

**Board of Adjustment
Canterbury, NH
Minutes of Hearing
8 January 2014**

Case No. 2013-5 (A) Special Exception

Present were: Chairman Joe Halla, Web Stout, Jim Wieck Board members. Christopher Evans, Lisa Carlson Alternates.

Chairman Halla provided a description of the special exception and gave a detailed explanation as to the conduct of the hearing. Tim Bernier spoke on behalf of the Schmids for Mourning Dove Holdings, LLC by reviewing the map and locations of the various components of the campground. He showed the 47 acre parcel that is the subject of this special exception application in the Resource Reserve Natural (RRN) zone. The zoning is primarily a use issue. It will be designed and engineered to the enth degree when they get to the Planning Board. It is an appropriate use in the zone that requires a special exception. They are proposing and believe they can get up to a 3 acre pond that they hope to be able to use for paddle boats and other recreational activities on the property. They plan to have a bath house and restrooms near it as well as a boat house to house the paddleboats for that pond. They are also proposing some courts, tennis courts. There are some new court games that are out. They are also planning a pavilion which is just a roof with picnic tables under it for picnickers, a pool area, a playground, and more restroom facilities. The access to the pond would be through a pedestrian access way here to a small dock to their frontage on Rocky Pond. Mr. Bernier advised the narrative has been rewritten to be very specific adding more details to be fair to everyone. He provided copies to the Board and extra for those attending. He wanted a detailed, written explanation about the use of Rocky Pond and exactly what they are proposing. Mr. Bernier read the narrative in its entirety (see file). Note: application of lot correction from 8-3. There is no 8-3. It was Lot 3 in the original subdivision. They corrected that at the last meeting. Change of hours from 11 PM to 7 AM correction made (had previously stated 11PM to 8 AM). At the end of Mr. Bernier's narrative reading he advised no motorized boats of any kind will be allowed by guest of the campground, only the 30 canoes or kayaks provided by the campground. They researched with Fish and Game and Marine Patrol about boats, they are not really concerned about canoes and kayaks. They picked the number of 30 boats, which certainly seemed fair to the Schmids, but they are not stuck on that number. They thought it would be fair. They did not find any scientific evidence that 40 boats would be environmentally harmful or 20 wouldn't be when you are talking about canoes and kayaks. Chairman Halla: When you refer to boats is that canoes and kayaks only? Yes, only canoes and kayaks, no motorized boats of any kind whatsoever. People will have to cross Harmony Lane from the boathouse to the dock. This will be the only use and a fence will be installed limiting access and use. At the last meeting there was discussion about people parking cars on Harmony Lane and utilizing the pond. Obviously the guests are not permitted to use Harmony Lane. If anyone goes down there, drives out Harmony Lane they've violated their agreement and will be asked the leave the campground. If somebody else from town comes along and does that, they recognize this is a large parcel of land, it's flat and he can see people parking there. So, they thought the fence would help prevent people from thinking they could park there because there isn't a camp there and people watching it. They will also be erecting signage at the site of these rules as well as the written agreements guest will have to sign when they register at the campground. So, they are proposing some recreational use and some access to Rocky Pond. The Schmids did not want to negatively affect the neighborhood and tried to come up with a solution that would provide some recreational use of the state 75 acre pond, it's state owned, but not excessively.

By doing this last month there was some concerns that this might not be controllable or couldn't happen. He gave this some thought and being the devil's advocate, this is required by special exception and if you grant the special exception with conditions then those conditions have to be met. This is a commercial recreational facility, the people that will use this will either pay rent at a campsite or they'll buy a day pass, they will be paying. It's a commercial activity. It's covered by the special exception and by the Planning Board site plan review process. Any conditions that are made by this Board or any Board have to be enforced. If they are not, there are avenues to make the necessary corrections by the town to enforce those requirements. He thinks they really can be enforced. The Schmids certainly intend to enforce these rules and requirements, but the Town also has the ability to enforce the limited access by the guests at the campground to Rocky Pond. They have looked at the facility as a whole, at Rocky Pond as a whole. It has no public boat launches as was testified to in the previous hearing. The only public access is state owned property, you can walk in, but there is no parking lot. It's not anywhere near the campground, they cannot prevent people from using state owned property, the residences have their own access. He just does not see it happening. It is not considered a good fishery by NH Fish and Game. The Schmids have talked about downplaying it from that standpoint. For fishermen there is Clough Pond in Loudon just down the road that is stocked, has a public boat launch, a parking lot and for fishing is a much better alternative. They are definitely going to promote those other alternatives for those kinds of uses. Again, they are 19 miles from Weirs Beach. If you really want to go motor boating, it's not like they are that far from Lake Winnepesaukee. There is no motor boat access to Rocky Pond. It is privately controlled, they don't see that avenue. They will do everything in their power to make certain it doesn't with the campground residents. As their guests they are subject to the agreement and those conditions they made prior to the agreement.

The uses are relatively low of impact to the site as a whole. Again, they are required to meet the five criteria for a special exception for allowable use. Because this is in the special zoning district, the Resource Reserve Natural zone has a supplemental set of conditions they are required to meet, one through three so they need to demonstrate that they meet those as well. He went through how they believe they meet them in his narrative:

1. That granting the permit would be in the public interest. Granting the special exception will provide passive recreation for the abutting uses while preserving sensitive areas such as steep slopes and buffers to the Soucook River. Not including hiking trails the proposal will impact less than 8 acres of the 47 of the tract, roughly 83% of the tract will remain natural with the exception of the hiking trails. The proposed use is consistent with the Master Plan which speaks continuously about promoting recreational uses in town. The proposed use is low in intensity compared to other permitted uses by the special exception. This use would only affect the pond which is 3 acres in itself. Other permitted uses such as church, education facilities, nursing homes, commercial greenhouses, including sales and golf courses would have a much larger impact on the environment in the area than what is proposed. The facility would provide outdoor physical family friendly, non-motorized recreational activity.
2. The proposed use would not adversely affect the property values in the district. Access to the recreational facility will be through the site. It will not be utilizing existing private roads. The closest to any proposed facility will to any of the existing structures 300 feet which is the proposed dock which is 300 feet to the closest camp. The closest resident to a non-hiking recreational potential noise making facility which he envisions as the playground...Chairman Halla called for those in attendance to please abate the background noise....the playground which has the potential for being noisy, is

likely to be one of the more noisy areas of the site is 830 feet horizontally from the closest residence and 133 feet vertically. Most of the site is going to remain natural trees and forested. These uses are going to take place in the summertime when it's densely forested. That distance is to a home on Route 106 in Loudon on the other side of the Soucook River. The closest resident on Rocky Pond to the playground is 1,050 feet horizontally, 118 feet vertically from the playground to the camp residence on Rocky Pond. Access by guests to Rocky Pond, a state owned 75 acre pond will be strictly controlled and limited as follows and again he broke down essentially the same points he made in that no boat access through the campground property, no motorized boats of any type, kayak and canoe rental only, a maximum of 30 total boats will be available at any one time, no swimming on campground lake frontage. They are going to have their own pond, will have at least 3 swimming pools. There is going to be a pool they are proposing on this site, plus 2 others in the campground, so he does not think there will be any lacking of places for people to swim. Limited hours of 11 PM to 8 AM and it's seasonal for the boat rental, as they get later in the fall it's probably not going to be a popular activity. They are going to make sure the boats can't be rented before 8 AM and they have to be returned by 8 PM. The dock will be utilized by boat renters only which means the only people allowed on the dock will be people who rented a boat and are launching a boat. Pedestrian access to Rocky Pond frontage, again you cannot drive down there, they don't want people driving and parking down there. There will be strict prohibition about the use of Harmony Lane by guests. The recreational facilities proposed were considered in the appraisal report prepared by Mary Ann Schmid showing no negative impact on the property values near these types of facilities; the report included in these studies of summer facilities with public water access. This is the same report, the only difference being they included Mary Ann Schmid's resume in the back which was omitted the first time the report was submitted. Christopher Evans asked: In total other than that omission? Yes.

