



**State of New Hampshire**  
**Department of Safety**

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

JOHN J. BARTHELMES  
COMMISSIONER OF SAFETY

## **ORDER ON MOTIONS FOR REHEARING**

In the Matter of:

### **Round, Fish & Flag Coves on Lake Winnepesaukee Meredith, New Hampshire**

Attorney Christopher Casco, Administrator, Bureau of Hearings, conducted a public hearing as designee for Commissioner John J. Barthelmes, Commissioner of Safety. Thereafter, as described below, Commissioner Barthelmes granted the petition. Three motions for rehearing pursuant to RSA 541:3 were timely filed.

This proceeding began when the Department of Safety received a petition requesting the establishment of a No Rafting Zone within Round, Fish, and Flag Coves, on Lake Winnepesaukee, Meredith, New Hampshire. The petition was submitted by Ms. Cheri Pierce in accordance with Saf-C 409.01 and was received by NH Marine Patrol on August 9, 2013.

Pursuant to RSA 270:12, RSA 270:43 and the New Hampshire Code of Administrative Rules Saf-C 407 and Saf-C 409, a public hearing was conducted on Monday, September 30, 2013 at 2:00 p.m. at the Meredith Community Center located at 1 Circle Drive, Room C, Meredith, New Hampshire. Following the statutory comment period, The Commissioner granted the petition by written order dated November 6, 2013.

On or about November 25, 2013, the Department received a motion for rehearing from John Clark (Appellant Clark). On or about December 2, 2013, Ken Hafen filed a motion for rehearing (Appellant

Hafen). Finally, on or about December 4, 2013, Amy Purpel filed a motion for rehearing (Appellant Purpel). The Petitioner was given an opportunity to respond, and did so, by letters received on or about December 11 & 20, 2013. While the motions were pending, after having received the Petitioner's response, Appellant Hafen withdrew his petition, and therefore, it is not considered as moot.

The Commissioner will address the remaining motions together. The first issue presented is whether Appellants Clark and Purpel have standing to file motions for rehearing under RSA 541:3 and New Hampshire Supreme Court case law in this subject matter area.

RSA 541:3 allows any party or person directly affected by the decision to file a motion for rehearing. This hearing was conducted under the legal authority of RSA 270:12 and Department of Safety administrative rules Saf-C 407 and Saf-C 409. RSA 270:12 allows 25 or more property owners or residents of each affected town in which a body of water is located to file a petition seeking a no rafting zone. Therefore, only specific individuals may file such petitions, and therefore, become an original party to an action. In addition, the statute requires a petitioner to notify any abutting property owners of the proposed action by certified mail. Therefore, such abutters are interested parties who are directly affected.

Moreover, the New Hampshire Supreme Court has considered what is required to confer standing in a case many times. In New Hampshire Bankers Association v. Nelson, 113 N.H. 127 (1973), the court stated that a person must demonstrate an "injury in fact" or be directly affected in order to have standing to file a motion for rehearing under RSA 541:3. Furthermore, in Avery v. New Hampshire Department of Education, 162 N.H. 604 (2011), the court stated that in order to bring a declaratory judgment action, a party must allege, "...an impairment of a present legal or equitable right arising out of the application of the rule or statute under which the action has occurred. Id. at 716. Finally, to have standing, a party must demonstrate that a right of his or hers has been impaired or prejudiced. Baer v. New Hampshire Department of Education, 160 N.H. 727 (2010).

For this type of hearing under RSA 270:12, the legislature has plainly defined who may file a petition as a resident or property owner where a lake, pond, or river is located. It has also conferred rights on abutting property owners and noncontiguous property owners affected by a waterway restriction as they must receive notice of a petition by certified mail. Appellant Clark describes himself in his motion, "As a citizen, Lake Winnepesaukee boater and lake front property owner." Appellant Purpel describes herself in her motion, "As a citizen of New

Hampshire..." She concludes her motion by identifying herself as a Meredith property owner. RSA 541:3 provides that a party or a person directly affected by the decision may file a motion for rehearing. Appellant Clark is neither a party or directly affected by the order. Therefore, Appellant Clark does not achieve standing under RSA 270:12 and RSA 541:3. Appellant Purpel does have standing as a Meredith property owner.

In addition, the Clark petition fails to adequately demonstrate that he has suffered any injury in fact, or that his personal right has been impaired or prejudiced. He does not state that his waterfront property is in the affected area, and does not state that he boats in the area. He does not state that he is a Meredith resident or property owner. Being a citizen and general boater on the lake is insufficient for standing. Consequently, Appellant Clark does not have standing to file a motion for rehearing and it is denied on that basis.

Assuming arguendo, that standing exists, the substance of the motions is briefly addressed. The Clark motion alleges that since no one opposed the petition, the relevant factors were not properly considered. The Petitioner disputes this in her response, and articulates the specific pages in the order where the relevant statutory grounds were considered in detail. Therefore, as there was sufficient detail in the report, and for the other reasons cited in the objection, the Clark motion is denied on the merits. Good reason for rehearing has not been sufficiently demonstrated. RSA 541:3.

As to the Purpel motion, she alleges that the Department failed to give a proper notice of hearing. Prior to the hearing, a detailed notice was published in the Union Leader, a newspaper of statewide circulation, which included a detailed description of the area in question. Moreover, as stated in Petitioner's objection, the public notice covered the three coves at issue. Also, the petition was posted on the Department of Safety web site, which put the public on notice as to what was being requested and the time and place of the hearing. The hearing occurred during the month of September, one of the designated times for this kind of hearing. Therefore, proper notice of the hearing was provided.

The Purpel motion next complains that single boats will be unable to anchor in the area. The order applies only to rafting as defined in RSA 270:44 that doesn't meet an exception under RSA 270:45. Therefore, the second ground alleged in the motion is insufficient to require rehearing.

Finally, the Purpel motion argues additional factors and the fact

that the absence of dissenting opinions compromised the decision-making process and warrants rehearing. A review of the record demonstrates that the statutory notice and hearing requirements were followed, and that based on the preponderance of the evidence civil standard of review, the petition was properly granted. Consequently, the Purpel motion fails to sustain its burden of demonstrating legally sufficient good reason for the rehearing. RSA 541:3.

Respectfully,



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Christopher Casco, Administrator  
Bureau of Hearings

**CONCLUSION OF LAW:**

The motions for rehearing fail to show good reason for rehearing under RSA 541:3.

**DISPOSITION:**

**It is hereby Ordered** that the motions for rehearing be **DENIED**.



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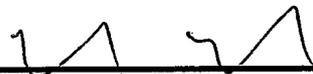
John J. Barthelmes  
Commissioner of Safety

**RSA 541:6 Appeal.**

Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

I certify that a copy of the order has been forwarded to the below named via first-class mail or electronic mailing (as applicable).

cc



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Christopher Casco, Administrator

Date of mailing: <sup>e-</sup> 1/21/14

A copy of this order was sent to the following:

Petitioner Designee  
Ms. Cheri Pierce  
(*To be distributed to co-petitioners*)

Colonel Robert Quinn, Director  
NH State Police/Division of  
Safety Services

Ms. Amy Purpel, Appellant

Mr. John Clark, Appellant

Mr. Ken Hafen, Appellant

Town Clerk/Administrator  
Meredith, New Hampshire

CC: File