



**Upton
& Hatfield** ^{LLP}
ATTORNEYS AT LAW

Concord Office

10 Centre Street
PO Box 1090
Concord, NH
03302-1090
603-224-7791
1-800-640-7790
Fax 603-224-0320

Attorneys At Law

Robert Upton, II
Gary B. Richardson
John F. Teague
Russell F. Hilliard
James F. Raymond
Barton L. Mayer
Charles W. Grau
Margaret-Ann Moran
Thomas T. Barry*
Bridget C. Ferns
David P. Slawsky
Heather M. Burns
Matthew H. Upton
Lauren Simon Irwin
Kenneth J. Barnes
Matthew R. Serge
Justin C. Richardson
Amanda B. MacKinnon
Beth A. Deragon
*Also Admitted In Virginia

Of Counsel

Frederic K. Upton

Hillsborough Office

8 School Street
PO Box 13
Hillsborough, NH
03244-0013
603-464-5578
1-800-672-1326
Fax 603-464-3269

Attorneys At Law

Douglas S. Hatfield
Margaret-Ann Moran
Paul L. Apple

North Conway Office

23 Seavey Street
PO Box 2242
North Conway, NH
03860-2242
603-356-3332
Fax 603-356-3932

Attorney At Law

Robert Upton, II

Portsmouth Office

159 Middle Street
Portsmouth, NH
03801
603-436-7046
1-877-436-6206
Fax 603-431-7304

Attorneys At Law

Russell F. Hilliard
Justin C. Richardson

Please respond to the Concord office

February 13, 2008

Zoning Board of Adjustment
Town of New London
Post Office Box 240
New London, NH 03257-0240

RE: Lakeside Lodge, Inc. v. Town of New London
Docket No. 07-E-0222

Dear Board Members:

Enclosed please find a decision of the court upholding the Board's decision with regard to the above-referenced matter. As you can see, the court was very detailed in its review, and upheld the Board's decision on all points. Because the court upheld the Board's decision, which limited the scope of the non-conforming use, the court concluded it was unnecessary to address the constitutional claims raised by the Plaintiff with regard to the Town's ordinance.

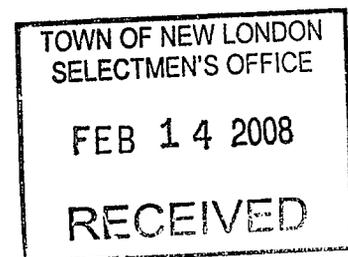
I have every expectation that the Plaintiff will appeal this decision to the Supreme Court. I shall keep you advised as developments warrant. I trust that you are satisfied with the results.

Sincerely,

Barton L. Mayer
bmayer@upton-hatfield.com

BLM/lm
Enclosure

cc: Board of Selectmen



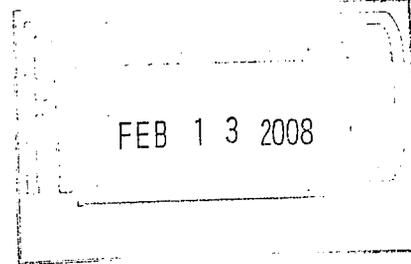
THE STATE OF NEW HAMPSHIRE

Merrimack County Superior Court

163 N. Main Street
P. O. Box 2880
Concord, NH 03301 2880
603 225-5501

NOTICE OF DECISION

BARTON L MAYER ESQ
UPTON & HATFIELD
P O BOX 1090
CONCORD NH 03302-1090



07-E-0222 Lakeside Lodge, Inc. v. Town of New London et al

Enclosed please find a copy of the Court's Order dated 2/06/2008
relative to:

Court Order

02/11/2008

William McGraw
Clerk of Court

cc: Jeffrey C. Spear, Esq.

The State of New Hampshire

Superior Court

Merrimack County Courthouse
163 North Main Street, P.O. Box 2880
Concord, NH 03302-2880
(603) 225-5501

2008 FEB -8 A 8: 39

NH SUPERIOR COURT
MERRIMACK COUNTY
CONCORD, NH

No. 07-E-222

Lakeside Lodge, Inc.

v.

Town of New London &
Town of New London Zoning Board of Adjustment

ORDER

The petitioner, Lakeside Lodge, Inc. ("Lakeside"), appeals a decision by the Town of New London ("the Town") Zoning Board of Adjustment ("ZBA") limiting the number of users of its property and its dock located in New London, New Hampshire. Upon review of the parties' submissions, the certified record, and the applicable law, the Court finds and rules as follows.

