

In the Matter of the Application
of Harold Halliday d/b/a Halliday
Capital LLC for a Class A marina
permit

HEARING REPORT
LGPC #5234-3-17
M1-MAJOR

SUMMARY

This report is based on the evidence presented at the hearing held on August 21, 2017 at the Lake George Village Hall regarding the application of Harold Halliday d/b/a Halliday Capital, LLC (Halliday, applicant) to the Lake George Park Commission (LGPC) requesting a Class A marina permit for property located at 2599 Ridge Road, Queensbury, New York (property). These proceedings are governed by 6 NYCRR part 645.

Applicant is seeking a Class A marina permit to store up to five vessels in a 3600 square foot building proposed to be constructed on applicant's residential property (Exhibit D). The LGPC issued a Notice of Intent to Deny by letter dated May 26, 2017 on the grounds that applicant had not demonstrated the necessary requirements for a Class A marina permit (Exhibit I). Applicant filed a request for adjudicatory hearing by letter dated May 31, 2017 (Exhibit J).

Pursuant to 6 NYCRR 645-6.2, New York State Department of Environmental Conservation (DEC) Administrative Law Judge (ALJ) Molly T. McBride was assigned as hearing officer for the matter. Pursuant to 6 NYCRR 645-6.3, a Notice of Public Hearing, Issues Conference and Adjudicatory Hearing was published in the Post Star on July 20, 2017, and in the DEC's Environmental Notice Bulletin on July 19, 2017. A public comment hearing, issues conference and adjudicatory hearing were held on August 21, 2017 at the Lake George Village Hall. Applicant appeared personally and with counsel, Thomas Ulasewicz, Esq., of the firm Fitzgerald Morris Baker Firth, P.C. The LGPC appeared by Eileen Haynes, Esq., of the firm Bartlett, Pontiff, Stewart and Rhodes, P.C., and Joseph Thouin, Environmental Analyst 1, Director of Water Quality for LGPC.

The public comment hearing was held first on August 21, 2017. Six speakers commented in person and two letters were received into the comment session record. The issues conference

was held immediately after the comment hearing. A petition requesting party status in the proceeding was filed by Frank and Isobel Munoff (Court Exhibit 4). Petitioners did not propose any new issues and indicated they did not have any witnesses that they intended to call at the hearing and did not wish to be a third party in the action (T. 37).¹ Pursuant to 6 NYCRR 645-6.4(b), the Munoffs were granted and accepted limited party status.

The adjudicatory hearing immediately followed the issues conference and the hearing concluded on August 21, 2017. The parties were afforded an opportunity to submit written briefs. Closing briefs were submitted on September 8, 2017. Applicant objected to the closing brief of LGPC by letter dated September 12, 2017, and requested an opportunity to reply to the closing brief. The request was denied by the hearing officer and the record closed on September 15, 2017.

The hearing officer is tasked with making Findings of Fact and Conclusions of Law based on the hearing record and forwarding a hearing report to the LGPC for a final decision (6 NYCRR 645-6.7[c]).

FINDINGS OF FACT

1. Harold Halliday d/b/a Halliday Capital, LLC, applied to the LGPC for a Class A marina permit on November 10, 2016 for a marina to be located at 2599 Ridge Road Queensbury, New York (Exhibit D). Applicant proposes to locate a 3600 square foot structure for purposes of storing five boats (see id.). The proposed site is located on Route 9L, also known as Ridge Road, a NY State Road (Halliday pre-filed at 2).

2. The matter was heard at the May 23, 2017 LGPC monthly meeting (Exhibit L). At the meeting, six commissioners voted against the application and two voted in favor of the application (Thouin pre-filed at 15-16).

3. LGPC issued a Notice of Intent to Deny on May 26, 2017 on the grounds that the project does not meet the requirements of 6 NYCRR 646-1.2 (Exhibit I).

4. Applicant requested a public adjudicatory hearing by letter to the LGPC dated May 31, 2017 (Exhibit J).

¹ Numbers in parenthesis refer to pages in the transcript from the August 21, 2017 hearing.

5. A public comment hearing, issues conference and adjudicatory hearing were held on August 21, 2017 at the Lake George Village Hall.

6. Six members of the public spoke at the public comment hearing. Four spoke in favor of the project:

Jim Lettis, 2586 Route 9L who stated that he believes he has the "better view" of applicant's property and he has no objection.

