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CAMDEN PLANNING BOARD
MINUTES OF MEETING – PART I
February 16, 2012

PRESENT: Chair Chris MacLean; Members Richard Householder, Jan MacKinnon, Kerry Sabanty and Lowrie Sargent; Alternate Member Sid Lindsley; Don White, Select Board Liaison to the Planning Board; and CEO Steve Wilson

ABSENT: Alternate Member Nancy McConnell

The Meeting was called to order at 5:10 pm.

1. PUBLIC COMMENT on NON-AGENDA ITEMS:

Dorie Kline: Ms. Kline came forward to invite members of the Board to attend a screening of the independent documentary film *Windfall* in which the producer takes a hard look at industrial wind development. The film has garnered favorable reviews from many prominent newspapers and is purported to cover the story from both sides – wind developers and opponents – in depth and fairly. There will be two showings at the Strand Theater in Rockland early next month: The first on Saturday, March 3, at 2 pm; and next on Sunday, March 4, at 3 pm.

2. MINUTES

February 2, 2012:

Page 5: Line 29: The word “title” was changed to the word “titled”.

Page 8 Line 1 and Page 13 Line 4: Mr. Kirill’s name had been spelled incorrectly

Page 9: Line 6: “Ms. MacKinnon asked why they should *not* be allowed to expand...”

Page 11: Line 1: The word “change” was changed to the word “chance”.

Page 12:

Line 43: The word “exiting” was changed to the word “existing”.

Line 47: “... development (or otherwise), that it is a subdivision and must be reviewed.”

MOTION by Mr. MacLean seconded by Mr. Sabanty to approve the Minutes of February 2, 2012 as corrected.

VOTE: 6-0-0

3. SITE PLAN REVIEW: PUC LIC HEARING: Residential Pier

William Kirill: Map 127 Lot 4-1: Coastal Residential District (CR): 156 Sherman’s Point Road

The property owner was represented by Attorney Paul Gibbons and the Applicant’s representative, Matt Tibbetts. Mr. Gibbons started with a Power Point presentation of the project; the Board moved to the audience to view the presentation.

The Revised Design:

The first slide showed the revised site layout of the entire Kirill property on Sherman’s Point including the land of two abutters – McCabe and Langhorne. (Exhibit 1; also submission Exhibit A) The second slide showed the revised design for the residential pier in the outer

1 harbor off Sherman's Point: the 20' approach ramp from land is gone from the Plan and the 40'
2 pier will meet the shore at ground level; there will still be a seasonal 45' ramp, but the float has
3 been reduced in width by 2' and is now 10' x 24' SF. (Exhibit 4; also submission Exhibit B) Mr.
4 Tibbetts added that this modification was made possible when he reassessed the elevations of
5 the design and went to the site and re-measured; they found it was possible to reposition the
6 pier and bring it straight in to shore instead of coming in at an angle. Mr. Gibbons stated that
7 the pier meets the "no more than 6' above MHW" height standard of the Ordinance.
8

9 The third slide was of submission Exhibit C, and was according to Mr. Tibbetts, a
10 typical cross-section of a pier. (Exhibit 5)
11

12 Returning to Exhibit 4, Mr. Gibbons stated that his client will no longer have to install a
13 set of stairs to reach the approach ramp. The owner *may* install some steps coming down the
14 slope toward the pier at some point in time using all natural features of the site. Tom Jackson, a
15 local landscaper, had provided a slide showing an example of shallow steps on a hillside made
16 of large slabs of stones fit into the grade and providing a slight rise in elevation (Exhibit 14).
17 These steps, Mr. Jackson said, would help prevent any erosion that might result from
18 concentrated foot traffic coming down the slope to the pier; a walkway like this will last
19 forever, and the proposed path of the walkway makes for a soft climb and a roundabout
20 approach. The selected layout also means that very few steps would be required to rise in grade
21 with perhaps no more than two steps together in a series to make the climb to the next level.
22 Plants will eventually grow in around the stones; the walkway will be very low maintenance;
23 and it will blend right into the landscape.
24

25 Slide #4 showed the original pier design laid out on SV-1, the Site Plan (Exhibit 3).
26 Mr. Gibbons noted this was the original design; now the section on land is much shorter. He
27 then referenced theories going around that any steps built to step down to the access ramp
28 should be counted toward the height requirement of the pier because they were part of the pier
29 system. Now the Applicant has no steps, and if he does in the future they will blend right into
30 the hillside. The obvious purpose of the height limitations was to prevent peoples' views from
31 being blocked, but the low profile of these new steps means that they will not interfere with the
32 view; these kinds of stairs are allowed whether or not a pier is involved.
33

34 The Structures on Abutting McCabe Property:

35 Mr. Gibbons showed pictures of one of the two large granite structures on the McCabe
36 property: The one nearest the Kirill property is a large platform perched on ledge and rocks
37 just off the property's edge; the other is built further away at the edge of shore. Mr. Gibbons
38 has heard theories expressed that the nearest of these two structures is a pier that brings the
39 300' pier-to-pier setback into play. But, it does not look like a pier – it does look like it was
40 something, but it doesn't look like a pier at all. They took pictures from the land and the water
41 side to support their position that this is not a pier, and argue that these pictures show that the
42 structure:

- 43 • Does not extend out over the water like a normal pier would (Exhibit 12)
- 44 • Is not even connected to the mainland – a person would have to be quite a jumper to
45 reach this platform from the land across the intervening gully (Exhibit 10)
- 46 • Does not go over the water or beyond the high-water line: His picture shows snow
47 along sides of this platform, and along the shoreline nearby, and that means that water

1 washes over this platform at high tide. If it met the definition of a pier it would be
2 above the high – water line; this structure is not (Exhibit 10)

- 3 • Another view of the structure shows that it is something, it is hard to tell what, but it is
4 not a pier (Exhibit 11)

5
6 The Camden Ordinances further supports his client’s argument that the structure is *not* a pier:

7
8 Camden Zoning Ordinance: Article III. Definitions: (Exhibit 16)

9 “**PIER:** A permanent platform-type structure connected to the shoreline and usually
10 built perpendicular therefrom over or beyond the normal high-water line or within a
11 wetland, supported by pilings or cribbing. It is used for the berthing, loading, and
12 unloading of vessels in coastal areas.”

- 13
14 • This structure does not go over the shoreline: A pier is defined as being connected to or
15 contiguous to the shoreline: there is a gap between this structure and the land that is not
16 bridged for access; and there is no way for anyone to get to this platform to make it
17 useable as a pier.

18
19 Camden Harbor Ordinance: Article II. Definitions: (Exhibit 17)

20 “**Pier:** A permanent platform-type structure contiguous to the shoreline and usually
21 built perpendicular therefrom over the water, supported by pilings or cribbing. It is used
22 for the berthing, loading, and unloading of vessels.”

- 23
24 • This structure is not used for “berthing, loading, and unloading of vessels.” Showing a
25 different view of the structure (Exhibit 11), Mr. Gibbons says that it does not appear
26 that this could ever be used for these purposes simply because of the height between the
27 end of the structure and the water (Exhibit 12); trying to do so would be reckless.
- 28 • Under either of these Ordinances it does not appear to be a pier for which you must be
29 300’ away from.

30
31 Mr. Gibbons then referenced the Harbor Ordinance: Section 3 Outer Harbor: (Exhibit
32 19) saying that the purpose of the Ordinance is to prevent piers from being closer than 300’ apart:
33 “C. Piers may be constructed subject to the following limitations:

34 6. No pier shall be built within 300 feet as measured along the shoreline *from an existing or*
35 *from an approved pier*, wharf or breakwater.” (Mr. Gibbon’s emphasis.)

- 36 • The Ordinance language - *from an existing or from an approved pier* - also protects those
37 with pier approvals from a neighbor attempting to get a permit and build a pier before
38 theirs is built

39
40 But, the Ordinance also says they have one year to begin building a pier and 2 more years
41 to finish. (Exhibit 22: “Construction of approved projects shall commence within one year from
42 the date of approval by the Select Board and shall be completed within two years from the date of
43 issuance of the building permit.” *Harbors and Waterways Ordinance Article VI, Section 7, G.*) If
44 they don’t, then a neighbor who wishes to build a pier can proceed with his request.

- 45
46 • Common sense will tell you that this structure, whatever it was, has certainly been there a
47 lot longer than two years.

1
2 There are also provisions of the Ordinance that allow for regular maintenance:

3
4 “ Notwithstanding the above provisions of Article VI, Section 7, regular maintenance and
5 emergency repair of piers, wharves, mobile boat hoists, breakwaters, or bulkheads, as defined
6 below, shall not require a permit under the Harbor and Waterways Ordinance, except as stated
7 expressly in the following paragraphs of this provision.”

