

Seymour Lake Association
Board of Directors Meeting - 4/9/15 - 7 P.M. - Morgan Listers Office

Present: Chuck Nichols, Jean McKenney, Tim Buzzell, Charles Woods

By Phone: Lyman McWain, Bruce Barter, Peggy Barter, David Anderson, David Kelley

Not Present: Susan Davis, Ted Jewett, Frank Antonelli, Erik Lessing, Ron Kolar

Guests: Jim and Bonnie McWain

Lawsuit: David Kelley - Options

David discussed the decision by Judge Tomasi regarding our lawsuit against ANR in which he dismissed our case. See Pg. 8 of the Ruling: According to the Ruling, ANR made a decision in 2009 and again in 2013 refusing our case and saying that SLA had 30 days to appeal, which was not done. David disagrees on every point of the Ruling. His options are listed below:

"1. We can file a Motion to Alter or Amend (my preferred option). The rules only allow ten days to file this motion. Even though I didn't receive the decision until April 3rd, to be safe we would have to count the ten days from March 31 (when it was filed. Holidays and weekends are omitted. We would have to file by the 14th without an extension. The AG's office would stipulate to a 20 day extension. I would ask the Court to grant until the end of the month.

The crux of our case was the fact that the Vermont General Assembly had adopted 30 V.S.A. 401 and 402 establishing the maximum high and low water levels of Lake Seymour and prohibiting the water levels to be raised or lowered beyond those levels by artificial means or permitted through neglect to be raised higher or lower than those levels.

I suppose it could be argued that ANR isn't using the dam to raise or lower the water levels--it is simply happening because the dam is there--but the dam is an artificial means. Likewise, they could argue it is not their "neglect" but their (ANR's) considered judgment.

But those arguments have never even been made and the Court has given no explanation as to why ANR does not need to adhere to the Statutes. It is never within the discretion of any State agency to ignore the law. ANR can't decide to just neglect the Vermont Statutes. The fact that SLA asked them to respect the statutes, and ANR decided not to, is meaningless. ANR does not have that prerogative. And furthermore, Lake Seymour is a public trust water--every citizen of the State has a vested interest in the Lake. The statutes weren't meant to benefit SLA alone. They were meant to benefit every citizen of Vermont. Each and every one of us is entitled to enforcement of the law. Let me offer a simple analogy: The police do not have to ask people not to jay walk or not to talk on their cell phones while driving. It is mandated by statute--hence the writ of mandamus. People are entitled to prompt enforcement of the law--especially by public officials.

2. We can take an appeal. We would have to file the notice of appeal within 30 days from March 31st. Saturdays, Sundays and holidays are counted. I said at the outset that I don't do appeals. I would contribute as much time as necessary but SLA would need to use an attorney who regularly does appeals. Normally I would recommend Dave Putter, but he is retiring.

3. We can take Judge Tomasi's suggestion and go to ANR with more data, seek reconsideration and when ANR refuses take an appeal to the Environmental Court (within 30 days). We would treat this just as any other lake, without the statutes regarding Seymour. By the way--there are quite a few lakes that use dams to manage water levels. I think Caspian and Harvey's may both do that.

4. Finally, you will recall that at the outset I urged you to have individual property owners named as plaintiffs and use a takings theory. If we did that I would reincorporate the nuisance theory and the request for mandamus as well. I would probably name David Mears as the Defendant as well as ANR and DEC. It would be almost impossible to get that dismissed (but the older I get the more I realize, nothing is impossible in Court)."

David asked to file a 20 day extension to give SLA time to respond and Chuck agreed.

David feels SLA should try Option #1 first. If it's refused, SLA can try any of the other options at any time.

A Motion was made by Dave Anderson and seconded by Tim Buzzell to File a Motion to Amend. Followed by a discussion. Lyman asked about Option #4 and David said there is no limit to file as long as there continues to be damage to land. 6 years for civil action in Vermont. Tim says there is a 5th option which is to do nothing. This option was dismissed by consensus. Jim McWain feels the Board needs to start thinking about finding another attorney if SLA has to Appeal to the Supreme Court - this is also David Kelley's recommendation as he does not do appeals to the Supreme Court. Inquiries will be made by Chuck and David.

The Motion to Amend was brought to a vote; Unanimous to go with Option #1.

FOVLAP: With Bruce Barter as FOVLAP treasurer, Peggy Barter as FOVLAP committee chair, and Beth Torpey as one of their Directors, SLA needs to think about assigning one of them to represent SLA and coordinate with the SLA Board on FOVLAP votes. On next meeting's agenda.

WEBSITE REDESIGN: Coming along and maybe next week it will be ready for people to look at it. On next meeting's agenda, should our property map with the indexes to properties and cross indexed to the property owner's name (same as the map SLA sells) be on the SLA website.

BY LAWS: Need to decide at the next Board meeting "who is considered a member and who gets to vote at the Annual Meeting; i.e. one vote per family membership - designate a family member to vote.

ANNUAL MEETING: Depending on the Judge's decision, ask David Kelley to speak.

PICNIC: Ron Kolar Ron has confirmed that he and Janet will host the SLA outing. It will be held at 6:00PM on Saturday August 1st. We will not invite Echo Lake Assoc. The format will be the same as last year- everyone brings an appetizer and their choice of drink.

SAMUELS MEMORIAL: Tim Buzzell proposed putting a memorial of benches and small garden at the Town Offices, can always be moved at a later date. Woody seconded.

Approved with 5 yes and 2 no. Jean McKenney with Tim Buzzell's help will go ahead with the plan.

MEMBERSHIP DUES: It is felt we need to raise the membership dues slightly. Will have a discussion with Ted at the next meeting.

PRESIDENT'S SPENDING LIMITS: Already discussed and decided at a previous meeting. Linda Buzzell will research.

NEXT BOARD OF DIRECTORS' MEETINGS:

May 23 - firm

June 27 - pencil in

July 25th Annual Meeting - firm

August 22 - pencil in

Chuck adjourned the meeting at 8 p.m.