CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES
Thursday, January 7, 2010 - 6:00 p.m.
210 State Street, City Hall, 2nd Floor Council Chambers, Charlevoix, MI

A) CALL TO ORDER

The meting was called to order by Chairperson Withrow at 6:00 p.m.

B) ROLL CALL

Members Present:	Gary Anderson, Richard Clem, June Cross, Mary Eveleigh, Greg Withrow and Alternate Larry Sullivan
Members Absent:	Alternate Kim VanMeter-Sanderson
Staff Present:	City Planner/Zoning Administrator Mike Spencer
	City Manager Rob Straebel
	Assistant City Attorney Bryan Graham

C) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST

Member Eveleigh advised the Board she lives within 300' of the project and has been recused in the past. She has been asked to recuse herself again.

The Board discussed the request. Mr. Graham suggested that Member Eveleigh be recused as she has not participated in previous discussions.

D) APPROVAL OF AGENDA

Planner Spencer advised that the Board By-laws require that officers be nominated at the first meeting of the new year. Chairman Withrow agreed to add officers to the agenda after the public hearing.

E) APPROVAL OF MINUTES

1. Motion to approve or amend July 29, 2009 meeting minutes

The Board reviewed the July 29, 2009 minutes.

Larry Sullivan asked that the July 29, 2009 minutes be amended to reflect the changes made to the June 24, 2009 minutes.

Member Cross asked to review the June 24, 2009 minutes. The Board reviewed the approved June 24th minutes.

Motion made by Member Clem and seconded by Member Anderson that the sixth paragraph on page 4 be amended to read:

> "Motion made by Member Miller and seconded by Member Anderson to approve the minutes of June 24, 2009 as amended **by changes noted in these minutes**."

The motion was adopted by a unanimous voice vote.

F) CALL FOR PUBLIC COMMENT (Not related to agenda items) None

G) OLD BUSINESS

Member Eveleigh updated the Board on the By-law revisions. The proposed By-laws are being amended and will be given to the Board at their next meeting.

H) NEW BUSINESS

1. Public Hearing for request for interpretation and appeal of permit # 3071 Project 09-04ZBA Applicants: Johnson, Camp, Saenger, and Reis.

Board Member Mary Eveleigh recused herself due to her conflict of interest and left the dias and sat in the audience at 6:18 p.m.
Alternate Board Member Larry Sullivan was designated as a voting Board Member in Ms. Eveleigh's absence.

a. Staff presentation.

Member Sullivan asked that a motion be adopted incorporating the prior proceedings. Assistant City Attorney Graham presented a motion for the Board's consideration.

Motion made by Member Sullivan and seconded by Member Clem that the record before the ZBA in case #09-03-ZBA - Johnson, Camp, Saenger and Reis, which consists of the certified record and transcripts in the Charlevoix County Circuit Court case No. 09-067822-AA is hereby incorporated into the present record by reference and that any party or the public may submit supplemental or additional evidence (but not duplicative or cumulative evidence) on the issues presently before the Board. Motion was adopted by a unanimous voice vote.

Planner Spencer advised the Board that the new member, Richard Clem, has been given recordings of prior meetings, approved minutes and exhibits to prepare for the meeting. Member Clem stated he has reviewed the documents and is familiar with the case.

The Board was given a letter from the Tip of the Mitt Watershed Council made part of the record as Exhibit 10.

Planner Spencer reviewed the new plans, which are part of Zoning Permit #3071, with the Board. The Board found that the previous application violated the definition of a boathouse by having a hot tub within it. The hot tub and the structure around the hot tub has been removed. The boathouse has been reduced so the square footage of the boathouse is less than 3,000 square feet. The rest of the application, the location and height of the buildings appears to be the same.

Planner Spencer has prepared a draft Findings of Fact for the ZBA to consider. There are three new issues to be reviewed by the Board.

Member Anderson asked for clarification on why the Board is being asked to review a second appeal.

Assistant Attorney Graham advised that the ZBA made a ruling in June. The Board's rulings were appealed to Circuit Court. The applicant (Johnson, Camp, Saenger and Reis) asked the Circuit Judge to place a "stay" or postpone the effectiveness of Zoning Permit #2850 from being revoked. The Judge denied the request. The appeal from the applicants was dismissed by Circuit Court. The Andersons filed a new zoning permit application, with modified plans. Mr. Graham asked the Anderson's to consider postponing consideration of the new permit until the Circuit Court made a ruling on the pending appeal. The Anderson's asked that the new application be reviewed. The City applied the ordinance standards to the new plans and Staff, based on its review of the ordinance, issued a new permit. Once the new permit (#3071) was approved, the Applicant - Johnson, Camp, Saenger and Reis, had a right to appeal a new

administrative decision, which is Zoning Permit #3071.

b. Presentation by applicants (if requested).

Nicholas J. White, of N. J. White Associates, Architecture & Planning, was retained by the applicant to review the drawings. His findings were given to the Board and made part of the record - Exhibit 11. Mr. White reviewed his extensive background with the Board. He asked the Board to consider five points:

1. The house is too wide - it encroaches into the east side yard setback by 7' 4".
2. The house is too long - it encroaches into the waterfront setback of 50'.
3. It is too high - the house portion is 44' high - 18' higher than allowed. The boathouse portion is 30'2" high, which is 4'2" higher than allowed.
4. It is too large - the building footprint is 13,090 square feet. It occupies 34.3% of the site.
5. The boathouse is not an authorized accessory building (attached or detached) in the R-1 zone district.

Boathouses are referenced in the Marina Commercial and Scenic Reserve zone districts. He can not find any reference to boathouses in the R-1 zone district. He reviewed Exhibit 11 with the Board. Mr. White also reviewed the Ferguson & Chamberlain Associates, Inc. survey of the property with the Board. The survey shows the 8-10-1992 waters edge. The City Code bases the water mark as the location of the watermark on 3-16-1992. The survey was made a part of the record and is hereby known as Exhibit 12. The side yard setback encroachment is due to the floating dock, built below grade. A 40' basement is being dug for the residence. The front of the building is completely exposed on the south. The grade stops at the deck line and the building height should be measured at the lower level. He used the top of the existing breakwall (elevation 583.3) to measure the boathouse height. Mr. White reviewed excerpts of the Zoning Code with the Board.