James Schoonover, neighbor residing at 2495 Route 9L who stated applicant has turned his property into a nice property and made the community "a lot better" and he does not object.

John Salvador, Jr., 37 Alexy Lane, North Queensbury stated that he does not believe a permit is necessary for the project.

Charles Munzenmarer, neighbor residing at 2760 State Route 9L has gone over the project with applicant and sees no negative impact on the neighborhood.

7. Two members of the public spoke in opposition, **Frank and Isobel Munoff**, 2626 Route 9L whose oppose the project on several grounds. They object based on potential visible (view structure when leaves are down), audible (sounds of business being transacted) and financial impacts (decrease value of their home). They also object as the project may disturb the peaceful nature of the area (Court Exhibit 4).

8. Two letters were submitted objecting to the project. The letters were from **Nicole Gillis**, not a neighbor to the project site, who objected to actions applicant took on other property he owns; and **William Calogero Jr.** neighbor residing at 2629 Route 9L who noted his only concern is with potential impacts to wildlife in the area as well as potential impacts to the water table should a septic system and running water be included with this project. (Running water and septic are not included with the proposed project.) He noted that a pond formed on a vacant lot between applicant's property and his property that he believes has attracted wildlife. He is concerned that the project will impact that wildlife. The letters are made a part of the record of the public comment hearing (T. 17-18).

9. Three issues to adjudicate were identified and agreed to by applicant and the LGPC at the issues conference:

- 1) Does the application meet the criteria for a Class A marina as defined at 6 NYCRR 646-1.2;

- 2) What probable effect will the facility have on the health, safety, welfare of the public resources of the Adirondack Park under 6 NYCRR 646-1.6; and
- 3) Does applicant intend to use the building as a marina use rather than a simple storage facility.

10. A petition requesting party status in the proceeding was filed by Frank and Isobel Munoff. They appeared at the issues conference but had no witnesses, no evidence to present and no issues to propose separate from the stipulated issues (T. 41). The Munoffs object to the project.

11. The proposed site is zoned Waterfront Residential by the Town of Queensbury and has a two-family residence located on it (Halliday pre-filed at 1).

12. The project requires a special use permit from the Town of Queensbury Planning Board. The permit was issued on January 24, 2017. The permit included a stormwater management plan that was approved by the Town's consulting engineer, Chazen Companies (Thouin pre-filed at 9; Exhibit D; T. 183). Frank Munoff appealed from the issuance of the permit twice. Both appeals were denied on the merits (T. 181, Exhibit 16).

13. A permit is required from the LGPC to construct or operate a Class A marina (6 NYCRR 645-5.3[a][1]). Pursuant to 6 NYCRR 645-2.1(f)(6), a Class A marina is defined, in part, as:

(f) *Class A marina* means any facility located in whole or in part within the park which provides services or berthing places for vessels by engaging in any of the following:

(6) the storage, berthing or mooring of two or more motorized vessels and/or nonmotorized vessels 18 feet in length or more not registered to the owner of the property, regardless of remuneration or profit.

14. The applicable requirements for a Class A marina are detailed at 6 NYCRR 646-1.2(b)(1-3):

(b) Specific requirements. No Class A marina shall be constructed, expanded or operated without providing the following:

(1) Restrooms, including toilet facilities, for the use by customers, which shall be available at all times from May 1st to October 31st of each year.

(2) One on-site parking space or adequate off-site parking for each vessel berthed. Where the Class A marina offers rides, instruction or water-based

recreation for a fee, adequate parking must be provided for customers of the Class A marina.
(3) An adequate storage area for trailers or the storage of trailers shall be prohibited.

15. Applicant requested a waiver from the LGPC request for the requirement that the Class A marina have restrooms (Thouin pre-filed at 11).

16. The proposed structure was originally situated on property owned by applicant in the Town of Ft. Ann and was originally intended by applicant to be used to store his personal equipment, boats, canoes, and "toys" (T. 85). Applicant must move the structure and is seeking approval to locate it at the proposed site (T. 86).

17. Applicant entered into an Order on Consent with LGPC on April 20, 2016 wherein he agreed to remove the structure from the Ft. Ann location and remediate that site (Thouin pre-filed at 6; Exhibit C).

