

# WETLANDS COUNCIL

## MINUTES

April 8, 2014

---

The Wetlands Council met on Tuesday, April 8, 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, Richard Mellor, Seth Prescott, Susan Slack, Russ St. Pierre, and Robert Snelling

**Absentees:** Councilors: Frank Byron, Sharon Champagne

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 9:00 a.m. with introductions and a quorum present. Richard Mellor was introduced as the new member representing County Conservation Districts. Tom Sloan is no longer with the Dept. of Agriculture so his position is now open.

### 1. Approval of Minutes

- ***Councilor Snelling made a motion to approve the January 14, 2014, minutes including the Hearing minutes, second by Councilor Lievens. Motion passed unanimously***

2. Public Input: None

3. Status Report

## III. Hearings or PHCs Pending

### **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(PHC) scheduled for February 10, 2014. 2/10/14 issued Pre-hearing Order(PHO) scheduling a 2<sup>nd</sup> PHC for March 12, 2014 at 10:30 a.m. 3/10/14 received the Withdrawal of Appeal.

### **Docket No. 13-08 WtC – Louis Gargiulo**

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

Hearing Officer: David Conley, Esq. appointed by AG on 01/16/14

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. January 14, 2014 Council accepted the appeal and waived Wetlands Council rule Env-WtC 203.03 (d)(1)(b). 1/17/14 issued appeal accepted letter. February 5, 2014 received Appearance from Darlene Forst. 2/11/14 sent Notice of Pre-hearing Conference scheduled for March 13, 2014 @ 10:30 a.m. March 12, 2014 received Withdrawal of Appeal.

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

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

Hearing Officer: David Conley, Esq. appointed by AG on 01/16/14

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. January 14, 2014 Council accepted appeal. 1/17/14 issued appeal accepted letter. February 11, 2014 sent Notice of Pre-hearing Conference scheduled for March 13, 2014 at 11:30 a.m. 3/13/14 received Appearance from Allen Brooks and issued Pre-hearing Order with a 2<sup>nd</sup> PHC scheduled for June 18, 2014, which will be held at the New Castle Town Hall. April 3, 2014 received State's memorandum of Law and Motion to Dismiss. 4/3/14 received Concurrence with State's Motion to Dismiss. 4/17/14 received Town of New Castle's Objection to State's Motion to Dismiss.

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

Subject: 9/27/13 Denial on Reconsideration for permit application file #2012-3200  
Hearing Officer: David Conley, Esq. appointed by AG on 01/16/14  
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. January 14, 2014 Council accepted appeal. 1/17/14 issued appeal accepted letter. February 3, 2014 received Appearance from Evan Mulholland for DES. 2/11/14 sent Notice of Pre-hearing Conference scheduled for March 13, 2014 @ 1:30 p.m. 3/13/14 issued PHO with a hearing scheduled for July 8, 2014 at 9 a.m. 3/27/14 received Memorandum of Law regarding the Availability of Remedies for DES' Failure to Comply with the 30-Day Period for Granting or Denying a Request for Reconsideration.

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

Subject: 9/27/13 Denial of permit application, file #2013-00879  
Hearing Officer: David Conley, Esq. appointed by AG on 01/16/14  
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. January 14, 2014 Council accepted appeal. 1/17/14 issued appeal accepted letter. February 5, 2014 received Appearance from Darlene Forst. 2/11/14/ sent Notice of Pre-hearing Conference scheduled for March 13, 2014 at 3:00 p.m. 3/13/14 received appellant's email request to reschedule PHC due to the snow storm. Hearing Officer granted. 3/18/14 issued Notice of rescheduled PHC for May 5, 2014 at 9 a.m.

**Docket No. 13-14 WtC – Bryan Belanger**

Subject: 10/9/13 Denial on Reconsideration of approval to extend permit #2007-02781  
Hearing Officer: David Conley, Esq. appointed by AG on 01/16/14  
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. January 14, 2014 Council accepted appeal. 1/17/14 issued appeal accepted letter. February 11, 2014 sent Notice of Pre-hearing Conference scheduled for March 13, 2014 at 8:00 a.m. 2/21/14 received Appearance from Collis Adams for the Department. March 11, 2014 received Motion to Summarily Dismiss the Petition for Appeal. 3/13/15 issued PHO with hearing scheduled for May 13, 2014 at 9 a.m. 3/21/14 received Motion to Deny Motion to Dismiss.

**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. February 12, 2014 received Status report. 2/21/14 issued letter granting request for filing a Status report in 60 days (by 4/12/14).

**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.

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

### **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. January 14, 2014 Council voted to not accept appeal. 1/21/14 issued appeal not accepted letter from Chairman. February 20, 2014 received Motion for Rehearing. Council to act on Motion. Discussion was held.

- ***Councilor Snelling made a motion that the Council, in recognition of Env 202.13 and recognition that denial would cause hardship, waive timely compliance with the rule, second by Councilor Mellor. Discussion was held. Motion was denied. 5-4 nay with Susan Slack recused.***
- ***Councilor St. Pierre made a motion to Deny Reconsideration, second by Councilor Crosbie. Motion passed 7 to 2 with Councilor Slack recused.***

The appellants have failed 3 times to follow the rules. They have twice been specifically told the rule to follow.

### **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. 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. 1/14/14 Hearing was held, Decision to be issued within 90 days

- ***Councilor Crosbie made a motion to adopt the Decision, second by Councilor Lievens. Motion passed unanimously. Abstaining was Councilor Mellor.***

## **I. New Appeals**

### **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.

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

### **Docket No. 14-03 WtC – William and Elizabeth Frago, Trustees**

Subject: 2/16/14 approval of Permit Application No. 2011-01677 issued to the Hopgood Bixby Shore Family Trust  
Hearing Officer:

Status: March 7, 2014 received Notice of Appeal. 3/14/14/ issued receipt of appeal letter. 3/20/14 received Appearance from Allen Brooks for the Department. 3/26/14 received Appearance for Atty. Mark Rouvalis and Motion for Summary Dismissal. It was determined that an Objection was submitted April 7, 2014, but not yet

received by the Appeals Clerk. Council to accept or dismiss appeal at its April 8, 2014 meeting.

- ***Councilor Crosbie made a motion to Table until May, second by Councilor Henderson. Motion passed unanimously.***

4. **Old Business** -

5. **New Business** -

b. **Annual Report**

- ***Councilor Prescott made a motion to approve the Annual Report, second by Councilor Henderson. Motion passed unanimously.***

a. **Wetlands Bureau Report – Collis Adams, Wetlands Bureau Administrator**

Collis reviewed the distributed document: *Wetlands Program Rulemaking & Process Improvement Effort*. They are in Phase I at this time. He offered the Wetlands Council a listening session if they would like to schedule. This is to hear feedback from groups out in the public. He noted the new website that has been set up and dedicated for this process.

He also distributed a schedule of listening sessions being held across the state. The overarching goals of this effort are to:

- Enhance transparency and predictability.
- Increase consistency and standardization
- Ensure scientifically-based decisions that protect New Hampshire's sensitive and important natural resources.

Chairman Kimball suggested the constituencies that are represented by the Council members are informed of this process. He then suggested next month a short summary of comments that have been received. He encouraged the Council members to attend one of the listening sessions.

Ongoing conferences are continuing with the Corps of Engineers regarding integrated SPG.

6. **Next Meetings** –

Next meeting will be May 13, 2014, at 8:00 a.m.

7. **Adjournment**

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

Meeting adjourned at 10:47 a.m.