

above to be filled in by office



TOWN OF LYMAN

Zoning Board of Appeals Application

11 South Waterboro Road, Lyman Maine 04002

Telephone: (207) 247-0647 Email: ceo@lyman-me.gov

Owner Information

Property Owner: Paul & Amy Ala

Mailing Address: 22 Sagamore Rd., Arlington
MA 02476

Project Address: 296 Wadleigh Pond Rd.,
Neighbor: 292 Wadleigh Pond Rd.,

Email: amyiliefala@gmail.com
Pauljala@gmail.com

Point of Contact if Other than the Property Owner

Note: the person(s) acting as an agent for the property owner must have written authorization from the owner giving permission to act on their behalf

Name: _____

Telephone #: _____

Email: _____

The above requests that the Board of Appeals consider the following:

Note to appellant: Please file this form with the Appeals board clerk, at which time a fee of \$500.00 must be paid. You will be notified of the date of the hearing regarding your appeal.

1. An Administrative Appeal. Relief from the decision, or lack of decision, of the Code Enforcement Officer or the Planning Board, in regard to an application for a permit. The undersigned believes that (Check one):

_____ an error was made in the denial of the permit

_____ the denial of the permit was based on a misinterpretation of the ordinance

_____ there has been a failure to approve or deny the permit within a reasonable period of time

other See attached summary and corresponding documentation.

Please explain in more detail the facts surrounding this appeal (please attach a separate piece of paper). You should be as specific as possible so that the Board of Appeals can give full consideration to your case.

2. A Variance.

a. Nature of Variance: Describe generally the nature of the variance:

In addition, a sketch plan of the property must accompany this application showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any topographic peculiarities of the lot in question.

b. **Justification of Variance:** In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the Zoning Ordinance would cause undue hardship. There are four criteria which must be met before the BOA can find that a hardship exists. Please explain how your situation meets each of these criteria listed below:

1. The land in question cannot yield a reasonable return unless the variance is granted.


2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

3. The granting of a variance will not alter the essential character of the locality.

4. The hardship is not the result of action taken by the appellant or a prior owner.

To the best of my (our) knowledge, all information submitted on this application is true and correct.

Signature:  Date: 2/12/25

Signature:  Date: 2/12/25

(applicant/owner of property and/or Agent)

Dear Members of the Zoning Board of Appeals,

We are filing an administrative appeal (SZO section 16(H)(4)(a)(i)) regarding a decision made by former CEO Patti McKenna (Exhibit 1) where she permitted two non-conforming docks: a T-shaped dock & a boat dock (Exhibit 2 and 2A) by granting grandfather status to these structures. These docks, located at 292 Wadleigh Pond Rd., belong to John and Linda Houy. We are requesting that the decision to grant grandfather status be overturned based on the facts outlined below.

We are also requesting a waiver of the thirty-day time requirement for the appeal, for good cause. Despite our request, the Town did not provide us, an interested party, with the notice of its decision until months after it had been made, making an appeal within the thirty-day time frame impossible (Exhibit 3 and 3A). Secondly, there should be no statute of limitations to an appeal when the decision being appealed relied on misinformation.

Initially, the only option was to address this situation outside the town, by requesting a hearing in Superior court regarding the former CEO's lack of enforcement action (not requiring the docks to be removed). However, a hearing was denied because the court upheld Lyman's SZO which states that appeals cannot be made for enforcement related matters. We also attempted to have this situation addressed in district court, under a nuisance claim, but encountered the same issue with the inability to appeal enforcement related matters. Since that time, there have been many significant changes in Town government and therefore we are now filing this administrative appeal regarding the above-mentioned decision.

There are two main reasons we are requesting this issue be addressed by the board. Firstly, the Houys are affecting our personal enjoyment of our property by harassing us and making a nuisance of themselves from the T-shaped dock (Exhibits 4 and Exhibit Videos 5 and 5A (see USB stick)), which they illegally moved over the property boundary.

Secondly, the decision to grant grandfather status to the two docks was based on dishonest information provided by the Houys. Initially, they claimed that two docks were present on their shoreline when they purchased the property; this is not true. Later, they claimed that both docks were present before the SZO was adopted in 1993; this is also not true. Allowing the docks to remain effects the integrity of permitting/grandfathering in the Town.

BOAT DOCK

The evidence that shows the boat dock was not present when the Houys purchased the property in 2010 is as follows:

(1) The Town's own investigation by former CEO Richard Lambert concluded the boat dock had been discontinued for ~ six years prior to the Houy purchase in 2010 (Exhibit 6). The SZO states that a structure that has been discontinued for more than one year cannot be resumed (Section 12(D)(2)).

Mr. Houy (a former selectman) repeatedly misled two former CEOs (McKenna & Lambert) regarding the presence of the docks and even went so far as to reference an outdated MLS listing from 2004 (Exhibits 7 and 8).

2) The most recent MLS listing (2008) for 292 Wadleigh Pond Road, from which the Houys purchased their property, indicated one dock and, most importantly, showed shoreline pictures of only one dock- T-shaped (Exhibit 9, 9A, and 9B).

3) Despite the above information, DEP "involvement", and Town politics at the time, the Houys were given the opportunity to present picture evidence that the docks existed prior to the enactment of the Shoreland zoning laws in 1993. This was allowed because DEP claimed that there was limited information on the docks in the Town file; the above information clearly indicated otherwise. Furthermore, a historic picture of the Houy shoreline from 1991 which was in the Town file showed the absence of any docks (see point #4 below).

The Houy picture "evidence" came in the form of an email sent from a friend who dated the picture between 1991-1992 (Exhibit 10). We requested to see the evidence from the Town given the Houy's history of misinformation. Interestingly, the picture that was sent to us appeared to be altered (Exhibit 10). Our suspicion was confirmed when we obtained the original unaltered picture as part of our discovery request for our Superior court claim (Exhibit 11). The picture had been altered to hide our shoreland, more specifically a gazebo was cropped out since its presence would date the picture more accurately.

The fact that a gazebo on our shoreline was visible in the uncropped picture (Exhibit 11) dates the picture after 1993 since per DEP Assistant Shoreland Zoning Coordinator, Jeffrey Kalinich, our gazebo did not exist prior to Lyman's SZO which was adopted in 1993 (Exhibit 12). Based on his logic alone, we can therefore conclude that the Houy docks did not exist prior to 1993 either.

Furthermore, the submitted picture did not even show the existence of two docks, but instead, one T-shaped dock and a swim float (exhibit 11A) located at the easterly side of the property. A boat dock was not present.

4) As mentioned above, the only historic picture for 292 Wadleigh Pond Road that was pre-1993 was found in the Town file, dated Sept'91 (Exhibit 13) which showed no docks present. Furthermore, the house and waterfront in the 1991 picture was completely different than the one in the picture the Houys presented as evidence, supposedly from 1991-1992. The picture the Houys presented was clearly not pre-1993 and therefore should not have been used in the decision to grant grandfather status to the docks.