Facts

Lakeside is an S-corporation currently owned by three shareholders - Barbara Herbert, Perry Wheaton, and Vahan Sarkisian. Lakeside owns a .06 acres parcel of land ("the property"), identified on Map 80 as Lot 5, located between Route 103-A and Herrick Cove on Lake Sunapee in New London, New Hampshire. The property was formerly part of a larger parcel of land purchased by Lakeside in 1984. In 1990, Lakeside applied for approval of a cluster subdivision. As part of the subdivision plan, Lakeside's owners divided the large parcel into two lots - one large lot where the cluster subdivision would be developed and one small waterfront lot with a

dock. The record reflects that the Planning Board inquired into the future use of the property after the lots were separated. C.R., App. B, p. 21. In response, Lakeside stated that it would provide a letter from the owners detailing the property's proposed use. Id. The Planning Board minutes indicate that Perry Wheaton ("Wheaton") submitted a letter dated April 6, 1990, that stated that the property would "remain in the ownership of the 3 men who are Lakeside Lodge, Inc., for their personal use."¹ Id. Subsequently, the subdivision plan was approved and the lots were separated.

In 1991, the Town's voters adopted an amendment to the zoning ordinances that created a Shoreland Overlay District. The amendment provides, in relevant part, as follows:

Lots within the Shore Land Overlay District shall not be used as common areas for Waterfront Access or for the purpose of granting deeded rights or access to residents of multiple units and/or non-waterfront properties, regardless of the location of such properties, except as provided herein and subject to Planning Board approval. For the purpose of this section, the term "common area" shall mean an area used by a group of 3 or more unrelated persons or by an association, club or organization consisting of three or more members.

C.R., App. C, New London Zoning Ordinance, Article XVI (D)(3).

In 1993, Lakeside applied for permission from the New Hampshire Department of Environmental Services to repair the dock. C.R., App. B, p. 24-28. The repairs were completed in 1995. In September 1995, the Town wrote to Lakeside stating that it had been brought to the Town's attention that boats were parked at the finger piers of the dock and that the Town's ordinances do not permit commercial use of a dock located in a residential district. Id. at 29. In January 1999, the Town sent Lakeside another letter stating that acceptance of money in exchange for a dock space was impermissible commercial activity in a residential district. Id. at 30.

In February 1999, Wheaton replied to the Town on Lakeside's behalf. Wheaton stated

¹ The original letter was not available for the Court's review and appears to have been lost.

his belief that Lakeside's use of the dock was grandfathered and that Lakeside had not engaged in any commercial activity. C.R., App. B., p. 31. In August 1999, Lakeside, through counsel, replied to an inquiry from the Town as to the nature of the activity related to the dock. Id. at 32. Lakeside's counsel reiterated that Lakeside had not rented any dock space on a commercial basis and that certain dock space was controlled by specific shareholders or was being used on a "friendly basis." Id.

In May 2001, Detective Chris Currier of the New London Police Department filed a report concerning his investigation of reports that Lakeside had been renting dock space in violation of the Town's zoning ordinances. C.R., App. B., p. 34. Detective Currier provided details of a meeting with Fred Ray, an individual who had docked his boat at Lakeside for the preceding 8-9 years. Id. Ray stated that he had paid the Heberts (shareholders in Lakeside) various amounts between \$1,200 and \$2,000 to dock his boat at Lakeside over the summer. Id.

In August 2002, the Town sent Lakeside another letter concerning the use of the dock. C.R., App. B, p. 36. The Town advised Lakeside that a non-conforming use could be lawful provided that the use had been in existence prior to December 1991 when Article XVI (D)(3) was adopted and provided the use had not diminished over time. Id.

In October 2002, Wheaton appeared before the Town's board of selectmen. C.R., App. B, p. 37. Wheaton did not make any representations concerning the number of users of the dock, however, he represented that there had been twelve boats docked over the summer of 1991 prior to the adoption of Article XVI (D)(3). Id. Wheaton also stated that while Lakeside, as an entity, does not rent dock space, the individual owners of Lakeside may do so. Id. The board of selectmen concluded that Lakeside had not met its burden to prove a lawful, nonconforming use existed prior to the adoption of Article XVI (D)(3). Id. at 48. Accordingly, in November 2002,

the selectmen ordered Lakeside to comply with Article XVI (D)(3). Id.

