



State of New Hampshire

Department of Safety

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

ROBERT L. QUINN
COMMISSIONER

Report and Recommendation

Petition in the Matter of:

Meredith Acres Association, Lake Winnisquam in Meredith, New Hampshire

HISTORY:

The Department of Safety received a Petition from Meredith Acres Association requesting the establishment of two (2) additional moorings to an existing Congregate Mooring Field for a requested total of six (6) moorings on Lake Winnisquam located in Meredith, New Hampshire. The Petition submitted presented the reasons for the requested Congregate Mooring Field supplemental moorings, and was assigned to and investigated by Ms. Mary Howe, Coordinator, Mooring Program, Division of Safety Services, Department of Safety.

Pursuant to RSA 541, a public hearing was held on Thursday, November 12, 2020 in Concord, N.H. with additional access permitted by video and phone teleconference. The legal authority to allow appearance by video or telephone at the hearing is provided by RSA 21-P:13, ¶ 3 as well as under Governor Sununu's Emergency Order No. 12 and Saf-C 203.36 which provided legal authority under an emergency rule to allow public hearings to be done by telephone.

The scope of the hearing was to accept and consider public comment in accordance with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules Saf-C 408 on the proposal. Mr. Christopher Casco, Administrator, Bureau of Hearings, as designee of Robert L. Quinn, Commissioner, Department of Safety, conducted the public hearing as

Hearings Examiner. Ms. Mary Howe, Mooring Coordinator, appeared by telephone representing the N.H. State Police, Marine Patrol Division at the public hearing.

OPENING REMARKS:

The Notice of Hearing was referenced but not read entirely into the record. The Petition, along with all supporting documents were saved electronically and available for review on the Bureau of Hearings portion of the Department of Safety website. In addition, notification of the public hearing was published in The New Hampshire Union Leader on October 21, 2020.

Everyone present in person, by video conference or telephone was informed:

- The public hearing is recorded; and
- The recording would be preserved for seventy-five (75) days along with an explanation of the procedure by which to receive a copy of the recording;
- The opportunity to orally signify the intent to sign the appropriate “sign-up sheet” electronically to present comment on the Petition; also, public comment was permitted after the hearing and was allowed until the end of the business day on November 23, 2020, at 4:15 p.m.;
- They could review the legal notice, along with the original Petition and any other documents electronically as they were available on the Bureau of Hearings website; and,
- How and where to submit written comment that must be received within ten (10) calendar days from the hearing date by the Department of Safety and no later than November 23, 2020.

STATISTICS:

One (1) person provided public comment at the hearing in favor of the Petition. Five (5) people provided public comment at the hearing opposed to the application. Nine people provided written comment in support of the Petition and five submitted comment against the petition which was received within the ten (10) days following the hearing. The hearing was closed to public comment at the conclusion of the business day on November 23, 2020 at 4:15 p.m.

EXHIBITS:

- Response from Fish and Game to Request for Input
- Response from Department of Environmental Services to Request for Input
- Letter from Sgt. Seth Alie

SYNOPSIS OF TESTIMONY:

Ms. Mary Howe. She works for New Hampshire Marine Patrol and is the Mooring Coordinator. She provided notification to the Department of Environmental Services, (DES), N.H. Fish and Game, and Marine Patrol asking for input on this application to add two (2) moorings to an existing field of four (4) moorings on Lake Winnisquam in Meredith. The original request sought 4 additional moorings, but after the site inspection, the request was modified to two moorings. She received notification back from DES and Fish and Game that this proposal would present no significant impact on the environment. In addition, the Marine Patrol, through Sgt. Seth Alie, agreed with the proposal to add two (2) moorings.

Mr. Joseph "Dave" Giguere. He appeared by telephone conference, representing Meredith Acres Association (Petitioner/Applicant). He testified in favor of the Petition/Application. He had nothing to add to his written application.

Mr. Jay Wilson testified opposed to the petition. He is an abutting property owner. He feels that the map of the proposed mooring field is inaccurate. He supplemented his testimony with detailed written comment which he submitted into the record before the hearing.

Mr. Bill Wilkes spoke against the petition. He echoed Mr. Wilson's comments. He is concerned about the length of the petitioner's dock.

Mr. Thomas Sheehan spoke against the petition. His position is that the application is inaccurate and does not depict the actual mooring field.

Mr. Kyle Sheehan spoke by telephone against the petition. He supports the testimony of the other opponents. The mooring field is too cluttered.

Mr. Lyndon Wilkes appeared by video and confirmed his opposition to the petition.

SYNOPSIS OF LETTERS RECEIVED:

The department received public comment both for and against the mooring field. Nine (9) people submitted public comment in favor of the 2 additional moorings. Five (5) people submitted written comment against the mooring field.