8 *Harbors and Waterways Ordinance Article VI, Section 7, I.* (Exhibit 23);

9
10 If you are regularly maintaining your pier you do not need a permit – unless you are
11 replacing pilings: *Harbors and Waterways Ordinance Article VI, Section 7, I* (Exhibit 24). In that case
12 , you must comply with the Ordinance and obtain a permit : *Harbors and Waterways Ordinance Article VI,*
13 *Section 7, I.*” (Exhibit 25)

14 So, if anyone wanted to transform this object into a pier they would have to comply with
15 the Ordinance – including the provision to be back 300’ from his client’s approved pier. “If the
16 Code Enforcement Officer determines that the applicant for the building permit proposes to
17 perform work which does not constitute regular maintenance or emergency repairs, then the Code
18 Enforcement Officer shall direct that applicant to obtain a permit in accordance with the
19 provisions of Article VI, Section 7 of this Ordinance. *Harbors and Waterways Ordinance Article*
20 *VI, Section 7, I.*” (Exhibit 26)

21 The Ordinance even defines Regular Maintenance: “For purposes of this provision,
22 "regular maintenance" shall mean restorative work, including replacing decking, and refurbishing
23 of portions of the decking or pilings of wharves, piers, or mobile boat hoists for the purpose of
24 preserving those structures and maintaining the structural integrity of those structures and in order
25 to counteract the effects of usual wear and tear caused by the use of those structures in marine
26 related activities. *Harbors and Waterways Ordinance Article VI, Section 7, I.*” (Applicant’s
27 Exhibit XIII)

28
29 The Ordinance provides for, and allows, stairways: *Zoning Ordinance Article X, Part I,*
30 *Section 1.(9)(I).* (Exhibit 29)

- 31
32 • We might put in a stairway of natural rocks, and if someone were to look at that stairway
33 they would not think that somehow these are an addition to or a part of a pier.

34
35 Returning to a picture of the McCabe structure as seen from the water (Exhibit 12) Mr.
36 Gibbons stated that they could, if they wanted to – but they don’t want to - build their pier 300’
37 away from this structure. He does not think that this is a structure from which his client needs to
38 build 300’ away. Exhibit 6 is a picture of the shore showing a granite block sitting on the
39 shoreline. Mr. Tibbetts stated that this block just happens to be 50’ away from the proposed pier
40 site, and Mr. Gibbons added that this is the site where Mr. Kirill could build a pier that would be
41 300’ from the McCabe’s structure. But, he doesn’t want to move it, and Mr. Gibbons doesn’t
42 think he has to.

43
44 One last item: This pier will be natural colors, not like the one across the harbor (Exhibit 7)
45 which is a lighter color.

1 The Board returned to their seats.

2

3 Questions from the Board:

4

5 Mr. Sabanty asked if anyone knew had any record of what the original purpose of this cement
6 structure was, who built is, and who owns it? The Chair informed the public that the Board
7 would wait to take comments all at once during the Public Comment period of the Public
8 Hearing; to do so otherwise is too disruptive of the process.

9

10 Mr. Householder: An observation: He noticed on the Site Walk earlier today that there were
11 attachment points on both ends of the platform including the water side. Obviously at some time
12 they had a ramp from the land area across the rocks; and on the water side there were two
13 attachments points where obviously they had a ramp down to the water.

14

15 Mr. MacLean: He observed that it certainly looked like a pier to him – it has all the hallmarks of
16 a pier from his point of view.

17

18 Mr. Sargent: Thinks calling it a pier is going overboard, but it certainly looked like it is – or was
19 - was part of a pier. A pier has to go from here to there and this is only a piece. Ms. MacKinnon
20 agrees.

21

22 Mr. Sabanty: Asked if there are any records of any plans. Will this new pier affect those plans?
23 Or have they ceased thinking about building a ramp down to the water.

24

25 The Applicant distributed copies of the revised design projected during the presentation.

26

27 Mr. Sargent asked Mr. Wilson about his comments that the Langhorne property shoreline
28 was a shorebird wading and staging area. The CEO responded that it was, and Mr. Sargent asked
29 if there would be environmental regulations that would prohibit a pier in this area. Mr. Wilson
30 said they might be able to squeeze one in, but it would be tough because any pier would head
31 right into the shorebird area and there are lots of restrictions that come into play.

32

33 Mr. Sargent asked if there are any permit applications on file for the McCabe property.
34 Mr. Wilson replied that no, but looking at it from the experience he has had with the DEP they
35 would actually classify this as a dead man which you could attach a ramp and a float - you still
36 can – but it is not a pier. You can have a dead man, ramp and float basically anywhere you can
37 get water but it can still only be a maximum of 50'; that restriction holds anywhere in the harbor
38 and the outer harbor. But typically, whenever you have a fixed concrete slab like that it falls
39 under the DEP's classification as a dead man rather than a pier because it is not supported on
40 piles. The Town's definition of a pier is supported on piles or cribbing and this is actually
41 poured onto the ledge which makes it a fixed object; it actually meets the definition of a dead
42 man more than a pier.

43

44 Mr. Sargent asked if someone attached a travel ramp and a float would that make it a
45 pier. Mr. Wilson replied that no, that would be simply a ramp and a float which goes to Steve
46 Pixley. Mr. Sargent asked what if a ramp was installed to connect to that system from the land –
47 would that need a permit. Mr. Wilson replied that Camden only allows one ramp and one float
48 per property in any of the harbors, and that land to platform connection would be a second ramp.

1 Historically that might have been OK, but not today. The DEP could be asked to allow them to
2 pour a concrete connector that would not be considered a ramp, and Mr. Sargent asked if that
3 happened would this be a pier or a dead man. Mr. Wilson is of the opinion that it still would not
4 be a pier because it does not a free-standing structure and it is not on pilings; it would be a dead
5 man between two ramps.
6

7 Mr. Lindsley asked if the fact that this was built before the Ordinance can they not do
8 what they want with it. Mr. Wilson replied that the Town's grandfathering Ordinance says that if
9 it doesn't exist for two years then it goes away.
10

11 Mr. MacLean again denied someone in the audience the opportunity to speak until the
12 Public Hearing; this will happen before any vote is taken. Ms. MacKinnon asked if the Board
13 had decided to actually hold a Public Hearing; Mr. MacLean said that one has been scheduled
14 but they do not have to hold one, they can decide that later on.
15

16 Mr. MacLean: Mr. MacLean confirmed with Mr. Wilson that "dead man" is not defined in the
17 Camden Ordinance. Mr. Wilson replied that it was typically found within DEP regulations and
18 used to secure a ramp at the shoreline where there is no ledge to use for that purpose. It was
19 fairly common that when you wanted a dead man somewhere you just walled one up and poured
20 it – this was before the DEP cared.
21

22 He read the definition of "pier" within the Zoning Ordinance that Mr. Gibbons had
23 referenced –the Board does not have a copy of the Harbor Ordinance: "Pier: A permanent
24 platform-type structure connected to the shoreline and usually built perpendicular therefrom over
25 or beyond the normal high-water line or within a wetland, supported by pilings or cribbing, and
26 addressed the word "usually". He reads the Ordinance as saying that a pier is "usually" built
27 over or beyond the high-water line or "usually" supported by pilings or cribbing; it doesn't say
28 that it must be built that way.
29

30 The Chair said that the Board will have to confront this definition of "Pier" sooner or
31 later and it could mean that new plans will have to be drawn up addressing the 300' setback.
32

33 He asked Mr. Gibbons to comment on the fact that there was another structure adjacent to
34 the platform they have been discussing on the McCabe property: some kind of sea wall or some
35 kind of a salt water pool. Does Mr. Gibbons know how far this structure is from the proposed
36 pier? Mr. Tibbetts thought it was perhaps another 50' away but the distance has not been
37 measured because it is not a pier, a sea wall or a breakwater. Mr. MacLean wondered if it might
38 be some kind of breakwater, but Mr. Tibbetts said that looking at the structure from the land it
39 was a concrete wall to retain water for some kind of sea water swimming pool – Mr. Wilson
40 agreed that was the classification of this structure. Mr. MacLean then referred to the Ordinance
41 definition of Breakwater: "A permanent solid structure of rock, concrete, steel or wood (or
42 combination thereof) extending from the shoreline into the waters for the principal purpose of
43 breaking and reducing the force of waves." He believes it may be a possible issue that will need
44 to be addressed.
45

46 Ms. MacKinnon: She suggested that the definition of "pier" with regard to the word "usually"
47 could be read to mean that piers are "usually" built perpendicular to the shoreline; "usually" does
48 not apply to being built over or beyond high water or being supported by pilings or cribbing – a

1 pier must meet those standards. Mr. MacLean agreed that interpretation was a possibility; he
2 does not know for sure, and it is up to the Board to determine if this structure is a pier or not.
3

4 Mr. Sargent turned to Article X Performance Standards: Part I. Standards in Overlay
5 Areas: (8)(h) No pier shall be built within 300' (three hundred feet) as measured along the
6 shoreline from an existing or from an approved pier, wharf, or breakwater, except in the
7 shoreland area adjacent to the Inner Harbor area of the Shoreland Zone where separation
8 between piers shall not be less than 40' (forty feet) and, except where the Harbor Business
9 District abuts a residential district, the separation between piers shall be no less than 20'
10 (twenty feet). Mr. Wilson says there is no record of a pier ever permitted on the McCabe
11 property and that this is a dead man. Ms. MacKinnon agrees that it is not a pier – if it ever it
12 may have been part of a pier – but it is not a pier now. Mr. Sargent suggests they don't
13 know if it is still being used or not – perhaps it hasn't lost that status.
14

15 The Chair noted that a review of Piers and Wharves involves a somewhat truncated Site Plan
16 Review process: Article XII Section 3 in part:
17

