

WATER COUNCIL MEETING

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

September 11, 2019
8:30 a.m.

Members present: Chairman Gilbert Councilors: Beaurivage, Boisvert, DeCurtis, Gegas, Geisser, Henderson, Joubert, O'Brien, and Spaulding

Members absent: Councilors Butler, Hardy, Rawnsley and Tremblay

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

Chairman Gilbert called the meeting to order at 8:33 a.m.

1. Approval of Minutes of the June 12, 2019 Meeting

- ***Councilor O'Brien made a motion to accept the June 12, 2019 minutes, second by Councilor Spaulding. Motion passed unanimously with Councilor Boisvert abstaining.***

2. Status of Appeals

I. New Appeals

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

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. 5/16/17 received Assented-To Motion to Consolidate (Docket No. 17-06 WC and Docket No. 17-07 WC). Hearing is scheduled for April 10, 2019 at 9 a.m. January 11, 2019 received Assented-To Motion to Postpone 3rd Pre-hearing Conference. 1/16/19 issued letter granting Assented-To Motion to Postpone 3rd PHC and rescheduled it for February 11, 2019 at 9 a.m. 2/11/19 issued 3rd Pre-Hearing Order. February 13, 2019 received Withdrawal of Atty. Maloney and Appearance of Atty. Aslin. March 21, 2019 received Assented-To Motion to Postpone Deadline for Filing of Witness and Exhibit Lists and Written Motions. #/22/19 issued Ruling granting Assented-To Motion to Postpone Deadline for Filing of Witness and Exhibit Lists and Written Motions. 3/22/19 received Appearance of Heather Neville for the Department. 3/29/19 received DES', Town of Hampton and North Hampton water Commission's Witness and Exhibit Lists and a Motion to Recuse/Disqualify Certain Members of the Water Council. April 1, 2019 received Respondent's Witness and Exhibit Lists and the Town of Hampton's amended Witness list. 4/8/19 received North Hampton Water Commission replacement Witness and Exhibit List. 4/10/19 Hearing was held and continued to May 8th. 4/24/19 received Town of Hampton's Motion to Continue May 8th Hearing Date. 4/24/19 received State's Objection to Town of Hampton's Emergency Motion for Discovery and issued letter

continuing Hearing to June 12th at 9 a.m. 4/25/19 issued letter ruling denying Town of Hampton's Emergency Motion for Discovery. 4/26/19 received Department's Renewed Motion to Dismiss North Hampton Water Commission and Wiggin Way/Winterberry Homeowners' Association's Joinder to State's Renewed Motion to Dismiss. 4/30/19 received Joint Objection to Renewed Motion to Dismiss North Hampton Water Commission. May 6, 2019 received Reply to Objection to Renewed Motion to Dismiss and Motion to Strike. 5/7/19 received Reply to Request for Additional Hearing Days. 5/13/19 received Joint Response to State's Reply to Objection to Renewed Motion to Dismiss and Motion to Strike. 5/20/19 issued Decision and Order denying State's Renewed Motion to Dismiss North Hampton Water Commission Appeal. Continued Hearing was held June 12, 2019 at 9 a.m. and then continued to July 15, 2019 at 8:30 a.m. Hearing was continued to July 16, 2019 where the record was closed and deliberations were held. Hearing Officer to issue Decision within 90 days.

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

Recusals: Councilor Henderson

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 7th at 9 a.m. November 7, 2018 issued Pre-hearing Order scheduling hearing for May 8, 2019 at 9 a.m. April 5, 2019 received Permittee's Witness and Exhibit List. 4/8/19 received State and Appellants' Witness and Exhibit Lists. 4/12/19 issued Notice of Rescheduled Hearing from May 8th to August 14, 2019 at 9 a.m. 4/19/19 rec'd State's Assented-To Motion to Extend Motions Deadlines. 4/24/19 issued letter ruling granting Assented-To Motion to Extend Motions Deadlines. 4/24/19 received Motion to Continue Hearing. 4/30/19 issued ruling granting Motion to Continue Hearing. Hearing is rescheduled to September 11, 2019 at 9 a.m. August 26, 2019 Appellants' Motion to Amend Exhibit List and Amended Exhibit List received. September 3, 2019 received Intervenor's Objection to Appellant's Motion to Amend Exhibit List. 9/6/19 issued ruling granting Motion to Amend Exhibit List. Hearing held today at 9 a.m.

Docket No. 19-07 WC – Charles Hildreth and Suzanne Fournier Appeal

Subject: 04/22/19 Approval of AoT-1588 permit issued to Frank Burpee

Hearing Officer: David Conley, Esq., assigned on 6/14/19

Status: May 21, 2019 received Notice of Appeal. 5/23/19 issued Receipt of Appeal letter. Council accepted Appeal June 12, 2019 with Councilor Henderson abstaining. 6/13/19 issued Appeal accepted letter. 6/20/19 issued Notice of Pre-hearing Conference scheduled for July 24th at 10 a.m. 7/24/19 issued Pre-hearing Order. August 19, 2019 received Appellant's Brief on Position on Enforcement and Update on Access for Wildlife Survey. September 4, 2019 received Appearance of Atty. Christopher Aslin for the Department. 9/9/19 received State's Motion to Dismiss and reply to Appellants' Position on Enforcement.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

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. February 13, 2019 received Withdrawal of Atty. Maloney and Appearance of Atty. Brooks for the Department. August 6, 2019 received Notice of Settlement Agreement.

3. New Business

Water Division Director Tom O'Donovan and Sarah Pillsbury, Administrator Drinking Water Ground Water Bureau

Director O'Donovan first thanked all who served and who serve today on this 9/11 anniversary. He then gave an update on key topics:

- 1) Continuing Resolution impacts on the Department
- 2) PFAs with new MCL issued that goes into effect the end of September
- 3) Arsenic in private drinking water wells
- 4) Lead - school testing program has been implemented
- 5) Positive E-Coli result started the largest boil order ever in New Hampshire. Hampton, N. Hampton & Rye were affected over Labor Day weekend.

Questions from the Council were addressed.

Councilor O'Brien noted and Director O'Donovan shared that Collis Adams and Mary Ann Tilton were recognized by EPA for their exemplary service at a ceremony in Boston yesterday.

Charles DeCurtis was introduced as the new Conservation/Environment member of the Water Council. The Council then introduced themselves and who they represent.

4. Old Business

5. Next Meeting

October 9, 2019 with the hearing to continue if necessary.

6. Adjournment

- ***Councilor Beurivage made a motion to adjourn, second by Councilor Gegas. Motion passed unanimously.***

Meeting was adjourned at 9:01 a.m.

WATER COUNCIL

HEARING MINUTES

September 11, 2019

The Water Council met for the Continued Hearing of
Docket No. 18-09 WC – Rae-Ann Melancon and Suzanne Fournier Appeal
Wednesday, September 11, 2019 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman John Gilbert, Councilors: Robert Beurivage, John Boisvert, Charles DeCurtis,
Bill Gegas, Richard Geisser, Dave Joubert, Tom O'Brien, and Gary Spaulding

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:15 a.m.

The Hearing adjourned at 4:45 p.m.

Continued the Hearing to October 9, 2019 at 9:30 a.m. at the Department of Environmental Services, 29
Hazen Drive, Concord, NH in Rooms 110, 111 & 112.