



State of New Hampshire

DEPARTMENT OF SAFETY
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Petition in the Matter of

Sturtevant Cove Association **Squam Lake, Center Harbor, N.H.** Congregate Mooring Field

HISTORY:

The Department of Safety received a petition from Janet Showers, on behalf of Sturtevant Cove Association (Association) or (Petitioner). The petition requested that 4 additional moorings be approved and added to an existing field of 2 moorings. The Association represents the interests of property owners on Squam Lake in Center Harbor, New Hampshire.

The Petitioner is requesting to add (4) moorings to an existing congregate mooring field of 2 moorings for a total of six moorings. The petition was filed with the Marine Patrol and forwarded to the Bureau of Hearings and processed to conduct a public hearing. The petition is date stamped on or about 10/2/18. The petition offered the reasons for the requested moorings. The primary reason is to allow more of the Association's property owners who have boat registrations an opportunity to have a mooring for their boats.

Proof by the Petitioner of notification to all the abutters by certified mail was received by the Department of Safety, allowing the requested hearing to be scheduled. In addition, the department mailed the hearing notice to abutters.

Notification of the August 28, 2019 public hearing was published in a newspaper of statewide circulation, the Union Leader, on August 12, 2019. The Notice of Hearing was placed on the Department of Safety web site on or about August 9, 2019 in accordance with RSA 270:12, III. In addition, the notice was mailed to the town clerk of Center Harbor.

Pursuant to RSA 541-A, a public hearing was held on Wednesday, August 28, 2019 at 11:00 a.m. at the New Hampshire Department of Safety, 33 Hazen Drive, Concord, New Hampshire. The scope of the hearing was to allow for and consider public comment in accordance with RSA 270:62,VI, RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules, Saf-C 408 (*et seq.*) on the Petitioner's request.

Hearings Examiner Christopher Casco, Esq., Administrator of Hearings as my designee, conducted the public hearing.

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 were available for review;
- the public hearing was recorded;
- the recording will be preserved for seventy-five (75) days 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 public hearing was published in the New Hampshire Union Leader on August 12, 2019 which is a newspaper of statewide circulation;
- notification of the public hearing was mailed to abutters;
- notification of the public hearing was mailed to the town clerk of Center Harbor;
- notification of the public hearing was posted on the Department of Safety web site on or about August 9, 2019;
- anyone present could review the original petition and any other documents;
- how and where to submit written comment that must be received by the Department of Safety within ten (10) calendar days after the hearing.

STATISTICS:

- On August 28, 2019, 4 people spoke at the public commentary hearing in favor of the petition. One person spoke against the petition. Within the ten days following, 3 letters or email comments were received in favor of the petition. Seven were received against the petition including from the N.H. Marine Patrol.
- On Monday, September 9, 2019, at the end of the business day, the hearing was closed to public comment.

OFFICIAL NOTICE:

- The Association's petition for hearing, application and attached exhibits, received on or about October 2, 2018, at Marine Patrol for the Department of Safety, Division of State Police requesting four (4) additional moorings be added to a congregate mooring field of 2 moorings for a total of 6. The attached diagram

describes the area and marks the location of each of the proposed moorings and the existing moorings.

- Notification of the August 28, 2019 public hearing was published in a newspaper of statewide circulation on August 12, 2019. In addition, it was sent to the town of Center Harbor. The Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III; and, Marine Patrol notification to the New Hampshire Fish & Game Department and the New Hampshire Department of Environmental Services, Water Division; and
- Public commentary received in written or electronic form before the end of the business day on Monday, September 9, 2019; and the testimonials received at the hearing. The mailing and email addresses were provided at the hearing and in the posted hearing notice.

SYNOPSIS OF TESTIMONY:

Mary-Jo Howe, Moorings Supervisor, provided an overview of the proposed location of the requested 4 additional moorings and presented a synopsis of the investigation results. As part of the preliminary investigation, she notified N.H. Department of Environmental Services, which department indicated that they did not feel that there is any significant impact as stipulated in RSA 270:64, I(c). She also notified the N.H. Fish and Game Department and received no response.