Lakeside appealed the selectmen's decision to the ZBA. C.R., App. B, p. 54. In December 2002, the ZBA voted to overturn the selectmen's decision. Id. at 56. The ZBA concluded that Lakeside had a lawful, nonconforming use prior to the adoption of Article XVI (D)(3) because the evidence proved that there were at least four users of the dock in 1991. Id. The abutters of the property appealed the ZBA's decision to the superior court. Id. at 58. The court (Fitzgerald, J.) concluded that the ZBA erred by failing to indicate what evidence it relied on in rendering its decision and remanded the case. See id., Merrimack Co. Super. Ct., Docket No. 03-E-114, Order (Jul. 14, 2003) (Fitzgerald, J.).

In October 2003, the ZBA reconsidered its decision and maintained its conclusion that Lakeside had established a lawful nonconforming use prior to the adoption of Article XVI (D)(3). C.R. at 9. In December 2003, the board of selectmen issued its own ruling, stating that it would enforce the ZBA's conclusion that there were four users of the dock. Id.

In June 2004, the abutters sought enforcement of the board of selectmen's decision. C.R. at 9. The board of selectmen however, declined to do so asserting that it was unclear how to proceed based on the ZBA's decision. Id. The selectmen referred the abutters back to the ZBA for further clarification. The ZBA subsequently discussed the number of users of the property. C.R. , App. B, p. 69-72. The ZBA concluded that Lakeside had adequately demonstrated that there were up to 11 users of the property in 1991. Id. at 72. Thus, the ZBA established a ceiling of 11 users. Id. The abutters appealed to the superior court. Id. at 73.

The abutters argued that the ZBA acted unlawfully because they did not receive sufficient notice that the number of users of the property would be re-opened and they were not provided an opportunity to present their own evidence. C.R, App. B, p. 77. The court (Smuckler, J.)

agreed, opining that the ZBA erred in setting the ceiling based solely on representations from Lakeside. See id.; Merrimack Co. Super. Ct., Docket No. 04-E-359, Order (Aug. 2, 2005) (Smuckler, J.). The court noted that in prior hearings, the ZBA had questioned whether there were 11 users because the ZBA had previously found only four users of the property. Id. The court vacated the ZBA's decision and remanded the matter. Id.

After the court issued its order, the ZBA requested that all parties submit memoranda and supporting documentation as to the appropriate number of users of the property. C.R., App. A, p. 143. On January 4, 2007, the ZBA held a public hearing to reconsider the matter. C.R. at 65. Lakeside argued that the only issue before the ZBA was the extent of the property's non-conforming use in 1991. Id. Lakeside offered affidavits stating that there were 11 users of the property at that time. C.R. at 65-66; C.R., App. A at 83-100, 104-110.

The abutters, through counsel, argued that Article XVI(D)(3) was clear that property in the Shore Land Overlay District may not be used as a common area to provide waterfront access. C.R. at 67. Abutters' counsel asserted that a "common area" was defined as an area used by three or more unrelated persons or by an organization consisting of more than 3 members. Id. Thus, abutters' counsel maintained that consistent with Wheaton's 1990 representation to the Planning Board, the property's use should be limited to the personal use of the three owners. Id. at 68. Several individual abutters also voiced their concerns about safety and increases in boat traffic, noise, trash, and debris in Herrick Cove. Id. at 69-70.

On March 1, 2007, the ZBA issued a lengthy notice of decision wherein it concluded that there may be no more than 6 users of the property and no more than 6 boats at the dock at any one time. C.R. at 15-19. In its decision, the ZBA reviewed the history of the property, specifically the creation of the property and Wheaton's representation before the Planning Board

in 1990 that the three owners would use the property for their personal use. Id. at 16. The ZBA also discussed that although Lakeside presented affidavits demonstrating 11 users of the property in 1991, these affidavits did not specify whether these individuals used the property for a day, a week or a season. Id. at 16-17.

The ZBA concluded that all past formulations for the use of the property proposed by the selectmen, the abutters, and the ZBA itself, failed to fully consider all of the facts and circumstances of this case. C.R. at 17. The ZBA acknowledged that docks can accommodate many more boats than a waterfront property owner actually owns. Id. The ZBA also recognized that property owners invite guests who make use of their docks. Id. The ZBA concluded that in these cases, the property owner exerted a “moderating force” on the dock’s use which resulted in a natural limit on the number of boats and guests using the dock at any one time. Id. at 17-18. The ZBA also reviewed the concerns raised by the abutters that there had been increases in traffic congestion (both on shore and in Herrick Cove), noise, and garbage. Id. at 18. The ZBA further noted there were no restrooms to accommodate the dock’s users. Id.

