

Environmental Law • Utility Law

February 3, 2023

VIA ELECTRONIC DELIVERY Daniel C. Goldner, Chairman New Hampshire Public Utilities Commission 21 S. Fruit Street, Suite 10 Concord, N.H. 03301-2429

Re: DW 22-082 – Agape Community Church Sewer System

Affidavit of Mailing and Posting of Order

Dear Chairman Goldner:

Pursuant to the Commission's temporary filing requirements dated March 17, 2020 and pursuant to the Commission's order commencing an adjudicative proceeding, attached please find an affidavit attesting that the order was mailed by first class mail as well as by certified mail to the lot owners in Colonial Drive as well as to Agape Community Church and Town of Moultonborough.

Thank you in advance for your assistance with this filing.

Very Truly Yours,

Marcia aBrown

Marcia A. Brown

Enclosures: Affidavit of mailing

Copies of certified mail receipts

Copy of Town Posting

cc: Docket Related Service List

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

Docket DW 22-082

Colonial Drive Residents and Agape Community Church

AFFIDAVIT

I, Marcia A. Brown, Esq. hereby certify that N.H. Brown Law, PLLC, on February 2, 2023, mailed the Commission's order commencing an adjudicative proceeding, by first class mail and by certified mail, to all owners of lots in the Colonial Drive subdivision, Agape Community Church, and the Town of Moultonborough-Town Clerk. Copies of the certified letter tracking receipts are attached.

Also attached is a copy of the order as it was posted at the Town of Moultonborough Town Hall on February 2, 2023.

Signed as of this 3rd day of February 2023.

By Mauria A. Brown, Esq.

N.H. Brown Law, PLLC



Environmental Law • Utility Law February 2, 2023

VIA FIRST CLASS AND CERTIFIED MAIL

Cheryl and Blaise Winter	Michael and Heidi Thurston
3083 Whispering Oaks Drive	47 Colonial Drive
Highland Village, TX 75077	Moultonborough, NH 03254
(Colonial Drive Lot 1)	(Colonial Drive Lot 2)
Jerelyn and Thomas Moreau	James Vocell and Paula Sheehan
51 Colonial Drive	55 Colonial Drive
Moultonborough, NH 03254	Moultonborough, NH 03254
(Colonial Drive Lot 3)	(Colonial Drive Lot 4)
Robert and Theresa Landry	Jason Ray
61 Colonial Drive	64 Colonial Drive
Moultonborough, NH 03254	Moultonborough, NH 03254
(Colonial Drive Lot 5)	(Colonial Drive Lot 6)
Karen and Keith Bell	Town of Moultonborough, Town Clerk
334 Davisville Road	6 Holland Street
N. Kingstown, RI 02852	Moultonborough, NH 03254
(Colonial Drive Lot 7)	(Colonial Drive Lots 8, 10, 12, 14)
Nancy and Steve Hamilton	George Correia and Valerieann Marchand
90 Washington Ave.	46 Colonial Drive
Waltham, MA 02453	Moultonborough, NH 03254
(Colonial Drive Lot 9)	(Colonial Drive Lot 11)
Albert and Susan Solomon	Agape Community Church
26 Colonial Drive	80 Bean Road
Moultonborough, NH 03254	Moultonborough, NH 03254
(Colonial Drive Lot 13)	mountainonagii, 1111 0525 1
(Colomar Billo Lot 13)	

Re: Docket No. DW 22-082

Order Commencing Adjudicative Proceeding and Notice of Prehearing

Dear Recipients:

As required by the New Hampshire Public Utilities Commission's order dated February 1, 2023, I am transmitting the attached order to you.

Sincerely,

Marcia A. Brown

Marcia a Brown

STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DW 22-082

RESIDENTS OF COLONIAL DRIVE, MOULTONBOROUGH

Complaint by Residents of Colonial Drive in Moultonborough Against Agape Community Church Sewer System

COMMENCEMENT OF ADJUDICATIVE PROCEEDING AND NOTICE OF PREHEARING CONFERENCE

On December 2, 2022, the residents of Colonial Drive in Moultonborough, New Hampshire (Residents) filed a complaint regarding Agape Community Church (ACC) for failure to provide reasonably safe and adequate sewer utility service as required by RSA 374:1, arguing that ACC owns the sewer system that serves the Residents' homes (the Complaint). The Complaint and subsequent docket filings are available on the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2022/22-082.html.

