

WATER COUNCIL MEETING

NH Fish and Game
11 Hazen Dr., Concord, N.H.

November 17, 2009
9:00 a.m.

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

Members absent: Councilors Dupee and Phillips

Non-meeting with counsel was held before the regular meeting.

Chairman Bridges called the meeting to order at 9:30 a.m.

1. Approval of Minutes of October 14, 2009 Meeting

- *A motion was made by Councilor Varotsis to accept the minutes of October 14, 2009 with amendments as noted, second by Councilor Butler. The Council unanimously voted to approve this motion. Councilor Harrington abstained from the vote.*

2. Status of 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.

II. Previously pending cases.

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

RE: AO WD 04-001

Presiding Officer: Joel Harrington

Status: A status request was sent to the parties to respond by the 12/9/09 meeting.

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: A status request was sent to the parties to respond by the 12/9/09 meeting.

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: A status request was sent to the parties to respond by the 12/9/09 meeting.

Docket No. 08-27 WC - Moody Point Company

RE: 5/19/08 Administrative Order No. 08-027 WD

Presiding Officer: Christopher Rawnsley

Status: Pre-Hearing Conference (PHC) scheduled for 12/7/09 at 9 a.m.

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. On 9/22/09 a Motion to Dismiss was filed by Attorney Brooks. An Objection to the Motion to Dismiss was filed by Atty. Donahue on 10/5/09. On October 14, 2009 the Motion to Dismiss was passed. Discussion ensued.

- ***Councilor Rawnsley moved to end discussion, second by Councilor Henderson. 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 Motion to Dismiss was tabled at the last meeting.

- ***Councilor Rawnsley made a motion to deny Motion to Dismiss the appeal and set March 10, 2010 as the hearing date, second by Councilor Lyons. Motion passed unanimously.***

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

RE: Notice and Decision on the Determination of Lake Level issued by DES on 9/29/08

Presiding Officer: Christopher Rawnsley

Status: Council denied the Motion to Dismiss filed by Atty. Licata. The council granted the Motion to Amend the Appeal of Notice of Decision on Determination of Lake Level 9/29/09 filed by Mr. Griset. A decision and order will need to be written and finalized regarding the decisions made by the Council on 10/14/09. A 2nd PHC will need to be scheduled in January 2010. The parties have agreed to postpone the 12/9/09 hearing for a later date.

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 at 10:00 a.m.

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

RE: 3/17/09 Administrative Order No. 09-006 WD

Presiding Officer: Christopher Rawnsley

Status: A PHC was held 10/26/09 at 2:30 p.m. 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. Council tabled the Motion to Dismiss at the last meeting.

- ***Councilor Rawnsley made a motion to deny the Motion to Dismiss, second by Councilor Varotsis. Discussion was held. Motion passed unanimously.***

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

Councilors Henderson, Lyons, and Christie recused themselves from this appeal.

RE: 4/16/09 Alteration of Terrain Permit WPS-8382

Presiding Officer: Stephen Densberger

Status: At the last meeting the Council tabled the following motions:

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.

At the last meeting, 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.

The minutes from the 9/9/09 Council meeting state the following, which was missed during the discussion:

- ***Councilor Cowan made a motion to table these motions until the presiding officer is present, second by Councilor Varotsis. Discussion. After discussion, Councilors Cowan and Varotsis withdrew their motion.***
- ***Councilor Harrington made a motion to grant Partially Assented-To Petition to Intervene, second by Councilor Cowan. Motion passed unanimously.***
- ***Councilor Cowan made a motion to table setting the hearing date until the next meeting or when the presiding officer is present, second by Councilor Varotsis. Motion passed unanimously.***

November 17th meeting:

- ***Councilor Czyz made a motion that at the October meeting there was an oversight concerning the Partially Assent-to Motion to Intervene and the vote at the September meeting stands, second by Councilor Densberger. Motion passed unanimously.***
- ***Councilor Densberger made a motion to deny Motion to Set Hearing Date and move to set a PHC for 1/18/2010, second by Councilor Butler. 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: Christopher Rawnsley

Status: PHC was held on 10/26/09 at 10:00 a.m. A hearing is scheduled for 4/14/09 at 10:00 a.m.

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: Appeal accepted on 10/14/09. On 10/15/09, Don Dam of Lake Ashuelot Estates, Inc. filed a Motion to Intervene and on 10/26/09, Robert Thompson of Ashuelot Pond Dam Village District filed a Motion to Intervene.

Action: Grant/Deny Motion to Intervene filed by Mr. Dam. Grant/deny Motion to Intervene filed by Mr. Thompson.

- ***Councilor Henderson moved to table decision to grant or deny Mr. Dam's Motion to Intervene and request more information, second by Councilor Cowan. Motion was withdrawn.***
- ***Councilor Densberger made a motion to deny Mr. Dam's Motion to Intervene as incomplete, second by Councilor Lyons. Motion passed with a majority, Councilor Harrington nay and Councilor Christie abstained.***
- ***Councilor Rawnsley made a motion to grant Mr. Thompson's Motion to Intervene, second by Councilor Densberger. Motion passed with a majority, Councilor Cowan voting nay.***

At this time the Council returned to the Lake Sunapee Association Appeal.

Upon returning to agenda:

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

Holly Green and Leah McKenna, Drinking Water Ground Water Bureau

Rules were distributed at the prior meeting and questions were addressed

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

5. **Legislation**

Director Stewart shared there are about 20 water related LSRs presented so far. There will be language to the bills in December.

6. **Other Business** -

A presentation on the Instream Flow Program will be set for the December meeting.

7. **Next Meeting**

Next meeting will be December 9, 2009.

8. **Adjournment**

- ***Councilor Barrett made a motion to adjourn, second by Councilor Harrington. Motion passed unanimously.***

Meeting was adjourned at 10:30 a.m.

DRAFT