18 The Board proceeded to review of the submission requirements to determine if the Plan was
19 now complete:
20

21 The Applicant has submitted:

- 22 • An Application for Site Plan Review dated January 4, 2012
- 23 • Permission to act as owner's Agent dated April 21, 2011
- 24
- 25 • An Application Packet which includes:
 - 26 • Pages 1 of 5 – Page 5 of 5 addressing submission requirements
 - 27 • Exhibit A: Plan SV-1 dated April 21, 2011 titled Preliminary Conveyancing Plan
 - 28 • Exhibit B: Pier Profile/Elevation – Walkway Pier System
 - 29 • Exhibit C: Pier Section
 - 30
 - 31 • Copy of Maine DEP NRPA Permit approved, signed and dated November 30, 2011
 - 32 • Proof of Army Corps Permit approval issued November 21, 2011
 - 33 • Sign-off from Maine Historic Preservation Commission (MHPC) dated October 14,
34 2011
 - 35 • Proof of Notification to the MHPC and Maine Indian Tribes dated October 13, 2011
 - 36
 - 37 • Site Plan: SPI: dated December 27, 2011, revised and sealed by Randy Scanfer, PE that
38 includes a Revised Exhibit A, Exhibit C, and the pier profile, Exhibit B, which has been
39 revised to illustrate the new design.
 - 40
 - 41 • A Deed and Easement Packet including:
 - 42 A Trustees Deed from The Helen Hubbard Marr 2000 Trust to William D. and Ann M.
43 Kirill dated April 8, 2011 and recorded at Book 4370 Page 81 (Knox County Registry
44 of Deeds) with the following attachments:
 - 45 ▶ Exhibit A recorded at Book 4370 Page 82 also conveying and describing:

1 a Beach Access Easement; a Beach Use Easement; a View Easement; a Utilities
2 Easement; two Easement benefitting McCabe – one for utilities one for a future
3 septic; and a Driveway Easement.

- 4 ▶ Maine Superior Court Docket No. RE-07-05: Consent Final Judgment: Helen
5 Hubbard Marr Trust v. Georgiana Hubbard McCabe dated June 14, 2007
6 recorded at Book 3816 Page 27, with the following attachments:
7 Exhibit A to Consent Final Judgment Land Parcel recorded at Book 3816 Page
8 35
9 Exhibit B House Parcel recorded at Book 3816 Page 37
10 Exhibit C to Consent Final Judgment Beach Access Easement and Beach
11 Easement recorded at Book 3816 Page 38
12 Exhibit D to Consent Final Judgment View Easement recorded at Book 3816
13 Page 39
14

15 In addition, the following documents have been added to the record:

16 Applicant's Exhibit I: Memo to the Camden Planning Board from the Camden Harbor
17 Committee dated February 3, 2012, Subject Kirill Pier Project
18

19 Applicant's Exhibit II: Minutes of the Camden Harbor Committee meeting of February 2, 2012.
20

21
22 The Applicant was given permission to submit paper copies of the documents and pictures
23 referenced in the presentation. They are referenced here as Applicant's Exhibits 1 - 30, and
24 have been made part of the official file. Copies of the Exhibit packet Table of Contents, and
25 copies of Exhibits 16 – 30 are attached to these minutes.
26

27 The Board reviewed again the submission as required by Article XII. SECTION 4.
28

29 (5) In addition to items (a), (c), (d), (l), (m), (o) and (q) in Section 3, applications for Piers,
30 Wharves, Breakwaters and Boat Ramps shall include:
31

32 **SECTION 3. SITE PLAN CONTENT:**
33

34 (a) *Owner's name and address*

35 Submitted on Page 1 of 5.
36

37 (c) *Sketch map showing general location of the site within the Town*

38 Submitted on Page 1 of 5.
39

40 (d) *Boundaries of all contiguous property under the control of the owner or applicant*
41 *regardless of whether all or part is being developed at this time.*

42 Shown on Exhibit A (SV-1)

43 → Exhibit A is titled "Proposed Division": the Applicant is to submit a revision of this
44 Plan that shows the Final Division, and it shows "Property to be retained." This language
45 needs to be removed.

46 → The Board wants to see the actual deeds along with proof that the property division is
47 final as shown.

1 → Exhibit A, included on SV1, now shows the actual property ownership with recording
2 information. Deeds are provided.
3

4 (l) *The location of open drainage courses, wetlands, stands of trees, and other important*
5 *natural features, with a description of such features to be retained and of any new landscaping*
6 *planned.*

7 Shown on Exhibit A on SV1.
8

9 (m) *Location and dimensions of any existing easements and copies of existing covenants or deed*
10 *restrictions.*

11 Submitted.
12

13 (o) *Location and type of exterior lighting.*

14 There is none proposed.
15

16 (q) *A signature block on the site plan, including space to record a reference to the order by*
17 *which the plan is approved.*

18 Included on Site Plan.
19

20 **SECTION 4 (5): Additional submissions required for piers, wharves, etc.**
21

22 (a) *A site plan stamped and sealed by an engineer registered in the State of Maine.*

23 Provided as SP1.
24

25 (b) *An elevation showing the height of the pier in relation to normal high water.*

26 Shown on SP1 as Exhibit B.
27

28 (c) *A pier section.*

29 Shown on SP1 as Exhibit C.
30

31 (d) *A detailed erosion control plan, including a schedule of construction. The schedule shall*
32 *include the kind of motorized equipment, how and when it will be used below high or low water.*

33 Not Applicable. Information is provided in the NRPA permit.
34

35 (e) *A detailed plan showing how oils, greases or other contaminates will be separated and*
36 *handled.*

37 There will be no equipment on land; it is being brought to the site on a barge.
38

39 (f) *Copies of required Maine Department of Conservation submerged lands lease, Maine*
40 *Department of Environmental Protection and United States Army Corps of Engineers permits,*
41 *provided, however, that the Board may approve site plans subject to the issuance of specified*
42 *State and Federal approvals and permits where it determines that it is not feasible for the*
43 *applicant to obtain them at the time of site plan review.*

44 All permits have been received; information was provided with Application. Mr. Wilson
45 confirmed this saying the final sign off from DEP will not come until the project is complete.
46
47

1 **SECTION 4: SUPPLEMENTAL INFORMATION**

2
3 (1) *Existing and proposed topography of the site at two foot contour intervals, or such other*
4 *interval as the Board may determine, prepared and sealed by a surveyor licensed in the State of*
5 *Maine.*

6 Not required: The Board believes they have sufficient information to proceed in this regard.

7
8 (2) *A storm water drainage and erosion control plan prepared by an engineer or landscape*
9 *architect registered in the State of Maine, showing:*

- 10 (a) the existing and proposed method of handling storm water runoff.
11 (b) the direction of flow of the runoff through the use of arrows.
12 (c) the location, elevation, and size of all catch basins, dry wells, drainage ditches, swales,
13 retention basins, and storm sewers.
14 (d) engineering calculations used to determine drainage requirements based upon a 25-year
15 storm frequency, if the project will significantly alter the existing drainage pattern due to
16 such factors as the amount of new impervious surfaces (such as paving and building area)
17 being proposed.
18 (e) methods of controlling erosion and sedimentation during and after construction.

19
20 The Board believes information in the NRPA application, and the fact that there will be no
21 soil disturbance; these issues have been sufficiently addressed.

22
23 (3) *A utility plan showing, in addition to provisions for water supply and wastewater disposal,*
24 *the location and nature of electrical, telephone, and any other utility services to be installed on*
25 *the site.*

26 Not required: There are no new utilities being installed.

27 → The utility line shown on SV-1 has been removed from the Plan.

28
29 (4) *A planting schedule keyed to the site plan and indicating the varieties and sizes of trees,*
30 *shrubs, and other plants to be planted.*

31 Not applicable to this project.

32
33 The Chair then turned to Article X Performance Standards to make sure there was nothing else
34 required; he found nothing.

35
36 The Board agreed they have everything they need to move forward. The five regular members
37 of the Board will be voting:

38
39 **MOTION by Mr. MacLean seconded by Mr. Sabanty that the Site Plan Application is**
40 **complete because all the required submissions for an application for a pier have been**
41 **submitted according to the Ordinance or they have been found to be not applicable.**

42 **VOTE: 5-0-0**

43
44 **SITE WALK:**

45 A Site Was held at 4 pm immediately preceding this meeting; all members attended. Mr.
46 Sargent visited the site at 2pm but was not present for the actual Site Walk. Also in attendance
47 were: Mr. Wilson, Matt Tibbetts, Ms. Cooper and Harbor Committee Chair Gene McKeever.

1 **PUBLIC HEARING:**

2
3 The Chair informed the public of the procedure that would be followed for the Public
4 Hearing saying the intent was to give everyone who wanted to speak the opportunity to offer
5 comments. Before they started Mr. Wilson wanted to note for the record that the Board was not
6 bound to accept his interpretation of the definition of a pier; that determination was theirs alone
7 to make.

8
9 The Applicant will defer comment until the end.

10
11 Mary Platt (Marti) Cooper: Representing Georgianna McCabe:

12
13 Ms. Cooper informed the Board that she was not here to oppose a Kirill pier, but to
14 question how this might potentially impact her client's historical use of her property, and
15 whether the proposed pier meets the 300' setback from an existing pier.