I. BACKGROUND AND PROCEDURAL HISTORY

The Complaint asked the Commission to open a receivership proceeding under RSA 374:47-a to oversee the ongoing emergency response to the failure of the sewer system that serves the Residents, and to grant such other and further relief as may be just and reasonable. In support of their Complaint, the Residents filed deed documentation regarding their properties, as well as copies of an estimate for new sewer pumps and an invoice for pumping service fees from Lamprey Septic & Drain. On January 12, 2023, Suburban Septic Service filed a letter in this docket, noting certain work that it has provided related to the sewer system at issue at the request of the New Hampshire Department of Environmental Services (NHDES), which regulates its license.²

¹ The Complaint requested a receivership proceeding. For purposes of this adjudicative proceeding, we will treat the Complaint as a petition for receivership under RSA 374:47-a.

² Our understanding is that Lamprey Septic & Drain and Suburban Septic Service are related entities; we will refer to Lamprey Septic for purposes of this order.

On January 12, 2023, the Commission held a preliminary hearing on issues raised by the Complaint. The Residents, Agape Church, Lamprey Septic, NHDES, and the New Hampshire Department of Energy (DOE) participated in the preliminary hearing. Based on that preliminary hearing, the Commission believes there is a good faith basis to convene an adjudicative proceeding in this matter to determine whether there is a public utility subject to Commission jurisdiction and whether the Commission should initiate a receivership action under RSA 374:47-a, as requested by the Residents.

II. ISSUES PRESENTED

The Complaint, including documents pertaining to certain deed transfers provided in Attachment A to the Complaint, presents the following preliminary issues:

- (1) whether the sewer system is owned or operated by an entity that constitutes a 'public utility' under RSA 362:2 and RSA 362:4 that is subject to Commission regulation and, if so, whether the Complaint must first be filed with DOE, served upon the utility, and investigated under RSA chapter 365, as amended;
- (2) whether the sewer system is a public utility regulated by the Commission under RSA 374:41-47 and therefore subject to receivership under RSA 374:47-a;
- (3) whether, if the sewer system is a public utility, it is providing safe and adequate and just and reasonable service under RSA 541-A:31;
- (4) whether the deeds of transfer for the Residents' individual lots on Colonial Drive carry forward the provisions of: Article III Reserved Easement and Rights, section 3.2; and Article VII Miscellaneous, section 7.1, which provides that:

[t]he covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by an Association of the Lot owners, or the Owners of any land subject to this Declaration or any Declaration supplemental hereto, their respective legal representatives, heirs, successors and assigns; and

(5) what entities or persons bear responsibility for the operation and maintenance of the sewer system that serves the Residents.

The Complaint also raises the following issues:

- (6) whether the Colonial Drive development is part of the Winnipesaukee River Basin Program; and
- (7) whether there are alternative remedies or potential guidance and/or assistance available through: (a) NHDES, (b) Bay District Sewer, (c) the Bay District Sewer Commission, (d) an appropriate department or committee of the Town of Moultonborough, or (e) any other entity.

Given the current nature of the issues and the lack of clear Commission jurisdiction, the parties may wish to consider expeditiously resolving the ongoing sewerage concerns while concurrently participating in this proceeding. Beneficial alternative avenues to pursue outside of the Commission's jurisdiction, may include:

- reviewing applicable municipal requirements, for more cost-effective solutions than upkeep and operation of the sewer system and pump station, such as alternative qualified service providers, the installation of individual septic systems, and/or the establishment of a homeowners' association;
- considering the services of a mediator to assist in identifying relevant documentation, applicable municipal and state laws and regulations, and potential avenues for resolution of the issues raised with respect to legal and financial responsibility and assistance for the operation and maintenance of the sewer system mains, the pump station, and related elements of the system;
- working with other agencies, such as NHDES, to receive information
 concerning potential sources of assistance financial, regulatory, or otherwise with
 respect to the issues raised in their Complaint; and
- considering recourse through the court system for resolution of any issues raised in the Complaint.

III. Initiation of Adjudicative Proceeding

Based on the Complaint and preliminary discussions at the hearing held before the Commission on January 12, 2023, an adjudicative proceeding is convened to address the foregoing issues.