The 5th requirement that they need to be is that the proposed uses will be well buffered from any existing residence. The recreational facility is subject to the same quiet hours as the abutting campground. The closest residence to (which is 11 PM to 8 AM) again is just repeating is 830 and 1,050 feet for noise issues emanating from the recreational facility.

6. That granting of the permit would be in the spirit of this ordinance. The Resource Reserve Natural zone and those uses permitted by right and special exception was intended to allow agricultural community services residential low impact commercial uses and recreation. The proposal would preserve 39 of the 47 acre parcel and provide only family oriented recreational opportunities which are consistent with the ordinance. The Master Plan promotes development of recreational uses and specifically includes hiking, biking, riding, kayaking, canoeing and swimming, all activities proposed on the property. The Master Plan also promotes conservation and rural land uses. The proposal will develop only 13% of the property, exclusive of hiking trails, leaving the 80% in its natural state. And that includes the pond, which they will hopefully be able to design, implement and make it fit in as an environmental asset to the area as well.

7. That the proposed use would not constitute a hazard because of traffic, hazardous materials, or other conditions. The proposed uses will be assessed by primarily by pedestrians of the abutting campground and there will be no hazardous materials. We do show a small parking down near the pond. There will be a gate proposed making it only accessible thru a certain area. Some people aren't able to walk. Golf carts are real popular in campgrounds, so they are anticipating that some people may want to access the manmade pond by golf carts. The only parking lot that they are proposing is beside the manmade pond. All other access is by pedestrian.

As he mentioned before the Resource Reserve Natural zone requires some supplemental conditions.

1. Landscaping and development be compatible with existing development. Again, they are preserving 39 of the 47 acres in its natural state. The majority of the proposal is well buffered from abutting development for the distances to abutting uses. The uses are family oriented recreational activities that would be consistent with the abutting residential development of families and kids.
2. Proposed uses be planned and oriented to respect natural features, solar access, scenic vistas and natural drainage areas. They chose the locations because of those very things. They are quite high, the elevation change from Route 106 to the playground is 113 feet, he believes he stated. It's up on a ridge, on a very steep slope with contours create a great vista from the playground on the plateau. In addition to preserving the vast majority of the property, they gave that some consideration.
3. Access ways and provisions for motor vehicles be planned to minimize their impact. They included very little parking down here for that very reason. It's not really how they want people to get there, but they also recognize that some people don't get around as well as others and they needed to provide some access. They will need to meet ADA requirements, but only for people with disabilities. They want to encourage pedestrian access. The primary access through the district will utilize the existing gravel road that will double as an emergency egress for Harmony Lane residents. This is what they talked about before and this is the piece of property that contains the old Harmony Lane Road which is a gravel road that runs from Harmony Lane down through. They went to the Planning Board to discuss the conceptual manner with that. One of their comments was in the previous approval, that road was an emergency access that they wanted to maintain an emergency access that is on this property and they are proposing to do this. The outlet for Rocky Pond where it becomes the Soucook River is located in this location. If they had a major flood it's the likely spot at which Harmony Lane might get washed out stranding everybody beyond that point. Their access is actually beyond the bridge that crosses the Soucook River, so this access road would avoid all of the Soucook River. That is an existing road that is there now that's going to be preserved. They did utilize that to minimize impacts to the property for a couple of recreational facilities.

Chairman Halla asked if the Board had any questions. Christopher: Will golf carts be available for rent? Jayne Cohen: Yes, in a limited amount. Web: The canoe and kayaks 30? Yes. What if somebody brings theirs? They cannot use the facility's dock or frontage. They will be specific that the dock and frontage will only be allowed use by kayaks and canoes owned by the campground. Jim: No swimming off the dock? No swimming on the frontage of the campground at all. There may be friends of people that live on Rocky Pond that stay in the campground. If they go swimming there, they cannot do anything about that. The dock is solely for the purposes of launching a kayak or canoe.

Chairman Halla asked if anyone wished to speak in favor. There being no one, he asked if anyone wished to speak in opposition.

Thanking the Board for calling on him, Jed Callen from BCM Environmental and Land Law. I represent 30 abutters and their neighbors and have provided that in a list to the Board. I want to get immediately to this district, but I'd like to put the Board on notice as I've said before that there will be a request for rehearing on the campground approval because despite all the discussion that you allowed in this last session about whether that should have been shut off for testimony or not, you failed to mention the fact that there had been a statutory failure of public notice in that Loudon, the Regional Planning Commission and Gilmanton had not received notice as is absolutely required by statute so that that hearing was invalid. Chairman Halla: That is your interpretation. Attorney Callan: That is my interpretation that is what I'm stating.

As a result, everything that was said in that hearing is not of record, this is my opinion, I'm allowed to speak my opinion. Chairman Halla: You're allowed to speak to what we are hearing now. Attorney Callen: So we had a 15 minute discussion with everybody, you included on this other point, but I may not....Chairman Halla: What you're saying is you're going to appeal the decision, etc., etc. What I'm asking for at this point is opposition to the Resource Reserve Natural outdoor recreation use. If you could, focus on that. Attorney Callen: Then let me ask a single question on that. Towns are allowed to set the deadlines for requests for rehearing individually, appeal from denial of rehearing has to be thirty days by statute. What is your town's... Chairman Halla: Thirty days. Attorney Callen: Thirty days from....hearing, then thirty days from denial. Chairman Halla concurred. Attorney Callen: Thank you very much.

Again, with respect to this special exception I'll ask the Chair to disqualify himself for prejudgment based on all we've heard a month ago and all night tonight. Chairman Halla queried the Board with a unanimous denial by the Board to do so. Attorney Callen: Alright, special exception. A couple of legal points with regard to this special exception. By statute, they may only be granted in harmony with the general purpose and intent of the zoning ordinance and consistent with the rules in the zoning ordinance. That's 674:33 IV. The relevant sections of the Canterbury zoning ordinance are 5.3 and 8.2 A & B. It is also a law of this state that the applicant has the burden of producing evidence on each and every criteria which you call conditions in your ordinance and the Board must vote and affirmatively find on each of the seven conditions and may not approve a zoning special exception otherwise. If any of the criteria are not met, the special exception has to be denied and the Board cannot vary or waive any of the requirements. So, let's go through the specific criteria. The first one is this recreational facility in the RRN district in the public interest. Case law says that the public interest is not what the Board thinks what the public interest is or that the public thinks the public interest is. The public interest is, in fact what the zoning ordinance says it is. The zoning ordinance is the codification of the voters of Canterbury's statement of what their interest is in each of these particular districts. It can only be amended, as you know, by vote and therefore when it states what a goal is that is by definition the public interest. The public interest and the definition of what is in the public interest in the RRN district is the following: 5.3 A 7, the purpose section of your zoning ordinance for natural resources. And the public interest is "To acknowledge those areas with high resource natural value as community assets which must be conserved by special consideration of the impact of uses in these areas". So the public interest is not that it is good for the tax base, it is not that we all like recreation. It's not even what the Master Plan says is a goal because Master Plans are not enforceable documents either, they are aspirational. They're meant to guide the Zoning Board and the public as to how to next amend the zoning ordinance to try to move in a direction that we all agree in a Master Plan. But by and of itself it is not enforceable. So we are working with a statement that what is appropriate in this district is to preserve and conserve by special consideration this community asset in the high natural resources value. Let's try to figure out what that means with reference to language specific to your zoning ordinance. First of all, the zoning ordinance tells us what other kinds of uses are permitted as of right in this RRN district. Only two uses are permitted as of right. They are illustrative and of what the public interest and kinds of uses are anticipated in this district. They are agriculture and forestry. The only other use permitted as of right, even a single family residential use, single home on a lot in this district requires a special exception. That's not even automatically permitted. And not only does it require a special exception, but it requires a ten acre minimum lot size. So that is Canterbury's enacted explanation of the kind of density, the kind of intensity that it intends for its special community RRN zone. It's also useful not only to look at what is permitted in that zone to understand again what Canterbury has said the public interest is in this RRN zone is to look at what is prohibited in this zone. That gives you the two poles of what your ordinance tells you is