Section 5.1 - Structure is out of character for the neighborhood.
Section 5.5 - Accessory use definition. There are boathouses in the R-1 district. Any upland boathouses are pre zoning. A boathouse built over the water is regulated by the Michigan Department of Environmental Quality (DEQ).
Section 5.5 - Boathouse is for the exclusive docking and/or storage of boats and marine equipment.
Section 5.6 - Dwelling, single family - only one family
Section 5.7 - Height of building - measured at the lowest elevation of the finished grade line of the ground and to accommodate the minimum glazing area requirements of the BOCA shall not be considered. The entire front is open, it is not a window well.
Section 5.12 - Watermark shall be at the elevation 581.0 NVGD at the location that existed at the adoption of this amendment, which is 3-16-1992.
Section 5.32 (1) Single Family Residential allows one single family dwelling on each lot.
Section 5.32(8) detached accessory building not more than 16' or one story in height and no closer than 6' to the rear lot line.
Section 5.32 (10) is the only place that the R-1 zoning code mentions anything about the shoreline. It refers to recreational boat docks, launch ramps and piers as permitted accessory structures. There is no mention of a boathouse. Boathouses are mentioned in the scenic reserve and marine-commercial districts. Boathouses are defined in the Code. Boathouses are not allowed in the R-1 zone.
Section 5.33 (1) regulates structures shall not use more than 30% of the lot coverage.
Section 5.176 Accessory buildings, if the boathouse were deemed as an accessory building, it would be allowed. It is not permitted in R-1, it would not be authorized. If the boat house were considered an accessory building, it would have to be only 16' high and 6' from the rear watermark.
Setback from waterbodies - all principal uses shall be setback 50'. It is not an authorized accessory building as it is not mentioned anywhere in the R-1 zoning. So it must be considered as part of the principal use and if it is a principal use, it must be 50' from the waterbody.
Section 5.272 - states that a zoning permit shall not be issued if it does not meet the zoning code.

Mr. White stated planning protects the status quo and preserves the existing character of the district. The structure is too high, too big, too long, is not authorized and does not protect and preserve the character of the neighborhood.

Attorney W. Richard Smith spoke to the Board. Mr. Smith reviewed his zoning experience with the Board and is consulting with Ms. Bridget Brown Powers on the appeal. He reviewed the zoning permit application. Section 5.31 (8) [wrong section # used by Mr. Smith, Staff opinion is it should be Section 5.32 (8)] of the zoning ordinance allows one detached accessory building in an R-1 zone district. He stated that the R-1 zone district does not permit an attached accessory building. If the City Council wished to permit attached accessory buildings, they would have done so.

City Code Section 5.176 authorizes an accessory building to be erected as part of or connected to the principal building or it may be completely detached. Section 5.170 of ordinance states that the general regulations in 5.176 shall apply to all districts, except where requirements of a general regulation and a district regulation differ, the more restrictive requirement shall prevail. Mr. Smith stated that Section 5.170 [wrong section # used by Mr. Smith, Staff opinion it should be Section 5.176] can not apply to the R-1 zone as Section 5.31(8) [wrong section # - Staff opinion is it should be 5.32 (8)] of the R-1 section is more restrictive and only allows one "detached" accessory building. The general provisions refer to accessory buildings. A parcel could have multiple accessory buildings. The R-1 regulations allow only detached accessory buildings. The definition of boathouse in the ordinance does not authorize it in the R-1 zone. The R-1 zone regulation determines what is authorized in that zone. The zoning permit gives permission to construct an attached accessory building, and the R-1 zone only authorizes detached accessory buildings. Therefore, the permit should be pulled.

Ms. Brown Powers addressed the Board. The motion adopted earlier incorporates everything that has already been said and done which includes transcripts, written word and the public submissions and exhibits. She does not wish to repeat, but will supplement the issues and address new issues. Ms. Brown Powers referred the Board to pages 12-18 of her September 29th letter. Ms. Brown presented a board that summarizes pages of her letter which discusses the environmental issues - Exhibit 13. Ms. Brown Powers asks that the Planning Commission review and issue a permit, because the amount of excavation that will need to take place is severe. This is not what we would call "normal", which is the ordinance guideline. Normal to us in an R-1 zone is a typical house, which is estimated at 2,000 square feet. Certainly not a house of this massive size with two basement levels, underground tunnels and a 3,000 square foot boathouse. You need to look at all the gravel, stone and other items that will need to be removed. There is a steep cliff with a significant drop. This takes it out of the realm of normalcy and needs to be reviewed by the Planning Commission. The review is important in this case as outlined in her appeal letter. For the MDEQ hearing, GeoTrans did a Phase 1 review of the site. The results indicate that a Phase 2 environmental should be done on the property as it is the site of an old lumber mill. The history of the site and review of the Sanborn maps, show that it could be a possible contamination site. Before the gravel and dirt is removed, someone should take a look at it. The property is upland, so the Corps of Engineers and MDEQ do not have jurisdiction. Because neither the County nor City have a soil erosion ordinance that speaks to these issues, there is the potential of contamination leaching into Round Lake and neighboring properties and could affect wildlife. We do not know for sure there is contamination on the site, but we know enough to know there might be and it is located at the waters edge. We are trying to protect what is located in the 50' scenic setback and the environmental concerns that we have as a city, state and nation. If this project is approved and there is no oversight authority, then we find that there are contamination issues from the wood treatment activities that might have occurred there. Ms. Brown Powers stated that she does not know if these activities took place on the site, but they might have taken place. It is probable. But why take the risk? This is a huge project and a large amount of soils will have to be removed to accommodate the two basement levels, which are completely submerged underground. This will require a lot of soils to be removed. The Andersons have not tested the site for possible contamination. There is nothing to know whether or not the site is contaminated. Ms. Brown asked that the Planning Commission

review the proposed excavation. The Planning Commission would have the ability to review and make some conditions on the permit to safeguard everyone. We need to know by fact that we dont know and why should we risk not knowing. The applicants have spent a great deal of money on attorney and consulting fees. These are serious issues to the applicants.

Ms. Brown Powers asked the Board to review Exhibit 12 - Ferguson & Chamberlain survey. The ordinance clearly says that the water mark is measured from the 1992 water mark. The 1992 water mark line is shown on the survey. The 1992 line is a lot different than the line presented on the Anderson's plan. Ms. Brown Powers stated that this item alone requires the Board to revoke the permit. The contamination issues are extremely important. It is important to find out what is there. If there is nothing there, then that's great, then we do not have to worry about the issue. But we need to find out before we pollute Round Lake, Lake Charlevoix and adjacent properties, little red foxes and other habitat that we know is down there. We have that responsibility as a community.

