

## WATER COUNCIL MEETING

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

October 10, 2018  
9:00 a.m.

**Members present:** Chairman Gilbert, Councilors: Beaurivage, Boisvert, Butler, Geisser, Henderson, O'Brien, Rawnsley, Spaulding, and Tremblay

**Members absent:** Clark, Gegas, Hardy, and Joubert

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

Chairman Gilbert called the meeting to order at 9:00 a.m. with an introduction of members.

### 1. Approval of Minutes of the September 12, 2018 Meeting

- ***Councilor Boisvert made a motion to accept the September 12, 2018 minutes, second by Councilor Spaulding. Motion passed unanimously with Chairman Gilbert and Councilors Butler, Tremblay, and Rawnsley abstaining.***

### 2. Status of Appeals

I. New Appeals

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

#### **Docket No. 17-14 WC Suzanne Fournier et at. Appeal**

Re: 09/18/17 approval of Alteration of Terrain Permit N. AoT-1313 issued to the Town of Milford  
Hearing Officer: David Conley, Esq., assigned on 11/16/17

Recused: Carol Henderson

Status: October 18, 2017 received Notice of Appeal. 10/19/17 issued Receipt of Appeal letter. 10/31/17 received Motion to Intervene from Town of Milford. November 7, 2017 received Appearance from Atty. Christopher Aslin for the Department. Council accepted Appeal 11/8/17 and Appeal accepted letter issued. 11/21/17 issued Notice of Pre-hearing Conference scheduled for December 11, 2017 at 1 p.m. 11/27/17 received Assented-To Motion to Continue PHC. 11/29/17 issued letter granting Assented-To Motion to Continue PHC to December 19<sup>th</sup> at 9 a.m. December 19, 2017 issued Pre-hearing Order scheduling hearing for March 14, 2018 at 9 a.m. The Appeal will possibly take 2 days. Council decided the 2<sup>nd</sup> day will be April 11<sup>th</sup>. February 14, 2018 received State's and Appellants' Witness and Exhibit Lists. March 7, 2018 received Appellants' Motion to Amend Their Exhibit List. 3/9/18 received Appellants' Statement to Clarify the Record. March 14, 2018 Hearing was held and continued to April 6, 2018 at 9 a.m. April 5, 2018 received Appearance from Atty. Biron Bedard for the Town of Milford. The Continued Hearing was held on April 6, 2018 with Deliberations scheduled for 4/11/18 at 9 a.m. 4/10/18 received Post-Hearing filings as requested by the Hearing Officer. 4/11/18 deliberations were held. Decision to be issued within 90 days. July 17, 2018 issued Decision and Order on Notice of Appeal. 7/20/18 received State's Assented-To Motion to Waive the Deadline for Objection to a Motion for Rehearing. 7/24/18 issued letter granting State' Assented-to Motion to Waive the Deadline. Received the Appellant's Motion for Rehearing on August 14, 2018. 8/20/18 received State's Objection to Motion for Rehearing. September 17, 2018 received Motion for Decision on

Motion for Rehearing. 9/26/18 draft Decision was circulated for review. October 5, 2018 issued Order denying Appellants' Motion for Rehearing. Docket now closed.

### III. Hearings or PHCs Pending

#### **Docket No. 17-06 WC – Town of Hampton, NH, 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: David Conley, Esq., assigned on 5/17/17

Recused member: Councilor Boisvert

Status: April 28, 2017 received Notice of Appeal. May 1, 2017 issued receipt of Appeal letter. Council accepted the appeal at the May 10, 2017 meeting. 5/11/17 issued Appeal accepted letter. 5/16/17 received Assented-To Motion to Consolidate (Docket No. 17-06 WC and Docket No. 17-07 WC). 5/17/17 received Appearance from Atty. Marcia Brown. 5/18/17 received Motion to Intervene. 5/25/17 issued ruling Granting Motion to Consolidate and Motion to Intervene. December 15, 2017 received State's Motion to Dismiss. January 29, 2018 received Town of North Hampton and North Hampton Water Commission Withdrawal of Appeal. 1/31/18 received Withdrawal of Attorney Stephen Bennett and North Hampton Water Commission's Motion to Reinstate Appeal. February 9, 2018 issued letter granting Motion to Reinstate Appeal regarding North Hampton Water Commission. 2/9/18 received Town of Hampton's Objection to State's Motion to Dismiss. 2/14/18 received Wiggin Way/ Winterberry Home Owners Association's Joinder to State's Motion to Dismiss and received Appearance for Atty. Timothy Harned for the N. Hampton Water Commission and their Objection to State's Motion to Dismiss. 2/28/18 received State's Reply to Town of Hampton's Objection to State's Motion to Dismiss. March 5, 2018 received Surreply in Support of Objection to State's Motion to Dismiss. May 23, 2018 issued Decision and Order denying State's Motion to Dismiss. June 18, 2018 issued Assented to Motion to Postpone 2<sup>nd</sup> Pre-hearing Conference. July 19, 2018 received Town of Hampton's Assented to Motion to Postpone 2<sup>nd</sup> Prehearing Conference. 7/19/18 issued letter granting Town of Hampton's Assented To Motion and rescheduling the 2<sup>nd</sup> Pre-hearing Conference for August 30, 2018 at 9 a.m. in room 110. 7/30/18 received Appearance of Stephen Bennett for North Hampton Water Commission. 8/23/218 received Assented to Motion to Postpone Pre-hearing Conference. 8/24/18 received Withdrawal of Stephen Bennett. 8/27/18 issued letter granting Assented to Motion to Postpone Pre-hearing Conference until September 5, 2018 at 2 p.m. 9/5/18 issued 2<sup>nd</sup> Pre-hearing Order scheduling a 3<sup>rd</sup> Pre-hearing Conference for January 22, 2019 at 2 p.m.

