

MINUTES
WETLANDS COUNCIL MEETING
Tuesday, February 8, 2022

The Wetlands Council met on Tuesday, February 8, 2022 at 9:02 a.m., in Room 112, 113, 114 at the NH Department of Environmental Services (NHDES), 29 Hazen Drive, Concord, NH.

Attendees:

Chairman Chip Kimball, Councilors Lee Carbonneau, Richard Mellor, Kenneth Rhodes, Gretchen Young, Matthew Bosiak, Jennifer Gilbert, Seth Prescott, Matt Urban; Sarah Richos, Council Clerk; Phil Trowbridge, Manager, LRM, NHDES; Darlene Forst, Administrator, Wetlands Bureau, LRM, NHDES; Mary Ann Tilton, Assistant Administrator, Wetlands Bureau, LRM, NHDES; Jaime Martinez, Legal Coordinator, Legal Unit, NHDES

Absentees:

Councilor Deborah Lievens, Wendy Weisiger

The regular Wetlands Council meeting was called to order at 9:02 a.m. by Chairman Kimball with introductions. Quorum present. Introduction of new members Kenneth Rhodes, Non-Marine Construction Industry, and Jennifer Gilbert, Office of Planning & Development, NH Department of Business & Economic Affairs.

1. **APPROVAL OF MINUTES:** Motion made by Councilor Prescott to approve the December 14, 2021 meeting minutes. Seconded by Councilor Mellor. Motion was passed without dissent
2. **PUBLIC INPUT:** No public input presented before the Council.
3. **STATUS OF APPEALS:** Jaime Martinez, Legal Coordinator, NHDES Legal Unit
 - See attached Status Report on Pending Appeals provided by acting Appeal Clerk Jaime Martinez.
4. **NEW BUSINESS:**
 - Election of new officers. Motion made by Councilor Mellor to re-elect Chip Kimball to serve as Chairperson, and Deborah Lievens to serve as Vice-Chairperson; seconded by Council Carbonneau. Motion passed without dissent.
 - Darlene Forst presented Wetlands/Shoreland Rules Update. Discussion held.
5. **OLD BUSINESS:**
 - 2021 Annual Report. Discussion held.
6. **NEXT MEETING:** Tuesday, March 8, 2022 at 9:00 a.m.
7. **ADJOURNMENT:** Motion made by Councilor Urban to adjourn. Seconded by Councilor Prescott. Motion passed without dissent. Meeting adjourned at 10:20 a.m.

To: Wetlands Council
From: Jaime Martinez, Legal Coordinator (*Acting Appeals Clerk*)
Re: Status Report on Pending Appeals
Date: *February 8, 2022*

Next Council Meeting: March 8, 2022

I. New Appeals

Docket No. 21-12 WtC - Thomas DiPace, Appeal

12/06/21 Received Notice of Appeal
12/06/21 Issued Receipt of Appeal Letter
12/07/21 Issued Insufficient Appeal Letter

12/16/21 Zachary Towle Designated as Hearing Officer
01/10/22 Appellant Communication to Hearing Officer
01/20/22 Order of Dismissal

Docket No. 21-11 WtC – Todd and Tanva McIntire, Appeal

11/19/21 Received Notice of Appeal
12/02/21 Issued Receipt of Appeal Letter
12/03/21 Rcvd. Appearance of Philip Hastings for Lake Ave. Realty
12/03/21 Rcvd. Motion for Summary Dismissal
12/13/21 Rcvd. Receipt of Appearance (McIntire)
12/13/21 Rcvd. Response to Motion for Summary Dismissal

12/16/21 Designation of Hearing Officer
01/20/22 Order of Dismissal

Docket No. 22-01 WtC – Sebastian and Rebecca Barthelmess, Appeal

12/30/21 Appeal Filed
01/19/22 Designation of Hearing Officer
01/26/22 Order of Dismissal

Docket No. 22-03 WtC – Rye Conservation Commission, Appeal

01/21/22 Appeal Filed
01/22/22 Appearance of Attorney Manzelli (Rye CC)
01/31/22 Designation of Hearing Officer
02/02/22 Order of Dismissal

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

III. Hearings or PHCs Pending

Docket No. 21-10 WtC – Wentworth by the Sea Country Club Limited Partnership, Appeal