to guide you in deciding on special exceptions which are those uses some of which at some level may be allowed and some of which at some level may not be allowed. Christopher: Before we go into that aspect of it can we go back up to the part that is acceptable. You don't suggest that there is no acceptable use in the RRN zone for recreation, do you? Attorney Callen: No, some things are permitted by special exception. Christopher: I understand that, I'm talking about you said there was nothing other than.... Attorney Callen: Let's look at the table, let's look at the table.... Christopher: On page 30 of the Table of Uses is says "Horses for personal use", that would be a recreational use. So, in fact the RRN does allow recreational use... Attorney Callen: I wouldn't say it allows all recreational uses, it allows horses for personal use under agriculture, sort of farm use. Christopher: We don't pull plows anymore, but I'll accept your point. Attorney Callen: And I accept yours. Let's add if you go down the whole column, for the NNR column, horses for personal use, agriculture, accessory buildings or accessory are allowed. It is what it is and my point was well taken, let's add horses for personal use, there you go, if you want to personally ride. Christopher: My point being a recreational use. Attorney Callen: A recreational use. It is quite distinct for instance from a go cart range to a single horseback rider. The things that are not permitted which gives you the other pole is what your electorate has said, you don't even have the authority to permit by special exception, they are prohibited are: all retail establishments, even multi-family residences, even a single triplex, commercial campgrounds, motels, laundries, restaurants, indoor recreational facilities, put walls on the pavilion, can't allow it even by special exception, offices, kennels, trailer parks, septic lagoons as opposed to an exfiltration. So that tells you that the area in which you have discretion to grant a special exception is somewhere between those two things, things that are permitted and things that are prohibited. So, I think your task is to judge whether the proposed use is more like any of those things or where it is in that continuum using those as your guideposts. And my clients suggest to you that a soccer field, a ball field, a park with a hiking trail might well be recreational uses that could be permitted by special exception because they are of the nature of agriculture or forestry or these other minimally intense and conserving of the natural values of this special area which is a flood plain and a recharge area and a filter buffer for run-off to the Soucook and Rocky Pond. So, I am not suggesting that no recreation could be allowed under special exception. That's why it's listed for a special exception. And were we sitting here and someone was proposing a hiking trail or a little pavilion to start a bird watching walk with some educational signage as an example I would think it appropriate to approve it. But let's not kid ourselves that what is being proposed is a veritable mosaic, like a Disneyworld of recreational facilities. We have heard just now that in addition to what we heard before and it's interesting that we getting a new narrative today with minutes to respond, that on the pond there's now going to be paddle boats and a boathouse there is new to me. Also listed are court games, playgrounds with plural at least in the previous narrative, I didn't have time to see if he used an "s" on it in this one or not. Playground(s), lawn sports which necessitates maintaining a lawn, activity pavilions, again it was plural, swimming pools, at least in the notice that we access to before we arrived tonight. The dock, kayaks, canoes, boathouse, access driveway, restrooms, plural, exfiltration beds for sewerage treatment facility to handle up to 1200 people.....this is not a park for a soccer field. This is an intense, recreational facility for the use of 1200 or so people. And I suggest that it is far closer to that continuum that is prohibited by this kind of use. Even a single recreational facility that had doors on it, indoor recreational facility to play ping pong in would absolutely be permitted. So, multiple pavilions that happen to not have sides that actually make them noisier to the neighbors may be technically approvable, one might be approvable I might suggest. This entire proposal is not approvable because it is not consistent with the purpose of the RRN district which defines the public interest in the RRN district. Therefore, it simply can't meet that criteria. Second criteria, will not adversely affect property values. If you're tracking my handout, since pages 2,3 and 4 address that issue

with respect to the campground. And it was only on page 7 that I addressed this issue with respect to RRN district, I'll ask you to incorporate by reference my discussion on pages 3 and 4 because it's generalized and I'll make it applicable to the RRN district, but that's the more full explanation of my argument. I incorporate it herein by reference. It's listed under commercial campground in the rural district. You'll see the argument is identical. I'll make it identical and I don't want to be limited to the argument because I didn't repeat every word of it. So, let me speak to it very quickly. First of all what was handed in before last month, my opinion, not part of the record because the last hearing was an illegal and unnoticed hearing, but resubmitted tonight again with no chance for us to look at it so either way, so we're working at a disadvantage nonetheless you may not rely on it. And you may not rely on it because it had no credible, dependable, believable relevant data and I'll tell you briefly why. We have with us a qualified appraiser, Louis Manias of Capital Appraisal Associates, Inc. who will speak and give a more exacting critique and also tell you what should be done, what you should want to hear which is real comparable value rigorous appraisal. To do so will take about 30 days. Therefore, we ask for this hearing to be continued to allow that report to be submitted. But, let me tell you why what you have in front of you, you should not rely on. It's primarily faulty for two major reasons. We all have enough sophistication about real estate to understand these points. It doesn't take an expert to know them. First off, it is simply not sufficient to look at it as the Schimd and Cohen report did at some sales in some earlier years and some sales later and say the average price went up which is exactly what her report did, generally speaking, I could be more exacting. And say therefore, there was no depression in property values because first of all, no attempt was made to make sure the comparison were of so called comps, of houses of otherwise equivalent value except for the campground being built in between or the year of the sale. It is ludicrous to say these 5 sales averaged \$100,000 and these 5 sales two years later averaged \$200,000, therefore there was no depression. Maybe the houses sold later have four bedrooms, marble and granite counters, frost free refrigerators, drive in garages and the other ones were two bedroom capes. We don't know. There was absolutely no data given to you that they were comparable. So, unless you are comparing houses that are comps, that's the term, you all know what I mean, of otherwise equivalent value in terms of size, age, location and number of other real estate factors you then adjust for that and then you can look at comparable values. That wasn't done, so that was useless. Secondly, looking at sales some years earlier versus some years later and not adjusting for the real estate market, general climb or decline, also is meaningless. I mean a house in 1920 and a house in 2014 sell at different values. Does that tell you the house has appreciated, not really. Without adjusting for the different years, the comparison was also meaningless. And if property values went up in later years, did they go up faster or slower than the values of houses not near the campground, that wasn't looked at.

