

MINUTES
WETLANDS COUNCIL MEETING
Tuesday, June 13, 2023

The Wetlands Council met on Tuesday, June 13, 2023 at 8:30 a.m., in Rooms 112, 113, 114 at the NH Department of Environmental Services (NHDES), 29 Hazen Drive, Concord, NH.

Attendees:

Chairman Chip Kimball, Councilors Richard Mellor, Gretchen Young, Lee Carbonneau, Kenneth Rhodes, Matthew Bosiak, Michael Dionne, Matt Urban, Sandra Crystall; Zachary Towle, Esquire, Dept of Justice; Philip Trowbridge, Manager, Land Resources Management (LRM), NHDES; Darlene Forst, Administrator, Wetlands Bureau, NHDES; Mary Ann Tilton, Assistant Administrator, Wetlands Bureau

Absentees: Councilors Seth Prescott, Jennifer Gilbert

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

1. **APPROVAL OF MINUTES:** Motion made by Councilor Mellor to approve the April 11, 2023, meeting minutes as amended by adding Sandra Crystall's name to attendees. Seconded by Councilor Urban. Motion passed without dissent.
2. **PUBLIC INPUT:** No public input presented before the Council.
3. **STATUS OF APPEALS:**
 - Zachary Towle, Esquire. Discussion held.
4. **NEW BUSINESS:** No new business presented before the Council.
5. **OLD BUSINESS:**
 - HB 2 legislation
6. **NEXT MEETING:** Tuesday, July 11, 2023, commencing at 8:30 a.m.
7. **ADJOURNMENT:** Motion made by Councilor Carbonneau to adjourn. Seconded by Councilor Crystall. Motion passed without dissent. Meeting adjourned at 9:34 a.m.

To: Wetlands Council
From: Pamela Monroe, Legal Unit Administrator (Acting Appeals Clerk)
Date: April 10, 2023
Re: Appeals Status Report

I. New Appeals

1. Docket No. 23-03 WtC Appeal of Donna and Paul Urbanek
Subject: 03-28-23 Approval of major impact project in Mill Pond 2019-01311
Hearing Officer: Zachary Towle (appointed by AG 05-01-23)
Status:

- 04-27-23 – Notice of Appeal
- 04-27-23 – Appearance Rouvalis and Walkley
- 05-01-23 – Appointment of Hearing Officer
- 05-24-23 – Request to Clarify Issued by Hearing Officer
- 05-26-23 – Appearance Kieser
- 05-30-23 – Request to Intervene Randy Bryan
- 06-02-23 – Appellants' Response to Request to Clarify
- 06-05-23 – Request to Intervene-Pascale Revocable Trust and Rockwood Revocable Trust
- 06-07-23 – Permittee's Objection to Bryan Motion to Intervene

2. Docket No. 23-06 WtC Appeal of Gail Kelley
Subject: 04-14-23 Approval for Standard Dredge and Fill Wetlands Permit 2021-03763
Hearing Officer: Zachary Towle (appointed by AG 05-18-23)
Status:

- 05-15-23 – Notice of Appeal
- 05-15-23 – Plan of Lot Line Adjustments
- 05-16-23 – Correspondence from Appeals Clerk
- 05-18-23 – Assignment of Hearing Officer

II. Cases Pending

3. Docket No. 20-08 WtC – Robert and Carolyn Newcomb Appeal
Subject: 04-14-20 Administrative Order No. 2020-009 WD
Remand from NH Supreme Court (08-05-22)
Hearing Officer: Zachary Towle (assigned 08-12-22)
Status:

- 05-09-23 – States Motion in Limine
- 05-15-23 – Objection to Motion in Limine
- 05-17-23 – Appellants Pre-Hearing Memorandum
- 05-22-23 – Order Granting Motion in Limine
- 06-06-23 – PHC Order
- 06-06-23 – Appellants' Exhibits and Exhibits List
- 06-07-23 – Objection to Appellants' Exhibit 32 - Worksheet of Land
Hearing Scheduled on June 13 and 14, followed by deliberations
Status Report - Pending Wetlands Council Appeals

4. Docket No. 21-06 WtC – Clinton and Cynthia Johnson Appeal
Subject: 02-09-21 Approval of Wetlands Permit Application, File Number 2020-01023 issued to Parker Realty Trust

Remand from the NH Supreme Court (09-29-22)
Hearing Officer: Zachary Towle (assigned 10-25-22)

Status:

- 03-09-23 – Order to Clarify Issued
- 03-20-23 – Appellants' Position Regarding Application of Rules
- 03-21-23 – Notice of DES' Position Regarding Applicable Rules
- 04-10-23 – Amended Notice of Appeal Filed

Amended Appeal Packet is under review by the Hearing Officer and a pre-hearing conference order will be issued. The hearing is tentatively scheduled for January 2024.

