



**State of New Hampshire**  
**Department of Safety**

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

**JOHN J. BARTHELMES**  
**COMMISSIONER**

**Report of the Hearings Examiner**

**In the Matter of:**

**Petition to Require Mooring Permits**

**Pleasant Lake**  
**Located within the town of**  
**New London, New Hampshire**

**HISTORY:**

The Department of Safety received a petition signed by at least twenty-five (25) residents and/or property owners ("Petition" or "Petitioners") from the town of New London, New Hampshire. The Petitioners requested the establishment of RSA 270:61-a Petitions to Require Permits: Hearings on Pleasant Lake. This petition sought a hearing to regulate moorings pursuant to RSA 270:61-a. The Petition, dated March 29, 2018, offered the reasons for the requested public hearing. It cited safety, and environmental concerns and a fear of the proliferation of moorings. Thereafter, based upon the Petition meeting the minimum legal requirements under the law, a hearing was scheduled.

Pursuant to RSA 541-A, a public hearing was held on Friday, June 22, 2018 at 2:00 p.m., at the Whipple Town Hall, Center for the Arts, 429 Main Street, New London, New Hampshire. The scope of the hearing was to allow and consider public comment in accordance with RSA 270:61-a and administrative rule Saf-C 412 on the Petitioner's application.

Christopher Casco, Administrator, Bureau of Hearings, conducted the public hearing as designee on behalf of John J. Barthelmes, Commissioner, Department of Safety.

**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 is recorded;
- the recording shall 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 sign the appropriate "sign-up sheet" to present comment on the petition;
- the notification of public hearing was published in The Union Leader on April 27, 2018 and a reproduction of the posting from the newspaper's web site was available for review;
- the petition and hearing notice were posted on the Department of Safety web site on or about April 25, 2018 and remain there; and
- the public may review the legal notice, along with the original petition and any other documents; and,
- how and where to submit written comment which must be received by the Department of Safety within seven (7) calendar days following the hearing.

**STATISTICS:**

- Approximately 56 people testified at the public commentary hearing. Four (4) people, including petitioner, were in favor and fifty (52) were against the petition.
- Approximately (128) documents of public commentary have been received. All but two were received within seven (7) calendar days following the hearing. Two public comment documents were received after the deadline, and therefore, could not be considered. Ten (10) comment documents were in favor of the petition with (116) documents submitted opposed to the petition.
- The hearing was closed to public comment at the close of the business day, Friday, June 29, 2018.

**OFFICIAL NOTICE:**

- Petition for the requirement of mooring permits on Pleasant Lake.
- Newspaper published announcement of public hearing.

**EXHIBITS:**

- 1: A presentation prepared by Peter Nichols, Esq.
- 2: Handwritten diagram of property by Laurey Kenerson

**SYNOPSIS OF TESTIMONY:**

Laurey Kenerson is in favor of the petition and spoke on behalf of the Petitioners. He described the mooring in front of his camp. This led to an argument about the mooring and a promise that it would be moved. When the mooring did not move, he decided that state regulation was required and he filed the petition. It makes sense to him that if you own property that you would pay a fee for a mooring.

**Summary of Proponents Testimony**

The proximity of the public beach to the existing mooring field at Elkins Cove is unsafe for swimmers. There are no docks for dinghies so that there is no way to access the moorings. Moreover, the only bathrooms and parking for the mooring field is only open to town residents. The mooring field contains 16 to 22 boats and is extending beyond the public property line. One speaker admonished the state for not imposing a time limit on public testimony. Not all neighbors on the lake are good neighbors. Political pressure has been exerted so that the petition will be denied. No one was forced to sign the petition.

**Summary of Opponents Testimony**

The overwhelming majority of the public comment was against the petition. Jonathan Nichols led the opposition with a detailed PowerPoint presentation that summarized the key reasons why the petition should be denied. He expressed the position of the group Friends of Pleasant Lake. He addressed all of the factors within the scope of the hearing individually and disputed each one. His ultimate position is that on each factor, the evidence is grossly insufficient, and for many points, the arguments in favor did not have any data to support them. The petition was conclusory in nature and contained a replication of the law or prior decisions without specific support. In addition, that this petition began as a personal dispute involving the petitioner's property is inappropriate. A petition to require mooring permits must be for the greater good, not only the good of

waterfront property owners. The petitioners have the burden of proof. This is a divisive issue caused by only a few people. The law requiring mooring permits is intended for larger lakes. The population of Pleasant Lake is small, which does not justify requiring permits. There is no record of safety violations. Furthermore, a petition against the petition had far more signatures which evidences that there is no public support for it.

