

WETLANDS COUNCIL

MINUTES

July 8, 2014

The Wetlands Council met on Tuesday, July 8, 2014 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Frank Byron, Ryan Crosbie, Carol Henderson, James Kennedy, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling, and Bob Wolff.

Absentees: Councilors: 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.

1. Approval of Minutes

- ***Councilor Snelling made a motion to approve the June 10, 2014 minutes as written, second by Councilor Byron. Motion passed unanimously with Councilor Lievens abstaining.***

Chairman Kimball noted that Councilor Snelling's appointment expires in October.

2. Public Input: None

3. Status Report

I. New Appeals

Docket No. 14-08 WtC – Frank Conroy Appeal

Subject: 4/16/14 Administrative Order No.14-007 WD

Hearing Officer: Not yet assigned.

Actions: May 16, 2014 received Notice of Appeal. 5/16/14 issued insufficient appeal letter. Pursuant to Env-WtC 203.03,(g) I am informing the Council, on June 18, 2014 received additional information on the 32nd day.

Additional information is still deficient in that there is no current deed reference and Appeals Clerk is not sure if a concise and explicit statement of the facts and statutory provisions upon which the council is asked to rely in granting relief is included. Also, there is no certification that a copy of the appeal was sent to the Department of Environmental Services as required.

- ***Councilor Prescott made a motion to deny acceptance of the appeal, second by Councilor Snelling. Discussion was held. Motion passed unanimously. The Chairman is to write a letter.***

Docket No. 14-11 WtC – Maria Giakoumakis and Paul Foden Appeal

Subject: 5/30/14 Administrative Order No. 14-012 WD

Hearing Officer: Not yet assigned

Actions: June 27, 2014 received Notice of Appeal. 6/30/14 issued appeal receipt letter. Council to accept or dismiss appeal at their September 9, 2014 meeting.

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

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. 5/16/14 received Bremner's Opposition to Motion for Rehearing and/or Reconsideration. Draft Decision on Reconsideration to be discussed today.

- ***Councilor Henderson moved to adopt the Order on 12-10 WtC, second by Councilor Slack. Discussion was held. Motion passed with one nay.***

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. June 18, 2014 issued 2nd Pre-hearing Order.

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. January 14, 2014 Council accepted appeal. 1/17/14 issued appeal accepted letter. 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. 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. 5/21/14 received Withdrawal from Allen Brooks and Appearance from Atty. Mary Maloney for the Department. 5/23/14 issued ruling on denying Motion for Reconsideration. June 16, 2014 received DES and Appellant's Witness and Exhibit Lists. 6/23/14 received DES's Objection to Appellant's Witness and Exhibit List. 6/27/14 received Reply to DES's Objection to Appellant's Witness and Exhibit List. 6/27/14 issued Order denying DES's Objection to Appellant's Witness and Exhibit List. July 1, 2014 received Motion to Continue Appeal Hearing. 7/7/14 issued letter granting Motion to Continue Appeal Hearing and rescheduled hearing for September 9, 2014 at 9 a.m.

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. 5/5/14 issued PHO with hearing scheduled for September 9, 2014 at 10 a.m. Spoke with Bryan Berlind, their representative, on July 7, 2014 and he will be sending a letter withdrawing the appeal.

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. June 9, 2014 received Declaration and for Reconsideration of Appeal. Draft Decision on Reconsideration to be discussed today.

- ***Councilor Lievens made a motion to adopt the Order on 13-14 WtC, second by Councilor Snelling. Motion passed unanimously.***

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: David Conley, Esq. appointed by AG on 5/20/14.

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. May 13, 2014 Council voted to deny the Motion for Dismissal and also voted to accept the Appeal. 5/13/14 issued appeal accepted letter and denial of Motion for Summary Dismissal. 5/20/14 issued Notice of Pre-hearing Conference scheduled for June 9th. 6/9/14 issued Pre-hearing Order scheduling hearing for November 4, 2014 at 9 a.m.

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: David Conley, Esq. appointed by AG on 6/16/14.

Status: 4/18/14 received Notice of Appeal, withdrawal of F. Barrett Falkner, and Appearance of Thomas Hanna. 4/21/14 issued Receipt of Appeal letter. 5/13/14 received withdrawal of Thomas Hanna. 5/19/14 received Appearance from Michael Bentley for the permittees. Council accepted appeal at its June 10, 2014 meeting. 6/10/14 issued Appeal Acceptance and Request for Memorandum of Law. 6/30/14 received Appellants' Motion for Summary Affirmance. July 2, 2014 received Memorandum of Law on Behalf of the Applicants'. Draft Summary Decision was distributed.

Recess taken at 9:38 a.m. for Chairman Kimball to speak with Council's attorney.

Meeting resumed at 9:44 a.m.

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: David Conley, Esq. appointed by AG on 6/16/14.

Status: May 2, 2014 received Notice of Appeal. 5/6/14 issued receipt of appeal letter. June 3, 2014 received Appearance from Regina Nadeau for permittee. Council accepted appeal at its June 10, 2014 meeting. 6/10/14 issued appeal accepted letter.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

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.

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. 5/20/14 issued Pre-hearing Order granting verbal Motion to Stay the appeal and ordered a status report be filed by June 30, 2014. No Status Report received. Another request for status letter to be sent.

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

DES has not sent in the Memorandum of Law as requested by June 20, 2014. The process went forward with a Hearing Officer assigned as of June 16, 2014 and all decisions are now made by him.

4. **New Business** -

5. **Old Business** -

6. **Next Meetings** –

Next meeting will be September 9, 2014, at 8:00 a.m. with the N. Miles Cook III Hearing at 9 a.m.

7. **Adjournment**

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

Meeting adjourned at 9:59 a.m.