



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

DECISION & ORDER

In the Matter of:

Pleasant Pond Henniker, New Hampshire

HISTORY:

- The Department of Safety received a petition requesting that any boat equipped with an internal combustion engine be banned from Pleasant Pond which is located within the town of Henniker.
- The petition, dated April 22, 2013, was submitted by Mr. Spencer Bennett and Ms. Linda McGuire on behalf of sixty-seven (67) co-petitioners.
- The petition requested a hearing pursuant to RSA 270:12 to address concerns, providing specific reasons listed within the cover letter and the synopsis included with the petition of names and addresses signatory thereto.
- The petitioners' proof of notification to the abutters of Pleasant Pond, received by the Department of Safety on May 15, 2013, allowed the requested hearing to be scheduled.
- Notification of the June 7, 2013 hearing to the public was published in a newspaper of statewide circulation on May 20, 2013; in addition, it was posted in at least one other public location including the State House and sent to the town of Henniker. The public notice of the continued public hearing, held on June 28, 2013, was published in a newspaper of statewide circulation on June 13, 2013; in addition, it was sent to the Department of Transportation, the Fish and Game

Department, posted in at least one other public location, and sent to the town of Henniker. The Notice of Hearing for June 28, 2013 was additionally placed on the Department of Safety Website in accordance with RSA 270:12, III.

- Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules, Saf-C 409, a public hearing was held on Friday, June 7, 2013 and on June 28, 2013 at 10:00 a.m. at the Henniker Community Center, 57 Main Street, Henniker, New Hampshire. Mr. Curtis Duclos, Hearings Examiner, conducted the hearing on my behalf.

OPENING REMARKS:

Everyone present was informed of the following:

- the Notice of Hearing was read to the persons in attendance;
- the Petition and all supporting documents will be available for review;
- the public hearing is recorded; and the recording will be preserved for seventy-five (75) days from the date of decision along with an explanation of the procedure by which to receive a copy of the recording;
- their opportunity to sign the appropriate "sign-up sheet" to present comment on the petition;
- Notification of the June 7, 2013 hearing to the public was published in a newspaper of statewide circulation on May 20, 2013; in addition, it was posted in at least one other public location including the State House and sent to the town of Henniker. The public notice of the continued public hearing, on June 28, 2013, was published in a newspaper of statewide circulation on June 13, 2013. In addition, it was posted in at least one other public location and sent to the town of Henniker. The June 28, 2013 Notice of Hearing was placed on the Department of Safety Website in accord with RSA 270:12, III.
- the Union Leader is a newspaper of statewide circulation and the two clippings from the newspaper were displayed; they could review the legal notice clippings from the newspaper, along with the original petition and any other documents; and,
- how and where to submit written comment that must be received by the Department of Safety within seven (7) calendar days following the hearing with a deadline of receipt before close of business at 4:15 PM on Monday, June 17, 2013, which was revised to Friday, July 5, 2013.

STATISTICS:

On June 7, 2013, seven (7) people spoke in favor of the petition and eight (8) persons did not speak, but were present and recorded themselves in favor of the petition. Nine persons (9) spoke against the petition and nine (9) recorded themselves against the petition. One person could not decide upon which sign in sheet to enter his name, but wanted to speak as a neutral person.

On June 28, 2013, two (2) people spoke in favor of the petition and no one else recorded themselves in favor of the petition. Six persons (6) spoke against the petition and two (2) others recorded themselves against the petition.

Fourteen (14) commentaries were received by letter or email prior to the close of business on July 5, 2013.

OFFICIAL NOTICE:

I take official notice of the following:

- The audio recordings of the June 7, 2013 and June 28, 2013 public commentary hearings conducted;
- The cover letter, providing the reason and justification for the petitioners' request, which was authored by Mr. Spencer Bennett and Ms. Linda McGuire;
- The Petition, dated April 22, 2013, included a letter of support from the Henniker Conservation Committee dated April 18, 2013;
- the documentation of compliance with RSA 270:12 by the petitioners giving notification to abutters by certified mail;
- the two notices of the public commentary hearings listed in a newspaper of statewide circulation and compliance with RSA 270:12, III by posting on the department website;
- the submitted documents delivered to the Department of Safety or sent in by mail, or by email, along with other attached electronic documents received and referenced (*infra*);

SYNOPSIS OF TESTIMONY: June 7, 2013

Mr. Spencer Bennett spoke in favor of the petition as one of the authors. He first explained the procedure by which the abutters were notified, then explained that the primary reason for sponsoring the petition is his concern for the loon located in the pond and to also preserve the water quality by preventing invasive plant species from entering the pond. He said that in the fifty years that he has been going to this pond only two new houses have been built, his and Mr. Weber's. He describes the pond as very stable and pristine. A family has owned most of the land surrounding the pond for many years. The property is very rural and the petitioners would like to keep it that way. Other bodies of water in the area have invasive species. Internal combustion engines primarily transport those invasive species pond to pond, noting that Mount Williams Pond and Dudley Pond currently have restrictions and will be a good model for Pleasant Pond.

