

**SUNAPEE BOARD OF SELECTMEN MEETING  
SUNAPEE TOWN HALL  
MONDAY, JUNE 21, 2004**

**Present:** William Roach, Emma Smith, Stephen White, David Gibbens

**Also Present:** Donna Nashawaty, Town Manager; Walter Goddard, LSPA

**Also Attending:** See sign-in sheet

**Items Signed:** Driveway Access: Schneider, 112/01; Donegan. Swenson, 238/43; CZC: Mount Royal Academy, 26 Seven Hearths Lane, 123/2; Town of Sunapee, 11 Route 103B. 132/49; Donegan/Swenson, 45 Penacook Path, 238/43; Cruise, 14 Orchard Circle, 129/39; Bolduc, 85 Edgemont Road, 133/2; Winkler, Vantine, 36 Piney Point Road, 118/33; Brophy, 154 Garnet Hill Road, 126/11; Dunnels, 53 Apple Hill Road, 218/40; Vincent, 76 Stagecoach Road, 138/28; Summerton, 8 Elm Street, 133/114

**7:00 PM** – Chairman Roach called the meeting to order.

**LSPA Boat Wash:**

Walter Goddard, President of LSPA, presented a revised boat wash plan. Bob Henry owns the property next to the original boat wash proposed location and pointed out that it would drain on to his property. Therefore, they have moved it to a 50 foot area in the in the upper parking lot. The parking spaces will not be affected. They need to hook into the power supply for the power wash. They may also suggest putting in a locked storage box. It would be manned by “lake hosts” who are partly financed by a grant from the State. They pay a good portion of the costs. LSPA is prepared to pay for the materials to create the wash area and defray the cost.

**Steve White made a motion to accept LSPA’s new plan, with thanks, for the boat wash area because it is more economical and feasible. The motion was seconded by Dave Gibbens and approved unanimously.**

Mr. Goddard expressed their thanks to everyone involved; the Board of Selectman, Police, Highway, and the Town Manager.

Emma reported that she now has almost \$300.00 toward the **tree in memory of Eleanor Hopwood**. She has spoken to someone at Warner’s and was given three choices: a Japanese Lilac, a Mountain Ash, or a Red Maple decorative tree. Getting one of those trees and having it planted by Warner’s would be just under \$250.00. The tree is eight feet tall. She will then arrange for a plaque. The Board members thought a piece of granite for the plaque would be good. Donna advised that the ground is very sandy and she should check that it would grow in this environment. She would like to say a date so she can notify all those who made donations so they can dedicate it when the plaque is installed. She will try to set it up for July 22<sup>nd</sup> and will place a notice in the paper.

**Town Manager Reports:**

1. **Coalition Communities** – Donna reported that she, Emma, and Bill went to Portsmouth non-public meeting. They would like to keep the Coalition going and have asked that the Coalition Communities be supportive. They will get an update in another couple of weeks on whether or not there is more action to take. Donna has reviewed the contributions from the Town because she had some issues. She could not balance out the money paid. As it turns out, we have a check that the Board authorized that never got sent. On July 6, 1999, \$2,000.00 was paid from the legal line item of the operating budget. On January 5, 2000, another \$3,000.00 from the legal fees budget was paid. At the February 2000 Town Meeting, there was Article 7 that put \$25,000.00 aside to help support the Coalition. On April 25, 2000, the Board voted to

send \$5,000.00 which would have been the first payment coming from the \$25,000.00 Fund. On March 8, 2001, the Board voted to send \$5,000.00 and it was never sent. On June 23, 2003, the Board voted to send \$5,000.00. They have received a total of \$15,000.00 from Sunapee. There is still \$15,000.00 in the Fund. The Board members felt they should at least send the \$5,000.00 that was not sent. That will leave \$10,000.00 in the fund. **Emma Smith made a motion to authorize the Town Manager to send the \$5,000.00 that was not sent in 2001. The motion was seconded by Steve White and carried unanimously.**

