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February 17, 2021

VIA EMAIL ONLY

Marshall Reckard

RE: **Proposed Wake Boat Ordinance**

Dear Marshall:

As a follow-up to our office conference of February 15th and our discussion at that time of the proposed Wake Boat Ordinance, you have now requested a written opinion from me.

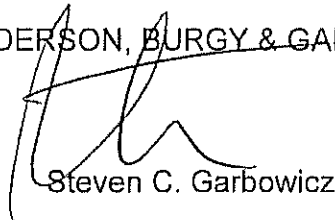
In reviewing both the statutes that were cited by the Department of Natural Resources and their letter declining to support the adoption of a Wake Boat Ordinance, it would be my opinion that the DNR quite frankly is probably right in this scenario and I would not embark on the adoption of a Wake Boat Ordinance. Based on my reading of what the DNR cited and the statutes in question, I do believe you would have a problem with its constitutionality and its enforceability. I doubt that the proposed Ordinance would survive a collateral attack in the event a citation was issued. By collateral attack I mean questioning its constitutionality and enforceability. Because of the fact that there are other statutes available to utilize to control wake boats, those would be the items cited by the Department of Natural Resources in their letter, it really makes no sense to create an Ordinance specifically designed for one particular watercraft. That is not normally the way boating regulations are created.

Therefore, my advice is do not enact and adopt a Wake Boat Ordinance of the type that you presented me with. I do not believe it is enforceable as currently written and could subject the Town to potential liability for adopting such an Ordinance.

If you have any questions, please feel free to contact me.

Sincerely,

O'BRIEN, ANDERSON, BURG & GARBOWICZ, L.L.P.



Steven C. Garbowicz

SCG:alc