16
17 Is this structure a pier? She refers to the Chairman's question regarding the definition of Pier
18 and to the word "usually": In comparison she asks the Board to look at the definition for a
19 "Wharf": "Wharf: A platform-type structure connected to the shoreline and built parallel
20 therefrom over the water, supported by piling or cribbing, used for the berthing, loading and
21 unloading of vessels." – the word "usually" does not appear here. She finds this important an
22 important distinction because there a wharf is so specifically defined while a pier is not.

23
24 This *is* a pier and has always been used as such by her clients: Although it is not an approved
25 pier, that would be because it has been in existence for decades and long used as a pier long
26 before any permitting requirements.

27
28 The Grandfathered Use continues and the rights to use the pier have not been abandoned: The
29 McCabes have continuously seasonally used this structure to hook a ramp and a float into.

30
31 There is a connection to the land: Her clients have always used planks to run from land to pier
32 – the attachment points on the land side of the pier that Mr. Householder saw are for securing
33 those planks.

34
35 The attachment points on the harbor side are for the ramp that leads to a float that the family
36 has used for years. They used to have a large boat they kept on a mooring off a larger float, but
37 now the float is smaller and is used mostly for small personal boats like kayaks and dinghies.

38
39 Ms. Cooper submits that this is a pier that the grandfathered use still applies.

40
41 Setback - Distance to the Kirill pier site: She is not sure of the distance from the McCabe pier
42 to the site of the proposed Kirill pier; it could very well be 300' if it is measured along the
43 shoreline. But, she has not seen such measurements and only heard estimates of 200' on the
44 Site Walk today. She has a picture that the CEO gave her of the shorebird area; it also show
45 where the proposed Kirill pier is to go. If the site is not 300' from the McCabe pier then, there
46 appears to be room to move it further away so that it meets the set back requirement and not
47 interfere with the Shorebird area. She will make this picture part of the record. (McCabe

1 Exhibit 1) She asked that the pictures Mr. Gibbons displayed also be made part of the record
2 and that will be done.

3
4 Adjacent cement structure: She believes this is a salt water pool, but she does not know if that
5 was, or is, the primary reason for constructing the structure. It may be that the use as a pool is
6 incidental to the use as a breakwater to keep waves from pounding the shoreline at this
7 location. Mr. Gibbons' pictures do show that water comes over these structures, so perhaps
8 there was another purpose in putting this here. She is not able to put any evidence on way or
9 the other before the Board tonight however. The CEO noted that this structure is classified as a
10 salt-water pool.

11
12 Questions from the Board:

13 Mr. Sargent: Do the McCabes have any evidence that they have put a ramp and float in the
14 water within the past two years? Are there any pictures they might have? Ms. Cooper said that
15 the McCabes cannot be here to answer themselves, but she has no evidence that it hasn't been
16 abandoned. She did not come prepared this evening to defend her client's rights to use their
17 property. She can say that in talking to her client, she does not believe that it is the case that
18 there has been no use for two years.

19
20 Mr. Householder has a question for the CEO: If the McCabes have used the pier every
21 summer, would they have to come apply for a permit? Mr. Wilson said not if they are using
22 this to put a ramp in and out. Mr. Lindsley asked if there was any permit required for any pier
23 in the Town, and the CEO replied that part of the DEP permit allows owners to put ramps and
24 floats in seasonally without permits.

25
26 Mr. Gibbons: When he first read the Ordinance he didn't believe this was a pier and he still
27 doesn't because the Ordinance says "pilings or cribbing" and this isn't pilings or cribbing. He
28 also thought that because structures like the ones next door on the McCabe property are often
29 not permitted. That doesn't mean that the family can't continue to use it as they have in the
30 past – to attach a ramp and float to access the water - but that doesn't make it a pier. He
31 doesn't have to meet the 300' setback requirement and they can continue to do what they are
32 doing.

33
34 Mr. MacLean read the definition for Wharf and re-stated Ms. Cooper's argument that
35 the Definition for Pier is qualified by the insertion of the term "usually". He asked Mr.
36 Gibbon's how he responded to that argument. Mr. Gibbons reiterated that it may be that
37 "usually" does apply, but only to the direction the pier takes extending into the water, and that
38 is usually perpendicular to the shore. In any case it is clear that the definition of pier says that
39 it extends over the water and it rests on pilings or cribbing; this structure is not a pier in any
40 definition that is consistent with English language usage. A floating ramp and a float are
41 seasonal and *not* part of a pier; a pier must be permanent.

42
43 Mr. Lindsley asked if the rocks where the structure was attached were above the normal
44 high water line. If they are, the shore begins above the HWM, and the structure is attached to
45 the shore; the family simply uses planks to span that gap between the shore and a more walk
46 able part of the land on the other side of the rocks. Mr. Gibbons says if they did that, the
47 connection is temporary, it isn't governed by the Ordinance and it isn't part of the pier. Mr.
48 Gibbons restated that this structure isn't on pilings, it isn't on cribbings, it doesn't go over the

1 water, and it isn't connected to the land – it isn't a pier. The use is grandfathered, and Ms.
2 Cooper's client can continue that use; but his client's pier does not have to be 300' away.

3
4 Mr. MacLean asked Mr. Gibbons about the reason for the 300' setback policy: Mr.
5 Gibbons replied that it was for visual protection – too many piers can affect the view of the
6 shore from the water as well as the view of the shoreline from shore. No one wanted to see a
7 lot of piers lining the harbor. But there are also safety considerations: if an “escaped” ramp is
8 blown toward a neighboring pier in a storm it probably won't reach the next pier and cause
9 damage if that pier is 300' away.

10
11 Mr. Householder to Mr. Wilson: Is there a way the distance from the Kirill pier site to the
12 McCabe property can be determined from tax maps or some other document the Town might
13 have, so the Board can have that measurement this evening. Mr. Wilson replied that for tax
14 purposes the measurement is taken from pin to pin in a straight line to determine frontage; he
15 wouldn't have anything that would show measurements taken along the shoreline. Mr.
16 Tibbetts has measured the distance along the shoreline at 250', but that measurement has not
17 been confirmed.

18
19 Mr. MacLean referring again to the definition of pier: The definition was probably written the
20 way it was because at that time it was unlikely that most people would put a cement slab out in
21 the water to act as a pier instead of using a platform on pilings. But, in every other respect this
22 structure meets the intent of a pier; it is a permanent structure and there are attachments to
23 connect a ramp and float. It is a pier.

24
25 Mr. Sargent asked Mr. Tibbetts how this particular site was selected: He replied that
26 this was the shortest distance to navigable water sufficiently deep for a boat.

27
28 For the record Mr. Tibbetts stated that he has observed the attachments on the structure:
29 the eyebolts on the harbor side are rusted nearly to nothing; the bottom half of one is gone and
30 the other would probably break off in his hand if he pulled on it. He does not believe that the
31 McCabes can be using those attachments for a ramp and a float – they are not useable like they
32 are. If they are attaching a ramp and float they must be using some other method of attachment.

33
34 No one else had comments and the Public Hearing was closed.

35
36 **APPROVAL CRITERIA:**

37
38 The Chair noted the receipt of two documents:

39
40 A memorandum from Harbor Committee Chair Gene McKeever dated February 3, 2012; and a
41 copy of the Camden Harbor Committee meeting of February 2, 2012, prepared by Marlene
42 Libby, Harbor Clerk. The documents will be entered into the record.

43 (NOTE: These documents have been labeled Applicant's Exhibits I and II respectively.)

44
45 The Chair began a discussion about the suitability of the submissions from the Harbor
46 Committee to serve the requirements of the Ordinance:

47 Mr. MacLean: At first he was very concerned that the criteria in the Harbor Ordinance
48 regarding approval for Piers had not been adequately reviewed. These documents show there

1 was thoughtful discussion, and now he is aware of the Board’s responsibility for reviewing
2 Article X as described previously. Because the criteria in Article X mirror those of the relevant
3 section of the Harbor Ordinance, he is confident that these criteria will be reviewed
4 sufficiently.

5
6 Ms. MacKinnon: She doesn’t want to do anything that will circumvent, or undermine, the
7 Harbor Committee’s actions. She feels these documents provide a fine report of a thorough
8 discussion of the pier.

9
10 Mr. Lindsley: The Harbor Committee did not look at the 300’ setback requirement and he
11 wonders if they should be asked to address that. Mr. MacLean noted that it is not important at
12 this point because the Planning Board will be reviewing the issue.

13
14 The Board determined that the Minutes serve to fill the requirement for a submission from the
15 Harbor Committee per the Ordinance.

16 “This Part contains three sections: Shoreland Areas, High Elevation Areas, and Historic Areas.
17 Each Section identifies an area or areas in which special standards shall apply to the uses and
18 activities within the area or areas. Unless otherwise indicated, the uses allowed within these areas
19 shall not differ from those listed as Permitted Uses or Uses Permitted by Special Exception in the
20 applicable underlying zoning district.”

21
22 The Chair turned to Article X: Performance Standards

23
24 He called the Applicant’s attention to Part I, Section 1. Shoreland Areas: (1)
25 Applicability, suggesting to the Applicant that, in addition to Site Plan Review, this language
26 directs the Board to review the Application under this Article as well. “This section applies to all
27 land areas within two hundred fifty (250) feet, horizontal distance, of the normal high water line
28 of any great pond or river; within two hundred fifty (250) feet, horizontal distance, of the upland
29 edge of a coastal wetland, including all areas affected by tidal action...” Mr. Gibbons agreed
30 that the last sentence, “This section also applies to any structure built on, over or abutting a dock,
31 wharf or pier, or other structure extending below the normal high water line of a water body or
32 within a wetland, or beyond the Harbor Line” means that this Article, specifically Section 1 Item
33 (8) Piers and Wharves, applies to their Application.

