

# WETLANDS COUNCIL

## MINUTES

September 8, 2015

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The Wetlands Council met on Tuesday, September 8, 2015 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Ryan Crosbie, James Kennedy, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, and Robert Snelling

**Absentees:** Councilors: Carol Henderson 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 9:06 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Mellor made a motion to accept the June 9, 2015 minutes as written, second by Councilor Kennedy. Motion passed unanimously.***

2. **Public Input:** None

3. **Status Report**

**I. New Appeals**

**Docket No. 15-06 WtC(PNA) – James and Carol Rust Revocable Trust Appeal**

Subject: 4/15/15 denial of permit application #2014-01571

Hearing Officer: Not assigned

Actions: May 14, 2015 received Preliminary Notice of Appeal(PNA). June 9, 2015 received Notice of Appeal. 6/10/15 issued receipt of Appeal letter. Council to accept or dismiss at their September 8, 2015 meeting.

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

**Docket No. 15-10 WtC – Christopher John Krochina Appeal**

Subject: 5/11/15 approval of permit #2015-00158 issued to Barbara Ann and Ronald Coburn

Hearing Officer: Not assigned

Actions: June 10, 2015 received Petition for Appeal. 6/11/15 issued insufficient appeal letter. July 10, 2015 received Amendment to Petition for Appeal. 7/13/15 issued receipt of Amendment to Petition for Appeal. Not sure of timeliness, depends on what date the Council decides is the date of issuance. Date of Decision(May 9, 2015) or cover letter (May 11, 2015). Council to accept or dismiss at their September 8, 2015 meeting.

- ***Councilor Kennedy made a motion to accept the Appeal based on the May 11, 2015 date, second by Councilor Snelling. Discussion was held. Motion passed unanimously.***

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

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regarding Motion to Intervene which was granted. Also, 9/19/14 issued Notice of Prehearing Conference scheduled for October 27, 0214 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 adopted Draft Decision and Order on Petition for Appeal. June 10, 2015 issued Revised Decision on Petition for Appeal. July 9, 2105 received Intervenor's Request for Reconsideration/Rehearing. 7/23/15 received one copy of the Appellant's Motion to Request an Extension of Time to Answer the Intervenor's Request for Reconsideration/Rehearing. 7/25/15 issued letter denying Appellant's Motion for Extension of Time. Council to act on Motion for Reconsideration/Rehearing September 8, 2015.

- ***Councilor Slack made a motion to deny the request for Reconsideration. It was noted the relief he is requesting is in the remand to the Department and the materials provided for reconsideration are now a part of the file. Second by Councilor Kennedy. Motion passed unanimously.***

#### **Docket No. 14-17 WtC – Michael Lepore Appeal**

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

Hearing Officer: Not assigned

Status: December 17, 2014 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. April 14, 2015 Council declined to accept appeal as it was still deficient. 4/15/15 issued letter Council not accepting appeal. May 15, 2015 received Motion for Reconsideration. June 9, 2015 Council voted to dismiss Appeal. 6/10/15 issued Ruling on Motion to Reconsider.

### **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. August 6, 2015 received Permit Holder's Witness and exhibit List. 8/13/16 received Assented-To Motion to Continue Final Hearing and Continue Hearing and rescheduling hearing for November 10, 2015 at 9 a.m. 8/20/15 received Partial Objection to Permit Holder's Motion in Limine.

#### **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 9<sup>th</sup> 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. June 9, 2015 issued Appeal of Amended Permit accepted letter. 6/29/15 issued Notice of Pre-hearing Conference scheduled for 7/13/15 at 1:30 p.m. July 13, 2015 issued Pre-Hearing Order scheduling hearing for December 8, 2015 at 9 a.m. August 14, 2015 received memorandum in Support of Appellant's Position that Notice to the Appellants was Inadequate Pursuant to RSA 483-B:5-b, IV-a

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and the State and Federal Constitutions. 8/27/15 received the trust's Response to Appellants' Memorandum on Notice and partial Assent to relief Requested. 8/31/15 received Appellant's Assent to Remand the Permit to the

Department for Reconsideration. September 1, 2015 issued Order on Assented to request to remand. Docket now closed.

**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: David Conley, Esq. appointed by AG on 6/18/15

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 accepted the appeal at the June 9, 2015 meeting. 06/11/15 issued appeal accepted letter. 6/22/15 received Appearance for Collis Adams. 6/23/15 issued notice of Pre-hearing Conference scheduled for July 13th at 11:30. 6/26/15 received Appearances from Michael Gardner, Maurice Morin, Linda Dutile, John McMahon and Vaughn Petraglia for the permittees. July 13, 2015 issued Pre-hearing Order scheduling hearing for Oct. 13, 2015 at 9 a.m. 7/17/15 received Motion to Amend Appeal. 7/21/15 received Appearance of Atty. Daniel Muller for permittee, Association's Objection to Appeal Amendment and the Association's Motion to Dismiss and Reconsideration. 7/24/15 received Objection to: (1) Objection to Amend the Appeal and (2) Motion to Dismiss. 7/31/15 received Motion to Compel. August 3, 2015 rec'd Objection to Motion to Compel. 8/6/15 rec'd Motion to Object to the Association's Objection to Motion to Compel. 8/11/15 received Association's Motion to Strike and Surreply to Motion to Object to Objection to Motion to Compel. 8/12/15 received Motion to Object to Appearance. 8/17/15 received Association's Objection to Motion to Strike Appearance.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**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. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo.

**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**

Wetlands Bureau Update – Collis Adams

Rulemaking draft is not yet ready. Concepts still being work on and consuming much bureau time. Goal is still to have a draft by the end of this year. The LRM reorganization process is still being worked through. Approval to come to Department of Personnel. No new staffing and function under the Continuing Resolution. Fee account is stable and running in the black. Number of permit applications is down but there are some larger projects.

The new EPA Clean Water ruling does not affect New Hampshire. Collis shared it is a huge national issue.

**5. Old Business**

**6. Next Meetings –**

October 13, 2015 at 8:00 a.m. with the Dean DeLaHaye Appeal hearing at 9 a.m.

**7. Adjournment**

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

Meeting adjourned at 9:58 a.m.