18. Applicant intends to store a maximum of five boats at the site if the permit is issued (Halliday pre-filed at 3; T. 68). Applicant intends to store boats roughly 10-12 feet wide and 32-35 feet long, including pontoon boats, racing boats, and wooden boats of several sizes. The maximum number he can store is five boats (Halliday pre-filed at 3).

19. The proposed structure totals 3600 square feet, 2400 square feet of inside storage and 1200 square feet of outside storage located under the rear building overhang (Exhibit D; Halliday pre-filed at 3). It would be 23'4" at its peak, 15' at the drip edge with tan colored sheet metal siding and a brown metal roof (Thouin pre-filed at 12).

20. There is adequate paved access to accommodate the business (Anthony pre-filed at 4).

21. The application package indicates that 2,350 square feet of wetlands will be filled (Exhibit D). No permit is required to fill the wetlands (Thouin pre-filed at 12). Applicant has received non-jurisdictional determinations from the Adirondack Park Agency (APA) (letter of Mary O'Dell dated February 14, 2017, Exhibit 9) and the US Army Corps of Engineers (Anthony pre-filed at 5).

22. Applicant had detailed site plans approved by the Town of Queensbury, including a Stormwater Management Report reviewed by

Queensbury's consulting engineer, Chazen Companies (Anthony pre-filed at 5).

23. The application review process necessitated the completion of a Short Form Environmental Assessment Form (EAF) and it was completed by Joe Thouin on February 8, 2017 (Exhibit D). Part 2-Impact Assessment of the EAF has eleven questions regarding impacts of the project and the preparer either marks the potential impact as "No, or small impact may occur" or "moderate to large impact may occur." Joe Thouin responded "No, or small impact may occur" in response to each of the eleven questions (see id.). Part 3 of the EAF, "Determination of Significance" concludes the proposed action will not result in any significant environmental impacts (Exhibit D).

24. Thouin concluded the specific proposed project's "limited scope did not warrant a Positive Declaration or a Conditioned Negative Declaration" (Thouin pre-filed at 15). Thouin drafted a Negative Declaration but it was not issued by the Commission as it was part of the resolution the Commission denied at the May 2017 meeting (see id.).

25. The application submitted does not indicate if restrooms will be available for customer use (Exhibit D). Applicant testified that the proposed structure will not have restroom facilities but he will make the restroom in his personal residence on the property available to customers (T. 94).

26. The anticipated customer visits at the project site are twice per year, once in the fall when the customer drops off the boat, and once again in the spring to pick up the boat (Exhibit D, Anthony pre-filed at 4). Applicant estimates it will take five minutes for a customer to drop off a boat (T. 127). Applicant will be operating the site (moving boats into storage in fall and out of storage space in the spring) for 3.33 hours to 5.83 hours total per year (Applicant brief p. 8).

27. Applicant's consultant Jeff Anthony discussed the issue of restrooms with Joe Thouin during the application review process (Anthony pre-filed at 4). The project entails storage only, no sales, service, repair or berthing, and no employees other than applicant (Anthony pre-filed at 4).

28. Applicant contends that the restroom requirement is not applicable as it requires facilities "from May 1st to October 31st of each year," which is not the anticipated storage time (Applicant brief at 4).

29. The LGPC determines what impact the facility will have on the health, safety and welfare of the community and the resources of the park (Thouin pre-filed at 4). The LGPC considers whether the facility will increase congestion in the lake and community and looks at the visual, cultural and audible effects of the proposed facility on the neighborhood pursuant to 6 NYCRR 646-1.2(a), which reads:

(a) Prior to granting any permit relative to a dock, wharf, mooring or marina, the commission shall ascertain the probable effect of the proposed facility and the operation thereof on the health, safety and welfare of the public and on the resources of the park. The commission shall also ascertain the impact of the proposed facility upon the congestion of Lake George and the probable visual, cultural and audible effects of the proposed facility on the neighborhood in which the facility is proposed and on the park. Where the commission determines that the facility will have an undue impact upon the health, safety, or welfare of the public or the resources of the park, lead to overcrowding or congestion, or cause undue visual, cultural or audible impacts on the neighborhood or the park, a permit shall be denied.

30. The following non-residential structures are located within one half mile of proposed site: North Queensbury Rescue Squad, US Post office, indoor storage at a former firehouse, NY Telephone switching station building, Cleverdale Country Store, Liquor store and fuel service, Davies and Davies real estate office, North Queensbury Firehouse, helicopter landing pad, Sunsoval Maintenance and Construction facility, Castaway Marina, J & D Indoor and outdoor boat storage (Halliday pre-filed at 2, and Exhibit 1-A).