Chairman Halla: We're talking about the RRN, not the campground. Attorney Callen: We're talking about the Resource, it's actually the Natural Resource district is the way it's stated in your ordinance. Chairman Halla: When you're referring to the real estate thing that referred to campgrounds, specifically. Attorney Callen: Well, of course and the applicant spoke about the project and presented the appraisal in this section for this special exception and as am I and of course it's necessary to do so. I'm not talking about the campsites, I'm talking about the pavilions, the whatever. But understand that if you were assessing or evaluating for a special exception a Walmart in the NR district you would not tell me that I had to tell you only about its impact empty of no cars and no customers you would say that's the facility. But the use is all the traffic that is attracted to the NR district Walmart even if they came from Boston. And I'm telling you that we have to talk about this recreational facility in the NR district in the context of it being, serving 1200 people that happen to be next

door. I'm not asking you evaluate whether to approve that campground. I'm asking you to look at the recreational facility but to scrub the people out and the traffic out. Christopher: That's a fair point. He submitted that the comparison during this..... Attorney Callen interrupted: This section. It's also logical for me to be talking, I'm not talking about campfires over in the other district, I'm talking about the 1200 people in the pavilion, on the courts, in the pond, on the dock, etc. If they happen to come from the campground or if they didn't, if you bussed them from Boston, I'd still be telling you it's too damn many people in the NR district on Rocky Pond in the Soucook River.

The other reasons and ways in which you cannot rely on that appraisal and he used the word appraisal, but in fact it was put together by a real estate agent. If you read the last line of it, I don't have the report in front of me, there was an appraiser involved, but the data was collected by not an appraiser and I don't think it's called an appraisal, it doesn't call itself an appraisal. But here are the other flaws really quickly: They talked about the New Hampton example, Jellystone. On its face it says the campground was built in the mid 70's, but the property values presented to you as proof of something or other were from the 1990's and the 2000's. There certainly cannot be any conclusion drawn about the impact of permitting or building a campground in 1970, if you just compare 1990 and 2000 sales. What you need is before versus after. What are the property values before there is a campground. Would the construction of a campground adversely affect the property value by looking at sales thereafter comparable sales or comparable houses compared to elsewhere in town, which Mr. Manias is prepared to do. It takes a lot of research, there's not that many campgrounds, but there are enough so that such a research appraisal is possible. The New Hampton example does not even come close to doing that. There's no pre-Jellystone sales mentioned. Cold Spring Camp Resort in Weare same thing. It indicates on its face it was built in the 70's, the listings were for 2011-2013. How does that reflect on what impact, I mean those are just sales next to or near a 20 year old or 40 year old campground. Christopher: May I ask you a question because I want to be clear why you are going through these points. Are you attempting to substantiate your request for a continuance? Attorney Callen: Partially that and partially under Continental Paving when an applicant or abutters or those opposed present expert testimony on a topic which is of expert, non-normal expertise and it's unrefuted by counter expert testimony, the court has said that the Board must give credence and weight to expert testimony. It ups the ante and requires people to hire experts. I'm suggesting we're happy to do that and he's underway doing it, but second you don't have an expert opinion. You have something that is called that and I don't like to be insulting, but I think that it's essential that I point out to you the inherent flaws in that. Christopher: Wouldn't your expert opinion do that automatically? Once you've provided expert opinion, wouldn't that accomplish the task? Attorney Callen: If we get there, but I'm not altogether confident there won't be a vote tonight. I don't know what you are going to do so I want to make the record that for you to fairly assess the issue of whether permitting for granting a special exception for a recreational facility in the RN district will adversely affect my clients' property values, I have to make that case that you don't have information which you cannot get and we're offering you an independent appraisal by somebody who doesn't own a campground. Chairman Halla: Do you have that tonight? Attorney Callen: No, we have not had time to pull that together. I am asking for time to allow him to do it and he can speak to what he needs and how much. Let me make two other quick points and I will move on. You understand I speak for 30 people and if you hear me out you might not have to hear from at least half of them or more than that. I'm hoping they will defer to that. Redundancy doesn't persuade. So Cold Springs again, no credible data because it's 2011-2013 for a campground that was built in the 1970's. Alton was 12 sales in 2013, the year the campground opened. Nothing before and too few before it was really built up and no comps, no attempt to match

any of those with properties of the same intrinsic value, so there's nothing to compare. In addition, they offered data on sales on Rocky Pond, I don't even understand why. How telling you what the values are now are which they conclude are depressed and therefore this campground won't have an impact on them is pure speculation, that's not appraisal, that's not even real estate data. It's an unsupported opinion that proposal of approved would not have an impact, not based on fact

Next criteria: appropriate location. Same arguments as I made for the public interest. This location has a purpose. The RN district has a purpose. It's stated in your zoning ordinance. This intensive, and you called it not intensive, but I don't think it's very debatable, that we're not talking about as I said a park or a dog park or a soccer field. We're talking about recreational facilities for 1200 people. This is not an appropriate location. That should not be in the flood plain that should not be in the area where you want water filtered and cleaned by moving through natural vegetation down to the river into the pond. You don't want exfiltration fields for septic systems for 1200 people that close to the river and the pond. A clogged pump, a clogged pipe totally inappropriate place to put exfiltration beds and parking lots and restrooms and pavilions, etc. I won't repeat that.

No adversely affect the health and safety or detrimental: Same arguments. This is a highly intense use as it has been proposed. It will be detrimental to the current uses of the neighboring properties which are single-family residential. Most of the houses on Rocky Pond are owned by retirees or people who have been there several generations, many of my clients are in those categories. They have value because of the pastoral, quiet rural surroundings. They think and thought they were protected from more intensive use because the rest of the back of the shoreline in that zone is the RN zone. It's inconceivable to them that it would be built up as a recreational Disneyland. My clients don't oppose these uses because there are going to be campers using them or transients or whatever. In fact, if this applicant had proposed one or two single-family residences on that frontage, they'd be welcome like everybody else. But that's not what's being proposed and it's a far cry from that. And several of the neighbors will speak to those specifics.

It's gotta not be a nuisance. Well, I think if you have 299 campsites feeding 1200 people in this district with their campers, radios, Frisbees, balls, dogs recreating in a way that's totally admirable. I'm not opposed to people spending their summer camping in New Hampshire, taking their kids out and throwing a football back and forth, throwing a ball for their dog. And if there were 20 of them, great. But 1200 potentially on the bank of this pond is going to be a nuisance. People, noise, music, lights, dogs, dog feces, trash, all the other things that are inevitable consequences of that many people are a nuisance.

Is it in the spirit of the ordinance? That's a very similar criteria to in the public interest. The spirit of the ordinance speaks to what is the ordinance intent and what does it mean. And I'll say it means two things: one I've already spoken to and won't repeat. You'll hardly believe me, but I'll try, try to wrap it up here and I'm close, that is that the specific purpose is that the other is the goal of it and any other zoning ordinance in New Hampshire is to segregate uses, to have similar uses zoned into their particular zone and have non-conformities slowly die out by abandonment, you understand zoning. So, to look at this zoning ordinance and say that we have set up a district surrounding Rocky Pond and along the Soucook River to particularly acknowledge the high resource value as a community asset and to conserve it by special consideration of

the impact, that's the spirit of the ordinance. And this proposal is simply too intense. It does not preserve. It exploits. It uses in a way that is permissible and would be totally permissible in a residential or industrial or commercial...

