

# WETLANDS COUNCIL

## MINUTES

May 12, 2015

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The Wetlands Council met on Tuesday, May 12, 2015 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Carol Henderson, James Kennedy, Deborah Lievens, Richard Mellor, Seth Prescott, Robert Snelling,

**Absentees:** Councilors: Sharon Champagne, Ryan Crosbie, Russ St. Pierre, Susan Slack and Bob Wolff

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. Chairman Kimball and the Council congratulated Councilor Prescott upon this receipt of the Governor's Excellence in Energy Efficiency Award.

### 1. Approval of Minutes

- ***Councilor Lievens made a motion to accept the April 14, 2015 minutes as written, second by Councilor Mellor. Motion passed unanimously.***

### 2. Public Input: None

### 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 2<sup>nd</sup> Insufficient Appeal letter. January 14, 2015 received revised Notice of Appeal. 1/16/15 sent receipt of revised appeal. Council declined to accept the appeal at the April 14, 2015 meeting. 4/15/15 issued letter appeal was not accepted.

##### **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. May 1, 2015 received Notice of Appeal of Amended Permit. 4/11/15 received Appearance from Greg Smith and Adam Dumville for Appellants. Also received Request to Consolidate Notice of Appeal and Notice of Appeal of Amended Permit. Council to accept or dismiss at today's meeting.

- ***Councilor Henderson made a motion to accept the April 2, 2015 appeal, second by Councilor Snelling. Motion passed unanimously.***

Appeal acceptance letter will include the notice that the Appeal of the Amended Permit will be voted upon at the next Council meeting.

##### **Docket No. 15-03 WtC – Dean DeLaHaye Appeal**

Subject: 2/20/2015 approval of permit #2-14-00160 issued to The Pointe at Riverfront

Hearing Officer: Not assigned

Status: March 20, 2015 received Petition for Appeal. 3/26/15 sent insufficient appeal letter. April 24, 2015 received revised Petition for Appeal. 4/27/15 sent receipt of appeal letter. Council to accept or dismiss at the June 9, 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 deliberate on Reconsideration. May 12, 2015 discussion was held on draft Decision on Reconsideration. Changes that were made since the first draft were noted.

- ***Councilor Kennedy made a motion to adopt the Order, second by Councilor Snelling. Motion passed unanimously.***

## **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 Hoppood 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 2<sup>nd</sup> day and continued hearing to 12/9/14. Decision due in 90 days(3/10/15). Council voted to adopt the Decision and Order on petition for Appeal at the April 14, 2015 meeting. 4/14/15 Decision and Order were issued.

### **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. Council to issue decision by July 13, 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. April 17, 2015 issued Notice of scheduled PHC for 4/24/15 at 9 a.m. 4/17/15 received Appearance for Collis Adams. 4/22/15 received Assented-To Motion to Continue. 4/23/15 issued letter granting Motion and rescheduling PHC for 5/13/15 at 11:30 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. Request for status letter to be sent.

**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. Request for status letter to be sent.

**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.

#### 4. New Business

##### a. Comments received on Proposed Wetlands mitigation rules revisions

Lori Sommer, Wetlands Mitigation Program, Mary Ann Tilton, and Collis Adams.

Draft rules changes had been distributed at the May meeting. She was here to accept any comments. Comments had already been received from some councilors, more comments were received, and discussion was held. Public hearing to be held in July.

31 pre-proposals have been received for the 2015 ARM Funds.

##### b. Letter to the Commissioner.

Questions for the commissioner were discussed. Discussion was held with Collis Adams as to the upcoming rules presentation. It was decided to write a positive letter to the Commissioner regarding the upcoming presentation of the rules and that the Council is looking forward to cooperation in this large endeavor. Also include a need to look into a standardization of a least impacting rule regarding the move or expansion of a dock. It was suggested a list be created of the issues for the future. Look at the rule rewrite first and then review them from the council/appeal standpoint.

#### 5. Old Business

#### 6. Next Meetings –

June 9, 2015 at 9:00 a.m. No meeting in July

#### 7. Adjournment

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

Meeting adjourned at 10:13 a.m.