31. Applicant placed a raised bucket truck on his property in order to evaluate visual impacts. He placed the bucket truck on the proposed foundation and took photos from the raised bucket at a height of twenty-nine feet (T. 74). Exhibit 4 is a series of photos taken by applicant showing his property and the Munoff property from ground level as well as from the 29-foot high bucket truck (Exhibit 4; T. 75-77).

32. Frank Munoff stated that he could see applicant's raised bucket truck from his property (T. 205).

33. The proposed project will increase vehicle traffic 0.12% to 0.61% above normal traffic levels on Route 9L (Exhibit D, Draft

Negative Declaration, Notice of Determination of Non-Significance, Exhibit 15).

34. The ratio of impervious surface to overall lot size for the proposed site is 20-22% now and would be 23-25% if the structure is constructed (T. 149).

35. No negative health effects have been raised regarding this proposed project.

36. No safety threats have been raised with regard to this proposed project.

37. Issues have been raised as to potential effects this proposed project may have on the public's welfare. Neighbors Frank and Isobel Munoff object to the visual, audible, social and financial impact it could have on their use and enjoyment of their property (Court Exhibit 4).

38. The Munoffs allege that they will look down at the roof of the building from their property (Court Exhibit 4). They object to the project because they claim they will hear "the voices of transacted business, directing movements of hauled cargo" (id.). They characterize the neighborhood around the project and their home as "beautiful natural residential zone that has for so long prevented the encroachment of gross commercial ventures in a pristine area" (Court Exhibit 4).

39. The area within one half mile of the Munoff home has private residences as well as thirteen (13) non-residential businesses and operations, including emergency services facilities and several marinas (T. 54-67; Exhibits 1-A, 1-B).

40. No proof was presented that the proposed project will disrupt or interfere with nearby wildlife.

41. No proof was presented that the proposed project will have an undue impact upon the health, safety, or welfare of the public or the resources of the park, lead to overcrowding or congestion, or cause undue visual, cultural or audible impacts on the neighborhood or the park.

42. The LGPC issued a Class A marina permit to Joel Jordan in Hague, New York. Mr. Jordan has a private single family home on-site with no restroom facilities other than his residence (Halliday pre-filed at 10; T. 145). Jordan services and stores boats at the site and he brings his customer's boats to and from his marina (T. 146).

CONCLUSIONS OF LAW

1. The project requires a Class A marina permit from the LGPC.
2. The application meets the criteria for a Class A marina permit. Applicant has demonstrated that the project meets the requirement of 6 NYCRR 646-1.2(b)(1) & (2) in that restrooms are available at the proposed project site in his residence and there is adequate on-site parking.
3. No proof has been made that the proposed facility will have an undue impact upon the health, safety, or welfare of the public or the resources of the park, lead to overcrowding or congestion, or cause undue visual, cultural or audible impacts on the neighborhood or the park that would warrant permit denial as required by 6 NYCRR 646-1.2(a).
4. Applicant has demonstrated that he intends to use the proposed facility as a Class A marina storage facility.

SUMMARY

The three issues for adjudication were fully developed at the hearing. First, applicant has demonstrated that he intends to store five boats in the storage facility. Second, applicant has demonstrated that the permit application meets the requirements of 6 NYCRR 646-1.2(b)(1)&(2) in that the area has sufficient paved surface to meet customer needs and, the restroom requirement can be met through the availability of applicant's personal residence which is located on-site. Applicant intends to store up to five boats on-site. The probable need for restrooms by customers will be limited. Applicant demonstrated that the intended use of the facility will result in five brief customer visits in the Fall to deliver the boat for storage, and five brief customer visits in the Spring to retrieve the boat from storage. Finally, no sufficient proof was presented that the proposed project will have an undue impact upon the health, safety, or welfare of the public or the resources of the park, leading to overcrowding or congestion, or cause undue visual, cultural or audible impacts on the neighborhood or the park. Several neighbors voiced no objection. The Munoffs' objection has not shown an undue impact as the proposed site is located in an area that has a mix of residential and commercial properties.

_____/s/_____
Molly T. McBride
Administrative Law Judge

Dated: November 2, 2017
Albany, New York