

Town of Oriental
Board of Adjustment Public Hearing
August 26, 2014 continued from August 19, 2014

The Town of Oriental Board of Adjustment held a Public Hearing on Tuesday, August 26, 2014. This hearing was a continuation of the August 19, 2014 Public Hearing. The subject of the Hearing was an Appeal request by Mr. Knute Bysheim, Proprietor, Whittaker Creek Yacht Harbor. The Appeal was in answer to a denial made by Town Manager Miller to a Grandfather Request to allow Mr. Bysheim to house RVs, travel trailers and campers at his place of business.

Chairman Valinoti, after hearing the roll called, determined a quorum to be present, and called the meeting to order at 2:01 PM. The hearing began with the Pledge of Allegiance.

PRESENT: Chairman Valinoti, Vice Chairman Carmichael, Members Small, Khouri, and Olson, Town Manager Miller, Town Attorney Scott Davis, Deputy Town Clerk Beyer, Police Chief Moore and public.

ABSENT: Members Johnson and Marlowe

Chairman Valinoti asked for approval of the August 19, 2014 Minutes. Member Olson made a Motion to approve the Minutes of August 19, 2014. Vice Chairman Carmichael seconded. Motion passed unanimously.

Chairman Valinoti then opened the Public Hearing, and gave a brief summary of the Board of Adjustment's role in the hearing, and reminded all who would be providing testimony that they must be sworn in prior to their testimony being heard.

Town Manager Miller read the appeal letter submitted by Mr. Bysheim on June 17, 2014. Chairman Valinoti determined that proper notice has been given and made and that the Town of Oriental Board of Adjustment has jurisdiction to hear this matter.

Town Manager Miller was then sworn in, and presented her timeline of the events leading up the hearing, beginning May 5, 2014. Mr. Collins, owner of the RV, requested a Special Use Permit to request additional time to live in his RV another 2 months while working on his boat. Town Manager Miller denied his request, and further stated that the Growth Management Ordinance (GMO) prohibited living in an RV or travel trailer longer than 2 weeks. Mr. Collins admitted to exceeding this time period. Mr. Bysheim, in response, submitted a request to be grandfathered as an entity who previously was allowed to have RVs and travel trailers on his business property. Town Manager Miller denied this request, as well. He stated that he should be considered a non-conforming project or use, neither of which would apply to Mr. Bysheim's request to be grandfathered. Mr. Bysheim went before the Planning Board at their regular meeting on May 20, 2014, where he stated that he did not ever recall having an RV stay beyond two weeks. Mr. Bysheim then submitted an appeal request for a hearing on June 17, 2014.

The original date of the Public Hearing was July 24, 2014, but this date was cancelled due to a lack of a quorum for the Board of Adjustment. The next date that was set was for August 19, 2014, which the Board of Adjustment continued to August 26, 2014 due to the appellant's attorney being unable to attend.

Town Manager Miller went onto explain that in the process of conducting due diligence, she contacted CAMA to inquire as to a pumpout station being inspected. The CAMA representative indicated that upon a site visit, there was not a functioning pumpout station currently available at Mr. Bysheim's property. The existence of a pumpout station would be necessary to be in compliance of the GMO, if an RV was to be allowed.

Chairman Valinoti then presented the floor to Mr. Knute Bysheim, who was sworn in, and his attorney, Mr. Alex Dawson. Mr. Dawson opened with the questioning of Town Manager Miller. He expressed concern that his client's request was misunderstood. He indicated that Mr. Bysheim was not seeking to open an RV Park, which was referenced in the paper work. Mr. Dawson questioned Ms. Miller as to how she arrived at the conclusion that Mr. Bysheim wished to expand his business to include an RV park, to which Ms. Miller replied that he had so stated in his correspondence and verbally. Mr. Dawson referenced a situation in 2012 concerning an RV parked at Mr. Bysheim's business, and was asked to be removed, at the request of the Town Board. Mr. Bysheim was instrumental in assisting with the removal of this RV. Mr. Dawson inquired as to whether or not Ms. Miller was aware of the availability of restroom and bathing facilities at the property. Ms. Miller was aware that these facilities were available, but this is not what is stipulated in the GMO, rather, sanitary facilities must be available to RVs and travel trailers to be compliant. Discussion and questioning continued concerning Ms. Miller contacting CAMA regarding the pumpout station Mr. Bysheim said he had on premises. CAMA stated that he had pulled a permit to build an additional dock, which in turn would necessitate construction of a pumpout station. Until such dock is constructed, a pumpout station is not required.

Chief Moore, Oriental Police Department was questioned about his recollection of a conversation between Town Manager Miller and Mr. Bysheim and the location of a pumpout station. Mr. Bysheim indicated that such a system existed, and that it was located behind a storage building that had an overgrowth of vegetation surrounding it. Chief Moore stated he saw connections to the RV coming from the dock, but was unsure if those were in relation to a pumpout station. He did not hear Mr. Bysheim state there was a pumpout station located behind the building.

Mr. Dawson did not have any further questions for Ms. Miller, and called Mr. Bysheim as a witness.