2. **Next Selectmen's Meeting** – Donna advised that July 5<sup>th</sup>, the date for the next Selectmen's meeting, is a holiday and the Town Office will be closed. The Board decided to meet the following Monday, July 12<sup>th</sup>. Dave noted that September 6<sup>th</sup>, first Selectmen's meeting in September, is also a Holiday. The Board will meet on September 13<sup>th</sup>.
3. **Area Watershed Coalition** – When June Vichter was here, she asked the Board to think about a member that might be part of the Area Watershed Coalition for the Lake Sunapee Watershed. **A motion was made by Dave Gibbens and seconded by Emma Smith to name Steve White the member of the Watershed Coalition. The motion was approved unanimously.**
4. **Crowther Memorial Chapel** – Genelle Richards has a list of things that she needs help with from the Town. One is for thank yous from the Town for a donation made by Mr. William Ruger who had a mold made for keys, Mrs. Nancy Rumery who donated some flowers, and a group of Honor students who did cleanup. The Chapel is to be overseen by a Committee which would have the authority to spend the Trust Funds and donations to the Chapel which are outside of the Town operations. There is also a non-expendable Trust Fund which has grown due to donations which were added. \$3,775.00 was the original principal of funds that were mentioned in the Superior Court documents. The funds totaled \$9,571.00 at the end of 2003. When the town accepted the authorization to run it, they also accepted the upkeep of it. They need to make this a line item in the budget. This Committee should be setting out what are the priorities and what needs to be done, and maybe coming up with a seven year plan. Genelle has a list of things that need to be done. The Board needs to establish a Committee. Donna came up with a three year term on a rotational basis. The Selectmen's Representative and the Highway Agent's terms would be their term of office. The proposed members are Jessica Leavitt, 2005; Norm Logan, 2005; John Augustine, 2006; Christopher Snow, 2006; Genelle Richard, 2007; Betsy Webb, 2007; Emma Smith, Selectmen Representative (term of office); Tony Bergeron, Highway Agent (term of office). **Steve White made a motion to accept the proposed roster as members of the Crowther Memorial Chapel Committee and that they be charged with developing a plan and the resources that might be necessary to do what they need to do over the next five years. The Motion was seconded by Bill Roach. The motion carried unanimously.**
5. **No Swim Zone** – The newspaper had a headline stating that swimming in the Harbor is now allowed. Donna then asked the Water Department to call the Attorney and ask them to interpret the Town's sign in the Harbor and what the RSA meant and how it meant it. She then asked for an update and got it. She understands that when the no swim zone was asked to have a waiver, the appeal was not heard, so the no swim zone still stands. The property owners have a waiver now for a hundred feet of their property. She just wants to make sure that the signs, which indicate that the Town is not availing itself of its property within 100 feet for swimming, are correct in not allowing that area to be available to the public for swimming. The Board agreed. Bill indicated that he saw someone swimming there last week. He thought a sign was going to be posted stating that there is no swimming and no lifeguard on duty. Donna stated there are signs indicating no swimming. Steve indicated that the same thing is true of the two hour parking limit. Donna has pulled all the property cards for properties in the Harbor and has asked the Assessor to look at them. Bill stated it was brought to his attention that some of the boards used for replacement are not as heavy as the ones that were there. Donna explained that they are a temporary fix and it will be taken care of.
6. **Revaluation Contract** – The Board reviewed the revaluation contract which is broken down into two pieces. There is \$105,000.00 in the Capital Reserve Fund. The revaluation company has reworked the numbers to determine what they can do, so they can have something even if they get no further funding

next year. Part of the revaluation is to go out, set up, and list and measure every property in the Town of Sunapee. The idea is to start now so they can get into at least the summer homes. Even if there is no further funding next year, they would have a database with every property listed and measure, which is the most labor intensive part of it. They can do that for \$110,000.00. The software would be another \$10,000.00 with all the connections. The additional \$5,000.00 for the contract would come from the normal Assessing budget. In addition, if there is no further funding next year, \$10,000.00 would have to come from the Assessing budget so that the data is preserved. Dave stated that a lot of people have asked what the purpose of revaluation is. Donna explained that the goal is that everybody's market value is representative of what they would get on a fair and equal market, if they sold their house at that time. In 2005 they would adopt the values. They, in essence, would be at 100%. In 2006 they would look at all the sales and all the stratas and determine if they needed any change. At that point, you would start listing and measuring one quarter of the community again. Then each year after, you would do another quarter. The State says that every five years you have to have a complete revaluation. You have to have an inspection on every property in that five year period. **A motion was made by Dave Gibbens that the Board of Selectmen, as agents to expend in accordance with 1996 Article 48 of Town Meeting, appropriate the sum of \$105,000.00 from the Revaluation Capital Reserve Fund to be used together with \$5,000.00 from the assessing operating budget to authorize the Town Manager, as our agent, to enter into a revaluation contract with Vision Appraisal Technology, Inc. We agree that the terms of the contract for \$186,000.00 have a clause that if additional funds are not appropriated at the 2005 Town Meeting then the contract shall not exceed \$110,000.00 which will provide for all of the listing and measuring in accordance with the contract. An additional \$10,000.00 is agreed for costs to purchase the software in the event of non-continuance because of lack of funding. The motion was seconded by Steve Smith.** Donna advised the DRA has blessed the way they are doing the spending. **The motion was approved unanimously.**