Member Clem asked for a confirmation that if the 1992 high water mark figure is used, would this be grounds for revoking the permit. Ms. Brown Powers stated that the water mark establishes the rear lot line and also affects the overall square footage of the property. Mr. White's information (Exhibit 11) includes specific ordinance references. The water mark is as established in 1992. The shoreline of Round Lake has been changed by natural erosion or by man-made changes. The water levels have also changed. The Anderson's have completed a couple of projects, including rip rapp, as shown on Mr. Chamberlain's survey, that have changed the shoreline. The items in the water are not under the City's jurisdiction, the MDEQ oversees it. The rear line lot depicted on the Andersons drawings and is not in the City's corporate limits. The City's zoning ordinance speaks to land, not to Round Lake. The red line shown on the drawing indicate the 1992 water mark. This is the line the ordinance requires be used as the rear lot line and is used to determine the square footage of the property.

City Manager Straebel asked the Board to review the issues. The Board needs to concentrate on the issues.

Ms. Brown Powers stated that the appeal and a request for interpretation is similar to the issues raised in the past, with additional items listed in her September 24th appeal letter. They have agreed to the motion previously passed, that they will not discuss the previous issues. The items in the prior record will be incorporated into this record. They are providing only additional information.

Chairman Withrow agreed one of the new issues is the question of site contamination. The staff report outlines three new issues to be reviewed. One is the removal of contamination soil. There are two others.

Assistant City Attorney Graham asked Ms. Brown Powers for clarification. How does the water mark line affect the setback from the water and how does it apply to detached accessory buildings? Ms. Browns Powers stated the line is the property's rear lot line and it is one of the issues to be reviewed by the Board.

Assistant City Attorney Graham asked about the establishment of the water mark line. Is it relevant to a setback line and if it is, what setback is relevant to lot coverage calculations and how? Ms. Brown Powers stated that the line is relevant to everything you asked and more. If this is the property's rear line and the boathouse is a detached accessory building, than it must meet the setback requirement of 6' from that line. If it is part of the principal residence, than it must meet the 50' scenic setback requirement. It is relevant for those purposes, as far as lot coverage is concerned, and anything that has to do with that. Ms. Brown Powers pointed out the line they used (for the permit) and the line that Mr. Chamberlain uses. The line used in the application does not exist, it lies within Round Lake. The line has everything to due with the lot coverage. The total lot coverage is affected by the line. The use of the water mark makes the lot smaller. This is new information. Mr. White's drawings show the issues in a different light.

Member Anderson asked if the Corps of Engineers needed to issue a permit to remove the soil and if the Corps would like this. Ms. Brown Powers advised that no, this is not in the MDEQ or Corps jurisdiction as it is upland from the water's edge. Anything in the water or over the water is reviewed by the MDEQ and Army Corps and is their jurisdiction. If it is over the land, it is the City's jurisdiction for zoning purposes. Mr. White says boathouses are not authorized in R-1. If you really look at it, this is really complicated stuff. In 1978, the City passed its first Zoning Ordinance and the only area in R-1 on Round Lake had over the water boathouses. That is all that existed. It was not on anyones radar. State & Federal government regulated that and at that point of time that was correct. As far as anything that happened that was not completely over the water or quasi-over the water or outside the district is all pre-zoning and nobody regulated it. It makes a lot of sense that the scenic reserve and marine commercial district specifically talk about boathouses. Obviously, the former City Council was aware of their existence. The R-1 did not, why is that, because they were only smaller ones and they were over the water. The City simply did not have jurisdiction because it was not in the City limits, it was in the water. The ordinance does specify the uses that are allowed, but R-1 is not one of them. You are allowed to have a dock. A dock starts on the land, so it can be regulated.

Eldon Johnson of 300 East Dixon spoke to the Board. He was here when the Board was reviewing the same issues a year ago and the Board revoked the previous permit. The new permit was brought back the same as it was with all the other issues we still contend with. Supplemental information has been given. This had to be done adequately. They had to do it in spite of the fact that it is his position that the 1992 location of the rear property line should have been developed by the City of Charlevoix before any permit was issued. The basis of the law needs to be determined. This is one issue that we had to go through the expense to clarify by going through the historic records of every permit issued by the DEQ along the entire lake front area and all the surveys that were done over time and in the files. We also looked at the field books. The survey shows the rear property line of the two waterfront lots involved in this permit. The City Manager has asked what we are specifically asking.

- We have discussed the lot building relationship at length. There are three separate lots of record. You have overlaid one project and issued a permit over what we consider is not legal and not according to the ordinance.
- Section 5.5 is just a definition of a boathouse.
- Section 5.5 accessory use. A boathouse is not an accessory use and never has been in a R-1 in the history of this town. I think that has been well deliberated here. The only thing that was ever allowed in the R-1 or adjacent to the R-1 were the "over the water" boathouses that were built prior to the zoning code. This is a complete change in the direction because they have situated the boathouse with zero lot line. Zero lot line has been set for the marine commercial, you can not eliminate a rear yard in a scenic setback. We want our views from up here. This building is 45' plus high and 50' wide and is 100' long with the extension. It is a huge building. It is going to be 3' to 4' above our rear yard line so we are going to be sitting there looking at it. It will block out our entire view of the City and the harbor. What was the intent and spirit of the setback? It was the scenic protection of what makes Charlevoix both from the water and the upper levels for all of us that pay taxes.
- Adequate permanent access - we have gone through that. This property has a deeded 16' easement. I was told by the City when I purchased the property that the easement would be enforced, improved and connected to Thistledown when residential development occurred on the two vacant lots. The deeds to the two lots indicate that the property had ingress and egress directly to US 31. It is in the title record.
- Definition of Lot Line Section 5.8 - That speaks for itself.
- Lot of record - there was some question at the last meeting. You issued a permit, which is the right to build. There is no requirement that the County Building Department get involved in any land use or ownership. You have given them the right to build over three lots of record, with two owners.
- Detached accessory building - they have comments on the record.