Moreover, the Marine Patrol conducted a site inspection. Sgt. Dirth reviewed all areas of the mooring field and at the time felt that there was no adverse impact. The distances of proposed moorings 3 and 4 was changed during this process to improve the mooring field.

Janet Showers testified in support of the petition. She is a member of the Association and property owner. She has been a property owner for 30 years, and the last 13 years, a full time resident. There are 37 Association members. There are many more boat owners than they have moorings for, which is the basis for the request to add additional moorings. The new moorings would have the same water depth as the existing moorings. They own 735 feet of shorefront property. Members use kayaks or small boats to get from shore to the moorings.

Moreover, they have parking for 20 vehicles. There are loon in the area but the mooring access is 150 feet away from them. They do not feel that there is any water quality or environmental problem presented.

George Gurney testified against the petition. He monitors water quality for the conservation commission. In 2001, the Association added a dock with 5 boat slips. As part of the application process for the docks, the Association agreed that moorings would be eliminated. This application violates that agreement. In addition, moorings will encroach on the beach. This area is a prime wetlands complex and is an ecologically fragile area. Moreover, the moorings may have a negative impact on the loon population, which had the best production this year. The new moorings will surround vegetation, which has a negative impact on the wetlands.

Craig Showers testified in favor of the petition. Adding the moorings will enhance the use of the waterfront for their 37 members. They are good stewards of the lake and try to protect the environment.

Larry Hirshick testified in favor of the petition. He is the President of the Association. They have sufficient frontage to warrant additional moorings.

Michael Rich, an abutting property owner, testified in favor of the petition. He has a mooring in the area. His mooring has a depth of 6 feet. He picks up trash in the area which evidences that the Association members care for the environment.

SYNOPSIS OF WRITTEN COMMENTARY: RECEIVED PRIOR TO OR AFTER THE HEARING

Three people, all of whom testified in favor of the petition, submitted written comment which summarizes their testimony. They all have a stake in additional moorings as property owners.

In contrast, the department received seven statements against the petition, six from private citizens, and one from the N.H. Marine Patrol. Most compelling is that the Association agreed not to add moorings as part of obtaining approval for a dock. The written statement from Ms. Howe documented the agreement which is reflected by a recorded deed: "The applicant shall permanently remove 5 moorings prior to the construction of the docking facility." The N.H. Department of Environmental Services approved the dock on the condition that moorings would never be added.

Moreover, the opponents argue that the moorings will increase boat traffic and harm the environment. They also suggest that the diagram submitted is inaccurate and that the moorings are farther north, closer to abutting property, than represented in the diagram. In addition, the chair of the Center Harbor Conservation Commission, Harry Viens, objected, citing environmental concerns as well as the agreement of the Association to remove permanently, not add moorings. Finally, the Loon Preservation Committee objected due to possible harm to loon by additional moorings because they will be too close to the nesting site, and thereby cause loon not to nest at that site, which will harm the loon population.

LEGAL ANALYSIS:

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

RSA 270-D: 2 General Rules for Vessels Operating on Water.

" ...Vessels shall be operated at headway speed only, while passing under all bridges. VI. (a) To provide full visibility and control and to prevent their wake from being thrown into or causing excessive rocking to other boats, barges, water skiers, aquaplanes or other boats, rafts or floats, all vessels shall maintain

headway speed when within 150 feet from: (1) Rafts, floats, swimmers; (2) Permitted swimming areas; (3) Shore; (4) Docks; (5) Mooring fields; (6) Other vessels. . . ."

