



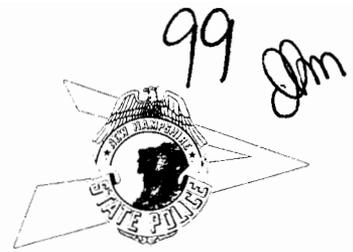
State of New Hampshire

DEPARTMENT OF SAFETY

John J. Barthelmes, Commissioner of Safety

Division of State Police

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



Colonel Robert L. Quinn
Director

August 06, 2014

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

RE: THE LEDGES AT NEWFOUND LAKE CONDOMINIUM ASSOCIATION

Requested Action

To **approve** the petition of The Ledges at Newfound Lake Condominium Association located on Newfound Lake in Alexandria, NH as recommended by the Department of Safety, Division of State Police under the authority of RSA 270:67. **The Ledges at Newfound Lake Condominium Association** is requesting repositioning of an existing Congregate Mooring Field. **It is recommended that the petition be granted.**

Explanation

The petitioner has presented sufficient proof to sustain the request for the repositioning of moorings in a Congregate Mooring Field in concurrence with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rule Saf-C 408.

Public Hearing held July 12, 2014.

Enclosed are the Petition Letter, Map and Public Hearing Report.

Respectfully submitted,

Colonel Robert L. Quinn
Director of State Police

Enclosures

Date: October 23, 2013

To: NH Department of Safety
Division of State Police
Mooring Program
Belmont, NH

From: Dennis Dodge
The Ledges at Newfound
Alexandria, NH

Attached are mooring plans for the Ledges at Newfound Lake Condominiums in Alexandria, NH. The mooring plans are identified as:

PLAN "A" - state approved layout dated March 17, 1997

PLAN "B" - actual/proposed configuration dated September 2013

Recently the Ledges Association finished the redesign and rebuilding of a portion of the beach area, the installation of new steps to access the beach(s), a new sidewalk, and safety railings to accommodate elderly and handicapped owners. There currently are other waterfront improvement projects in the planning stages, some of which may affect the mooring field in the future.

The changes to the mooring field are as yet undefined, but in order to establish a baseline for the overall waterfront, the Ledges commissioned a consultant to redraw and layout the existing configuration of all the elements comprising the waterfront which is reflected in **PLAN B**.

The configuration of the mooring field has shifted over time due to a number of reasons, resulting in a disorganized, but workable layout. As part of the recent baseline process, the Ledges attempted to restore the mooring field to the approved configuration (**PLAN A**), but it was quickly recognized that we were creating a very unsafe layout. At a 35' mooring spacing, it was impossible to navigate through the mooring field, and adjacent moored boats were colliding with each other under variable wind conditions. To mitigate the safety issues, we repositioned some of the moorings increasing the spacing between the rows of boats, and then proceeded to re-layout the entire mooring field in a more orderly (and safer) configuration.

The resultant layout is as shown in **PLAN B** and is a close approximation of how the moorings have been positioned for the past several years. Note that the layout in **PLAN B** is essentially the same as in **PLAN A** except that the spacing of the moorings is increased to 45' in the N-S direction, and 50' in the E-W direction. Also, the first row of moorings north of the main dock are shown 90' from shore, vs. 62' in **PLAN A**. This was done to position the boats in deeper water (4'-5') as a sand bar is developing along

the waterfront that has resulted in a 3' water depth 60' from shore which is too shallow to moor boats.

PLAN B shows other mooring field "improvements" as well, notably:

- a wider (100') channel from the lake to the dock for easier (and safer) access
- the mooring field is well within the existing boundary defined by the marker buoys
- no mooring is closer to our extended property line than approximately 75'
- no mooring is closer than approximately 50' from the dock or the swim area

We respectfully submit the September 2013 map of our waterfront for approval. Thank you for your consideration.

Respectfully,



Dennis Dodge
The Ledges at Newfound Lake
955 West Shore Road
Alexandria, NH 03222
603-566-5927



State of New Hampshire

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

JOHN J. BARTHELMES
COMMISSIONER

Petition in the Matter of

**The Ledges at Newfound Lake
Condominium Association
Newfound Lake, Alexandria, N.H.**

HISTORY:

The Department of Safety received a petition from Dennis Dodge which was prepared and submitted as a congregate mooring plan on behalf of The Ledges at Newfound Lake Condominium Association, (Association) or (Petitioner).

The Petitioner is requesting to move an existing congregate mooring field. The petition, dated October 23, 2013, offered the reasons for moving the moorings.

Proof by the Petitioner of notification to all the abutters was received by the Department of Safety on or about May 27, 2014 allowing the requested hearing to be scheduled.

Notification of the June 12, 2014 public hearing was published in a newspaper of statewide circulation on June 2, 2014; in addition, it was sent to the town of Alexandria for posting. The Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III.

Pursuant to RSA 541-A, a public hearing was held on Thursday, June 12, 2014 at 1:00 p.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., 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 will be available for review;
- the public hearing is 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 Union Leader on June 2, 2014 which is a newspaper of statewide circulation;
- they could review the legal notice, along with the original petition and any other documents; and,
- how and where to submit written comment that must be received by the Department of Safety within ten (10) calendar days following the hearing.