Due to the volume of the remaining testimony and the fact that similar themes were present throughout, it is most expeditious to summarize the main points rather than reiterate the testimony of each individual. There was an effort made to resolve the dispute involving the mooring in front of the Petitioner's house but he declined meeting to resolve the problem. The petition used findings from the general court and from other hearing decisions which resulted in a false and misleading petition. The petition demonstrates a distain for boating. Forcing all public boaters to launch when they want to use the lake will cause an unsafe situation because the boat launch is on a dangerous curve.

Moreover, if mooring permits are required, the field at Slope N Shore will be required to use flashing lights which will make the view of the lake less attractive. The boats in Elkins Cove are watched more than other moorings on the lake, and for one incident of a boat breaking free, many people intervned to rescue the boat. The boat's owner had many calls and messages from others informing him of the situation and it was easily resolved. The solution to any problems with moorings should be resolved by neighbors working with neighbors to resolve them without state intervention. Also, due to the limited public access to Pleasant Lake, the proliferation of moorings is not likely.

#### **SYNOPSIS OF PUBLIC COMMENT RECEIVED:**

##### **OPPOSED**

As was the case with the testimony, the overwhelming majority of written comment opposed the petition. Again, it is more efficient to summarize the main points rather than describe the individual letters in detail, although each document was reviewed in its entirety and considered separately. Many of the letters constituted impassioned pleas against implementing mooring regulation. One consistent theme throughout the public comment, as in the testimony, was that the genesis of the petition was the result of a private grievance involving one boat and two neighboring property owners. As such is a personal dispute with limited broad public impact, implementing an expansive regulation affecting the entire lake and the public is an inappropriate way to address a personal grievance. Many people expressed that this dispute could have been resolved between neighbors without State intervention. In fact, going forward, many of the mooring holders in Elkins Cove expressed an interest in cooperating with their lakefront neighbors to ensure that the field is maintained in the safest manner possible, and they have a web site for that purpose.

Many writers expressed that the Petitioner did not present sufficient evidence of the factors for consideration as defined in RSA 270:61-a to constitute a problem warranting

mooring regulation. The two existing mooring fields at Elkins Cove and Slope N Shore have not caused problems, which is evidenced by the lack of reported incidents to Marine Patrol or local police. Also, granting the petition will result in the exclusion from the water of residents who do not own shorefront property, and therefore, greatly reduce or eliminate the availability of moorings to those people. This will have the impact of providing lakefront property owners greater rights than residents who do not own such property.

Also, the petition contains broad, unsupported generalizations without any specific data to confirm problems with existing moorings. Several agencies including the New London Fire Department, Police Department, New London Recreation Department, and the NH Marine Patrol were consulted. There was little data to support safety or environmental concerns, or that supported the other criteria for review. The claims of safety problems related to the mooring field in Elkins Cove next to the town beach are unsupported.

Also, eliminating the available moorings in Elkins Cove would have a negative impact on the environment because all of those boats would have to go in and out of the water, which could result in the introduction of milfoil and other invasive species from other bodies of water. In general, eliminating moorings will result in more boats being launched for a day which will introduce milfoil and other invasive species into the lake.

Moreover, the Elkins Cove moorings are maintained in a safe manner, are possessed by town residents who live within 2 miles of that location, and the holders have proper access to the town beach and parking area with toilet facilities. The mooring field has been reconfigured and its members are committed to maintaining it in a safe manner hereafter. Several writers indicated that even before these changes, the field has never presented safety concerns with the town beach because the swimming area at the beach is defined by a swim line which separates it from the moorings. There is a web site dedicated to the users of this mooring field and ensures compliance with safe practices for the field. Also, the field is within a cove, isolated from boat traffic, and therefore, does not present a safety issue.