RSA 270:60 Mooring of Boats on Public Waters

The general court finds that:

- (a) Water is a public resource held in trust by the state and that the state maintains jurisdiction to control the use of public waters for the greatest public benefit; and
 - (b) The public waters are a significant asset which enhance the well-being and lifestyle of the state's citizens, benefit the state's substantial tourist industry and the environment, and are a habitat for many fish and wildlife; and
 - (c) That undue proliferation of moorings is detrimental to the integrity of the state's waters and the public's enjoyment thereof.
- I. The general court intends to establish through this subdivision a means of regulating the usage of moorings on public waters. Existing moorings may be permitted in their existing locations, provided such moorings comply with the provisions of this subdivision.
 - II. The general court does not intend, by passage of this legislation, to convey to, create for, or recognize any rights of shorefront property owners.

RSA 270:64 Moorings Prohibited

- I. No mooring shall be located:
 - (a) In such a manner that it constitutes a hazard to the public safety because it interferes with or impedes, or could potentially interfere with or impede, navigation; or
 - (b) In such proximity to other moorings as to constitute a hazard to public safety; or
 - (c) In such a manner that it presents an unreasonable adverse effect on the environment, including but not limited to water quality, wildlife habitats, or natural areas; or
 - (d) In such a manner that it unreasonably interferes with other recreational uses of the water and adjacent land.
- II. The director shall develop rules to carry out the purposes of this subdivision pursuant to RSA 270:71 and RSA 541-A.
- III. The director shall consult with the fish and game department, the department of environmental services, or the office of energy and planning to assist in the assessment required under subparagraph I(c).

RSA 270:67 Public and Congregate Mooring Fields; Permit Required.

I. Public Mooring Fields.

- (a) The division of state police shall identify suitable locations for public mooring fields and prioritize the need for the development of such sites. In determining said locations the division of state police shall recommend each location size and the configuration of each public mooring field. Further, it shall be determined by the division of state police that

adequate access exists to serve the needs of the users of the public mooring field. Said site proposal shall then be transmitted to the respective political subdivision or subdivisions in which the proposed mooring field is to be located, where a public hearing on said site proposal may be conducted by the division of state police. The division of state police shall review all recommendations received and submit their final site proposal to governor and council for approval. All such recommendations shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvement programs of the adjacent municipality.

- (b) The division shall issue a permit to any applicant for a mooring in a public mooring field who fulfills the mooring requirements in this subdivision subsequent to approval under subparagraph (a).
- (c) Each public mooring field applicant shall be assessed a fee of \$25 which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.
- (d) No mooring shall be sold or leased except as provided in this section.

II. Congregate Mooring Fields.

- (a) The division of state police may identify suitable locations for congregate mooring fields. In determining said locations the division of state police shall recommend each location size and the configuration of each congregate mooring field. Further, it shall be determined by the division of state police that adequate access exists to serve the needs of the users of the congregate mooring field. Said site proposal shall then be transmitted to the respective political subdivision or subdivisions in which the proposed mooring field is to be located, where a public hearing on said proposal may be conducted by the division of state police. The division of state police shall review all recommendations received and submit their final proposal to governor and council for approval. All such recommendations shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvement programs of the adjacent municipality.
- (b) Subsequent to approval by the governor and council, the division shall issue a permit to any applicant for a congregate mooring field who shows that:
 - (1) The location and size of the congregate mooring field meet the criteria established pursuant to RSA 270:71; and
 - (2) Adequate access exists to serve the needs of the users of the congregate mooring field; and
 - (3) The congregate mooring field will comply with the provisions of RSA 270:64; and
 - (4) No mooring shall be sold or leased except as provided in this section.
- (c) Each congregate mooring field permitted by the director shall be assessed an annual mooring fee of \$25 for each mooring installed in the congregate mooring field which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.

- (d) Operators in charge of maintaining congregate mooring fields may charge no more for the use of a mooring than an amount which reasonably covers the costs of mooring installations and maintenance. Said charges shall be reported to the division of state police who shall submit an annual report to the governor and council and the general court on all congregate mooring fields.