- Section 5.32 (1) - only one single family dwelling on each lot of record.
- The connection of the accessory is probably going to be determined at a higher level than we are at right now. That is a matter of legal interpretation. You have interpreted one way and we have another.
- Section 5.180 is a major issue for us. You are taking about over 8,000 cubic yards of dirt. There are no grading plans or definition of grades that usually accompany this much excavation. In any case, the extraction should be going to the Planning Commission as outlined by Ms. Brown Powers. The City can take the responsibility of requiring borings. No borings have been done in the areas to be excavated, including the big channel at the lower level. There have been no borings in the area we consider to be a possible Brownfield. This needs to go to the Planning Commission so there can be sufficient bond protection, if something happens. We do not know if this company is going to be there next week or next year. What happens if the project gets started and then doesnt get finished or if there is contamination? That much excavation on the permanent access will have a major affect. They are planning to haul over 500-700 truck loads of excavated materials through our limited 8' easement, which is limited in scope to only its use from 1965 to 1985. That is in the Judges ruling.
- Rear yard lot coverage - they cannot use more than 30% of the rear yard lot. This structure is required to be setback. What was the purpose of the 50' scenic setback? It is to protect the views and the beauty of the north lake front shore. It should be enhanced, not have a Zoning Administrator unilaterally change the law, which is what they have done here.
- Height of building. The lowest level on the south face of the building is the docks and the seawall. That is where the height should be measured, not at an artificially built grade.
- Section 5.12 Yard, Rear definition and Section 5.198 Setback from Waterbodies - Request enforcement of the 50' setback from the waterbodies. The 35' rear yard setback should also be maintained. The lot has an exclusive rear yard setback requirement of 50'. A detached accessory building can be 6' from the rear lot line, but the proposed building is beyond the rear lot line and is placed in the wetlands.
- Parking - There is no plot plan showing the location of 10-12 cars. There is no parking plan for the site.

Dan Barron asked the Board for a short recess. The applicant has presented evidence that we would like to review and discuss. Chairman Withrow agreed to the fifteen minute recess.

Meeting recessed at 7:30 p.m.
Meeting reconvened at 7:50 p.m.

c. Presentation by Anderson and/or agents. (If requested)

Dan Barron, representing Jim and Patricia Anderson, voiced surprised at the amount of information presented this evening. The Anderson's have attempted to comply with the Zoning Ordinance and not apply for any variances. The Anderson's have submitted their application using information provided by Staff and past City practices. The City needs to determine the location of the rear lot line. Is the rear lot line at the rip-rapp or is the line as shown on the Ferguson-Chamberlain (Exhibit 12) survey? An interpretation is needed to determine where to measure from. Once we know where that line is, we can come back with modified plans that will adhere to the Zoning Ordinance. The Board has the power to modify any order which has been issued, such as a Zoning Permit. We need to determine where the line will be. Another public hearing may be necessary to determine that. We are concerned about lot coverage and would like to modify the permit, if necessary. Mr. Barron asked for direction from the Board in addressing the issues raised this evening.

Chairman Withrow agreed that the new information needs to be reviewed. He asked Mr. Barron to give the Board the information he has available this evening and all the issues will be discussed at a future meeting. Chairman Withrow asked Board members to make notes of any concerns the Board many have; this will allow the Board to review all the concerns at one time and resolve the issues.

Mr. Barron agreed that once they know the location of the rear lot line, they will make sure the permit complies with the Zoning Ordinance. Mr. Barron asked to review the environmental issues at this time.

Valerie Snyder of Barron and Engstrom gave materials to the Board. The materials include a December 8, 2009 letter from BCI Engineers & Scientists, copy of DEQ Administrative Hearing and Rules, DEQ Final Determination and Order and a copy of the MDEQ permit for the site (Exhibit 14). She reviewed the environmental issues with the Board. The letter of appeal referred to environmental issues raised at the MDEQ permit hearing. Ms. Snyder stated that there is nothing in the Zoning Ordinance that outlines the reason these issues where to be reviewed by the ZBA. The letter of appeal submitted by Ms. Brown Powers did not reference what section of the Zoning Ordinance applied and why it was a point for the ZBA to consider. Ms. Snyder does not think these are issues for the ZBA Board to decide. There is a speculative contamination issue. Even if the allegations were true, it's still not an issue for the Zoning Board of Appeals. There is nothing in the ordinance that requires residential zone property to under go this type of testing. The MDEQ has reviewed these issues. The MDEQ has heard six days of testimony on potential contamination issues. The parties stipulate the MDEQ had jurisdiction on both the upland and the bottom land dredging. MDEQ has decided the matter and has chosen to issue a permit (Exhibit 14). The Anderson's have a permit to do both the upland and bottom land dredging. There is no contamination on the site. MDEQ has not found any contamination. Mr. Sweatman, a geologist with BCI (Exhibit 14) also testified at the MDEQ hearings that there was no contamination on the site. Roger Mawby of Otwell Mawby PC of Traverse City will discuss with the Board, the sediment sampling done on the property in November 2009. Ms. Snyder pointed out several items outlined in Judge Macks Proposal for Decision dated May 21, 2009 (Exhibit 14).

- "Evidence does not support the conclusion regarding the treatment of wood products on the subject parcel." The DEQ has found that there is no credible evidence that the activities took place on the property.
- "I find as a Matter of Fact, the soils on the subject site do not indicate a historical use of the property as a lumberyard." "I find, as a Matter of Fact, the mill and the oil house at the eastern edge of the lumberyard were approximately 500 to 600 feet west of the subject site. Further, the oil house is down gradient from the subject site, so any contamination would have migrated away from where the upland dredging is proposed." "I find as a Matter of Fact, the dredging of an upland basin, and its connection to Round Lake, will not pollute, impair or destroy the natural resources of this state.
- "I find, as a matter of fact, the dredging proposed in the application will not pollute, impair or destroy the natural resources of the State."

Ms. Snyder advised the Board that the arguments being heard about the contamination are nothing but speculation, that the MDEQ has stated there is nothing to support. The MDEQ has listened to evidence on these issues.

- "Based on this evidence, I find, as a Matter of Fact, the proposed dredging will not encroach into the Petitioner's riparian interest area. I further find, as a Matter of Fact, the proposed dredging will not destabilize the soils, nor will it result in subsidence on the Petitioner's parcel, or within his riparian interest area. Finally, I find, as a Matter of Fact, the proposed dredging will not impair the improvements on the Petitioners property."
- "I find, as a Matter of Fact, the project will not have any effect on fish or wildlife, including foxes."
- "There is no substantive evidence that the upland on the subject parcel is contaminated from historical users of the property, or any other source."

Ms. Snyder wished to point out one of the conditions of the MDEQ permit approval, was that sediment testing would be done. The testing has been completed and the MDEQ permit has been issued. Mr. Mawby will report on the sediment testing. To make a statement that no one is looking at the issue and no

one is protecting the environment, is a specious argument. Not only has the MDEQ looked at this in depth, but Mr. and Mrs. Anderson have also obtained a Soil Erosion Permit and an Army Corps of Engineers permit. They have permits from agencies charged with protecting our environment. The Board of Appeal is not charged with protecting the environment. Member Cross disagreed with this statement and believes that the Board is responsible for protecting property rights and the environment.

