

**STATE OF VERMONT
WATER RESOURCES BOARD**

**In re: Petition seeking the
delegation of state authority
to regulate the mooring of
vessels in the public waters
within the City of Newport**

10 V. S. A. § 1424

BACKGROUND

In April of 2000 the Vermont Water Resources Board (Board) was petitioned under the provisions of 10 V.S.A. § 1424 by the City of Newport (the City) to adopt rules delegating to the City the state's authority to regulate the mooring of vessels in the public waters located within the City of Newport including a portion of Lake Memphremagog (the petition).

In response to this petition, the Board proposed rules granting the delegation requested by the City for purposes of receiving public comment. Following public notice, the Board and the City Council held a joint public hearing at the City of Newport, Vermont on July 17, 2000 to receive public comment on the Board's proposed rules and a draft of the City's implementing ordinance.

The Board established August 15, 2000 as the deadline for the filing of written comment regarding its proposed rules.

DECISION

At its meetings on August 30, 2000 and again on September 19, 2000, the Board reviewed and discussed the public comment received both at the public hearing and in writing. At its meeting on September 19, 2000 the Board voted unanimously to grant the City's petition and to proceed with the adoption of rules, modified somewhat in response to public comment, delegating to the City the state's authority to regulate the mooring of vessels in the public waters located within the City including a portion of Lake Memphremagog.

FINDINGS

1. The Board the authority to adopt rules to regulating the use of public waters under 10 V.S.A. §1424. Under this authority the Board authorized to make a subdelegation of this authority to a municipality that is adjacent to such waters when the municipality accepts the delegation by adopting or amending a bylaw or ordinance for the regulation of the waters. 10 V.S.A. §1424(f).

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2. The petition under consideration asks the Board to adopt rules delegating to the City the authority to regulate boat moorings in public waters located within its boundaries.
3. The waters that are subject to this proceeding consist of public waters of the state of Vermont within the meaning of 10 V.S.A. § 1422(6) and include: portions of Lake Memphremagog, the Clyde River and the Black River.
4. The use of public waters for the mooring of vessels is a use of public waters that is subject to regulation under the authority of 10 V.S.A. §1424 and therefore may be delegated to a municipality.
5. Prior to filing its petition with the Board the City formed a Mooring Management Planning Committee (Committee) consisting of eight local citizens. The Committee included persons who were users of the affected public waters for various recreational uses including fishing, boating, swimming and general recreation as well as a local marina operator, a member of the City Council and the City's Director of the Recreation Department.
6. The Committee held numerous meetings open to the public for a period of several months prior to the development and submittal of the City's petition.
7. The City's petition included a draft municipal ordinance that it would adopt to implement its delegation of state authority if granted. The City's petition and the Board's proposed rules provide that such an ordinance once adopted by the City would be subject to review by the Board for consistency with its delegation.
8. The City has requested this delegation to allow it to manage the location and configuration of mooring fields in the waters near and adjacent to its newly renovated waterfront. Such management is needed to better insure that: other recreational uses of the waters are not unduly impacted by boat moorings, navigational fairways through or between mooring fields are maintained and mooring equipment used meets reasonable standards to reduce the incidence of vessels breaking loose from their moorings and damaging other vessels and/or public or private shoreline structures.
9. The Board views the delegation of state authority to the City as requested in its petition as appropriate and necessary experiment that, if successful, will serve as

a model for future delegations to Vermont municipalities seeking to manage specific use conflicts involving public waters within their boundaries.

10. Following the submittal of the City's petition, the Board convened an informational meeting in Montpelier in June to review the petition prior to the public hearing. This meeting was attended by representatives of the Board, the City, the Agency of Natural Resources (ANR), the United States Coast Guard, and the Vermont State Police.
11. During June and July 2000 officials from the ANR evaluated the City's proposed mooring management scheme in terms of its potential impact on critical natural resources. These evaluations were conducted by representatives of: the Department of Fish and Wildlife with respect to fish and wildlife habitat and the Department's Nongame and Natural Heritage Program, and the Department of Environmental Conservation with respect to wetland issues.
12. In response to ANR's evaluations, the City agreed to make a number of changes to its draft ordinance and to its mooring management scheme including: eliminating boat moorings within the Clyde and Black Rivers and excluding moorings within 300 feet of the Pender Cove inlet.
13. ANR concerns regarding possible boat moorings within Pender Cove were resolved to the satisfaction of the City and ANR by an agreement to monitor how many boat moorings actually occur in this area which, due to its shallowness, is not well suited to such use.
14. A few shore land property owners have expressed concerns that the proposed rules do not "grandfather" existing moorings. The Board believes that such "grandfathering" is not appropriate and, as a practical matter, unnecessary. All uses of public waters are subject to the police power of the state and, as a consequence, they may be reasonably regulated by the Board or its delegate. Furthermore, while mooring equipment may constitute private property, public waters and the lands lying thereunder to which the moorings are attached are subject to the public trust doctrine and should be managed for the benefit of all the State's citizens.
15. In developing its final proposed rules, the Board, with the City's active cooperation, has attempted to balance the public's interest in the sound

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management of a limited public resource and the private property owner's understandable concerns about the continued use of existing moorings.

16. Under the plan proposed by the City and approved by the Board, while regulation may eventually result in some reconfiguration of the current pattern of boat moorings, with few if any exceptions, those with existing boat moorings will continue to be able to moor their vessels in a convenient and reasonable manner. Any final regulatory action by the City is appealable to the Board.

Dated at Montpelier, Vermont on this 19th day of September 2000.

VERMONT WATER RESOURCES
BOARD



David J. Blythe, Chair

Board members concurring:

Jane Potvin
Barbara Farr
John Roberts