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## MEMORANDUM

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**TO:** NORWICH SELECTBOARD  
**FROM:** STEPHEN N. FLANDERS  
**SUBJECT:** POOL APPLICATION FOLLOW-UP  
**DATE:** NOVEMBER 24, 2015  
**CC:** TOWN MANAGER

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- 1 This is in response to Mary Layton’s request for an agenda item in her November 23, 2015 memo, “Pool Permit Application Follow up”.
- 2 I oppose scheduling time for a matter that can’t be regarded as a lesson learned, because the town won’t be applying for another pool permit. The intent appears to be solely to castigate those, who assembled the permit package. Nor is it a matter of any urgency that should be dealt with before other selectboard priority issues.
- 3 The assumption on the part of the selectboard and town management has always been that ANR would reject the application—hence the provision for funds for litigation, requested in the last budget.
- 4 At the time of the application, the \$85K represented sunk costs, which would have been completely wasted, had we not submitted the application.
- 5 At the time of final preparation of the permit, there was no viable alternative legal or engineering approach, owing to the expiry date of the FEMA funds, nor was there a strong alternative contender. Prior to settling on demountable stream impoundment, the engineers, Dubois & King, had considered both a side-channel pool—which did not mitigate water quality issues—and an in-ground pool at Huntley Meadows. Lebanon reportedly paid \$1.9 million to construct such a pool and pays an annual cost of \$115K to maintain it—an option that did not appeal to any of the selectboard members.
- 6 At the public forum, there was no substantive feedback that suggested the proposed approach to be lacking.
- 7 Prior to the SB’s approval of sending the application, the board had seen the text. Layton pronounced it a strong application.
- 8 The resistance an ANR began to rise only after the application was submitted, when they shut down communications on whether any clarification was requested. Therefore, a “risk assessment”, different from that already discussed prior to application would have been impossible.

- 9 The surprise from ANR was not that they denied the permit, but that they did not address the points made in the application. An analysis of their denial would show that their claims for denial ignore the valid claims made in the application, which themselves substantially addressed state statute and case law. This made it difficult to narrow the basis for the anticipated appeal. Rather than being an issue of diligence on the part of the town's engineering-legal-management team, the denial clearly reflects bad faith on the part of ANR in their quest to disallow any more dams in Vermont.
- 10 Upon learning of the denial, Layton again pronounced the application to be strong.