



# 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

MAY 29 '13 PM 12:45 DAS



Colonel Robert L. Quinn  
Director

April 1, 2013

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

RE: Boat Moorings – LAKE WINNIPESAUKEE – THIRTY-ONE MOORINGS

### Requested Action

To deny the permit application of Akwa Marina Yacht Club, LLC located on Lake Winnepesaukee in Laconia, NH as recommended by the Department of Safety, Division of State Police for a public mooring field under the authority of RSA 270:67. Akwa Marina Yacht Club, LLC is applying for thirty-one moorings. It is recommended that the application be denied.

### Explanation

Akwa Marina Yacht Club, LLC has failed to provide sufficient proof to sustain the request for the location of a Public Mooring Field in concurrence with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules Saf-C 408.

Public Hearing held February 5, 2013.

Enclosed are the Application, Map and Public Hearing Report.

Respectfully submitted,

FOR:   
Colonel Robert L. Quinn  
Director of State Police

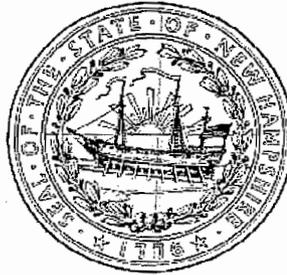
Enclosures

Application Number: \_\_\_\_\_

DECAL # \_\_\_\_\_

Permit Number: \_\_\_\_\_

Conditions: \_\_\_\_\_



# OF MOORINGS APPROVED \_\_\_\_\_

**FOR OFFICIAL USE ONLY**

**APPLICATION FOR A PUBLIC MOORING FIELD PERMIT**

**Instructions:** This application should be used for public mooring fields of 5 or more moorings. The application must be completed in its entirety with all the required documentation. Mail the completed application to:

**Department of Safety – SS – Moorings Program**  
3 Higgins Road, P. O. Box 1150, Belmont, NH 03220  
Telephone: 603-267-6453

**SAFETY SERVICES**

**SEP 06 2012**

**MOORINGS**

Applicant's name: Akwa Marina Yacht Club LLC

**NOTE: The applicant must be the owner or leaseholder of the shore front property accessing the mooring field.**

Shorefront property location: 95 Centenary Ave

Town/City: Laconia

Phone #: 603-668-8220

Contact Person/Operator: Kurt Mailloux

Mailing Address: 59 Sandy Pond PKWy City: Bedford State: NH Zip: 03110

Home Phone #: 603-231-6002 Local Phone #: 603-668-8220 Cell Phone #: 603-231-6002

The proposed mooring field is located on Lake: Winnepesaukee Town/City: Laconia

The town/city tax lot number of the shore front property is: 139-127-46

Does the applicant have title ownership to the shore front property? yes

If no please explain: \_\_\_\_\_

Number of moorings requested: 31 Applicant's shore frontage in feet: 800+

The approximate area (size) of the mooring field in square feet: 42,948 SF

The distance from shore to the furthest mooring in feet is: 238'

The number of docks at the property: 1 The number of boat slips: 76

Is there is swim raft at the property? yes What is the square footage of the raft? 64 SF

Is there a swim line at the property? no Is there a gas dock on the property? no

Is dingy docking provided? yes Is a water taxi service provided? no

Is there a pump out station for boat holding tanks? not currently

What provisions exist for refuse removal? Dumpster, recycling, and many trash cans

Are there restroom facilities on the property and if yes, where are they located? yes there are two sets of bathrooms, one near the dingy docks and one near the pool.

How many available parking spaces for automobiles and trailers? 123+

Percentage of moorings that shall be used for a full season: 50%

**Note: Unless a waiver is granted under Saf-C 408:18(d), 50 percent of the total number of moorings within a public mooring field shall not be used for a term longer than 30 days. The waiver shall be in writing and include reasons for the requested change.**

Please state all proposed charges for the use of the moorings: We currently propose the cost for one mooring will be \$1000 for the mooring, plus \$1500 for a social membership in the club for a total of \$2500, this may vary slightly depending on up keep and construction costs.

30 day rentals will be \$1000, <sup>INCLUDES</sup> ~~with~~ membership in Akwa Marina Beach Club

Please give a description of access to the mooring field from the shore: We will provide dingy docking for mooring members to tie up their dingy. It is a floating dock and makes for an easier time getting on and off of smaller craft like dingys.

Please describe the mooring buoys, including the color, shape, size and material: The mooring bouys will be 24" in diameter, white with a 2" blue band around the bouy, it will have a buoyancy of 196 lbs It will be a hard plastic 1/8" thick with high density polyurethane foam core. Part #CAL4403T

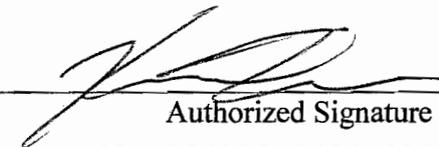
Please describe the mooring anchors, including the material used and the weight: The mooring anchor will be concrete weighing approximately 3000 LBS, and have stainless steel eye bolt.

**THE FOLLOWING DOCUMENTATION MUST ACCOMPANY YOUR APPLICATION:**

**NOTE: If the documentation requested does not apply please indicate so.**

1. Copy of the deed or lease to the shore front property.
2. A copy of all rules pertaining to waterfront use, including docks, beaches and swim rafts.
3. Five copies of a scaled map on 11" x 17" paper of the proposed mooring field. See the attached sample map for the required specifications and information.
4. A copy of the certificate of insurance for comprehensive general liability insurance against all claims of bodily injury, death, or property damage resulting from the maintenance, management, or operation of a mooring field and the amounts of coverage.
5. A statement that no other viable alternative exists for securing the boats. (If docks exist which are under the applicant's control, the applicant must show that they are not sufficient for the user's current need. Unless there are extenuating circumstances, permits will not be issued for small boats, which can be easily removed from the water such as sunfish, jetskies, pwcs, canoes, etc.)
6. A statement explaining what circumstances exist that would warrant the moorings to be located more than 150 feet from the shore.
9. Land and water directions to the shore front property.
10. Signed, certified returned receipts from each abutter. (See abutter definition on back of the application)

I, the applicant, certify that the petitioner shall indemnify and hold harmless the state, its officers and employees from all claims, liabilities or penalties resulting from the acts or omissions of the petitioner in maintaining, managing or operating the mooring field:

  
Authorized Signature AMYC LLC

I, the applicant, certify that all abutters to the shore front property have been notified of this application by certified mail, (based on municipal tax data) return receipt requested, and have been provided copies of the application and grid map.