STATISTICS:

- On June 12, 2014, two (2) persons spoke at the public commentary hearing. Within the ten days following, one email comment was received, which was an updated site plan as discussed at the public hearing. Four (4) people signed the sheet in favor of the petition. No one spoke or signed-up against the petition.
- On Monday, June 23, 2014, 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 dated October 23, 2013, and received by the Bureau of Hearings requesting to move an existing mooring field. The attached and updated diagram describes the area which clarifies the existing moorings and how the field will be moved should the petition be granted; marking the location of each of the proposed new mooring locations;
- the Division of State Police, Bureau of Marine Patrol Sgt. David Ouellette's testimony concerning his investigation;
- notification of the June 12, 2014 hearing to the public was published in a newspaper of statewide circulation on June 2, 2014; in addition, it was sent to the town of Alexandria for posting. The Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III; and,
- public commentary received in written or electronic form before the end of public comment at the end of the business day on Monday, June 23, 2014; and the testimonials received at the hearing conducted on June 12, 2014. The mailing and email addresses were provided along with the Department of Safety internet web site address.

SYNOPSIS OF TESTIMONY:

Dennis Dodge testified as an association member representing Petitioner. They are requesting to move this mooring field in order to resolve issues with the field which include moorings drifting due to snow and ice. The moorings have been scattered across the field which has created navigational and safety issues.

Some of the moorings are in shallow water of 2 feet due to the drifting. Consequently, they don't now have a clear channel to their dock. Moving the field will ensure adequate water depth. It will also provide proper spacing between moorings.

In addition, the Petitioner hired a surveyor, a professional engineer who assisted with re-positioning the 42 moorings to make the field better. The new positions will increase space between boats of 50 feet between moorings east and west and 45 feet for north and south. A sand bar is coming into the northern end of the mooring field. Also, the southern-most mooring is right on the abutter's property line. The repositioning will bring that mooring closer into the field and farther from the abutter. The repositioning of the field will result in a smaller overall footprint for the mooring field.

Ms. Sharon Champagne, Moorings Supervisor, provided an overview of the proposal. She sent notice of this request to the NH Fish and Game Department and they indicated that they feel that the plan does not have any negative impact. She also sent written notice to the NH Department of Environmental Services and did not receive a response.

Sgt. David Ouellette spoke about his investigation and examination of the site on or about June 5, 2014. He took laser measurements of the field and compared such with the submitted diagram. Based on discussion at the hearing, an updated diagram was submitted during the public comment period which refined some of the distances of the moorings. The desired move will place all of the moorings within the existing approved mooring field.

Ed McCarthy feels that moving the mooring field will not present a hazard if it is done according to the proposed layout. Since the proposal moves the field in and makes it smaller and closer to shore, he agrees with it.

SYNOPSIS OF COMMENTARY: RECEIVED PRIOR TO OR AFTER THE HEARING

The only comment received was an amended site diagram that changed some distances.

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).

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.

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. Petitioner is asking to move an existing, approved mooring field in order to compress and improve it.

In my evaluation, there was appropriate information in the application supplied by the petitioner on the topics specifically required under statute and rule when applying for moving an existing 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 in my determination of facts to consider. Comments include that changes in placement of moorings due to snow and ice and encroachment by a sand bar are required so that some of the moorings are moved to deeper water. In addition, the requested move will bring the field closer to shore and decrease the overall footprint of this field and increase space between boats, which will be safer. In addition, the move will create a clear channel through the field to Petitioner's dock, which will enhance safety.

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, The Ledges at Newfound Lake Condominium Association, (Petitioner) requested the Department of Safety to conduct a public hearing seeking to move an existing congregate mooring field.
2. Official notification to the public of the June 12, 2014 hearing was published in a newspaper of statewide circulation on June 2, 2014; in addition, notice of the hearing was sent to the town of Alexandria. Finally, the Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III.
3. A public hearing was scheduled on Thursday, June 12, 2014 at 1:00 PM 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 to move moorings that were previously approved in Newfound Lake, located in the town of Alexandria, thereby changing positioning in a Congregate Mooring Field. The described area, shown on a diagram submitted by the Petitioner, encompasses the shorefront property on West Shore Road in Alexandria, New Hampshire and as marked on town tax map 201, lot 84 and the diagram included with the petition.
5. The diagram provides satisfactory placement and distances referenced within the Petitioner's application, testimony at the public hearing, and submitted plan.

6. The Department of Safety, Division of State Police, Field Operations Bureau, Marine Patrol Unit enforces the statutes and rules governing Newfound Lake in Alexandria, New Hampshire and navigational laws are enforced through that agency.
7. Moving the positioning of the moorings decreases the overall footprint of the mooring field and will move it closer to shore.
8. Moving the moorings will improve navigation because based on the shifting of the moorings, there is not now a clear channel through the field to the dock.
9. Since the water depth is too shallow for some of the moorings, moving them will ensure that they are all at an appropriate depth for a mooring.
10. Also, moving the moorings will provide adequate space between moorings. The new positions will increase space between boats of 50 feet between moorings east and west and 45 feet for north and south.

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 supporting the Petition based upon the Findings of Fact listed (*Supra*) and that you reach the following Conclusion of Law.

CONCLUSION OF LAW:

The Petitioner has presented sufficient proof to sustain the request for the repositioning of moorings in a Congregate Mooring Field in concurrence with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rule, Saf-C 408.

RECOMMENDATION: New Hampshire Governor and Council

I respectfully recommend this Petition submitted by The Ledges at Newfound Lake Condominium Association **be granted**. The evidence demonstrates that the Petition is in the public interest fulfilling the purpose of law. There is sufficient proof that the Petitioner has met the burden by a preponderance of the evidence therefore showing cause for moving moorings in a Congregate Mooring Field, be allowed pursuant to RSA 270:67, RSA 270:68 and Administrative Rule, Saf-C 408.

Very truly yours,



John J. Barthelmes, Commissioner
Department of Safety

Date: 8/1/14

cc: Dennis Dodge, Petitioner

Town of Alexandria

Colonel Robert L. Quinn,
Division of State Police

Sharon Champagne, Moorings Supervisor

File