5. 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 (assigned 09-28-21)

Status:

- 04-11-23 – Assented-to Motion to Continue or Stay the Appeal and Consideration of the Motion for Reconsideration
- 04-12-23 – Order Issued on Motion to Continue
- 05-15-23 – Assented-to Motion to Stay the Appeal
- 05-18-23 – Order Issued on Motion to Continue

The Appeal Hearing in this matter is continued to a date after 07-01-24

6. Docket No. 22-18 WtC – Appeal of Jenny Lang

Subject: Appeal the Issuance of Permit 2022-02905

Hearing Officer: Zachary Towle (assigned 01-09-23)

Status:

- 02-09-23 – Order of Dismissal Issued
- 02-22-23 – Supplemental Notice of Appeal Filed
- 03-24-23 – Joint Motion to Stay Appeal Filed
- 04-12-23 – Order Issued Granting Motion to Stay
- 04-12-23 – Order Granting Motion to Intervene

The matter is stayed until further notice.

7. Docket No. 22-19 WtC – 111 Bow St. Condo Assoc.

Subject: Appeal the Issuance of Permit 2021-2150

Hearing Officer: Zachary Towle (assigned 11-30-22)

Status:

- 02-09-23 – Order of Dismissal Issued
- 03-03-23 – Appellant's Supplemental Filing
- 03-06-23 – Intervenor's Objection to Supplemental Filing
- 03-20-23 – Appellant's Reply to Intervenor's Objection to Supplemental Filing
- 03-20-23 – Appellant's Motion to Strike and Motion for Order Voiding all Orders
- 03-21-23 – Intervenor's Opposition to the Motion to Strike
- 03-21-23 – Reply to Objection to Motion to Strike
- 03-22-23 – K. Allen Brooks Appearance

There is a pending supplemental notice of appeal filing and an objection to the supplemental filing/motion to strike.

There is a standing dispute which needs to be resolved. A pre-hearing conference has not been scheduled.

8. Docket No. 22-20 WtC – Martha G. Stolzer and Martha G. Stolzer Revocable Trust

Subject: Appeal the issuance of Permit 2022-00118

Hearing Officer: Zachary Towle (assigned 1-18-23)

Status:

01-13-23 – Petition for Appeal Filed
01-13-23 – Appearance of Courtney Herz
02-27-23 – Appearance of Aslin
04-13-23 – Notice of Joint Pre-Hearing Conference Stolzer and Hall
05-08-23 – Appellants’ Partially Assented to Motion to Stay
05-18-23 – Assented to Motion to Continue PHC and Objection
05-18-23 – Order on Motion to Stay and Motion to Continue PHC and Objection
05-26-23 – Richardson Email Response to Appeals Clerk
05-26-23 – Hepp Affidavit
05-26-23 – Motion for Summary Affirmance or Dismissal
05-26-23 – Assented-to Motion for Extension to File Pleadings
06-01-23 – Partially Assented to Motion for Late Filing
06-01-23 – Appearance Preston
06-05-23 – Order Issued on Assented-to Motion for Extension to File Pleadings (Appellants' have until June 15, 2023 to respond to the motion and objection).

