

# WETLANDS COUNCIL

## MINUTES

November 4, 2014

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The Wetlands Council met on Tuesday, November 4, 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, James Kennedy, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling, and Bob Wolff.

**Absentees:** Councilors: Frank Byron and 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 8:02 a.m. with introductions and a quorum present.

### 1. Approval of Minutes

- ***Councilor Snelling made a motion to approve the September 9, 2014 minutes as written and the October 7, 2014 hearing continuation minutes, second by Councilor Lievens. Motion passed unanimously.***

### 2. Public Input: None

### 3. New Business -

#### **ARM FUND Report**

Lori Sommer, Wetlands Mitigation Coordinator, introduced Mindy Bubier the Wetlands Mitigation Program Specialist who now works with her. This year there were 5 watersheds that had funds available. In March the grant round was announced which asked for proposals to be submitted. 33 proposals were submitted and feedback was given to each. 12 full applications were then received with 1 withdrawing in September. No applications were received for the middle Connecticut River, these funds will be advertised again next year. The committee met in September to begin review. Site visits were Sept. 29, Oct. 9 and Oct. 21. The recommendations before the Council were decided October 29<sup>th</sup>. Lori then addressed questions from the Council. The proposal step has become very helpful in preparing the projects to realize what all is necessary to complete a full application. There are less restoration projects and more preservation projects. With Mindy's expertise they are hoping she can be used to develop restoration projects with cities and towns. The overarching goals are to try to restore the functions and values that were lost. The accounting is looking at acreage protected, wetlands vs uplands, and then credits generated to get a score. 27 questions for restoration, the other questions are related to location. Under the Wetlands rule revision they are hoping to strengthen the criteria. There is monitoring built-in to the budget and there's usually 3 – 5 years of monitoring in restoration projects. In August a site visit of the projects will be conducted to see how the projects are being handled. The land trusts are now holding more of the easements. There was discussion regarding the "Forever Wild" designation.

Recommendations for funding:

#### **Pemigewasset-Winnepesaukee River Service Area:**

- ***Chairman Kimball made a motion to approve \$64,236 to the Lakes Region Conservation Trust & Lake Wicwas Association for the protection of four separate parcels in the northeast part of Lake Wicwas, second by Councilor Henderson. Motion passed unanimously.***

**Salmon Falls to Piscataqua River Service Area:**

- ***Chairman Kimball moved that the Wetlands Council approve an award of \$121,000 to the Rye Conservation Commission for the Rand Lumber Yard Project, second by Councilor Kennedy. Motion passed unanimously.***
- ***Chairman Kimball moved that the Wetlands Council approve an award of \$100,000 to the Town of Exeter for the removal of the Exeter Great Dam, second by Councilor Crosbie. Motion passed unanimously.***
- ***Chairman Kimball moved that the Wetlands Council approve an award of \$15,000 to the Southeast Land Trust of New Hampshire for the "Garrison" property, second by Councilor Henderson. Motion passed unanimously.***
- ***Chairman Kimball moved that the Wetlands Council approve an award of \$100,000 to Trout Unlimited for the Thompson Brook Fish Passage Project, second by Councilor Lievens. Discussion was held. Motion passed unanimously.***

**Merrimack River Service Area:**

- ***Chairman Kimball moved that the Wetlands Council approve an award of \$75,000 for Bear-Paw Regional Greenways to acquire six parcels from Manchester Sand and Gravel, second by Councilor Wolff. Motion passed unanimously.***
- ***Chairman Kimball moved that the Wetlands Council approve an award of \$197,707 to the Lakes Region Conservation Trust to protect 86 acres of land located on Guinea Ridge Road in Gilmanton, second by Councilor Snelling. Motion passed unanimously.***
- ***Chairman Kimball moved that the Wetlands Council approve an award of \$150,000 to the Society for the Protection of New Hampshire Forests to protect the Shost Property in Goffstown, second by Councilor Snelling. Motion passed unanimously.***