Requiring the public to launch boats to gain access rather than moorings will compromise safety because more parking will be done in the Masonic Lodge parking lot, and when that is filled, parking will spill into the roadway. There are many people who walk in the area, and they will have to walk into the road to get around trailers. Also, the town beach and post office are near the lake's one public boat launch, and the increase in launching of boats will increase traffic in the area and create a safety problem that does not currently exist. The unintended negative safety and environmental impacts that granting the petition may cause constituted a recurring theme in the public comment against the petition.

Also, there are other legal mechanisms available if the intent of the petition is to protect the environment. One writer suggested that complaints with State and federal regulators could be filed to enforce existing environmental protection laws rather than restricting moorings.

In addition, there are property owners in the area that own deeded access to the water and have moorings at the shoreline of their right of way. Granting the petition would also prohibit these people from keeping their moorings, further restricting access to the lake. Those with rights of way are not permitted to obtain moorings on regulated lakes.

Furthermore, several writers indicated that the petition does not have the support of the Town of New London selectman or the citizen organization charged with protecting the lake. This demonstrates that the petition will not serve the public good.

### **IN FAVOR**

As was the case with the written comment opposed to the petition, for brevity, the main arguments are summarized below. All of the documents were reviewed and carefully considered in their entirety. The mooring field in Elkins Cove near the town beach presents hazards to swimmers. The mooring field at Slope N Shore extends beyond the property lines and has grown from 16 to 22 boats. It is encroaching on neighboring property. There is a concern that any property owner can allow another person access to their waterfront and allow them to place a mooring any place that they choose, and it does not have to be in front of their property. As a result, the mooring could be in front of another's property, thus infringing on their right to enjoy their property, including their view of the lake, for which they pay expensive property taxes.

Moreover, a significant amount of opposition testimony was from people from Slope N Shore, who may not own property. In order to have a mooring at Slope N Shore, one need only belong to an association and not necessarily own property. Therefore, more weight should be given to the testimony of land owners than association members. There is boat traffic in the area of the Elkins Cove field which presents safety hazards to kayaks and other small boats. Regulation is needed as a preventative measure before an accident occurs.

Due to winds in the area of the Elkins Cove field, it is not an ideal location for a mooring field. Many of the moorings are improperly secured. For example, a car tire filled with cement is used as an anchor, which is insufficient to secure a boat. Boats then may crash into the rocks due to the wind and insufficient anchoring.

Furthermore, the existing unregulated moorings have caused chaos on Pleasant Lake because moorings can be placed anywhere a person can gain access from a property owner. There is also the threat of the proliferation of unregulated moorings. This is evidenced by the Elkins Cove mooring field which started with 1 or 2 boats but has increased every year and now has approximately 20 boats.

## **LEGAL ANALYSIS:**

In gathering findings of fact, the following laws and rules are given consideration, and reproduced in relevant part:

### **RSA 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 270:60 Statement of Intent. –**

- 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.

