

WETLANDS COUNCIL

MINUTES

January 14, 2014

The Wetlands Council met on Tuesday, January 14, 2014 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Ryan Crosbie, Carol Henderson, Deborah Lievens, James Kennedy, Susan Slack, Russ St. Pierre, Thomas Sloan, and Robert Snelling

Absentees: Councilors: Frank Byron, Sharon Champagne, and Seth Prescott

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball at 8:08 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Snelling made a motion to approve the November 12, 2013 minutes, second by Councilor Crosbie. Motion passed unanimously with Councilor St. Pierre abstaining.***

2. **Public Input:** None

3. **Status Report**

I. New Appeals

Docket No. 13-08 WtC – Louis Gargiulo

Subject: 8/14/13 Denial of permit application File #2013-01430

Hearing Officer: Not assigned

Status: September 13, 2013 received Notice of Appeal. 9/17/13 issued insufficient appeal letter. October 18, 2013 received revised Notice of Appeal, which was received 31 days after notice of insufficient appeal letter. 10/28/13 issued receipt of revised appeal letter. November 1, 2013 received request for Council to accept the late filed revised appeal. Council to accept or dismiss appeal.

- ***Councilor Crosbie made a motion to apply the waiver in rule 202.03 and accept the appeal, second by Councilor Henderson. Motion passed unanimously.***

Docket No. 13-09 WtC – Robert and Jane Rafferty

Subject: 8/22/13 Administrative Order No. 13-015 WD

Hearing Officer: Not assigned

Recused: Susan Slack

Status: September 19, 2013 received Notice of Appeal. 9/24/13 issued insufficient appeal letter. October 23, 2013 received revised Notice of Appeal. 10/23/13 issued receipt of revised appeal letter. November 6, 2013 received Request to Intervene from Joseph Barbone, Jr. Council to accept or dismiss appeal.

- ***Councilor Henderson made a motion to deny the appeal, second by Councilor Crosbie. Motion passed unanimously.***

Docket No. 13-11 WtC – Town of New Castle

Subject: 9/19/13 Approval of Permit #2012-01896 to Nancy Hall

Hearing Officer: Not assigned

Status: October 21, 2013 received Notice of Appeal. 10/22/13 sent insufficient appeal letter. 10/29/13 received Appearance from Atty. Steven Solomon for permittee. November 6, 2013 received Motion for Partial Summary Dismissal by Nancy Hall. 11/14/13 received revised Notice of Appeal and Objection to Motion for Partial Summary Dismissal by Nancy Hall. Council to accept or dismiss appeal.

- ***Councilor Snelling made a motion to accept the appeal, second by Councilor Lievens. Motion passed unanimously.***

Docket No. 13-12 WtC – N. Miles Cook III

Subject: 9/27/13 Denial on Reconsideration for permit application file #2012-3200

Hearing Officer: Not assigned

Status: October 23, 2013 received Notice of Appeal. 10/24/13 issued insufficient appeal letter. 10/30/13 received revised Notice of Appeal and issued receipt of revised appeal letter. Council to accept or dismiss appeal.

- ***Councilor Crosbie made a motion to accept the appeal, second by Councilor Kennedy. Motion passed unanimously.***

Docket No. 13-13 WtC – Joseph Finocchiaro, III

Subject: 9/27/13 Denial of permit application, file #2013-00879

Hearing Officer: Not Assigned

Status: October 25, 2013 received Notice of Appeal. 10/28/13 sent insufficient appeal letter. November 18, 2013 received revised Notice of Appeal. 11/19/13 issued receipt of revised appeal. Council to accept or dismiss.

- ***Councilor Slack made a motion to accept the appeal, second by Councilor Lievens. Motion passed unanimously.***

Docket No. 13-14 WtC – Bryan Belanger

Subject: 10/9/13 Denial on Reconsideration of approval to extend permit #2007-02781

Hearing Officer: Not assigned

Status: November 18, 2013 received Notice of Appeal. 11/14/13 sent insufficient appeal letter. December 11, 2013 received revised Appeal. 12/19/13 sent receipt of revised appeal letter. Council to accept or dismiss appeal.