Those in favor are association property owners. They support having additional moorings so that a greater number of property owners may have access to boats close to their properties. Otherwise, they have to store the boats elsewhere in order to enjoy them on Lake Winnisquam. They allocate available moorings by lottery, and adding 2 moorings will increase the chance for more families to have a mooring with their properties.

Those against the moorings are abutting property owners. They suggest that the map submitted in support of the additional moorings is not accurate. Consequently, it does not accurately reflect the area for the mooring field. Therefore, the mooring field is of an insufficient area to safely support two more moorings. They feel that any added moorings will impede navigation and encroach on the area in front of their properties. Moreover, they submit that the existing dock in front of the association's property is longer than what was approved, and that the dock pushes the boats on moorings farther into the lake. They indicate that the dock is 90 feet rather than the 40 feet depicted in the first application submitted. The most recent application being considered does not include the length of the dock. In addition, two of the existing moorings are farther from shore than the map depicts, and therefore, they encroach on public water. Moreover, that the mooring closest to a raft does not have a proper swing radius which causes it to encroach into the safety zone of the raft. Finally, that while the applicant indicates that it has 3 boat slips, in fact, they have 6 slips.

DISCUSSION:

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

I. 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.
- II. 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.
 - III. The general court does not intend, by passage of this legislation, to convey to, create for, or recognize any rights of shorefront property owners.

Selected Administrative Rule Definitions

- 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 408.05** Mooring Permit Application.
- Saf-C 408.07** Congregate Mooring Permit Application.
- Saf-C 401.16** "Mooring field" as defined in RSA 270:59, VII includes congregate and public mooring fields.

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 defines designation of locations and other specific criteria to consider.

The number of people in attendance at the hearing and the number of persons recorded for or against the proposed moorings are given weight in determining findings. It is significant that several abutting property owners expressed strong objections. This must be balanced against the evidence provided in the petition, as well as with the written comment in favor of the application submitted by property owners. All of the comments provided came from individuals with a significant interest in this area. Therefore, it must all be given careful consideration in reaching a decision.

In addition, substantial weight is given to the specific information submitted for review by testimony and exhibits in this case. The application and the information provided by Mr. Wilson on behalf of the opponents has been carefully considered.

The application indicated that the association has 379 feet of shore front property. It supported that assertion with a hand-drawn map. The opponent, however, strongly disputed that figure and provided his own version of the map and a Google earth depiction of the shore line and mooring field. The opponents argue that the available frontage is approximately 100 feet less than the applicant claims. Moreover, Sgt. Alie conducted a site inspection and recommended approval of 2 additional moorings. He conditioned his approval, however, on the applicant having 379 feet of water frontage. The opponents have raised doubt as to whether the available shorefront is 379 feet, and the map provided is not specifically precise enough to resolve the dispute. Because the applicant has the burden of proof at the hearing, the evidence is insufficient that the applicant has

sufficient shore front property which will safely support a larger mooring field.

Also, the opponents have demonstrated that the applicant's dock is 90 feet rather than 40 feet long. This is important because a dock that is twice as long will leave significantly less room for 2 additional moorings with the required swing radius for all of the moorings. Moreover, in written testimony, the association conceded that its current 4 moorings were out of place as compared to GPS records from when they were installed. Therefore, based on the evidence, the new mooring field may encroach upon the public waterway as well the area in front of abutting properties.

Consequently, the Petitioner has not provided sufficient evidence, by a preponderance of the evidence, to add two (2) moorings to the existing Congregate Mooring Field. Although both the Department of Environmental Services and Fish and Game responded to the request for input from Marine Patrol indicating that there is no significant impact as stipulated in RSA 270:64, I(c) abutting property owners appeared in strong opposition to the petition/application. Due to the lack of sufficient proof that the mooring field is of sufficient total area to support 2 additional moorings, the request must be denied.

After carefully considering the exhibits, testimony and public comment presented, findings of fact are issued.

FINDINGS OF FACT:

1. That pursuant to RSA 270:67, Meredith Acres Association (Petitioner/Applicant), petitioned the Department of Safety to conduct a public hearing seeking that an existing Congregate Mooring Field be updated to add two (2) additional moorings to an existing, approved mooring field.
2. That official notice for the hearing was published in a newspaper of statewide publication, The Union Leader, Manchester, New Hampshire, on October 21, 2020. Prior notice was given to the Town of Meredith on Lake Winnisquam where the mooring field is located. The public hearing notice was posted on the Department of Safety website.
3. Abutting property owners were notified of the application for additional moorings and the hearing date and time.
4. That a public hearing was held on Thursday, November 12, 2020, at 1:00 p.m. in Concord with additional access by video and telephone on the issue and conducted pursuant to RSA 541; RSA 270:67; RSA 270:68 and Administrative Rules Saf-C 408 and Saf-

C 203.36, an emergency rule implemented to allow for a telephonic hearing, and RSA 21-P:13, ¶ 3 allowing video conference hearings in Concord, New Hampshire.