Mr. Bennett has counted forty boats this year on the pond and every one was either electric or paddle powered showing that when humans use the pond it is in a quiet and sensitive manner. The loon has been returning to the pond for about nine years with a nesting pair this year. The loon preservation committee has placed a buoy line to try to keep people away. The committee is also placing signs this coming weekend to better identify this area. He said that recently groups of swimmers have come to use the pond. This is the first year geese with young have been observed on the pond. The reason for the petition is so people can coexist with the birds. People with internal combustion engines should go to a bigger lake.

In response to questions from the commissioner's designee, Mr. Bennett said that there is public access to the pond by a state maintained boat ramp located at the southern end of the pond. The ramp is owned by the Department of Transportation. He described an internal combustion engine as using a liquid or gaseous petroleum type fuel turning the chemical into kinetic energy.

Mr. Carl Moskey spoke against the petition. The land has been in his family since 1929. He owns two of the five fulltime residences and about one-third of the land around the pond. He has been coming to the pond all his life and has lived in one of the buildings since 1978. He testified that the pond is "little changed" in the last sixty years.

The activity level currently is much less than twenty years ago when a fifty foot right-of-way was built for boat access. Boat traffic is primarily fishing boats with electric and internal combustion engines. Removing the internal combustion engines will reduce the amount of fishing. With the exception of one motorboat used about

fifteen hours a year, which is owned by a resident to be used by his two children to water board, motorboats are rarely seen.

Mr. Moskey recalls learning to waterski in his youth at Pleasant Pond and wants his daughter to have the opportunity to learn to waterski too. He said that many people in the community and attending this hearing have similar memories. Adopting the petition will prevent future generations from experiencing the variety of appropriate, safe and enjoyable uses of Pleasant Pond. There is little compelling evidence that there are public safety issues; in addition, the environment, water quality, or species of birds including loons, are not currently threatened or endangered. Pleasant Pond has been used for many years with no restrictions on its use. Adoption of the rule will not preserve, but restrict its use by landowners and deny public citizens the freedom to enjoy the pond in a variety of ways.

Ms. Alison Wimmer spoke in favor of the petition by reading a letter that she and her mother authored. *(She said the letter had been submitted prior to this hearing and included pictures.)*¹ The letter spoke of the family history associated with the use of the pond and their property including her extended family swimming and fishing during family gatherings. The letter described the wildlife including types of fish and birds they have enjoyed observing. At times in the past, motorboats have traveled the length of the pond creating wakes that knocked young children over in the water. The pond is too small for speedboat traffic. General usage does not include this type of boat.

Mr. Maurice Davison spoke in opposition to the petition. His family has lived in the area since 1919. He recalls as a youth that he and his family waterskied after having brought in hay all day. He also recalls swimming and suggested that if boating is restricted, perhaps swimming should be too. Eliminating internal combustion engines will reduce the number of people fishing, as many anglers do not own electric engines. He believes the pond is in better condition presently than it was in the sixties. He is concerned that if limitations are imposed, the small number of landowners around this pond may be encouraged to start selling. Rather than the small number now, many more buildings may be built.

Mr. Mark Mitch, representing the Henniker Conservation Commission, spoke in favor of the petition. There are eleven ponds located within the town of Henniker. Five of the ponds are impacted in some degree by some aspect of water quality with two severely so. Pleasant Pond's high quality is attributed to the wetlands surrounding its shoreline, but that does not control what is introduced into the

¹ The documents and pictures were not received.

pond. The Commission has been monitoring the ponds since 2000. During that time, the water quality has diminished due to swimmers, but it is only present for a few days.

Mr. Mitch testified that Henniker is surrounded by towns with bodies of water that are impacted by invasive species such as milfoil and introducing the plants can occur in a matter of thirty seconds once a propeller transmits the plant to the water. The Commission also supports the petition because of the nesting loons.

Ms. Dolores Aucoin spoke against the petition. She and her extended family have enjoyed the pond since 1926. She said there is not much boat traffic, but the motorboats help by stirring up the pond. As to the loons, if the petitioners are worried about them, move them to another pond and leave Pleasant Pond alone.

Mr. Ross Bennett supports the petition noting that it is important to protect the water quality. He said the pond is small in perspective to motorboats saying that you can paddle across the pond in a couple of minutes. He has seen motor boaters put the boat into the pond do a lap and then leave disappointed after going to the trouble of launching the boat.

Mr. Philip Ryan spoke against the petition. He and his partner own Henniker House and recommend the pond to guests. He also spends time each day snorkeling. While doing so, he picks up trash found on the bottom of the pond; however, in the last several years he has found less to pick up.

Mr. Ryan next described the public launch as "self-limiting", saying that it is almost impossible to launch any decent-sized-boat. He said a person has to walk out into the pond a good distance before it is deep enough to swim noting it isn't a short walk. He described the hundreds of glacial boulders located on the west side of the pond just under the water surface making it unfavorable to swim there and unsafe to operate a motorboat in that area. Mr. Ryan does not like the smell of a motorboat, but during his daily use of the pond, when such boats are present, have not bothered him. He recalled that last year the loons, on three occasions, sought him and his companions out. Mr. Ryan said, "they [the loons] are pretty much digging what's going on there." He went on to describe the number and variety of fish he sees in abundance along with turtles. He closed saying that any large boats will have little room to maneuver based on the size and shape of this pond.

