

VERMONT SUPERIOR COURT  
Environmental Division  
32 Cherry St, 2nd Floor, Suite 303,  
Burlington, VT 05401  
802-951-1740  
www.vermontjudiciary.org



Docket Nos. 53-7-20 Vtec  
7-1-20 Vtec

Grimaldi Dock Placement Determination AND In Re Susan Grimaldi NOV

**ENTRY REGARDING MOTION**

Title: Motion to Continue and Stay pending measurement of MWL (Motion: 2)  
Filer: David L. Grayck  
Filed Date: August 13, 2021

The motion is **GRANTED**.

Annie Christopher and Peter Backman (Appellants) request that these matters be continued to allow for the measurement of the mean water level (MWL) of Nelson Pond relative to the Grimaldi dock from June 1 through September 15, 2022, in compliance with the Vermont Department of Environmental Conservation's Chapter 31, Watershed Management, Rules for Determining Mean Water Level for Lakes and Ponds, 12/30/2011. Susan Grimaldi opposes Appellants' Motion to Continue, offering that Appellants have had ample time to collect MWL evidence.

Docket 7-1-20 Vtec is an appeal of the Town of Calais Development Review Board's (DRB) determination that Ms. Grimaldi's dock is below the MWL, and therefore not subject to zoning (the NOV appeal). Docket 53-7-20 Vtec is an appeal of Lindsay Miller's (Agency of Natural Resources) June 16, 2020 letter which states, in relevant part, that "the dock's current location appears to be beyond mean water level." Thus, whether Ms. Grimaldi's dock is above or below the MWL has been the central issue in these matters.

Erick Titrud, Esq. originally represented Appellants in these matters. Sadly, Attorney Titrud died a few months ago and David Grayck, Esq. assumed representation of Appellants. The pace of these matters was a bit slow due in part to the Covid-19 pandemic and Attorney Titrud's illness. Because of these factors, the court does not find that Appellants have already had "ample opportunity" to collect information in the meaning of V.R.C.P. 26(b)(2)(B)(ii) as argued by Ms. Grimaldi. We will not penalize Appellants and force them to litigate these matters without a fair opportunity to gather relevant evidence. See Kokoletsos v. Frank

Babcock & Son, Inc., 149 Vt. 33, 35 (1987) (“It is well settled that the granting of a continuance by the trial court is a matter of discretion”) (internal quotation removed).

Similarly, we will not penalize Ms. Grimaldi by requiring that the subject dock be removed or relocated during these actions.

We therefore **CONTINUE** these matters to allow for the measurement of the MWL of Nelson Pond. We also **ORDER** that the status quo of the existing dock continue until these matters are concluded. The parties are directed to complete all necessary work to be trial ready by October 1, 2022. The Court will schedule a status conference for this time.

Electronically Signed: 9/15/2021 10:17 AM pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge  
Superior Court, Environmental Division