

## **Shapleigh voters approve rights-based ordinance**

*Move prohibits commercial water extraction in town: Selectmen question legality*

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**By Tammy Wells, Staff Writer**

SHAPLEIGH — Residents Saturday approved a rights-based ordinance that prohibits water extraction by corporations.

The vote was 114 to 66 and came 25 minutes into the Town Meeting – and only seven minutes after the call for the vote.

The vote makes Shapleigh the only Maine community to have approved a rights-based ordinance. Residents of Barnstead, N.H., passed a similar ordinance in 2007.

The question now: Will it be challenged?

Immediately following the vote, Selectman Bill Hayes seemed to suggest that selectmen might issue a challenge, but when confronted by a voter, said the board would seek legal advice.

“We’ll seek advice from counsel,” said Hayes. “If the ordinance isn’t enforceable, it puts us in a pretty precarious position as how to proceed.”

Both the town’s lawyer and a Maine Municipal Association attorney have said the rights-based ordinance is unconstitutional and against Maine law.

Selectman Mike Perro read a statement from town attorney Ron Bourque just before the vote, which said the ordinance was illegal, unconstitutional and unenforceable.

Martin Bretton, of the citizens group Protecting Our Water and Wildlife Resources, read an opinion from the group’s attorney, Lynne Williams of Bar Harbor, who is also a candidate for governor as a Green Independent. Williams noted that the ordinance hasn’t been tested in court so, in her opinion, to say it is illegal or unconstitutional isn’t in an attorney’s purview.

Passage of the ordinance is a victory for the citizens group. When it approached selectmen with a petition last year to have the rights-based ordinance on the annual Town Meeting ballot, the group’s request was rejected, based on the lawyers’ opinions.

While the ordinance applies to all companies contemplating water extraction in Shapleigh, it is aimed squarely at Poland Spring, a division of Nestlé Waters North

America. Poland Spring had sought to test water on town-owned land on the Mann Road with a view to setting up a pumping station.

In September 2008, residents rejected Poland Spring's bid to test water and enacted a 180-day moratorium to give the Planning Board time to craft an ordinance to regulate water extraction. That ordinance will appear on the annual Town Meeting warrant March 14.

Selectmen have previously said that Shapleigh residents would have a vote on water extraction if it were contemplated on town-owned land, but acknowledged that voter approval wouldn't apply to state-owned or private land. There are test pits on state-owned land in the Vernon Walker Wildlife Refuge on Mann Road.

Shelly Gobeille, who heads the citizens group, said she was pleased by the vote.

"I was excited to see how many people turned out and no matter which way it went, the citizens were involved," she said.

Bretton said he was glad for the victory but had hoped for a wider margin.

Gobeille also had some words for selectmen if the board is contemplating court action. One option that has previously been mentioned is an injunction.

"If the selectmen of Shapleigh are going to take the citizens they are supposed to be representing to court, in my opinion, that's a despicable act," she said.

Perro said he wasn't surprised by the vote.

"I'm not sure we as a town should challenge (the result)," he said.

What it could all rest on is the clause in state statute by which the citizen's group called the special town meeting after selectmen refused to put the issue on the ballot.

"If the selectmen unreasonably refuse to call a town meeting, a notary public may call the meeting," the statute states.

"It boils down to whether our action (in refusing to put the article on the annual warrant) was reasonable or unreasonable," Hayes said. "If the court says we were reasonable than this meeting is illegal."