

WATER COUNCIL MEETING

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

May 10, 2017
9:00 a.m.

Members present: Chairman Gilbert, Councilors: Beaurivage, Boisvert, Clark, Gegas, Henderson, O'Brien, Rawnsley, and Tremblay

Members absent: Councilors: Butler, Hardy, Hinds, and Joubert

Also present were Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

Chairman Gilbert called the meeting to order at 9:01 a.m.

1. Approval of Minutes of the April 12, 2017 Meeting

- ***Councilor Clark made a motion to accept the April 12, 2017 minutes, second by Councilor Beaurivage. Motion passed unanimously with Councilor O'Brien abstaining.***

2. Status of Appeals

Paula Scott presented an update on the following appeals:

III. Hearings or PHCs Pending

Docket No. 16-10 WC (PNA) – Town of Lincoln Appeal

Re: 5/20/16 Administrative Order No. 16-012 WD

Hearing Officer: David Conley assigned on 7/18/16

Status: June 17, 2016 received Notice of Appeal. 6/20/16 issued receipt of Appeal letter. Council accepted the appeal at their July 13, 2016 meeting. 7/13/16 issued Appeal accepted letter. 7/29/16 received Appearance from Attorney General. December 14, 2016 issued Notice of Pre-Hearing Conference scheduled for January 23, 2017 at 11:30 a.m. PHC was held on 1/23/17 with a 2nd PHC scheduled for April 10, 2017 at 9 a.m. April 10, 2017 issued 2nd Pre-hearing Order with deadlines for filing.

Docket No. 16-16 WC Suzanne Fournier, et al. Appeal

Re: 08/22/16 approval of Alteration of Terrain Permit No. AoT-1149 issued to the Town of Milford

Hearing Officer: David Conley assigned on 11/17/16

Recused: Councilor Henderson

Status: September 8, 2016 received Notice of Appeal. October 10, 2016 receipt of Appeal letter. Council accepted the Appeal at their November 9, 2016 meeting. November 9, 2016 issued Appeal accepted letter. December 12, 2016 issued Notice of Pre-hearing Conference scheduled for January 23, 2017 at 10:30 a.m. 1/17/17 received Motion to Intervene from the Town of Milford. 1/23/17 PHC was held, Town of Milford's Motion to Intervene was granted and a hearing was scheduled for April 12, 2017 at 9 a.m. February 8, 2017 received Appearance from Atty. Christopher Aslin for DES. 2/15/17 received Town of Milford's Motion to Remand, etc. 2/17/17 received Appellants' Objection to Town of Milford's Motions and also received their Witness and Exhibit list. 2/23/17 received DES' Witness and Exhibit List. March 6, 2017 received State's First Request for Information from Appellants. March 7, 2017 received Appellant's Request for Information from the State. 3/9/17 received State's Motion to Dismiss. 3/13/17 received Objection to State's Motion to Dismiss. 3/20/17 Hearing Officer requested copies of attachments referenced

in Notice of Appeal that were not attached. 3/22/17 received attachments (exhibits) referenced in the Notice of Appeal as requested by the Hearing Officer. April 3, 2017 received State's Motion to Continue Hearing. 4/4/17 issued Order granting State's Motion to Dismiss the Appeal. April 27, 2017 received Appellants' Motion for Rehearing. May 2, 2017 received Objection to Motion for Rehearing.

Docket No. 16-19 WC Patricia Rodrigues and John Corduff Appeal

Re: 8/31/16 approval of after-the-fact Alteration of Terrain Permit No. AoT-1154 issued to Gretchen Fowler, Trustee of the George R. Graves Revocable Trust
Hearing Officer: David Conley assigned on 1/17/17