Member Cross asked if the report states there was Mercury indicated on the site. Where did this come from? Ms. Snyder advised she dose not know where it came from and hopes Mr. Mawby can talk about that. But the significance that Mercury was detected, was the reason that additional testing was done. The contaminate was removed by previous dredging. The point of testing the site was not to determine if the dredging could be done, but how to dispose of those materials. Member Cross agreed it is true, we do not know if the site is contaminated, but there were buildings, oil drums, a lot of things on the hill when it was a lumber mill and we do not know what is there and do not want to contaminate the water. Ms. Snyder agreed you cannot say for sure there is no contamination, but you could not say for sure if you were building a house on State Street. You cannot say there is no contamination for sure about any piece of property. There is no authority for the Board of Appeals to require anything else from the Anderson's. Ms. Snyder advised that there nothing in the Zoning Ordinance that applies to this issue.

Ms. Snyder also asked the Board to review the "Final Determination and Order" from MDEQ (Exhibit 14). This adopts the Findings and Proposal for Decision and is the actual MDEQ order and decision. Exhibit 14 also includes the actual MDEQ permit for the Anderson property issued on December 2009.

Roger Mawby of Otwell Mawby addressed the Board. He firm was hired by the Andersons to take dredge samples and determine if the dredging would have any potential impact to upland areas. Seven dredge samples were taken according to MDEQ protocols. The analysis was submitted to MDEQ and the findings were that there were only non-detectible. The only items detected where metals that normally and naturally occur in soils and sediments. Samples were taken for Mercury. Mercury was found in an earlier sample, but no Mercury was not found in the proposed dredging area.

Chairman Withrow asked for clarification on where the samples were taken, on land or out in the lake. Mr. Mawby advised that the sediment samples are in the low water area.

Mr. Anderson advised the Board that samples were taken during dredging a number of years ago. The Mercury was found at that time and has been removed from the site. Additional samples were taken in the area that will be dredged out and no traces of Mercury were found.

Mr. Mawby advised the Board that their results were submitted to MDEQ, who reviewed the results and have concurred with their findings. There is no evidence of impact. Mr. Mawby discussed the potential for upland contamination with the Board. The Johnson's had a Phase 1 Environmental Assessment done. He has reviewed the same information, including the Sanborn maps. During an environmental assessment you either find a concern or you don't. If you find something it is referred as a recognized environmental concern. This is a very detailed process. I looked at the same information and found no evidence of potential contamination on the property. The lumber mill operations did occur 400' to 600' west of the properties. The Sanborn maps do not show any lumbermill operations on the site. There is no evidence of wood treating and the oil issue was a distance from the property. So when you have an environmental review, you either find there is or there isn't a concern. In his professional option, there is no recognized environmental concern, based up the review of the data available. If a concern is found during a Phase 1 Environmental Assessment, a Phase 2 Environmental Assessment is done. If no concerns are found during the Phase 1 study, you have completed your inquiry. It is very unusual that an environment study is done on residential property. The Anderson property has already seen a higher standard of environmental inquiry than normal. Ms. Snyder has pointed out that my opinion is consistent with the Administrative Law Judge and BCI Engineers & Scientists. There is no creditable evidence to establish an environmental

concern. This has been looked at by the MDEQ.

Chairman Withrow asked if any soil sampling was done upland. Mr. Mawby advised that no samples were taken. But he does not feel that it is necessary.

Traver Wood reviewed the Zoning Permit application with the Board. The only new information he has heard is the location of the high water mark. He does not know if it is right or wrong. At the time he made the original application, he knew where the high water mark line was. That information was taken to City staff (former City Planner Gerry Harsch) and City staff clarified the location of the rear yard. Mr. Wood prepared his drawings per the information received by Staff. Round Lake is surrounded by bulkhead and the water mark location does not change.

Assistant City Attorney Graham asked Mr. Wood if he was familiar with the new Zoning Ordinance definition of "ordinary high water mark". Mr. Wood stated he was familiar with the new definition. Mr. Graham reviewed the definition with Mr. Wood.

> Section 5.10 "Ordinary High Water Mark: ... The ordinary high water mark shall be at elevation 581.5 feet International Great Lake Datum for Lake Michigan and Lake Charlevoix."

Assistant City Attorney Graham asked Mr. Wood if elevation 581.5 can be determined scientifically. Mr. Wood advised that theoretically it can, but it is an elevation that can change. It is Mr. Woods experience that forces working on the shoreline can change the location of the elevation. Assistant City Attorney Graham asked if at the time Zoning Permit #3071 application was filed, was the location of elevation 581.5 determined scientifically. Mr. Wood stated that the location of elevation 581.5 was noted on the drawings. Assistant City Attorney Graham confirmed that the drawings submitted with the application showed the 581.5 elevation for the rear lot line. The zoning ordinance was changed prior to the permit being issued. Mr. Wood advised the that ordinance was changed after the permit application had been submitted. Assistant City Attorney Graham stated that a Zoning Permit application must adhere to the ordinance in affect at the time it is issued.

City Planner Spencer pointed out that the approved plan shows that Ranger & Associates, a local certified land survey and engineering firm, provided the information. The City does not have the resources to double check the work and assume what they are providing is accurate and meets the ordinance.

Mr. Wood showed the Board that the survey shows a water mark of 581.0 NDVG. City Planner Spencer advised that Board that at the time the amendment was being considered, Mr. Ranger advised that methods of calculating the two water marks (NDVG and IGLD) were virtually the same.

Member Sullivan stated that IGLD, International Great Lake Datum, has various benchmarks of various years. So you could have a benchmark of 581.0 in 1980 could vary from a benchmark year of 1920. Assistant City Attorney Graham stated that the ordinance specifies 1985.

Mr. Wood advised the Board that he was aware of the ordinance amendment. He had the new ordinary high water mark line surveyed and recalculated the lot coverage and provided the information to Staff. Assistant City Attorney Graham advised that the amendment was adopted on June 15, 2009. The amendment took effect 30 days later and the amendment was in effect when the permit was approved. Mr. Wood stated he recalls that there was a minor horizontal change between the line shown and the elevation that was later prescribed. The change addressed the former water mark location of 580.5 and was raised to 581.5. The State of Michigan uses 580.5, but the Corps of Engineers uses the 581.5 figure. The recent zoning change uses the 581.5 elevation. The permit complies with all ordinance requirements.

