



# State of New Hampshire

DEPARTMENT OF SAFETY  
OFFICE OF THE COMMISSIONER

33 HAZEN DR. CONCORD, NH 03305

603/271-2791

JOHN J. BARTHELMES  
COMMISSIONER

September 19, 2011

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In the Matter of )  
 )  
 Senter Cove, Lake Winnepesaukee, )  
 Moultonborough, New Hampshire )  
 )  
 Motion to Appeal RSA 541:3 )  
 Motion to Reopen RSA 541:3 )

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Re: Response to Appellants Motion to Reopen and Motion to Appeal pursuant to RSA 541:3

**APPELLANTS**

Mr. Thomas J. Kinney  
48 Sticks'N'Stones Road,  
Moultonborough, New Hampshire 03254

Mr. Maurice J. McCarthy  
39 Bay Road,  
Moultonborough, New Hampshire 03254

**I. INTRODUCTION**

I have carefully reviewed the Decision and Order issued August 9, 2011 based upon a public commentary hearing in the Town of Moultonborough on Friday, June 24, 2011 along with all of the exhibits and written documentation submitted for consideration. I have also carefully read the Motion to Reopen and Motion to Appeal submitted by Mr. Thomas J. Kinney ("Mr. Kinney") or ("Appellant") and also Mr. Maurice J. McCarthy's Motion to Reopen ("Mr. McCarthy") or ("Appellant") pursuant to RSA 541:3. In preparing my reply, the arguments for consideration submitted by the Appellants along with the photographic exhibits from Mr. Kinney are carefully considered.

Mr. Kinney submitted a timely Motion with grounds seeking the decision issued August 9, 2011 be reversed by petitioning to appeal and/or asking to reopen the hearing to allow an opportunity to debate. Mr. McCarthy joins Mr. Kinney petitioning to reopen the hearing.

## II. RELIEF SOUGHT

Mr. Kinney submitted his September 2, 2011 letter and photographs seeking appeal of the August 9, 2011 Decision and Order. He submitted arguments focusing on four key areas: 1) The Petitioners; 2) Marine Patrol; 3) The Environment and Erosion; and, 4) The accuracy of testimony in the original hearing. The Appellant disagrees with the Conclusion of Law reached based upon the analysis supporting the Findings of Fact. In addition, the Appellant argues the accuracy of the commentary of two persons he spoke with after the hearing had concluded, relating a discussion the he had with them. Mr. Kinney argued that the emphasis I placed by underlining the words "residents of the state" within my analysis infers that the Petitioners are vacationers from other areas and not residents or landowners.

Mr. McCarthy submitted his September 8, 2011 Appeal letter joining with Mr. Kinney's Motion to Reopen. Mr. McCarthy submitted grounds based on water-use decisions including: a 2009 decision regarding Salmon Meadow Cove; the August 9, 2011 decision issued for Senter Cove (the instant case); and a public commentary hearing on Barbers Pole conducted on July 30, 2011 with findings published on August 25, 2011. Mr. McCarthy also focused on the general concerns of the persons petitioning for a no-wake-zone arguing the varied responses submitted regarding enforceability of general boating laws by the New Hampshire Marine Patrol.

I shall respond to the motions submitted by Mr. Kinney and Mr. McCarthy, as applicable, a Motion to Reopen and a Motion to Appeal pursuant to RSA 541:3.

## III. ANSWER TO APPELLANTS MOTIONS TO REOPEN AND MOTION TO APPEAL

My answer and decision takes into consideration the cited statutes and rules listed within the August 9, 2011 Order and Decision. In this response I focus on RSA 270:1,II, including, for example, the competing uses for the safe and mutual enjoyment of a variety of uses within Lake Winnepesaukee. In addition to the published statutes and administrative rules, I relied on my analysis weighed from the public commentary, defining the basis for findings of fact and publishing a conclusion of law and decision.

Mr. Kinney did not provide the name of the person he argues is misquoted saying the wildlife leave the cove when

the cove is busy, then returning to the cove when it is less busy. I believe Mr. Kinney is referring to comments from Mr. Farnum. I agree with Mr. Kinney that Mr. Farnum spoke in favor of the petition. The weight I gave was on the commentary and not the person providing it.

Mr. Kinney and Mr. McCarthy draw from prior, and in the case of Barbers Pole, a post Senter Cove hearing decision arguing that the decisions are not alike. Each decision is based upon what the petition specifically requests, the law(s) upon which it is based and the exhibits and commentary provided. In each review the statistics are weighed, but it the public commentary and exhibits along with the standard of laws that are given greater weight by me.

After careful review, I find the Petitions to Reopen, and Petition to Appeal do not supply sufficient supporting reference to a statute or administrative rule that I should consider to amend the published Order. The arguments Mr. Kinney and Mr. McCarthy presented are not persuasive enough to alter my original conclusion.

#### IV. DECISION

Mr. Kinney and Mr. McCarthy, I respect the time and effort each of you took to submit your appeals for reconsideration; however, for the stated reasons I have listed, your petitions to reopen and petition to appeal the August 9, 2011 Decision and Order is denied.

#### V. APPEAL

RSA 541:6. 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.

Very truly yours,

  
John J. Barthelmes  
Commissioner

JJB/

Via US Mail or Email  
Copy sent to Appellants  
Town of Moultonborough  
Director of State Police  
File