

STATE OF VERMONT  
Water Resources Board

Petition to Regulate the Use  
of the Public Waters of  
Lake Hortonia, Towns of  
Hubbardton and Sudbury, Vermont

Preliminary Findings  
of Fact

Introduction

On January 2, 1985, a petition by the Lake Hortonia Property Owners Association, an organization representing 10 or more freemen, was filed with the Vermont Water Resources Board under the provisions of 10 V.S.A. §1424. That petition requested that the use of the public waters of Lake Hortonia located in the Towns of Sudbury and Hubbardton, Vermont be regulated as described in preliminary finding of fact #5 below.

The Water Resources Board appointed William A. Bartlett, Executive Officer, as a hearing referee for purposes of conducting a public hearing with regard to this petition on their behalf. Such a public hearing was held on July 6, 1985 at the Horseshoe Pavilion, Sudbury, Vermont. On the basis of the testimony presented at that hearing the referee makes the following preliminary findings of fact.

Preliminary Findings of Fact

1. Lake Hortonia is a natural body of water whose water level has been enhanced by a dam located on the west side of the lake. Lake Hortonia has a surface area of approximately 450 acres and a maximum depth of approximately 60 feet.
2. There are two public fishing access areas on Lake Hortonia.
3. There are approximately 500 seasonal and permanent residences located adjacent to or in very close proximity to the shoreline of Lake Hortonia.
4. Lake Hortonia is used extensively for a variety of recreational purposes including fishing, swimming, waterskiing and recreational boating by both motorized and nonmotorized vessels.
5. The petition of Lake Hortonia Property Owners Association as filed on January 2, 1985 requested the Water Resources Board to adopt the following rules:
  - (1) Waterskiing and operation of motor powered boats shall be prohibited from sunset to 8:30 a.m.
  - (2) Boats shall not exceed 5 mph in the bay area near the store.

- (3) No houseboats or other boats with living facilities shall be permitted on the lake.
  - (4) These rules supplement and do not modify other laws and regulations other than provided herein.
  - (5) Signs with lake rules shall be posted in the areas.
  - (6) The Towns of Hubbardton, and Sudbury may make laws to enforce these rules.
  - (7) Vermont Water Resources Board may modify these rules and maintains jurisdiction.
6. The Lake Hortonia Property Owners Association amended requested rule 1 to read as follows: "Waterskiing and the operation of motorboats in excess of 15 mph shall be prohibited from sunset to 8:30 a.m."
  7. The primary intent of requested rule 1 is to prevent the noise associated with waterskiing and boating in excess of 15 mph between sunset and 8:30 a.m.
  8. The secondary intent of requested rule 1 is to enhance the safety of fisherman, recreational boaters, and swimmers between sunset and 8:30 a.m.
  9. Title 23 V.S.A. §3311(c) (page 7 of the yellow booklet entitled "Laws and Rules Governing the Use and Registration of Motorboats") requires motorized boats to operate at speeds not in excess of 5 mph within 200 feet of: the shoreline, boats occupied by a person, and swimmers.
  10. It was the general consensus of those present at the July 6, 1985, hearing that if the provisions of 23 V.S.A. §3311(c) were better known and enforced, the safety concerns which in part prompted requested rule 1 would be substantially addressed.
  11. Waterskiing and the operation of motorboats in excess of 15 mph presently occurs after sunset and at least on occasion begins in the morning as early as 6:15 a.m.
  12. Those speaking in support of the petition noted the nuisance and imposition created by the noise associated with waterskiing and high speed boating for the residents adjacent to the lake. The proponents of requested rule 1 noted the residential character of the shoreline.

13. Those speaking in opposition to the petition noted that there are many sources of noise between sunset and 8:30 a.m. which can create a nuisance and that the noise associated with waterskiing and motorized recreational boating in general are part of the background noise on any large lake. The opponents also noted the difficulty of boat operators determining the speed at which they are traveling making it difficult to comply with, or to enforce, a 15 mph speed limit. Finally, opponents noted that because of work schedules the opportunity to waterski for some individuals would be significantly reduced or even eliminated by requested rule 1.
14. Other common sources of noise on Lake Hortonia which occur between sunset and 8:30 a.m. include, but are not limited to:
  - (a) noise associated with construction
  - (b) noise associated with the operation of motorboats, including motorboats operated by fisherman, at speeds of less than 15 mph.
  - (c) loud music
15. A petition was filed at the public hearing on July 6, 1985 signed by 31 individuals indicating their opposition to requested rule 1 as originally drafted.
16. A straw poll of those present at the July 6, 1985 hearing indicated that of those in attendance and voting, 46 were in favor of requested rule 1 as amended; while 28 were opposed.
17. Requested rule 2 is intended to apply to that area of Lake Hortonia westerly of a line drawn between camp 116 and camp 225 as shown on the Property Owners Association map of Lake Hortonia.
18. The area within which requested rule 2 would restrict speeds to 5 mph is a relatively narrow channel leading from the main lake to the dam. A convenience store frequented by many shoreline property owners is located adjacent to the channel. As a result, the channel area receives a relatively high volume of boat traffic relative to lake as a whole.
19. The operation of boats at speeds in excess of 5 mph in the channel area would create an unsafe condition.
20. For many years a sign indicating a 5 mph restriction was posted at the entrance to the channel even through no rule to that effect had been adopted by the Water Resources Board.

21. The 5 mph "rule" in the channel area has been generally observed for several years.
22. The intent of requested rule 2 is to have the Water Resources Board adopt a rule which is consistent with a long standing and generally observed convention that for safety purposes, boats operating in the channel area should not exceed 5 mph.
23. A straw poll of those present at the July 6, 1985 hearing indicated unanimous support for the adoption of requested rule 2.
24. No one present at the July 6, 1985 hearing could recall a houseboat being operated on Lake Hortonia or boats with plumbing being used for residential purposes.
25. A straw poll of those present at the July 6, 1985 hearing indicated unanimous support for requested rule 3.
26. There was no discussion of requested rules 4 through 7 at the public hearing on July 6, 1985.

Opportunity for Further Comment

The above preliminary findings of fact are issued in accordance with 10 V.S.A. §905(a) by the referee appointed by the Vermont Water Resources Board. Anyone with an interest in this matter, whether or not they attended the July 6, 1985 hearing, has the opportunity to file comments regarding these findings, to request additional findings or to request that a further hearing be held by the Vermont Water Resources Board. In order to be considered by the Board any such comments or request must be postmarked by July 29, 1985. All correspondence regarding this matter should be addressed to the Vermont Water Resources Board, State Office Building, Montpelier, Vermont 05602 (telephone 828-2871).

Done this 10th day of July, 1985 at Montpelier, Vermont.

By authority of the Vermont  
Water Resources Board



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William A. Bartlett  
Hearing Referee