T-Shaped Dock

The T-shaped dock, which is a non-conforming structure due to its location, was present when the Houys purchased their property. The dock was moved during their ownership sometime between 2016-2018, as indicated by Google satellite images (Exhibit 14). The final location of the dock was even more non-conforming because they pushed it over the property boundary (Exhibit 14A). Per former CEO Brenda Charland, moving a non-conforming structure in any manner would cause it to lose its grandfathered status and it would need to be removed entirely (Exhibit 15).

Given all the evidence, we are asking that our appeal be granted.

We hope that the Board can appreciate our desire to peacefully enjoy our property and its role in helping to maintain the integrity of permitting/grandfathering in the Town. Allowing residents to provide misinformation for their gain encourages other residents to behave similarly.

Thank you for your time and help in this matter.

Paul and Amy Ala

**Town of Lyman
Code Enforcement Office / Land Use Director
So. Waterboro Road
Lyman, Maine 04002
247-0647
ceo@lyman-me.gov**

Exhibit 1

January 20, 2022

Linda & John Houy
292 Wadleigh Pond Rd
Lyman, ME 04002

Re: Map 27 Lot 18-4

Dear Linda and John,

I am writing in response to your email request of January 18th. I apologize for not sending this official notice prior to your having to ask for it.

DEP and I did a site visit at your property this fall based on complaints received. One of the complaints was that your property has two docks, and the ordinance allows a property to have one dock, or a dock for each 200 feet of shore frontage. Your property doesn't have 400 feet of shore frontage. However, you provided pictures from 1991 time frame that shows two docks. Our shoreland zoning ordinance was adopted in 1993. Because there were two docks located at this property prior to the adoption of the ordinance, the town considers the docks to be grandfathered. This means that we will not be enforcing the removal of one of the docks and you may continue to have them.

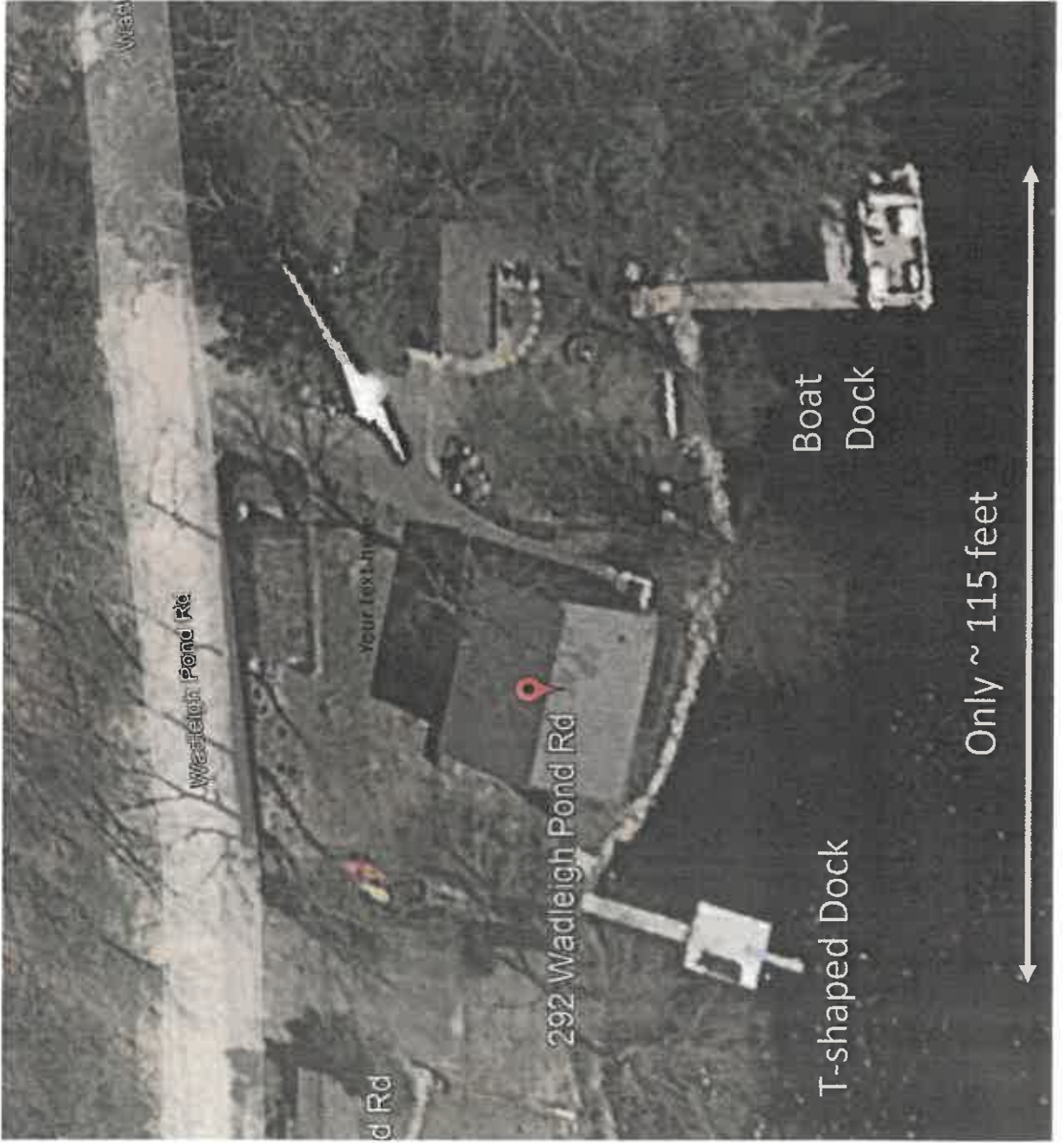
As to the storage container which I previously allowed to be placed there without a permit: A building permit was issued to you to add a second story to your existing garage. As part of that application and permit, you agreed to remove the storage container when the garage addition is completed. This corrects the error in not getting a permit for the storage container.

In your email you asked the Town attorney to confirm that a legal action would not be taken on this. It is the Board of Selectmen that decide that. I am not asking for any further action on your property regarding these two complaints. Legal actions start with a recommendation from me as the code enforcement officer. It is my opinion that these two issues have been resolved.