**NOTE: Abutters: The record owner of land immediately adjacent to, and/or of any portion of land that is located within 300 feet of, the boundaries of the proposed mooring field, including properties adjacent to the water within 300 linear feet, such as in the case of coves.**

  
Authorized Signature AMYC LLC

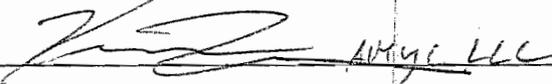
I the applicant hereby give permission for the director or his agents to enter the property for the purpose of performing a field investigation to review this application:

  
Authorized Signature AMYC LLC

**NOTE: This application may require a public hearing. The applicant and abutters will be notified as to the date, place and time of the hearing. The Department of Safety, Division of Safety Services will submit a recommendation to the Governor and Council who will approve or deny the application. The applicant and abutters will be notified in writing of the recommendation prior to the scheduled Governor and Council meeting.**

Do not send any fee with this application. If approved, by Governor and Council, notification will be sent requesting the decal fee. Your annual mooring decal(s) will be forwarded to you upon receipt of payment of the current decal fee. Decals must be renewed annually and must be attached to each mooring above the waterline prior to using the moorings. **Perimeter lighting, if required, must be installed prior to use.**

I hereby certify that all statements on this application and all documentation supplied with this application are true. Supplying false information on this application will result in revocation of any permit issued and is punishable by imprisonment. This application is signed under penalty of unsworn falsification pursuant to RSA 641:3.

Authorized Signature:  AMYC LLC Date: 7-5-12

- LEGEND**
- (1) DUNGY DOCKING
  - (2) RESTROOMS
  - (3) REFUGE REMOVAL
  - (4) PARKING FOR MARINA
  - (5) LOADING DOCKS
  - (6) MOORING LIGHTS

THIS PLAN / LIST 138-127-46  
 PROJECT NO. 463  
 DATE: 09/20/12  
 LACONIA MARINA

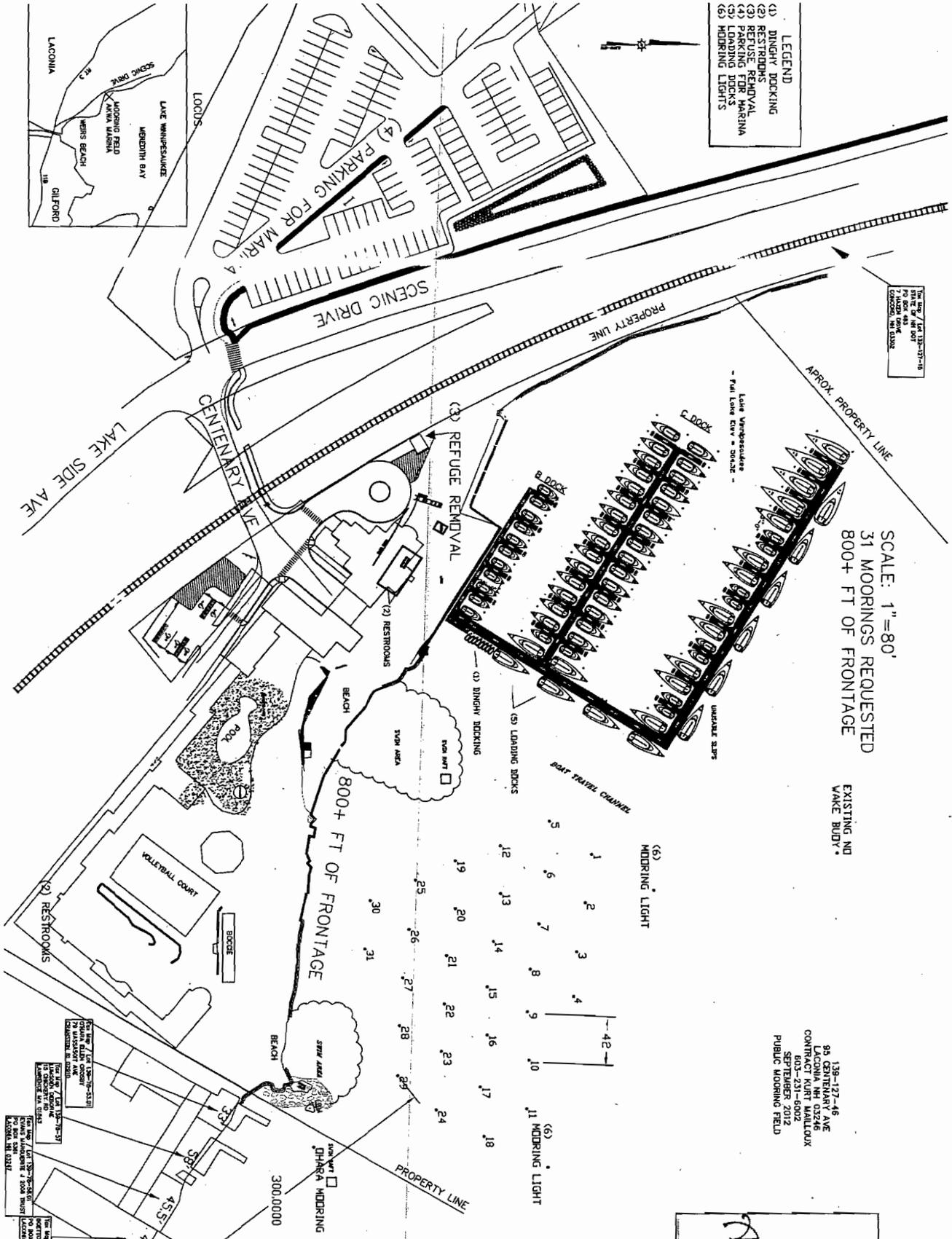
SCALE: 1"=80'  
 31 MOORINGS REQUESTED  
 800+ FT OF FRONTAGE

EXISTING NO  
 WAKE BUOY

138-127-46  
 95 CENTINARARY AVE  
 LACONIA NH 03246  
 CONTACT: 603-251-6092  
 SEPTEMBER 2012  
 PUBLIC MOORING FIELD

**Arkwa Marina**  
 yacht club

ATMFEREHS.A.T



MOORING	DEPTH	SWING	DIST SHORE
1	18	21	243
2	18	21	241
3	18	21	232
4	18	21	242
5	12	21	194
6	13	21	202
7	14	21	202
8	12	21	199
9	17	21	204
10	19	21	209
11	10	21	211
12	10	21	163
13	10	21	168
14	10	21	164
15	13	21	167
16	17	21	170
17	10	21	162
18	10	21	173
19	11	21	134
20	12	21	130
21	14	21	125
22	8	21	133
23	8	21	134
24	8	21	134
25	8	21	134
26	8	21	134
27	8	21	134
28	8	21	134
29	8	21	134
30	8	21	134
31	8	21	134