Jim Wieck: Not to make it worse and I'm not saying I'm supporting one side or another, but the word is conserve, not preserve.

Attorney Callen: Conserve. Acknowledged. I stand corrected. It's conserved, it must be conserved, which must be conserved by special consideration, so if you are going to ere in the direction of allowing or not allowing looking at the kinds of uses, remember that the purpose is that it must be conserved because it is of special community importance for its natural resources, not because it may add jobs. I remember hearing something that it was good for the economy. That is not the spirit of the ordinance or the public purpose for this district. Whether people want it or not, that's not what you are charged with... Christopher: As opposed to like a commercial district. Attorney Callen concurred, a commercial district and other districts where the goals are otherwise for areas suitable for development to permit commercial and retail growth and development. You have districts for this. In summary, there the proposal is not in the spirit of Section 5.3.A.7, the purpose and thus it is not in the spirit of the ordinance because that is the part of the ordinance that guides your decision on this special exception. And finally, not finally because there's 3 additional conditions:

It's not a hazard. I suggest that this isn't my strongest argument, but I'll put it on the table for what it's worth. If there is a potential hazard, the plan to have an emergency exit off Harmony Lane for Class A RV's is probably going to present a traffic hazard and a traffic study should probably requested. Remember, these aren't single cars pulling out of there. I haven't been there and I hope you have. If you haven't, I suggest a site visit. But I understand from the comments from some of my clients that it's a rather steep entrance onto Route 106, that it's a tight turn and for RV's to pull out at Harmony Lane onto Route 106 pulling Class A's with sometimes with towable who knows what behind probably is a hazard or could well present a hazard and ought to be studied. Christopher: Can I stop you for a minute? Where are the RV's coming off of Harmony Lane? How does that... Attorney Callen: Did I misspeak? It is only from an emergency standpoint. The other entrance is not in this district. Nonetheless, it's part of the plan that there be an egress and it may provide/present a traffic hazard.

Attorney Callen: Alright, the 3 additional criteria applicable to the NR district in the zoning ordinance, section 8.2.B. The first one is compatible with existing development. Well there I mean I hardly need to make an argument or repeat. It's very explicit. Is what is being proposed compatible with existing development in the area. This is not compatible. Nothing about this extremely intense proposal is compatible with a single-family home on Harmony Lane, around Rocky Pond and this area. It is vastly different, it's compatible with water parks, amusement parks, intense recreational uses of which there is plenty of room at ski areas. We have all kinds of intense recreational uses in the State of New Hampshire. Sited correctly they're a wonderful asset for people. But they are not for this proposal to do exactly that with all those uses, 30 canoes and kayaks and a rule that nobody will swim. I suggest to you though you can have the right to assume that people will follow every rule. You also have to use your common sense to know that it's a hot summer day, there are 1200 campers there and there's the pond. There's a walking path to it and a dock. Are they going to prevent any kid from swimming in Rocky Pond? Is there any way they can do that? Are they going to stand there with guns and shoot campers that attempt to bring their own kayak that was in their camper and carry it down or a floating inner tube? You invite when

you place a recreational facility and a dock serving 1200 people in the summer on a pond and say one of the reasons I want you to come is that this campground has frontage on Rocky Pond. It's part of our facility, not in our district, the campsites aren't in the district, but the campground includes Rocky Pond frontage and there is going to be no swimming and no extra rubber tubes and extra kayaks or even if there are 30, that is compatible. That is vastly out of character and incompatible with what currently exists in the area and that's the criteria, existing development. Not even what would otherwise be permitted there and may be there in fifty years when everything around Rocky Pond is a five family condo and everything is more intense. But that's not the criteria. I don't think it respects the natural features which are a natural floodplain, a surface water buffer that is supposed to filter runoff before it makes it into the waterways. We all know that's what vegetative buffers and NR districts are for on waterways to filter out things that run off in storms. You pave it, you put parking lots, you put exfiltration beds, you put parking lots, you put restrooms, that to me, that does not respect those natural features and functions which are held to be a community asset in your zoning ordinance.

And finally, and it is final, access ways for motor vehicles will be planned to minimize their impact. Well, I did hear that that dirt road is an existing dirt road so it may be less of a point than I thought before, but nonetheless, it's still their responsibility in that if they're going to develop this facility perhaps it should be moved. But the way it looks now according to that map or the one that we saw it is darn close to the Soucook River. And that road seems to go right along the river. That is not planned to minimize its impact. As we all know, roads have runoff if salted, especially bad, but even if not cars drip a little bit of antifreeze, a little bit of brake fluid, a little bit of gasoline, a little bit of oil, roads have minor non-point source pollution issues and runoff from roads have pollutants, hydrocarbons and therefore they should and all smartly designed sited roads are set a distance from waterways so that the natural vegetation can absorb and absorb those particles before they run into the river. This is right on the river. It is not well sited to minimize the impact.

So, in summary I believe that this proposal does not meet actually any of the criteria and hope you will vote separately on each because they are different and find that it does not meet at least one and I would suggest ten or some small number of that and I thank you for your attention.

If the Chair would allow, I would like our other expert who we paid to come a long way to be called on next if you are going to call on other members of the public. Again he speaks for 30 people. Chairman Halla: And who is this? Attorney Callen: Louis Manias from Capital Appraisal... Chairman Halla: But he hasn't had time to do... Attorney Callen: He has time input on behalf of 30 people who have stayed to speak... Christopher: But not in lieu of your request for a continuance? Attorney Callen: No, it's lieu, but not in lieu. I have a submission to hand to you as well (see file).

Louis Manias: Good evening Mr. Chairman, my name is Louis Manias. I'm an independent fee appraiser with Capital Appraisal Associates out of Concord. I've been doing this for about 28 years, I'm a former chairman of the NH Real Estate Appraisal Board and I was also on a federal regulatory board that helped draft the uniform standards professional practice. I've been at this for quite a long time. I was contacted last week by Mr. Callen to take a look at a market analysis that Mr. Bernier represented as he gave it to you this evening as an appraisal with the qualifications in the back of a Mary Ann Schmid who is a certified residential appraiser. If they are representing this as an appraisal and this is the entire report I will start by saying this will be turned into the Appraisal Board because it violates every single standard of appraisal that