34
35 The Chair then turned to Part 1. Section 1 and read through the categories of review that
36 activity in the Shoreland Overlay Area affected: (2) Agriculture; (3) Beach Construction and
37 Alteration of Shorelines; (4) Campgrounds and Individual Private Campsite; (6) Erosion and
38 Sedimentation Control; (7) Mineral Exploration and Extraction; and (8) In addition to Federal or
39 State permits which may be required for such structures and uses, piers, docks, wharves,
40 breakwaters, causeways, marinas, bridges over 20 feet in length, and uses projecting in water
41 bodies shall conform to the following standards: (All references to Inner Harbor, Outer Harbor,
42 and Coastal Harbor shall mean those areas as defined in the Harbor Rules and Regulations of the
43 Town of Camden.) Members agreed that Items (2) – (5) and (7) did not apply; Item (6) did not
44 apply because there would be no soil disturbance as part of this project – all work is being
45 accomplished from the water; and Item (8) did apply. The Chair noted that criterion (h) will
46 force the Board to answer the question of whether or not the McCabe structure is a pier: “(h) No
47 pier shall be built within 300’ (three hundred feet) as measured along the shoreline from an
48 existing or from an approved pier, wharf, or breakwater...”

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Article X: Part 1. Section 1.

(8) In addition to Federal or State permits which may be required for such structures and uses, piers, docks, wharves, breakwaters, causeways, marinas, bridges over 20 feet in length, and uses projecting in water bodies shall conform to the following standards: (All references to Inner Harbor, Outer Harbor, and Coastal Harbor shall mean those areas as defined in the Harbor Rules and Regulations of the Town of Camden.) [Note: There is no paragraph (a), (b), or (c).]

(d) Height of walkway of piers and wharves in the shoreland area adjacent to the Inner Harbor and Outer Harbor areas as defined in the Harbor Rules and Regulations of the Town of Camden shall not exceed six feet above mean high water. In the shoreland area adjacent to the Coastal Harbor, the height shall not exceed ten feet above mean high water.

MOTION by Ms. MacKinnon seconded by Mr. Sabanty that Item 8(d) is satisfied because the height of the pier is 5.5' above MHW (Mean High Water) as shown on Plan SP1.

VOTE: 5-0-0

(e) The maximum width of the walkway of the pier in the shoreland area adjacent to the Coastal and Outer Harbor areas shall not exceed 4' (four feet). The overall width of the pier at the walkway shall not exceed 6' (six feet). Piers and wharves in the shoreland area adjacent to the Inner Harbor area shall not exceed 12' (twelve feet) in width. The width of the base of the pier shall be in conformance to standard engineering practices.

MOTION by Ms. MacKinnon seconded by Mr. Sargent that Item 8(e) , Maximum Width, is satisfied because the pier does not exceed 4' in width as shown on Plan SP1, and the width of the base of the pier is in conformance to standard engineering practices because the Plan was drawn, signed and sealed by an engineer licensed in the State of Maine.

VOTE: 5-0-0

(f) Fender pilings, bollards, railings, or other accessory structures which extend above the walkway or a pier or wharf shall be limited to a height of 6' (six feet) above the walkway. Railings shall be substantially open in construction to minimize visual interference from both shore and water.

MOTION by Mr. Sargent seconded by Mr. Householder that Item (f) is satisfied because the railing shown on SV1 is less than 6' high.

VOTE: 5-0-0

(g) No pier shall be constructed within 30' (thirty feet) (horizontal distance) of the point where the property line intersects the Harbor line in the shoreland area adjacent to the Coastal and Outer Harbor areas. In the Inner Harbor area there shall be no required setback except where a business district abuts a residential district in which case the setback shall be 10' (ten feet) from the line between the two districts.

MOTION by Mr. Sargent seconded by Ms. MacKinnon that as shown on SP1, the horizontal distance of the point of intersection of the pier with the Harbor line is greater than 30' on each side.

VOTE: 5-0-0

(h) No pier shall be built within 300' (three hundred feet) as measured along the shoreline from an existing or from an approved pier, wharf, or breakwater, except in the shoreland area adjacent to the Inner Harbor area of the Shoreland Zone where separation between piers shall not be less

1 than 40' (forty feet) and, except where the Harbor Business District abuts a residential district,
2 the separation between piers shall be no less than 20' (twenty feet).

3 **MOTION by Mr. Sargent seconded by Ms. MacKinnon that the Application satisfies Item**
4 **(h) because the proposed pier is greater than 300' as measured along the shore from an**
5 **existing pier and there are no other piers within 300' as measured along the shoreline.**
6

7 Discussion:

8 Mr. MacLean: He is not persuaded that there is not a pier within 300' because it appears to him
9 that the slab on the McCabe property has served and is still serving as a pier.

10
11 Ms. MacKinnon: She wouldn't consider this a pier based on the definition of a pier: for one
12 thing there are no pilings or cribbing.
13

14 Mr. Sabanty: The Applicant has said that the proposed pier is 250' away from the structure on
15 the McCabe property. He is not sure it is a pier and is not sure, even if it was a pier, that it is still
16 grandfathered. With Mr. Tibbetts having said the eye bolts were rusty he doubts that it is
17 grandfathered.
18

19 Mr. MacLean: The Applicant has the burden of proof and persuasion to show that the pier is not
20 use. The McCabes have put the existence of a pier into play and the Board must decide what to
21 do with that information.
22

23 Mr. Householder: The slab lends itself to being part of a pier. If the McCabes' representative
24 says that they are using it regularly then that satisfies him for now. This has the integral parts of
25 a pier; it is up to the Applicant to justify why they are outside of the 300' setback.
26

27 Mr. Lindsley: If it was used as a pier in the last two years he believes this criterion would apply.
28 But his major concern is that the distance has not been measure exactly, and that is too important
29 to this decision – are they within 300' or not.
30

31 Mr. Sargent agreed with Mr. Lindsley that they are missing very important information – it
32 should have been submitted with the Plan.
33

34 Mr. Gibbons responded that it was not fair to the Applicant to ask for that information at
35 this point in the review. When someone submits a permit application and all the information that
36 is required, then they have satisfied the Ordinance. If the Board knew they wanted this
37 information they should have asked for it at the first meeting; to hold them up now for a new
38 request is simply not fair.
39

40 Mr. MacLean replied that no one on the Board could have known until the Site Walk
41 today that the distance measurement was a potential issue; until they saw the McCabe property
42 and the structures there was nothing in the submissions that could have brought this to their
43 attention. If it had come earlier in the process they would have asked for the information at that
44 time.
45

46 Mr. Gibbons responded that the Board is putting a burden on the Applicant to prove how
47 something was used based only on hearsay testimony; he wonders how much impact that kind of
48 statement should be given in the review process. He believes the Board is relying too much on a

1 single source of information that is based on what she thinks her clients have done in the past –
2 she is not even sure what her clients practice has been in the past

3
4 Mr. Gibbons believe they have already met their burden of proof by relying on the
5 definition of a pier to prove this structure is not a pier. If the Board is in a quandary about
6 whether or not this is a pier, the Motion should be withdraw and they should answer two
7 questions before they proceed:

- 8 • Is this a pier or not?

9 And, if they find that it is a pier they should determine:

- 10 • Is this pier grandfathered or not – is it still a pier?

11
12 The Chair asked Mr. Gibbons if sensing the concerns of the Board, he would rather they
13 not proceed to a vote; he offered Mr. Gibbons the option of having the Board put the Application
14 on hold and Continue the review until their next meeting to give members time to think about
15 this issue. Mr. Gibbons was confident that if Members were to retract the Motion and then ask
16 the question: “Is this a pier?” they could only find on a factual and a legal basis, that this was not
17 a pier. It does not look like a pier – that is a fact; it does not meet the definition of a pier – that is
18 also a fact. But, if they do determine it *is* a pier, they need to ask next: “Is it grandfathered?”
19 The simple fact is they can call it something other than a pier and that will still allow the
20 McCabes to continue the use of this structure just as they have always done. Right now they
21 have shifted the burden of proving this isn’t a pier to the Applicant by applying an Ordinance
22 standard that isn’t there.

23
24 Comments from the Board:

25 Mr. Sabanty: The Board wants to be fair: Mary Platt Cooper does not know for sure that her
26 clients have used the pier. Mr. Sabanty asked her what she could do to prove to the Board that
27 the pier has been in continuous use. Ms. Cooper replied that she could, perhaps, try to obtain an
28 Affidavit from her client addressing the use of the pier. They have been seasonal owners for 50-
29 60 years, but that does not mean that family has been present every time the pier has been used;
30 many people come and go at this summer house. The Chair interrupted and restated that the
31 Planning Board has no authority to require that the McCabes submit any documentation at all
32 regarding the use of this structure.