- ***Councilor Henderson made a motion to accept the appeal, second by Councilor Lievens. Motion passed unanimously.***

Docket No. 13-15 WtC – Little Bear PCS, LLC

Subject: 10/7/13 Denial of permit application #2013-01313

Hearing Officer: Not assigned

Status: November 8, 2013 received PNA. 11/19/13 received Notice of Appeal. 11/22/13 sent insufficient appeal letter. December 19, 2013 received revised Appeal and sent receipt of revised appeal. Council to accept or dismiss appeal at its March 11, 2014 meeting.

II. Decisions that need to be written/finalized and issued.

Docket No. 13-10 WtC – Alan Armstrong

Subject: 7/11/13 Notice of Findings. This request for appeal was received untimely as well as being insufficient in many ways. As it was untimely filed there was no need to send an insufficient appeal letter. November 12, 2013 Council voted to dismiss appeal as untimely. 11/14/13 issued appeal not accepted letter.

III. Hearings or PHCs Pending

Docket No: 12-10 WtC – Robert and Katherine Michele

Subject: 9/4/12 Denial of Reconsideration for permit No. 2007-02868 issued to Joseph and Linda Bremner
Hearing Officer: David Conley, Esq. appointed by AG on 11/28/12

Actions: On Oct. 4, 2012 received Petition for Appeal Oct. 5, 2012 issued receipt of appeal letter. Council accepted appeal with request for complete copies of the relevant court decision to be forwarded to the Council at its Nov. 13, 2012, meeting. June 21, 2013 received copy of Cheshire County Superior Court order on Bremner's Motion to Dismiss, which was denied. 9/18/13 received Fully Assented-to Motion to Reschedule Hearing to January 14, 2014 9/30/13 issued ruling on Appellants' Question of Law. January 7, 2014 received Joint Response to Appellants' More Definite Statement of Facts in Support of Appeal. 1/9/14 received Appellants' Witness and Exhibit Lists. 1/9/14 received Content List of permit file. 1/10/14 received Permittees' Witness and Exhibit List. Hearing is scheduled for today at 9 a.m.

Docket No: 13-03 WtC – Kevin and Melanie McNamara

Subject: 4/4/13 Wetlands Minimum Impact Forestry Notification Decision on Reconsideration

Hearing Officer: David Conley, Esq. appointed by AG on 7/10/13

Status: May 2, 2013 received Notice of Appeal. 5/3/13 issued insufficient appeal letter. 5/15/13 received revised Appeal. 5/16/13 issued receipt of appeal letter. Council to accept or decline appeal at its July 9, 2013 meeting. 7/9/13 Council accepted the Appeal. 7/10/13 issued appeal accepted letter. 7/31/13 sent notice of PHC scheduled for August 21, 2013 at 8:30 a.m. 8/9/13 received Appearance from Atty. Mulholland. 8/21/13 PHC was held and PHO was issued. 9/11/13 received Consented to Motion to Extend Time from PHO. 9/13/13 issued ruling granting the Motion to Extend Time. December 20, 2013 received Assented to Motion to Withdraw. 12/23/13 issued letter granting Motion to Withdraw.

Docket No: 13-07 WtC – Judith Evans, Trustee of the L.M.E. Nominee Trust

Subject: August 7, 2013 Permit Denial on Reconsideration, file #2013-00379

Hearing Officer: David Conley, Esq. appointed by AG on 11/15/13

Status: September 5, 2013 received Notice of Appeal. 9/10/13 issued insufficient appeal letter. 9/13/13 received Revised Notice of Appeal. 9/17/13 issued receipt of revised appeal letter. Council accepted the appeal at its November 12, 2013 meeting. 11/15/13 sent appeal accepted letter. January 14, 2014 issued notice of Pre-Hearing Conference scheduled for February 10, 2014.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No: 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: David Conley, Esq. appointed by AG on 12/22/11