ALL MEASUREMENTS IN FEET

BOATDOCK MOORING  
 JUNIOR MOORING

SEE MAP 7 LIST 138-127-46  
 FOR MOORING DEPTHS AND SWINGS  
 SEE MAP 7 LIST 138-127-46  
 FOR MOORING DEPTHS AND SWINGS  
 SEE MAP 7 LIST 138-127-46  
 FOR MOORING DEPTHS AND SWINGS  
 SEE MAP 7 LIST 138-127-46  
 FOR MOORING DEPTHS AND SWINGS



# State of New Hampshire

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

JOHN J. BARTHELMES  
COMMISSIONER

In the Matter of

Application

## **Akwa Marina Yacht Club, LLC**

95 Centenary Avenue, Laconia, New Hampshire

Petition for a Public Mooring Field in Lake Winnepesaukee

### HISTORY:

On September 6, 2012 the Department of Safety received an application from Mr. Kurt Mailloux on behalf of Akwa Marina Yacht Club, LLC, (Akwa) or (Petitioner), petitioning for a public mooring field permit.

The specific application submitted by the Petitioner asks that thirty-one (31) moorings be established on Lake Winnepesaukee in Laconia, New Hampshire. The location of the requested moorings will be adjacent to the shorefront property at tax map #139-127-46, 95 Centenary Avenue, Laconia, New Hampshire. The approximate area of the planned mooring field is forty-two thousand nine hundred forty-eight (42,948 sq ft) square feet, with the furthest distance from the shore defined as two hundred thirty-eight (238') feet. The application offered the reasons for the requested moorings.

Department of Safety Mooring Program Supervisor, Sharon Champagne, forwarded the application for investigation and a site inspection was conducted by Sergeant Eric S. Robertson on November 28, 2012. His January 23, 2013 report was submitted by Ms. Champagne at the hearing.

Pursuant to RSA 541-A, a public hearing was held at 2:00 p.m. on February 5, 2013 at the New Hampshire Department of Safety, 33 Hazen Drive, Concord, New Hampshire. The scope of the hearing allows for and to 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.

Department of Safety Hearings Examiner Curtis Duclos conducted the public hearing as my designee.

### 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-in sheet" to present comment on the petition;
- notification that the public hearing was published in The Union Leader on January 25, 2013 which is a newspaper of statewide circulation and confirmation of publication by the newspaper was displayed;
- they could review the legal notice clipping from the newspaper, along with the original petition and any other documents; and,
- how and where to submit written comment via email or postal service that must be received by the Department of Safety within ten (10) calendar days following the hearing which was clarified as by the end of the business day February 15, 2013 before 4:15 PM.

### OFFICIAL NOTICE:

- A January 3, 2013 communication from Ms. Champagne to the Bureau of Hearings with the following:
  - The Petitioner's September 5, 2012 letter from Mr. Kurt Mailloux and application for a public mooring field permit which also provided an attached diagram and photograph of the general location (the diagram describes the area of the proposed moorings and the photograph offers an overview of the existing shoreline, docks and swimming areas);
  - A November 9, 2012 letter in reply to Ms. Champagne's October 29, 2012 inquiry from William B. Pribis, Esq. on behalf of the Petitioner;
  - A November 13, 2012 supplementary letter in reply to Ms. Champagne's October 29, 2012 inquiry from William B. Pribis, Esq. on behalf of the Petitioner; and,
  - Mooring Application Notice to the Department of Environmental Services and reply as stipulated in RSA 270:64.I(c).
- Published announcement on January 25, 2013 of the public hearing in a newspaper of statewide circulation;
- The hearing is conducted pursuant to RSA 541-A (et seq.); RSA 270:60; RSA 270:62.VI; RSA 270:64; RSA 270:67; RSA 270:68; and Administrative Rule, Saf-C 408 (et seq.);
- Notification of hearing to Petitioner's Attorney via email;
- Public Hearing Sign-in;
- Attorney Nadeau, representing several persons opposing the application, provided two "poster board-size" exhibits (*which are also enclosed within Exhibit A (d)*). The first, an aerial color photograph of the general location of the Petitioner's existing shorefront; secondly, the area where the Petitioner seeks approval of thirty-one (31) public moorings.

**EXHIBITS:**

Received at Hearing:

- Exhibit #1**      New Hampshire Marine Patrol Investigation Report
- Exhibit A**      Evidence Binder
- Exhibit B**      Meredith Bay internet page referencing the designed amenities

**SYNOPSIS OF TESTIMONY**

*(In order of Appearance)*

**Ms. Sharon Champagne**, Moorings Supervisor, provided the documents she received and transferred for review at public hearing. In addition, she submitted the site inspection and investigation report completed by Marine Patrol Sergeant Eric S. Robertson.

**Mr. Kurt Mailloux** testified at the public comment hearing as a spokesperson representing Akwa Marina Yacht Club, LLC (Petitioner). He testified that the Petitioner is the only resort marina [of its kind] on the lake that services the public. There are seventy-six (76) boat slips for rent; also, swimming pool, hot tub, a volleyball and bocce court, beaches, two (2) sets of bathrooms and showers, game room, and outdoor pavilions. Akwa is unique to New Hampshire where people come to the club and feel that it is their home on the lake. People come and some sleep on their boat; others just weekend there, some live at adjacent resorts or live close by. Mr. Mailloux said Akwa is the home of the American Boat Club; as such, there is allowed public access to the lake through what Mr. Mailloux describes as a "sort of" timeshare for a boat. This timeshare has grown exponentially which is one of the reasons there is a need for more dockage for boats. He said that there are thirteen (13) transient boat slips for people to use when visiting the Petitioner's restaurant.

