

# WETLANDS COUNCIL

## MINUTES

December 9, 2014

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The Wetlands Council met on Tuesday, December 9, 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, James Kennedy, Deborah Lievens, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling, and Bob Wolff.

**Absentees:** Councilors: Ryan Crosbie, Richard Mellor, 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 8:08 a.m. with introductions and a quorum present.

### 1. Approval of Minutes

- ***Councilor Lievens made a motion to approve the November 4, 2014 minutes as written, second by Councilor Snelling. Motion passed unanimously with Councilor Byron abstaining.***

2. Public Input: None

3. New Business -

### **ARM FUND Update**

Lori Sommer, Wetlands Mitigation Coordinator, reported on the *Site Selection Committee Final Report Addendum*. Although the Committee recognizes the importance of re-establishing aquatic connectivity on Robinson Brook it did not recommend funding the Andorra Pond Stream Restoration project. They were looking for funds to connect a bridge and this was for stream creation and not restoration. The committee felt the stone ford that was already there was sufficient. Their recommendation was to not support this project. Discussion was held and questions answered.

### **Lower Connecticut River Service Area:**

- ***Councilor Snelling made a motion to support the addendum and final December 2014 report of the ARM, second by Councilor Kennedy. Motion passed unanimously.***

Lori shared a new statewide database is being developed regarding the location of deficient culverts on state roads. 250 deficient culverts have been identified. This is good information for communities and DOT to target what is needed for stream habitat improvement when funds are available.

### 4. Status Report

Paula Scott shared the following:

I. New Appeals
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II. Decisions that need to be written/finalized and issued.
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### **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: 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. Draft decision to be discussed December 9, 2014 meeting. Discussion was held and clarifications made.

- ***Councilor Slack made a motion to adopt the Decision and Order on Docket No. 13-12 WtC as annotated, second by Councilor Henderson. Motion passed unanimously with Councilor Byron abstaining.***

### **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. 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. Hearing continued to December 2, 2014 at 9 a.m. at Fish and Game. Held 2<sup>nd</sup> day of hearing and continued hearing to December 9, 2014.

#### **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. 11/18/14 issued Prehearing Order with Hearing scheduled for April 14, 2015 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. December 3, 2014 received withdrawal of 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. New Business -**

Councilor Mellor will not be able to be here until the June meeting as he has been taking vacation days to attend the council meetings.

This is Councilor Byron's last meeting as he has submitted his resignation. He was thanked for his time and service.

Chairman Kimball shared his concern regarding the permit fee and the keeping a balance between fiscal rectitude and the service people are paying for. When personnel have more time to review permit applications a better job is done and there are less appeals.

It was noted the LSRs have begun and everyone was encouraged to watch the bills as they develop.

**6. Next Meetings –**

Next meeting will be February 10, 2015 at 8:00 a.m. with the 14-11 WtC Marian Giakoumakis and Paul Foden Appeal Hearing.

**7. Adjournment**

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

Meeting adjourned at 8:50 a.m.

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**WETLANDS COUNCIL**

**HEARING MINUTES**

**December 9, 2014**

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The Wetlands Council met for  
Docket No. 14-03 WtC – William and Elizabeth Frago, Trustees Appeal Hearing  
Tuesday, December 9, 2014 in Rooms 112, 113, & 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Councilors: Carol Henderson, James Kennedy, Chairman Chip Kimball, Deborah Lievens, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling, and Robert Wolff

**Absentees:** Councilors: Frank Byron, Sharon Champagne, Ryan Crosbie, and Richard Mellor

Also present was: Paula Scott, Appeals Clerk

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

The Hearing closed at 2:35 p.m.

Deliberations were held from 2:45 p.m. to 3:53 p.m.