7. **Beech Street** – Tony approached Donna with the Beech Street road design contract. The cost is \$18,780.00. \$20,000.00 had been budgeted, so it will be within the budgeted amount. CLD Consulting Engineers is the company. The estimated time frame is September.
8. **59 Prospect Hill Road** – Donna has received a petition from some of the neighbors of 59 Prospect Hill Road. The house is leased by Mrs. Laro to Mr. Greenlagh. There is a 300 gallon septic tank which is not big enough for the ten people who are living there. There was raw septic coming out and he was given a sheriff served pump order. Now they find they have to go after the property owner. The Town is going up and putting lime on it. It was pumped right away, but needs to be pumped every day. She is not asking the Board to resolve it, but wants them to be aware of the petition and that she and the Health Department are working on it. There is another failed system on Nutting Rd. for which a letter went out today.
9. **Kearsarge** – Donna advised that the construction of the docks was done in according to design, the insurance coverage has been brought up to date, the money has been paid, and the contract has been signed.
10. **Parking Ordinance** – During discussion with the Department Heads it was brought up that the Parking Ordinance is not as clear as it could be. It should state that all parking spaces at Sunapee Harbor located on the west side of the Lake Sunapee outlet bridge, *including all boat slips at the Town Dock with the exception of boats with current lease agreements with the Town of Sunapee*, no vehicle shall be parked for longer than two hours between the hours of 7:30AM and 6:00PM. There is another Ordinance that states no overnight dockage. If necessary, they can have a public hearing to approve the change (in italics). Everyone thought this was the wording, but it was not there. The lots to the east of the Lake Sunapee outlet bridge and the Ben Mere property parking are six hours. They need to get the east and west terminology straightened out. Donna will come back with a clarification, but they need to set a hearing date. Steve felt that they need to redraft the Ordinance. Donna advised it has to be posted 10 days before the hearing. Donna will work with the Police Chief on wording that can be upheld and schedule a public hearing for July 12<sup>th</sup> as long as they can work it out and get it in the newspaper.

Donna advised the Board they will have a lease to sign for the MV Mt. Sunapee, as it was not done at the beginning of the year.

John had asked the Police Chief to work with Primex on setting up Sexual Harassment Policy training. There will be a mandatory training session on July 7<sup>th</sup> at 1:00PM at the High School. It will be mandatory for all the employees. She will not be pulling the lifeguard off duty, but the Beach Manager must attend and the Police Chief will schedule his own people. She encouraged the Board to attend.

**8:55 PM – A motion was made by Steve White and seconded by Bill Roach to adjourn the meeting. The motion carried unanimously.**

Submitted by,  
Joan C. Bleau

Approved by the Board\_\_\_\_\_

\_\_\_\_\_  
William Roach, Chairman

\_\_\_\_\_  
Frederick C. Gallup

\_\_\_\_\_  
Emma M. Smith, Vice Chairman

\_\_\_\_\_  
Stephen W. White

\_\_\_\_\_  
David E. Gibbens





State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



February 12, 2003

Town of Sunapee  
Water and Sewer Commission  
Attn: Aaron Simpson, Esq., Chairman  
PO Box 347  
Sunapee, NH 03782

**VIA FACSIMILE  
AND US MAIL**

**Re: Appeal of John M. Dixon et al.  
Docket No. 01-20 WC**

Dear Chairman Simpson:

As you know, by written decision dated January 24, 2003 the Water Council granted a request for waiver of Env-Ws 386.64(h)(5) filed by John M. Dixon and other property owners on Sunapee Harbor, finding that "[w]here there has been no enforcement of the no-swim zone (including adequate signage), and a sand filtration system has been put in place to purify the water," a waiver allowing "property owners to swim within 100 feet of the shoreline within the no-swim zone" of Sunapee Harbor would "adequate to ensure that the intent of RSA 485:24 and RSA 485:25 is met."

As we consider our case for appeal, DES requests any information that you may have relative to the enforcement of Env-Ws 386.64(h)(5), such as specific examples of enforcement of the no-swim zone, including name and position of persons enforcing the rule, time, date, location, and disposition of each event.

The deadline for filing a request for reconsideration with the Water Council is February 26, 2003. In order to assist us to present a comprehensive and timely request, please forward any information you would like DES to include in its appeal to my attention by Friday, February 21, 2003.

On behalf of DES, thank you for your cooperation. Please contact me at the number below with any questions.