33
34 Mr. Gibbons passed on the opportunity to have the Application Continued; the Board
35 resumed consideration of Item (h):

36
37 **VOTE: 1-4-0 with Mr. Householder, Mr. MacLean, Mr. Sabanty, and Mr. Sargent**
38 **opposed.**

39
40 The Chair informed the Applicant that with the failure of the Application to meet this
41 Standard of the Ordinance, the Application cannot win approval; the failure to meet one single
42 criterion means the Application cannot be approved. In the interest of providing a complete
43 review and building a complete record, the Chair offered Mr. Gibbons and the Applicant the
44 choice of continuing through a review of the criteria so they will know if any other problems
45 surface.

46
47 Mr. Gibbons asked if they could request that the Application be continued so they could
48 come back with a revised Plan that might show a different location for the pier. The Chair

1 informed him that an entirely new application would be required now that the current one had
2 failed; that is why he had offered the Applicant this option prior to the Vote. Now that the Vote
3 has been taken, there is no option left with regard to the current Application.
4

5 The Chair offered to continue on to review all the remaining criteria to help the Applicant
6 build a record; the Applicant accepted the offer, and the Board continued reviewing Article X
7 (8):
8

9 (i) The location of the structure or the use of the facility shall not conflict with the applicable
10 sections of the Harbor Rules and Regulations of the Town of Camden.

11 **MOTION by Mr. MacLean seconded by Mr. Sargent** that the Application satisfies Item 8(i)
12 based on the Application submitted.

13 **VOTE: 5-0-0**
14

15 Mr. Sargent noted that he finds this unfair to the Applicant: Just because the Board voted
16 against approving this Item has nothing to do with the Application itself; he, nor any of the other
17 Board members, is not familiar enough with the Harbor Ordinance to say whether or not this
18 criterion has been met. In fact, he has never even seen the Harbor Ordinance. Mr. MacLean
19 agreed that they did not have the information they needed to make an informed decision.
20

21 → The CEO was asked to provide Board members with copies of the Harbor Ordinance so they
22 can familiarize themselves with the requirements.
23

24 → The Board asked to have an Amendment to the Zoning Ordinance prepared that would add
25 language outlining the requirement for Article X review to the appropriate section(s) of Site Plan
26 Review in time for the June Warrant.
27

28 (j) No structures shall be permitted on piers, wharves, or breakwaters, except temporary
29 structures and permanent non-building type structures allowed under the regulations of that
30 District.
31

32 **MOTION by Mr. Householder seconded by Mr. MacLean** that there are no temporary
33 structures proposed for this pier.

34 **VOTE: 5-0-0**
35

36 (k) No filling is permitted beyond the officially established Harbor Line except in connection
37 with construction of a municipal pier or boat ramp.
38

39 **MOTION by Mr. Householder seconded by Mr. Sabanty** that this item is not applicable to
40 this project because no fill is proposed.

41 **VOTE: 5-0-0**
42

43 The Board stated their policy that a positive motion is required even when it is known that it
44 will fail:
45

46 **MOTION by Mr. Sargent seconded by Mr. Sabanty** that the Board has found that the
47 Performance Standards set forth in Article X 1.1 (8) (d) – (k) have been met because the Board
48 has found that the Application satisfies all items with the submission of the Plan.

1 **VOTE: 0-5-0 with all opposed**

2

3 **FOR THE RECORD**, and in acknowledgement of the language of the Motions, the Board
4 clearly states that they have found that the Performance Standards of Article X had not been
5 met.

6

7 **SITE PLAN APPROVAL CRITERIA:**

8 **MOTION by Ms. MacKinnon seconded by Mr. Householder** that Approval Criteria (1)

9 Preserve and Enhance the Landscape, (2) Erosion Control, (3) Relationship of the Proposed
10 Building to Environment and Neighboring Buildings, (4) Vehicular Access, Parking, and
11 Circulation, (5) Surface Water Drainage, (6) Utilities, (7) Special Features of Development, (8)
12 Exterior Lighting, and (9) Emergency Vehicle Access, are not applicable because this is a
13 proposed pier that is to be assembled and brought in from the water.

14 **VOTE: 5-0-0**

15

16 (10) Special criteria for Piers, Wharves, Breakwaters, Municipal Boat Tamps, Municipal
17 Piers, Consolidated Piers and other mariner related uses requiring site plan approval under
18 the terms of the Ordinance. In addition to the above approval criteria, the site must be
19 demonstrated to be suitable for the proposed use according to the following specials criteria.

20

21 (a) The project must not cause undue erosion on or near the site.

22

23 (b) The proposed use must not cause degradation of marine life in or near the area. The
24 Board may ask for an examination and statement by a qualified marine biologist
25 regarding the impact of the project, and that statement shall show no significant adverse
26 impact on marine life.

27

28 **MOTION by Mr. Sargent seconded by Ms. MacKinnon** that the Applicant has satisfied Item
29 10(a) and (b) because: 1) There will be no soil disturbance and therefore no erosion; and 2) The
30 letter from the Maine Department of Environmental Protection dated November 30, 2001, says
31 there will be no degradation of marine life because of this project.

32 **VOTE: 5-0-0**

33

34 (11) Design standards for new construction, additions or exterior renovations in the B-1, B-TH
35 or B-TR Zoning Districts...

36

37 **MOTION by Mr. Sargent seconded by Mr. Householder** that 11 is satisfied because the
38 Applicant has not done any work within these Zones.

39 **VOTE: 5-0-0**

40

41 **MOTION by Mr. Sargent seconded by Mr. Sabanty** that the Project be approved because
42 it has satisfied all the criteria in Article X, Performance Standards, and Article XII, Site
43 Plan Review.

44 **VOTE: -0-5-0 with all Members opposed**

45

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2
3 **4. SITE PLAN REVIEW: SITE PLAN REVIEW**

4 Megunticook Lake Woodside Home: Map 103: Lot 27; Rural 1 District (RU-1)
5 139 Beaucaire Avenue LLC: Beaucaire Avenue and Start Road
6

7 The owners were represented by Applicants and authorized agents: Bruce Norelius,
8 Architect, owner of Bruce Norelius Studios; Emma Kelly, a Landscape Architect with
9 Richardson and Associates, and Andrew Hedrich of Gartley and Dorsky Engineering and
10 Surveying who prepared the Erosion and Sedimentation Control Plan for the project. They are
11 here this evening to begin review of the proposal to construct a driveway and residence off the
12 Start Road that will involve grading and filling in excess of 40,000 SF and requires Site Plan
13 Review. They came before the Board in September of 2011 for a pre-application of this project,
14 and are here with revised plans and submissions which they hope will satisfy Site Plan
15 Submission Requirements.
16

17 Ms. Richardson began by asking the Board if they agreed with the Applicant's
18 interpretation of the Ordinance regarding the scope of review required of applications like theirs
19 that falls within Article XII Section 1. Purpose and Applicability #(4): Proposals to pave, strip,
20 remove earth materials from, or grade areas of more than 40,000 sq. ft. within a five-year period
21 for residential uses; however, in reviewing such proposals, the Planning Board shall only
22 consider Section 6, Approval Criteria, (1), (2) and (5).
23

24 As they read the Ordinance they need only comply with the following criteria:
25 (1) Preserve and Enhance the Landscape; (2) Erosion Control; and (5) Surface Water Drainage;
26 to receive approval.
27

28 Mr. Sargent noted that the bridge, now proposed at 20' long, also requires they comply
29 with Criterion #10: Special criteria for Piers, Wharves, Breakwaters, Municipal Boat Ramps,
30 Municipal Piers, Consolidated Piers, Causeways, Marinas, **Bridges over 20 feet in length**: " In
31 addition to the above approval criteria, the site must be demonstrated to be suitable for the
32 proposed use according to the following special criteria.
33

34 (a) The project must not cause undue erosion on or near the site.

35 (b) The proposed use must not cause degradation of marine life in or near the area. The Board
36 may ask for an examination and statement by a qualified marine biologist regarding the impact
37 of the project, and that statement shall show no significant adverse impact on marine life."
38

39 Mr. Hedrich noted that the DEP NRPA permit application for the bridge has information
40 to address this Criterion. In addition there were other DEP Permits-by-Rule required for the
41 Town's permit for the drive and the stream crossing; there should be sufficient information to
42 address all criteria.
43

44 Ms. Richardson proceeded to describe the project as a single family home; a garage with
45 guest apartment; two sheds – one existing along Beaucaire Avenue and one proposed writers
46 studio; and two parking areas – one off Start Road and one adjacent to the garage. Retaining
47 walls and a set of stairs are shown, and the possible locations of septic fields are noted.
48

1
2 The Plan submissions consist of the following submissions all dated February 2, 2012:

- 3
- 4 ․ SP.0: Cover Sheet with Site Locus Maps & Abutters
- 5 ․ SP.1: Site Plan – Existing
- 6 ․ SP.2: Site Plan - Proposed
- 7 ․ SP.3: Landscape Preservation and Enhancement Efforts
- 8 ․ SP.4: Lighting Diagram
- 9 ․ SP.5: Architectural Studies – Average Natural Grade
- 10 ․ SP.6: Architectural Studies – Elev. Studies, Main Home 1
- 11 ․ SP.7: Architectural Studies – Elev. Studies, Main Home 2
- 12 ․ SP.8: Architectural Studies – Elev. Studies, Guest/Garage
- 13 ․ SP.9: Architectural Studies – Elev. Studies, Shed/Structures
- 14 ․ SP.10 Erosion Control Plan with Signature Block

15
16 In addition the Applicant has submitted the following documents in support of the Application:

- 17
- 18 ․ Town of Camden Application for Site Plan Review Dated: January 26, 2012
- 19 ․ Site Plan Content Narrative Dated: February 2, 2012
- 20 ․ Approval Criteria Narrative Dated: February 2, 2012
- 21 ․ Deed Dated: April 15, 2011
- 22 ․ Tax Map with driveways Dated: February 2, 2012
- 23 ․ Permit Application (NRPA Stream Crossing PBR) Dated: November 16, 2011

24
25 Regarding Landscaping: Native understory shrubs and groundcovers are proposed for disturbed
26 surfaces and will serve as part of the stormwater control plan by serving as passive surface water
27 controls. There are plans to add to the native forest understory for the purpose of beefing up
28 screening for the future, but all plantings will replicate the existing native mix.