**RSA 270:61 Mooring Permit Required; Limitations. –**

- I. Any person erecting, installing, maintaining, or exercising control over a mooring on Lake Winnepesaukee; Lake Winnisquam; Squam Lakes; Newfound Lake; Ossipee Lake; and Lake Sunapee shall obtain a mooring permit from the division as provided in this subdivision.
- II. Any person applying for a mooring permit shall:
  - (a) Demonstrate to the satisfaction of the director that a need for the mooring exists:
    - (1) Either by furnishing the director with proof of a boat registration for each mooring requested, or for persons owning boats not requiring registration, proof of boat ownership for each mooring requested; or by showing that circumstances exist which require that a mooring be available for intermittent or temporary use; and
    - (2) By verifying that no other viable and safe alternative exists for securing the boat in question; and
  - (b) Show to the satisfaction of the director that he has legal access over land to such mooring; and
  - (c) Show to the satisfaction of the director that such mooring will not be sold or leased except as provided in RSA 270:67; and
  - (d) Furnish any additional information required by the director to determine that a proposed mooring meets the requirements of this subdivision.
- III. Unless a special exception is granted under RSA 270:65, or a mooring field or mooring area has been permitted under RSA 270:67 or 270:68, no more than one mooring shall be permitted adjacent to any shorefront property. This limitation shall apply regardless of the uses or permitted uses, number of owners or others with legal access, or type of ownership of that property, and shall not be construed to exempt any applicant from meeting all of the requirements of this subdivision.
- IV. After July 1, 1989, the director or the director's agents shall remove or cause the removal of any mooring, and any boat that may be moored to it, on the lakes cited in paragraph I if it does not have the appropriate decal. Such removal shall be without the right to a prior hearing and at the expense of the owner of the mooring pursuant to RSA 270:66, IV.
- V. It shall be illegal for a permittee, without approval of the division, to move or cause to be moved a mooring that has been approved in a particular location by the division.
- VI. The department shall not deny a mooring permit to any person, or place any limitations on the type of craft permitted at a mooring, when reasonable need exists, there is no opposition from abutters, there is no evidence that the mooring will interfere with navigation, and the mooring is in compliance with RSA 270:64.
- VII. An owner of shorefront property separated from the main water body by a manmade structure shall be granted a permit for a mooring on the main body of water if the need for the mooring is established and if the conditions of RSA 270:64, I are met.

**RSA 270:61-a Petitions to Require Permits: Hearings.**

- 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, pond, or river is located and after notice and hearing at which it appears that the public interest requires the use of mooring permits, amend the rules adopted under this subdivision to require mooring permits on the body of water. The provisions of this subdivision and associated rules shall then apply to such water body.
- II. The commissioner of safety shall hold a public hearing to determine whether to grant a petition submitted under paragraph I. In determining whether to grant the petition, the commissioner shall take into consideration the following factors:
  - (a) The size of the body of water
  - (b) Public safety
  - (c) The maintenance of residential, recreational, and scenic values
  - (d) The variety of uses of the body of water
  - (e) The environment and water quality
  - (f) Threatened and endangered species
  - (g) The number of people affected, either directly or indirectly
  - (h) The availability of moorings to the non-shorefront owning public
- II. The commissioner of safety shall schedule the public hearing at a date and time which provides interested individuals with sufficient notice, and at a location in the vicinity of the body of water under consideration. If mooring permits are required under this section, the effective date of such requirement shall be no earlier than October 1 of any given year.

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

**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.

### **Selected Administrative Rules**

#### **Saf-C 412 PETITIONS TO REQUIRE PERMITS HEARINGS**

**Saf-C 412.01** Request for Hearing. Any group of 25 or more residents or property owners of each affected town or town in which a lake, pond, or river is located, pursuant to RSA 270:61-a, may petition the commissioner for a hearing to determine whether the public interest requires the use of mooring permits.

**Saf-C 412.02** Scheduling of Hearing. The commissioner shall schedule a hearing within a reasonable period of time, but in no event more than 60 calendar days after the date he received the request. The commissioner shall provide at least 7 calendar days advance notice of the hearing. The hearing shall be held in a town in which the body of water under consideration is located, or in a contiguous town.

**Saf-C 412.03** Conduct of Hearing.

- (a) The commissioner or his designee shall conduct the hearing as follows:
- (1) The commissioner/designee shall explain the purpose of the hearing, including:
    - a. The request made by the petitioners; and
    - b. The commissioner's authority under RSA 270:61-a to make rules regarding the requirement of mooring permits on the body of water;
  - (2) The commissioner/designee shall state that written comments shall also be accepted and considered. The commissioner/designee shall provide the address to which written comments may be sent and the date by which comments shall be received in order to be considered. Such date shall be 7 calendar days after the date of the hearing;
  - (3) The commissioner/designee shall request that all persons who wish to speak at the hearing sign a sign-up sheet provided by the commissioner/designee. This shall not bar any late arrivals from speaking if they do desire;
  - (4) The order in which persons speak shall be the same order in which their names appear on the sign-up sheet provided, however, that persons who wish to speak out of order shall be allowed to do so unless there is an objection by another speaker; and
  - (5) After all speakers have been heard, the commissioner/designee shall:
    - a. Establish a date by which the commissioner shall make a determination on whether to adopt rules pursuant to the authority granted by RSA 270:61-a;
    - b. State the means by which interested persons shall be informed of the commissioner's determination; and
    - c. Inform those present at the hearing that another opportunity for public comment will be possible, under RSA 541-A, if any rulemaking action is taken.