Subject: Wetlands #2020-02473; issued 09/13/21

Hearing Officer: Zachary Towle

Recusal: Lee Carbonneau

Status: 10/22/21 Received Notice of Appeal; 10/22/21 Rcvd. Appearance of John Cronin (Cronin, Bisson, and Zalinsky, P.C.); 10/25/21 Issued Receipt of Appeal Letter; 10/26/21 Issued an Updated Receipt of Appeal Letter; 10/28/21 Received Letter Designating Zachary Towle as Hearing Officer; 12/14/21 Council Member Lee Carbonneau, NH Association of Natural Resources Scientists recused herself from this Appeal; Council accepted the Appeal; Acting Appeals Clerk will issue Appeal Acceptance letter.

12/14/21 Acceptance of Appeal Letter Issued
12/17/21 Appearance by Attorney K Allen Brooks
12/17/21 Assented-To Motion to Remand
12/20/21 Order on Parties' Assented-To Motion To Remand

Docket No. 21-07 WtC – David Birchenough and Darrelle Lang Appeal

Subject: 2/19/21 Administrative Order No. 21-004 WD

Hearing Officer: Zachary Towle (Appointed 8/23/21)

Status: 3/22/21 rec'd Notice of Appeal. 3/23/21 issued Insufficient Appeal letter. 3/24/21 rec'd Revised Notice of Appeal. 3/29/21 issued Receipt of Revised Appeal letter. Council to accept or decline appeal today, May 11, 2021. 5/11/21 issued Appeal Accepted letter. 5/12/21 rec'd Appearance of Jason Reimers for the Appellant's. 6/22/21 rec'd Appearance of Kerry Barnsley for the department. 8/26/21 Letter received (dated 8/23) from AGO designating Zachary Towle as Hearing Officer; 11/29/21 Issued Notice of Prehearing Conference (scheduled for 01/11/22)

12/23/21 rec'd Notice of Closure and Release of Recordation for Administrative Order No. 21-004 WD

12/28/21 rec'd Withdrawal of Appeal

01/03/22 rec'd Notice of Withdrawal and Cancellation of January 11, 2022 Pre-Hearing Conference

Docket No. 21-09 WtC – Margot L. Thompson and Edward P. Thompson Appeal

Subject: Administrative Order No. 2021-012 WD, issued on 09/20/21

Hearing Officer: Zachary Towle

Status: 9/17/21 Received Notice of Appeal; 9/20/21 Issued Receipt of Appeal Letter; 9/29/21 Received Letter (dated 09/28) from AGO designating Zachary Towle as Hearing Officer; 11/12/21 Issued Appeal Accepted Letter; 11/18/21 Rcvd. Appearance of Christopher Aslin; 11/19/21 Rcvd. Revised and Corrected Appearance of Christopher Aslin; 11/29/21 Issued Notice of Pre-Hearing Conference (scheduled for Jan. 18)

01/14/22 Red'd Appeal Structuring Order

01/19/22 Hearing Officer issued Pre-Hearing Conference Order

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 19-02 WtC – Timothy & Jean Pineau and Jean Pineau, Trustee Appeal

Subject: 12/19/18 Amendment to Administrative Order No. 18-020 WD

Hearing Officer: David Conley (appointed by AG 2/14/19)

Status: 1/11/19 rec'd Appearance from Regina Nadeau and Petition for Appeal. 1/15/19 issued receipt of appeal letter. Council to accept or dismiss appeal at today's meeting (2/12/19). 2/19/19 issued Appeal Accepted letter. 2/25/19 issued Notice of Pre-hearing Conference scheduled for 3/18/19 at 10 a.m. 2/26/19 rec'd Appearance from Jason Reimers. 3/1/19 rec'd Appearance from Christopher Aslin. 3/11/19 rec'd Petition to Intervene. 3/18/19 issued Pre-hearing Order granting Motion to Intervene and scheduling a second Pre-hearing Conference for May 8, 2019 at 8 a.m. 4/12/19 issued Notice of Rescheduled Pre-hearing Conference to June 11, 2019 at 8:00 a.m. 6/11/19 issued 2nd Pre-hearing Order staying appeal pending resolution of quiet title and ordering Appellant to file status update by Dec. 16, 2019. 12/16/19 rec'd Status update. 12/17/19 issued letter requesting another Status Update by Feb. 14, 2020. 2/13/20 rec'd Status Update. 11/12/20 issued Request for Status Report. 11/19/20 rec'd Status Report from Appellants. 6/10/21 issued Request for Status Update. 6/29/21 rec'd Status Update. 8/26/21 Letter received (dated 8/23) from AGO designating Zachary Towle as Hearing Officer.

