

MINUTES

WETLANDS COUNCIL MEETING

Tuesday, December 12, 2023

The Wetlands Council met on Tuesday, December 12, 2023 at 9:00 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, Lee Carbonneau, Gretchen Young, Matthew Bosiak, Michael Dionne, Seth Prescott, Matt Urban, Sandra Crystall; Zachary Towle, Esquire, Hearing Officer, Dept of Justice; Pam Monroe, Esquire, NHDES Legal Unit; Michelle Doucette, Esquire, Appeals Clerk, DOJ; Phil Trowbridge, LRM Manager, NHDES; Jeff Blecharczyk, Compliance Supervisor, NHDES; Emily Nichols, NHDES ARM Fund Manager; Darlene Forst, Administrator, Wetlands Bureau, NHDES; Mary Ann Tilton, Assistant Administrator, Wetlands Bureau; R. Jessie Webb, council secretary

Absentees: None.

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

1. **APPROVAL OF MINUTES:** Motion made by Councilor Urban to approve the September 26, 2023, meeting minutes. Seconded by Councilor Carbonneau. Motion passed without dissent. Chairman Kimball noted that the council did not have a quorum for the regular meeting on October 10, 2023. The council did have a quorum for the WtC 20-08 appeal hearing held on October 10 and 12, 2023.
2. **PUBLIC INPUT:** No public input presented before the Council.
3. **STATUS OF APPEALS:** Pam Monroe, Legal Unit Administrator, NHDES, gave an update on the attached appeals.
 - Zachary Towle, Esquire, Hearings Officer, Dept. of Justice asked for any edits to the following appeals:
 - Docket No. 20-08 Wtc – Robert and Carolyn Newcomb appeal:
 - Councilor Rhodes mentioned an error using “inches” when it should state “feet”.
 - Motion to adopt the final ruling made by Councilor Bosiak seconded by Councilor Crystall. The motion passed without dissent.
 - Hearing held on October 10 and 12, 2023.
 - Docket No. 22-03 Wtc –Rye Conservation Commission appeal:
 - *Phragmites* needs to be capitalized throughout per Councilor Crystall, and page 9 claim #4, line 5 should be “a question *of fact*” and first paragraph, second sentence replace *te* with *the*.
 - Discussion ensued.
 - Motion to adopt the final ruling was made by Councilor Prescott and seconded by Councilor Mellor. The motion passed without dissent.
 - Docket No. 21-06 Wtc – Clinton and Cynthia Johnson appeal:
 - It was explained that a hearing date of January 2024 had been proposed, but not agreed on by the parties. The ruling on a motion to dismiss is pending.

4. NEW BUSINESS:

- Emily Nichols, NHDES ARM Program Fund Manager, gave a presentation on the ARM projects review and approval process. Darlene Forst, NHDES Administrator, explained how “credits” works.
 - Regarding the ARM Biennial Report FY 2022 -2023 Chair Kimball reported that he believed Permit fee and Administrative fee columns in Table 2 were swapped.
 - Particular concern was expressed regarding the balance between Wetlands and Stream loss, project costs, and how this impacts stream crossing projects.
 - The Council had extensive discussion with Ms. Nichols regarding the new Corps of Engineers requirements for crediting mitigation.
 - Gonic Dams Removal project:
 - Motion made by Councilor Mellor to approve the funding and seconded by Councilor Urban. Councilor Dionne and Councilor Young abstained. Motion passed without dissent.
 - Lancaster School Floodplain Restoration project:
 - Discussion ensued. Motion made by Councilor Young to approve the funding and seconded by Councilor Dionne. Councilor Dionne and Councilor Young abstained. Motion passed without dissent.
- Jeff Blecharczyk, Compliance Supervisor, DES, gave an update on the compliance status at NHDES. Darlene Forst, NHDES Administrator, added information on policy restrictions.
 - Discussion ensued.

