

State of Vermont  
water Resources **Board**

Re: Town of Newfane Appeal  
Docket No: **90-07**

Authority: 10 V.S.A. § 1024

Decision

The Town of Newfane appealed a decision of the Department of Environmental Conservation (DEC), which issued a stream alteration **permit** to Joseph and Dorothy Druke for the stabilization of approximately 170 linear feet of streambank with rip rap. This project is located on Baker Brook in the Town of Williamsville. The appeal was originally submitted by Walter Phelps who later withdrew his request for party status, making the co-appellant, the Town of Newfane, the sole appellant. The only matter at issue in this appeal is whether the stream alteration will significantly damage the Town's prospective fire pond and existing dam.

A hearing on this matter was conducted on March 20, 1991. Based on the credible evidence presented at the hearing, and the Board's own research, the Board now finds and concludes the following:

Findings of Fact

1. This project consists of the stabilization of approximately 170 linear feet of streambank with rock rip rap located on the Baker Brook in the Town of Williamsville, Vermont. The Baker Brook drainage area is greater than ten square miles.
2. The permittees' application dated May 29, 1990, includes an attached schematic drawing on which the Department based its decision, was stipulated to and admitted into evidence.
3. The appellant, Town of Newfane, is a riparian owner whose property abuts the property of the Drukes.
4. It appears **that the** proposed change to the watercourse will **not** significantly damage the rights of the Town of Newfane as **riparian** owners. The stream bank stabilization work will not significantly damage the Town's fire pond.

Conclusions of Law

Pursuant to 10 V.S.A. § 1023, a stream alteration permit shall be granted, **subject to** warranted conditions, if it appears **that the** change will not adversely affect the public safety, not significantly damage fish life or wildlife, not **significantly** damage the rights of riparian owners, and in the case of outstanding resource waters, not adversely **affect the** values sought to be protected by the designation. 10 V.S.A. § 1023 (a) (1)-(4).

---

In this case, the Town of Newfane appealed the decision of the Commissioner of the Department of Environmental Conservation which granted the Drukes a stream alteration permit. The only matter at issue was whether the change to the watercourse would significantly damage the rights of the Town as a riparian owner, as directed by 10 V.S.A. § 1023 (a) (3).

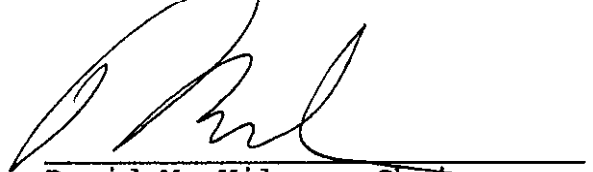
Based on the evidence before the Board, it appears that the **proposed** change to stabilize approximately 170 linear feet of streambank with rock rip rap will not significantly damage the **rights** of the Town of Newfane as riparian owners.

order

The **Druke's** request for a stream alteration permit is granted **subject** to the conditions stated in the stream alteration permit SA-2-0231, issued by the Department on June 6, 1990. However, **condition** 12 is deleted, and condition 9 is modified to read Work **shall** be accomplished during the period June 1 - October 1 of 1991 or 1992."

Dated this 12 day of June, 1991.

The Water Resources Board



David M. Wilson, Chair  
Elaine B. Little  
Mark DesMeules