

**TOWN OF NAPLES
BOARD OF APPEALS
MINUTES
Wednesday, October 30th, 2013 – 7:00 pm
Municipal Offices Building**

John Flaherty called the meeting to order at 7 pm. Barry Freedman, Skip Meeker, Marcia Stewart, Russell Lashua, Code Enforcement Officer Renee' Carter, and Recording Secretary Kate Matthews were also present.

The meeting did not involve any reviewing of minutes.

On the agenda was a remand from Superior Court in the matter of Cynthia White versus the Town of Naples and Peter and Kathleen Serunian.

Mary Costigan, the town attorney and David Silk, Mrs. White's attorney were both present. Ms. Costigan explained that on October 30th, 2012 the Board held a hearing and denied the appeal of the Serunians' mooring by Cynthia White. Mrs. White then appealed the Board's decision to Superior Court and on August 30, 2013 the court issued a decision. The court found that the mooring permit was not issued pursuant to an allocation system as contemplated by state law, and because of that the approval appears to conflict with the state law limit of one mooring per parcel. The court also found that the record does not show that the Board considered the propriety of issuing a second mooring to a single property owner, and therefore they remanded the matter back to the Board to consider whether the town was even authorized to issue a second mooring in the first place, regardless of the location.

Ms. Costigan explained that state law also limits the mooring privilege to one mooring per parcel, but it does not prevent the owner of a shorefront parcel from receiving additional mooring assignments under an allocation system for all other residents.

Skip Meeker stated that the ordinance Naples has in place is specific to the circumstances of the town, which is the reason why all residents are not offered the placement of a mooring.

Ms. Costigan explained that under the Naples Shoreland Zoning Ordinance, a shorefront property owner is allowed one mooring per 50' of shore frontage, thus allowing more than one mooring per parcel. In order to allocate more than one mooring per parcel under state law, such mooring would have to be issued pursuant to an allocation system for all other residents. Flaherty stated he believed it should be up to the Board of Selectpersons if the Town's ordinances were to be changed. However, the court left it up to the Board of Appeals for this particular case.

David Silk stated that state law controls over local law because technically the state of Maine owns the water in the bed of the lake. He said that the state law shows that if waterfront land owners do not have 100' of shore frontage, then technically they do not

have the privilege of owning a mooring, unless it was permitted prior to 1987. Because this issue was not taken into account a year ago at the previous Board meeting, the judge wanted this information to be taken into account so that the Board could realize that the placement was not the only issue at hand. Mr. Silk explained that the Board should act in an appellate capacity only with regard to appeals from a decision by the Harbor Master, and therefore they should not hear any factual evidence, only legal evidence. Silk then stated that a motion would have to be made to reconsider the decision to deny the appeal at the end of the meeting. He stated that state law clearly states a shorefront property owner needs at least 200' of water frontage to own two moorings, and Peter Serunian only own 182' so he should not have a second as he already owned one.

Mary Costigan clarified that the issue is whether a second mooring was issued pursuant to an allocation system open to all residents.

The Harbor Master, Bill Callahan, stated that he is concerned because he knows that this new information will affect dozens of people owning more than one mooring.

Silk stated that if between the time that the Board makes a decision and the time the court makes a final decision, the two parties find a resolution, there will be no presidential effect, because the case would dismissed before there was a final decision by the court.

There was heated discussion between the two parties, and John Flaherty had to close the discussion.

Skip Meeker made a motion that the second mooring was not issued to Mr. and Mrs. Serunian pursuant to an allocation system that is open to all residents in accordance with state law. Barry Freedman seconded the motion, and all were in favor.

Mr. Meeker then made a motion that the second mooring permit issued to Mr. and Mrs. Serunian is invalid. Freedman seconded and the board was unanimously in favor.

Mr. Meeker motioned to adjourn at 7:56 pm. All were in favor.

Respectfully submitted,

Kate Matthews
Recording Secretary