

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

October 14, 2009
9:00 a.m.

Members present: Chairman Bridges, Vice Chairman Christie, Councilors Butler, Cowan, Czysz, Densberger, Dupee, Henderson, Lyons, Rastallis, Rawnsley, and Varotsis

Members absent: Councilors Barnard, Barrett, Harrington, and Phillips

Chairman Bridges called the meeting to order at 9:00 a.m.

1. Approval of Minutes of September 9, 2009 Meeting

- *A motion was made by Councilor Varotsis to accept the minutes of September 9, 2009 with corrections as noted, second by Councilor Butler. The Council unanimously voted to approve this motion.*

2. Status of Appeals

After discussion, it was decided for consistency and ease of process that Councilor Rawnsley and Councilor Harrington will serve as Hearings Officers for all Pre-Hearing Conferences and Appeals.

Amy Samson, Appeals Clerk, presented an update on a number of appeals and requested Council action on several, as noted below.

I. New appeals.

Docket No. 09-34 WC – Ashuelot Pond Association

RE: 8/28/09 Notice of Decision on Determination of Lake Level for Ashuelot Pond Dam Village District

Presiding Officer: Chris Rawnsley

Status: Accept or Deny Notice of Appeal

- *Councilor Cowan made a motion to accept the appeal, second by Councilor Rawnsley. Motion passed unanimously.*

II. Previously pending cases.

The following 3 appeals have been transferred from Councilor Cowan to Councilor Harrington:

Docket No. 04-05 WC - Freudenburg-NOK General Partnership

RE: AO WD 04-001

Presiding Officer: Joel Harrington

Status: Need to reschedule PHC.

Docket No. 04-18 WC - Thaddeus Dymon

RE: Denial of a Request for Waiver of Env-Ws 386.56(h)(12), (14), (18)

Presiding Officer: Joel Harrington
Status: Need to reschedule PHC.

Docket No. 04-19 WC - Town of Newport

RE: Denial of a Request for Waiver of Env-Ws 386.56(h)(12), (14), (18)
Presiding Officer: Joel Harrington
Status: Need to reschedule PHC.

Docket No. 08-27 WC - Moody Point Company

RE: 5/19/08 Administrative Order No. 08-027 WD
Presiding Officer: Nancy Christie transferred to Christopher Rawnsley
Status: Need to reschedule PHC.

Docket No. 08-29 WC - Silver Lake

RE: Notice of Determination of Natural Mean High Water Mark Evaluation dated 5/29/08
Presiding Officer: Stephen Densberger
Status: A Motion to Continue was filed by Atty. Donahue on 8/25/09, which Councilor Densberger granted. The hearing has been rescheduled for 2/10/10. Time TBA. A Motion to Dismiss was filed by Attorney Brooks for DES on Sept 22, 2009.

- ***Councilor Densberger made a motion to dismiss the case, second by Councilor Christie. Discussion was held. Motion passed unanimously.***

Docket No. 08-54 WC - Loretta Simonds

RE: 8/8/08 Decision on Request for Reconsideration
Presiding Officer: Christopher Rawnsley
Status: A PHC was held on 6/29/09. A hearing is to be rescheduled. A Motion to Dismiss was filed by Attorney Roth for DES.

- ***Councilor Rawnsley made a motion to deny the State's Motion to Dismiss, second by Councilor Cowan. Discussion was held. Councilor Rawnsley moved to withdraw his motion.***
- ***Councilor Densberger made a motion to Table the Motion to Dismiss for further consideration by council, second by Councilor Henderson. Motion passed unanimously.***

Docket Nos. 08-57 & 08-59 WC - Eric W. Waleryszak, Brian T. and Adela J. Griset Appeal

Councilor Cowan recused himself from this appeal.

RE: Notice and Decision on the Determination of Lake Level issued by DES on 9/29/08
Presiding Officer: Christopher Rawnsley
Status: A PHC was held on 6/29/09. On 8/11/09, Motion to Dismiss Under Env-WC 203.02 for Failure to Provide Clear & Concise Statement of Relief Sought and Motion to Dismiss for Lack of Standing Under Rule Env-WC 203.02(A)(6) filed by Atty. Licata. On 8/13/09, Motion to Amend Appeal of Notice of Decision on Determination of Lake Level 9/29/08 filed by Mr. Griset. On 8/21/09, Objection to Motion to Dismiss for Lack of Standing was filed by Mr. Griset. On 8/31/09, a Reply to State's Objection to Appellant Griset's Motion to Amend Appeal on Notice of Decision on Determination was filed by Mr. Griset. A hearing is currently scheduled for 12/9/09 at 10 a.m.

Action: Council will need to grant/deny the Motion to Dismiss filed by Atty. Licata. Council will need to grant/deny Motion to Amend the Appeal of Notice of Decision on Determination of Lake Level 9/29/09 filed by Mr. Griset.

