



State of New Hampshire
Department of Safety

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

ROBERT L. QUINN
COMMISSIONER OF SAFETY

**ORDER ON MOTION FOR
REHEARING**

In the Matter of:

**Mooring Application-
Meredith Acres
Association, Meredith,
New Hampshire**

PROCEDURAL HISTORY:

The Department of Safety, hereafter department, received an application to add 2 moorings to an existing mooring field. The department held a hearing allowing appearances in person at 33 Hazen Drive or by video or telephone on or about November 12, 2020. By order dated 1/20/21, the department denied the request.

By email dated February 9, 2021, Meredith Acres Association, hereafter association or petitioner, requested that the department reconsider its order and approve their application.

DISCUSSION:

The legal standard of review for a motion for rehearing is contained in RSA 541:3. This requires that a party seeking rehearing file a motion within 30 days of the decision. The statute gives any party to the action or proceeding or any person directly affected thereby the ability to apply for 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. The legal standard that will permit a rehearing is if, in the

commissioner's opinion, there is good reason for rehearing as stated in the motion. Moreover, cases of the New Hampshire Supreme Court appealing administrative agency decisions further delineates the legal standard of proof for a party seeking to overturn an agency decision through rehearing, and their legal burden. It is the association, as appellant, that bears the burden of proof in this motion for rehearing. If they fail to provide sufficient evidence, then a rehearing must be denied. Submitting new or additional evidence is not permitted as part of a motion for rehearing.

In the case of *Appeal of Sandra Brown, DVM (NH Board of Veterinary Medicine)*, 198 A.3d 276 (N.H.2018), the Supreme Court considered an appeal of a decision of the Board of Veterinary Medicine. The court described what must be established in order for a board decision to be reversed on appeal. This same standard applies to this motion for rehearing. In that case, the Supreme Court stated, "RSA Chapter 541 governs our review of board decisions. We will not set aside the board's order except for errors of law unless we are satisfied by a clear preponderance of the evidence that it is unjust or unreasonable. The board's findings of fact are considered prima facial lawful and reasonable. In reviewing the board's findings, our task is not to determine whether we would have found differently or to reweigh the evidence, but rather, to determine whether the findings are supported by competent evidence in the record." Citations omitted. *Id.* at 280. This standard must be applied to the motion for rehearing that has been filed in order to determine whether it may be granted because it is the same standard of appeal to be applied by the supreme court.

First, based on the record from the hearing, the association presented its application and supporting documents which included only a map prepared by free hand. It did not introduce the tax map that it now offers as part of the motion for rehearing. The abutting property owners personally appeared at the hearing and offered testimony that refuted the petitioner's useable shore frontage. Moreover, the abutters introduced documents that refuted the length of the dock. In fact, the original application provided a shorter dock length than what was presented at the hearing.

The petitioner had the burden of proof at the hearing. The decision on the motion for rehearing may only be based on the record evidence presented at the hearing. Therefore, the tax map may not now be considered. Furthermore, while in its motion for rehearing, the petitioner argues that since the 2 additional moorings will be parallel with the dock and not in front of it, that a longer dock will not reduce the available area in the mooring field. A longer dock, however, affects the total available area in the mooring field. Consequently, any reduction of available area for 2 extra moorings raises the question as to whether the mooring field may safely support 2 additional moorings.

In addition, the question raised about useable shorefront area was not adequately refuted or even addressed at the hearing because the petitioner

rested on its application and did not respond to any of the concerns. Therefore, there was insufficient record evidence that this mooring field is large enough to support 2 additional moorings. In order to address the question raised as to available shore frontage, a professionally prepared map of the area by an architect or surveyor is necessary to resolve the question. It may not be done now by submitting a tax map after the evidence is closed.

Consequently, the petitioner may reapply for 2 additional moorings and provide additional supporting documentation to conclusively establish its useable shore frontage. It must do so because it has the burden of proof in this matter. The abutters raised sufficient doubt at the hearing to require that the application be denied. Since the petitioner has not demonstrated that the department's order is unreasonable or unlawful, the motion is denied. It may reapply and a new hearing conducted.

I recommend that the following denial of the motion for rehearing be approved.

Respectfully submitted,



Christopher Casco, Esq.
Administrator

CONCLUSION OF LAW:

Pursuant to RSA 541:3, the motion for rehearing of an order denying the application for 2 additional moorings of the petitioner is respectfully denied.



DISPOSITION:

Denied



Robert L. Quinn
Commissioner of Safety

RSA 541:6 Appeal

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

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



Christopher Casco, Administrator

Date of emailing: 3/12/21

Petitioner Designee:
(*To be distributed to petitioners*)

Mr. John Raymond, President,
Meredith Acres Association

Captain Timothy Dunleavy,
NH Division of State Police
Marine Patrol Unit
Department of Safety

cc: File