

**THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT**

**Rockingham, SS.**

**SUPERIOR COURT**

Sally Stewart King, et al.

v.

Town of Rye

Docket No. 218-2026-CV-00610

**ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

The plaintiffs, Sally Stewart King, Scott F. Marion, Michelle Tyminski, and Deborah Taylor, bring this action against the Town of Rye (“the Town”), seeking a writ of mandamus, a writ of prohibition, declaratory relief, and injunctive relief.

Contemporaneous with the filing of the complaint, the plaintiffs filed an ex parte motion seeking a temporary restraining order and a preliminary injunction. Doc. 2 (Pl.’s Ex Parte Motion); Doc. 3 (Pls.’ Mot. for Prelim. Injunction); Doc. 4 (Pls.’ Mem. Law). The Town objected to both motions. Doc. 7 (Obj. to Doc. 2); Doc. 13 (Obj. to Doc. 3). On May 12, 2026, the Court (Ruoff, J.) denied the plaintiffs’ ex parte request and scheduled a hearing. The Court held the hearing on May 22, 2026. After review, the plaintiffs’ motion for a preliminary injunction is DENIED.

Background

The Court draws the following facts from the record. The plaintiffs are a collection of Town residents who enjoy bird watching. In 2010, the Town acquired a 12-acre farm known as Goss Farm, which is controlled and managed by the Rye Conservation Commission (the “RCC”). The farm has an eighteenth-century barn (the “barn”) which has been a yearly nesting ground for Barn Swallows since the 1960s.

Sometime in 2025, the RCC and the Town decided to limit the swallows' access to the barn. The Town based its decision on the opinion of the Town's Health Officer and Fire Chief, who both opined that the swallows in the barn constituted a public health risk. After a year of public discussions and planning, the RCC closed the barn to the swallows in January 2026. Specifically, the Town had the barn cleaned and installed metal grates over the windows to prevent the swallows from entering. The Town installed two nesting structures for the swallows to use as an alternative to the barn. In response to the Town's actions, the plaintiffs and other residents filed a petition for a special town meeting to consider passing an ordinance requiring the Town to protect nesting birds on town-owned properties. The parties believe that meeting will occur sometime in the fall of 2026.

In response to the Town's actions, the plaintiffs' hired an expert ornithologist, Mara Silver, who opined that the alternate nesting structures are inadequate for the swallows. She additionally stated that damage to the swallow population will occur if the swallows do not have access to the barn by May 15, 2026 (the beginning of their nesting season). The plaintiffs filed this action on May 7, 2026, seeking a preliminary injunction requiring the Town to stop any actions to exclude the swallows, remove any exclusionary objects including metal window grates and screens, and cancel any activities in the barn that would require removal of the swallows. Doc. 1 ¶ A.

### Analysis

"A preliminary injunction is a provisional remedy that preserves the status quo pending a final determination of the case on the merits." N.H. Dep't. of Env't Servs. v. Mottolo, 155 N.H. 57, 63 (2007). "It is within the trial court's sound discretion to grant an

injunction after consideration of the facts and established principles of equity.” Id. The Court will not grant a preliminary injunction unless the party requesting the injunction shows: (1) that they “would likely succeed on the merits”; (2) that they have “no adequate remedy at law”; and (3) that “there is an immediate danger of irreparable harm to the party” if the injunctive relief is not granted. Id. If the party seeking the preliminary injunction does not establish any one of these factors, the Court will not issue the preliminary injunction. See id.

In their motion, the plaintiffs assert that they face irreparable injury as beneficiaries of the conversation commission due to the Town’s removal of the swallows from the barn because the swallows will never return. Doc. 4 at 6. In addition, the plaintiffs argue there is no adequate remedy at law because the swallows will never return if they miss this mating season, and thus the swallows must be allowed to enter the barn before May 15, 2026. Id. at 7. Lastly, the plaintiffs contend that they have a likelihood of success on their claims because the eviction of the swallows violates the public trust doctrine. Id. at 8–10.

For its part, the Town argues that the plaintiffs have not established immediate irreparable harm because they filed this action too late and the mating season has passed. Doc. 13 at 14. Specifically, the Town asserts that the alleged harm to the swallows has already occurred, because the swallows were not allowed to access the barn by May 15, 2026. Id. In addition, the Town argues that the plaintiffs have an adequate remedy at law, as they have filed a petition to reopen the barn to the swallows with the Town and a Town meeting will be held. Id. at 7–8. Lastly, the Town contends that the plaintiffs have not shown a likelihood of success on the merits because the

Town acted in a discretionary manner without violating the obligations of the conversation documents. Id.

Upon review, the Court rules that the plaintiffs have not demonstrated an imminent danger of irreparable harm. “Injunctive relief is one of the peculiar and extraordinary powers of equity, normally to be exercised only when warranted by imminent danger of great and irreparable damage.” N.H. Donuts, Inc. v. Skipitaris, 129 N.H. 774, 779 (1987) (quotations omitted). In determining the existence of irreparable harm, a court must balance the significance of the threat of irreparable harm to the party requesting injunctive relief against the potential harm that granting an injunction would inflict on the other party. Kukene v. Genualdo, 145 N.H. 1, 4 (2000); UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14–15 (1987).

Here, the plaintiffs alleged that irreparable harm would occur to the nesting swallows if they did not access the barn by May 15, 2026. Notably, the plaintiffs filed this action on May 7, 2026, 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, despite the plaintiffs’ knowledge of the Town’s plan to do so. At the May 22, 2026 hearing, the parties indicated that the barn is currently closed to the swallows. Consequently, the plaintiffs’ alleged harm has already occurred. Thurston Enters., Inc. v. Baldi, 128 N.H. 760, 764 (1986) (“Injunctive actions . . . look to prevent future conduct rather than to remedy past conduct. Thus, injunctions issue only to prevent imminent irreparable harm.”). Indeed, the purpose of a preliminary injunction is to maintain the status quo, and in this case the Town has already excluded the swallows from the barn. N.H. Dep’t. of Env’t Servs. v. Mottolo,

155 N.H. 57, 63 (2007) (“A preliminary injunction is a provisional remedy that preserves the status quo pending a final determination of the case on the merits.”).


In addition, the Court concludes that the harm to the Town outweighs the alleged threat to the plaintiffs. Specifically, the Town has invested time and money into cleaning the barn to remediate the bird fecal matter and safely open the barn to the public. If the Court ordered the Town to reopen the barn to the swallows, the Town would be forced to pay for subsequent cleaning after the mating season if the plaintiffs did not prevail on their claims.

Further, the preliminary injunctive relief the plaintiffs seek—that the Town opens the barn to the swallows—is the same remedy they would obtain if they are successful on the merits. A preliminary injunction is not a device for providing final relief to a plaintiff more quickly; rather, a court should issue a preliminary injunction only when there is an imminent danger of great and irreparable harm. Thus, the Court concludes that an injunction is improper. See Mottolo, 155 N.H. at 63 (holding that a preliminary injunction should be denied if any of the factors are not satisfied). As such, the plaintiffs’ motion for a preliminary injunction is DENIED. Doc. 3.

Conclusion

For the foregoing reasons, the plaintiffs’ motion for a preliminary injunction is DENIED.

Date: June 11, 2026

  
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Hon. Jacalyn A. Colburn,  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 06/11/2026