29
30 Regarding Exterior Lighting: There is no actual lighting strategy proposed, but all lamps will
31 meet dark sky standards. There will be some pedestrian way-finding lighting from the upper
32 parking area possibly, and possibly a light at the bridge abutments; it is not proposed that the
33 drive will be lighted for its length. Mr. Sargent noted that the illumination area for the lighting
34 that is shown on the Plan is 30', and that seems excessive. Ms. Richardson replied that the
35 fixtures would probably be placed at 20' – 30' intervals so it would be scattered lighting with tree
36 mounted lights. Mr. Norelius stated that he had not planned to present a full lighting schematic
37 at this point in the design process; they will revise the Plan to show only what they know will
38 actually be lighted for certain at this point. Ms. MacKinnon thinks it is premature to require that
39 information especially when Exterior Lighting (Approval Criterion #4) will not be reviewed for
40 this Application.

41
42 → The Applicant was asked to remove from the Plans anything that will not undergo review at
43 this time – like the lighting.

44
45 Mr. Norelius briefly discussed the plans for the buildings, but those Plans will not be under
46 review at this time either; this Application is just for fill and grading.

47
48 Questions from the Board:

1 Mr. Householder: There is no bridge cross-section – is that required? The Board, noting that the
2 bridge was designed by an engineer, agreed that this was not a submission requirement and not
3 something they needed to proceed with review. They would accept the stamped and sealed plans
4 as a sufficient showing that the plans met the standards for bridge design.
5

6 Private Way: The drive, even though it is 550' in length, it is not, according to the Town
7 Attorney and the CEO, considered a Private Way and is not required to be reviewed under that
8 Ordinance. The drive runs for its entire length over the Applicant's property, and no right-of-way
9 is involved. Construction of the road itself did not trigger Site Plan Review either, and they have
10 begun construction with the appropriate Town permits in hand.
11

12 Notice: The CEO confirmed that notice had been sent to abutters, but that the meeting had not
13 been advertised as a Public Hearing. The Chair asked if anyone in attendance had come to speak
14 to the project even though it was not a Public Hearing; there were two abutters present who
15 acknowledged that they had hoped to speak. The Chair informed them of the Board's policy to
16 allow public comments whenever possible, and assured them the Board would give full
17 consideration to their comments even though this was not a formal public hearing..
18

19 Public Comments:
20

21 Edith Manns: Start Road and Beaucaire Avenue: Her driveway is immediately across from the
22 Applicant's drive and she is very concerned about the additional stormwater that will come off
23 the property as a result of the construction. The stormwater drainage situation along that portion
24 of road already overwhelms the existing ditching at times. She is pleased to hear they are taking
25 such precautions, but she wonders if the engineers and the others have any idea just how much
26 water travels down the ravine that the bridge will cross. Right now the water overflows to their
27 driveway; she urges them not to underestimate how much water comes through this property.
28

29 Ms. Manns also noted her and her neighbors concerns the quality of the Lake water as
30 there is more and more development pressure along Lake Megunticook in this area. Every
31 construction project must be considered for its impact on run-off in any given storm.
32

33 Mary Saltonstall: She lives directly across the road and is extremely concerned about
34 erosion control and run-off from the driveway that will come into the culvert at Beaucaire.
35 There is not a lot of undergrowth to stop run-off as it heads down the lot toward the lake. The
36 proposed planting are supposed to serve this purpose but she is concerned that they will take root
37 and grow sufficiently to serve this purpose.
38

39 She also briefly expressed her concerns about lighting, saying that even with good
40 intentions, new lighting in an area where there has been none, can be disconcerting to the
41 abutters. Ms. Richardson replied that the designers' concerns for safety and their support for
42 way-finding lighting runs up against the owner's strong concerns about the impact of lighting –
43 they don't want any more exterior lighting than is absolutely necessary.
44

45 Ms. Richardson replied that they have one important charge from the owners of the
46 property, and that is to protect the environmental health of the area. They are also charged with
47 creating and maintaining good relationships with neighbors, and to listen and respond to their
48 concerns. She realizes the area has significant floods – there are trees uprooted along the banks

1 that indicate an incredible flow of water. She and Mr. Hedrich agreed that this is an obvious
2 fact, and that it was taken into consideration in siting and designing the bridge. Ms. Richardson
3 went on to say that the bridge is elevated far above the gulley and that they have done everything
4 to protect the embankment from eroding. They really hope that the design will improve erosion
5 issues in the area rather than harm them.
6

7 The end result of Ms. Richardson's landscape design will result in a heavily re-vegetated
8 and naturalized water filtering system. She will also establish native sods that spread rapidly and
9 anchor themselves quickly – plantings like hay scented ferns for example. They have had strong
10 concerns all along about controlling run-off and everything they have done – including the layout
11 and design of the road – has been done to minimize potential run-off.
12

13 SITE PLAN CONTENT:

14 (a) *Owner's name and address*

15 Provided on the Application
16

17 (b) *Names and addresses of all abutting property owners*

18 Provided on Plan SP.0
19

20 (c) *Sketch map showing general location of the site within the Town*

21 Provided on Plan SP.0
22

23 (d) *Boundaries of all contiguous property under the control of the owner or applicant regardless*
24 *of whether all or part is being developed at this time.*

25 Provided on Plan SP.1
26

27 (e) *Zoning classification(s) of the property lines of the property to be developed and the source*
28 *of this information.*

29 Answered on Page 2 of Site Plan Narrative
30

31 (f) *The bearing and distances of all property lines of the property to be developed and the source*
32 *of this information. The Board may require a formal boundary survey when sufficient*
33 *information is not available to establish on the ground, all property boundaries.*

34 → The Applicants were informed that the Ordinance calls for the addition of bearings and
35 distances to the actual Site Plan.
36

37 (g) The location of all building setbacks required by this Ordinance.

38 Provided on Plan SP.10
39

40 (h) *The location, dimensions, front view, and ground floor elevations of all existing and*
41 *proposed buildings in the site.*

42 Not Applicable.
43

1 (i) *The location and dimensions of driveways, parking and loading areas, and walkways.*

2 Provided on Plan SP.10

3

4 (j) *Location of intersecting roads or driveways within 200 feet of the site.*

5 Not Applicable.

6

7 (k) *The location and dimensions of all provisions for water supply and wastewater disposal*

8 Not Applicable.

9

10 (l) *the location of open drainage courses, wetlands, stands of trees, and other important natural*

11 *features, with a description of such features to be retained and of any new landscaping planned.*

12 Provided on Plan SP.10

13

14 (m) *Location and dimensions of any existing easements and copies of existing covenants or deed*

15 *restrictions.*

16 There are none.

17

18 (n) *Location, front view, and dimensions of existing and proposed signs.*

19 Not Applicable.

20

21 (o) *Location and type of exterior lighting.*

22 → The Applicants were asked to remove all references to lighting from the Site Plan.

23

24 (p) *Copies of applicable State and Federal approvals and permits, provided, however, that the*

25 *Board may approve site plans subject to the issuance of specified State approvals and permits*

26 *where it determines that it is not feasible for the applicant to obtain them at the time of site plan*

27 *review.*

28 The NRPA Permit by Rule for the stream crossing is provided.

29

→ The Applicants are waiting for the DEP Storm Water Permit and are hopeful that it will arrive

before Final Review.

30

31

32 (q) *A signature block on the site plan, including space to record a reference to the order by*

33 *which the plan is approved.*

34 Provided on Plan SP.10

35

36 Mr. Sargent asked the Applicants if they would arrange to meet with the Town's Public Works

37 Department, the abutters and the CEO to discuss the area of the Beaucaire Avenue culvert in

38 general and the history of flooding. They agreed to do so before the next meeting on March 1.

39

40 Site Walk: A Site Walk will be held at 4:00 pm on March 1, 2012.

41 Public Hearing: A Public Hearing will be advertised for March 1, 2012. The CEO will send

42 abutters a second notice in addition to advertising the Hearing.