has been written. It does not list a client, it does not list an effective date, it does not list a highest and best use, and it does not list a purpose. However, in light of that I did read that in fine print on the back that the data and research was completed by Ms. Schmid and that the report was prepared by Ms. Cohen who is a real estate broker, a campground consultant and also a campground owner. So, in light of that, I would like to give you copies of a document I have prepared after I've read the report that was prepared by Ms. Cohen and Ms. Schmid. Initially this is called a market analysis. It is as far from a broker's market analysis as it could be. Chairman Halla: Let me ask you before we go any further. You have not done an analysis here. Mr. Manias: I have not yet completed one. Chairman Halla: Are you going to? Mr. Manias: I have been asked to, yes. And my purpose is not to prove that a diminution of value exists, my purpose is to examine the market and see whether the market supports or does not support the premise of diminution of value. Chairman Halla asked the Board if it wants to issue a continuance until he gets this information. This is actually related directly to what Mr. Bernier said, but he understands the request. He would like to do his presentation for the Board so that we understand the reason..... Chairman Halla: Would you rather it now or would it have better impact when you return? Mr. Manias: This will have some significant impact right now because it may impact some of the decisions that you've made already as you go forward, it may. Chairman Halla: I understand you point about what they presented, I'm saying if we continue this and you come back with your findings, a comparison of the two at that time rather than hearing this one now and hearing your 3 weeks from now or whatever a suitable period of time is for you to accumulate your information. It would seem to me that the impact would be greater to do them both at the same time. If you want to continue with this go right ahead, but... Mr. Manias: I would like to just get this on the record since you've got the record open and I'll try to be as brief as possible because I know there are a lot of people that have a lot more invested in this than me. First, most of the points were already brought up by Mr. Callen so I'll try not to repeat too many of them. In looking at the report that was presented and prepared in support of no diminution in value for this particular special exception. And that's how it was presented if I understand correctly. The first analysis that was completed, Mr. Callen highlighted very clearly that it was Jellystone Park in New Hampton. This happens to be a park that is owned by Ms. Cohen, OK. She did a listing of sales from 1994 to 2007. She bracketed them a little bit and you can see on the chart where she's got some that are sale/resale. But she doesn't describe whether the market changed over that period of time, whether there were improvements made to the sites or whether there was any undue influence on the sales. Then she skips from 2007 to 2011, 12 and 13 for sales in New Hampton within a couple of miles of Jellystone Park. That's great, it's wonderful data, and somebody did that. But what they failed to do was say we've got two sales in 2011, we don't know where they are, they didn't tell us. We don't know what they are, they didn't tell us. So at best, this is faulty information and it's incomplete. And when it lacks that kind of data, that's basic data that you need in order to make an educated and qualified decision that tells me that this is not worth what it was typed on. In addition, where this campground happened to be owned by Ms. Cohen, she's certainly not going to present anything in a light that would show that her campground diminishes the value of any of the properties surrounding her. There's a perception of bias that already exists because she's one of the ones that contributed to the preparation of the report, OK? When we go to Cold Springs Campground Resort in Weare, I appraised the property right next door to it, so I know this facility very well. Our office has appraised it before and we are very familiar with that and the neighborhood. The 3 residential subdivisions that she mentions in this report, High Rock Hills, Rolling Hills and Brook---- are not located near this camp. They are a mile and a half down Route 114 and are private subdivisions where you don't even go by Cold Springs Campground. So there's absolutely not even a visual impact of going by the campground. So, the conclusion that she has here that says the

presence of the campground and RV Center has not affected real estate values is unsupported because she didn't look at anything right nearby. Chairman Halla: Is it possible there wasn't anything right nearby, I don't know. Mr. Manias: I do, I do, because I did a little bit of research. I only got into this last week. On page 2, second paragraph I talk about Cold Springs Resort and what I did, I looked at Barnard Hill Road, the address of the subdivision that is Cold Springs Resort, 38 residential sales from 1997 to 2013. In 16 years, that was just over 2 sales a year. This is in fairly close proximity and you have to drive by the campground to get to them. However, the only 2 sales I've found were 2 bankruptcy sales that were across the street from this campground. So, you can come up with reliable data, but you have to search in the market to find it. The same thing with the property in New Hampton. From 2009 to 2013, there were 4 sales in the Colony Woods subdivision which is across the street from Ms. Cohen's facility which she doesn't talk about, 2 of them were foreclosures. Along Route 132 in a neighborhood adjacent to Colony Woods there were 9 sales in that same time period and 5 of them were foreclosures. So, if someone is going to give you a picture of the real estate market in a particular neighborhood, they better be extremely careful and extremely thorough, otherwise the information they are giving you is misleading. With Turtle Crawl in Alton, it's a brand new park. They had their first season last year. The access to this park is from a commercial zone located on Route 28 right before you hit the Alton Circle; it's actually on the left hand side. You get into this and it is surrounded by 3 large tracts of forested land. Two of them are owned relations or owners of this park. There are no residential neighborhoods adjacent to this or anywhere near it. So the data of some sales that she lists has no relevance to making an educated decision. Additionally, if you are going to really sit down and compare apples to apples, the proposal for the Rocky Pond Campground is going to have frontage on a pond. The campers and residents there will have access to that pond. Jellystone Park is on the Pemigewasset River, it's not on a pond. Cold Springs Resort has a 2 to 3 acre pond in the middle of it with no other waterfront. Turtle Crawl is on the Merrymeeting River where it has frontage. I did a quick search by looking at Youcampnh.com website. There are 25 campgrounds in the Merrimack Lakes Region that have frontage on lakes and ponds. If I'm going to sit there and make a comparison, one of the factors, one of the major factors I'm going to consider is what type of water access do they have. Do they own frontage on a pond? And is there residential neighborhoods on that same pond where individual owners have frontage. Now I can turn around and look at a neighborhood and say, does this neighborhood have an affect or does it not have an effect as a result of the presence of a campground. The document that you received from Cohen and Schmid you cannot rely on. And I don't know, Mr. Bernier's not here represented, Ms. Cohen does this represent the entire report? Ms. Cohen: The entire report that we submitted to.... Mr. Manias: I'm sorry I asked you directly, I should have asked through you (indicating Chairman Halla), in the interest of getting it done, who is responsible for the report, you or Ms. Schmid? Ms. Cohen: Ms. Schmid researched the data behind the report; I put it into an analysis form to present to the Board. Mr. Manias: But you've attached her qualifications to representing that this was done by an appraiser? Ms. Cohen: She's an appraiser; she is a real estate broker and appraiser..... Mr. Manias: Ya, I understand that, I know of her and I know of her qualifications. Ms. Cohen: She's not appraisal, if that's what you're asking. Then it still does not conform to the standards set forth by the Uniform Standards any licensed appraiser in New Hampshire has to follow and by attaching her qualifications, you and Mr. Bernier are representing that this is a document that can be relied on and prepared by a licensed appraiser. This is a very, very, excuse me having been doing investigation work for the appraisal board now, this person would probably be subject to some sanctions from the board because of the document that has been prepared under her authorship. Chairman Halla: So, you've been hired to do an appraisal and you are in the process of doing that. Mr. Manias: My initial, in speaking with Mr. Callen that's correct. I was asked first could I do a study to determine whether that diminution of

value exists or not. Chairman Halla: And you are in the process of doing that. Mr. Manias: I just started and in the meantime I had to do this in preparation for tonight's meeting. Chairman Halla: In anticipation of the Board postponing this to give you time to do that and I think that's what the Board is going to do, I need to know how much time you need. Mr. Manias: I anticipated 30 days and that was the quote I had given Mr. Callen and his representative. Chairman Halla: So, if we postpone it 30 days from today, is that enough? Mr. Manias: I think that would be reasonable, yes. Chairman Halla: You're sure? Mr. Manias: Yes. Chairman Halla: Because we can do it longer.... Mr. Manias: I understand, but in the interest and fairness to everybody involved, I can get it done in 30 days and come up with a report that is comprehensive enough that you would be able to make an educated decision based on some hard data rather than some unsupported opinions.

