eadus commented because of necessary changes we were unable to dredge and informed the Board what the wave attenuator does to protect the marina and the bay and how a wave attenuator works. He worked with the Wildlife Resources and Marine Fisheries in the designed and developing the wave attenuator and the only concern they had was about the exchange of ? fishes and felt the new layout reduced that impact and that is why you also have

proposed gaps. (Unable to understand what Mr. Eadus is saying) The impact was deemed acceptable by the agencies that approved it and it was found to not have a significant impact.

Member Storie wants to know the true thinking of the fuel docks and does not see them in the approved CUP. Mr. Hayes commented for the convenience of the slip owners and users, it helps make the marina viable. Our slips are definitely described not only in the conditional use permit but in our dockuminium document. The uses are very specific for the two classes of slips, and the dockuminium document which controls the condominium zing of boat slips so that they can be sold and owned by individuals in a common scheme. All those documents were reviewed by the Town and approved and there can't be any commercial operation in that marina. You can't lease the slip to anybody other than the person leasing your condominium, villa or residential unit. There is no intent to make it a commercial marina; what we want is a viable marina, there has to be fuel, conveniences, pump outs and fish cleaning stations and the marina needs to be protected. One thing we have not done a good job at is explaining the one piece of wetland is eroding and whatever protection the attenuator would give the slips will protect the shoreline too. We never dreamed that the request for fuel for a 188 slip marina would be anything other than normal. When we started this plan and working with the Town it was our understanding that the configuration here could be anything so long as it did not go over 188 slips. Chairman Parker asked why wouldn't the plan that the town signed off on be the one that is being built and Mr. Hayes commented that the approved configuration would not work and it is an evolutionary thing. Along the way we had a much bigger attenuator that the Town administratively approved. We made application for a fueling station and it is a necessary part of the marina and that was a logic thing to do. Chairman Parker asked how the shifts from the docks being assigned to condominiums to now being sold individually as dockuminium happen. Mr. Hayes commented he does not have the actual plan but the conditions on that plan required parking for 100 slips to be sold to non property owners. Mr. Hayes commented this was brought up to you that there were going to be people who buy property that don't want a dock or later they decide they don't need a boat and they can't sell their slip without selling the condominium. Chairman Parker asked then why would you build a slip and Mr. Hayes responded because we had ample parking and because we are building a marina and you could tie those things together by deed. Mr. Hayes thought they understood that this would be a real ownership problem. Mr. Hayes commented that we have the parking issue taken care of it is in the conditional use permit and the dockuminium document that was approved. Member Scarborough commented that he realizes it would be a hazard to have a fuel dock but it sure would be convenient for the people in Manteo. The re-location of the ship store was discussed; Chairman Parker commented that all that they have submitted in the past

couple of months were the marina configuration and in the past couple of weeks we have also gotten in these other things and does not know how they tie in either. Mr. Eadus commented a portion of the previous store had been moved and the idea of moving the store is to lessen the impacts on the coastland wetlands. Mrs. Ross asked why we needed a ship store if this was a residential marina and not a commercial marina. Mr. Wilson commented from 2002 to last December he missed very few meetings with the previous owners and the current owners; we were asked to approve a dock for every condominium; every residential lot and every hotel suite that was to be sold and thought it appropriate to have a dock deeded with each lot like Pirates Cove; after few more docks were proposed than there were dwelling units and the reason given to us was that Harry Schiffman was going to be taking down the Salty Dawg Marina and there would be people here on the island who did not have docks and they would like to be able to rent a few or sell a few so that people on the island could have a place to put their boats. We were told that Kitty Hawk Land Company had no experience in running a marina, no interest in running a marina that the old gas pumps at the Marina were going to be removed, the tanks were going to be removed and they had no interest in any other thing than selling a dock with a unit as an amenity. They even compared it to a swimming pool; their words were "we are selling a dock as an amenity to the condo just like a swimming pool. Mr. Wilson thinks what is worrying some of us and why we need to take our time and think about this is expanding further out in the bay and having a marina that is so big, bigger than all the other ones we have put together is going to have a very different impact on our Town. Mr. Wilson stated he was not going to say what was right or wrong or how it should be handled, but it is a completely different intent. It was never going to be a commercial marina. The ships store was a building that was partially over marsh and was grand fathered, it existed and they did not know whether they were going to tear it down or keep it and that is why it is on the master plan as building #18 and we didn't seem to care because it never occurred to us, they told us there would be no fuel, there would be no commercial activity, there would be no commercial marina and no wish to run one. The dash line on the plan indicating the subdivision of the marina from the rest of the development was discussed and Mr. Hayes commented the docks in the dockuminium need to be tied to upland so there is a very narrow strip of land around the marina that ties itself to the slips so they can be described as a piece of real estate tied to the land and in our discussions with the Town the idea to replace and redo this parking lot we decided that we would dedicate these 46 parking spaces to slips and they actually became the dotted line that Mrs. Trebisacci remarked to you about some new subdivision. Mr. Hayes stated that is because we created a dockuminium that not only included the slip but a little narrow piece of land around it and it was deeded into the dockuminium and they will be owned by the dockuminium and not for the general owners in Marshes Light and that is what that dash line is; we decided to take the parking area into the