Mr. Mailloux continued, next discussing the Petitioner's need for the moorings. Currently two-way-ties are used to secure boats; however, the Department of Environmental Services has not permitted the use of four-way-ties. Some boats are unable to dock safely in the existing slips based on water conditions. He continued saying that there is access to a public highway and to the proposed mooring field. There is ample dinghy docking available, but a water taxi service is not currently planned, as it would increase rental costs for the moorings. The Petitioner does not offer sanitary waste disposal facilities, but there are local companies in the area that provide this service where a boater might fuel the boat. He said the lack of this service, for that reason, would not create a water quality issue. The same holds true for a holding tank pumping out facility as all boats on Lake Winnepesaukee are required to have a holding tank on board. As to other wastes, there is a garbage area located on the submitted map at location number three (#3). In addition, floating boats do not have an effect on the water quality, nor is there an area that will have an adverse effect on wildlife or natural areas.

Mr. Mailloux said that the Petitioner was careful in the planning of placing moorings away from the property boundaries to give people space, especially "Little Beach", with a corridor to allow access to the lake without going through a mooring field. The marked swimming areas do not have swim lines; people may swim anywhere along the shoreline. He explained that the marked mooring locations in closer proximity to the swim areas show the locations being further from the shoreline, contrasting mooring number thirty (#30) to mooring number five (#5) as an example. Mr. Mailloux drew the map submitted by the Petitioner. He explained that each of the requested thirty-one (31) mooring locations have a forty-two (42') foot radius, so that if a circle was drawn around each location, no circle will overlap another. The forty-two (42') foot radius was used from existing mooring plans he located.

In closing, Mr. Mailloux believes the requested public mooring field is located in front of the property. The location does not interfere with the right to swim, launch kayaks and enjoy the lake by way of the Little Beach Area, which is a part of the Petitioner's property. He voiced concern over the language within the investigator's report regarding this beach area saying that the court litigations have been ruled on and the opinions on this subject should not be taken into account.

**Regina A. Nadeau, Esq.**, spoke in opposition to the proposed moorings on behalf of a number of persons she represents who are each listed on the cover of her submitted "Evidence Binder" [Ex. A with sub headings (A-F)]. Attorney Nadeau, using the poster board-size aerial photo and map, along with the enclosed documents, argued her reasons for denying the Petitioner's application. She represented many of the persons listed on the binder in a successful court decision regarding "Little Beach". Other users of this location have signed a document as opposed to the application for moorings. Counsel argued that the Petitioner's request for moorings is an egregious proposed overuse of this property based on the history and future planned use. She explained that the Petitioner's property used to be the Brickyard Marina. On the hill behind the marina, the Brickyard Mountain Lodge, also known as Brickyard Mountain Resort, was then subdivided into two (2) timeshare condominium projects. Those condominium projects were given deeded beach rights to the shorefront property as a means to market [the projects] [Ex. A, (c)]. The easement, (project two), consists of hundreds of unit owners, each with beach rights. The beach rights include swimming, sunbathing and launching small craft within the two areas including the full shorefront.

More recently, in early 2000 or so, further development of the area on the hill occurred. A marina project was submitted as a part of that development. Attorney Nadeau said that she objected that the developer did not have sufficient shorefront to support the proposal under the Laconia ordinance. The applicant set up two different corporations, one to run the marina and the other to sell the lots located "up on the hill" with a private agreement for the people buying lots to become members of a club, evading the city ordinance prohibitions of zoning. Counsel noted that through a de facto<sup>1</sup> perspective, her clients still have the beach access in place. This is the second time a further development has overburdened this property.

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<sup>1</sup> Black's Law Dictionary-Fifth Edition (1979) "In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate. ...."

Counsel argued her statements' relevance based on [Ex. A, (d)] saying that the existing dockage with the proposed mooring field and the travel paths to get around and dock, make known that four and one-half (4½) acres of state park is being allocated for this commercial entity's use [the Petitioner] and is the same size as three and one-half (3½) football fields.

Counsel next focused on [Ex. A, (e)] regarding need, pointing out that RSA 482-A (*which regulates docks*) currently allows a commercial entity to have one (1) boat slip for every twenty-five (25) feet of frontage. The Petitioner claims eight hundred (800') feet of frontage so by law is entitled to thirty-two (32) boat slips; however, the Petitioner has seventy-six (76) boat slips because they were "grandfathered". She submitted that now the Petitioner wants thirty-one (31) moorings bringing the allowed thirty-two (32) boat slips to one hundred and seven (107) boat slips. Attorney Nadeau argued the purpose for moorings is there is not sufficient dockage. Currently the Petitioner has twice the amount of dockage they would have under the law. She argues there is nothing offered to show how the public is going to be able to rent the moorings. There is no indication that the "people up on the hill" are the benefactors of the moorings; during today's testimony, she said it was noted that the "people up on the hill" will be able to use the moorings.

Attorney Nadeau said that she is skeptical about any claim that this Petitioner's application falls within the parameters of the intent of a public moorings field. She submitted that the petition is an additional marketing tool and a money making operation for the existing marina. She argued that Administrative Rule, Saf-C 408.09 suggests the Petitioner did not identify all the easement holders and that a unilateral cordoning off of three and one-half (3½) football fields will not allow boats to get in or out. With no existing swim lines and with the addition of mooring boats in the proposed mooring locations, it is a substantial reduction in her clients' access and use of this beach area based on the court's order. There is nothing within the application by the Petitioner or as presented, that explains how the public will have access to the moorings other than the price for short-term and for long-term users. Short-term users will not be required to pay a membership fee, but some of the "people up on the hill" may already be members. There is no way made known that the Petitioner is helping the public and, if accepted, the mooring field will reduce her clients' historic usage. The aerial photograph, [Ex. A, (d)], illustrates the overall area and the lots in the vicinity and it shows the proposal is overwhelming in comparison to other [use of the lake] in the area; an unfair cordoning off of "state park" for this individual purpose.