- ***Councilor Rawnsley made a motion to deny the Motion to Dismiss for Lack of Standing, second by Councilor Varotsis. Motion passed unanimously.***
- ***Councilor Rawnsley made a motion to deny the State's Motion to Dismiss, second by Councilor Butler. Discussion was held. Motion passed unanimously.***
- ***Councilor Rawnsley made motion to accept the Motion to Amend, second by Councilor Dupee. Motion passed unanimously.***

Docket No. 08-61 WC - Norman and Patricia Bureau

RE: 11/4/08 Administrative Order No. 08-044 WD - Alteration of Terrain at 5 Christopher Road & 6 Steep St., in Merrimack
Presiding Officer: Joel Harrington
Status: A Decision and Order still needs to be finalized.

Docket No. 09-05 WC - North Country Alliance for Balanced Change (Dalton Valley Drag)

RE: 12/12/08 Alteration of Terrain Permit WPS 8289 for Dalton Valley Drag
Presiding Officer: Christopher Rawnsley
Status: A PHC was held on 7/28/09 at 9:00 a.m. The hearing has been scheduled for 1/13/10. Time TBA.

Docket No. 09-14 WC - Andrew and Karen Goldstein

RE: 3/17/09 Administrative Order No. 09-006 WD
Presiding Officer: Mike Butler transferred to Christopher Rawnsley
Status: A PHC is scheduled for 10/26/09 at 2:30 p.m.
Action: Appeal received on 4/9/09. On 5/4/09, a Motion to Dismiss Administrative Order was filed by the appellant. On 5/7/09, an Objection to the Appellant's Motion to Dismiss the Administrative Order was filed by DES' representative, Atty. Mulholland. These motions were on the status report on 5/13/09, but not voted on at that time. Atty. Macdonald filed an objection to hold a PHC on 10/26/09 until these motions are ruled on.

- ***Councilor Varotsis made a motion to not Dismiss, no second.***
- ***Councilor Czyz made a motion to Table this until the next meeting pending clarification by counsel, second by Councilor Dupee. Discussion was held. Motion passed unanimously.***

Docket No. 09-24 WC – Lake Sunapee Protective Association

Councilors Henderson and Christie recused themselves from this appeal.

RE: 4/16/09 Alteration of Terrain Permit WPS-8382
Presiding Officer: Stephen Densberger
Status: On 7/28/09, Motion to Set Hearing Date and Witness List filed by Atty. Mulholland. On 8/11/09, Appearance filed by Atty. Roth on behalf of DES. On 8/20/09, Partially Assented-To Petition to Intervene filed by Atty. Mayer. On 8/3/09, LSPA's Objection to the New Hampshire Fish and Game Department's Motion to Set Hearing Date and Witness List filed by Atty. Smith.

Action: Grant/Deny Motion to Set Hearing Date and Witness List filed by Atty. Mulholland.
Grant/Deny Partially Assented-To Petition to Intervene filed by Atty. Mayer.

It was noted that a PHC has not been held yet.

- ***Councilor Cowan made a motion to deny the motion to Set the Hearing Date and Witness List, second by Councilor Rawnsley. Motion passed unanimously.***
- ***Councilor Czyz made a motion to Table the Partially Assented-To Motion to get clarification on what “partially assented-to” means and interpretation of what degree of standing must demonstrate from legal counsel, second by Councilor Cowan. Discussion was held. Motion passed unanimously.***

Docket No. 09-27 WC – Homes for a Life Time, LLC

RE: 5/28/09 Denial of Alteration of Terrain Permit Application No. 081231025

Presiding Officer: Jim Varotsis transferred to Christopher Rawnsley

Status: PHC scheduled for 10/26/09 at 10:00 a.m.

3. Env- Dw 1200 - Privately Owned Redistribution Systems Rules

Bob Mann and Holly Green, Drinking Water Ground Water Bureau
Initial proposed rules were distributed at the September meeting. Public hearing and comment period will be in December and go to JLCAR in January.

- ***Councilor Densberger made a motion to accept the proposed rules, second by Councilor Butler. Motion passed unanimously.***

4. Env – Dw 1002 Amendments to Water Supply Land Protection Grants

Holly Green, Drinking Water Ground Water Bureau
RSA 486-A was amended and the proposed amendments make the necessary legislative changes. Public hearing and comment period will be in December and go to JLCAR in January.

- ***Councilor Densberger made a motion to approve the rules as presented, second by Councilor Christie. Motion passed unanimously.***

5. Env – Dw 800 Public Notification by Public Water Systems Rule

Selina Makofsky, Drinking Water Ground Water Bureau
Rules were distributed at the meeting to be voted on at the next meeting. These are existing rules that are being readopted; there will be interim rules until these are adopted.

6. Other Business -

Councilor Butler requested a presentation on the Instream Flow Program.
Councilor Christie requested the November Water Council meeting be rescheduled as the regular meeting falls on Veterans Day. Another date and place will be researched and the Council notified.

The Council asked that assistance be given to the Appeals Clerk, Amy, as the work load has increased so much.

7. **Next Meeting**

Next meeting will be announced.

8. **Adjournment**

- ***Councilor Varotsis made a motion to adjourn, second by Councilor Densberger. Motion passed unanimously.***

Meeting was adjourned at 10:30 a.m.