Respectfully,

Patti McKenna
Code Enforcement Officer

Google satellite image of 292 Wadleigh Pond Rd. (May 2018)
Houys have only ~115 feet on water frontage



Survey Map of Houy shoreland 292 Wadleigh Pond Rd.
 (July 2004)

Exhibit 2A



Exhibit 2A



Amy Ala <amyiliefala@gmail.com>

RE: 296 Wadleigh Pond Rd. - Holding Tank

4 messages

Amy Ala <amyiliefala@gmail.com>

Fri, Mar 18, 2022 at 10:49 AM

To: Patti McKenna <ceo@lyman-me.gov>

Bcc: Paul Ala <pauljala@gmail.com>, amyiliefala <amyiliefala@gmail.com>

Good Morning Patti,

We received your letter dated 3/15/22. We would like to clarify one thought in your letter. You had mentioned the request to do a 24 hr monitoring of our tank when it was full which we had no issues with. We never heard more about it though; after Mr. Brochu's expert advice, it was deemed that the water contamination was coming from the Houy property because their dug well was too close to their septic system. In fact, our lawyer followed up with an email to you and the Town attorney on 10/29/21 asking for more information regarding the investigation and to date we have not received any. We would appreciate it if you could forward any new complaints made about our tank and any other information related to the septic investigation since that time.

I will be happy to forward you a copy of the latest pump report from November 23, 2021 which also states that our tank is in good working condition.

Lastly, we have not heard back from the Town regarding our shed/gazebo and the Houy second boat dock/ storage trailer. Has the Town made a decision yet and if not, when can we expect a decision?

Thank you and have a nice weekend.
Amy & Paul

Code Enforcement Officer <ceo@lyman-me.gov>

Mon, Mar 21, 2022 at 2:30 PM

To: Amy Ala <amyiliefala@gmail.com>

Hi Amy and Paul,

The town didn't rescind its request to monitor your full holding tank.

Mr. Brochu did not "determine" that the contamination was coming from the Houy's own septic. He suggested that it very well could be. There has been no determination made as to the source of the well contamination. Our test of your full holding tank was an aid to rule out your tank as being the source.

I am told that the Houy's septic was inspected and found to be functioning as it should. I do not have a report.

The town attorney has been asked to discuss with DEP as to what the town has to do in regard to your shed and gazebo.

The town has received documentation that the Houy's had two docks since before shoreland zoning was adopted and are considering both as grandfathered and can remain. The Houy's applied to build a second level addition to their current garage and were granted a permit last fall. When that is finished they will be removing the shipping container. Both of these determinations have been accepted by DEP.

Thank you for forwarding the pumping report to me.

2/12/25, 8:53 AM Email - 292 & 296 Wadleigh Pond Road; Possible Contamination of Pond from Houys' Septic System; Questions Regarding Multiple...



Amy Ala <amyiltrafa@gmail.com>

292 & 296 Wadleigh Pond Road; Possible Contamination of Pond from Houys' Septic System; Questions Regarding Multiple Investigations, Etc.

Benjamin Johnson <bjohnson@benjohnsonlaw.com> Fri, Oct 15, 2021, at 4:52 PM To: 'ceo@ymca-me.gov' <ceo@ymca-me.gov> Cc: 'Jeffrey C. Kalinich@maine.gov' <Jeffrey.C.Kalinich@maine.gov>, Richard Lambert <ric.lambert.yt@gmail.com>, 'bmorin@bourquelegg.com' <bmorin@bourquelegg.com>

Dear Ms. McKenna:

Good afternoon. I hope you are doing well. Thank you for all the time and effort you have been expending dealing with the complaints of the Alas and the Houys regarding 292 and 296 Wadleigh Pond Road. The Alas remain hopeful these matters will be resolved by the Town fairly and expeditiously. While the Alas have been copying me on all correspondence they send or receive, I would like to better understand where things now stand. To that end, kindly respond to the numbered questions in this email at your earliest convenience.

It is my understanding that further investigation into whether the Alas' holding tank is responsible for the Houys' drinking water contamination is now on hold pending the completion of an investigation as to whether it is actually the Houys' septic system that is malfunctioning and causing the contamination. While I don't know if it will be helpful, I've attached a copy of a test the Alas recently had on their well water. As you will see, there is no bacterial contamination and all the primary standards are within EPA parameters. However, beginning last summer, the Alas' son began getting rashes after swimming in the pond, usually mid-way between the Alas' dock and the island. A doctor who examined the Alas' son opined that the rashes were likely due to something in the pond water. In light of the recent revelations regarding the Houys' contaminated well water, the Alas are concerned that the Houys' septic system may also be contaminating the pond. On this issue:

- 1) Did the Town or the DEP conduct any investigation to determine if the Houys' septic system was malfunctioning and contaminating their well and/or the pond?
2) If so, what was the result of the investigation(s)?
3) Was the Houys' septic system inspected by an independent professional?
4) Did the Houys provide the Town with a report regarding an independent inspection of their septic system?
5) On September 26th, the Alas' emailed you photos showing the Houys had been digging in their yard where their septic system is located. Did the Town look into this and was the reason for the digging determined?
6) Did the Houys apply for a permit to dig up their septic system and/or make repairs to it?

It is my understanding that Mr. Kalinich and yourself conducted an investigation regarding the Houys' renewed complaint regarding the placement of the Alas' gazebo and shed. In regard to this issue:

- 1) Did Mr. Kalinich prepare a final report or make any written recommendations to the Town?
2) Did the Selectmen make any decision regarding this at the October 4th meeting?
3) If so, will the Town notify the Alas of its decision in writing and when?

2/12/25, 8:53 AM Email - 292 & 296 Wadleigh Pond Road; Possible Contamination of Pond from Houys' Septic System; Questions Regarding Multiple...

It is my understanding that Mr. Lambert is still in the process of investigating whether the Houys violated the SZO by: a) installing a second, easterly dock on their shoreline; b) moving their second, easterly dock; c) substantially modifying their second, easterly dock; and/or c) moving their first, westerly dock closer to the Alas' property line. The Alas were under the impression that you and Mr. Lambert were going to address this issue with the Selectmen at the October 4th meeting. As it now stands, based on your October 7th email to Mr. Lambert and myself, it appears the Town is waiting to see if the Houys can provide proof that a second dock had been built on their shoreline prior to the adoption of the SZO in 1993. Even if the Houys' predecessors built a second dock on the shoreline of 292 Wadleigh Pond Road, all the evidence I am aware of indicates that it must have been subsequently removed and wasn't there when the Houys purchased their property. I've attached another Google satellite image with notations by the Alas. While it is very blurry, it certainly appears to show that there was no easterly dock in existence at 292 Wadleigh Pond Road in 1998. On this issue:

- 1) Did Mr. Lambert make any additional findings or prepare any further reports after August 19th (the date of his "preliminary findings")?
2) Did Mr. Kalinich prepare a report or make written recommendations to the Town?
3) Did the Town make any decision at the October 4th meeting other than to give the Houys time to submit more evidence?
4) Did the Town set any deadline by which the Houys must present any additional evidence?

