

WETLANDS COUNCIL

MINUTES

October 13, 2015

The Wetlands Council met on Tuesday, October 13, 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, and Bob Wolff

Absentees: Councilors: Carol Henderson

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

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:30 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Snelling made a motion to accept the September 8, 2015 minutes as written, second by Councilor Lievens. Motion passed unanimously.***

2. **Public Input:** None

4. **New Business**

Lori Sommer will be here at the November 10th meeting to present the ARM Fund Report. The reports will be emailed out before for review. There is a hearing that day so the meeting will begin at 8:00 a.m.

Chairman Kimball read the letter received from Commissioner Burack expressing his appreciation of the Council's work.

3. **Status Report**

I. New Appeals

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 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 adopted Draft Decision and Order on Petition for Appeal. June 10, 2015 issued Revised Decision on Petition for Appeal. July 9, 2015 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. Council denied the Request for Reconsideration. September 10, 2015 issued Decision and Order on Intervenor's Request for Reconsideration/Rehearing. Docket is closed.

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. 9/25/15 issued Order on Permit Holder's Motion in Limine.

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 received Objection to Motion to Compel. 8/6/15 received 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. September 9, 2015 issued Order on Motion to Dismiss and Reconsideration, Order on Motion to Amend, Order on Motion to Compel and Order on Motion to Strike Appearance. 9/14/15 received Association's Motion in Limine to Exclude Testimony or Evidence Relative to Count II; Association's Motion in Limine to Exclude Evidence Relative to Count I; Association's Motion in Limine to Require Application of Reasonable Judgement Test and Association's Witness and Exhibit List. 9/15/15 received Appellant's Witness and Exhibit List and Motion to Request Extension of Deadline. 9/16/15 received Motion to Strike Appellant's Witness and Exhibit List and Objection to Motion to Request Extension of Deadline. 9/17/15 issued order on Permittee's Motion to Strike Witness and Exhibit List. 9/17/15 received Motion to Object to Association's Motion in Limine to Application of Reasonable Judgment Test, Motion to Object to Association's Motion to Exclude Testimony or Evidence relative to Count I and Motion to Object to Associations Motion to Exclude Testimony or Evidence relative to Count II. 9/22/15 received Request for copies of 2 exhibits on Intervenor's list. 9/25/15 received Motion to Reconsider. 9/28/15 issued Order on Permittee's Motion in Limine Requiring Application of Reasonable Judgment Test. 9/29/15 issued Order on Permittee's Motions in Limine to Exclude Evidence Relative to Count I and Count II. 9/30/15 received Association's Objection to Motion to Reconsider. October 5, 2015 issued letter denying Appellant's Motion to Reconsider.

Docket No. 15-06 WtC – James and Carol Rust Revocable Trust Appeal

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

Hearing Officer: David Conley, Esq. appointed by AG on 9/14/15

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 accepted appeal at their September 8, 2015 meeting. 9/10/15 issued appeal accepted letter. 9/24/15 issued Notice of PHC scheduled for 10/19/15 at 9:30 a.m.

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: David Conley, Esq. appointed by AG on 9/14/15

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 accepted appeal at their September 8, 2015 meeting. 9/10/15 issued appeal accepted letter. 9/25/15 issued Notice of PHC scheduled for 10/19/15 at 10:30 a.m.

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.

5. **Old Business**

6. **Next Meetings –**

November 10, 2015 at 8:00 a.m. with the David and Louise Drolet, et al. Appeal hearing at 9 a.m.

7. **Adjournment**

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

Meeting adjourned at 8:44 a.m.

WETLANDS COUNCIL

HEARING MINUTES

October 13, 2015

The Wetlands Council met for
Docket No. 15-03 WtC – Dean J. DeLaHaye Appeal Hearing
Tuesday, October 13, 2015 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentees: Councilor: Carol Henderson

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:10 a.m.

Hearing ended at 12:23 p.m.

Deliberations were held from 1:05 p.m. to 1:40 p.m.