dockuminium. We had an obligation in the conditional use permit to provide 50 spaces for the sale to non real estate owners for 100 boat slips because the ratio in the Town is ½ parking space for a slip, so if you have 50 dedicated parking spaces you could technically sell 100 slips to the public. We have 370 parking places and even with the sell of the slips we would still have parking for restaurants; parking for restaurants is higher and we don't know how many restaurants we will have so we don't want to shoot off our foot by selling a lot of slips and sacrifice the ability to have restaurants in the downstairs of our buildings. The sale of a slip and parking is highly controlled, there is language in the dockuminium document that controls the marina and is very specific about parking. Chairman Parker asked who is going to be responsible for the parking when the spaces are full. Mr. Hayes replied the dockuminium association. Mrs. Ross asked if they have actually sold units without slips and Mr. Hayes responded yes, there was no requirement to sell a slip with a unit. Member Storie asked why build the slip if you have to provide parking and Mr. Hayes commented that a high percentage of the sales will have a slip to it and we were not required to sell a dedicated slip with residential property. Mr. Hayes commented what they need is the wave attenuator, we have 188 slips approved; if you watch the wave action in the marina I wouldn't want my boat is one of these slips. Chairman Parker asked wasn't that because we anticipated the usage of this facility for small boats with people using them on weekends and hope they had enough sense to pull them out of the water when there is high winds. Mr. Hayes commented he doesn't think we talked about that. Chairman Parker asked if there isn't the demand why would you build it and Mr. Hayes responded there will be a demand and this is a business. Larry Belli commented about the ships store; one of the most important things with the development was the mixed use with stores and restaurants and adequate parking and basically the marina store fit into that. Mr. Belli would be very concerned about parking spaces for the marina as a commercial use; you would be cutting out parking for the mixed use. Bill Godley would want to continue them to compare this project with Shallowbag and learn from our mistakes. Mr. Godley asked what assurance we have if the project is sold will your comments about it not being a commercial marina still be pertinent and will there be adequate parking under Mr. Hayes plan; Mr. Hayes commented that it is a recorded declaration and can be enforced by the Town. Chairman Parker asked why that should be the responsibility of the Town. Mr. Hayes commented that the Town would like this to be a viable community and if they don't want that then they wouldn't. Mr. Johnson noted the conditional use permit says no commercial boats shall be allowed unless additional parking is provided and permitted according to the zoning ordinance; we are not seeking that at this point. There is a provision in the conditional use permit about transferring, the conditional use permit runs with the land and that provision requires the Town approve a transfer of the conditions, not only does it run with it as for transfer we would have to come back to the town for approval before we can do that. Member

Storie commented that she wants a promise that there are no plans for commercial. Mr. Hayes commented that is our intent and that is why we submitted our property, these slips and our land to the restrictions that we drafted that were approved by the Town and it is very specific we cannot use for commercial and the dockuminium document also states the same thing. The homeowners association will make sure that there are no commercial slips. Mrs. Ross that something needs to be noted: there is a big difference from someone who lives here by the water and having their dock than them taking public trust waters and selling it to anybody else, it is a completely different use of the land. Susan Godley wanted to know why they need fuel tanks and she wanted to know the composition of the wave attenuator. Mr. Hayes commented our conditional use permit did not forbid fuel tanks and it is logical that fueling is part of a large marina and maybe something we should have covered in the conditional use permit; we assumed all along we could have a fueling station. Mr. Eadus gave a description of the wave attenuator as less than 6 feet in height; will be visible and be required to be marked by the Coast Guard; an inch gap every six inches and there are different designs. There will be a series light on it and it would not be higher than the docks. The fueling and the underground storage tanks were discussed and Mr. Eadus gave an explanation of them and that this plan will need to be permitted by CAMA.

MOTION: by Member Walker seconded by Member Woody, to adjourn the meeting at 8:05 p.m. Approved by the following vote: Ayes: Members Parker, Woody, Storie, Scarborough, and Walker. Noes: None. Absent:

This the 5th day of May 2008

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Bill Parker, Chairman

ATTEST:

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Becky Breiholz, Town Clerk