Ms. Nancy Foley spoke in favor of the petition. She loves to hear the quiet. The only buzzing she wants to hear is from bees.

Ms. Diane Mallett spoke against the petition. She grew up in Henniker and with her brothers and sisters enjoyed visiting Pleasant Pond. She recalled seeing plenty of boats then, but not very many now. She and her son enjoy regularly snorkeling in the pond and many times she sees more dogs than people at the pond. She would like to see the water "stirred up a little;" rather than the water stagnating. Ms. Mallett said that she would not want to see gasoline in the water, but with so few boats there would be little problem with that occurring.

Mr. Gary Archley, a sportsman, signed to speak in favor of the petition. He said small boats on the pond are not a problem, but this issue involves one boat. This one boat seems to be a hazard to any swimmer crossing the pond; the same scenario exists for people in smaller craft sharing the pond. He believes the petition is about this one large boat saying smaller engines would be safer because they will not travel at the higher speeds. Mr. Archley also described the boat ramp similarly to an earlier speaker.

Ms. Bonita Morse spoke against the petition as a resident living on the shores of Pleasant Pond for many years. She said this is a "live free or die" state and [the people] do not need any more rules and regulations than "on the book" [already]. She said the Morses have been taxpayers in town for the past seventy-five years and have had no problems on the pond. Her family enjoys people having a fun time at Pleasant Pond. She said as to loons and birds, motorboats don't bother them; the birds are "nosey" and come right up to people. The larger lakes have plenty of motorboats and loons and ducks are nesting in those locations.

Ms. Morse described the water at the boat landing as not deep enough to allow access to a big boat. People using a motorboat are anglers who purchase a fishing license and register the boat, which brings revenue to the State. She worries what will be banned next.

Mr. Merrick Bennett spoke in favor of the petition recalling his family history and that both those either for or against this petition agree that Pleasant Pond is a wonderful place and resource. He would like to propose that there be an agreement to propose rules regarding usage of the pond that everyone could agree to preserve, rather than close the pond. He feels the risk is that one lap around the pond is enough to allow infestation of invasive plants. He also suggests that the loons may be 'guiding' people away, rather than being friendly.

Mr. Michael Slader spoke against the petition. He has been swimming regularly at Pleasant Pond since 1977. Much of the time,

he is swimming across, rather than near the shoreline. Mr. Slader uses many types of non-motorized boating, emphasizing that he is not a fisherman. He testified that the pond is "self-regulating" if comparing the current law and the limitations of where the ski-craft and boats can travel at greater than a no-wake speed. He continued saying that education and licensing requirements emphasize responsible boating. If there is a violation, the violator should be cited. He next discussed the education regarding invasive species and noted that the prop on a gas-powered boat and an electric-powered boat are no different and do catch weeds. Lake Sunapee issues a sticker to entering boats and washes them all including kayaks and canoes.

Mr. Slader described the boat launch saying it is not a ramp, but a launch. The water is shallow and he described the difficulty he had trying to remove his twelve-foot rowboat from the trailer, saying to float the rowboat from the trailer he would have had to go "halfway across the pond". He emphasized the larger boats will have great inconvenience with launching into this pond; therefore, it is self-regulating.

Ms. Susan Armstrong spoke against the petition discussing primarily the loons and their familiarity and interaction with her within the pond as she swims. She has seen the discussed motorboat, but has never observed the boat operating on the pond and she noted that her routine includes swimming at various times of the day. For the fifteen hours of operation pointed out by a prior speaker, she cannot see why that one boat is troublesome to the pond.

Mr. Scott Osgood signed to speak as a neutral person on the subject and to provide his commentary. He spoke to emphasize other speakers' commentary saying boaters are self-limited; otherwise, they are breaking the laws. He provided an example regarding the duty of all boaters to clean their boat by removing any weeds. Mr. Osgood ended by saying he is pleased that neighbors are out and talking about solutions.

Ms. Kathleen LaBonte spoke against the petition. She learned that the town did not post the hearing as they determined that the hearing was a state, not town, matter. In the nine years that she has taken her son to Pleasant Pond to swim, she has never seen any improper motor boating.

SYNOPSIS OF TESTIMONY: June 28, 2013

Ms. Barbara French spoke in favor of the petition. She began by saying that the crux of the hearing is to speak about a bird and a pond. The loon, a very special and endangered bird in New Hampshire, is located within Pleasant Pond. In closing, she said the loon is a very special bird and should be given any protection available.

Mr. Mark Brunstad lives adjacent to the pond and spoke against the petition. He has had an opportunity to read press and other commentary regarding the petition and learned that it was reported that a resident was waterskiing on Pleasant Pond. He said since he is the only person who fit that description, some or all was directed toward him. He appeared to clarify the testimony of others as it related to his use of the pond. He and his family are very sensitive regarding conservation and use of the pond and protecting the environment. He said neither he nor his family have ever harassed or bothered the loons. His boat is not introducing any invasive species of plants because his boat remains in the pond and is never taken to another body of water.