**Saf-C 412.04** Criteria for Review.

- (a) The commissioner shall, after the hearing, adopt rules of the type authorized by RSA 270:61-a if it appears that, consistent with RSA 270:61-a, the public interest requires the use of mooring permits on the body of water.

(b) In determining whether to adopt such rules the commissioner shall consider the factors set forth in RSA 270:61-a.

**LEGAL ANALYSIS ~ DISCUSSION:**

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 the practice of mooring presently in other lakes within the State and the variety of uses by the public of Pleasant Lake within the town of New London. This fact-finder has carefully read the content of each submission measuring the discussed commentary with the scope of review listed within the published law and rules (*Supra*). In addition, this fact-finder considers the number of people each public comment represents. The vast majority of public input opposed the petition. Moreover, a petition generated opposing the petition was submitting that contained several times more than the 25 required to initiate the hearing. In fact, several petitioners expressed desire to remove their names from the petition both at the hearing and through the public comment process after the hearing. This evidenced a lack of understanding by some petitioners as to the impact that granting the petition would have on Pleasant Lake.

The exhibits and public comments by reference to those exhibits at the hearing, along with all commentary submitted to the fact-finder after the hearing, provided more detailed information in reference to the size and configuration of the area being considered. The persons speaking or writing are a diverse group, with people either owning homes and/or land along the shoreline or non-waterfront property within the town that otherwise do not have the ability to keep boats on the lake. Most of the people with moorings at Elkins Cove live within 2 miles of that area. Moreover, there was testimony regarding how regulation would compromise the public's ability to boat on Pleasant Lake because of the limited accessibility due to one public boat launch, on a road where accessing the launch can be hazardous. In addition, there is limited parking for trailers, which would further limit the ability to launch boats in the lake. While the Masonic Lodge allows parking, there are very few spaces for vehicles with trailers to park. Also, the post office and public beach are close to the boat launch, resulting in traffic. The increase in traffic that would result if mooring permits become required and the loss of the Elkins Cove mooring field will further increase traffic, having the unintended consequence of making the roadway less safe.

The Commissioner of Safety must weigh the language of the law, (*Supra*) while bearing in mind the Petition submitted, along with the information to be considered specifically under the authority of the legislature, explicitly RSA 270:61-a. Because this petition requests review of a law that will influence the entire lake, this fact-finder reviews within RSA 270:1 the language for deliberation speaking to competing uses for the enjoyment of the waters; regulating that use for the benefit of all users, keeping in mind what may diminish the value to be derived from them. The water is a public resource, and therefore, a broad public need for requiring mooring permits must be proven in order to grant the petition. The 8 factors, or elements of proof within the statute must be proven by the petitioners. In order to prove the elements, it is necessary for a problem with mooring on the body of water to be sufficiently

demonstrated using specific data. Absent same, it is difficult for the petitioners to sustain their burden of proof.

In addition, as highlighted by the opposition at the hearing, 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. This law, and the others this fact-finder has listed, places the responsibility on the Commissioner of Safety to consider: 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. It illustrates to this fact-finder that the objective of RSA 270:61 and RSA 270:61-a is to recognize the cumulative effect of boats being moored (placed) or scattered without any guidelines, regulations or parameters, and therefore, requiring specific and appropriate regulation. The law requires a complex balancing test of competing interests. As the opponents pointed out, most lakes that require mooring permits are larger than Pleasant Lake. For example, Bow Lake, a body of water added to the list of those that require mooring permits, is 1,160 acres while Pleasant Lake in New London is 606 acres.<sup>1</sup> Also, RSA 270:61, passed into law in 1988 to require mooring permits on certain bodies of water, covered the 6 largest lakes in New Hampshire, which evidences that fact that typically mooring regulation is necessary on larger bodies of water. Another recognized problem for a petition is to address a proliferation of moorings on a particular body of water. The evidence presented at this hearing, however, suggests a condition with moorings that is relatively stable and one that has not been changed for many years. The change that occurred which prompted the filing of the petition involved one boat, 2 lake front property owners, and another property owner with a right of way to Pleasant Lake being unable to resolve a disagreement about that mooring. Granting a petition to redress a grievance involving a single boat, without more, is insufficient to justify granting a petition. This is particularly true because the NH General Court has clearly indicated that shorefront property owners do not have any special rights to the water, and that the water is a resource for all to enjoy. This includes not having any special right to an unobstructed view of the water.