9. Docket No. 22-21 WtC – Pamela S. Hall and Pamela S. Hall Revocable Trust

Subject: Appeal the issuance of Permit 2022-00118

Hearing Officer: Zachary Towle (assigned 1-18-23)

Status:

01-13-23 – Petition for Appeal Filed
02-27-23 – Aslin Appearance
04-04-23 – Richardson Appearance
04-04-23 – Petition to Intervene filed by 393 New Castle Ave.
04-13-23 – Notice of Joint Pre-Hearing Conference Stolzer and Hall
05-08-23 – Appellants’ Partially Assented to Motion to Stay
05-18-23 – Assented to Motion to Continue PHC and Objection
05-18-23 – Order on Motion to Stay and Motion to Continue PHC and Objection
05-26-23 – Richardson Email Response to Appeals Clerk
05-26-23 – Hepp Affidavit
05-26-23 – Motion for Summary Affirmation or Dismissal
05-26-23 – Objection to Motion to Stay
05-26-23 – Assented-to Motion for Extension to File Pleadings
06-01-23 – Partially Assented to Motion for Late Filing
06-01-23 – Appearance Preston
06-05-23 – Order on Assented-to Motion for Extension to File Pleadings (Appellants' have until June 15, 2023 to respond to the motion and objection).

10. Docket No. 22-23 WtC City of Laconia

Subject: Appeal of the Issuance of Permit 2022-00636

Hearing Officer: Zachary Towle (assigned 02-10-23)

Status:

03-10-23 – Notice of Pre-Hearing Conference
03-27-23 – Intervenor’s Motion for Summary Dismissal
03-29-23 – Appearance of Joseph Driscoll
04-05-23 – Joint Stay of Appeal
04-06-23 – Order Issued Granting Assented-To Petition to Intervene and Joint Motion to Stay
Appeal is stayed until Sept. 1, 2023

11. Docket No. 19-04 WtC – 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: Zachary Towle (assigned 08-23-21)

Status:

01-20-23 – Order Issued Granting the Joint Motion to Stay-Appeal--Stayed until Further Notice.

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

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

12-14-21 H.O Update: Appeal suspended until resolution of proceeding in Belknap County Superior Court

03-09-23 Acting Appeals Clerk Update-The trial has been completed and an Order was issued by the Court. A Motion for Clarification of the Order was subsequently filed and is pending before the Court.

III. Closed or On Appeal

13. Docket No. 23-02 WtC Berard Appeal

Subject: 03-10-2023 Approval of Dredge and Fill Permit 2022-02848

Hearing Officer: Zachary Towle (appointed by AG 04-04-23)

Status:

03-29-23 – Berard Letter

03-29-23 – NHDES Response to Berard Letter

04-02-23 – Appeal Berard

04-02-23 – Berard Email Requesting Waiver of Rules

04-04-23 – Appointment of Hearing Officer

04-05-23 – Berard Letter with Permit

04-13-23 – Order of Dismissal Issued

14. Docket No. 22-17 WtC – James Contois

Subject: Appeal the issuance of Permit 2021-0251

Hearing Officer: Zachary Towle (assigned 11-30-22)

Status:

02-07-23 – Order of Dismissal Issued

03-17-23 – Permittee Objection to Motion for Reconsideration

03-21-23 – Order Denying Appellant's Motion for Reconsideration

04-20-23 – Appellant Motion for Rehearing

05-01-23 – Objection to Motion for Rehearing

05-03-23 – Order Denying Appellant's Motion for Rehearing

06-02-23 – Petition for Council Review and Hearing

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

Subject: Appeal the issuance of Permit 2018-01767 (requesting to modify the permit)

Hearing Officer: Zachary Towle (assigned 01-31-22)

Status:

03-21-23 – Order Issued Denying Appellant's Motion for Rehearing

04-20-23 – NH Supreme Court Filing--Appeal with Companion Request for Emergency Ex-Parte Injunction and Expedited Ruling thereon

16. Docket No. 22-10 WtC – Port City Air Leasing, Inc.

Subject: 06-16-22 Approval of Wetlands Permit Application, File Number 2021-03615 issued to Pease Aviation Partners, LLC/Million Air Portsmouth

Hearing Officer: Zachary Towle (assigned 8-23-21)

Status:

01-30-23 – Order Issued Granting Intervenor's Motion for Summary Dismissal

Awaiting H/O ruling

03-01-23 – PCA Motion for Reconsideration and Rehearing

03-07-23 – Intervenor Objection to Motion for Reconsideration.

04-12-23 – Order Denying Motion for Rehearing

05-10-23 – Appellant's Motion for Stay

05-16-23 – Intervenor's Objection to Motion to Stay

05-12-23 – NH Supreme Court Filing – Petition for Appeal From Final Order of the NH Wetlands Council