Mr. Brunstad is open to communicating with others regarding concerns raised by Mr. Bennett, one of the petition's authors, and he wanted to state that he has never met him. Swimmers, boaters, or other persons living at or near the pond have never approached him regarding his allegedly damaging the environment. He said there are current laws regarding the environment and there has never been an issue. He hopes that people will be able to continue using the pond for fishing, swimming and waterskiing within the present laws.

Ms. Nancy Foley spoke in favor of the petition. She added to her testimony from June 7, 2013 saying that she feels so much better since listening to Mr. Brunstad's explanation. She recalled water conditions where she grew up leaving an oily residue on her skin. She came to live in New Hampshire to leave those conditions behind.

Mr. Bob Pagano spoke against the petition. He knows the primary petitioner "grinds personal axes" with his neighbors costing Henniker a great amount of money. Mr. Pagano, after being cautioned, next focused on the passage of House Bill 99, which banned certain types of fishing tackle and the Conservation Committee's rules regarding loons. They do not mention gas engines, but do discuss harassment of the birds and persons' proximity to loon nesting sites. He said that in his experience and observing environmental laws in general is that they seldom, if ever, achieve their stated goals, but they always achieve three things: expand

government, increase taxes and decrease personal liberties. He said those goals are always achieved.

Mr. Pagano testified that based on the size of the pond, the pond is already under the jurisdiction of the State. He ended saying agencies would become abutters to the pond.

Ms. Kate Bartlett spoke against the petition. She values the pond as a recreational and scenic public asset in Henniker. She swims in Pleasant Pond almost daily, weather permitting. She has observed many others enjoying the pond too. She does not hesitate to speak up to educate and assist people if they are not being conservation-minded; in addition, she believes this common sense approach is better than another rule or more legislation. More enforcement brings with it higher costs in government and Henniker does not need that.

Ms. Bartlett continued her testimony saying that the boat ramp is 'self-limiting' as it relates to the size of boats using it. She is satisfied with the prior speaker who clarified in his testimony that his boat does not go to other bodies of water and does not introduce invasive plants to Pleasant Pond. A sense of community is necessary to set an expectation of behavior as to how the people use the pond.

Mr. Joseph Grady spoke against the petition by reading from a prepared statement. His statement began by noting that his family purchased property adjacent to Brown Pond, as it was then known, in 1947. He reminisced about his many adventures enjoying the pond as he grew up and his children enjoyed the pond in the boat he built to teach them to waterski.

Mr. Grady next discussed the studies he has read on the subject of the loon and their needs when living in a proper environment, which allows people to live next to nesting areas. He also mentioned predators like the raccoon. He spoke about boats, kayaks and jet skis, explaining how each might cause an issue of concern, such as the kayak being able to travel into the area in close proximity to the loons' nesting area. Other problems for the loon include lead shot and sinkers in the water. Mr. Grady said the few landowners around the pond do not want to cause harm to Pleasant Pond and he sees little chance of future development.

The petition appears at this time to be too restricting at the current level of use of this pond. He has not learned of any documented evidence of reduction in water quality or harm to the loon population from the use of gas motors. Mr. Grady ended by discussing the use of education and further study to reveal awareness of the pond's conditions, outlining a number of proposed steps in carrying out this plan.

Ms. Bonita Morse spoke against the petition adding to her testimony received on June 7, 2013. She focused on her conviction that there is no need for additional rules regarding the banning of gas engines. She focused on what might happen next, describing the inability to use gas-powered augers for ice fishing or using four-wheeled vehicles in the winter. She also said the loons have been on the pond for years and no one has bothered them. People coming in to boat on the lake have not been an issue of concern, so this proposed rule is not necessary.

Mr. Kris Branback spoke against the petition saying the State already has sufficient laws to regulate the pond.

SYNOPSIS OF WRITTEN PUBLIC COMMENTARY RECEIVED:

Received prior to or after the June 7, 2013, and/or the June 28, 2013 public hearing, but before the end of the business day July 5, 2013. The commentary is listed alphabetically.

Mr. Albert Aucoin is against the proposed petition. He lives in Henniker, but used to reside within a mile of Pleasant Pond. In past years, Mr. Aucoin used his boat, equipped with a 40 horsepower motor, to waterski with no difficulty launching from the public ramp noting the water was not too shallow as others suggested on June 7, 2013. He closed, writing that the restriction of motorboats will prevent future generations of people from experiencing the variety of safe recreational activities that he has enjoyed.

Ms. Lorraine Aucoin writes reporting that she had mistakenly signed as supporting the restriction having signed without understanding the petition's tenets. She asks that her name be removed, because she is not in favor of the restriction she signed.

Ms. Aucoin states that there has never been a problem with boats on Pleasant Pond. She learned to waterski and recalled that waterskiing was more prevalent at that point in time. She currently still uses her kayak and she also brings her grandchildren to swim, noting the pond is relatively quiet more recently. Ms. Aucoin has observed the loons, but she believes the person seeking the restriction has complained of loud wedding music and that, "he is using the pair of loons as an excuse". She states that the loons are nesting in a marshy area where boats cannot travel. She asks that there be no added restriction.

Mr. Steve Bennett is in favor of the petition, noting that the restriction will benefit his properties located at the pond and

nearby. He described the recently established nesting loons, dreading the thought of motorized vessels demolishing the sites or creating a nuisance that will drive the loons away.

