

WETLANDS COUNCIL

MINUTES

June 9, 2015

The Wetlands Council met on Tuesday, June 9, 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, Robert Snelling, and Bob Wolff

Absentees: Councilor: Sharon Champagne and Susan Slack

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:00 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Henderson made a motion to accept the May 12, 2015 minutes as written, second by Councilor Snelling. Motion passed unanimously. Councilors Wolff, St. Pierre, and Crosbie abstained.***

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 2nd 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. May 15, 2015 received a Motion for Reconsideration. Appeal was reviewed.

- ***Councilor Prescott made a motion to deny the Reconsideration, second by Councilor Henderson. 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: David Conley, Esq. appointed by AG on 05/14/15

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 accepted Notice of Appeal only at May 12, 2015. 5/12/15 issued appeal accepted letter, noting Amended Permit appeal and Request for Consolidation of Appeals to be voted on at the June 9th meeting. 5/15/15 received Appearance from Atty. Christopher Boldt for permittee. 5/20/15 received Respondent's Initial Answer. 5/22/15 received Response to Respondent's Initial Answer and Objection to Evidence submitted by Ames Associates.

- ***Councilor Snelling made a motion to accept the amended appeal, second by Councilor Lievens. Motion passed unanimously.***

Docket No. 15-03 WtC – Dean DeLaHaye Appeal

Subject: 2/20/2015 approval of permit #2014-00160 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.

- ***Councilor Wolff made a motion to accept the appeal, second by Councilor St. Pierre. Motion passed unanimously.***

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 deliberated on Reconsideration. May 12, 2015 discussion was held on draft Decision on Reconsideration. Changes that were made since the first draft were noted. Order was adopted at the May 12, 2015 meeting and issued Order on Appellant's Motion for Reconsideration.

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 Intervenors' 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 act on Draft Decision and Order on Petition for Appeal today.

- ***Councilor St. Pierre made a motion to adopt the Decision and Order, second by Councilor Wolff. Motion passed unanimously by only those in attendance at the hearing.***

III. Hearings or PHCs Pending

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. May 13, 2015 issued Pre-hearing Order scheduling hearing for September 8, 2015 at 9 a.m. 5/15/15 issued Ruling on Validity of Permit Condition.

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. May 14, 2015 sent request for status update. 5/20/15 received status update from appellant. June 4, 2015 issued Appeal Summarily Dismissed letter. Docket now closed.

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. May 14, 2015 sent request for status update. 5/20/15 received status update from intervenor. June 4, 2015 issued Appeal Summarily Dismissed letter. Docket now closed.

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

Discussion was held about each case being considered on its own merits as the same rules apply to all. Clarity, transparency and consistency are being worked on in the new Wetland rules.

Councilor Snelling asked Collis Adams about the new EPA ruling on streams and the possible effect on New Hampshire. Collis said they are looking at the new federal Clean Water Rule now. Discussion was held.

5. Old Business

Letter to the Commissioner will be sent out.

6. Next Meetings –

September 8, 2015 at 8:00 a.m. No meeting in July or August.

7. Adjournment

➤ ***Councilor Lievens made a motion to adjourn, second by Councilor Crosby. Motion passed unanimously.***

Meeting adjourned at 9:38 a.m.