Status: October 3, 2016 received Notice of Appeal. 10/10/16 issued receipt of Appeal letter. Appeal initially appeared to be untimely. Based on information subsequently received, Appeal may be timely. If the Council determines that the Appeal was timely filed, it is likely that an Insufficient Appeal letter will have to be sent. A motion was made and passed to consider the Appeal timely filed on November 9, 2016. 11/9/16 issued insufficient Appeal letter. December 9, 2016 received revised Appeal. 12/21/16 issued receipt of revised Appeal letter. Council to accept or decline Appeal at January 11, 2017 meeting. Council accepted the Appeal at the January 11, 2017 meeting. 1/11/17 issued Appeal accepted letter. 1/30/17 issued Notice of Pre-Hearing Conference scheduled for February 22, 2017 at 10 a.m. February 17, 2017 received Appearance from Atty. Allen Brooks for the Department. 2/21/17 received email request from Appellant to postpone PHC due to medical event. 2/21/17 issued Ruling granting postponement. March 21, 2017 issued Notice of Pre-hearing Conference scheduled for April 10, 2017 at 10 a.m. April 10, 2017 issued Pre-hearing Order scheduling hearing for July 12, 2017.

Docket No. 17-01 WC (PNA) – Christopher and Rebecca Crowe Appeal

Subject: 12/21/16 Administrative Order No. 16-033 WD
Hearing Officer: David Conley assigned on 3/15/17

Status: January 19, 2017 received Notice of Appeal. 1/20/17 issued Insufficient Appeal letter. February 17, 2017 received Revised Notice of Appeal. March 1, 2017 issued Receipt of Revised Appeal letter. Council to accept or decline appeal at their March 8, 2017 meeting. Council accepted Appeal at their March 8, 2017 meeting and issued Appeal accepted letter. April 6, 2017 issued Notice of Pre-hearing Conference scheduled for May 2, 2017 at 9 a.m. 4/12/17 received Appearance for Atty. Christopher Aslin. May 2, 2017 issued Pre-hearing Order scheduling hearing for September 13, 2017 at 9 a.m.

Docket No. 17-03 WC – Town of Hampton, NH Appeal

Subject: 1/13/17 Administrative Order No. 17-001 WD
Hearing Officer: David Conley assigned on 3/15/17

Status: February 10, 2017 received Notice of Appeal. 2/15/17 issued Receipt of Appeal letter. Council to accept or decline appeal at their March 8, 2017 meeting. Council accepted Appeal at their March 8, 2017 meeting and issued Appeal accepted letter. April 6, 2017 issued Notice of Pre-hearing Conference scheduled for May 2, 2017 at 10 a.m. 4/12/17 received Appearance for Atty. Mary Maloney. 4/25/17 received DES' Assented-to Motion to Continue. May 1, 2017 issued letter granting Assented-to Motion to Continue. 5/2/17 issued Notice of Pre-hearing Conference scheduled for May 15, 2017 at 9 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

3. New Business

a. Legislative Update

Director Forbes distributed the updated U.S. Drought Monitor for New Hampshire updated as of May 2, 2017. The areas of drought are getting smaller and smaller. Discussion was held.

The June and July Council meetings will be held as scheduled with the Council not meeting in August unless a decision by the Council is required.

It was noted the Industrial position and the Lakes position are still open on the Council.

- ***Councilor O'Brien made a motion to temporarily adjourn the meeting to consult with Counsel at 9:32 a.m., second by Councilor Henderson. Motion passed unanimously.***
- ***Councilor Tremblay made a motion to reconvene the regular meeting at 10:05 a.m., second by Councilor Rawnsley. Motion passed unanimously.***

II. Decision and Orders that need to be written finalized and issued.

Docket No. 16-23 WC – City of Rochester, NH Appeal

Subject: 12/19/16 Notice of Violation for PWS#2001010

Hearing Officer: Not assigned

Status: December 23, 2016 received Notice of Appeal. January 4, 2017 issued receipt of Appeal letter. Council to determine whether the Appeal is within the Council's jurisdiction. 1/11/17 Council voted to table Appeal for their attorney's opinion on jurisdiction. February 8, 2017 Council voted to decline to accept the Appeal as it is not within their jurisdiction. 2/27/17 issued Decision and Order on Notice of Appeal. March 8, 2017 received Motion for Rehearing. April 12, 2017 Council voted to defer Motion for Rehearing for their attorney's opinion.