5. **OLD BUSINESS:**

- a. Chair Kimball gave the status on Study Committee on Environmental Councils appeal.
- b. Prime Wetlands Rules are posted, and a hearing will be held at NHDES on the December 20th at 2:00 pm in room 208C.

6. **NEXT MEETING:** Tuesday, January 9, 2024, at 9:00 a.m. location TBD.

7. **ADJOURNMENT:** Motion made by Councilor Crystall to adjourn and was seconded by Councilor Urban. Motion passed without dissent. Meeting adjourned at 11:12 a.m.

To: Wetlands Council

From: Pamela Monroe, Legal Unit Administrator (*Acting Appeals Clerk*)

Date: December 12, 2023

Re: Appeals Status Report

I. Appeals

1. Docket No. 23-15 WtC Appeal of David and Pamela Amari

Notice of Appeal Filed: 10-23-23

Subject: Appeal of LRM Document Number 2023-01908 regarding no violation of a dredge and fill action on abutting property.

Hearing Officer: Zachary Towle (assigned 10-26-23)

10-23-23 – Notice of Appeal

10-23-23 – Appearance Amari

10-23-23 – Motion for an Extension

10-23-23 – Supplement Packet

10-26-23 – Designation of Hearing Officer

11-05-23 – Bradley Amari Correspondence

2. Docket No. 23-14 WtC Appeal of Gary Dixon et.al.

Notice of Appeal Filed: 09-22-23

Subject: Appeal of Administrative Decision on orders to remove seasonal dock structure previously determined by the Department to be “grandfathered.”

Hearing Officer: Zachary Towle

09-22-23 – Notice of Appeal

09-22-23 – Motion to Stay Administrative Decision

09-22-23 – Appearance of William Philpot Jr

09-27-23 - Designation of HO

10-02-23 - Appearance of Kerry Barnsley for NHDES

10-02-23 - Motion to Dismiss Appeal

10-02-23 - Response to Motion to Stay

10-10-23 - Motion to Withdraw Appeal filed

3. Docket No. 23-13 WtC Appeal of Mastenbrook et. al.

Notice of Appeal Filed: 08-14-23

Subject: Appeal of NHDES Administrative Order No. 18-020 WD on approval of a docking structure
Hearing Officer: Zachary Towle (assigned 08-22-23)

08-14-23 - Notice of Appeal With Attachments
08-22-23 – Designation of Hearing Officer
Status Report - Pending Wetlands Council Appeals

4. Docket No. 23-11 WtC Appeal of Brian Bilapka and Andrea Page

Notice of Appeal Filed: 07-21-23

Subject: Individual Septage Disposal System Approval with approval number eCA2023062223 and NH Shoreland Permit

Hearing Officer: Zachary Towle (assigned 07-27-23)

08-11-23 - Appearance of Muller
08-11-23 - Motion to Intervene
08-11-23 - Motion to Dismiss
08-22-23 - Objection to Motion to Dismiss
10-31-23 - Supplemental Filing from Appellant
11-15-23 - Appearance Lucas
11-21-23 - Motion to Dismiss
11-29-23 - Obj. to Motion to Dismiss

5. Docket No. 23-03 WtC Appeal of Donna and Paul Urbanek

Notice of Appeal Filed: 04-27-23

Subject: 03-28-23 Approval of major impact project in Mill Pond 2019-01311 Hearing Officer: Zachary Towle (assigned 05-01-23)

09-08-23 - Order Issued Denying Pascale and Rockwood Motion to Intervene
09-08-23 - Order Issued Denying Bryans' Motion to Intervene
09-09-23 - Correspondence from Rockwood and Pascale
09-14-23 - State's Objection to Rockwood and Pascale Motion for Intervention
09-20-23 - Order issued Continuing PHC to October 16, 2023
09-25-23 - Second Assented-to Mtn to Continue PHC
10-06-23 - Order Granting Motion to Continue PHC
10-13-23 - Appellants' Proposed Appeal Structuring Order
10-13-23 - Sate and Permittee's Proposed Appeal Structuring Order
10-16-23 - PHC held with the Parties
10-18-23 - Pre-Hearing Order Issued-Hearing Scheduled in July 2024
Status Report - Pending Wetlands Council Appeals

6. Docket No. 20-08 WtC – Robert and Carolyn Newcomb Appeal

Notice of Appeal Filed: 05-13-20

Remanded from NH Supreme Court on 08-05-22

Subject: 04-14-20 Administrative Order No. 2020-009 WD

Hearing Officer: Zachary Towle (assigned 08-12-22) Status:

Hearing held on October 10. The Decision is pending.