Sincerely,

Mark R. Harbaugh  
DES Legal Unit  
(603) 271-7509

cc: Harry T. Stewart, P.E., Director, DES Water Division  
Rene Pelletier, Manager, Land Resources Program, DES Water Division  
Tony Giunta, Administrator, DES WSEB  
Sarah Pillsbury, DES WSEB  
Paul Susca, DES WSEB  
David Brennan, Superintendent, Public Works, Town of Sunapee, NH



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER COUNCIL

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3434 FAX (603) 271-2982

May 19, 2003



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MAY 21 2003

SULLIVAN, HOLLIS, PLLC

Richard W. Head  
Assistant Attorney General  
Environmental Protection Bureau  
33 Capitol Street  
Concord, NH 03301

Re: Docket No. 01-20 WC – John Dixon Appeal

Dear Mr. Head:

Enclosed please find the NH Water Council's Decision & Order relative to the *Motion for Reconsideration or Rehearing, and Request for Clarification*, which you filed with my office on February 24, 2003.

If you have any questions, please contact me at (603) 271-6072 or by e-mail at [msclafani@des.state.nh.us](mailto:msclafani@des.state.nh.us).

Sincerely,

Michael Scalfani, Appeals Clerk  
NH Water Council

cc: New Hampshire Water Council  
Robert Monaco, Acting Commissioner  
Harry T. Stewart, Director, DES Water Division  
Mark Harbaugh, DES Legal Unit  
William D. Pandolph, Esq.  
James Shirley, Es



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER COUNCIL

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STATE OF NEW HAMPSHIRE  
WATER COUNCIL

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MAY 21 2003

Decision & Order

OLLIS, PLLC

*Motion By Attorney Richard W. Head  
For Reconsideration or Rehearing, and Request for Clarification*

Docket No. 01-20 WC

**Appeal of John Dixon *et al.*  
In Re: Request for Waiver of Env-Ws 386.64(h)(5)**

Background

By Request for Waiver dated August 1, 2001, John Dixon and other owners of property abutting Lake Sunapee within ¼-mile of the intake for the Sunapee public water system requested a waiver of Env-Ws 386.64(h)(5) to allow swimming within 100 feet of the shoreline within the no-swim zone. That rule states that “[n]o person shall bathe in [Lake Sunapee] within one fourth mile of where water is taken for a public supply, or within like distance to any private intake pipe, provided notice to that effect is conspicuously posted in the vicinity[.]”

By letter dated October 19, 2001, the Department of Environmental Services, Water Division (“DES”) denied the requested waiver on the basis that granting it “would contravene the intent of the rule”, which is “to prevent the contamination of the water supply with pathogenic organisms (such as bacteria, viruses, or protozoans) from the feces, bodily fluids, or skin of any bather, as well as to minimize the turbidity of the source water by minimizing the stirring up of sediment near the shore.” John Dixon and the others who requested the waiver filed an appeal with the NH Water Council (“the Council”) dated November 13, 2001. The appeal was accepted by the Council and was assigned Docket No. 01-20 WC.

Under the authority of RSA 21-O:7 and RSA 21-O:14, a hearing before the Council was held on Wednesday, August 21, 2002 beginning at approximately 10:00 a.m. at the DES's offices in Concord. The hearing was conducted in accordance with RSA 541-A:31-38 and the Council's procedural rules, NH CODE ADMIN. RULES Env-WC 200.

At the hearing, the Council heard testimony and received evidence relative to the denial of the requested waiver. Testimony and evidence also was presented relative to Mr. Dixon's alternative theory that the "no bathing" rule does not prohibit swimming. The evidence demonstrated that while Env-Ws 386.64(h)(5) has been in effect for a number of years, there has been no enforcement of the rule. Due to the lack of enforcement, the property owners who live within the no-swim zone have been swimming in front of their property for years with no problems. The value of their property would be severely affected by any sudden enforcement, causing a real and measurable hardship. The evidence further revealed that while the rule requires adequate signage as to the no-swimming requirement, there is only one sign that is located at the town dock. There are no additional signs along the shoreline within the no-swim zone.

With regard to the impact of the swimmers on the quality of the water supply for the town, evidence was presented that there is now a sand filtration system in place to purify the water that was not in place when the rule was adopted.

Env-Ws 386.04(b) provides in relevant part,

(3) The division shall approve a request for a waiver upon finding that:

- a. The proposal shall be at least equivalent to the specific requirement contained in the rule; or
- b. If the proposal was not equivalent to the requirement contained in the rule, it shall be adequate to ensure that the intent of RSA 485:24 and RSA 485:25 is met.



