

Chairman DiBella requested that Attorney Halloran update the Board on the ongoing issue regarding the outcome of the *Blonski v MDC* lawsuit.

Attorney Halloran reported the following:

"The problem that you have is that up until this lawsuit, the MDC believed that it was immune from this type of action. There are basically three different possible immunities that apply. The first one is a recreational immunity if you're a private landowner and you open up your land to the public for no cost, under the General Statutes of Connecticut, you are immune for any suit for any injury that takes place related to those recreational activities. Because the MDC is not a private party, but instead a municipality, we are not eligible for that immunity. Normally because we are a municipality we would be immune from liability for any discretionary acts, there's a long line of cases that say you can only hold a municipality for ministerial acts, not discretionary acts, and everybody admitted that the decision to put the gate there or to close or open the gate was a discretionary act, that you're not mandated by anything to have that gate there or to close it. They used their discretion because they were trying to prevent automobiles from going up to the reservoir. The judge found that this immunity did not apply to us because we engage in entrepreneurial activity by selling water. Now the previous cases on this had been selling water for profit, ok, and as you know the MDC is required by statute to sell water for the cost of producing water, so I believe that this is incorrect, but that is the interpretation of the court and as it stands right now that is the law you are dealing with. Finally, there's another public act, another General Statute, 25-43C which allows the Department of Health to give permits for recreational activity on water related property. The MDC applied for such a permit, applied back in 2002 and has kept the permits up through 2008, and specifically the Department of Health permitted the activity of bicycling on the reservoir where this injury occurred. The interpretation apparently of the court was that this is beyond the scope of the power of the Department of Public Health because the statute relates to the water and water related activities, I don't agree with that either but unfortunately it doesn't really matter what I agree with, the court rules and where we are right now is that, our council, which tried this case has sought to have the judge reverse the ruling based on these statutes and saying that we cannot be found liable because we are immune. Frankly, when the court has already ruled one way, it is a little bit unlikely that they are going to change their mind, but there is always the appellate process. So, we have that issue before you. The problem that you have to deal with is, right now, the ruling of the court is that you're not immune, rightly or wrongly, and so that other people: walkers, hikers, bicyclers, and other people using the facility can bring a claim against you, you frankly are the only entity, if you a private entity you'd be immune, if you were a regular municipality that's not selling water, you would be immune, and if it was only related to water activity you'd be obviously immune. So really the MDC is probably the worse entity to permit walking, bicycling, hiking on its property because you're most exposed to liability so that's, you have to make a policy decision on what to do."

Chairman DiBella commented:

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"Well I think there are a couple of other issues here. 1) We're covered under our existing insurance policy, we have a \$250,000 deductible, so it's \$250,000 we'll have to pay if in fact that appeal fails, the other thing is we don't control the attorneys, Bart does not control the attorneys that are representing us, they are in place by the insurance carrier and as a result we have sort of been isolated in this trial. But the other very interesting thing becomes is that if in fact the courts now are saying we are not excluded and we don't have an immunity protection you can bet your life the cost of that insurance policy is going to dramatically change because they were insuring us under excess limits based on the fact that they felt we had an immunity and they were pretty safe from liability and that's changed. The other thing is we've looked at what safety standards would be required to meet, at least in the eyes of the underwriters, Bart, a reasonable level of safety and we believe that it's going to be very very expensive. Do you want to address that Bart?"

Attorney Halloran answered:

"There are national transportation safety boards that apply when you have bike paths where you also have pedestrians and they require a certain width, they would require fencing along the reservoirs, there's so many miles I can't give you a calculation, but it would be millions of dollars."

Chairman DiBella commented:

"So as a result we are now taking this under consideration, and probably what we will do is develop a policy which will require public hearings, and we'll have public hearings on this whole issues, especially in the reservoir towns, but also in the MDC towns themselves, and we'll pursue a policy and that policy will be one that we will look at shutting the recreation areas down, not only in the reservoirs in West Hartford, but I would assume it would impact Barkhamsted and several of the other places that we provide recreational activities and it's going to be something that we are going to begin to develop the policy and obviously there'd be input by the board because you have to make that final determination, and the committees that are structured around the District Board, and over the next, what two months Bart, we'll establish..."

Attorney Halloran commented:

"Well we suggested the last time this came up the Water Bureau held a public hearing that considered the options and it seems like the same method of approaching this is appropriate. We currently have insurance until October so that's one thing that you should consider anyway, and nobody's cancelled it yet. But that, so if you refer to the Water Bureau and then have them report back to the Board with their recommendations."

Commissioner Al Reichin commented:

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"We had this same thing happen some years back with another accident and then we were ruled immune. My concern is a lot of people read in the newspaper about this woman riding her bike with her head down, running into a yellow fence, counter clockwise going the wrong way, and this is a person who taught bike safety at the reservoir. I just think in this day and age, with people suing and people with deep pockets, I'm surprised we don't already have another lawsuit. In my opinion, as long as

this lawsuit is pending, I think we should shut down the facility. Now, I'm not for that, but I think if we shut down the facility, post no trespassing signs and all the other legal stuff, we'll have such a large uprising in the community that the Legislature will have no choice but to change the immunity policy; that's my opinion."

Chairman DiBella commented:

"Again, we're going to let the Water Bureau Commission look at this policy and have some public hearings on it and make a recommendation. We've got coverage that runs through October right now, whether that gets cancelled or not we don't know. But again, before there's going to be any legislative action it'll be January of 2011 anyway, so I mean we're really between a hard place and a rock. I would think that we're going to have to make a decision in the next month or two on closing down."

Attorney Halloran commented:

"Yes, we are going to appeal this, and there is a process that you have to go through first where you ask the judge who heard the case to throw the case out, and once he refuses to do that, you have the right to go to the appellate court, and then to the supreme court after that, so it's a three step process. Each time it gets harder, okay, to win, but I would agree that if you forbid people from going on, you do change your liability. You change it because under the laws, trespassers don't have the same rights as people you invited onto the property."

Commissioner Kronen asked:

"Do we have any idea how many people use this park? Thousands?"

Bob Moore answered:

"The last count was about 200,000 a year. In addition last year there was approximately about 18 track meets, cross country meets, and other walk-a-thons and another 19 or 20 different kinds of events including a swat team practice for 35 police departments, so there's a tremendous amount of organized activities in addition to the individuals walking and riding their bikes. In the other room we put up the maps of the trails, and it shows you the kinds of activities that have been allowed on the properties."

Commissioner Reichin asked:

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"I guess a question for Bart, regarding the calendar that you sort of went through of asking the judge to throw it out, the appeal process and so forth, where would the best use of public hearings be; prior to any of those steps or do we have to wait till all those steps are exhausted?"

Attorney Halloran responded:

"I would say that you need to have your public hearings now and I would not look at the public hearings effectively in the process, the legal process is what it is, we'll have lawyers arguing on our behalf trying to change it, but I would suggest you have position in fairness to everyone else; establish a position one way or the other."

Chairman DiBella concluded:

"I have had a discussion with Tim Curtis and he is going to take this up immediately, Chairman of the Water Bureau."

ADJOURNMENT

The meeting was adjourned at 8:03 P.M.

ATTEST:

Kristine C. Shaw _____

District Clerk Date of Approval

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