

WETLANDS COUNCIL

MINUTES

April 14, 2015

The Wetlands Council met on Tuesday, April 14, 2015 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: 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 8:34 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Snelling made a motion to approve the February 10, 2015 minutes as written, second by Councilor Wolff. Motion passed unanimously. Abstaining were Councilors Henderson, Crosbie, and Mellor.***

2. Public Input: None

4. New Business

Chairman Kimball noted the rules are presented to the Council for comment, not to adopt or approve. There are then 10 days open for comment.

ARM FUND Report

Lori Sommer, Wetlands Mitigation Program, reviewed the proposed changes to the rules. Any comments should be sent directly to Lori. 3 stakeholder meetings were held as the rules will expire in 2015. They will file these rules June 19, 2015.

Env-Wt 100 requires a pre-application meeting with the federal and state agencies if the mitigation threshold is met.

Env-Wt 801 Establishes a requirement that conservation commission cities have to develop a list of possible mitigation projects when a development project is reviewing mitigation opportunities.

Env-Wt 800 Lori highlighted changes that are proposed. These focused on incorporating streams and stream impacts and stream mitigation. The option of enhancement was added also.

Send comments directly to Lori within the next 2 weeks. Then at the May meeting a letter will be drafted with comments from the Council.

3. Status Report

I. New Appeals

Docket No. 14-17 WtC – Michael Lepore Appeal

Subject: 11/20/14 Denial of permit application file #2014-02949

Hearing Officer: Not assigned

Status: 12/17/14 received Notice of Appeal. 12/17/14 sent Insufficient Appeal letter. 12/29/14 received Insufficient Appeal letter by return mail "No such Street". 12/30/14 sent 2nd Insufficient Appeal letter. January 14, 2015 received revised Notice of Appeal. 1/16/15 sent receipt of revised appeal. Council to accept or dismiss at their April 14, 2015 meeting.

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- ***Councilor Henderson made a motion to deny acceptance of the appeal, second by Councilor Kennedy. Discussion was held. Motion passed unanimously.***

Docket No. 15-02 WtC (PNA) – Janette and Allen Richardson Appeal

Subject: 3/3/15 approval of permit #2015-00336 issued to Loren B. McCabe 2002 Trust

Hearing Officer: Not assigned

Status: 4/2/15 received Notice of Appeal. 4/3/15 issued Receipt of Appeal letter. 4/7/15 issued corrected docket number letter. Council to accept or dismiss at their May 12, 2015 meeting.

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: 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. December 10, 2014 issued Decision on Notice of Appeal. January 6, 2015 received Motion for Reconsideration/Rehearing. 1/13/15 received DES' Objection to Motion for Reconsideration/Rehearing. February 11, 2015 issued letter granting Motion for Reconsideration. April 14, 2015 Council to deliberate on Reconsideration.

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. Hearing continued to December 2, 2014 at 9 a.m. at Fish and Game. Held 2nd day and continued hearing to 12/9/14. Decision due in 90 days(3/10/15). Council to act on Draft Decision and Order on petition for Appeal.

- ***Councilor Kennedy made a motion to adopt the Decision and Order, second by Councilor Henderson. Motion passed unanimously. Councilor Crosbie abstained.***

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. March 5, 2015 received Motion to Continue. 3/6/15 issued letter granting Motion to

April 14, 2015

Continue and reschedule hearing to May 12, 2015 at 9 a.m. April 6, 2015 received Withdrawal of Appeal. 4/8/15 issued letter accepting the Withdrawal of Appeal. Docket now closed.

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. January 9, 2015 received Intervenor's Witness and Exhibit List. 1/12/15 received Appellant's Witness and Exhibit List. 1/13/15 received DES' Witness and Exhibit List. 1/15/15/ received Motion to Dismiss Administrative Order No. 14-012 WD. 1/26/14 received Respondent's Objection to Appellants Motion to Dismiss. 1/29/15 issued letter denying Motion to Dismiss. Hearing was held February 10, 2015; deliberations are scheduled for April 14, 2015.

Docket No. 14-16 WtC – David and Louise Drolet, et al. Appeal

Subject: 11/10/14 permit approval #2014-00246 issued to Green and Company

Hearing Officer: David Conley, Esq. appointed by AG on 3/13/15

Status: 12/10/14 received Notice of Appeal. 12/11/14 issued insufficient appeal letter. 12/24/14 received Amended Notice of Appeal. 12/30/14 issued receipt of appeal letter. Council accepted the appeal at the February 10, 2015 meeting. 2/11/15 issued Appeal accepted letter. 2/20/15 received Appearance from Ari Pollack for permittee. 4/7/15 issued Notice of scheduled PHC for 4/24/15 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. 13-15 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 –

May 12, 2015 at 9:00 a.m.

7. Adjournment

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

Meeting adjourned at 9:07 a.m.

WETLANDS COUNCIL
DELIBERATIONS MINUTES
April 14, 2015

The Wetlands Council met for
Docket No. 14-11 WtC – Maria Giakoumakis and Paul Foden Deliberations
Tuesday, April 14, 2015 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentees: Councilors: Ryan Crosbie, Sharon Champagne, Carol Henderson and Richard Mellor

Also present was: Paula Scott, Appeals Clerk

The Deliberations were called to order by Hearings Officer David Conley at 9:15 a.m.

The Deliberations closed at 10:20 a.m.

WETLANDS COUNCIL
DELIBERATION on RECONSIDERATION MINUTES
April 14, 2015

The Wetlands Council met for
Docket No. 13-12 WtC – N. Miles Cook III Appeal
Tuesday, April 14, 2015 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, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling and Robert Wolff

Absentees: Councilors: Ryan Crosbie and Sharon Champagne

Also present was: Paula Scott, Appeals Clerk

The Deliberations were called to order by Hearings Officer David Conley at 11:05 a.m.

The Deliberations closed at 12:30 p.m.