The Alas and I appreciate that the Town is attempting to address these issues impartially and to look at all the evidence before making any final determinations. Moving forward, please keep me apprised of the status of these matters. Also, in the interest of transparency, if the Town has any of the following documents, please email me copies or advise as to whether they are now available in the Town's files for copying by the public:

- A) Any recent reports, permits and other documents related to the contamination of the Houys' well, the condition of their septic system and any repairs made to it;
B) Any recent reports, recommendations from the DEP and other documents related to the Alas' shed and gazebo; and
C) Any recent reports, recommendations from the DEP and other documents related to the docks at 292 Wadleigh Pond Road

I also request that, moving forward, you and/or the Town copy me on any non-privileged emails or other correspondence regarding these issues

Finally, I respectfully request that the Alas be afforded the opportunity to examine and rebut any evidence the Town may obtain from the Houys or other sources before any final determinations are made regarding the placement of the shed and gazebo or whether the Houys' docks violate the SZO.

Thank you in advance for your attention to this email. Please let me know if I can be of any assistance.

Best regards,

Ben Johnson

T-Shaped Dock: Houys making a nuisance of themselves

Exhibit 4

7/3/2022



Speed boat docked over property boundary, in front of our shed

8/7/2022



Seadoo docked in front of our shore

7/4/2021



Houy family casting across our shoreline

6/16/2024



John Houy casting across our shoreline

Harassment Videos

October 2023



Exhibit 5
Exhibit 5A

Video file for exhibit 5 & 5a available upon request

Email from CEO Richard Lambert to CEO Patti McKenna

Richard Lambert <dicklambert.ydc@gmail.com>
To: Code Enforcement Officer <ceo@lyman-me.gov>

Wed, Aug 25, 2021 at 1:53 PM

Hi Patti:

It seems that both parties involved in these tit-for-tat complaints have lawyered up and I think the only responsible position for the Town would be to also Lawyer up. In the past when these kinds of situations came up, I have recommended that an arbitrator be brought in to negotiate a settlement between all parties, including the Town and the State. Saco used Durward Parkinson in the past and the costs associated by engaging him were split between all parties. If all of these issues end up in litigation, the first thing that the judge will do is instruct the parties to attempt to settle the matters by arbitration so by going this route in the first place, it may save some time.

On the second dock matter, I have had responses from two of the previous owners of the Houy property and it appears that there may have been a second dock in 2004 but it was removed by the Andrews family before they sold it just about that time. It was not reinstalled until the Houys become owners in 2010. I still haven't determined the exact time the second dock made a reappearance but judging from Google Earth, 2010 is a good estimate. The question now is, does the Town want to take action on a violation that old? A conversation with the Maine DEP may be helpful in determining if they plan to get involved with either of these issues (second dock and bunkhouse). Again, I think the Town absolutely needs to bring in their attorney to actively engage the two other parties and possibly the Maine DEP if they choose to get into the picture. Let me know if I can assist further.

Sincerely,

Dick Lambert

This letter confirms that the Houys provided false statements to Mr. Lambert when they told him that their boat dock was never discontinued.



John Houy <johnhouy1@gmail.com>

LETTER FROM LYMAN CEO REGARDING 292 WADLEIGH POND ROAD LYMAN MAINE

5 messages

John Houy <johnhouy1@gmail.com>

Wed, May 26, 2021 at 9:36 AM

To: ceo@lyman-me.gov, Patti McKenna <ceolyman@roadrunner.com>, LUCIEN.LANGLOIS@maine.gov

Cc: Linda Houy <lindahouy1@gmail.com>

Bcc: John Houy <johnhouy1@gmail.com>

Good Morning Patti:

I hope this letter finds you well !!

I received your letter regarding my docks and the water issue. I have attached a copy of the real estate listing for my property which is dated 2004. As you will see, under the remarks section, it clearly states "boat launch, 2 docks and raft". I hope this clears up any concern that you may have had regarding the 2 docks that are on my property. The docks were here prior to me buying the property, which I believe makes them grandfathered.

In regard to the use of cement blocks under or around the fence, this claim is faulty. As I had discussed with you under the fence, I have placed riprap to control the water and stabilized the exposed soil with grass and plants. There is absolutely no use of cement blocks at all.

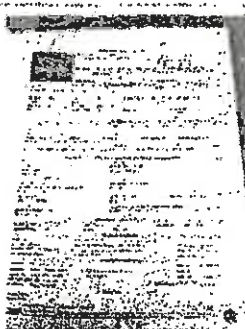
Also as you and I discussed, I put up the section of fence because my neighbor has installed a camera approximately 10 feet from the property line, aimed at the windows of my house. My neighbor is constantly watching and listening to everything that we do, as I can hear the camera being activated constantly. The installation of the fence partly blocks the camera, from the view of my house.

I have also obtained a statement from the gentleman that has graded Wadleigh Pond Road for approximately 25 years. In the statement he states there have been no changes to the roadway or banking in front of 292 Wadleigh Pond Road for the last 25 years

I welcome an inspection of these areas by yourself or the DEP. As you will find they meet the standards that you and I have discussed on several occasions

If there are any other concerns, please feel free to contact me.

Regards
John Houy
207-282-9658



DOCK.jpg
5548K

Linda Houy <lindahouy1@gmail.com>
To: John Houy <johnhouy1@gmail.com>

Wed, May 26, 2021 at 9:47 AM

John Houy falsely stated to CEO Mr. Lambert that the boat dock was never discontinued or removed for a period of time

Exhibit 8

**Town of Lyman
Code Enforcement Office / Land Use Director
11 South Waterboro Road
Lyman, Maine 04005
(207) 247-0647**

July 13, 2021

John & Linda Houy
292 Wadleigh Pond Road
Lyman, ME 04002

RE: Follow up of letter of July 7, 2021, 2nd Dock. Tax Map 27, lot 18-4.

Dear Mr. & Mrs. Houy,

Thank you for reaching out to me today concerning my letter to you dated July 7, 2021. In that letter I explained that I did not find any response to a letter sent to you by Patti McKenna who was acting in her capacity as Code Enforcement Officer/Land Use Director for the Town of Lyman regarding a complaint she was investigating concerning a second dock being installed at your property as captioned above. From the information you have provided today, it does appear that Patti investigated this matter and that you had provided information and documentation to her on May 26, 2021 regarding the existence of 2 docks and a float when you purchased the property back in 2004. This evidence was in the form of an MLS Property listing indicating under the remarks section "Year-round ranch is located on Wadleigh Pond. Property comes with detached garage with spare room, patio, deck, boat launch, 2 docks and raft."

