

## WATER COUNCIL MEETING

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

October 9, 2019  
9:00 a.m.

**Members present:** Councilors: Beurivage, Boisvert, DeCurtis, Gegas, Geisser, O'Brien, Rawnsley, Spaulding, and Tremblay

**Members absent:** Chairman Gilbert, Councilors Butler, Hardy, Henderson, and Joubert

Also present were Carolyn Guerdet, Council Clerk and Attorney Peter Demas

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

### 1. Approval of Minutes of the September 11, 2019 Meeting

- ***Councilor Tremblay made a motion to accept the September 11, 2019 minutes, second by Councilor DeCurtis. Motion passed unanimously with Councilors Rawnsley and Tremblay abstaining.***

### 2. Status of Appeals

#### I. New Appeals

##### **Docket No. 19-16 WC (PNA) – Midlands Investments, LLC Appeal**

Subject: 0711/19 Denial of AoT permit application #181224-189

Hearing Officer: Not assigned

Status: September 23, 2019 received Petition for Appeal and Assented-To Motion to Stay. 9/26/19 issued Receipt of Appeal letter. Council to accept of dismiss Appeal today, 10/9/19.

- ***Councilor Tremblay made a motion to accept the Appeal, second by Councilor Rawnsley. Discussion was held. Motion passed unanimously.***

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

##### **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 3<sup>rd</sup> Pre-hearing Conference. 1/16/19 issued letter granting Assented-To Motion to Postpone 3<sup>rd</sup> PHC and rescheduled it for February 11, 2019 at 9 a.m. 2/11/19 issued 3<sup>rd</sup> 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 8<sup>th</sup>. 4/24/19 received Town of Hampton's Motion to Continue May 8<sup>th</sup> 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 12<sup>th</sup> 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.

### III. Hearings or PHCs Pending

#### **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 7<sup>th</sup> 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 8<sup>th</sup> 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 was held September 11, 2019 at 9 a.m. and was continued to October 9, 2019 at 9:30 a.m. 9/20/19 received State's Assented to Motion to Continue Hearing. 9/25/19 issued ruling granting State's Assented-to Motion to Continue Hearing and rescheduling it for January 8, 2020 at 9 a.m. 9/27/19 issued letter confirming parties agreement to submit post-hearing memoranda on December 20, 2019.

#### **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 24<sup>th</sup> 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. 9/12/19 received Objection to State's Motion to Dismiss.

#### 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. September 16, 2019 received Withdrawal of Appeal.

### **3. New Business**

Holly Green and Paul Susca, Drinking Water and Ground Bureau

Holly and Paul gave a review as to how they arrived at the lower arsenic level of 5 MCL in public water systems. After a review and study it was recommended to adopt the 5 parts per billion based on consumption. The federal standard is 10 parts per billion. One half of NH is on private wells. There is no assistance for the private well owners to install treatment. Discussion was held with questions addressed. Waste Management Division and Council will be dealing with the disposal.

This will now go to rule making. Further comments will be received in the public comment period.

### **4. Old Business**

It was suggested, and discussed, for future meetings to have presentations of programs represented on the Council.

It was also suggested that when a new rule is to be reviewed it be distributed the meeting the month before the vote. This will give time to discuss and answer questions. Also it was suggested to stay away from hearing dates.

### **5. Next Meeting**

November 13, 2019.

### **6. Adjournment**

- ***Councilor Boisvert made a motion to adjourn, second by Councilor Geisser. Motion passed unanimously.***

Meeting was adjourned at 9:53 a.m.