Mr. Bennett listed his other concerns including: the pond is small and motorized vessels create noise and pollution affecting others. Safety is a great concern with motorboats operating in close proximity to swimmers and smaller craft. Pollution is a concern as he reports there are no external sources of fresh water flowing into Pleasant Pond. Once pollution is introduced to the pond, attributable to motorized boats, the pollution will quickly accumulate to dangerous levels. Mr. Bennett also noted that motorboat users are more likely to dispose of garbage into the pond as opposed to the users of non-powered vessels or swimmers. He next discussed invasive plants and animals reporting that Pleasant Pond is currently free of invasive species, but is highly susceptible to introduction by motorized boats if having been previously launched in contaminated bodies of water.

Mr. Bennett believes a small, but aggressive, group of people had no position regarding the loons but rather object to government imposed restrictions. He closed saying that he has enjoyed swimming in Pleasant Pond for sixty years and he resents contending with the noise, pollution and safety risks caused by motorized vessels, reiterating the risk to the pond and nearly impossible eradication of invasive plant species once introduced to Pleasant Pond.

Mr. Spencer Bennett and Ms. Linda McGuire submitted additional written testimony with a letter of introduction and in addition to their commentary, provided additional information including: letters from the Henniker Conservation Commission, dated April 18, 2013, and The Loon Preservation Committee, dated April 22, 2013; and charts and photographs for consideration. The thirty-five page submission, including the aforementioned descriptive information, also provided a two-page document with nine additional supporting signatures in favor of the petition. Also included are Town and State records regarding invasive species and Henniker property tax charts depicting current assessed valuations of land and buildings including a chart entitled 'Reductions Due To Invasive Species'. The commentary additionally included NH law: Title L Water Management and Protection, Chapter 483-A New Hampshire Lakes Management and Protection Program. The ten color photographs each have a description included.

Ms. Liz Brennan asks that her signature be removed because she believed the petition was about saving loons, not restricting boats with internal combustion engines.

Mr. Scott Duval supports the petition. He focused first on his concern for his personal safety when swimming, describing his difficulty finding a clean water source to swim that is free of boats that can potentially cause injury to swimmers. He noted that boats cause waves and he has experienced the smell and the taste of the gas and oil. He swims early in the morning, describing the sun rising and the enjoyment he receives appreciating his surroundings. He is concerned that the loons will not continue to flourish if scared away by dirty water or lack of food if the fish disappear. He ended by stating that the water quality is crucial for everyone who goes to Pleasant Pond to enjoy a scenic and quiet place for swimming, fishing, kayaking, photography and just plain relaxing. He reports that he has not found a cleaner place to swim in Henniker or in other local towns.

Mr. Joseph Grady provided verbal commentary against the petition on June 28, 2013 and is recorded (Supra) on page #10. His written statement was submitted prior to the close of business on Friday, July 5, 2013.

Ms. Susan Hayes supports the petition and preserving Pleasant Pond's natural qualities.

Ms. Valerie Ingersoll wrote in support of the petition. She presented a detailed history of her family since purchasing a parcel of property that has frontage on Pleasant Pond in 1972. Her letter focused on her safety concerns from motorboats traveling the length of the pond and creating large wakes that causes small waves on the lateral shorelines, noting that when her children were young one boat created waves large enough to knock them off their feet.

Ms. Ingersoll is concerned for the nesting loons. She wrote noting that this protected species of bird is particularly susceptible to stress, so it is important to protect any area where the loons choose to nest.

Ms. Suzanne Knapton requests that her signature be removed from the petition. She believes that she was misinformed and should have looked into the details before signing it.

Ms. Katherine LaBonte is against the petition. Her testimony at the June 7, 2013 hearing has been recorded earlier within this report. She submitted six separate emails, which are each considered. She pointed out that more than one person was deceived as to the actual significance behind the petition. She also noted that a number of people were not given proper advance notification of the hearing. Since the June 7 hearing, she learned

only the abutters were given notice along with the Town of Henniker, but the town never posted the public hearing notice.

Ms. LaBonte pointed out that the son of one of the petition's sponsors (Mr. Spencer Bennett) serves on the town's Conservation Commission and, when a vote to support the petition was taken, failed to recuse himself from voting. Ms. LaBonte submitted a copy of her letter to the Conservation Commission addressing her concerns regarding the supporting letter in this matter. (Attached as Exhibit)

Ms. LaBonte, in her continuing public commentary, writes that the most important concern is that the testimony received on behalf of the Conservation Commission is that in the past thirteen years of monitoring Pleasant Pond, the water quality continues to be excellent. There are no known issues with invasive plants and that loons have been residing at Pleasant Pond for the last eight years. She argued that the statements provided at the hearing do not support the Conservation Commission's reasoning to restrict motorboats on Pleasant Pond and are contradictory to their support. She argued that the letter seems biased in order to lend sway on Mr. Bennett's behalf.²

Ms. LaBonte submitted additional public commentary on or after the June 28, 2013 public hearing. Her commentary included three Microsoft Word letters attached to her email, which she authored and addressed to the following: Henniker Conservation Commission, (6/15/13); Henniker Select Board, (6/19/13); and Henniker Community School, (6/27/13).³ Ms. LaBonte previously sent in her letter to the Conservation Committee; she has now provided a copy of her letter to the Henniker Select Board and Henniker Community School indicating that each letter has significant meaning and bearing as to her belief of the unethical process in the filing of the petition with the Department of Safety.