New Hampshire law, RSA 270:61-a is a statute that authorizes the Commissioner of Safety to add lakes to the list of those presently named within RSA 270:61 that require mooring permits after a petition is submitted seeking review by public hearing and if granted, adopting an administrative rule. The other clarification is RSA 270:61-a (h); the availability of moorings to the non-shorefront owning public. There is a single boat launch next to the town beach, near the post office, in an area with a curve in the road which makes launching boats difficult. The beach has parking only open to town residents, with the only additional parking off of the roadway at the Masonic Lodge which has a small parking lot. If the petition is granted, the increase in boats launched for a day will not have sufficient parking, and may have the unintended consequence of compromising public safety in the area. Consequently, if the petition is granted, such will significantly compromise the non-shorefront owning public's ability to boat on the lake. Also, many of the mooring holders in Elkins Cove live within 2 miles of the area, yet they will no longer be able to easily use their boats. This will occur without

---

<sup>1</sup> In the Matter of: Petition to Require Mooring Permits on Bow Lake, 1/13/10, John J. Barthelmes, Commissioner.

any documented instances of accidents or spilled fuel or other negative environmental impact from the Elkins Cove mooring field. Also, despite the petition's assertion that untended boats present a significant concern, the record contained a noteworthy lack of any problems having resulted from untended boats. The one incident of a boat becoming unsecured did not injure anyone, and was easily resolved. Within a short time of the boat becoming loose, neighbors had called the boat's owner, who was unavailable at the time, and since he could not secure it, they secured it for him before any negative consequence resulted.

Based on the entire record of evidence presented, the petition lacks sufficient support of the 8 statutory criteria for review. The harm that the petition attempts to remedy is limited to shorefront property owners who wish to protect their view of the lake, and is justified in part by their position that they pay increased taxes for that view. While that viewpoint is understandable, and those property owners have a legitimate property interest, such must be carefully balanced with the public's interest and right to use the lake as well. Without a well-documented problem evidenced by specific statistical support in the record, a petition to require mooring regulation may not be approved. Moreover, there is significant evidence in the record that this petition was brought forward due to a private dispute between neighbors. In fact, one of the involved parties, Storm Connors, very candidly provided his opinion that it was his dispute with the petitioner involving the mooring that he allowed to be placed in front of his property that resulted in the petition. Also, much of the public comment supported Mr. Connors position. He feels that he caused the problem which resulted in the petition being filed. As a result, promulgating a broad policy to redress what is essentially a private grievance is inappropriate.

Finally, it is instructive to review the decisions in the hearings involving Bow Lake in Northwood and Strafford and Pleasant Lake in Northwood and Deerfield where the department granted petitions. The Commissioner of Safety granted the petitions, thereby requiring mooring permits. The Commissioner granted the petition for Bow Lake because moorings had crowded a public boat launch, extended out far into the lake which made navigation difficult and unsafe, and due to safety concerns from swimmers around the moorings and boats breaking from the moorings. Moreover, parking in the area of the moorings was problematic. See In the Matter of: Petition to Require Mooring Permits on Bow Lake, 1/13/10, John J. Barthelmes, Commissioner, Saf-C 408.01. Many of the reasons for mooring permits on Bow Lake do not exist on Pleasant Lake, and therefore, the Bow Lake case supports denying the petition due to lack of sufficient, similar evidence. Similarly, the petition concerning Pleasant Lake in Northwood and Deerfield also had well documented reasons well supported by the evidence which justified it being granted that do not exist here. See In the Matter of Petition to Require Mooring Permits on Pleasant Lake in Deerfield and Northwood, 12/1/16, John J. Barthelmes, Commissioner, Saf-C 408.01.