In response to the evidence you provided, Patti sent you a follow-up email on May 26, 2021, which states "Thank you for the additional pictures. I will add the emails and pictures to your building file for future reference. I will also type a letter stating that I don't intend to take any action on the complaints in the letter sent to me by the Ala's attorney and I will mail that to you and put a copy in the file." When I asked you in this morning's conversation if either dock had ever been discontinued and removed for a period of time, you responded no. It is this information that I could not find that prompted my letter to you dated July 7, 2021. I apologize for the confusion this may have caused. By way of this letter, I am advising you that the Town will not move forward with any enforcement action concerning this matter, absent additional evidence not already presented to the Town.

Thank you again for your prompt response to my original letter.

2008 MLS -Only 1 dock present

Exhibit 9

Private Client Synopsis Report

292 Wadleigh Pond Road, Lyman, ME 04002
 List Number:
 Status:

864698
Closed

Neighborhood:
 Association:
 County: **York**

Association Fee:
 Seasonal: **No**
 Entrance Fee:

Directions: From Gardford, Route 202 to right on S. Waterboro Road. Left on Clark's Wood Road, left on Fries Bridge Road right on Wadleigh Pond Road, property on right. Sign on property

General Information

Property Sub-Type:
 # Rooms:
 # Bedrooms:
 Style:
 Color:
 Year Built:
 Surveyed:
 Road Frontage +/-:
 # Fireplaces:

Single Family Residence
3
1 Baths: 1.0
Cottage
Gray
1992
Unknown
102

SqF: Finished Above Grade +/-: **692**
 SqF: Finished Below Grade +/-: **0**
 SqF: Finished Total +/-: **692**
 SqF: Source: **Seller**
 Other Source of Square Footage:

Leased Land: **No**
 Lot Size Acres +/-: **0.2**
 Source of Acreage:
 Zoning: **Shoreland**

Water Information

Water Frontage:
 Water Frontage Amt +/-:
 Waterfront Connec +/-:
 Waterfront Shared +/-:
 Water Body:
 Water View:
 Water Body Type:

Yes
120
120
Wadleigh Pond
Yes
Pond

Tax/Deed/Community Information
 Book/Page/Deed: **14545/488**
 Map/Block/Lot: **27 / 18-4**
 Full Tax Amount/Year: **\$1,676 / 07-09**
 Tax ID: **292 Wadleigh Pond Road Lyman 2718-4**



Interior Information

Room Name	Length	Width	Level	Room Features	Room Name	Length	Width	Level	Room Features
Kitchen	8	13	First	Fab-In Kitchen	Primary Bedroom	11	12	First	

Property Features

Utilities On:	No	2 Detached Houses on 1 Lot	Wood Frame
Site:	Level; Open	Constructor:	Crawl Space
Driveway:	Gravel	Basement Info:	Block
Parking:	1-4 Spaces	Foundation Materials:	Clapboard
Location:	Near Shopping: Rural	Exterior:	Metal
Restrooms:	No Restrictions	Roof:	Direct Vent Heater
Recreational Water:	Dock	Heat System:	K-1/Kerosene
Roads:	Gravel/Dirt	Heat Fuel:	Electric
Transportation:	Circuit Breakers	Water Heater:	None
Electric:	No Gas	Cooling:	Carpet; Vinyl
Gas:	Septic Design Available; Septic Existing on Site	Floors:	1 Car; Detached
Sewer:	Well Existing on Site	Vehicle Storage:	Deck; Porch
Water:		Amenities:	
Equipment:		Accessibility Amenities:	
Basement Entry:		View:	

Remarks: This 1 BR year-round cottage sits directly on the water's edge of peaceful Wadleigh Pond. In addition to the open concept, it offers a sleeping loft & detached garage w/separate bunkhouse potential. Listing Agent/Office Information

Days On Market: **300** List Date: **03/28/2008** Buyer Agency: **2%** S/Lb Agency:
 Pending Date: **01/22/2009** Withdrawal Date: Terminated Date: **2%** Transaction Broker: **2%**
 Listing Office: **Town Square Realty Group 2176**

Sold Information

Seller Contributions: **Cash** Closed Date: **04/20/2010**
 Closed Price: **\$145,000**



Exterior Front.



Other.



Waterfront Dock/Pier.



Kitchen.



Living Room.



Other.



View.



Perked in Lot 45 view.

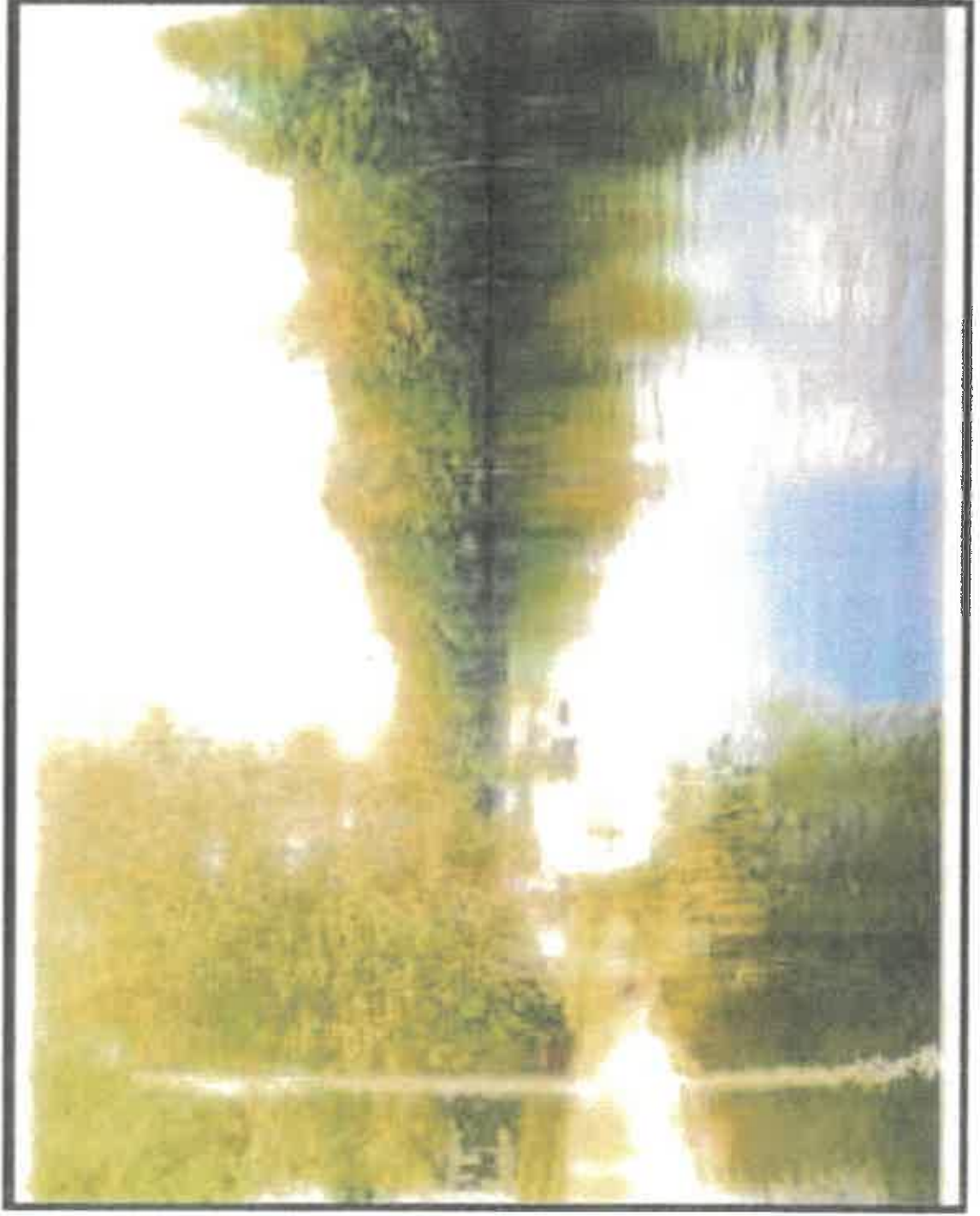
This smaller dock belonged to 296 Wadleigh Pond and was removed around the time the T-shaped dock was pushed beyond the boundary line.