In support of its limitation on the number of users and the number of boats, the ZBA acknowledged that there are three owners of Lakeside who have the right to use the dock for their personal use, including inviting guests to use their dock. C.R. at 19. Thus, the ZBA concluded each owner and one invited guest constituted a total of six users and six boats. Id. The ZBA stated that “personal use is the touchstone, and if an owner chooses to have two (2) boats, he has used up his ‘capacity’ to invite a guest.” Id. The ZBA further stated that :

[t]he Board will not examine who occupies these six (6) “slots,” how long they are occupied by a given individual, or whether rent is paid. It is not uncommon for lakefront owners to rent out their property in the summer, or to have several guests over the season. The limits established in this decision are based on the evidence and familiarity of the Board with uses on the lake. It precludes turning the dock into what is now for all intents and purposes a marina, and will facilitate

enforcement. The Board does not wish to interfere with the rights of the owners of Lakeside, but holds those individuals to the terms of their commitment to the Planning Board in 1990.

Id. Lakeside timely filed for rehearing which was denied. C.R. at 22-64. The within appeal followed.

Standard of Review

The Court's review of ZBA decisions is limited. Harrington v. Town of Warner, 152 N.H. 74, 77 (2005) (citation omitted). "The factual findings of the ZBA are deemed prima facie lawful and reasonable, and will not be set aside by the trial court absent errors of law, unless the [C]ourt is persuaded, based on the balance of probabilities, on the evidence before it, that the ZBA's decision [was] unreasonable." Id. "The party seeking to set aside the ZBA's decision bears the burden of proof on appeal." Id. The standard of review is not whether the Court would find as the ZBA did, but whether the evidence reasonably supports the ZBA's finding. See Hussey v. Town of Barrington, 135 N.H. 227, 231 (1992).

Analysis

On appeal, Lakeside argues that the ZBA made a myriad of errors. First, Lakeside asserts several alternative arguments to support its contention that the ZBA impermissibly limited the number of boats that can use the dock. Second, Lakeside asserts that the ZBA lacked a legal and/or factual basis to find its use of the dock was "excessive." Third, Lakeside asserts that the ZBA lacked a legal or factual basis to determine that only six users may use the property. Fourth, Lakeside contends that the ZBA erred in a number of its other findings including: 1) its reliance on Wheaton's representation to the Planning Board in 1990; 2) its characterization of the use of the dock as commercial; 3) its conclusion that an owner presents a "moderating" influence on the use of a dock; and 4) its characterization of Lakeside's evidence. Finally, Lakeside

argues that both the ZBA's decision and the underlying ordinance are unconstitutional. The Town objects.

The ZBA's jurisdiction in this matter arises from its authority to hear administrative appeals from zoning enforcement actions. RSA 674:33, I (a) (Supp. 2007). In its exercise of this authority, the ZBA may "reverse or affirm, wholly or in part, or may modify the order ... appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken." RSA 674:33, II (Supp. 2007). Because expansions of nonconforming uses may be detrimental to the community, the ZBA has the authority to attach conditions to decisions of administrative officers with respect to nonconforming uses, "provided the conditions are reasonable and lawful." Peabody v. Town of Windham, 142 N.H. 488, 492 (1997) (citing RSA 674:33, I-II).

To the extent that the ZBA found that the legal nonconforming use of the property prior to enactment of Article XVI(D)(3) was limited to the personal use of Lakeside's three owners, the Court finds this conclusion reasonable and lawful. The record reflects that in 1990, Wheaton appeared before the Planning Board and agreed that the property would be used for the three owners' personal use. Thus, the Court finds that it was reasonable for the ZBA to rely on this representation to establish the extent of the prior nonconforming use.

The Court also finds that the ZBA's limitation on the number of users and boats was reasonable and lawful. Zoning boards have "broad authority on subjects within [their] jurisdiction" and "may impose reasonable conditions to prevent improper expansion of a nonconforming use." Peabody, 142 N.H. at 492-93. In Peabody, the petitioners appealed certain ZBA-imposed conditions placed on the legal nonconforming use of their property including the type of business which may be operated on the petitioners' property, the number of vehicles that

may be stored on the property and the size of the vehicles which could access the property. 142 N.H. at 491. The trial court agreed with the petitioners, finding that the conditions were excessive and beyond the ZBA's authority to impose. Id. Both parties appealed the trial court's decision. Id.