#### **Docket No. 18-09 WC Rae-Ann Melacon and Suzanne Fournier Appeal**

Re: June 18, 2018 approval of Alteration of Terrain Permit No. AoT-1437 issued to Leighton A. White, Inc.

Hearing Officer: David Conley, Esq., assigned on 9/17/18

Status: July 5, 2018 received Notice of Appeal. 7/16/18 issued receipt of Appeal letter. 7/20/18 received Appearance of Biron Bedard and Motion to Intervene. 7/24/18 received Appearance of Christopher Aslin for the department. Council accepted Appeal September 12, 2018. 9/13/18 issued Appeal accepted letter. 9/20/18 issued Notice of Pre-hearing Conference scheduled for October 22, 2018 at 1 p.m. 9/20/18 received Appearance of Attorneys Michael Schowalter and Richard Head for the Appellants. October 2, 2018 received Assented to Motion to Continue Pre-hearing Conference. 10/4/18 issued letter granting Motion to Continue PHC and rescheduling it for November 7<sup>th</sup> at 9 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal
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**Docket No. 18-04 WC – Town of Hampton, NH Appeal**

Re: 1/17/18 Administrative Order No. 18-001 WD

Hearing Officer: David Conley, Esq., assigned on 4/10/18

Status: February 16, 2018 received Notice of Appeal. 2/21/18 issued receipt of Appeal letter. March 7, 2018 received Appearance from Atty. Maloney. Council accepted appeal on March 14, 2018. April 5, 2018 issued Appeal accepted letter. 4/13/18 issued Pre-hearing Conference notice for May 21, 2018 at 10 a.m. May 21, 2018 received agreement to Hold in Abeyance and issued Pre-hearing Order. September 17, 2018 received Status Report.

**3. New Business**

- a. Env-Wq 404 Underground Injection Control Requirements  
Debra Sonderegger and Stephen Roy, DWGW  
Rules are expiring so these are updates with new federal classifications of injection wells. Discussion was held and questions addressed from the Council.
  
- b. Env-Wq 1200 – Winnepesaukee River Basin Program  
Sharon McMillin, WRBP  
Rules are expiring and proposing this set with minor amendments to definitions with option of additional changes at a later date. Now incorporating federal regulations in industrial pretreatment rules. Then clarifying language to make it more user friendly. Discussion was held and questions addressed from the Council. It was suggested to have a presentation on the Winnepesaukee River Basin Program and the Franklin Plant.
  
- c. Env-Wq 1900 Instream Flow Rules  
Ted Diers, Watershed Management Bureau  
This is part of the surface water quality program. A little bit of background - Instream flow program studies the balance of competing needs for water in our rivers, to make sure that there is enough water for people and animals. With their dynamics - "How much is too little?" What is the difference of normally low water and abnormally low water? Establish a protected instream flow with historic hydrology and the biology that exists there. 2 pilot programs have been run with a goal of a water management plan. There have been many opportunities of public participation. This applies to Designated Rivers which there are 19 designated rivers that are automatically eligible but a prioritization policy is being developed.  
  
These rules are based on pilot rules on Lamprey and Souhegan rivers. Original pilot rules were modified. Not a lot of new, it is a lot of reorganization. Changes are to all designated rivers, the 2016 rules, selection of next streams to look at, changes to conservation plans, added additional places for stakeholder involvement and participation, and waivers and extensions. 5 Stakeholder meetings were held and well attended. He noted on Env Wq 1903, Page (3), is a good outline of the program.  
  
Discussion was held and questions addressed from the Council. It was also suggested have the Rivers Management Protection Program give a presentation.
  
- d. DWGW Trust Fund Update  
Erin Holmes, Administrator of Trust Fund  
This Trust Fund just began this year and is a multifaceted program across DES. Update on the improved projects between 2017-2018. MTBE settlement brought in over \$278 million dollars into the state. The MTBE fund is for very specific use. The DWGW trust fund has a much broader use of the funds. This is different from the SRF fund. There is a 19 member advisory

commission with DES as the administrative arm of the fund. The Commission makes the decision and DES is getting the money out. Drinking water infrastructure and water supply land construction projects can now be funded in New Hampshire. Addressing contamination was the number one priority. It is to be leverage funding to supplement other funding sources. Water supply land protection grants were also important. The Trust fund is here to maximize all the programs it is leveraged with. With contamination being the most important, educating the homeowners is a very huge part of this program. Advisory committee will be reviewed and updated as necessary.

Then reviewed was the Southern NH Regional Water Project which is to address MTBE contamination of Windham, Salem, and Plaistow. The budget was approved and the design is in progress. \$30.2 million was approved for this project.

In 2017 - 2018 \$124 million is to be dispersed across the state. There is to be significant outreach in communities. This is a unique project in southern New Hampshire. With contamination in different state regions, different solutions may be needed.

Mike Juranty, the new director of MTBE, was introduced.

Administrative rules are being developed and will be brought forward in the future. The program will be reviewed and refined as it moves forward.

Discussion was held and questions answered throughout the presentation.

#### **4. Old Business**

#### **5. Next Meeting**

November 14, 2018 at 9 a.m. with Commissioner Scott to be addressing the Council. In the future there will be a Rivers Management Protection Program presentation, also a presentation from the Winnepesaukee River Basin Program.

#### **6. Adjournment**

- ***Councilor Tremblay made a motion to adjourn, second by Councilor Beaurivage. Motion passed unanimously.***

Meeting was adjourned at 10:28 a.m.