The Commission will conduct the prehearing conference and hearing in this matter in person. The Commission will consider requests to use a hybrid format. The Commission will permit remote participation by a specific individual if the Commission determines a sufficient reason has been provided for why that individual is unable to attend in person. Any party requesting a specific individual be permitted to participate remotely must file a written request with the Clerk's Office no later than fifteen days prior to the prehearing conference or hearing date. If the Commission determines one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues under RSA chapter 541-A, RSA 365:1, RSA 374:1, RSA 374:47-a, and the Commission's procedural rules; and it is

FURTHER ORDERED, that ACC shall participate in this proceeding as a mandatory party; and it is

FURTHER ORDERED, that the Commission will hold a prehearing conference, under N.H. Admin. R., Puc 203.15, at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on February 23, 2023, at 1:30 p.m., at which each party should be prepared to address any of the issues set forth in N.H. Admin. R., Puc 203.15; and it is

FURTHER ORDERED, that during the prehearing conference, the Commission will consider the matters listed in Puc 203.15(c) and (d), including potential simplification of the issues; stipulations or admissions as to issues of fact or proof, by consent of the parties; the establishment of a procedural schedule governing the remainder of the proceeding; and any other matters which aid in the disposition of the proceeding; and it is

FURTHER ORDERED, that parties and potential parties are encouraged to facilitate the development of a procedural schedule by conferring prior to the prehearing conference, so that the presiding officer can address any matters on which there is disagreement during the prehearing conference. Any procedural schedule, however, will not be approved until after the prehearing conference and after consulting the Commission's calendar; and it is

FURTHER ORDERED, that parties shall make appropriate representatives available, as needed, for a technical session to review the filing, immediately following the prehearing conference; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to all parties on the service list, on or before February 14, 2023. The petition shall state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before February 17, 2023; and it is

FURTHER ORDERED, that parties shall file any proposed exhibits, written

testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Clerk's Office at (603) 271-2431 or <u>ClerksOffice@puc.nh.gov</u>. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. R., Puc 203.12, the Residents shall send a copy of this order of notice by certified and First Class U.S. mail to each resident on Colonial Drive, the Agape Community Church, and the Town Clerk of the Town of Moultonborough, and shall post a copy of this order of notice at the Moultonborough Town Hall at 6 Holland Street in Moultonborough, no later than two business days after the date of issue, such mailings and posting to be documented by affidavit filed with the Commission on or before February 15, 2023. In addition, the Clerk shall publish this order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the hearing guidelines issued on December 9, 2022.

So ordered, this first day of February, 2023.

Pradip K. Chattopadhyay
Commissioner

Carleton B. Simpson Commissioner

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

Service List - Docket Related

Docket#: 22-082

Printed: 2/1/2023

Email Addresses

ClerksOffice@puc.nh.gov kelvin.a.brooks@doj.nh.gov mab@nhbrownlaw.com Energy-Litigation@energy.nh.gov jayson.p.laflamme@energy.nh.gov anthony.j.leone@energy.nh.gov ocalitigation@oca.nh.gov Matthew.C.Young@energy.nh.gov Kerry.d.barnsley@des.nh.gov Kurt@devylderlaw.com mserge@dwmlaw.com

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only Л 40 For delivery information, visit our website at www.usps.com®. Lewisviller TX 75077 П Certified Mail Fee \$4.15 0878 40 5 \$0.00 81 Extra Services & Fees (check box, add fee \$30,000) -Return Receipt (hardcopy) \$0.00 0001 Return Receipt (electronic) Postmark \$0.00 Certified Mail Restricted Delivery Here Adult Signature Required \$0,00 Adult Signature Restricted Delivery \$ Postage 2720 \$0.63 02/02/2023 Total Postage and Fees 78 Cheryl + Blaise Winter Sent To 7021 3083 Whispering Oaks Drive

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- signature) that is retained by the Postal Service" for a specified period.

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- of Certified Mail service does not change the insurance coverage automatically included with certain Priority Mail items. For an additional fee, and with a proper
 - endorsement on the mailpiece, you may request the following services: - Return receipt service, which provides a record
 - of delivery (including the recipient's signature). electronic version. For a hardcopy return receipt, complete PS Form 3811, Domestic Return Receipt; attach PS Form 3811 to your mailpiece;

You can request a hardcopy return receipt or an

associate for assistance. To receive a duplicate return receipt for no additional fee, present this USPS®-postmarked Certified Mail receipt to the retail associate.

