

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Case No. 218-2026-CV-00610

SALLY STEWART KING et al

v.

TOWN OF RYE et al

PLAINTIFFS' MOTION TO RECONSIDER THE COURT'S JUNE 11, 2026 ORDER

NOW COME Sally Stewart King, Scott F. Marion, Michelle Tyminski, and Deborah Taylor, by and through their undersigned counsel, and respectfully file this Motion to Reconsider the Court's June 11, 2026 Order (Doc. 21).

INTRODUCTION

This Court's June 11, 2026 order illustrates why the duty of candor to the Court is paramount. As addressed herein, a misrepresentation made by the Town—contradicted by the record in this case—has become the cornerstone of this Court's finding that the Plaintiffs have failed to demonstrate immediate and irreparable harm warranting a preliminary injunction. Having been deprived of crucial time to preserve a valuable natural resource, the Plaintiffs must now again address the Town's deliberate misstatement of facts that has created understandable confusion for this Court.

STANDARD FOR RECONSIDERATION

Pursuant to New Hampshire Superior Court Rule 12 (e), a motion for reconsideration "shall state, with particular clarity, points of law or fact that the court has

overlooked or misapprehended. . .”

ARGUMENT

I. The Court’s Order misapprehends the harm to the Plaintiffs as having already occurred. It continues to be immediate, great, and irreparable.

The Town has alleged that “according to the Plaintiffs’ own expert, that the Barn must be open by May 15, 2026 in order to allow nesting opportunities. . . the nesting opportunity for the swallows has passed and thus no imminent, irreparable harm can be credibly asserted.” Doc. 12, ¶ 4. The Court appears to have accepted this gross misrepresentation of ornithologist Mara Silver’s expert opinion, even though it was addressed at length by undersigned counsel in arguments before the Court. *King et al v. Rye*, 218-2026-CV-00610, Preliminary Hearing, May 22, 2026 (audio at approximately 13:40:00 – 16:00:00).

Ms. Silver has never opined, as has been suggested by the Town and apparently believed by this Court, that this year’s entire nesting opportunity for the swallows would pass on May 15, 2026. *Id.*, and see Doc. 21 at 5. Ms. Silver has opined that “... as long distance migrants, timing of nesting is critical, as Barn Swallows are on a tight breeding schedule, typically raising two broods of 2-6 chicks in just 3-4 months.” Ex. 8, *Silver Expert Aff.* ¶ 4. For these reasons, it was her opinion that if the barn swallows did not regain access to the Goss Farm barn by May 15, there would be great and irreparable harm done to the colony by the loss of at least one brood. *Id.* ¶¶4-5.

Although the passage of time since the May 22, 2026 hearing has now almost certainly resulted in the loss of one brood of chicks (cutting the season’s reproductive

output by half), a single late brood of chicks from a shortened breeding season can still be saved. That late brood and the continuation of the local swallow population thereby, continues to be in imminent danger of immediate, great, and irreparable harm as are Plaintiffs' enjoyment of these birds and their benefits aesthetically, recreationally, and ecologically.

II. The Court's balancing of the harms is skewed by failure to recognize the imminent, great, and irreparable harm to the Plaintiffs that can still be avoided.

Plaintiffs contend that the RCC acted unlawfully by evicting the swallows, as conservation commissions have a statutory duty to protect natural resources. *See* RSA 36-A:2 and RSA 36-A:4, I. Plaintiffs further contend that the Public Trust Doctrine places an additional duty upon the RCC to manage valuable natural resources in the public interest rather than prioritize the creation of event space. The RCC's duties are not diminished, and its statutory authority is not expanded, by any easements or agreements it might enter into or any expenditures it might make.

Unfortunately, the Court's balancing of the harms focuses on the Town's expenditure for cleaning and overlooks that the Town has pointed to no legal authority allowing its Conservation Commission to manage a manmade structure on conservation property to the detriment of the swallow colony – an incredibly valuable natural resource. The plain text of RSA Ch. 36-A provides no such authority, while no expert has opined that the swallows must be evicted from the barn for it to be used by people.

An injunction bond could mitigate any risk of damages to the Town from being wrongfully enjoined. However, Plaintiffs contend that any damages that might be

incurred are severely overstated by the Town and would be a result of the RCC's failure to stay within the confines of its statutory authority. Therefore, Plaintiffs continue to believe that a nominal or no injunction bond should be required if injunctive relief is granted.

III. The Court's finding that the preliminary injunctive relief and final remedy sought by Plaintiffs are identical overlooks the remainder of the swallows' breeding season that could be saved.

If granted a preliminary injunction, the Plaintiffs would have the opportunity to save half of this year's barn swallow breeding season and offspring while pursuing permanent relief protecting the swallows in years to come. If the Plaintiffs are not granted a preliminary injunction, even if they ultimately prevail, there will be significantly less returning birds – and possibly no colony next year – to be saved by a final order.

IV. The Court's finding suggests that the timing of the Plaintiffs' action is a factor in its decision, but the Court misapprehends the timeline of events in this case.

Plaintiffs were not eager to seek judicial intervention here, and their timing was not designed for any sort of strategic advantage (a seed planted by the Town that seems to have taken root). The Court asserts that the Plaintiffs "filed this action. . . after a year of discussions with the Town regarding its intention to close the barn to the swallows. Moreover' the plaintiffs filed this action after the Town cleaned and closed the barn to the swallows." Doc. 21 at 4. Both assertions are incorrect. The barn was closed initially outside the breeding season, and the RCC did not decide to close the barn to the swallows until January 22, 2026. *See* Ex. 15. Furthermore, the cleaning to remediate years of accumulated waste took place months before the decision to evict the swallows, in fall of

2025. *See* Ex. I at 2. Plaintiffs' time spent deciding next steps, securing counsel, and filing suit, were normal and do not excuse or mitigate the RCC's failure to operate within the confines of its statutory authority.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- A. Grant this Motion to Reconsider.
- B. Grant the preliminary injunction requested by the Plaintiffs.
- C. Grant such other relief as this Court deems just and necessary.

Respectfully submitted,

**Sally Stewart King,
Scott F. Marion,
Michelle Tyminski,
and Deborah Taylor**

by their attorney,
Law Office of Sheridan T. Brown, PLLC
d/b/a Long River Law

Dated: June 11, 2026

/s/ Sheridan T. Brown

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SUPER. CT. R. 3 (A) CERTIFICATION

I HEREBY CERTIFY that on June 11, 2026 a copy of the foregoing *Plaintiffs Motion to Reconsider the Court's June 11, 2026 Order*, filed through the Court's electronic filing system, has been sent electronically to counsel for the Defendant.

/s/ Sheridan T. Brown
Sheridan T. Brown, NH Bar# 18911