Status: On Nov. 2, 2011, received DES' addendum to the Witness and Exhibit List. 11-07-11 Assented-to Motion to Continue was filed. Motion to Continue was granted verbally on 11/7/11 and PO will have written ruling out within a few days. 10/28/13 received Appellants' Status Report requesting a review hearing. November 1, 2013 received Withdrawal of representation by Collis Adams and an Appearance for DES from Gretchen Hamel. 11/13/13 issued notice of review hearing scheduled for December 11, 2013 at 2 p.m. 12/6/13 received Assented-To Motion to Continue Review Hearing. 12/9/13 issued letter granting Motion and rescheduled the review hearing for January 13, 2014. Review hearing was held on 1/13/14 status report to be filed in 30 days.

Docket No.: 12-14 WtC – Mastoran Corporation and B & P Realty Ventures, LLC

Subject: 11/8/12 Denial on reconsideration of Denial of Application File #2012-00768

Hearing Officer: David Conley, Esq. appointed by AG on 2/13/13

Status: November 27, 2012 received Notice of Appeal and Motion to Stay Appeal. 11/28/12 issued insufficient appeal letter. December 28, 2012 received supplement to Notice of Appeal and Motion to Stay Appeal. January 3, 2013 issued receipt of revised appeal. Council accepted appeal at its January meeting. January 23, 2013 issued appeal accepted letter. Hearing Officer to rule on Motion to Stay Appeal. March 13, 2013 issued letter regarding the granting of the Motion to Stay Appeal.

4. Old Business -

Chairman Kimball and Councilor St. Pierre attended oral arguments for the Hooksett Appeal that was before the Supreme Court on November 13, 2013.

Chairman Kimball has drafted the 2013 Annual Report. The 2013 appeal summary and draft report will be emailed to the Council.

Chairman Kimball noted that when a decision is made by this Council what happens after is not in the hands of the Council.

5. **New Business** -

a. **Election of Officers**

- ***Councilor Henderson nominated George Kimball as Chairman and Ryan Crosbie as Vice Chair, second by Councilor Slack. Motion passed unanimously.***

b. **Wetlands Bureau Report – Mary Ann Tilton, Wetlands Bureau**

Staffing –

Linda Lester has taken vacant support staff position

Kayla Gonsler has been hired as a Shoreland reviewer

Dexter Dragon has left leaving open a part time phone receptionist position

Rule making –

The Bureau will be meeting with 10 functional partners discussing Wetlands rulemaking and process improvement. They are now doing research and listening on how to improve process and rules. Bi-weekly meetings are being held with the Commissioner and Commissioner's office. This will take about an hour for presentation and questions to the Council. Mary Ann will follow up regarding Shoreland Advisory Committee. This is a multi-year project and will start formal rulemaking in 2015. There has been a shift in staffing to accommodate this.

Councilor Sloan arrived at 8:55

6. **Next Meetings** –

Next meeting will be March 11, 2014, at 9:00 a.m. unless any legislative action is needed.

Councilor Lievens will be seeking reappointment.

Councilor Crosbie noted all the new appeals sent to the Council were insufficient – is there a way to change this? The Council asked Paula is to go ahead with development of a checklist and bring to council for review before posting to the web.

7. **Adjournment**

- ***Councilor Snelling made a motion to adjourn, second by Councilor Crosbie. Motion passed unanimously.***

Meeting adjourned at 9:02 a.m.

WETLANDS COUNCIL

HEARING MINUTES

January 14. 2014

The Wetlands Council met for
Docket No. 12-10 WtC – Robert and Katherine Michele Appeal Hearing
Tuesday, January 14, 2014 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Councilors: Ryan Crosbie, Carol Henderson, James Kennedy, Chairman Chip Kimball, Deborah Lievens, Russ St. Pierre, Susan Slack, Thomas Sloan, and Robert Snelling

Absentees: Councilors: Frank Byron, Sharon Champagne, and Seth Prescott

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:12 a.m.

The Hearing concluded at 1:20 p.m.

Deliberations were held as well this day which started at 2:10 p.m. and ended at 3:25 p.m.