- ***Councilor Rawnsley made a motion to deny the Motion for Reconsideration, second by Councilor Tremblay. The basis for the motion is that the notice of violation under consideration isn't a department enforcement decision, it's considered by statute, and isn't appropriate for the Council to hear at this time. Motion passed unanimously.***

I. New Appeals

Councilor Boisvert recused himself from the following discussion of No. 17-06 and 17-07 and left the meeting.

Docket No. 17-06 WC – Town of Hampton, NH Appeal

Subject: 03/29/17 Administrative Order No. 17-006 WD issued to Wiggin Way Home Owners Association AND Aquarion Water Company of NH, Inc.

Hearing Officer: Not assigned

Status: April 28, 2017 received Notice of Appeal. May 1, 2017 issued receipt of Appeal letter. Council to accept or decline appeal at the May 10, 2017 meeting.

- ***Councilor Rawnsley made a motion to accept the Appeal, second by Councilor Beaurivage. Motion passed unanimously with Councilor Tremblay abstaining.***

Docket No. 17-07 WC – North Hampton Water Commission and Town of North Hampton Appeal

Subject: 03/29/17 Administrative Order No. 17-006 WD issued to Wiggin Way Home Owners Association AND Aquarion Water Company of NH, Inc.

Hearing Officer: Not assigned

Status: April 28, 2017 received Notice of Appeal. May 4, 2017 issued receipt of Appeal letter. Council to accept or decline appeal at the May 10, 2017.

- ***Councilor Beurivage made a motion to accept the Appeal, second by Councilor Clark. Motion passed unanimously with Councilor Tremblay abstaining.***

Docket No. 17-04 WC – City of Rochester, NH Appeal

Subject: 02/14/17 Notice of Violation for PWS#2001010

Hearing Officer: Not assigned

Status: March 13, 2017 received Notice of Appeal. 3/20/17 issued receipt of Appeal letter.

Please note that the Council may have to determine whether the Appeal is within the Council's jurisdiction at their April 12, 2017 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a Notice of Insufficient Appeal, as required under Env-WC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal.

- ***Councilor Henderson moved to deny WC 17-04 based on the fact that it is similar to WC 16-23, in that the Water Council does not have jurisdiction, second by Councilor Rawnsley. Motion passed unanimously.***

Chairman Gilbert noted the Council needs to exercise its responsibility to advise the Department of wording of these notices so that these types will not be filed with the Council to be denied on jurisdictional basis. There is a need to communicate directly to the Commissioner. Director Forbes is to arrange a meeting with the Commissioner, Chairman Gilbert and himself.

- ***Councilor Beurivage moved to draft a letter to the Commissioner indicating the concerns following the meeting with the Commissioner, draft to be circulated to the Council, second by Councilor O'Brien. This is not for criticism, but for clarification for all. Motion passed unanimously.***

Docket No. 16-16 WC Suzanne Fournier, et al. Appeal

Re: 08/22/16 approval of Alteration of Terrain Permit No. AoT-1149 issued to the Town of Milford

Hearing Officer: David Conley assigned on 11/17/16

Recused: Councilor Henderson

Status: See status as entered above

Chairman Gilbert noted a Motion for Reconsideration (Rehearing) was received. The Appeal has been dismissed as a matter of law. But there is some uncertainty as to where the relative authority for acting on this Motion for Reconsideration lies.

- ***Councilor Boisvert made a motion to defer action on this motion, as titled Motion for Rehearing WC 16-16, to the next meeting to allow time for legal evaluation, second by Councilor Henderson. Motion passed unanimously.***

4, Old Business

5. Next Meeting

June 14, 2017 at 9:00 a.m.

6. Adjournment

- ***Councilor Tremblay made a motion for adjournment, second by Councilor Beurivage. Motion passed unanimously.***

Meeting adjourned at 10:19 a.m.