

Nancy Kramer

From: Christopher Ashley <c.ashley.sb@gmail.com>
Sent: Wednesday, December 30, 2015 10:08 AM
To: Nancy Kramer
Cc: Linda Cook; Neil Fulton
Subject: SB Correspondence

Nancy,

I have been asked for a copy of this letter that I read at the December Selectboard Meeting. Please enter it into Selectboard Correspondence for our next regular SB meeting.

Thank you,
Chipper

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Christopher Ashley
Norwich Selectboard

Please note that any response or reply to this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act.

Response to Mary Layton's Memo of November 23, 2015 on the subject of "Pool Permit Application Follow Up"

In her memo, Mary Layton writes: " In reviewing the rejection letter from the VT ANR I am noticing that the application failed to meet statutory requirements for acceptance on twenty-seven different criteria." Further she writes, "I do not understand how the risk assessment could have been so out of alignment with the reality of the results as expressed in the rejection letter. I would like an explanation in writing from both Neil Fulton and Nate Stearns...."

I object to this characterization of the application because:

- 1) There aren't 27 failed criteria.
- 2) The permit denial uses a process that is based on generalizations and doesn't respond to the actual application in a meaningful way. Frankly the application did address and achieve the three standards as required by VT statute.
- 3) Mary ignores the report to the Selectboard from Jim Masland on November 18, 2015 as to the VT ANR's aboutface in the process, from a meaningful dialogue to an abrupt non-responsive denial. As Mary heard, there was a very significant change on the part of the VT ANR after the application was filed. Neither Neil Fulton nor Nate Stearns could have realized that the VT ANR was not acting in good faith in the process.

To further expand on my three points:

Since Mary Layton didn't list the 27 criteria that she cites, I can only surmise that her statement lumps the rejection of smaller pieces of overall standards together to create a large negative statement. It is not clear what is her intent in doing this, other than to scapegoat and blame.

Here is an example of repetitive counting.

Regarding the topic of hydrology, the VT ANR denial (on page 5) states 3 times that the application fails to maintain stream flows during filling, during the summer, and during emptying. The application actually specifically addresses all three of these situations over 8 pages in Exhibit 4 with design, procedures, and data to prove that the dam will maintain the necessary stream flows. Words stating "failure" are used by Mr. LaFlamme of the VT ANR give his opinion that there is a failure in the application, but he does not cite any mistakes in the design, data, or analysis to justify this response. Both Mr. LaFlamme and Mary Layton fail to consider the actual content of the application on its merits. I assume that Mary counts this as 3 distinct failures.

This is what the letter from Peter LaFlamme of VTANR states regarding criteria:

"In order to qualify for a stream alteration permit, the application must meet the standards set forth in 10 VSA#1023(a). In accordance with the statute, the Agency must find that the project:

1. will not adversely affect the public safety by increasing flood or fluvial erosion hazards;
2. will not significantly damage fish life or wildlife; and
3. will not significantly damage the rights of riparian owners"

When Mary Layton refers to 27 criteria, she must be counting smaller pieces of the three standards. Mr. LaFlamme denied the application (in my opinion) using uncertain suppositions and generalizations while not responding to the design, data, and analysis contained in the application based on the three stated standards.

Here are 2 of the many examples of this shoddy process:

Denial page 2: "The proposed dam is designed to withstand a 500 year flood from a flow standpoint. It is uncertain however whether the impoundment would fill with sediment and debris from a large flood...."

This response ignores the analysis in part 5) Hydraulic Connectivity in the application, along with the 8 pages of annual and monthly stream flows, rainfall, watershed, sediments, and other data that DuBois and King present to demonstrate that the dam will withstand a 500 year flood. Instead of the word "uncertain", Mr. LaFlamme should point out mistakes in the flood water flow modeling or dam design that create a danger to public safety. He is non-responsive to the application and the data.

Denial page 5: "The application fails to demonstrate that the project will not significantly change the diurnal thermal regime of the Norwich Pool or down-stream reaches of Charles Brown Brook."

On the contrary, the application, using water temperature data collected over 2 years and stream flow data from over 50 years proposes a dam design and operating procedures that will create a water temperature increase below the dam of less than 1 degree. Again Mr. LaFlamme ignores the application part 3) Temperature and 9 pages of data in Exhibit 3 on temperature calculations. If the DeBois and King analysis is incorrect, he should indicate where the mistake lies. Instead he ignores the presented information.

I could give other examples of how the permit denial ignores the content, data, and/or analysis contained in the permit application, but due to time and space constraints for this reply, I will not do so.

At the November 18, 2015 Selectboard meeting our Vermont Representative, Jim Masland, reported on the abrupt change of tone in the discussions with the VT ANR after the application was filed. Jim had been highly involved since last January. He didn't understand the change, nor could he explain it. Neither Neil Fulton nor Nate Stearns is responsible for, what is in my opinion, the VT ANR acting in bad faith. My opinion is also shaped by the phone conversation I had with Deb Markowitz, the Secretary of the VT ANR, last year that I reported to the Selectboard. Mary Layton heard Jim's report and her memo ignores it.

Instead of a scapegoating attack on Neil Fulton and Nate Stearns, Norwich's disappointment ought to be directed at the VT ANR for a terrible process as our application was discussed and submitted. There was neither a failure of judgement nor a failure of risk analysis on Norwich's part. If there was any failure in Norwich it was the decision not to pursue the appeal to let the entire town decide this important issue.

Christopher Ashley
Norwich Selectboard
December 9, 2015