III. Notwithstanding RSA 270:61, III, small mooring sites may be established without the approval of governor and council, but subject to the approval of the division. Such sites shall be only for the use of motels, cottages, condominiums, other rental property, or homogeneous use group.

RSA 270:68 Mooring Areas; Designation

- I. The division shall determine the need and suitable locations, size, and configuration for mooring areas. The director shall designate appropriate mooring areas and assign mooring sites within such designated areas to individuals who meet all other requirements of this subdivision and can demonstrate a need for a site in such area. All designated mooring areas shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvements programs of the adjacent municipality.
- II. Any mooring which does not comply with the specifications of this section may be subject to removal at the owner's expense.

Selected Administrative Rules

Saf-C 401.04 "Congregate mooring field" means a mooring field dedicated to homogeneous use groups, such as, but not limited to clubs, associations and youth camps.

Saf-C 401.16 "Mooring field" as defined in RSA 270:59, VII includes congregate and public mooring fields.

Saf-C 408.05 Mooring Permit Application.

Saf-C 408.07 Congregate Mooring Permit Application.

Pursuant to RSA 270:61 through and including RSA 270:68 along with New Hampshire Code of Administrative Rules, Saf-C 408 (*et seq.*) defines and regulates the practice of mooring of boats. RSA 270:67 further delineates designation of locations and other specific criteria to consider.

LEGAL ANALYSIS ~ DISCUSSION:

The number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition is given weight in determining findings; however, greater significance is given to the specific information submitted for review by testimony and the information within the petition, which includes a diagram of the proposed addition to the mooring field. The Association is asking for 4 additional moorings to an existing congregate mooring field for its use.

In my evaluation, there was insufficient justification in the application supplied by the Petitioner on the topics specifically required under statute and rule when applying for 4 additional moorings for a congregate mooring field. The abutters and the public were notified in accordance with RSA 270:12. After the hearing and the ten days following, once all public commentary was received, I carefully weighed the request within the petition, all of the public commentary along with the Marine Patrol investigation and report in my determination of facts to consider. Comments included the compelling fact that the Association agreed to permanently remove 5 moorings when they obtained a dock with 5 boat slips. The N.H. DES only approved the dock in consideration of the removal of moorings, which evidences that adding moorings will have a negative environmental impact on this sensitive and small area with a fragile ecosystem and a loon nesting area. In recent years, the loon population has rebounded after struggling. Additional moorings may well cause a set back with loon in the area and disturb their nesting area which is 300 feet from the existing moorings, and 150 feet from the closest proposed new mooring. New moorings will encroach on, and disrupt the loon nesting area.

In reaching a decision, the competing interests of people in this area must be balanced, and the above-mentioned legal authority applied. Moreover, in passing these laws, the legislature clearly expressed an intent to limit the number of moorings. Therefore, moorings may only be approved when the petitioners have introduced significant evidence, which supports their petition. Consequently, the desire to have moorings for association members, while understandable, is by itself insufficient to justify adding moorings to the field in this area.

After balancing such interests, there is insufficient legal justification to approve the application submitted in this case. While the Petitioner presented the interests of its property owners in desiring moorings, there is no right to such moorings where granting the petition may present a navigational and safety problem in this area to the abutters. This is a small, shallow area with abutting properties and an Association beach close by. Due to this, motorized boat traffic is prohibited. Therefore, more boats and individuals accessing the boats in the area will cause congestion and present a safety hazard.

In addition, there are protected areas of shoreline and vegetation in the area, which may be negatively impacted by added moorings. In fact, in promulgating RSA 270:60, the legislature specifically recognized that shorefront property owners do not have specific rights to moorings, and that such areas must be strictly regulated. Consequently, the Petitioner has failed to sustain its burden of proof due to insufficient evidence by a preponderance of the evidence.

After carefully considering the exhibits, testimony and public comment presented, Findings of Fact are issued (*Infra*).