Ms. Vicki McCloskey is in favor of the petition. She believes the pond is too small for motorized boats and the boats pose a danger to the nesting loons. As a frequent swimmer, Ms. McCloskey reports a motorboat 'spinning circles' on the pond sending waves into the weeded area where the nesting loons are located. She described the location where the boat is docked. Ms. McCloskey notes that the clarity of the water in Pleasant Pond is now pristine, but worries this will be spoiled due to emissions from the motors.

² Mr. Bennett supported the petition

³ Official notice is taken of the three documents

Ms. Nicole Patterson reported that she signed the petition, but that she was not provided all the details; therefore, she asks that her name be removed.

Mr. Philip Ryan submitted additional information since his earlier commentary explaining that he had not yet been swimming this year at Pleasant Pond. Mr. Ryan offered his account of his encounters with swimmers and people snorkeling as he was observing loon and other wildlife on and below the surface of the pond.

Mr. Ryan disagrees with the Petitioners and believes strongly that the loons within the pond are doing well. He recommended enforcement of current laws along with posting signs near nesting sites. The signs, providing enforcement agency contacts, could assist with identifying violators. He mentioned having felt "watched out for" on another body of water as a violator was cited by marine patrol and enforcement of existing rules serves the purpose better than what is being requested through petition on Pleasant Pond. In closing, Mr. Ryan wrote ... "Electric motor technology can dwarf the performance of internal combustion engines, making the proposed restriction meaningless."

DISCUSSION:

In gathering findings of fact, the following is given consideration:

270:1 Declaration of Policy.

- I. In the interest of public safety and the protection of property, it shall be the duty of the commissioner of safety, in all cases not provided for by the United States inspection laws and in all cases in which inspections are not regularly made thereunder, to provide for the inspection on any public waters of the state of all commercial and private boats and the machinery, appliances, and equipment thereof, such inspections to be performed by said commissioner of safety or his duly authorized representative. Said commissioner of safety shall also supervise the safety of navigation and the establishment of aids to navigation, and all lights and buoys maintained at public expense on the inland waters of the state shall be under the jurisdiction of said commissioner of safety. Said commissioner of safety shall make such alterations and improvements in existing lights and buoys as may be desirable, place additional lights and buoys where required to promote the safety of navigation, remove obstructions tending to impede navigation, and maintain all lights and buoys under its jurisdiction.
- II. In the interest of maintaining the residential, recreational and scenic values which New Hampshire public waters provide to residents of the state and to the promotion of our tourist industry, and in light of the fact that competing uses for the enjoyment of these waters, if not regulated for the benefit of all users, may diminish the value to be derived from them, it is hereby declared that the public

waters of New Hampshire shall be maintained and regulated in such way as to provide for the safe and mutual enjoyment of a variety of uses, both from the shore and from water-borne conveyances. Such provisions shall take into consideration the following: the variety of special uses appropriate to our lakes, public safety, protection of environment, and water quality, and the continued nurture of New Hampshire's threatened and endangered species.

RSA 270:12. Operating Restrictions.

- I. The commissioner of safety shall, after receiving a petition signed by 25 or more residents or property owners of each affected town or towns in which a lake, or river is located and after notice and hearing, at which it appears that the public interest requires, adopt rules under RSA 541-A governing the maximum horsepower of boat engines and outboard motors or prescribe maximum speed limits for the operation of such boats or outboard motors applicable to or upon all or any portion of the public waters of this state. The commissioner of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and outboard motors on bodies of public water having an area of 35 acres or less; provided, that said prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75-109. (emphasis added) Hearings under this section shall be held in the vicinity of the body of water under consideration during the months of June, July, August and September following the date of the petition.

It is the duty of the commissioner to maintain safety on public waters. The law is explicit requiring no protracted analysis by this fact-finder. Also considered is RSA 270:12 with emphasis upon the language specifying the review by the legislature for bodies of water with thirty-five acres or less. (*supra*)

Saf-C 409.04 Criteria for Review.

- (a) The commissioner shall, after the hearing, adopt rules of the type authorized by RSA 270:12 if it appears that the public interest requires such action.
- (b) In determining whether to adopt such rules the commissioner may consider the following:
 - (1) The size of the body of water or portion thereof for which rulemaking action is being considered;
 - (2) The effect which adopting or not adopting the rule(s) would have upon:
 - a. Public safety;
 - b. The maintenance of residential, recreational, and scenic values;
 - c. The variety of uses of such body of water or portion thereof;
 - d. The environment and water quality; and
 - e. Threatened and endangered species.
 - (3) The number of people affected, either directly or indirectly, by adopting or not adopting the rule(s); and
 - (4) The availability and practicality of enforcement of the rule(s).

