

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Brent Tweed, et al

v.

The Town of Nottingham, et al

Docket No. 218-2019-CV-00398

OBJECTION TO NOTTINGHAM WATER ASSOCIATION'S MOTION TO INTERVENE

NOW COME the plaintiffs, Brent Tweed and G&F Goods, LLC, and respectfully object to the motion to reconsider filed by putative intervener Nottingham Water Alliance, and in support thereof states as follows:

1. In a detailed and well-reasoned opinion, the Court (Delker, J.) denied Nottingham Water Alliance's motion to intervene in this matter.
2. The Court based this denial of NWA's motion to intervene on several grounds.
3. First, the court found that NWA had to have "general standing" to intervene in the case, and that NWA lacked such general standing as, "NWA has neither any legal rights at stake nor a 'direct and apparent' interest in the outcome of this litigation." Order On Nottingham Water Alliance's Motion To Intervene at 9.
4. Second, the Court correctly found that NWA lacked standing under Part I, Art. 8 of the New Hampshire Constitution. Order on Nottingham Water Alliance's Motion To Intervene at 11-12.
5. Third, the Court considered, *sua sponte*, the question of whether to allow NWA to intervene in a limited capacity as *amicus curiae*. The Court decided against granting NWA *amicus curiae* status, but authorized NWA to renew its motion if it can demonstrate that the

Town of Nottingham, “will not adequately defend the constitutionality of the ordinance.” Order at 17.

6. In the prayer for relief in its original motion to intervene, NWA did not seek to be permitted to enter this case as *amicus curiae*. Likewise, the present motion does not ask that NWA be permitted to participate in this case as *amicus curiae*. Rather, it asks the court to reconsider its decision to deny NWA’s motion to intervene as a full party.

7. The Court’s findings that NWA had neither “general standing” nor standing under Part I, Article 8 are not affected in any way by the progress of this litigation and nothing in NWA’s motion to reconsider argues that these standing rulings are based on any misapprehension of facts or law.

8. Further, the Court should not allow NWA to participate as *amicus curiae*. Nothing in the town’s defense of this matter suggests that defense counsel’s has been inadequate.

9. Counsel in any legal matter have a, “limitless variety of strategic and tactical decisions that counsel must make....” *State v. Thompson*, 161 N.H. 507, 529 (2011)(discussing standard for ineffective assistance of counsel in criminal cases).

10. In this case the decisions made by counsel are well grounded, given the obvious weakness of the town’s case and the absurd propositions advanced in the ordinance. Further, actions (or inactions) taken by the town at the meeting at which the ordinance was adopted, and the nature of the case generally, may expose the town to liability for payment of legal fees.

11. At the town meeting, the plaintiff Mr. Tweed asked the selectboard whether the town attorney had an opinion as to the legality of the ordinance. A video file of the meeting can be viewed at <https://www.youtube.com/watch?v=c89V8Wyda7k&t=7801s>. Despite the presence of

Attorney Courtney at the meeting and the ease with which a legal opinion could have been provided to the town meeting, the select board specifically rejected the suggestion that such an opinion be provided

12. The plaintiffs incorporate by reference all arguments presented in their original objection to NWS's motion to intervene.

13. Simply stated, the Court should not allow NWA and its legal supporters to use this Court as a forum to argue what they think the law should be, rather than argue what the law is. As set forth in the plaintiffs' prior objection, the place to enact the kind of legal, structural change is in the legislature, not in the superior court.

14. It would be particularly unfair to require the plaintiffs to absorb the legal costs involved in responding to NWA and its CELDF allies arguments for revolutionary change in order to obtain legal relief that it is obviously entitled to.

WHEREFORE, the plaintiffs respectfully ask that this Court:

- A. Deny NWA's motion to reconsider; and
- B. Grant such other relief as may be just and proper.

Respectfully Submitted
By his attorneys,
Lehmann Law Office, PLLC

/s/Richard J. Lehmann

March 2, 2020

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CERTIFICATION

I hereby certify that a copy of this pleading was this day forwarded to opposing counsel via the court's electronic case filing system.

/s/Richard J. Lehmann

Richard J. Lehmann