- Restricted delivery service, which provides delivery to the addressee specified by name, or to the addressee's authorized agent.
- Adult signature service, which requires the signee to be at least 21 years of age (not available at retail). Adult signature restricted delivery service, which
- requires the signee to be at least 21 years of age and provides delivery to the addressee specified by name, or to the addressee's authorized agent (not available at retail). To ensure that your Certified Mail receipt is
- accepted as legal proof of mailing, it should bear a USPS postmark, If you would like a postmark on this Certified Mail receipt, please present your Certified Mail item at a Post Office™ for postmarking. If you don't need a postmark on this Certified Mail receipt, detach the barcoded portion of this label, affix it to the mailpiece, apply appropriate postage, and deposit the mailpiece.

IMPORTANT: Save this receipt for your records.

PS Form 3800, April 2015 (Reverse) PSN 7530-02-000-9047

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only 74 For delivery information, visit our website at www.usps.com®. Moultonboroush, NH 03254 82 Certified Mail Fee 0878 5 \$0.00 81 -Extra Services & Fees (check box, add fee \$0.00 Return Receipt (hardcopy) \$0.00 0007 Return Receipt (electronic) Postmark \$0.00 Certified Mail Restricted Delivery Here Adult Signature Required \$0.00 Adult Signature Restricted Delivery \$ 20 Postage \$0.63 02/02/2023 Total Postage and Fees 27 7021 Sent To. Moulton borough Holland St Street and Apt. No., or P City, State, 21P+ Mou Hon borough DC Form 2000 An

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 A record of delivery (including the recipient's
- signature) that is retained by the Postal Service" for a specified period.

A unique identifier for your mailpiece.

Important Reminders:

or Priority Mail® service.

- You may purchase Certified Mail service with First-Class Mail*, First-Class Package Service*,
- Certified Mail service is not available for international mail.
- Insurance coverage is not available for purchase with Certified Mail service. However, the purchase of Certified Mail service does not change the
- insurance coverage automatically included with certain Priority Mail items.

 For an additional fee, and with a proper endorsement on the mailpiece, you may request
 - the following services:

 Return receipt service, which provides a record
 - Return receipt service, which provides a record of delivery (including the recipient's signature).
 You can request a hardcopy return receipt or an electronic version. For a hardcopy return receipt, complete PS Form 3811. Domestic Return

associate for assistance. To receive a duplicate return receipt for no additional fee, present this USPS®-postmarked Certified Mail receipt to the retail associate.

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 To ensure that your Certified Mail receipt is
- accepted as legal proof of mailing, it should bear a USPS postmark. If you would like a postmark on this Certified Mail receipt, please present your Certified Mail item at a Post Office" for postmarking. If you don't need a postmark on this Certified Mail receipt, detach the barcoded portion of this label, affix it to the mailpiece, apply appropriate postage, and deposit the mailpiece.

IMPORTANT: Save this receipt for your records.

Receipt; attach PS Form 3811 to your mailpiece; IMP(PS Form 3800, April 2015 (Reverse) PSN 7530-02-000-9047



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Electronic verification of delivery or attempted

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Important Reminders:

- You may purchase Certified Mall service with First-Class Mail®, First-Class Package Service®, or Priority Mail® service.
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U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only 93 m For delivery information, visit our website at www.usps.com®. Moultonborough, NH 03254 П Certified Mail Fee 40 0878 5 \$0.00 81 Extra Services & Fees (check box, add fee as appropriate) -Return Receipt (hardcopy) \$0.00 0007 Return Receipt (electronic) Postmark Certified Mail Restricted Delivery \$0,00 Here Adult Signature Required \$0.00 Adult Signature Restricted Delivery \$ Postage 20 \$0.63 Total Postage and Fees \$4.78 02/02/2023 ~ П Sent To Michael + Heidi Thurston 7021 Street and Apt. No., or PO Box No. 47 Colonial Dr City, State, ZIP+4 moultanboro ugh 03254 See Reverse for Instructions

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A unique identifier for your mailpiece.

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Important Reminders:

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IMPORTANT: Save this receipt for your records.

PS Form 3800, April 2015 (Reverse) PSN 7530-02-000-9047

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT 7461 Domestic Mail Only For delivery information, visit our website at www.usps.com®. Waltham, MA-02453 명되 Certified Mail Fee \$4.15 0878 5 Extra Services & Fees (check box, add fee seppone \$0.00 81 0 Return Receipt (hardcopy) 0007 \$0.00 Return Receipt (electronic) Postmark Certified Mail Restricted Delivery \$0.00 Here Adult Signature Required to.00 Adult Signature Restricted Delivery \$ 20 Postage \$0.63 Total Postage and Fees 78 02/02/2023 57 7021 Sent To Hamilton - Steven Washington City, State 02453 San Dayaren for Instructions