**Mr. Lewis Hunter** testified against the proposed mooring field. He is an abutter to the Petitioner and has a mooring in front of his property. His concern focused on the size and location of the proposed field based on his understanding of the law. Mr. Hunter testified that his use and enjoyment of the lake extends to his family. Some of his family members enjoy tubing and, because they are young, he travels along the shore just beyond the no wake zone. His understanding is that he will be required to travel one hundred fifty (150') feet beyond the mooring field before he can accelerate above a no wake speed limit. This will bring the boat and the tuber being towed within the major pathway of boats traveling to and from Meredith and Weirs Beach and is dangerous to the children. He attended the public hearing to explain that he enjoys the lake by sitting on his porch and looking down toward Meredith and it is beautiful. He sees the sunsets and the approaching

storms. But if the mooring field is approved, will be looking at many boats. He understands why this is being requested - because [*the Petitioner*] is a developer and is trying to make money and taking every opportunity to do so. Mr. Hunter hopes that he can pass the property along to his family so they may enjoy it as he and his wife have for many years.

Mr. Hunter is also concerned about the sanitation, not just from debris, but from the number of boats with more gas and oil and other waste materials affecting the water quality and all the children using the lake. He does not understand the application seeking a public mooring field, because there is nothing public about the application requested. Fees are being paid to a developer to use the field. He believes there is an over-development of the area and is concerned that there is over utilization of the nice clean lake and wants to continue to enjoy the lake and this field will, in the long run, infringe on him as a user of the lake area swimming, snorkeling and tubing. Mr. Hunter closed saying that although he is not associated with the attorney's clients, he concurs with her statements.

**Mr. Ed Ricate**, who has rights to Little Beach, testified against the proposed mooring field. His concern is for his family including eight (8) grandchildren. He explained that they use floats and float out fifty (50') feet or more from shore. His son-in-law snorkels, so safety and environment issues, (mainly oil and gas emissions) were discussed and of his concerns for those emissions discharging toward the beach. As to safety, he said boats traveling in toward the moorings and away from the area are concerns. He used an example of a twenty-five (25') foot boat leaving and having its aft end towards the beach; the boat will be located within twenty-five (25') feet of the shore. He pointed out that small boats do not have waste disposal and if remaining on their boats drinking soft drinks or beer, he mused, how will they eliminate [*the waste product*]. He said there is no pump out facility and sometimes the boaters sleep on their boats and asked what the boaters will use for waste disposal.

**Persons** (as listed on the *Public Hearing Sign In*) when called upon did not wish to provide oral commentary.

#### **SYNOPSIS OF COMMENTARY and/or DOCUMENTS RECEIVED AFTER THE HEARING:**

*(In alphabetical Order)*

**Mr. Derek Bekar** submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for his family to be able to enjoy Lake Winnepesaukee.

**Ms. Shanna Bekar** submitted by email that she is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for her family to be able to enjoy Lake Winnepesaukee.

**Mr. and Mrs. Peter & Donna Boettcher** submitted commentary that they are not in favor of the proposed public mooring field at Akwa Marina Yacht Club. They referenced water-quality issues such as persons sleeping on moored boats failing to use proper restroom facilities at the marina.

**Mr. Brad Cole** submitted by email that he is in favor of the proposed public mooring field.

**Attorney Amy Connolly** submitted by email that she is in favor of the proposed public mooring field. The moorings will greatly enhance any family's vacation to Lake Winnepesaukee.

**Ms. Jessie Dick** submitted by email that she is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for her family to be able to enjoy Lake Winnepesaukee.

**Ms. Meghan Doyle** submitted by email that she is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for her family to be able to enjoy Lake Winnepesaukee.

**Mr. Michael Gagnon** submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for his family to be able to enjoy Lake Winnepesaukee.

**Mr. Anthony Kostek** submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great option for his family to be able to enjoy Lake Winnepesaukee.

**Mr. Jimmy Mackin** submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for his family to be able to enjoy Lake Winnepesaukee.

**Mr. John Makin** submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for his family to be able to enjoy Lake Winnepesaukee.

**Ms. Sara Makin** submitted by email that she is in favor of the approval of Akwa Marina mooring permit. She stated that with the "down economy", the moorings are a cost-efficient way for families to enjoy the lake who may not be able to. It is also important for children to spend more time outdoors and to be active so the more that "kids" get to enjoy the lake.

**Mr. Henry Marsh**, as a lifelong New Hampshire resident, submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for his family to be able to enjoy Lake Winnepesaukee.

**Mr. Gary McCarthy** submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for his family to be able to enjoy Lake Winnepesaukee and promote business in the area.

**Attorney Alvin Nix, Jr.** represents the Village at Winnepesaukee ("Village"). The Village objects to the Petitioner's application for a public mooring field stating that the Village has an easement to use, for recreational purposes, certain portions of the property owned/operated by the Petitioner. Counsel also objects to the restriction of submitting a response no later than ten days after the public hearing because the Village was entitled to notice; therefore, [its] due process rights have been violated.

Attorney Nix argues that the size and scope of the proposed public mooring field is excessive, pointing out that there is already a high number of boats docked in this area of the lake. A field of this size, he notes, only will increase the number of boats that have the potential of leaking oils, fuels, fluids and effluents into the lake. The safety hazards include environmental disasters if the unattended boats' mooring lines tangle and break causing the boats to be driven by the wind into the shoreline. Attorney Nix also asks the fact finder to consider who will monitor the boats as they travel to and from the mooring, with the occupants using surrounding waters as a bathroom along with the noise due to disembarking through the night, sheets and tackle banging against masts and overnight parties. The "parking lot" affect of this public mooring field will create obstruction to the public's view of the lake and mountains and has the potential to cause environmental impacts to the beaches used by the Village and the public.

**Mr. Brooks Polleck** submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for his family to be able to enjoy Lake Winnepesaukee.

**Attorney William Pribis** submitted supplemental information on behalf of the Petitioner. Counsel indicates that the Petitioner strongly disagrees with the conclusions reached in Sergeant Robertson's report arguing that the photographs are mistakenly described or have been manipulated through inconsistent use of a "zoom" lens to support his conclusions. Counsel argues that the sergeant suggests the "closest mooring" will interfere with the swimming area. Attorney Pribis notes that there are two (2) moorings; mooring number thirty (#30) is located about fifty-six (56') feet and mooring number thirty-one (#31) is fifty-four (54') from shore. Counsel argues that the sergeant confused "distance to shore" with "distance from the shore" of any swim area, noting the "shore" the investigator measured is not part of the Petitioner's swimming area. The three (3) moorings closest to shore are said to be sixty (60') feet from the shore. Counsel disagrees noting the measurements reveal the three closest moorings are between one hundred thirty-four (134') feet and one hundred sixty-three (163') feet away from the shoreline.