2008 MLS-

Only 1 dock present

Picture from 2008 MLS shows no dock present on the easterly side of the shoreline. Therefore, only one dock (T-shaped dock) was present on 292 Wadleigh Pond Rd when the Houys took ownership.



CEO Patti McKenna emailed us the Houy picture evidence

Exhibit 10

Note that we were notified about 5 months after the picture had been presented to the Town



Amy Ala <amyiliefala@gmail.com>

RE: Copy of Houy Boat dock picture

Code Enforcement Officer <ceo@lyman-me.gov>
To: Amy Ala <amyiliefala@gmail.com>

Mon, May 16, 2022 at 3:34 PM

Attached please find a copy of the email and picture of the docks.

[Quoted text hidden]

2 attachments

 SKM_364e22051615340.pdf
18K

 SKM_364e22051615350.pdf
24K

Code Enforcement Officer

From: Linda Houy <lindahouy1@gmail.com>
Sent: Tuesday, October 12, 2021 2:16 PM
To: Code Enforcement Officer
Subject: Re: Photo

Hi Linda,
I found this photo from about 1991-1992. My youngest son was born end of August 1991. While my father still had the old camp. The picture shows a dock in the place your current dock is located.

Sincerely,
Denice Morais



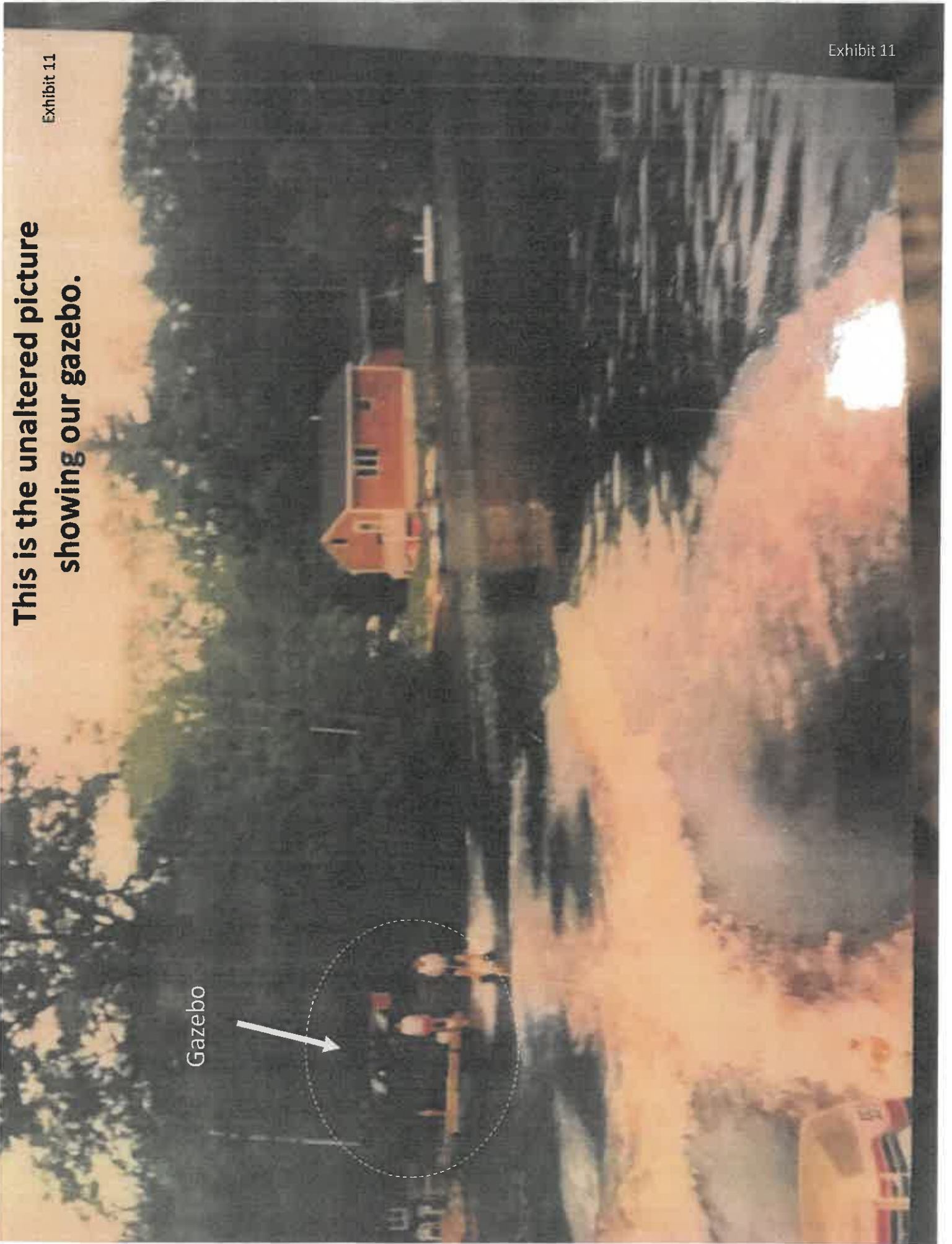
Exhibit 10

This is the unaltered picture showing our gazebo.

Exhibit 11

Exhibit 11

Gazebo



This is a swim float not a dock.

