RECEIVED

DEC 1 2 2003

STATE OF NEW HAMPSHIRE

WATER COUNCIL

PETITION OF APPEAL OF PENNICHUCK BROOK WATERSHED COUNCIL

03- 19 WC

RAIS-CREST, LLC'S OBJECTION TO REQUEST FOR EXTENSION OF TIME (WAIVER OF RULES) and MOTION TO DISMISS

NOW COMES Rais-Crest, LLC, a New Hampshire limited liability company, by and through its attorneys, Winer and Bennett, LLP, and hereby objects to the granting of any extension of time (waiver of rules) to permit Pennichuck Brook Watershed Council ("PBWC") to file its Petition of Appeal (pertaining to permits issued to Rais-Crest, LLC), which Petition of Appeal was not filed in a complete form until December 8, 2003. In addition, Rais-Crest, LLC moves that PBWC's Petition of Appeal be dismissed. In support hereof, Rais-Crest, LLC states as follows:

Background

1. Rais-Crest, LLC is the developer of the residential community to be known as Summerfield Condominium in Amherst, New Hampshire.

2. Various permits for Summerfield Condominium (the "Project") were issued to Rais-Crest, LLC during 2003 (or were issued to TANA Properties Limited Partnership, one of the present owners of the land to be developed into Summerfield Condominium),

including DES Site Specific Permit #WPS-6467, DES Subdivision Approval #SA2003004123, and various subsurface sewage disposal septic system approvals, all as are more particularly identified in the Department of Environmental Service's Response to Motion for Reconsideration, dated November 5, 2003.

3. As detailed in DES's Response to Motion for Reconsideration, on July 14, 2003, PBWC filed a Motion for Reconsideration regarding the aforementioned permits and approvals. PBWC's Motion for Reconsideration was denied in all respects by DES as evidenced by the aforementioned Response to Motion for Reconsideration, dated November 5, 2003.

4. As stated in the Response to Motion for Reconsideration, PBWC had thirty (30) days from the date of the decision (November 5, 2003) to appeal to the Water Council, DES's affirmation of Site Specific Permit #WPS-6467.

5. Also as set forth in the Response to Motion for Reconsideration, PBWC had 30 days to appeal to the Superior Court, DES's affirmation of the aforementioned subdivision and septic system permits and approvals.

6. Apparently in the latter part of the day of December 5, 2003, PBWC attempted to file its Petition of Appeal (the 30th day after the date of decision and thus the last date for filing), but because of procedural deficiencies, was not able to complete the filing of the Petition of Appeal. PBWC attempted to correct these procedural deficiencies by documentation filed with the Water Council on December 8, 2003, which date was beyond the appeal deadline.

7. Under Env-WC 203.09(a), any party to an appeal may petition the Water Council to extend a time limit under certain criteria. Presumably, it is under this rule that PBWC seeks an extension of time to satisfy its procedural deficiencies and complete its appeal.

8. One of the criteria required by Env-WC 203.09(a) is that the request for extension (of time) be submitted in writing to the Water Council prior to the expiration of the prescribed period (emphasis added).

9. In the present case, no written request for extension was submitted to the Water Council before the thirty (30) day deadline (December 5, 2003), but rather, the request for extension itself was late, having been filed on December 8, 2003.

10. Under Env-WC 203.09(b), any other party may object to the request within five (5) days of the request, stating the reasons therefor.

Objection

11. Rais-Crest, LLC, being the permitee and party in interest, objects to any request for extension of time by PBWC.

12. Rais-Crest, LLC's objections are based upon the following fundamental factors:

a. As noted in paragraphs 8 and 9 above, PBWC's request for extension of time in and of itself was untimely and not in compliance with the requirements of Env-WC 203.09(a), not having been filed prior to the expiration of the prescribed time limit itself;

b. Extensions of time should not be granted to the filing of the petition or notice of appeal which initiates a case, but rather should be reserved for procedural deadlines during the processing of a case. To do otherwise would, in effect, render the thirty (30) day appeal period itself indefinite;

c. Even a cursory examination of PBWC's Petition of Appeal demonstrates that it is not in compliance with Env-WC 203.03(b) which sets forth the required contents of an appeal, in that:

i. PBWC's Petition of Appeal does not contain a clear and concise statement of the relief sought, but rather is a rambling and incoherent combination of disconnected statements with quotations from portions of DES's Response to Motion for Reconsideration;

ii. The sheer length and discontinuity of PBWC's Petition of Appeal renders it an oppressive pleading;

iii. PBWC's Petition of Appeal does not contain a concise and explicit statement of the facts upon which the Water Council is expected to reply in granting the relief (as required under Env-WC 203.03(b)(3), but rather rambles through many facts unrelated to the Site Specific Permit itself and burdens the Water Council to review irrelevant documents, some of which pertain to presentations before the local Zoning Board of Adjustment, others of which pertain to cases unrelated to Summerfield Condominium, and others which are citations to New Hampshire Law not on point; and

iv. The focus of PBWC's Petition of Appeal pertains to the subdivision and septic system permits, not the Site Specific Permit. As a result, the vast bulk of the Petition of Appeal is not even relevant to a matter appealable to the Water Council since, as noted by DES in their Response to Motion for Reconsideration, the subdivision permit and septic system permits are appealable to the Superior Court (not to the Water Council).

13. In its Response to Motion for Reconsideration, when ruling on the Site Specific Permit, DES concluded that "because the PBWC has not provided any basis on

which to find that the issuance of Site Specific Permit #WPS-6467 is unlawful and unreasonable, the request for reconsideration of this permit is denied." See page 2 of the Response to Motion for Reconsideration.

14. Similarly, PBWC's Petition of Appeal is without basis. PBWC has provided no substantive rationale upon which the Water Council could possible find error in DES's ruling.

15. As a consequence, it can only be anticipated that PBWC will ask for further time to amend and supplement its Petition of Appeal, since the Petition of Appeal contains no substantive basis upon which the Water Council could make a finding in favor of PBWC.

16. As a further consequence, Rais-Crest, LLC will be burdened by continuing extensions of time while PBWC tries (but will undoubtedly fail) as evidenced by its prior filings, to articulate a rational Notice of Appeal.

Motion to Dismiss

17. In light of the foregoing, the Water Council should dismiss PBWC's Petition of Appeal as being untimely filed.

18. As an independent reason, the Water Council should dismiss PBWC's Petition of Appeal as being outside of the Water Council's jurisdiction with respect to the subdivision and septic system permits and as being out of compliance with the requirements of Env-WC 203.03.

WHEREFORE, in light of Rais-Crest, LLC's Objection to PBWC's Request for Extension of Time, it is respectfully requested that the Water Council dismiss, with prejudice, PBWC's Petition of Appeal.

Respectfully submitted,
RAIS-CREST, LLC
By its attorneys,
Winer and Bennett, LLP

COPY

Dated: December 12, 2003 By: _____

J. Bradford Westgate, Esquire
111 Concord Street, PO Box 488
Nashua, New Hampshire 03061
(603) 882-5157

Certificate of Service

I certify that copies of this Objection to Request for Extension of Time (Waiver of Rules) and Motion to Dismiss have been mailed this 12th day of December, 2003, to Michael P. Nolin, Commissioner, New Hampshire Department of Environmental Services, Harry T. Stewart, Director, Water Division, New Hampshire Department of Environmental Services, Gretchen Rule, DES Legal Unit, Town of Amherst (c/o Charles Tiedemann, Zoning Administrator), and Pennichuck Brook Watershed Council, c/o Allan Fuller, Chairman.

COPY

_____
J. Bradford Westgate