The Petitioner points out that the size of the boats (as stated at the hearing) using the forty-two (42') foot dimension on the application is based upon a sample application provided by the Department of Safety. It is the Petitioner's intent to moor only smaller boats. Larger boats will use the existing docking system. The Petitioner intends to apply for and install swim lines for both beach areas.

Other concerns discuss claims proffered by Attorney Nadeau, speaking on behalf of persons claiming easement rights to the "Little Beach" swim area. Attorney Pribis points out that these individuals have taken informal and formal steps and actions towards stopping the development of the Petitioner's property. He points to a lawsuit (a portion of which is appended to his submission), saying that the claims submitted within (F) subsection of the "Evidence Binder" are misleading. The discussion of legally existing docks is not a per se basis for denying the Petitioner's application. Instead, he argues the issue is whether the existing dock space is sufficient for the applicant's current need. The Petitioner is unaware of any specific requirement of notification to "easement holders", acknowledging the statute requiring notice to "abutters". With ample notification provided through the

Department of Safety's public notification process, and although the statute requires notice to "abutters", with no protest from the Village of Winnepesaukee, this should not be a basis for denial. Counsel argues that the clients represented by Attorney Nadeau do not have legal standing to raise notice issues that do not concern or affect them, directly or indirectly.

The Petitioner notes the objection to the application focuses on safety concerns. Counsel argues such concerns are unfounded because the mooring field is located and operated at the marina, which is designed for the docking and mooring of boats. The nature of the Petitioner's facility makes it a far better location than elsewhere on the lake.

Attorney Pribis submitted that, to the extent recreational users would be limited in any manner by the proposed mooring, Akwa Marina notes that the primary group affected would be its own members. As a practical matter, there is extremely limited "general public" recreational use of the mooring area that could be affected by the moorings. He said the proposed mooring field will not extend past the Marina's already existing docks and is otherwise in an area where general boating traffic would not travel due to the location of the Marina's docks and the configuration of the shoreline. The application, if approved, will provide the public with opportunities to access Lake Winnepesaukee for boating and other recreational purposes at a reasonable cost. In closing saying that simply put, the proposed mooring field creates far more recreational opportunities than it eliminates.

**Mr. Robert Rist** submitted by email that he is in favor of the proposed public mooring field at Akwa Marina Yacht Club. The moorings will be a great way for his family to be able to enjoy Lake Winnepesaukee.

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#### **STATISTICS:**

- On February 5, 2013, fifteen (15) persons attended the public commentary hearing.
    - (5) Five persons spoke, with one (1) person delivering information from the Department of Safety referencing the investigation of the application.
    - (1) One spoke on behalf of the Petitioner.
    - (3) Three persons spoke against the Petition, with one of the three providing commentary on behalf of (24) twenty-four persons, along with (55) fifty-five persons as signers of a document against the proposal (*some of which are also listed as a part of the (24) twenty-four represented by counsel*).
  - Within the ten (10) days following, seventeen (17) letters or email comments were received
    - (16) Sixteen are in favor of the petition
    - (1) One representing the Village at Winnepesaukee is against the petition
  - On Friday, February 15, 2013 the hearing was closed to public comment at the end of the business day.
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## **LEGAL ANALYSIS:**

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

### **270:12 Operating Restrictions. –**

- 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, adopt rules governing the maximum horsepower of boat engines and outboard motors or prescribe maximum speed limits for the operation of such boats or outboard motors applicable to or upon all or any portion of the public waters of this state. The commissioner of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and outboard motors on bodies of public water having an area of 35 acres or less; provided, that said prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75 through 270:132. Hearings under this section shall be held in the vicinity of the body of water under consideration during the months of June, July, August, and September following the date of the petition.
- II. Notwithstanding the provisions of RSA 270:12, I, any hearings regarding the closing or restricting of any body of water to seaplanes shall be addressed to and heard by the commissioner of safety or his designee. Prior to issuing a decision, the commissioner shall consult with the director of aeronautics, rail, and transit, department of transportation.
- III. Persons petitioning the commissioner requesting a change of use or restriction of the use of any public waters shall notify, by certified mail, all abutters with deeded waterfront property or deeded water access rights of the proposed change or restriction and the department shall post the petition on its official website at least 2 weeks prior to a public hearing scheduled by the department.
- IV. In this section, "abutter" means any person who owns property immediately adjacent and contiguous to the area on which the change of use or restriction of use will take place. If the change of use or restriction of use is located in an area which by its configuration would cause the change or restriction to affect noncontiguous properties, owners of those properties are considered as abutters. The term does not include the owner of a parcel of land located more than 1/4 mile from the limits of the proposed change or restriction.

### **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. . . ."

### **270:59 Definitions. – In this subdivision:**

- I. "Director" means the director, division of state police, department of safety.
- II. "Division" means the division of state police, department of safety.
- III. "Mooring" when used as a noun, means a mooring anchor, or other fixed object or stationary point, with or without a mooring buoy together with attached chains, cables, ropes, and pennants and related equipment used for the purpose of securing watercraft.

- IV. "Mooring anchor" means any anchor or weight which is designed to rest on the bed or to be buried in the bed of a navigable water body, which is designed to be attached by a chain, cable, rope, or other mechanism to a mooring buoy and which is designed to be left in position permanently or on a seasonal basis.
- V. "Mooring area" means an area which has been designated as an appropriate location for a concentration of individually permitted moorings to be placed.
- VI. "Mooring buoy" means any float or marker which is attached to a mooring anchor and either is suitable for attachment to a boat through the use of a pennant or other device or facilitates the attachment of the boat to the mooring anchor.
- VII. "Mooring field" means any group of 5 or more moorings with individual moorings located according to a plan and maintained by an individual, organization, business, or governmental entity which is responsible for assignment of mooring locations and general supervision of the mooring field.
- VIII. "Shorefront property" means any property recognized as a legal building lot by a municipality, having shore frontage on public waters. "Shorefront property" shall include:
  - (a) A lot on the public waters that is divided by a road so that the buildable portion of the lot is on the opposite side of the road from the public waters or divided by an exclusive right-of-way which has been acquired as a result of an eminent domain proceeding which resulted in the break or loss of property between the property owner's residence and shore frontage.
  - (b) A lot of record with not less than 50 feet of frontage. A lot with less than 50 feet of frontage may be included if the lot owner obtains the written consent of the abutting property owner that the abutting property may be included in the footage calculation. Such consent shall be signed by both parties, notarized and filed with the mooring application. Shorefront property shall not mean a deeded right-of-way, nor shall it mean lots not contiguous to the shore with any other type of legal shorefront access. For the purposes of this subdivision, property owned in common by condominium associations or other groups shall be deemed owned by the group and shall not convey any rights under this subdivision to its individual members.
- IX. "Public mooring field" means a mooring field that is not a congregate mooring field.
- X. "Congregate mooring field" means a mooring field dedicated to homogeneous use group.
- XI. "Small mooring sites" means sites consisting of 2 to 4 moorings, inclusive.