Member Clem asked for clarification if the square footage of the yard is accurate and complies with the new

amendment. Mr. Wood advises that it is very close and that the Planner has the right data. The new rules apply and the lot area coverage is less with the rules. The new rules also no longer include overhangs or eaves in lot coverage. The new ordinance amended the ordinary high water mark and does change the lot area, but the ordinance also determined that there was less building, the eaves are no longer included in lot coverage figures. The net result is that there is less lot coverage. The new definition of the ordinary high water mark is for Lake Michigan and Lake Charlevoix but it does not mention Round Lake.

Bridget Brown Powers stated that she does not feel Mr. Wood is qualified to answer Mr. Grahams question as he is not a licensed surveyor or architect. Ms. Brown Powers asked that Nick White be asked to comment on the issue.

Mr. Wood stated that as counsel has pointed out that the State has made its decision and its rules will govern. There has been a lot of talk about the location of the ordinary high water mark that existed in 1992, but according to the ordinance, 1992 doesn't have anything to do with it.

Dan Barron questioned if it was appropriate for Mr. White to review the survey drawings as the work was not rendered by Mr. White, it was prepared by Ferguson & Chamberlain and he has survey work that was preformed by Ranger & Associates. Staff may have to provide additional review for the Board. Any speculation will not be helpful. The parties involved need to figure out where that line is and based upon that line and review the lot coverage.

Mr. Barron noted that we have variations on where the (water mark) line is. We have heard comments from Mr. White that the building is too wide, too long, too high, too large and not authorized. Data has been submitted to the City and analyzed by the City Planner. Mr. Johnson has addressed numerous points, it appears that those points were addressed at the prior hearing and are in the record incorporated from the prior permit. I do not think there is any new evidence. I do not want to labor any points which are on the record and there needs to be new evidence in order to legally justify any change of the Boards prior rulings. One issue that should be pointed out is the claim that there could not be an accessory building exceeding 3,000 square feet of floor area. This does not pertain to an attached accessory structure. Mr. Spencer has conferred with the County Building Department and they do not feel it applies to attached accessory structures, only to detached accessory structures. The square footage of the structure (boathouse) has been reduced to 2,998.8 square feet, so it is less than the 3,000 square foot threshold. There has been a lot of discussion on the environmental issues and a ordinance provision that has been on the books since 1978 requiring a soil removal permit (Section 5.180). Since 1978, this provision has not been applied to any property. The provision is intended for a commercial extraction or mining use. It is very clear, the provision seeks to prevent stagnant water and that the surface not be left in unstable condition. It gives no authorization to the City to compel environmental testing. There were six days of hearings before the MDEQ, who has jurisdiction over these types of issues. The MDEQ has determined that there is no evidence of contamination. The provision has not be applied in the past because there has been no commercial mining or extraction in the City. This is the construction of a house and the boathouse, it is not a commercial extraction. The appeal application asks what is a normal excavation. Mr. Barron stated that the term "normal excavation" is a subjective term. The term is wide open and can be mischaracterized to somebodies personal opinion or personal preference. It is very easy for someone to say that since this is very large it is not a normal excavation. This is a subjective standard, not quantifiable or arbitrarily. The provision could not stand legal scrutiny. It has to be based upon objective standards. The standards exist in the City's zoning ordinance. What does "normal" mean? Normal is based upon norms. There are dimensional requirements, lot coverage and side yard setbacks. These are the norms. This excavation is intended for the construction of home. If you were going beyond what was necessary to construct the residence, then it would not be normal. This ordinance is not intended nor should it be construed to be a backdoor effort to limit the size of a residence. If it is the intent of the City to limit the size of residences, then it is a legislative act. The Planning Commission and City Council can adopt an ordinance that limits the size of residences. The Anderson's are complying with the ordinance to build a residence. This is a permitted

residence and it satisfies the norms and the standards of the ordinance.

Mr. Barron also reviewed the Petitioner's request that a landscape and parking plan be required. The Staff report outlines that a parking plan has not been required for a residential project. The ordinance Section 5.32 (10) requires parking spaces, which are delineated on the application. The parking spaces were confirmed by Mr. Spencer. They have complied with the obligation to provide parking spaces. Section 5.211 of the Zoning Ordinance regulates parking in all zones and Section 5.212 regulates the size of parking spaces and the tandem parking is allowed in R-1. Section 5.212 (1) states that a parking plan shall be required in commercials, professional office, industrial and multi-family. It does not say R-1. So there are certain things that apply to R-1 but a parking plan does not. The last point is the landscaping plan. A landscaping plan has never been required for a residential project in the R-1 district. Section 5.32 (10) requires parking spaces for recreational boat docks. This has been submitted. The ordinance also states that if a parking lot is required than a parking and landscaping plan is required. Parking spaces are required, not a parking lot. The section also refers to a boat launching ramp. The Ferry Boat Ramp requires parking lot, which would also require a landscape plan. There are certain situations where a parking lot would be required. A recreational boat dock does not require either a parking lot or a landscape plan. Eleven parking spaces are dispersed throughout the lot, not in one location. We do not believe there is any legal justification for a soil removal permit, a parking plan or a landscape plan. The Anderson's are looking to comply with the Zoning Ordinance and not request any variances. The only question that remains is location of the rear lot line. Mr. Barron sought the Board's guidance to determine the location. Once its location is ascertained, the lot coverage may still be satisfactory. If not, they ask for a brief period to make minor readjustments in the structures to make the plan adhere to the ordinance.

Jim Anderson addressed the Board. They started planning their home in 2003 after the purchase of 300 East Dixon. The combination of 300 East Dixon with 304 East Dixon gave them the ability to create a single conforming lot. They have not, nor are they asking, for any variances. They do not want nor have they every wanted to build anything in violation of the zoning code. They are trying to improve the neighborhood from many perspectives, including zoning. At the present time all the lots on the south side of Dixon from Mr. Saenger's property to Burns Street are non-conforming in one or more ways. Many of the homes on these lots are also non-conforming. Most, if not all, of the property owners on the north shore of Round Lake, including the previous owners of our two properties, rented or currently rent boat slips without approval from either zoning or the DEQ. We want to combine the non-conforming lots to make a conforming lot. We wish to replace two non-conforming houses with one conforming house. We have not rented our boat slips nor do we have any plan to rent our boat slips in the future. In short, we wish to make a significant investment in Charlevoix, improve the economy and improve the neighborhood in the process. They do not wish to do anything more or less than any other property owner has the right to do. They applied for their first permit in January 2007. They worked with one of the areas most reputable companies and City staff to make sure all aspects of the Zoning Code were followed and did not need any variances. Their initial instructions, which have not changed, was to design a home that could hold their extended family, represented the essence of Charlevoix and required no variances to build. Unfortunately after two years of litigation with the Saengers, Johnsons and Mrs. Camp, our permit was revoked, rather than modified last year due to a misunderstanding about a hot tub. They modified their design to eliminate the hot tub in the breezeway and dealt with the issues that caused the Board to revoke their first permit. They worked with City staff once again to make sure we complied with all aspects of the zoning regulations and received their second permit for this project in August 2009. The final order from the MDEQ was received in December 2009 approving the project and rejecting all of Mr. Johnson's claims, including those related to site contamination. Now three years after applying for our first permit, new issues are raised by Mr. Johnson, Mr. Saenger and Mrs. Camp that are either unrelated in any way to the permit or issues that have already been ruled on by the Board. This seems unfair and could result in a never-ending process that would prevent anyone from building anything, because you would never know what requirements would have to be met until reviewed by the ZBA. Mr. Johnson mentioned tonight, for the first time, that his view would be impacted by the project. We decided a long time ago to build the boathouse inland or upland so it