Chairman Halla: I'm going to stop taking testimony and let the Board decide on this issue. Give me some input here, postpone 30 days; wait for their report from a licensed appraiser that refutes theirs entirely? Jim: I think it's worthwhile having that information.... Interruption by lady saying: Sorry, I'm one of your clients...I think we need to talk. If nobody else gets to say anything tonight these people have traveled very far. Things that we say may seem to be relevant that he may not even need to be hired for another 30 days. Chairman Halla: I think that he's going to go ahead and do this, I'm assuming.... Attorney Callen: Mr. Chair, if I may, if my clients will trust me to make tactical decisions on their behalf and they have the right to have their own opinion, but I think continuing this hearing for 30 days is absolutely necessary and appropriate, I ask that you do that. I know there are people here tonight who hoped to be heard and if you keep the record open of the hearing, in other words, continue the hearing not just for Mr. Manias... Chairman Halla: No, it will be for everybody..... Attorney Callen: Then I hope they will be satisfied that they were keyed up and wanted to speak tonight because they couldn't be guaranteed that they would gotten to anyhow. If 100 people had showed up and we ran out of time, you would have continued it. So, I apologize to those of you who are my clients and those who aren't. Time is what it is, but having this Board continue this hearing and hear from Mr. Manias and also hear from you, I think is in the best interest at least to those who want this decision to be made fair and those who are opponents. Perhaps if some people know they cannot be here in 30 days because they have a trip planned to Antarctica and you are willing to hear a few maybe you would want to ask that, I cannot speak to that. But, I would ask that you continue and would ask my clients to forebear and let the process run that way.

Aaron Roy: Before you determine whether there will be a continuation or not, I would like to ask some ground rules under which we are operating in the future. Chairman Halla: If we do a continuance, this is going to be the end for tonight, what are your ground rule questions, very briefly. Aaron Roy, Canterbury: I'm a little confused. My attorney talked about a campground. You at 9:37 said we're not talking about a campground. However, prior to my attorney speaking, Mr. Bernier must have used the term campground 15 times. He was referring to the previous testimony, comments that he had made. There was no comment from you about his use of the term campground. Now, are we using the term campground or are we not? That's question number one. Number two, Mr. Bernier referred to comments made at a previous meeting. That meeting was 12/4/13. There was no question from anybody on the Board about the relevance and correctness of using the information from those minutes. I assume because there was no criticism that we will be able for the next meeting to use the minutes from the previous meeting as well since Mr. Bernier did and there was no comment. Chairman Halla: I think your perception may be wrong or mine may be wrong. His reference using the word

campground was how people from the campground were going to use the two other special exceptions, that was perfectly fine, he used the same term. The people from the campground are going to be going to the pond where they are going to be using the RRN area. We did not get into a discussion of the merits of the campground. Mr. Roy: And neither did Mr. Bernier, but, Mr. Bernier referred to the campground. Chairman Halla: It's fine to refer to it. What I was saying was what we were not going to open up tonight was people that wanted to speak in opposition to the testimony we had closed the last time. Making a reference to it in regards to the convenience store or in regard to the RRN, I don't think that was a problem for anybody. Mr. Roy: So, I shall assume, we shall assume that the testimony provided at the previous meeting is relevant information. Chairman Halla: As it pertains to the two that we are talking about, yes, it's pertinent information, yes. If it's not pertinent, we're not opening that discussion. We've already voted on the campground, that's done. That's not going to be redecided or rediscussed. What we're doing is we're going to wait 30 days for this gentleman's report to vote and we've already voted on the convenience store, that's a done deal. Mr. Roy: The second question, I'll speed things up, the site plan that was presented at the 12/4 meeting that was presented and is on file that we all use is not the same site plan that was presented tonight. It's been modified/changed. Which site plan are we using? The one that presented last week upon which you used as information to support for approval or the one presented tonight? Chairman Halla: The one that was presented last week was the one that we used to vote on the campground, which is already done. I don't feel that this is a different than the one and if it is, I'm not aware of it, but we weren't voting on the campground to begin with. Mr. Roy: So, the question is which visual aides are we using, the ones that were presented last week at the last meeting or the ones that were presented tonight because they are different. Chairman Halla: I would say the ones that we saw at the last meeting were used to vote on the campground. The ones presented tonight were used tonight to vote on the convenience store and we have not voted on the RRN area. Mr. Roy: Therefore, the ones that were on file that we would have access to to prepare our defense were different than the ones that were actually used tonight. Chairman Halla: How different were they? Mr. Roy: OK, well we'll talk about it another time. I just wanted to go on record as saying they are different and I'm confused as to which one we're using because they can't use one and we can't use a different one. Chairman Halla: No, I'd agree with that.

Chairman Halla: I'm going to make a motion that we postpone this for 30 days. Mr. Roy: So if it's scheduled for 30 days may people who are scheduled to be out of town speak tonight? Christopher: Four straight weeks away would be 28 day at 5 February 2014. A considerable discussion by everyone in the room ensued about dates and it was decided that Wednesday, 5 February 2014 at 7 PM in the Meeting house would be the continuance date for this hearing.

Chairman Halla asked how many people could not possibly be at the next hearing and who had to travel great distances. He agreed that those four people would speak tonight briefly. A cacophony from those in attendance ensued about how many more people needed/should be heard despite the late hour and reason for issuing a continuance. Chairman Halla advised at any point anyone could submit a written document voicing their displeasure that will be part of the record.

Donna Harvey: My name is Donna Harvey, I live on Rocky Pond on Route 106 in Loudon. I have a few questions about the dock on Rocky Pond. It says that they're going to provide a boat storage building to access to the dock. Where is this building going to be? It was pointed out to Ms. Harvey on the map. So how far away is that going to be from the dock? Is it on the other side of Harmony Lane? Yes, it is. So, you're going to prepare a footpath for people to bring their kayaks and canoes down from the boat storage to the dock and they are going to carry them across Harmony Lane on a footpath?

Now, also golf carts you were saying? Are they going to bring these golf carts down the footpath? Mr. Bernier: We testified that no cart access except for ADA requirements for disabilities. Ms. Harvey: OK, now you are saying no swimming will be allowed on or off the dock. That dock and I know I lived on Rocky Pond for 35 years, my whole life, my husband and I just retired, we built our home on Rocky Pond, which I never thought I was going to live on Rocky Pond as my retirement home, but I am there and I love it. Now, I go down to that end of the pond where the dock is going to be and sometimes when the water dries up, we can't even get our canoe down there. It's all mud, muck, what are you going to do with these people that bring canoes down and can't get on the pond and is there someone that is going to be monitoring the dock? Mr. Bernier: If you cannot launch a kayak it will be closed. Ms. Harvey: And you say no swimming in the pond. Now, are they going to come out in their boats, jump out and go swimming in the pond? We're a close knit neighborhood on Rocky Pond. There was a speedway going around the island. I live right across from the dock that's going to be put in and I have a speedboat, we go waterskiing and I come around that island. All of us on Rocky Pond, we know the rules on Rocky Pond. If we see another boat out there we give them respect, we don't go out while they're out there; we wait, it's a small pond. You're going to have these canoes, 30 boats with 2 people in each boat come out. Now these kids are going to jump off the boats and be swimming in the water. Here I come with my boat pulling my kids skiing, OK and these kids are all over the water. God forbid, I could never live with myself if I hit one of those kids. I have a swimmer that lives across from me and he respects when a boat is out there, he has his arms up. We have respect on the pond. Are these people going to be respectful to us? I don't think so. Those are my concerns, their safety concerns and I mean it's awful to think about. Thank you.