**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.

**270:62 Decal Issuance; Display; Replacement; Renewal; and Fee. –**

- I. The division shall issue a decal containing a control number for any mooring to any person who has completed the permit application procedure adopted pursuant to RSA

- 270:71 and met the requirements of this subdivision and applicable rules. A record of the issuance of the decal for a particular mooring shall be maintained by the division.
- II. The decal shall be affixed to the mooring buoy according to rules adopted by the division under RSA 541-A.
  - III. If the decal is lost, destroyed, or removed from the mooring buoy, the owner shall notify the division as soon as possible and shall apply for a replacement decal.
  - IV. Any decal issued pursuant to this subdivision shall be valid until December 31 of each year. Decals shall be renewed prior to the use of the mooring in the following year.
  - V. A fee of \$125 shall be charged for each initial decal issued pursuant to this subdivision which shall be deposited in the navigation safety fund established under RSA 270-E:6-a. An annual mooring fee of \$50 for each mooring in a congregate mooring field and \$25 for each mooring not in a congregate mooring field shall be charged for each decal renewed pursuant to this subdivision which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.
  - VI. A hearing shall not be required for the renewal of a permit for a congregate mooring field, unless there are changes in the permit or a hearing is requested after notice has been issued.

**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).

**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 408.08** Public Mooring Permit Application.

**Saf-C 408.09** Rejection of Mooring Permit Application and Revocation of Mooring Permit.

- (a) The director shall reject an application for a mooring permit, or revoke, after notice and an opportunity for a hearing, a mooring permit for any of the following:
- (1) The location interferes with or impedes navigation and subsequently constitutes a hazard to public safety;
  - (2) Viable and safe alternatives exist for securing the boat;
  - (3) Adequate docking facilities exist, over which the applicant has control;
  - (4) The owner of shorefront property who has authorized a person to cross his or her land to gain access to the mooring, fails to file an application on behalf of the individual;
  - (5) The owner of a shorefront property who filed and received a mooring permit on behalf of a person without shorefront property decides he or she no longer wants the individual to cross his or her property to access the mooring or no longer owns the property;
  - (6) Evidence exists that the mooring might be transferred, leased or sold;
  - (7) False information was given on the application form, unless the false information is of such an inconsequential nature, such as, but not limited to, a typo or a misspelled name or address;
  - (8) The proposed location for the mooring unreasonably interferes with recreational uses of the water and adjacent land;
  - (9) The director or his designee determines that the corners or the perimeter of the mooring field shall be designated by orange buoys with non-strobe flashing orange lights, but the operator of the mooring field refuses to install said buoys and lights and has attached boats to the moorings;
  - (10) There are more moorings installed than the number allowed and stated on the approved mooring permit application;
  - (11) The public mooring field does not have at least one designated public access;
  - (12) The public mooring field has a membership requirement;
  - (13) The public or congregate mooring field does not have an operator;
  - (14) The public mooring field operator allows more than 50 percent of the total number of moorings within the field to be used for a term longer than 30 days;
  - (15) The public mooring field operator is found to be in violation of the provisions of Saf-C 408.13;
  - (16) It is determined that the water depth, shoreline configuration, wind exposure, domestic water use in the area and other environmental conditions and effects are such that the location is not appropriate for moorings; and
  - (17) Non-compliance with Saf-C 408.
- (b) For the purposes of (a)(8) above, a mooring location shall be considered an unreasonable interference if:
- (1) It interferes with an abutter's use of the water in front of his or her property;
  - (2) It poses a safety hazard to users of a public beach;
  - (3) It is located so close to another existing mooring that the attached boats may collide;
  - (4) The location poses a navigational hazard to other boaters; and
  - (5) Any other interference that creates a hazard.
- (c) For the purposes of (a) above, hearings shall be held pursuant to Saf-C 202.

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 are given weight in determining findings. Greater significance however, is given to the specific information submitted for review by testimony and exhibits. My fact-finding includes all documents the hearings examiner took official notice of and the statutory laws and administrative rules cited. My evaluation includes all of the commentary either for or against the requested public mooring field.

During the hearing, the spokesperson for the Petitioner set forth the Petitioner's need for a public mooring field describing the overall location and amenities. His description included the marina area and the use of the existing shorefront beach areas and boat slips. Due to the growth in timeshare sales and use of docked boats as a timeshare for some to sleep overnight, there is a need for more docking. The reason given is that certain types of boats have been damaged at the current docks caused by weather-related conditions that the "two-way tie system" has not prevented.

Currently, there are thirteen (13) boat slips for people to use when visiting the Petitioner's restaurant. I place weight to the investigator's report because the investigator is a sergeant who has experience in matters involving usage of the water and the Title XXII statutes and administrative rules associated with marine law. I focus on RSA 270:60.1 (a),(b),and (c). The photographs I recognize as a way to visualize the areas listed within the Petitioner's application. I understand that depth perception may be altered with zoom lenses; so I consider this, as applicable, along with the pictures and as explained with his approximate measurements. His report also reveals concern that there are potential hazards to individuals swimming in or around the mooring field while boats are potentially operating in the area. The number of moorings in the mapped location may contribute to boat damage depending on the size of the boat, amount of lead line between the boat and mooring, the wind, waves and boat chop. In addition, the sergeant notes his concern with the two "swim areas" being located so close to an area where boats, potentially several boats, may be maneuvering in close proximity to swimmers. I also note that persons speaking against the petition voiced concerns for swimmers and persons snorkeling and maneuvering small craft such as kayaks, canoes and floatation devices through the mooring field or in/near the path of in/outgoing boats. The sergeant's conclusions show his concerns about the potential number of users and the competing uses of the public water in this area and about a mooring field of this size increasing the potential for a hazardous condition to occur.