would not obstruct his view of downtown. I do not have to look any further than his surprise submittal tonight to demonstrate this. Page 2 (Exhibit 11) shows the view of downtown from the corner of his property. The boathouse will be completely to the right of the seawall. Right now there is a 40' tall tree line that can be seen. The boathouse will not obstruct the view any more than the existing tree line. He wishes to be able to enjoy his home with his children and grandchildren just like the Saenger's, Johnson's and Camp's have done for decades. They do not wish to build anything that violates the zoning rules. If he is advised that the zoning rules have changed how lot coverage is determined, they will modify the design to comply with those rules. But he asks that he not be asked to go back to square one again with another permit application, which will result in another set of complaints from Mr. Saenger, Mr. Johnson and Mrs. Camp.

d. Rebuttal by applicants (If requested)

Bridget Brown Powers spoke to the Board about the contamination issues. She advised the Board that the Anderson's have advised the Board that the Petitioners did not know if there were any contamination issues. They were right, we do not know if there is any contamination. The MDEQ process was under Part 301 Inland Lakes and Streams. The jurisdiction of the MDEQ is very limited. The Judge found that they had not submitted enough historical evidence to find that the site was contaminated. At the MDEQ, Mr. Sweatman testified that he had not tested the property. A second geologist testified at the hearing and he too admitted that he had not tested the property nor had he been given Sanborn maps or other information to review. Today, Mr. Mawby appeared before the Board and he advised the Board that no soil samples were taken upland. Why not? Ms. Brown Powers asked why given the questions that have been raised, why didn't they (the Anderson's) have the upland property tested. Ms. Brown Powers' clients have completed a Phase I environmental, which is basically research, that searches various data bases, maps and photos to find out prior property uses that might have caused contamination. The Anderson's have provided experts, but none of them have tested the property. The MDEQ does not have jurisdiction over the upland property, it reviewed the portion of the site that touched the water and future boat wells. There is no oversight. It is unknown if the property is contaminated, but there is enough evidence from the information gathered from the Phase I review, to determine that a Phase II is needed. Mr. Mawby stated that this is not done in a residential setting. It may not happen very often, but if the use on the piece of property changes and there is a historical use that differs from a straight residential, then we look at it. As attorneys when we represent clients who are buying or selling property, we always make sure that this is looked into. We know what the property was. Do we know if there was wood treatment facilities on the APJ Property? No, we don't know, all we want to do is find out. Ms. Brown Powers asked that the ZBA revoke the permit, but in the event that you disagree there are other issues. She asked the Board refer this to the Planning Commission for its review and the Planning Commission in turn has the ability to provide conditions to safeguard it.

Ms. Brown Powers reminded the Board that the Petitioner requested after the first permit was issued that the ZBA's decision be stayed, so that it would not be the interim law. She was afraid that a new permit application would be submitted and approved prior to the Circuit Court's ability to review the one that had already been decided (Zoning Permit 2850). Judge Patjas denied the motion to stay. Had the permit been stayed by an agreement of the parties or a court order, this hearing would not be occurring. The Circuit Court would have made their decisions on the other issues. But Mr. Anderson would not agree to stay and applied for a second zoning permit.

Ms. Brown Powers reviewed the high water mark issue. She feels Mr. White is qualified to clarify the issue.

Assistant City Attorney Graham stated that there have been a number of discussions on the environmental issues. But he has not heard anyone cite a specific zoning provision that would require the Anderson's to do any type of environmental study. Ms. Brown Powers stated that Section 5.180 requires Planning Commission review and the Planning Commission has the authority to condition the environmental review. Assistant City Attorney Graham quoted the last sentence of Section 5.180, "shall not be construed to

prohibit normal excavations or grading incidental to the construction or alteration of buildings". Nothing in the other provisions deal with environmental issues. The section talks about soil removal, when it can be done and how close to the property line it can be. He asked for a specific provision in the zoning ordinance that mandates the types of environment investigations that you claim are needed. Ms. Brown Powers stated that the word in Section 5.180 is "normal". There is nothing else in the Zoning Ordinance that speaks of contamination. Due to the enormous size of the project and the amount of soils and materials to be removed, this is abnormal and triggers the provision that applies to all the zone districts. Assistant City Attorney Graham asked that if the size of the excavation makes the size of the project abnormal, then obviously this section would apply and the Planning Commission would have to review it. He asked how this relates to all of this environmental investigation requirements. Ms. Brown Powers stated that this issue is not before the ZBA, but would be discussed with the City Planning Commission. Assistant City Attorney Graham asked to confirm that if the ZBA rules that this excavation is normal and within the meaning of the term, then all the environmental issues are mute. Ms. Brown Powers agreed, but due to the size of the removal and the issue that it might be contaminated makes it abnormal. If the ZBA decides that it is normal, then yes. Ms Brown Powers stated that the excavation is abnormal because of its size and the possible contamination. The more dirt removed from the site could cause an erosion issue and the possible contamination could affect neighboring properties.

Ms. Brown Powers agreed that parking plans have not been required in the past. This is not marine-commercial, it is R-1. Chairman Withrow stated that the Chicago Club boathouse is an example of a boathouse in R-1.

Nick White advised the Board he is not a surveyor nor is he a civil engineer. Traver Wood has more shoreline experience than he has. That is why Sherm Chamberlain was hired to do the survey and give a definitive answer on the location of the shoreline. The ordinary high water mark is a vertical datum. A horizontal datum or shoreline can change year to year by erosion, dredging or fill. If the old line is closer inland, then that is the line you comply with. If the shoreline had eroded, which many of the lines have done, then you can use the 1992 line, which could be out in the water. Mr. Barron has stated that the project complied and is permitted. It is his opinion and based on the study that he did on the drawings, it is too wide, too long, too high, too large and he finds no mention of boathouses in the R-1 zone district.