Chairman Halla: Is there somebody else that's traveling great distance or just can't be here? Brian Harvey: Donna is my wife. Thirty boats on a small pond will virtually, we won't be able to put power boats on the pond again. Strategically placed, you just won't be able to go there. I would propose to the applicant no boats. There is a state owned island out in front of our property with a rope swing on it, OK? So, 30 kayaks and canoes are going to converge on that island, use the rope swing, swim, raise holy hell and I can throw a rock to that island from my beach, OK? So I would propose to the owner to not do a dock and not do....I propose to my attorney to squash the whole thing and not have a campground or any of it. The noise and all you people on the Board think about this happening in your backyard, OK? It virtually is going to destroy the way we live, the noise, the use of the pond. I'm not one to not allow people to come on the pond; it's not hurray for me and keep everybody else out. People use the launch to where their property is and nobody on the pond complains. Transient people come in there and use that boat launch and nobody says anything, they come in, do their fishing and they leave and everybody is happy. There is a sign on that property that says Keep Out. In terms of the state and the lake, there is no public access to the water. Chairman Halla: But it is a public lake owned by the state. Mr. Harvey: The point is that 30 boats from the applicant's dock are virtually going to change the way that pond will be able to be used. Essentially it will destroy my summers; I live there now. Like Donna said, we built our retirement home there. Thirty boats, where are they going to wind up? They can get out of their boats and swim at the island, that's where they're going to wind up. I'm looking at it, I'm listening to it, so....not fair. I would ask the applicant to have no dock, no boats.

Gary Hermsdorf, 52 Harmony Lane: I would just like to quote from your website: "Canterbury is a great town to live in. The natural beauty of this surrounding area provides many opportunities to enjoy outdoor activities". My question is,

which clientele are you proposing to have at this park? Will you recite that to him? Chairman Halla: What do you mean which clientele? Mr. Hermsdorf: What clientele are you looking for? Chairman Halla: All kinds of people, anybody that wants to come to the park and can afford the use of the park. Will there be a different type of person that comes with day pass as opposed to a permanent resident? Chairman Halla: I wouldn't know..... Mr. Hermsdorf: Oh come on....you've never gone with a bunch of guys and had several beers and gone out in a canoe, are you kidding me? Chairman Halla: Are you asking me? Mr. Hermsdorf: To ask him.... Chairman Halla: OK, fine...are they going to be different people...some with black hair, some with blonde? Mr. Hermsdorf: Oh come on, you can't understand what I'm saying? Chairman Halla: No. Mr. Hermsdorf: Oh, come on....the people that are there permanently are going to be different than the people that come for a day pass. Yes or no? Chairman Halla: Yes or no? Jayne Cohen: I think I understand what you are asking. You're saying that people that come in for the day will have a different attitude toward the property than the people there for week or for the season. Mr. Hermsdorf: There you go, she got it, you didn't. Chairman Halla: You didn't say attitude, you said different people. Mr. Hermsdorf: Well..... Ms. Cohen: I will address your concerns; I will address your concerns if you'll let me. Were you at the last meeting? Mr. Hermsdorf: No, unfortunately. Ms. Cohen: OK, I wasn't sure. At the last meeting we did discuss how there is 299 campsites, alright? The amount of daytime visitors that we would accept... Mr. Hermsdorf: I read all that. I understand all that. You don't have to say any more. There is a gentleman sitting over here that said it was the low impact and most of the site is natural, OK. So, I would like to know what type of destruction is needed to build all of these spots for all of these spots. How many trees come down, what's happening to the nice land that we're giving up? Mr. Bernier: I'd be happy to talk about that. I included impact areas in that calculation. These are structures that are just posts. They're not foundation, wall and insulation and heat, they're just....you could fit them in probably without having to cut any trees, particularly down near Harmony Lane. Up in here (depicting areas on the map) it is much more intense, but it's a relatively small area and obviously we're building a pond and you are going to have to cut down the trees, but as far as these little structures go and the paths, they're going to go along the tree lines. Mr. Hermsdorf: 30 boats is definitely not good. Picture 30 boats with day people, drinking beer with dogs and fishing rods out on the water with say the 20 speedboats that are there. There's nothing but trouble. And they mentioned boats till 8 PM. I don't think these boats are going to have lights on them so there's a slight problem there as well which is a danger. Ms. Cohen: We won't let the boats out after dark. Mr. Hermsdorf: It says 8 PM so.... And I've never seen or heard a playground that has just a little noise.

Liane Crawford, 33 Harmony Lane: So, it seems to me that this last section, number 3 seems to be the least predictable in terms of impact and the least certain in terms of impact. I don't feel that we can be sure of what.... The developer seems very sure that there's not going to be much impact on the pond, on the residents, on the real estate. We'll be addressing the real estate, but I think that the impact is very not predictable at this point....long term, a year, five years, ten years, whatever. Here's an example: So, if I understand it correctly people at the campsite will be coming down this road with their boats, with their kayaks. What's to prevent somebody to pull into the campsite with a motorboat, with a motorboat to the campsite, bring it in, their own vehicles, their own jet skis, on the back of their trailers, whatever, come down on Route 106 and up Harmony Lane and go right to the launch? What's to prevent them from doing that? Or even from just coming to the boat launch that we have apart from the campsite launch, which means a lot of people might see an opportunity to use the lake for that purpose. Christopher: There was testimony that said in the agreement there would be no access and also signs at the point of entry. Ms. Crawford concurred, but there is another launch is there not?

There's another launch on Harmony Lane where those at the campsite could bring their boats around on Harmony Lane and launch from the launch. And they bring milfoil in with the launch. I believe there is another launch and people who have other vehicles could come down Route 106, up Harmony Lane and use that launch because that big lake is there, small lake. Chairman Halla: Do they do that now? Ms. Crawford: Yes. They use the launch and bring milfoil into the lake because we have been battling.....that is a whole other issue. Ms. Crawford: But not everyone there is going to know whether this one or that one or whose it is. I'm just saying the potential seems huge to me because it's there and is very tempting. And I am going to just bore you with something I wrote (see file) and I'm going to leave it with you since I cannot be here February 5th. My husband is the swimmer, the long distance swimmer who swims across the lake and back and is very aware and boaters are very aware of his being there as well. It sometimes makes me very uncomfortable and I have actually escorted him in my own kayak so that he's safe. I've overcome my own fear of water on this pond. This is my last opportunity to talk to you, but I overcame my own fear of water on this lake and now I can swim to the island and swim around the island and I've had my parents who are long gone who enjoyed much time there. I've raised 3 children, they learned to swim, kayak, canoe, search for frogs and turtles and all of the species that live on that lake. It means a lot to us to be able to pass this on as it is to the next generation. My neighbor who has passed on long ago first told me when we moved there that Rocky Pond is not a romantic name, but it's a romantic place. And I never forgot that because it's true. And I feel that the size of this project will make it no longer romantic, it will make it congested. It will make it nothing like what it has been for a long time and I implore you as zoning board members and I thank you for your volunteer service. I was a volunteer for many years and I appreciate the fact that you spend this time to do this. But, I implore you to consider the impact that this will have on residents, on the pond, on the environment with that access. And I have to say that even though I'm not in that confine of the whole project and I think it will be over the years and decades very negative on many, many points and I just ask you to consider it that way.

Chairman Halla: OK, I'm going to close the testimony part and we'll be back on the fifth of February at 7 o'clock. The testimony has been closed for just tonight. Chairman Halla proposed that the minutes of the hearing held 4 December 2013 be approved as written and was seconded by Jim Wieck. The Board voted to unanimously approve the minutes.

Respectfully submitted,

Lisa Carlson, Clerk
Board of Adjustment