FINDINGS OF FACT:

1. Pursuant to RSA 270:67, Sturtevant Cove Association, (Petitioner) requested the Department of Safety to conduct a public hearing seeking approval of 4 additional moorings in an existing congregate mooring field of 2 moorings, for a total of 6.
2. Official notification to the public of the August 28, 2019 hearing was published in a newspaper of statewide circulation, the New Hampshire Union Leader on August 12, 2019. Notice of the hearing was sent to the Center Harbor Town Clerk. Also, the Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III on August 9, 2019. The hearing notice was mailed to abutting property owners.
3. A public hearing was held on Wednesday, August 28, 2019 at 11:00 AM on the issue and conducted pursuant to RSA 541; RSA 270:67; RSA 270:68 and Administrative Rule, Saf-C 408 at the Department of Safety, 33 Hazen Drive, Concord, New Hampshire.
4. The Petitioner seeks approval of 4 moorings in a congregate mooring field in front of its property on Squam Lake, located in the town of Center Harbor, New Hampshire. The described area, shown on a diagram submitted by the Petitioner is specifically described as located on Center Harbor tax map #208-043-000, lot 43.
5. The Association has 735 feet of water frontage.
6. The Association has 37 members, with 14 members owning N.H. registered boats.
7. The Association policy for boats restricts size to 20 feet, and boats may not have holding tanks on-board.
8. The diagram does not accurately represent where the moorings are actually located according to information submitted by an abutting property owner. As a result, it is closer to abutting property than the application suggests.
9. The Petitioner has provided for proper restroom facilities as they have a portable toilet near the Association's beach.
10. Users access moorings by kayaks, dinghies and other small watercraft.
11. The water depth for the proposed moorings will be 3.5 feet, 4 feet, and two of 4.5 feet making them shallow.
12. The Department of Safety, Division of State Police, Marine Patrol Unit enforces the statutes and rules governing the water surrounding the mooring field on Squam Lake in Center Harbor, New Hampshire and navigational laws are enforced by that agency.
13. The mooring field will unreasonably interfere with recreational uses of the water as it will present a navigational and safety hazard because additional moorings will

increase the footprint of the existing field and interfere with the Association's beach and abutters.

14. The additional moorings will have an unreasonable adverse effect on the environment in that the close proximity of new moorings to protected areas and vegetation as well to the fragile loon population will have a negative impact. Existing moorings are 300 feet away from the loon nesting area, while the closest new mooring will place it 150 feet away. Both the Center Harbor Conservation Commission and the Loon Preservation Committee object due to the negative environmental impact that additional moorings will have.

15. Moreover, the N.H. Marine Patrol, through Captain Dunleavy, objects to the approval of the petition because the Association previously agreed to take away moorings permanently when it obtained a permit for a dock with boat slips with N.H. DES.

DISCUSSION - DISPOSITION:

The submitted information has been thoroughly taken into account within the Petitioner's application and testimony, along with public commentary received. I recommend denying the Petition based upon the Findings of Fact above-mentioned and that you reach the following Conclusion of Law.

CONCLUSION OF LAW:

The Petitioner has presented insufficient proof to sustain the request for adding 4 moorings to a congregate mooring field of 2 moorings in accordance with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules, Saf-C 408.

RECOMMENDATION: New Hampshire Governor and Council

I respectfully recommend that this Petition submitted by Sturtevant Cove Association be **DENIED**. The evidence demonstrates that the Petition is not in the public interest fulfilling the purpose of law. There is insufficient proof that the Petitioner has met the legal standard by a preponderance of the evidence pursuant to RSA 270:67, RSA 270:68 and Administrative Rule, Saf-C 408.

Very truly yours,



Robert L. Quinn, Commissioner
Department of Safety

Date: 10/15/19

cc: Janet Showers, Sturtevant Cove Association

Town of Center Harbor

Colonel, Christopher Wagner
Division of State Police

Captain Timothy Dunleavy, N.H. Marine Patrol

Mary-Jo Howe, Moorings Supervisor, N.H. Marine Patrol

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