

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, January 6, 2020 **1:30 PM** in LOB Room 305

**Minutes**

- I. Call to order:
  - a. The meeting was called to order by Mark McConkey, Chair, at 1:35 PM
- II. Introductions:
  - a. Members: Darlene Forst, Cindy Balcius, Rob Wichland, Paul Goodwin, Tom Quarles, Captain Dunleavy, Tony Guinta, Representative Renzullo, Representative Smith, Mark McConkey, Kelly Buchanan
  - b. Guests: Joel Anderson (House Committee Researcher)
- III. Approval of last meeting's minutes (12/16/19):
  - a. Tom presented clarifications to the matters voted upon last meeting to define them as:
    - i. "Supporting legislation to allow docks on legally existing lots with at least 25' of shorefront".
    - ii. "Supporting legislation to replace the current "imaginary extension of the property lines into the water" with a 20' setback radius from property lines as the minimum side setback for docking structures".
  - b. The commission voted unanimously to accept Tom's clarifications.
  - c. Captain Dunleavy made a motion to approve the minutes as clarified. Representative Renzullo seconded. The minutes were approved with one abstention (Cindy due to absence).
- IV. Legislative Update and Discussion:

Commission's website:

<http://gencourt.state.nh.us/statstudcomm/committees/1400/>

- a. Darlene gave a summary of the dock registration LSR/bill from Senator Bradley for the 2020 session that is similar to HB645 from 2019. Darlene stated moving the PBN process and subsequent projects into this system would be most convenient. A request for amendment would be required. This commission can recommend amendments or do so through legislators on the commission. Joel stated the chair or another member could recommend at the public hearing or the Senator on our commission could request it directly.
- b. NHDES would propose changes to the current LSR/bill in order to tidy up enforcement language to clarify projects with existing enforcement actions in play cannot be automatically deemed legal.
- c. Tom is still concerned about legalizing structures without abutter notification. He doesn't like the process of registration without notification. If we are going to a new system based on square footage, then why create compliance outside of that through registration? Tom thinks the commission should insert language to this bill to start the square footage system.
- d. Paul expressed the title of this bill should be changed to remove "seasonal docks" because it does not apply only to seasonal docks.
- e. NHDES maintains the legislature has the ability to change the grandfathering date. There is a statute of limitations in wetlands, but not for shoreland/dock projects.
- f. As this LSR/bill from Senator Bradley stands, it is the exact same as the last version of the HB645 (2019) language. If you can prove your dock has been the same since 2001, then you can opt in to registration program. The registration would allow you to repair the dock as needed without paperwork. The fee is \$200 every 5 years and it is entirely voluntary.

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- g. NHDES is willing to compromise and find solutions for structures with pending procedures (within the agency or civilly). Tom is willing to compromise and support the grandfathering date. Tom stated Paul inquired about adding boat lifts to this process. Tom isn't sure why we should do this if they are included in the square footage calculation. In years past, NHDES has agreed to add boat lifts on existing slips at existing docks (so people didn't expand outwards). Paul stated this is an administrative burden for the applicant because boat lifts are always approved anyway. Darlene stated we could add a disclaimer stating this doesn't preclude civil suits. Tom doesn't have language to suggest and believes it would be inconsistent to the intent of registration. Tom's issue is retroactively applying compliance. This would be removing a "negative property right" of the abutter to prevent their neighbor from installing or maintaining an illegal structure. Darlene recommends we do not expand this to anything outside of the PBN process.
- h. Paul stated he would like this bill to take effect sooner than January 1, 2021. Darlene stated NHDES needs the time to write rules and create the system.
- i. Paul stated the square foot calculation permits should be checked by shoreland staff and not administrative staff. They require more technical review.
- j. Captain Dunleavy stated this system sounds very similar to the mooring permit process. Representative Renzullo asked: What if someone lied? Captain Dunleavy replied neighbors usually report discrepancies. Darlene stated the plan for the dock registration program becomes the document of record, which eliminates confusion surrounding what is and is not legal. This would increase transparency and public access to information.
- k. Tom would like the bill to say "measured plans" instead of "plans". Paul stated that exists in rule. Darlene asked if this should be in the statute or in the rule. Tom expressed adding it to the statute would help lay people understand what was required of them. Tom also

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suggested we strike the “imaginary extension of the property line” to be the same as new, agreed upon setback language the commission proposed at the 12/16/19 meeting.

- l. Darlene asked: What should we do about property transfers and modifications? There are many details to this system. This is the first part of the transition.
- m. Mark inquired: Why is the fee \$200? Darlene stated if a lot of people registered and paid, then we could drop the fee. Currently, this money would go to the Wetlands Bureau and would create predictable revenue.
- n. Darlene clarified this program really caters to non-conforming or permanent structures. Paul believes many people are outside of compliance and would take advantage of this to prevent future problems. Darlene stated if we could make this registration process easy enough to comply with, people would happily do it.
- o. Mark asked: What if people use this as a mechanism to legally transfer property? Darlene stated that would work, provided that people are not engaged in any sort of civil or agency pursued action.
- p. In most cases regarding disagreements over non-tidal structures, the aggrieved party has 3 years to take action. For example, you think your neighbor’s dock is illegal. Then, you send a neighbor a letter to complain. You then have three years to take any further action. However, the state always has the right to pursue corrective action if they are acting in the public trust and for the public good (or if a structure or other permitted project becomes a nuisance).
- q. Tom and Paul clarified that this registration process only applies to non-tidal structures. It would apply to the construction of a seasonal dock. It would also apply to the repair or maintenance of any other non-tidal structure.

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- r. Paul thinks our hands are tied to adjust the registration bill and the commission should work separately on the square footage system.
  - s. The commission members agreed they would like to see language for the dock registration bill with the discussed changes. Darlene will provide it before the next meeting on 1/27/2020.
- V. Discuss next steps and other business that may come before the commission (All):
- a. At the next meeting, we will address the draft changes to the dock registration bill.
  - b. When will dive into the square footage system? Any other items?
    - i. How do we proceed or collect information for square footage system?
      1. Is the commission in favor for an alternative process for docks outside of wetlands? Do we set the matrix into law? Do we incorporate both a long/traditional process for outlier projects and a short/easy process? Should we transfer docks to another RSA?
      2. Tom and Mark expressed we should not tackle marinas. Paul stated it is difficult to deal with because the commercial structure rules are unclear. Paul suggests we carve out specific items for marinas that meet criteria for approval (and send more complex details to rule).
      3. Should we institute sub-committees to bring deliverables to the group? Tom suggested we continue meeting as a group.
      4. What is a comfortable time frame to create a structure for the square footage proposal? 6 weeks from now Darlene will share a structure with the commission.
  - c. Tom suggested we discuss the kayak flag bill and monitor the raft/float bill from Representative MacDonald.

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VI. Next meetings:

- a. Monday, January 27<sup>th</sup> at 1:30 PM
- b. Monday, February 24<sup>th</sup> at 1:30 PM

VII. Adjourn

- a. The meeting unanimously adjourned at 3:18 PM.

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