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Receipt; attach PS Form 3811 to your mailpiece; IMPC PS Form 3800, April 2015 (Reverse) PSN 7530-02-000-9047

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only 74 For delivery information, visit our website at www.usps.com®. North Kinsstown, RI 02852 LI Certified Mail Fee \$4.15 40 0878 5 \$0.00 81 Extra Services & Fees (check box, add fee as appropri 0 Return Receipt (hardcopy) \$0.00 1000 Return Receipt (electronic) Postmark \$0.00 Certified Mail Restricted Delivery Here \$0.00 Adult Signature Required Adult Signature Restricted Delivery \$ 20 Postage \$0.63 02/02/2023 Total Postage and Fees 78 27 Sent To 7021 Street and Ant Davisville Rd City, State, ZIF 02852 Kingstown RI DC E--- 2000

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i Sassan's presentation.

c Meeting

OMMISSION

2023

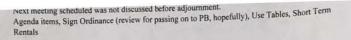
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03254

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c sessions under RSA:91-A:3





02/01/23

POSTED ON FRIDAY, FEB. 3, 2023



STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DW 22-082

RESIDENTS OF COLONIAL DRIVE, MOULTONBOROUGH

Complaint by Residents of Colonial Drive in Moultonborough Against Agape Community Church Sewer System

COMMENCEMENT OF ADJUDICATIVE PROCEEDING AND NOTICE OF PREHEARING CONFERENCE

On December 2, 2022, the residents of Colonial Drive in Moultonborough, New Hampshire (Residents) filed a complaint regarding Agape Community Church (ACC) for failure to provide reasonably safe and adequate sewer utility service as required by RSA 374:1, arguing that ACC owns the sewer system that serves the Residents' homes (the Complaint). The Complaint and subsequent docket filings are available on the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2022/22-082.html.

BACKGROUND AND PROCEDURAL HISTORY

The Complaint asked the Commission to open a receivership proceeding under RSA 374:47-a to oversee the ongoing emergency response to the failure of the sewer system that serves the Residents, and to grant such other and further relief as may be just and asonable. In support of their Complaint, the Residents filed deed documentation regarding their properties, as well as copies of an estimate for new sewer pumps and an invoice for pumping service fees from Lamprey Septic & Drain. On January 12, 2023, Suburban Septic Service filed a letter in this docket, noting certain work that it has provided related to the sewer system at issue at the request of the New Hampshire Department of Environmental Services (NHDES), which regulates its license.2

¹ The Complaint requested a receivership proceeding. For purposes of this adjudicative proceeding, we will treat the Complaint as a petition for receivership under RSA 374:47-a.

² Our understanding is that Lamprey Septic & Drain and Suburban Septic Service are related entities; we will refer to Lamprey Septic for purposes of this order.

Attendees: Mike Couture, Karin Ne Absent: Tracy Waterman Others present: Bey Nelson, Joanne

Meeting called to order at 0932AM

- Review previous meeting minut
- Finance update Karin reports balance is \$98,002, however in the balance. Reimbursement fro and other diving expenses
- . DASH, Lee's Pond, beaver dam a 2022 season DASH work. Overall inconsistent. Due to known miss three days. Samples taken from were genetically tested by NHDE those from the beaver dam area costs and effectiveness of herbicic that herbicide was likely most effe
- Future herbicide notification plans
- Lake Host shelter Previous disci Mills launch, particularly since the The vision for such a shelter is peri of the day and could be moved fro such a shelter could be stored, h
- 2023 Bids
 - Herbicide A bid wa number of abutters as the bid f of materials, fuel, etc. for the in much smaller area was treated to approve the Solitude bid for : abutters that must be notified.



Moulton Ernest I Moulton

Notice is hereby given that a public Improvements Program Committee (CIP presentations from Department Heads ab

Recreation Department Series!! y 15th

uditorium

on and his band will rock the erial. Performed this year at the Sandwich Fair!

rn Singer/Songwriter who plays original tunes as well as an mporary songs. Tom's original song, "You Can't Get There From ohn Davidson.

nil Sanguedolce are a local acoustic duo based in Meredith, NH. is of classic rock tunes, folk rock & country rock tunes intermingled & jazz tunes.

songwriter from Holderness. Featured styles range from rock to ocals. There's something for everyone!

pand with a big heart! One is Tall, one is small and another is Paul over songs from the Grateful Dead, Dave Mathews, Beatles and