Exhibit 11A :



Exhibit 11A



Amy Ala <amyiliefala@gmail.com>

Re: 296 Wadleigh Pond Road Shed and Gazebo

Kalinich, Jeffrey C <Jeffrey.C.Kalinich@maine.gov>
To: Amy Ala <amyiliefala@gmail.com>

Thu, May 18, 2023 at 8:46 AM

Dear Ms. Ala,

To be grandfathered the structures would have to have preexisted Lyman's Shoreland Ordinance which is not the case with the shed or gazebo. The original shed was permitted but the location was not in compliance with the permit. The original gazebo was never permitted and appeared after the shed was constructed. Pati permitted the replacement shed and gazebo in error.

Regards,

Jeffrey C. Kalinich

Assistant Shoreland Zoning Coordinator

Maine Department of Environmental Protection

312 Canco Road

Portland, Maine 04103

Ph. (207) 615-7044

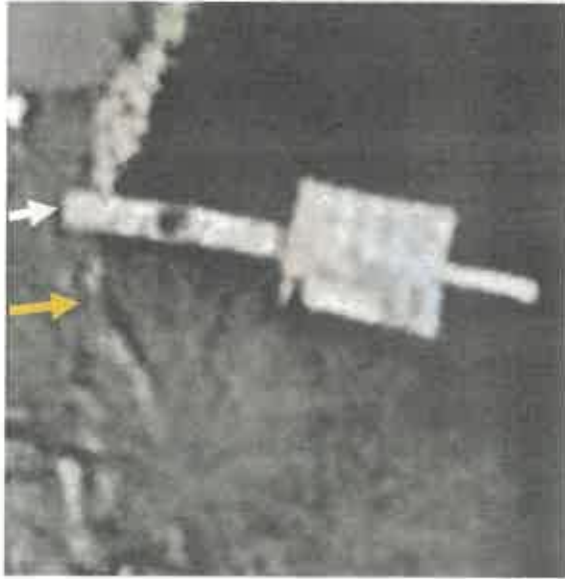
Fax. (207) 822-6303

www.Maine.gov/dep

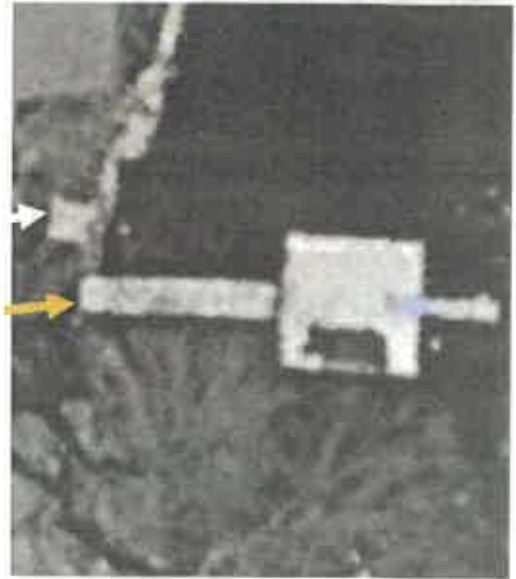


1991 Picture in Houy town file- no docks present
and a completely different looking house

T-Shaped Dock: Dock was moved beyond the property boundary



Satellite images confirm Houys moved their T-shaped dock beyond property boundary sometime between 2016 and 2018.



Based on this information, the dock was moved approximately six to eight years after the Houys purchased their property.

T-Shaped Dock: Dock was moved beyond the property boundary (Town of Lyman Shoreland Zoning Ordinances)

View down boundary fence - land



11/14/2020

View down boundary fence - lake view



8/1/2020

9/18/23, 1:39 PM

RE: Water questions - Code Enforcement Officer - Outlook

RE: Water questions

Code Enforcement Officer <ceo@lyman-me.gov>

Wed 4/12/2023 5:30 PM

To:Linda Houy <lindahouy1@gmail.com>

Hello Linda, in response to your questions regarding 292 Wadleigh Road, Lyman:

1. I believe the dock in question is a legal, non-conforming structure meaning that it existed prior to the enactment of the Zoning Ordinance; moving a non-conforming structure in any manner would cause it to lose its "grandfathered" status and it would have to be removed entirely;
2. I have never agreed with ditching along the boundary of a lot in the Shoreland Zone in order to divert surface water into the lake.

I hope this answers the questions you have. Please feel free to contact me if you need further information

Brenda Charland
Code Enforcement Officer

11 So. Waterboro Road, Lyman, ME 04002

207-247-0647

207-468-3220

ceo@lyman-me.gov

lyman-me.gov

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STATE OF MAINE
YORK, ss.

SUPERIOR COURT
Civil Action
Docket No. AP-22-011

PAUL J. ALA and MELINA AMY ILIEF-
ALA,)
)
)
 Plaintiffs,)
)
 v.)
)
 TOWN OF LYMAN,)
)
 Defendant,)
)
 and)
)
 JOHN W. HOUY and LINDA M. HOUY,)
)
 Parties-in-Interest.)

**ORDER DISMISSING
RULE 80B APPEAL**

Paul J. Ala and Melina Amy Ilief-Ala filed this appeal pursuant to M.R. Civ. P. 80B challenging decisions by the Town of Lyman's Code Enforcement Officer not to issue notice of violations or otherwise enforce provisions of the Town's Shoreland Zoning Ordinance with respect to several issues relating to the abutting property owned by John and Linda Houy. For the reasons set out below, the appeal is dismissed.

Background

The Alas own waterfront property located at 296 Wadleigh Pond Road in Lyman. In April 2010, the Houys purchased an abutting property located at 292 Wadleigh Pond Road. Shortly thereafter, the Houys began construction to expand an existing structure on the property. Their application for an after-the-fact permit was denied in December 2010 by the Planning Board, which noted that a prior expansion of the structure had already exceeded the limit under the Shoreland Zoning Ordinance. Subsequently, the Town and the Houys

entered into a consent order which required removal of an accessory building. In or around 2014, the Houys placed a large storage container on their property after being told by the Town's Code Enforcement Officer ("CEO") that a permit was not needed. The storage container still remains on the property.

In early October 2021, the Maine Department of Environmental Protection ("DEP") conducted an inspection of the Houys property after receiving complaints concerning stormwater drainage. Jeffrey Kalinich, the DEP's Assistant Shoreland Zoning Coordinator, sent a memorandum dated October 7, 2021, to the Town's CEO summarizing his findings from the inspection. The memorandum addressed in addition several other issues, including the storage container located on the property as well as the existence of a second dock.

With regard to the storage container, the Kalinich memo advised that it did not appear to be a temporary structure, and that by not requiring a permit the Town's implementation of its Shoreland Zoning Ordinance ("SZO") was inconsistent with the requirements of Maine's mandatory Shoreland Zoning Act because the storage container, whether permanent or temporary, must meet setback and all other shoreland zoning standards. The memo further advised that the storage container did not appear to meet the 75-foot setback requirement from the pond; may exceed the 20% lot coverage limit; and may also exceed the allowed dimensions.