Mr. Bysheim stated that the area where the RV is located is inspected 5 to 10 times per week by him personally. Mr. Bysheim believes having an RV there promotes a good environment to prospective clients. He indicated that the RV currently on site has been moved to allow Mr. Collins, the owner of the RV closer proximity to his boat. Mr. Bysheim maintains that Mr. Collins has resided at the Marina in the RV since 2011. Mr. Bysheim feels that Mr. Collins should be grandfathered as the change to the GMO had not occurred until 2013. Mr. Bysheim encouraged Mr. Collins to visit Town Hall to secure a permit to reside in the RV.

Mr. Bysheim maintains that he can enlarge the non conformity without a permit or Town involvement. A non conforming situation can be enlarged, according to Mr. Bysheim's interpretation of the GMO.

Vice Chairman is unsure what Mr. Bysheim is requesting, and asked MR. Dawson to clarify.

Mr. Dawson states that he wishes for Mr. Collins to be allowed to remain in the RV, but not attempting to build an RV park.

Town Manager Miller inquired of Mr. Bysheim if Mr. Collins paid for the space where the RV was parked, and Mr. Bysheim indicated that he paid a cumulative amount monthly for the boat and the RV that was at the Marina. Mr. Bysheim did not have any financial records to present to the Board that would illustrate the payment of this monthly amount.

There being no further questioning of Mr. Bysheim, Chairman Valinoti recommended a short recess of the hearing.

MOTION: Vice Chairman Carmichael made a Motion to recess the hearing for 10 minutes. Member Small seconded. Motion passed 4-0.

The hearing recessed at 3:20 PM.

At 3:30 PM, the hearing reconvened and Chairman Valinoti called the hearing to order.

Chairman Valinoti asked if RVs were not permitted at the inception of the GMO in 1999, and Town Manager Miller replied that the property was zoned MU, and RVs were permitted for a period of 6 months. The most recent amendment changed the time period from 6 months to 2 weeks. Mr. Bysheim would have had to have his property grandfathered back to 1999, and prove that the use was consistent for that entire time forward.

Chairman Valinoti then opened the floor to interested parties (abutting and adjoining property owners, and slip owners at the adjacent yacht harbor). Mrs. Peggy Vick was sworn in and lives at 413 Whittaker Point Road. Spoke against having an RV or Trailer park near her house, and expressed concern over property values of adjacent properties being adversely affected. She spoke of the danger of allowing one RV to reside there, only to encourage others to come and live there in their RVs.

Mr. Dan Steiger, dockmaster at Whittaker Point Yacht Owners Association was sworn in next for comment. Mr. Steiger stated that there are 82 slips in the marina, and some have been purchased for about \$40,000 to \$50,000 each. He spoke with several of the slip owners, and all were very against Mr. Bysheim having RVs either one or many. Mr. Steiger indicated that Mr. Bysheim's pumpout station is non-functional. He also expressed concern over the electric. He also was concerned over the shared parking lot becoming full and the yacht owners not having a place to park.

Member Carmichael questioned what exactly was being appealed, and was looking for clarification. The Town Manager was tasked with reading the GMO language from 1999 which read as follows: Article IV Section 2(b): Use of a travel trailer as a permanent residence: Temporary use may be granted for a period of 6 months with an issuance of a Land Use Permit. Situations that do not comply with this subsection on the effective date of this chapter are required to conform in one year. This would apply to all zones.

Mr. Dawson indicated that Mr. Bysheim does not wish to open an RV Park, rather, does not want to preclude other customers from having the ability to reside in their RVs or travel trailers while purchasing or maintaining a boat from Mr. Bysheim.

Chairman Valinoti asked for Motion to close the public hearing.

MOTION: Vice Chairman Carmichael made a Motion to close the Public Hearing. Member Small seconded. Motion passed 4-0.

Chairman Valinoti does not find any information or testimony to support RVs or travel trailers being on Mr. Bysheim's property after February, 1999. There are no permits or appeals on file related to this issue, either.

Per Scott Davis, Town Attorney, the applicants are free to change their position during the hearing. The question that needs to be answered is the land use requirement. Discussion followed.

The findings of fact were presented as follows: Did the use exist prior? Can the use be continued as a non-conforming use? Is there evidence to support grandfathering the RV on the property?

MOTION: Member Small made a Motion to deny the appeal of Mr. Bysheim due to the absence of any specificity of continued use of an RV and uphold the Town Manager's decision. Vice Chairman Carmichael seconded. Discussion followed.

There were no permit requests, no sewer or hook-ups, no SUP application, to support the request of the Applicant. There were RV/trailers used on the property associated with Marina activities prior to the GMO's enactment in 1999 that has since been made non-conforming.

Chairman Valinoti then called for a vote from each member; a 'yes' vote would constitute supporting the Town Manager's decision to deny the applicant's request.

Member Small:	YES
Member Olson:	YES
Vice Chairman Carmichael:	YES
Chairman Valinoti:	YES

There being no further business, the meeting was adjourned.

MOTION: Member Olson made a Motion to adjourn the meeting. Vice Chairman Carmichael seconded. The meeting adjourned at 5:15 PM.

Joseph Valinoti, Chairman

Diane H. Miller, Town Manager