The Petitioner was informed of the need to comply with RSA 270:12, IV. This requirement discusses notification to abutters. The Petitioner believes this department has handled the matter in this instance and that easement holders are not specified within the law. The amendment to law added recently places the responsibility of notification to abutters by the Petitioner. In this hearing, the State notified abutters via certified mail and by public notice to the City of Laconia and publication in a newspaper of statewide circulation. The argument as to a definition of abutters and easement holders

that has been the subject of multiple judicial rulings involving the beach rights for this matter does not require, for this review, any specific response.

There was insufficient documentation or testimony received from the Petitioner showing a need for additional locations for a boat to be docked or moored. In conclusion, I have not found any practical purpose presented by the Petitioner to permit a public mooring field at this location.

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 Akwa Marina Yacht Club, LLC, (Petitioner) requested, by application, the Department of Safety to conduct a public hearing seeking approval of a Public Mooring Field.
2. A mooring application notice was sent to the Department of Environmental Services and a reply, as stipulated in RSA 270:64.I(c), was returned with no adverse comment.
3. Official notification for the hearing was published in the Union Leader, Manchester, New Hampshire, on January 25, 2013, a newspaper of statewide circulation.
4. A public hearing was scheduled on February 5, 2013 at 2:00 PM on the issue and conducted pursuant to RSA 541-A (et seq.); RSA 270:60; RSA 270:62.VI; RSA 270:64; RSA 270:67; RSA 270:68; and Administrative Rule, Saf-C 408 (et seq.) at the Department of Safety, 33 Hazen Drive, Concord, New Hampshire.
5. The Petitioner's application offered the reasons for the requested moorings within a Public Mooring Field describing the area on a plan/map/diagram submitted by the Petitioner, prepared by Mr. Mailloux, the Petitioner's designee. The plan/map/diagram encompasses the shorefront property at City of Laconia tax map #139-127-46 and the public water within Lake Winnepesaukee.
6. The specific application submitted by the Petitioner asks that thirty-one (31) moorings be established on Lake Winnepesaukee in Laconia, New Hampshire within the Public Mooring Field sought.
7. The requested moorings are plotted to be located adjacent to the shorefront property at 95 Centenary Avenue, Laconia, New Hampshire. The approximate area of the planned public mooring field is forty-two thousand nine hundred forty-eight (42,948 sq. ft.) square feet, with the furthest distance from the shore labeled as two hundred thirty-eight (238') feet.

8. Neither the plan/map/diagram nor the application provided any detail as to the size of any boats that will be a part of the public mooring field.
9. The plan/map/diagram fails to provide satisfactory placement and distances referenced within the Petitioner's application and testimony at the public hearing to provide sufficient clearance between moored boats or other vessels or persons using the water near or within the field.
10. Restroom facilities are available.
11. Dinghy docking will be provided, but not water taxi service.
12. The Petitioner does not have sanitary waste disposal facilities or boat holding tank pumping out facilities.
13. The number of available parking spaces is presently sufficient, but the Petitioner has not provided accurate information to support thirty-one (31) added moorings.
14. The Petitioner has access to a public highway; access to a mooring field or area.
15. The Petitioner has not provided adequate information to show that the proposed public mooring field will not present an unreasonable adverse effect on the surroundings including whether a mooring field, in this particular location, shall unreasonably interfere with recreational uses of the water adjacent to the land. RSA 270:60 and Saf-C 408.12.(b)(4). The Petitioner reasons that the proposed mooring field creates far more recreational opportunities than it eliminates, but fails to provide details on which to formulate a reference to reach a decision in favor of the Petitioner.
16. The New Hampshire Department of Safety, Division of State Police Marine Patrol enforces the statutes and rules governing the public waters within Lake Winnepesaukee in Laconia, New Hampshire and navigational and moorings laws are enforced through that agency.
17. Sgt. Robertson conducted a full investigation and recommended denial of the moorings field due to safety concerns.
18. The affect which adopting or not adopting the petition would have upon the public safety is considered. There are thirty-one (31) moorings requested that would be contained within an area described as three and one-half (3 ½) football fields within the public waters; in addition, the law requires that a speed of No Wake (minimal steerage speed) shall be maintained within one hundred fifty (150') feet surrounding the field. Saf-C 408.12.(b)(2)(b). There is not adequate and accurate information to support the Petitioner's request.

**DISCUSSION - DISPOSITION:**

The submitted information is thoroughly taken into account within the Petitioner's application and testimony, along with public commentary received. I respectfully recommend denying the petition based upon the Findings of Fact listed (*Supra*) and reaching the following Conclusion of Law.

**CONCLUSION OF LAW:**

The Petitioner has failed to provide sufficient proof to sustain the request for the location of a Public Mooring Field in concurrence with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules Saf-C 408.

**RECOMMENDATION:** New Hampshire Governor and Council

I recommend this Petition **be denied**. The evidence demonstrates that the Petition is not in the public interest and fails to satisfy the purpose of law. There is **insufficient proof** of the Petitioner meeting the burden by a preponderance of the evidence and therefore Akwa Marina Yacht Club, LLC has failed to show cause that the Public Mooring Field should be allowed pursuant to RSA 270:67, RSA 270:68 and Administrative Rule, Saf-C 408.

Respectfully yours,

  
\_\_\_\_\_  
John J. Barthelmes, Commissioner  
Department of Safety

Date: 3/15/13

cc: to the following:  
Via email or U.S. Mail

**William B. Pribis, Esq.**  
Cleveland Waters and Bass, P.A.  
PO Box 1137  
Concord, NH 03302-1137

**Regina A. Nadeau, Esq.**  
Normandin, Cheney & O'Neil, PLLC  
PO Box 575  
Laconia, NH 03247-0575

**Alvin E. Nix, Jr., P.C.**  
261 South Main St.  
Laconia, NH 03246-3718

**Colonel Robert L. Quinn**  
Director of State Police

**Christopher Casko, Esq.**  
Administrator, Bureau of Hearings

Distributed to Petitioner, Abutter(s),  
and the City of Laconia by the  
Mooring Supervisor

File