12/14/21 Wetlands Council requested an update from the Hearing Officer

12/14/21 H.O Update: Appeal suspended until resolution of proceeding in Belknap County Superior Court- trial date scheduled for May 2022

Docket No. 19-04 WtC (PNA) – Sagamore Landing Association and David and Margaret Witham Appeal

Subject: 02/25/19 Approval of Wetlands Permit #2018-03677 issued to Joan and Jon Dickinson

Hearing Officer: David Conley (appointed by AG 6/14/19)

Status: 5/10/19 rec'd Petition for Appeal, Appearance for Lynn Preston and Appearance for Bryanna Devonshire. 5/13/19 issued receipt of appeal letter. 5/16/19 rec'd Appearance of John-Mark Turner for the appellants. 5/17/19 rec'd Appellant's Updated Service List. 6/7/19 rec'd Appearances from Attorney John Bosen and Bernard Pelech for the permittee. Council to accept or decline appeal today (6/11/19). 6/13/19 issued Appeal Accepted letter. 6/20/19 issued Notice of Pre-hearing Conference scheduled for July 24th at 9 a.m. 7/3/19 rec'd appellant's Request for Information. 7/24/19 issued Pre-hearing Order staying the appeal. 9/24/19 rec'd Joint Status Report. 9/26/19 issued letter ordering parties to submit an updated status report by Nov. 22, 2019. 11/22/19 rec'd Joint Status Report. 11/25/19 issued letter re Joint Status Report and ordering an updated Status Report be filed by Feb. 20, 2020. 2/21/20 rec'd Appellants' Status Report. 2/28/20 issued Letter re Appellants' Status Report and order an updated Status Report be filed by Aug. 19, 2020. 3/10/20 rec'd Appearance of Mary Ann Tilton. 8/18/20 rec'd Joint Status Report. 6/10/21 issued Request for Status Update. 6/11/21 rec'd Appellants' Status Report. 6/24/21 rec'd Permittee's Status Report. 8/26/21 Letter received (dated 8/23) from AGO designating Zachary Towle as Hearing Officer; 12/14/21 Wetlands Council requested an update from the Hearing Officer.

12/14/21 H.O Update: Appeal suspended in anticipation of new dock permit being submitted

V. Misc.

Docket No. 21-06 WtC – Clinton and Cynthia Johnson Appeal

Subject: 2/9/21 Approval of Wetlands Permit Application, File Number 2020-01023 issued to Parker Realty Trust

Hearing Officer: Not assigned

Status: 3/9/21 rec'd Notice of Appeal. 3/11/21 issued Insufficient Appeal letter. 3/25/21 rec'd Revised Notice of Appeal. 3/29/21 issued Receipt of Revised Notice of Appeal. 4/2/21 rec'd Motion to Intervene. Council to accept or decline appeal today, May 11, 2021. Appeal still appears to be insufficient; Env-WtC 203.01 (e), send complete copy to each person listed on the copy list of the permit. 5/11/21 issued Ruling denying Acceptance of Appeal. 5/19/21 rec'd Motion to Reconsider. 5/25/21 issued Ruling Provisionally Granting the Motion to Intervene. 6/2/21 rec'd Request Denial of Motion to Reconsider. 6/4/21 rec'd Objection to Motion to Intervene.

6/16/21 issued Final Ruling on Motion to Intervene and Ruling denying Motion to Reconsider.

7/16/21 Appeal by Petition under RSA 541:6 and N.H. Sup. Ct R. 10 filed with NH Supreme Court

9/14/21-Received Notice from the Supreme Court that the Motion to Dismiss was Denied and the Appeal was Accepted.

10/04/21-Received N.H. Supreme Court Order for Case No. 2021-0313, Appeal of Clinton Johnson & a., requesting a copy of certified record to be submitted on or before December 3, 2021; 11/18/21 Delivered the Certified Record to the NH Supreme Court