

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, August 12, 2019 1 PM in **LOB Room 301**

**Minutes**

- I. Call to order:
  - a. Mark McConkey, Chair
  - b. The meeting was called to order 1:07 PM.
- II. Introductions:
  - a. Members Present: Darlene Forst, Tony Guinta, Don Ware, Cindy Balcius, Rob Wichland, Paul Goodwin, Tom Quarles, Representative Renzullo, Representative Suzanne Smith, Mark McConkey, Kelly Buchanan
  - b. Guests: Ari Pollack (Home Builders Assoc.), Joel Anderson, George Hickey (member of the public with a docking setback problem at Ossipee), Luke Testa (member of the public)
- III. Approval of last meeting's minutes (7/1/19):
  - a. Mark McConkey, Chair
  - b. Tony made a motion to approve the minutes as written. Darlene seconded. Abstentions: Representative Suzanne Smith and Don Ware.
  - c. The meeting minutes from 7/1/19 were approved as distributed.
- IV. Legislative Update:
  - a. Representative Smith and Representative Renzullo reported:
    - i. HB645, relative to a voluntary dock registration program was vetoed by the Governor.
- V. Public input:

- a. George Hickey from Spindle Point in Freedom, NH described to the commission his problems securing a permit to install a docking structure on his property.
- b. Mr. Hickey cannot obtain the consent of his abutter to waive the current setback requirements. He wants an appeal or a variance.
- c. The commission explained because setback requirements are set in statute the agency cannot issue a waiver or a variance. Per statute, an abutter may, but that is the only option.
- d. Tom expressed interest in allowing a variance. Darlene explained that statute was established to ensure safety of abutters. Abutters may waive that safety if they desire.

VI. Policy Discussion Topics (All):

- a. Boat slips/frontage:
  - i. Darlene explained many docking requests pertain to the type and function of the boat owned by the property owner. Her questions included:
    - 1. What boats are appropriate for different types of waterbodies? How do property owners buy property appropriate to the watercraft?
  - ii. Frontage currently determines the number and size of boat slips allowed.
  - iii. A decision by the Governor and Executive Council does not guarantee a slip on less than 75' frontage. Per the wetlands audit, the department cannot make an exception and allow a structure for less than 75' in frontage, other than a structure exactly 4' x 24' in size.
    - 1. Mark asked does ENV-WT 402.12 preclude George Hickey from installing a structure?
      - a. Darlene responded he would need at least one abutter approval and could pursue a communal dock. However, the agreeable abutters already have a dock and have no incentive to do that.

2. Islands, commercial establishments, public facilities, and marinas have a slightly different set of frontage requirements (please refer to Darlene's handout). Commercial establishments do not have rules regarding frontage requirements.
- iv. The persistence of subdivision in the 1980s caused the Executive Council to halt docks.
  - v. Don asked does anything restrict a mooring off-shore? Any maximum length out to open water?
    1. Darlene responded that Captain Dunleavy would need to answer that question.
  - vi. Cindy asked what was the longest permitted docking structure to date? Darlene responded a bit over 100'. The largest ever requested was 180'.
  - vii. Paul inquired about the dock rules that were held back from the wetlands rules revision process. Darlene responded they would have kept the status quo and have not been worked on.
  - viii. Paul inquired if these permitting decisions should be based on what the general landscape of the neighborhood looks like. If many others have grandfathered status with long docks, then should new permits follow those standards at those locations?
    1. Darlene asked: how do we decide between the private and public interests? (e.g., longer docks impeding uses or providing uses)
    2. Paul opined rules shouldn't be written regarding specific boats, but lake level and normal high water doesn't allow for water depth.
    3. Darlene stated DES doesn't control all dams or water levels.
    4. Cindy explained sand migration is changing the lake landscape as well.

- a. Darlene said Winni doesn't struggle as much with this. Sand migration affects smaller waterbodies. Photos in handout have been shallow for a long time.
- 5. Tom raised the issue of infill (allowing docks similar in length to grandfathered docks when it doesn't impede on a previously undeveloped area) vs. outfill (new docks outside of developed areas).
- ix. Darlene explained the commission shouldn't forget rivers and the changing uses around large cities like Nashua. Rivers should be permitted differently. We don't currently have applicable rules to deal with rivers.
- x. Mark asked if slip designations also apply to certain rivers?
  - 1. Darlene answered no, too many challenges exist to define the waterlevel of rivers.
- xi. Mark stated the commission could approach Winni with 4ft depth for boat slip definition and dock length.
- b. Darlene re-introduced the Oregon dock concept that utilizes a two-tier permitting system. She explained if 60' docks were proposed, then certain square footage requirements could be implemented based on frontage with a maximum. This would allow smaller projects ultimate flexibility. The larger projects would be more closely followed and regulated.
  - i. Tom asked if we should delineate rules between small lakes (less than 500 acres), medium lakes, and then the big six lakes?
  - ii. Paul asked what about small lakes with heavy development? Do we remove certain small waterbodies from this proposed dock program? The commission expressed interest in removing certain small and heavily development lakes from the two-tier proposal.

- iii. Don asked would this proposal apply to existing and new structures? Darlene answered, yes to both. Don opined that he liked sizing dock size to frontage.
- iv. Paul said the proposed design matrix limits outrageous structures, such as more than 10' wide or many, many fingers off docks.
- v. Don explained he was struggling with upper limit of 2500 sq ft. What does that look like? Paul explained he will demonstrate the design process next meeting.
- vi. Tom asked if the commission needed an opinion from the AG regarding this proposal. Would it impede property rights because it would impose on existing docks?
- vii. Tony stated we should always have an appeals board to address any outliers. The commission members expressed agreement.
- viii. Paul expressed we should retain the traditional permitting process for "oddball" or high impact projects. The commission members expressed agreement.

## VII. Adjourn

- a. Tony made a motion to adjourn the meeting. Darlene seconded. The meeting was adjourned at 3:03 PM.