With respect to the second dock, the Kalinich memorandum stated that the inspection confirmed the Houy property has two docks but only has the shore frontage required for a single dock under the SZO. However, it was unclear whether both docks existed prior to adoption of the relevant ordinance provision and was therefore a grandfathered use. The memo asks the Town to address these questions. In response, the Town notified the Houys

of the DEP's findings and requested that they respond within thirty days with a plan to remove the storage container or apply for an after-the-fact permit, and also submit documentation regarding the dock.

On December 1, 2021, the CEO issued a building permit to the Houys authorizing the relocation of a portion of an existing structure and the addition of a second floor onto their existing garage. The permit also requires that the storage container be removed within forty-five days of completion of the project and that grass be planted where the container had been located. The permit expires on December 1, 2022. The CEO did not issue a notice of violation to the Houys with regard to the storage container.

The Houys contend, and the CEO agreed, that the second dock is a grandfathered use. The Houys submitted various materials to support their contention, including a 2004 MLS listing of the property showing two docks on the property as well as photographs from 1991 depicting two docks in roughly the same location as they are currently. The Alas submitted other materials indicating that one of the two docks had been removed sometime between 2004 and when the Houys purchased the property in 2010. John Houy stated, in response to a question from the CEO, that the docks had never been discontinued or removed for a period of time. The CEO found that, because the SZO was adopted in 1993 and the property contained two docks prior to its adoption, the Town considers the docks to be a grandfathered use and that "[the Town] will not be enforcing the removal of one of the docks and [the Houys] may continue to have them." (R. 133.)

The Alas were informed of the CEO's decisions in a letter dated March 21, 2022. They did not file an appeal with the Town's Board of Appeals but rather filed the instant Rule 80B appeal on April 21, 2022, directly in this court seeking review of the CEO's enforcement

actions or inactions. Along with the complaint, Plaintiffs filed a motion to enlarge the time for filing the Rule 80B appeal.

Discussion

The instant appeal challenges enforcement actions or non-actions taken by the CEO, namely the decision not to issue a notices of violation regarding the storage container and the second dock, and order their removal. The Town and the Houys contend that Plaintiffs are not entitled to appeal under the express terms of the SZO and this court therefore lacks jurisdiction.

Section 16(H)(1)(a) of the SZO provides that “[a]ny order, requirement, decision or determination, or failure to act, in the enforcement of this ordinance is not appealable to the Zoning Board of Appeals.” (R. 38.) Although “[a]n administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer,” any “enforcement-related matters as described in Section 16(H)(1)(a)” are exempt from appeal. (*Id.*)¹

Plaintiffs concede that CEO enforcement orders, actions or non-actions are not appealable to the Board of Appeals but argue that this does not preclude an appeal directly

¹ Plaintiffs state they “are *not* appealing the issuance of the December 22, 2021 building permit, only the CEO’s determination to allow the storage container to remain in place until some date uncertain, the CEO’s determination that the dock that had been removed and later rebuilt was not an enforcement violation, and the CEO’s inaction on the relocated dock. (Plaintiffs’ Rule 80B Brief, 10.) (Emphasis added.) Even if the CEO’s “determination to allow the storage container to remain in place until some date uncertain” constitutes administrative action, which may be appealable to the Board of Appeals under Section 16(H)(4)(a)(i)—as opposed to an enforcement action, which may not be appealable—Plaintiffs have expressly disavowed an appeal of the December 2021 permit. Moreover, their failure to take such an appeal within the allotted 30 days under Section 16(H)(4)(a)(i) constitutes a waiver and does not permit a direct appeal to Superior Court.

to the Superior Court. They cite in support of their argument *Paradis v. Town of Peru*, 2015 ME 54, 115 A.2d 610 and *Raposa v. Town of York*, 2019 ME 29, 204 A.3d 129.

Plaintiffs' argument is unpersuasive. In *Paradis*, the appellant challenged the CEO's determination that a garage had been constructed in violation of multiple ordinance provisions. 2015 ME 54, ¶ 1, 115 A.2d 619. The Town of Peru's ordinance contained provisions identical to Section 16(H)(1)(a) and Section 16(H)(4)(a)(i) of Lyman's ordinance cited above. *Paradis* held that "the Board of Appeals lacked jurisdiction to hear Paradis's appeal, which in turn deprived the Superior Court of jurisdiction to consider it . . ." *Id.* ¶ 8. In *Raposa*, the Law Court reviewed the state of the law in this area, including the enactment by the Legislature of P.L. 2013, ch. 144, which provides Boards of Appeal and the Superior Court with jurisdiction to review municipal notices of violation. 2019 ME 29, 204 A.3d 129. This enactment, codified at 30-A M.R.S. § 2691(4), provides in pertinent part:

Absent an express provision in a charter or ordinance that certain decisions of its code enforcement officer or board of appeals are only advisory or may not be appealed, a notice of violation or an enforcement order by a code enforcement officer under a land use ordinance is reviewable on appeal by the board of appeals and in turn by the Superior Court under the Maine Rules of Civil Procedure.

30-A M.R.S. § 2691(4) (emphasis added). *Raposa* held that a CEO's written decision interpreting a land use ordinance "is appealable to the Board [of Appeals] and in turn to the Superior Court—whether the CEO finds that there is or is not a violation—so long as the ordinance does not expressly preclude the appeal." *Raposa*, 2019 ME 29, ¶ 11 (emphasis added).

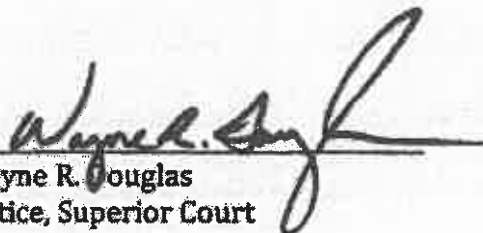
Here, the Town's ordinance does expressly preclude an appeal from the CEO's "order, requirement, decision or determination, or failure to act, in the enforcement of this ordinance." The court, therefore, lacks jurisdiction to hear the instant appeal. Accordingly,

it is hereby ordered and the entry is: "Plaintiffs Paul J. Ala and Melina Amy Ilief-Ala's complaint is DISMISSED because the court lacks jurisdiction. Plaintiffs' Motion to Enlarge Time to File Rule 80B Appeal is DISMISSED as moot.²

The clerk may enter this Order Dismissing Rule 80B Appeal on the docket by reference pursuant to M.R. Civ. P. 79(a).

SO ORDERED

Dated: August 24, 2022


Wayne R. Douglas
Justice, Superior Court

ENTERED ON THE DOCKET ON: 8/24/2022

² Because the court concludes it lacks jurisdiction, the other issues raised by Plaintiffs are not addressed.