After carefully considering all of the evidence, exhibits, testimony and all public comment presented, Findings of Fact are issued.

**FINDINGS OF FACT:**

1. That pursuant to RSA 270:61-a, at least 25 residents and or property owners in the town of New London submitted a petition requesting the establishment of mooring permits on Pleasant Lake. Thirty four (34) people signed as petitioners. During and after the hearing, however, some individuals expressed a desire to remove their names from the petition.
2. At the hearing, 4 people, including the petitioner, appeared in support of the petition, with 53 appearing and speaking against the petition.
3. That the petition, dated March 29, 2018, offered specific reasons for the requested establishment of mooring permits and asked for a public hearing requesting that the Department of Safety conduct a public hearing.
4. That official notification for the public hearing was published in a newspaper of statewide circulation, The Union Leader, Manchester, New Hampshire on April 27, 2018.
5. The petition and hearing notice were posted on the Department of Safety web site beginning on April 25, 2018.
6. That a public hearing was scheduled on Friday, June 22, 2018 at 2:00PM on the issue and conducted pursuant to RSA 541; RSA 270:61-a; and Administrative Rule, Saf-C 412 at the Whipple Town Hall, Center for the Arts, 429 Main Street, New London, New Hampshire.
7. That public comment was received and evaluated in reference to the scope of review within RSA 270:61-a including:
  - (a) The size of the body of water.
  - (b) Public safety.
  - (c) The maintenance of residential, recreational, and scenic values.
  - (d) The variety of uses of the body of water.
  - (e) The environment and water quality.
  - (f) Threatened and endangered species.
  - (g) The number of people affected, either directly or indirectly.
  - (h) The availability of moorings to the non-shorefront owning public.
8. That although RSA 270:60 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, and RSA 270:67 further delineates designation of locations and other specific criteria to consider, this petition is solely to review criteria contained in RSA 270:61-a, and Administrative Rule, Saf-C 412.

9. That Administrative Rule, Saf-C 412, was adopted September 14, 2009 and became effective on September 15, 2009.
10. That Pleasant Lake is approximately 606 acres in size. It is 1.6 miles long, .7 miles wide, and 90 feet deep. Exhibit 1, page 9.
11. Pleasant Lake has 110 private waterfront homes, 84 moorings, and approximately 180 moorings and docks. Exhibit 1, page 10.
12. Pleasant Lake has 2 mooring fields: Elkins Cove, a public field used primarily by town property owners and town employees and Shore N. Slope utilized by private property owners. Neither impedes the navigation of other boats on the lake.
13. Pleasant Lake has one public boat launch but no general public parking as parking at the town beach is for residents only. Also, the boat launch is on a hazardous stretch of road due to a dangerous curve leading to the boat ramp, making launching boats using that ramp difficult. An increase in the launching of boats that imposing mooring regulations would likely cause may have the unintended consequence of compromising public safety on the public roadway in that area. Prior complaints of boat ramp traffic blocking the roadway have been received by the New London Police, and the Chief of Police has expressed concern that such increase may constitute a hazard. Exhibit 1, page 44.
14. That there are two mooring fields where boats are kept. There are no documented incidents of unsafe behavior in the mooring fields, or evidence of boats from the mooring fields compromising public safety in any way.
15. Moorings are not scattered throughout the lake, but contained in primarily two locations. The mooring that concerned the petitioner was in front of his property, but was permitted by his neighbor, for the use of his other neighbor who possesses a right of way but not shorefront property.
16. That moorings other than within the 2 existing fields above-mentioned within Pleasant Lake do not present navigational and safety issues.
17. There is no evidence that the existing moorings compromise public safety in any way, or that they interfere with swimming, boating, or other waterborne activities.
18. That the effect which adopting or not adopting the petition would have upon the public safety is considered. There is insufficient information to support the request because no evidence of how the existing moorings compromise public safety was introduced. The petitioner presented no statistical information of safety concerns, unsafe situations, or documented incidents of unsafe behavior reported to Marine Patrol or the New London Police to support mooring regulation.
19. That the New Hampshire Department of Safety, Division of State Police, Marine Patrol Unit enforces the statutes and rules governing the public waters within

Pleasant Lake, in New London, New Hampshire. The present navigational laws and any future moorings laws shall be enforced through that agency's Mooring Program and Marine Patrol, and based on the evidence presented, existing law is adequate, and therefore, requiring mooring regulation is unnecessary.

