

WETLANDS COUNCIL

MINUTES

May 13, 2014

The Wetlands Council met on Tuesday, May 13, 2014 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Frank Byron, Carol Henderson, Deborah Lievens, James Kennedy, Richard Mellor, Russ St. Pierre, and Robert Snelling

Absentees: Councilors: Sharon Champagne, Ryan Crosbie, Seth Prescott, and Susan Slack

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 8:00 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Snelling made a motion to approve the April 8, 2014, minutes with corrections, second by Councilor Kennedy. Motion passed unanimously, with Councilor Byron abstaining.***

2. **Public Input:** None

3. **Status Report**

I. New Appeals

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

Subject: 2/6/14 approval of Permit Application No. 2011-01677 issued to the Hopgood Bixby Shore Family Trust
Hearing Officer: Not Assigned

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. April 7, 2014 received Objection to Applicants' Motion for Summary Dismissal. Motion was tabled at the April 8, 2014 meeting. Council to accept or dismiss appeal today. Discussion was held.

- ***Councilor St. Pierre made a motion to deny the Motion for Dismissal, second by Councilor Snelling. Motion passed unanimously.***
- ***Councilor Lievens made a motion to accept the Appeal, second by Councilor Kennedy. Motion passed unanimously.***

Docket No. 14-04 WtC (PNA) – George and Denise Scholl Appeal

Subject: 2/5/14 Decision on Reconsideration of Permit No. 2011-00314(PNA filed 3/6/14)

Hearing Officer: Not Assigned

Status: April 18, 2014 received Notice of Appeal, Withdrawal of F Barrett Faulkner, and Appearance of Thomas Hanna. 4/21/14 issued receipt of appeal letter. Council to accept or dismiss appeal at its June 10, 2014 meeting.

Docket No. 14-06 WtC – Philip E. King Appeal

Subject: 4/3/14 Approval of Permit No. 2014-00442 issued to William Garber

Hearing Officer: Not Assigned

Status: May 2, 2014 received Notice of Appeal. 5/6/14 issued receipt of appeal letter. Council to accept or dismiss appeal as its June 10, 2014 meeting.

Docket No. 14-07 WtC – P & S Realty Trust

Subject: Letter dated April 1, 2014, File #2014-00365

Hearing Officer: Not Assigned

Status: May 5, 2014 received a letter requesting acceptance of this as a formal appeal regarding file #2014-00365. 5/6/14, pursuant to Env 203.03(c), sent email with attached scanned copy of the letter informing the Council it was untimely and insufficient.

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

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 accepted letter from Chairman. February 20, 2014 received Motion for Rehearing. Council to act on Motion. April 8, 2014 Council issued ruling denying Motion to Reconsider.

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. April 8, 2014 issued Decision and Order on Notice of Appeal. May 8, 2014 received Motion for Rehearing and/or Reconsideration.

III. Hearings or PHCs Pending

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 2nd 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. Hearing Officer to act on Motion and Objection.

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. April 10, 2014 received Petitioner's Memorandum of Law Regarding Remedies under RSA 482-A:10,III and Motion for Permit by Default. 4/23/14 received DES' Objection to Motion for Permit by Default. May 2, 2014 issued Order denying Appellant's Motion for Permit by Default. 5/6/14 received Appearance from Allen Brooks and 2nd PHC was held with a 2nd PHO being issued. 5/8/14 received Motion for Reconsideration. Hearing Officer to act on Motion.

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, 0214 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. 5/5/14 issued PHO with hearing scheduled for September 9, 2014 at 10 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. April 15, 2014 received Appellants' Witness and Exhibit List. May 9, 2014 issued Order granting DES' Motion to Summarily Dismiss.

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

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

Hearing Officer: David Conley, Esq. appointed by AG on 4/10/14

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 accepted appeal on April 8, 2014. 4/10/14 issued appeal accepted letter. 4/18/14 received Appearance from John Cronin and Motion to Intervene. 4/30/14 sent Notice of PHC scheduled for May 20, 2014. 5/6/14 received Appearance from Collis Adams. 5/9/14 issued letter granting Motion to Intervene in the appeal as a party without limitation.

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). April 11, 2014 received appellant's Status Report. 4/17/14 issued letter regarding DES to submit Status Update. 4/18/14 received DES' Status Update. 4/22/14 issued letter scheduling a Status Hearing for May 5, 2014 at 10 a.m. 5/8/14 received Withdrawal Without Prejudice as to Limited Issues. Docket now closed.

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** -

5. **New Business** -

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

Public listening sessions for the re-writing of the rules have all been held and comments are still being compiled. The general tenor of the meetings was appreciation as it is needed. And also appreciated being listened to and a lot of feedback was received. The tendency was to want to get into specifics. The next phase is to set up workgroups to get into the specific topics and technical items. There has been some realigning of staff to accommodate this but the statutory deadlines are all being met.

The number of permits is down but the projects seem to be larger so the bureaus are financially holding their own right now.

Collis then answered questions from the councilors.

6. **Next Meetings** –

Next meeting will be June 10, 2014, at 9:00 a.m.

7. **Adjournment**

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

Meeting adjourned at 9:05 a.m.