DISCUSSION: Continued

The variety and maintenance of residential, recreational and scenic values are considered. There are a described variety of uses within Pleasant Pond. Commentary submitted covered all of the criteria within Administrative Rule, Saf-C 409.04,(b), but the comments are conflicted on the various points for consideration. For example, water quality was discussed through commentary in favor and against the need to ban internal combustion engines because of introduction of the spent fuel into the pond; however, the dialogue was more focused on the topic of preventing invasive plants. The other subject, equally focused on, was commentary as to whether or not the ban the petitioners seek is, or is not, needed to protect threatened and endangered species, specifically, the loon.

The number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition are given weight in determining findings; however, greater significance is given to the specific laws that govern this review and the applications the petitioners seek to have considered.

The written commentary and testimony received and reviewed collectively provided this fact-finder with information in reference to the size and configuration of the area for consideration. The proposed area seeking a ban on internal combustion engines encompasses the entire pond.

The petition describes the size of Pleasant Pond in Henniker as covering about 85 acres; pointing out that the loons have lived on the pond for about eight to ten years. The petitioners provided their reasons for seeking the ban of all internal combustion engines within and on Pleasant Pond. Their reasons including topics for consideration such as that the actions of large motorboats, along with the large wake created and the noise associated with the engine, disturbs the nesting loons and the herons. This same described motorboat activity in the pond is also disturbing and unsafe for persons who use the pond as marathon swimmers, kayakers and canoeists as well as people fishing from small boats.

The petition included a letter from the Henniker Conservation Commission providing support by agreeing that granting the request to ban internal combustion engines will greatly reduce the risk of invasive species as well as protect the loon and other important aspects of what the petition describes as a quiet pond.

The petition states that Pleasant Pond has the best water quality of all the bodies of water in the town of Henniker. The petition continues, noting that Pleasant Pond does not appear to have any invasive species at this time and restricting internal combustion engines will diminish the risk of introduction. In conclusion, the petitioners state the vast majority of people using this "delightful

little pond" will not be adversely affected by the proposed prohibition of motor craft. There are five full-time residences and three seasonal cabins on the pond, with a strong majority of the residents supporting the Petition. The petitioners note that nearby, Dudley Pond already has a prohibition of internal combustion engines.

Persons in support of the petition, including one of the authors, state that the primary reason for sponsoring the petition is concern for the loon located in the pond. Restriction by petition will preserve the water quality by preventing invasive plant species from entering the pond. He described Pleasant Pond as very stable and pristine. This person had counted forty boats this year on the pond; all were either electric or paddle powered, noting that when people use the pond they are doing so in a quiet and sensitive manner. Another person commenting said the loon, as an endangered bird, should be allowed any protection available.

Others in favor of the petition spoke about their family histories associated with the use of the pond over many past years and their properties describing recollections including extended family swimming and fishing during family gatherings. Their commentary included that at times in the past, motorboats have traveled the length of the pond creating wakes that knocked young children over in the water. Another person reported a motorboat "spinning circles" on the pond sending waves into the weeded area where the nesting loons are located. Some people described one boat that seems to be responsible for being hazardous to swimmers crossing the pond. A person noted that motorboat users are more likely to dispose of garbage into the pond as opposed to the users of non-motor-powered vessels or swimmers.

The Henniker Conservation Commission attributes Pleasant Pond's high water quality to the wetlands surrounding its shoreline, but noted the wetlands do not control what is introduced into the pond. Monitoring the pond since 2000, the commission reported water quality has diminished due to swimmers, but only for a few days each time.

More than one person supporting the petition discussed protecting this pond from future possible safety concerns. They remember swimming in other locations in the United States in unclean water, smelling and/or tasting oil and gas in the water and do not want this to happen in Pleasant Pond.

Persons against the petition offered commentary about such things as the activity level of users on the pond currently much less than twenty years ago when a fifty foot right-of-way was built for boat access. They described boat traffic consisting primarily of fishing boats with electric and internal combustion engines noting that in the past, there was more recreational activity with motorboats towing water-skiers. Another person pointed out that eliminating

internal combustion engines will reduce the number of people fishing, as many anglers do not own electric engines. Also, that if limitations are imposed, the landowners around the pond may be encouraged to start selling their properties resulting in, rather than the small number of buildings now, many more being built.

At least two persons mentioned recommending Pleasant Pond to their guests as a location to use for recreational activities, pointing out the self-limiting launch site due to shallow water and the glacial boulders situated above and just below the waterline. The launch site and boulders make the pond difficult for larger vessels to launch or maneuver very effectively.

A person, believing that he may be the owner of the boat discussed at the June 7, 2013 hearing, clarified that his family is using the one boat in the pond. He went on to say he and his family are very sensitive regarding conservation, use of the pond and protecting the environment. He said neither he nor his family have ever harassed or bothered the loons. His boat is not introducing any invasive species of plants because his boat remains in the pond and has never been relocated to another body of water.

A number of people recorded themselves stating that motorboats, if in the pond, have not bothered them when they are swimming. They provided separate personal recollections of interactions with wildlife in the pond saying they find no concerns regarding the threatening of loons.

Several commentaries voiced concerns about creating more restricting laws for residents who have paid to register boats and purchased fishing licenses, asking what will be banned next. Education and licensing requirements currently emphasize responsible boating. Based on the size of the pond, it is already under the jurisdiction of the State and laws already require adherence to watercraft safety.