Based on the evidence detailed above, the Council concluded that the DES acted in an arbitrary and capricious manner by not granting the requested waiver. Where there had been no enforcement of the no-swim zone (including inadequate signage), and a sand filtration system had been put in place to purify the water, the Council found that a waiver to allow property owners to swim within 100 feet of the shoreline within the no-swim zone was adequate to ensure that the intent of RSA 485:24 and RSA 485:25 is met. The appeal of John Dixon *et al.* was granted by the Council, by written Decision & Order, on January 24, 2003.

Pursuant to Env-WC 203.29(a), any person whose rights might be directly affected by a decision of the Council may file a motion for rehearing within 30 days of the date the written decision is issued.

On February 24, 2003, and on behalf of DES, Attorney Richard W. Head filed a *Motion for Reconsideration or Rehearing, and Request for Clarification*. In his filing, Attorney Head argues the following points: (1) Enforcement or lack thereof, of the no swim zone, is an improper legal basis for the Council's decision. (2) The Council's finding of "no enforcement" [of the no-swim zone] is contrary to fact and the evidence presented at the hearing. At the hearing, Paul Susca testified on behalf of DES that the rule was over 100 years old, having been promulgated in 1899 by the State Board of Health, and was most recently readopted by DES in 1997. Mr. Susca also testified that he had been told of several occurrences of enforcement of the no-swim zone by town and other officials. In addition, DES presented two documents and several maps of Lake Sunapee which notify town and Sunapee Harbor residents of the no-swim zone and Mr. Dixon presented a photograph of a "No Swimming" sign posted in Sunapee Harbor. In the event that the Council rules that it requires additional testimony, DES is prepared to offer testimony regarding specific enforcement of the no-swim zone, including testimony from a New Hampshire Marine Patrol Officer, two former Water & Sewer Commissioners and a former Town of Sunapee police officer. (3) The Council's decision is based, in part, on its own judgment that the existence of a sand filtration system to purify the water is sufficient to ensure

consistency with the intent of RSA 485:24 and RSA 485:25 if swimming is allowed within the no-swim zone. DES Presented testimony that the existence of a sand filtration system alone is contrary to DES' multi-barrier approach to the protection of the public drinking water supply, and further, even the most efficient sand filtration system does not provide 100% protection to human health against human pathogens commonly associated with swimming, even when properly operated and maintained. No evidence was presented to support a finding that the sand filtration system used by the Town of Sunapee was adequate to remove all pathogens. Thus, sand filtration alone is inadequate to protect against pathogenic organisms. The use of a no-swim zone provides a margin of safety not otherwise available to residents who consume public water in Sunapee and is consistent with DES's multi-barrier approach to protection of public water supplies. The Council improperly substituted its judgment over the expert judgment of DES with regards to the adequacy of a sand filtration system to purify the water being sufficient to ensure consistency with the intent of RSA 485:24 and RSA 485:25. (4) At hearing, Mr. Dixon presented a "Sunapee Harbor Water Quality Investigation" ("the Study") performed by Normandeau Associates, Inc. at the direction of Lake Sunapee Property Rights and Conservation Association on the "impact of swimming within the ¼ mile of the drinking water intakes for the Town of Sunapee." DES objected to the study and requested that DES be given an opportunity to consult with its staff and other experts because there was insufficient time to do so before the hearing. The Council did not allow this request. (5) The Council's decision to grant Mr. Dixon's appeal requires clarification. The decision could be read (a) to be limited to the right of Mr. Dixon to swim off his property; (b) to include the rights of all property owners on the Lake; (c) to include the right of any and all guests of property owners on the Lake; or (d) to include all members of the public at large. (6) The Council's decision could be used in the future to limit or otherwise prevent DES's right to enforce any rule that has not previously been aggressively enforced. Since the Council appears to rely, in part, on the presence of a sand filtration system in Sunapee, the Council decision could be read to prevent DES from implementing a no-swim zone adjacent to any water intake treated with a sand filtration system.

Discussion and Conclusion

On March 12, 2003 the Council considered arguments brought forth in the Department's *Motion for Reconsideration or Rehearing, and Request for Clarification*. After discussion of the issues, the Council ruled that (1) all parties had sufficient time to review all materials and prepare their case, and (2) that in the event of a rehearing, a change in the outcome of the Council's decision would be unlikely as the original vote to grant Mr. Dixon's appeal was unanimous.

Order

It is therefore ordered that the Department's *Motion for Reconsideration or Rehearing, and Request for Clarification* is DENIED.

Pursuant to RSA 541:6, within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the Supreme Court.

So Ordered for the Council by:  May 19, 2003

Michael Scialfani, Appeals Clerk