The Supreme Court reversed the trial court, holding that it is within a ZBA's jurisdiction to place reasonable conditions on a legal, nonconforming use to control expansion of such a use. Id. at 492. The Supreme Court reasoned that "[a]lthough both the New Hampshire Constitution and State statute protect the existing use of land or structures from becoming unlawful by later zoning enactment, property owners' rights to use their property are not unlimited." Id. at 493 (internal citation omitted). "A controlling policy of zoning law is to carefully limit the extension and enlargement of nonconforming uses." Id. "In this area, the ultimate purpose of zoning regulations is to reduce nonconforming uses to conformity as quickly as possible." Id. The Court further clarified that the party opposing the condition bears the burden to prove that it is unreasonable. Id. The Supreme Court stated unequivocally that "[u]nless the conditions were unreasonable, arbitrary, unduly burdensome, or undercut or unlawfully restricted the scope of the plaintiffs' vested nonconforming use, they should be affirmed." Id.

In this case, the record reflects that the property is primarily used to provide access to the dock. It is well settled that it is within a ZBA's jurisdiction to enforce zoning ordinances and if necessary, regulate the use of land and docks. See RSA 674:16 (Supp. 2007); RSA 47:17, VII (Supp. 2007); see also Grey v. Seidel, 143 N.H. 327, 330 (1999). The record reflects that in 1990, Wheaton agreed that the property would be for the three owners' personal use. The record also reflects that the number of users of the property varied over the years with up to 11 people using the property to access up to 15 boats. The record also indicates that abutters complained

about the use of the property and the Town attempted to enforce Article XVI(D)(3). While the Court acknowledges that the issue of the number of users and the number of boats has been addressed separately in different hearings before the selectmen and the ZBA, this does not divest the ZBA of its authority to examine and, if necessary, curtail a legal nonconforming use.

The record reflects that the ZBA heard extensive testimony from Lakeside and abutters on their respective positions regarding the number of permissible users of the property. Lakeside offered evidence that there were up to 11 users of the property and 15 boats. The record also reflects that the ZBA considered all prior proposed limitations and decided that none of them properly addressed the circumstances with respect to Lakeside's property. The ZBA stated that based on its experience, it would not unduly restrict the rights of Lakeside's owners to limit the use of the property to six users and six boats given the fact that waterfront property owners often invite guests to use their dock and property. The ZBA further reasoned that in so doing, it was seeking to protect Herrick Cove and Lake Sunapee from the threats of damage to its ecosystem due to overcrowding.

~~Based on the foregoing, the Court cannot find that the conditions placed upon the use of the property were arbitrary or unreasonable.~~ The ZBA members are within their authority to rely on their individual experience to inform their decisions. See Vannah v. Town of Bedford, 111 N.H. 105, 108 (1971) ("In arriving at a decision, the members of the board can consider their own knowledge concerning such factors as traffic conditions, surrounding uses, [] resulting from their familiarity with the area involved."). Moreover, based on Peabody, it is within the ZBA's authority to limit the type of activity which takes place on a piece of property and the quantity and size of the boats that access the property. 142 N.H. at 492. Here, the ZBA stated that the members relied on their knowledge of the area and their concerns over safety and the effects on

the environment in determining the extent to which it was reasonable to restrict Lakeside's nonconforming use. The Court does not sit as a "super zoning board" and will not substitute its judgment for that of the board. See Thomas v. Town of Hooksett, 153 N.H. 717, 724 (2006). Thus, the Court affirms the ZBA's decision.

While Lakeside argues that the ZBA exceeded its authority because RSA 482-A preempts local regulation of docks on state owned lakes, ~~the Court does not agree~~. RSA 482-A:3, I (Supp. 2007) provides in relevant part that "[n]o person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department." Thus, RSA 482-A:3 evinces a legislative intent to preempt local regulation of the construction of docks. However, it does address the use of docks. Indeed, RSA 47:17, VII grants city councils the authority to enact ordinances "[t]o regulate all streets and public ways, wharves, docks, and squares, and the use thereof, ..." which evinces a legislative intent to allow local governing bodies to regulate the use of docks. See also Grey v. Seidel, 143 N.H. 327, 330 (1999). Thus, the Court finds that the ZBA's authority to regulate the use of the dock is not preempted by state statute.