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

Notice of Appeal filed: 01/21/22

Subject: Appeal the issuance of Permit 2018-01767 (requesting to modify the permit) Hearing Officer: Zachary Towle (assigned 01-31-22) Status:

Hearing and deliberations concluded on 10/6/23. The Decision is pending

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

Notice of Appeal Filed: 03-09-21

Remanded from NH Supreme Court on 09-29-22

Subject: 02-09-21 Approval of Wetlands Permit Application, File Number 2020-01023 issued to Parker Realty Trust

Hearing Officer: Zachary Towle (assigned 10-25-22) Status:

08-25-23 - Order issued Affirming RSA 541

09-05-23 - Motion to Reconsider

09-05-23 - Assented-to Motion for Waiver of Rule

09-15-23 - State's Motion to Dismiss

09-25-23 - Objection to Motion to Dismiss

09-27-23 - Response to Objection to Motion to Dismiss

09-29-23 - Partially Assented-to Motion for Leave to Surreply

10-02-23 - Johnson Response to State and Intervenor Expert Disclosures

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

Notice of Appeal Filed: 09-17-21

Subject: Administrative Order No. 2021-012 WD, issued on 09-20-21 Hearing Officer: Zachary Towle (assigned 09-28-21) Status:

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

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

Notice of Appeal filed on 12-28-22

Subject: Appeal the Issuance of Permit 2022-02905 Hearing Officer: Zachary Towle (assigned 01-09-23) Status:
Status Report - Pending Wetlands Council Appeals

04-12-23 - Order Granting Joint Motion to Stay. The appeal is stayed until further notice.

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

Notice of Appeal filed: 01-13-23

Subject: Appeal the issuance of Permit 2022-00118 Hearing Officer: Zachary Towle (assigned 1-18-23) Status: Awaiting Order from HO regarding Motion for Summary Affirmance or Dismissal, Motion to Stay, and Motion to Consolidate

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

Notice of Appeal filed: 01-13-23

Subject: Appeal the issuance of Permit 2022-00118 Hearing Officer: Zachary Towle (assigned 1-18-23) Status: Awaiting Order from HO regarding Motion for Summary Affirmance or Dismissal, Motion to Stay, and Motion to Consolidate

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

Notice of Appeal filed: 02-08-23

Subject: Appeal of the Issuance of Permit 2022-00636 Hearing Officer: Zachary Towle (assigned 02-10-23) Status:

08-30-23 - Partially Assented-To Motion to Extend Joint Stay of Appeal Proceeding until November 1, 2023

11-01-23 – Second Partially Assented-To Motion to Extend Joint Stay of Appeal Proceedings until December 1, 2023

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

Notice of Appeal filed: 05-10-19

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:

The appeal is stayed until further notice.

III. Closed or On Appeal

15. Docket No. 23-06 WtC Appeal of Gail Kelley

Notice of Appeal Filed: 05-15-23

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:

09-11-23 - Order of Dismissal Issued

Status Report - Pending Wetlands Council Appeals

10-11-23 – Motion for Rehearing

10-16-23 – Objection Motion for Rehearing

10-31-23 – Supplement to Motion for Rehearing

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

Notice of Appeal filed: 07-15-22

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:

Appeal filed with the NH Supreme Court

06-30-23 - Order issued requiring submittal of the certified record by August 29, 2023 08-23-23 - Certified Record submitted to the NH Supreme Court