**Lower Connecticut River Service Area:**

- ***Chairman Kimball moved that the Wetlands Council approve an award of \$115,000 to the Cheshire County Conservation District for the Falls Brook culvert in Swanzey, second by Councilor Mellor. Discussion was held. Motion passed unanimously.***
- ***Chairman Kimball moved that the Wetlands Council approve an award of \$140,000 to the Monadnock Conservancy for the acquisition of two conservation easements on the West Hill Property in Keene, Swanzey & Chesterfield with the understanding that staff will review the Forever Wild provisions so that they allow adequate flexibility in the future, second by Councilor Mellor. Discussion was held. Motion passed unanimously.***

**4. Status Report**

Due to the scheduled hearing Chairman Kimball verbally reviewed the following appeals as there were no new appeals or decisions to be voted upon. He noted the next hearing will be February 15, 2015.

**I. New Appeals**

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

**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 2<sup>nd</sup> PHC was held with a 2<sup>nd</sup> 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. Hearing was continued for a second day on October 7, 2014. Deliberations were held on 10/10/14. Decision to be issued within 90 days (by 1/8/15).

### **III. Hearings or PHCs Pending**

#### **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. July 9, 2014 received Appellants and Permittees Motion for Summary Judgment. 7/28/14 received Appellants' Assented-To Motion for Extension of Time. 7/29/14 issued letter granting Assented—To Motion for Extension of time. August 6, 2014 received Appellants and Permittees Objections to each other's Motion for Summary Judgment. 9/17/14 issued Order on Cross Motions for Summary Judgment. October 1, 2014 received both Appellants' and Permittees' Witness and Exhibit Lists. 10/2/14 received DES' Witness and Exhibit List. 10/28/14 received Appellants' and Permittees' exhibits to be used at hearing. 10/28/14 also received Permittees' Memorandum of Law and Appellants' Final Witness and Hearing Exhibit Lists.

#### **Docket No. 14-10 WtC – Durham Boat Company, Inc. Appeal**

Subject: 4/24/14 Approval of permit #2013-02883 issued to NH DOT

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Recused: Councilor Henderson

Actions: May 27, 2014 received PNA. July 11, 2014 received Notice of Appeal. 7/15/14 issued receipt of appeal letter. 7/28/14 received Appearance of Ronald Grandmaison for DOT. Council accepted appeal at the September 9, 2014 meeting. Councilor Henderson recused herself from this appeal. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 10:30 a.m. 10/21/14 received Request to Continue the PHC. 10/21/14 issued letter granting Request to Continue and rescheduled PHC for November 18, 2014 at 9 a.m.

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

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

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: June 27, 2014 received Notice of Appeal. 6/30/14 issued appeal receipt letter. Council accepted appeal at their September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/19/14 issued letter regarding Motion to Intervene which was granted. Also, 9/19/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 9:30 a.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order scheduling hearing for February 10, 2015 at 9 a.m.

### **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. September 11, 2014 issued request for status update be filed no later than October 1, 2014. 9/15/14 received status update from Atty. Bordeau. 9/25/14 received status update from Atty. Philpot; appellant's brief due at Supreme Court 10/20/14.

**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. July 18, 2014 issued letter granting verbal request 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. July 9, 2014 sent request for status update. 7/21/14 received Appellant's Status update.

**Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action.

**Docket No. 14 – 13 WtC – Ergendino Perrone and Robert Gleason Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings.

**Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay.

**V. Misc.**

**5. Old Business -**

**6. Next Meetings -**

Next meeting will be December 9, 2014 at 9:00 a.m.  
It was decided the Wetlands Council will not meet on March 10th, 2015.

**7. Adjournment**

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

Meeting adjourned at 8:39 a.m.

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**WETLANDS COUNCIL**

**HEARING MINUTES**

**November 4, 2014**

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The Wetlands Council met for  
Docket No. 14-03 WtC – William and Elizabeth Frago, Trustees Appeal Hearing  
Tuesday, November 4, 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, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling, and Robert Wolff

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

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:10 a.m.

The Hearing was continued to December 2, 2014 at 9 a.m. at Fish and Game.

The Hearing closed at 3:00 p.m.