20. There has not been a proliferation of moorings on Pleasant Lake, and therefore, the maintenance of residential, recreational, and scenic values has not been compromised. In fact, the current moorings are safe, and their users have demonstrated responsible behavior making regulation unnecessary. They have implemented best practices for moorings and are committed to doing so going forward.
21. Balancing the competing interests of a variety of uses of the water which includes those individuals who have had moorings on Pleasant Lake for many years without any problems weighs against granting the petition because they will no longer have sufficient access due to only 1 boat launch in an area without adequate public parking.
22. There is insufficient availability of moorings to the non-shorefront owning public. The public mooring and application process with the New Hampshire Marine Patrol will be insufficient to maintain the public's right to the use of Pleasant Lake.
23. The environment and water quality will not be enhanced by requiring mooring permits. There has been no evidence that moored boats have caused any environment or water quality problem. That requiring boats to be launched frequently into Pleasant Lake could introduce contaminants from other lakes that may have a negative impact on the environment.
24. The Petitioner failed to demonstrate that unregulated moorings have an adverse impact on the lake. The voluminous record of opposition to the petition, which includes a counter petition with 3 times as many names as the petition supports that mooring regulation is unnecessary.
25. There is insufficient evidence of a problem warranting imposing mooring regulation on Pleasant Lake.

**ANALYSIS CONCLUSION OF LAW:**

The public interest does not require the use of mooring permits. The petition for the requirement to have RSA 270:61-a implemented will not present a positive result on public safety and the maintenance of residential, recreational, and scenic values. In addition, the petition for moorings will not present a positive result on the environment, the variety of uses of the body of water including the environment and water quality, threatened and endangered species, the number of people affected, either directly or indirectly, and the non-availability of moorings to the non-shorefront owning public on Pleasant Lake.

The information submitted was thoroughly taken into account within the petitioner's application; public testimony; and exhibits together with taking into consideration the public written and oral commentary submitted, the overwhelming majority of which opposed the petition. Having done so, this fact-finder recommends denying the Petition based upon these Findings of Fact; (*Supra*) and, that you reach the following Conclusion of Law.

I recommend that the following Conclusion of Law and Disposition be approved based upon the Findings of Fact listed within this report.

Respectfully submitted,



---

Christopher Casco, Administrator  
Department of Safety  
Bureau of Hearing



**CONCLUSION OF LAW:**

The Petitioners have not presented satisfactory proof to sustain their request for the establishment requiring permits for moorings on Pleasant Lake in New London in accordance with RSA 270:61-a; and Administrative Rule, Saf-C 412.

**ORDER AND DISPOSITION:**

The evidence fails to demonstrate that the Petition is in the public interest fulfilling the purpose of law. There is insufficient proof that the Petitioners have met their burden, by a preponderance of the evidence, showing cause that a requirement to have mooring permits on Pleasant Lake in New London, New Hampshire be adopted pursuant to RSA 270:61-a; and Administrative Rule, Saf-C 412. The petition is respectfully **DENIED**

**So Ordered.**



---

John J. Barthelmes, Commissioner  
Department of Safety

Date: 7/31/18

**APPEAL:**

Please be advised of the right to appeal the decision of the Commissioner of Safety. An interested party may apply for a rehearing within thirty days pursuant to RSA 541:3; and, if denied, may then appeal by petition to the New Hampshire Supreme Court within thirty days pursuant to RSA 541:6.

---

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

Date of mailing: 7/31/18



---

Christopher Casco, Administrator  
Department of Safety  
Bureau of Hearings

**cc:** Captain Timothy Dunleavy  
Division of State Police  
Marine Patrol Unit  
Department of Safety

Moorings Supervisor  
Division of State Police  
Marine Patrol Unit  
Department of Safety

Petitioner Designee:  
  
Mr. Laurey Kenerson  
  
Town of New London  
  
File

