

COMMISSION TO STUDY THE EFFECTIVENESS OF THE CURRENT STATUTES
RELATED TO MANAGEMENT OF NON-TIDAL PUBLIC WATERWAYS AND THE
CONSTRUCTION OR PLACEMENT OF STRUCTURES WITHIN THEM (RSA 482-A:35)

Monday, October 21, 2019 1 PM in LOB Room 305

Agenda

- I. Call to order:
 - a. Mark McConkey, Chair
 - b. 1:10 PM
- II. Introductions:
 - a. Members: Mark McConkey, Representative Suzanne Smith, Representative Renzullo, Tom Quarles, Paul Goodwin, Captain Dunleavy, Cindy Balcius, Darlene Forst, Kelly Buchanan, Diane Hanley, Rob Wichland
 - b. Guests: Senator Rosenwald
- III. Approval of last meeting's minutes (9/30/19)
 - a. Mark McConkey, Chair
 - b. Tom made a motion to approve the minutes. Representative Smith seconded. The minutes were approved unanimously.
- IV. Senator Rosenwald
 - a. George Hickey, resident of Nashua and a constituent, also has a property on Ossipee Lake. He cannot obtain a better approval for his dock. He requests a waiver or appeal process. The Senator is interested in helping her constituent and filing a bill to add a waiver/appeal process.
- V. Policy Discussions:

- a. Tom stated he thinks we've reached a consensus on an appeals format, led by the wetlands council.
- b. Darlene, we need clear, well-defined criteria if this was to happen. But, DES wouldn't support this according to Rene Pelletier via Darlene.
- c. Darlene stated this would be an easy adjustment for the wetlands council to pick up.
- d. Mark, what does the council do?
 - i. Darlene, the council has broad authority to review rules, appeals. Decisions before a group of people more favorable.
 - ii. Tom, this is similar to a planning board or ZBA. You expect some sort of "frontline" decision from lesser entity.
- e. Rep. Smith, if someone gets a waiver, can it have provisions? Such as it must be used or access in a certain way (docking only on one side).
 - i. Darlene, this doesn't work and is not enforceable. Marine Patrol and DES would find a way to work with this. But, the dock needs to be easily identified. We also need support for MP staff & authority to be fined immediately if non-compliant with a strong fine.
- f. Darlene asked: are we talking about historic lots? Grandfathered? Limited frontage?
 - i. Mark asked if the frontage limit should be 15 ft for a dock.
 - ii. Darlene stated 25ft is the reasonable number to center a dock. Captain Dunleavy agreed 25ft was the best for safety.

- iii. Paul, these should be examined individually based on the property's layout.
- g. Darlene, variance cannot be used in the shoreland program because it's already been defined in other ways. Someone could research this term vs. waiver. There's also special exception as a term.
 - i. Tom thinks we should use "waiver" because every rule is supposed to have a waiver process with standard procedure.
- h. Tom stated he would like to solve imaginary extension of property line problem.
- i. Paul drew an example of a set of properties in Roberts Cove. A large property had to secure a waiver from DES to install their dock with 300 ft. of frontage. This process is used sparingly according to NHDES. What if we used protective radius/arch instead?
- j. Mark stated we'll form a sub-committee to draft a proposal on using a 20 ft protective arch.
- k. Darlene, this would be similar to a buffer. Paul, this system exists in other places in statute.
- l. Rep. Renzullo, would it be helpful to define a limited use dock? Dock on one side?
 - i. Darlene, for the purpose of enforcement this would help. But, this would still present challenges for compliance. Darlene doesn't think this would gain much.

- m. Tim stated the proposed protective arch would prohibit some of our current swim lines, especially town beaches that are huge because of water depth. Tim recommended this apply only to dock structures.
- n. Tom stated should we also address a max length on small lots. Is that length 24 ft? We should also place the dock centered on the property. There could be a waiver to adjust for topography problems.
- o. Darlene asked can waivers be limited by the abutter? For example, at time of sale the new owner would have to secure waiver again. Committee expressed this should run with the land instead.
- p. Cindy, can removing the waiver be a process? Tom, no b/c it becomes part of the deed.
- q. Darlene, DES records on waivers must be strong if we allow for specific instances instead of going into deed. Diane expressed she preferred that system. Paul stated that would be useless and create more neighbor conflict. Specific provisions could still be allowed and be useful.
- r. Tim, do denied waivers carry with the property as well?
- s. Tim, Tom, Paul, Darlene and Mark will meet to draft language.

VI. Other Policy Discussion Topics (All):

- a. Continued discussion on the proposed new dock permitting system
 - i. Paul explained the dock & accessory areas handout.
 - ii. Tim, there are many places where people don't need 50 ft in length because water depth is sufficient.
 - iii. Darlene, this allows people to tailor their dock to their usage.

- iv. Paul, if people can have lounge areas on water, then they may cut down less trees on shore.
- v. Darlene, technically rule forbids land based activities on docks now. How is DES supposed to enforce this? It is not a reasonable expectation.
- vi. Paul, on lakes other than Winnepesaukee, wider and different shapes improve safety and accessibility. Paul – use the chart in conjunction with the drawings!
- vii. Paul, he will provide drawings for smaller lakes for next meeting.

VII. Moorings

- a. Tom is concerned about the placement of moorings.
 - i. Tim, we adjust to the many different variables in each location. Permit based on those. If people meet minimum requirements, then people get moorings. It shouldn't be hazardous to navigation or safety (property line setbacks, etc.). This process has worked well. However, the lack of specific regulation allows us flexibility to work with applicants in each scenario. We tend to deny people who already have multiple moorings (3rd and 4th additions). Only denied 11 permits about of 5,200 this year.
“Avoid the undue proliferation of moorings”.
 - 1. Congregate and public mooring fields. Tom, what's the difference?
More than 4 moorings are either definition and needs G & C approval. Public fields need a certain number for transient boats.
Does this apply statewide? Only applies to 7 lakes per Tim.

- ii. Should these rules go beyond the 7 lakes already using them? Should we only allow property owners to drop moorings?
 - iii. Rob, thinks unregulated moorings should be prohibited.
 - iv. Tim, transfer of property starts the mooring process over. No grandfathering.
 - v. Tim will look into issues with the swing of a boat over imaginary property line and non-property owners with moorings.
- b. Swim floats
- i. Rep. MacDonald filed a bill to address and give Marine Patrol authority to regulate placement. Tim's only concern is the view provision. Otherwise, the language is helpful.

VIII. Schedule next meeting

- a. Monday, Nov. 18 1 PM

IX. HB645, Rep. Renzullo needs to decide tomorrow on LSR.

- a. Do we work on an amendment or kill it and file another bill? Rep. recommends we kill it for more time. Permit by notification for a seasonal dock with new rules now requires NHB review, which is confusing because you're not sure what you need to do. NHB doesn't take credit cards and this slows down the permit.
- b. Straw poll – unanimously agree to kill the dock registration LSR from Rep. Renzullo.

X. The Chair will ask Rep. MacDonald to come and talk about his swim float LSR.

XI. Adjourn

- a. Tom made a motion to adjourn at 3:25 PM. Kelly seconded. The meeting was unanimously adjourned.