1 During discussion of the Notice given to abutters, the CEO informed the Board that he has not
2 been advertising Public Hearings until he knows for sure the date they will be held. This change
3 from his previous policy of automatically sending notice and advertising a meeting where review
4 will be conducted as a Public Hearing was made for budgetary reasons – it has gotten very
5 expensive and very time consuming to do so. Mr. Sargent asked the CEO if he had done any
6 research into the question of whether or not the Town could charge applicants for this service;
7 Mr. Wilson’s rely was that he had not had time to do so. Given this discussion, the Applicants
8 offered to pay for the expense of sending the second round of notices to abutters.
9

10 DISCUSSION:

11
12 Due to the late hour, the majority of the items up for Discussion were deferred.
13

14 Signs: Ms. MacKinnon and Mr. Householder reported that the proposal to revise the existing
15 Town directional signage was ready for Planning Board review and comments prior to going to
16 the Select Board for their approval.
17

18 MUBEC: The date of the meeting in the letters of invitation to the local Representatives was
19 incorrectly stated as March 8. Mr. Wilson will contact Senator Rector and Representative Welch
20 to see if they can make a meeting on March 1 instead. If not, the MUBEC Public Hearing will
21 be rescheduled for March 8 instead of March 1. The Sign Committee needs to come to the
22 Planning Board at the meeting on March 1 in order to meet the Select Board’s schedule for June
23 amendments; that may be the only item on a March 1 meeting.
24

25 Mr. Sargent asked that they pursue an amendment that would make notice fees the responsibility
26 of applicants.
27

28 The CEO informed the Board that the Spear Subdivision will be coming before them soon –
29 perhaps by the middle of March if not sooner.
30

31 There being no further business before the Board they adjourned at 9:15 pm.
32
33

34 Respectfully submitted,
35 Jeanne Hollingsworth, Recording Secretary

APPLICANT'S EXHIBITS: TABLE OF CONTENTS

- 1 Map Kirill Property, Langhorne, McCabe property
- 2 Portion of survey of Kirill property
- 3 Map of original pier – later shortened
- 4 Map showing scaled drawing of final pier
- 5 Pier section – Kirill
- 6 Picture of shore just north of proposed Kirill pier
- 7 Picture of pier on opposite side of harbor
- 8 Picture of area where steps – rocks – might be placed
- 9 Picture of shorefront directly where pier will be built
- 10 Picture of existing cement block on property of McCabe
- 11 Picture of existing cement block on property of McCabe from another angle
- 12 Picture of existing cement block on property of McCabe from water
- 13 Picture of example of stone stairs that might be used by Kirill to access proposed pier
- 14 Picture of example of stone stairs proposed by Kirill – to be installed by Tom Jackson
- 15 Another picture of possible stone stairs leading to proposed pier
- 16 Definition of pier – Zoning Ordinance Camden
- 17 Definition of pier – Harbor and Waterways Ordinance
- 18 Portion of Camden Zoning Ordinance – 300 ft. Requirement Pier Article X Part 1 Section 1(8)(h)
- 19 Portion of Harbors and Waterways Ordinance Article VI Section 3, C, 6
- 20 Portion of Harbors and Waterways Ordinance – 300 ft. Requirement Article VI Section 6

- 21 Portion of Harbors and Waterways Ordinance Article VI Section 7, A
- 22 Portion of Harbors and Waterways Ordinance Article VI, Section 7, G
- 23 Portion of Harbors and Waterways Ordinance Article VI, Section 7, I
- 24 Portion of Harbors and Waterways Ordinance Article VI, Section 7, I
- 25 Portion of Harbors and Waterways Ordinance Article VI, Section 7, I
- 26 Portion of Harbors and Waterways Ordinance Article VI, Section 7, I
- 27 Definition of regular maintenance – Harbors and Waterways Ordinance
- 28 Definition of emergency repairs – Harbors and Waterways Ordinance
- 29 Portion of Camden Zoning Ordinance concerning stairways: Article X, Part 1, Section 1(9)(I) page 29
- 30 Portion of Harbor and Waterways Ordinance definition Floats Chapter V Article II Definitions

APPLICANT'S EXHIBITS 16 - 30

Applicant's Exhibit 16

PIER: A permanent platform-type structure connected to the shoreline and usually built perpendicular therefrom over or beyond the normal high-water line or within a wetland, supported by pilings or cribbing. It is used for the berthing, loading, and unloading of vessels in coastal areas. (Amended 6/20/06) (Amended 11/10/09)

Zoning Ordinance of the Town of Camden, Maine, Article III, Section 1.

Applicant's Exhibit 17

Pier: A permanent platform-type structure contiguous to the shoreline and usually built perpendicular therefrom over the water, supported by pilings or cribbing. It is used for the berthing, loading, and unloading of vessels.

Harbors and Waterways Ordinance Chapter V, Article II, Definitions

Applicant's Exhibit 18

No pier shall be built within 300' (three hundred feet) as measured along the shoreline from an existing or from an approved pier, wharf, or breakwater, except in the shoreland area adjacent to the Inner Harbor area of the Shoreland Zone where separation between piers shall not be less than 40' (forty feet) and, except where the Harbor Business District abuts a residential district, the separation between piers shall be no less than 20' (twenty feet).

Zoning Ordinance of the Town of Camden, Maine, Article X, Part I, Section 1.(8)(h).

Applicant's Exhibit 19

Piers may be constructed provided:

No pier shall be built within 300 feet as measured along the shoreline from an existing or from an approved pier, wharf or breakwater.

Harbors and Waterways Ordinance Article VI, Section 3, C, 6.

Applicant's Exhibit 20

No mobile boat hoists, piers, wharves, bulkheads, breakwaters, marine railways or other structures shall be constructed, enlarged or improved except upon approval and issuance of a permit in accordance with Section 7 of these Harbor Rules and Regulations.

Harbors and Waterways Ordinance Article VI, Section 6

Applicant's Exhibit 21

Any construction, renovation, or improvement of a mobile boat hoist, pier, Wharf, bulkhead, breakwater, marine railway or other structure shall require an application to the Code Enforcement Officer of the Town of Camden.

Harbors and Waterways Ordinance Article VI, Section 7, A.

Applicant's Exhibit 22

Construction of approved projects shall commence within one year from the date of approval by the Select Board and shall be completed within two years from the date of issuance of the building permit.

Harbors and Waterways Ordinance Article VI, Section 7, G.

Applicant's Exhibit 23

Notwithstanding the above provisions of Article VI, Section 7, regular maintenance and emergency repair of piers, wharves, mobile boat hoists, breakwaters, or bulkheads, as defined below, shall not require a permit under the Harbor and Waterways Ordinance, except as stated expressly in the following paragraphs of this provision.

Harbors and Waterways Ordinance Article VI, Section 7, I.

Applicant's Exhibit 24

In the event that regular maintenance or emergency repairs to piers, wharves, or mobile boat hoists require the removal of existing pilings and the replacement of those pilings along the outermost side of the pier or wharf facing the waters of the harbor, then the person causing such normal maintenance or emergency repairs shall submit to the Code Enforcement Officer a site plan, stamped and sealed by an engineer, registered in the State of Maine, at a scale of not greater than one inch to twenty feet, which shows specifically the location of existing pilings and decking for the pier, wharf, or mobile boat hoists and the proposed locations of new or replacement pilings and decking in connection with such normal maintenance or emergency repairs.

Harbors and Waterways Ordinance Article VI, Section 7, I.

Applicant's Exhibit 25

Any person causing such normal maintenance or emergency repairs shall submit to the Code Enforcement Officer, together with the building permit application for such work, required by the Camden Zoning Ordinance, a description of the work for such normal maintenance or emergency repairs which provides the Code Enforcement Officer with sufficient information to determine whether the proposed project conforms with the meaning of "regular maintenance" or "emergency repairs" as set forth in this provision.

Harbors and Waterways Ordinance Article VI, Section 7, I.

Applicant's Exhibit 26

If the Code Enforcement Officer determines that the applicant for the building permit proposes to perform work which does not constitute regular maintenance or emergency repairs, then the Code Enforcement Officer shall direct that applicant to obtain a permit in accordance with the provisions of Article VI, Section 7 of this Ordinance.

Harbors and Waterways Ordinance Article VI, Section 7, I.

Applicant's Exhibit 27: Definition of regular maintenance:

For purposes of this provision, "regular maintenance" shall mean restorative work, including replacing decking, and refurbishing of portions of the decking or pilings of wharves, piers, or mobile boat hoists for the purpose of preserving those structures and maintaining the structural integrity of those structures and in order to counteract the effects of usual wear and tear caused by the use of those structures in marine related activities.

Harbors and Waterways Ordinance Article VI, Section 7, I.

Applicant's Exhibit 28: Definition of Emergency Repairs

For purposes of this provision, "emergency repairs" shall mean replacement and relocation of pilings, decking, or underpinning replacement which requires rapid action in order to avoid a dangerous condition which threatens life or injury to any person or which threatens property damage; emergency repairs shall include, by way of illustration, repairs arising out of storm damage, fire and the threat of imminent collapse of a pier, wharf, or mobile boat hoist.

Harbors and Waterways Ordinance Article VI, Section 7, I.

Applicant's Exhibit 29

Stairways: Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided that the structure is limited to a maximum of four feet in width, that the structure does not extend below or over the normal high water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C), and that the applicant demonstrates that no reasonable access alternative exists on the property. *(Amended 11/10/09)*

Zoning Ordinance of the Town of Camden, Maine, Article X, Part I, Section 1.(9)(I).

Applicant's Exhibit 30

Float: Any floating structure normally used as a point of transfer for passengers, goods, or for mooring. The term includes floats attached to wharves and piers.

Harbors and Waterways Ordinance Chapter V Article II Definitions