As I have either listened to or reviewed the overall commentary, I find when comparing the persons recorded, either in favor or not, that there is a common-thread. Their shared remarks reveal a respect for the pond and a similar objective of wanting to safeguard the pond, while at the same time allowing for the variety of uses discussed and offering what the effect of adopting or not adopting the rule asked for will have. They want to provide for the safe and mutual enjoyment of a variety of uses, both from the shore and from water-borne conveyances as outlined in RSA 270:1. The history of Pleasant Pond reveals that this public body of water has been used in a variety of ways and is continuing to provide ongoing enjoyment to everyone.

Appropriate weight has been given to the area under discussion in accordance with the criteria of evaluating this petition found within the scope of authority as listed within this dissertation including

documents, photographs and testimony received during a period of public comment. The information submitted was thoroughly considered within the petition, along with the public commentary received.

FINDINGS OF FACT:

1. Pursuant to RSA 270:12 and Administrative Rule, Saf-C 409.01, twenty-five or more people petitioned the Commissioner of the Department of Safety to conduct a public hearing to regulate motorboat usage on Pleasant Pond, Henniker, New Hampshire, and to establish a ban on the use of vessels powered by internal combustion engines. Three petition signers requested the withdrawal of their name for various given reasons; however, the remaining signatures are sufficient to proceed with the petitioned public hearing.
2. The petition requested that all internal combustion-powered vessels be banned on or in Pleasant Pond, Henniker, New Hampshire.
3. Official notice for the hearing was published in a newspaper of statewide publication, The Union Leader, Manchester, New Hampshire on May 20, 2013. A miscommunication of requirement to post notice on the Department of Safety website was adjusted by following through with continued public commentary on June 13, 2013 in compliance with RSA 270:12.
4. A public hearing was scheduled Friday, June 7, 2013 and rescheduled for continuing public commentary June 28, 2013 on the issue. The hearings were conducted pursuant to RSA 541, RSA 270:12 and Administrative Rule, Saf-C 409 at the Henniker Community Center, 57 Main Street, Henniker, New Hampshire.
5. The approximate size of Pleasant Pond is described as about eighty-five acres. The pond is located within the town of Henniker. Pleasant Pond is accessible by a public road maintained by the town and has an established public boat ramp or launch maintained by the State of New Hampshire.
6. The effect which adopting or not adopting the petition would have upon the public safety is considered. The commentary regarding public safety generally discussed incidents. One person recalled a boat causing waves that knocked children down; another person recalled that a boat, turning at too high a speed, resulted in waves traveling into the nesting area for the loon. No specific detail was provided such as the time, day,

month or year of occurrence; and if the occurrence was reported to law enforcement.

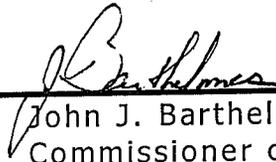
7. Testimony has not been received with any reasonable clarification referencing the maintenance of residential, recreational, and scenic values on the shoreline or within the pond. Testimony in reference to recreational and scenic values was received. In a general sense, commentary encompassed the State of New Hampshire maintaining the public boat ramp; ongoing monitoring of water quality by the Henniker Conservation Commission; and the need to work toward removal of invasive plant species if required.
8. There is no evidence of any invasive plants currently within Pleasant Pond. The need to work toward removal of milfoil and other invasive plants is not currently needed. The pond's reported water quality is currently at the highest quality in Henniker when matched with several other bodies of water located in town.
9. The petition is focused on concerns for wildlife, especially the loon. There is no conclusive evidence that the loon or any other wildlife in or around the pond is endangered by the use of vessels equipped with internal combustion engines.
10. The public's use of the water within Pleasant Pond for all boaters and all persons lawfully enjoying this public body of water will not benefit from establishing a ban on all vessels using internal combustion engines in accordance with RSA 270:12, I.
11. The Department of Safety, Division of State Police, Field Operations Bureau, Marine Patrol Unit enforces the statutes and rules governing Pleasant Pond in Henniker, New Hampshire and navigational laws are enforced through that agency.

CONCLUSION OF LAW:

The information submitted was thoroughly considered within the petition, along with the public commentary received. The evidence demonstrates that the petition is not in the public interest and does not fulfill the purpose of law. The findings are not of sufficient proof to show cause that a ban on the use of internal combustion engines should be established pursuant to RSA 270:12 and Administrative Rule, Saf-C 409 (et seq.).

DISPOSITION:

The Petition for a Ban on the use of motorized vessels using internal combustion engines in Pleasant Pond, Henniker New Hampshire is respectfully denied.



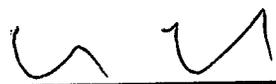
John J. Barthelmes
Commissioner of Safety

RSA 541:3 Motion for Rehearing.

"Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion."

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

Date of mailing: 7/17/13



Christopher Casco, Esq.
Administrator, Bureau of Hearings
Department of Safety

A copy of this order was sent to the following:

Petitioners' Designee ~ (To be distributed to Petitioners)	Colonel Robert L. Quinn Director of State Police
Town Administrator Henniker, New Hampshire	Christopher Casco, Esq. Administrator Bureau of Hearings
File	

Notice shall be posted on the Department of Safety Website. www.nh.gov/safety