Chairman Withrow asked Mr. White the relevance of the 1992 survey verse the plan. Mr. White stated lot area and setback off the water is different. Chairman Withrow asked Mr. White if the 1992 survey provided a different datum than the Zoning Ordinance? Mr. White stated that datum is the ordinary high water mark and if the shore is changed than the line changes.

Assistant City Attorney Graham asked how the 1992 line equates to the definition of the ordinary high water mark which specifies that the elevation is 581.5' International Great Lake Datum 1985? Is the 1992 line in the same location as 581.5'? Mr. White stated that in 1992, 581.5 line is further inland than is it today. Assistant City Attorney Graham stated that the ordinance defines the line as a specific point in space at 581.5' as determined in 1985. How can this line move, it is a fixed point. Mr. White stated that the line is a fixed vertical point, but it is not a fixed horizontal point; it moves by erosion and fill. Thus the lot area changes and according to our calculations, it has changed by over 1,000 square feet.

Member Clem asked Mr. White if his calculations were based on 1992 datum? Mr. White stated that the percentage of lot coverage they are using is based on the 1992 data of a smaller lot.

Assistant City Attorney Graham asked Mr. White if a surveyor could place a fix on the point today. Mr. White concurred that a surveyor could determine the point. The line shown on the map, is the line today. But Mr. White reads the Code to say that the water mark shall be at elevation 581.0 NVDG in the location it existed at the adoption of this ordinance. Assistant City Attorney Graham advised Mr. White that he had not cited the definition of the ordinary high water mark. If there is a conflict between the two definitions, the last

ordinance amendment will control.

Jim Anderson advised the Board that the ordinary high water mark, at the time of adoption, is the line shown on his drawings

City Planner Spencer asked the Board to be very careful in reviewing the ordinance language. The Johnson side is arguing that the boathouse should be subject to a 50' setback or at minimum if it is a detached accessory building, have a 6' setback. The language in the ordinance states: "Not withstanding any other provisions of this chapter, all principal uses located in the R-1 zone, shall have a 50' setback." The Board needs to determine where the home is located. The principal use of the lot is residential. Staff made the decision that the 50' setback did not apply, the boathouse is not the principal use of the lot. It is an accessory. Just like a garage hold cars, a boathouse holds boats. They are both an allowable accessory structures in the ordinance and it has always been applied that way.

Chairman Withrow asked the setback requirement for an accessory structure? City Planner Spencer advised that a detached accessory structure setback is 6'. An attached accessory structure is 0' on the rear if it is a boathouse. The argument is that attached accessory structures are not allowed in R-1. Is the City going to prohibit someone from building a garage with a breezeway attaching it to their home? If not, why would you apply it to this accessory structure.

Assistant City Attorney Graham asked the Board to review Section 5.176 of the Zoning Ordinance.

(1) Authorized accessory buildings may be erected as part of the principal building or may be connected to the principal building by a roofed porch, patio, breezeway or similar structure …

(2) Where an accessory building is attached to the **side or front** of a principal building, such accessory building shall be considered part of the principal building.

If it is part of the principal building it needs to meet the 50' setback, as it is part of the principal use. But it is not attached to the front or side of the principal building, it is attached to the rear of the principal building. The Code draws a distinction to whether it is attached to the front, side or rear. Therefore, Section 5.198 it does not apply.

Chairman Withrow asked the Board if they have received any new information that requires additional study. Do we have enough information to make a decision? Assistant City Attorney Graham pointed out that the Board has received several large information packets that need to be reviewed.

Member Clem stated that the question of setbacks and whether boathouses were permitted in R-1 is a new issue.

City Planner Spencer reviewed the definition of boathouse and that accessory buildings are allowed in the R-1 zone district. He also advised the Board that he would like to take a closer look at the discrepancy between the surveys. He does not think it affects the setbacks, but it could affect lot coverage.

Chairman Withrow asked for clarification on what the Board needs to review. Is it the items listed in written form and received before the meeting or does the Board need to look at everything that has been brought to them.

Assistant City Attorney Graham stated that the Board needs to review not only the written documentation but oral statements made as part of the public hearing.

e. Call for public comment.

f. ZBA determination of findings of fact.

g. Motion.

Motion made by Member Sullivan and seconded by Member Anderson to table further deliberation of the issue pending a review the newly submitted information submitted by all parties and a report be provided to the Zoning Board of Appeals members regarding that information, particularity on the compliance of the dimensional requirements of the ordinance.

Member Clem asked for clarification of the location of the lowest elevation. He questioned if filling in could change the lot's grade.

Chairman Withrow asked the Board to consider the motion and that Board members outline any other concerns they might have so they can be addressed.

Member Anderson asked if the environment issue is a point that needs to be reviewed by the ZBA. Assistant City Attorney Graham stated that the Johnson's are asking the Board determine what is "normal" as outlined in Section 5.180 and whether the exception of the last sentence applies.

Member Sullivan agreed that the Board needs to determine if the excavation is abnormal and if the Planning Commission needs review it.

The Board voted on the motion. The motion being considered is: Motion made by Member Sullivan and seconded by Member Anderson to table further deliberation of the issue pending a review the newly submitted information submitted by all parties and a report be provided to the Zoning Board of Appeals members regarding that information, particularity on the compliance of the dimensional requirements of the ordinance.

Yeas: Members Cross, Withrow, Anderson, Sullivan and Clem
Nays: None.

Motion adopted.

The Board listed their concerns.

- Determination of lowest finished grade of the boathouse
- Determination of lowest finished grade of house
- Lot coverage
- Location of high water mark
- Is excavation normal? Should it be remanded to Planning Commission?
- Dimensions
- Boathouse height - measured from ground or ordinary high water mark?
- Can the grade be adjusted?
- Site contamination
- Boathouse in R-1 district

City Planner Spencer will prepare a new staff report to address the Board's concerns. He will also work with the ZBA and the applicants to set up another meeting.

Motion made by Member Sullivan and seconded by Member Anderson to close the public hearing. The Board would retain the right to ask questions.

Yeas: Members Clem, Cross, Sullivan, Withrow and Anderson
Nays: None.

Motion adopted.

2. Election of Officers

Member Sullivan asked that the election of officers be tabled to the next meeting. The Board agreed.

I) REQUESTS FOR NEXT MEETINGS AGENDA

- Election of officers
- ZBA By-laws

J) ADJOURNMENT

Chairman Withrow adjourned the meeting at 9:34 p.m.