5. That the Petition seeks to allow adding two (2) moorings to an existing field of four (4) moorings for a total of six (6) moorings within the existing Congregate Mooring Field within the public water on Lake Winnisquam located in Meredith, New Hampshire, at the property of Meredith Acres Association. The specific location of the additional moorings is in a mooring field as shown on Tax Map W02, Lot 10.
6. That the effect which adopting or not adopting the Petition would have upon the public safety is considered. There are (2) additional moorings requested for a total of 6 congregate moorings. There is a negative impact on public safety due to the configuration of the mooring field because it will extended 200 feet into the waterway. It will interfere with the abutting properties because they will not be able to safely waterski in front of their properties.
7. That public comment received in reference to recreational and scenic values indicated a negative impact on abutters in the ability to use the water in front of their properties.
8. That the Petitioner by testimony, application, and the hand drawn chart/map submitted, has not established sufficient data that the proposed addition to the congregate mooring field is in accordance with the law. Based on the record evidence, adding two (2) moorings will have a negative impact on the environment, public safety, and or abutting properties. Several abutting property owners objected to the additional moorings and the map as presented with the application.
9. The application indicates that the association has 379 feet of shore frontage. The abutters, however, demonstrated that this figure inflates the actual, useable shore frontage by 100 feet, and therefore, the field does not have sufficient space to add 2 moorings. Although Sgt. Alie of the Marine Patrol recommended approval of the moorings after making site visits, his recommendation is conditioned upon the applicant having 379 feet of water frontage. Since there is doubt as to the actual, useable frontage, the evidence is insufficient that the applicant has a large enough mooring field for 2 additional moorings based on the evidence presented.
10. Moreover, the petitioner has a dock depicted as being 40 feet long. The abutters presented evidence that shows that the dock is 90 feet long. Consequently, the dock extends too far into the

mooring field which results in insufficient space to add 2 moorings.

11. The abutters have demonstrated that increasing the mooring field by 2 moorings will result in the encroachment of the field into the public waters.
12. The abutters have demonstrated that increasing the mooring field will encroach on their properties. The association conceded in written testimony that its existing moorings are out of place.
13. That the New Hampshire Department of Safety, Marine Patrol enforces the statutes and rules governing the public waters within Lake Winnisquam in the Town of Meredith, New Hampshire, and navigational and moorings laws are enforced through that agency.
14. The Petitioner has not demonstrated sufficient evidence of good cause for two (2) additional moorings.
15. The mooring field is maintained by the association.
16. Both the NH Department of Environmental Services and Fish and Game indicated that the mooring field with two (2) additional moorings will not have any significant adverse impact. Based on the evidence presented by the abutting property owners, these recommendations are insufficient to warrant approval of the moorings due to the other significant problems that the moorings present.
17. The mooring field has support facilities available to property owners, the only users of the moorings.
18. Property owners access moorings by canoe, rowboat, or dinghy.

The information submitted was thoroughly considered within the Petition, along with the public commentary received.

CONCLUSION:

The Petitioner has not presented sufficient proof to sustain the request for two additional moorings in accordance with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules Saf-C 408 on the proposal.

Therefore, for the reasons as set forth I advise the Petition be **respectfully denied** based upon the Findings of Fact listed (*supra*).

Respectfully submitted,



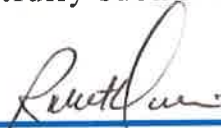
Christopher Casco, Administrator
Bureau of Hearings

Date: 1/20/21

RECOMMENDATION: DENIED

The evidence **does not demonstrate** that the Petition is in the public interest fulfilling the purpose of law. There is insufficient proof that the Petitioner has met the burden of proof by a preponderance of the evidence showing cause that an expanded "Congregate Mooring Field" be adopted pursuant to RSA 270:67, RSA 270:68 and Administrative Rule Saf-C 408.

Respectfully submitted,



Robert L. Quinn
Commissioner of Safety

Petitioner Designee, Joseph Giguere

Abutters as listed on site map

Town Clerk/Administrator,
Meredith, New Hampshire

CC: File

Colonel Nathan Noyes, Director
Division of State Police
Department of Safety

Mary Howe, Supervisor, Moorings
Program
Marine Patrol
Department of Safety