Lakeside also asserts that the ZBA exceeded the scope of the issues identified for appeal and it did not properly provide notice that it would address the number of boats at the January 2007 hearing. ~~The Court does not agree.~~ In this case, the ZBA notified all parties that the case had been remanded for the ZBA to address the issues identified in the abutters' June 2004 appeal² of the ZBA's decision to allow 11 users of the property. As Lakeside repeatedly asserted, there were 11 users of the property in 1991. The record reflects that these 11 users accessed the property primarily to access their boats. As discussed above, the permitted number

² On appeal, the abutters argued that the ZBA failed to determine the number of users of the dock and that it improperly raised maximum number of users of the property. See C.R., Ex. 2, p. 10-11.

of boats and the number of users was addressed separately in some of the underlying proceedings. However, the Court is persuaded that all parties were on notice that, on remand, the ZBA would discuss the number of users of the property which would reasonably include a discussion of the number of boats at the dock.

Lakeside also argues that it never agreed that the ZBA had the authority to regulate the number of boats using the dock. The Court finds this argument unavailing as it is within the ZBA's authority to restrict the expansion of a legal, nonconforming use when such expansion is before it as part of an administrative appeal. See Peabody, 142 N.H. at 492. Thus, Lakeside's assent was not a prerequisite to the ZBA exercising its authority in this matter.

Although Lakeside repeatedly asserts that its owners never agreed to a six user or six boat limitation and that there is no support for this limitation in the record, ~~the Court finds that Lakeside misconstrues the ZBA's decision.~~ The ZBA based its decision on Wheaton's representation that the property would be used by Lakeside's three owners for their personal use and evidence that the property's use had expanded. Pursuant to RSA 674:33, the ZBA may restrict expansion of a nonconforming use. Contrary to Lakeside's assertions, the ZBA's limitation was not based on evidence that six users historically use the property. Rather the ZBA set the limitation based on what it considered to be a reasonable number of users in addition to the three primary users.

Lakeside also asserts that the ZBA improperly relied on the minutes of the Planning Board to determine the extent of the nonconforming use. While Lakeside asserts that Wheaton has no recollection of drafting the letter referenced in the minutes, it acknowledges that Wheaton stated before the Planning Board that the property would be used by Lakeside's owners. Thus,

the Court finds that there is no basis upon which to question the more specific recitation of the content of the letter as described in the meeting minutes.

Lakeside argues that the ZBA erred in its characterization of its use of the dock as “commercial” and “excessive.” In ZBA appeals, the Court must accept the ZBA’s findings as prima facie lawful and reasonable unless there is no evidence to support such findings or if there is sufficient evidence to the contrary. See Harrington, 152 N.H. at 77. In this case, the Court finds that there was sufficient evidence in the record to support the ZBA’s finding that the dock had been operated as a commercial enterprise. The record reflects that at different times, the owners of Lakeside accepted rent in exchange for dock space, that the owners offered certain dock space for sale, and that the owners had permitted a commercial barge to use the dock. Moreover, the property’s legal nonconforming use was limited to the three owners for their personal use. As the record reflects use by 11 people and up to 15 boats, ~~the Court cannot find that the ZBA’s characterization of the use of the dock as excessive was either unlawful or unreasonable.~~

Finally, Lakeside asserts that Article XVI (D)(3) is both facially unconstitutional and unconstitutional as applied to its property. The Court need not address these arguments as the ZBA’s actions were not based on enforcing Article XVI. The ZBA only made reference to the year Article XVI was enacted, 1992, as the date from which it must measure the extent of Lakeside’s nonconforming use. The parties agreed that Lakeside’s use of the property was in effect prior to the passage of the ordinance and thus, it did not apply to restrict its use of the property. The ZBA’s decision was based on its statutory authority to limit the expansion of a nonconforming use, not on its authority to enforce Article XVI (D)(3).

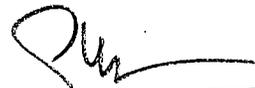
~~In summary, the ZBA’s decision to limit Lakeside’s legal, nonconforming use of its~~

~~property to six users and six boats is hereby AFFIRMED.~~ The Town has submitted a request for findings of fact and rulings of law. However, the Court's findings and rulings are contained in its discussion above. Accordingly, the Town's requests are GRANTED to the extent that they are consistent with this order; otherwise, they are DENIED. See Geiss v. Bourassa, 140 N.H. 629, 632-33 (1996).

So ordered.

Date: _____

2/16/08



Gillian Abramson
Presiding Justice