

WETLANDS COUNCIL

MINUTES

August 9, 2016

The Wetlands Council met on Tuesday, August 9, 2016 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Sheridan Brown, Carol Henderson, James Kennedy, Deborah Lievens, Richard Mellor, Russ St. Pierre, Susan Slack, Robert Snelling and Bob Wolff

Absentees: Councilors: Ryan Crosbie and Seth Prescott

Also present was: Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:01 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Wolff made a motion to accept the June 14, 2016 minutes with correction, second by Councilor Henderson. Motion passed unanimously.***

2. **Public Input:** None

3. **Status Report**

I. New Appeals

Docket No. 16-12 – William M Ranney Appeal

Due to the filing date this will be addressed at the September meeting to allow the required 30 days.

Docket No. 16-11 – Alain Breault Appeal

Subject: Permit #2016-00187

Hearing Officer: Not assigned.

Status: The Councilors did have a copy of the appeal, no motions for summary dismissal received. It was found to be in order.

- ***Councilor Snelling moved to accept the Appeal, second by Councilor Henderson. Motion passed unanimously.***

Docket No. 16-09 Brox Environmental Citizens Appeal

Subject: Town of Milford

Hearing Officer: Not assigned.

Status: Appeal filed on May 25, 2016. Town of Milford filed Motion to Intervene on June 30, 2016.

1st: Town of Milford has Intervener status.

2nd: Appeal – RSA 21.014 and RSA 482-A:10. This allegation is for a failure(decision) to enforce, and is not subject to Council review.

3rd: As the appeal is not under the Council review, deciding standing is not necessary to address.

- ***Councilor Snelling made a motion to approve the Intervention and reject the Appeal, second by Councilor Lievens. Motion passed unanimously.***

II.a Decisions finalized and issued.

Docket No. 16-05 WtC – Alan and George Armstrong Appeal

Subject: 2/17/16 Clarification of permit #2012-02636 from Assistant Attorney General Chris Aslin.

Hearing Officer: Not assigned

Status: March 13, 2016 received Request for Appeal. 3/23/16 issued Receipt of Appeal letter. April 5, 2016 received State's Motion to Summarily Dismiss. May 3, 2016 Response to State's Motion to Dismiss. Council to accept or dismiss appeal today. June 14, 2016 Council granted the Motion to Dismiss and not accept the Appeal. Decision was sent out after last meeting and no reconsideration received.

II.b Decisions that need to be written/finalized and issued.

Docket No. 14-16 WtC – David and Louise Drolet, et al. Appeal

Subject: 11/10/14 permit approval #2014-00246 issued to Green and Company

Hearing Officer: David Conley, Esq. appointed by AG on 3/13/15

Status: 12/10/14 received Notice of Appeal. 12/11/14 issued insufficient appeal letter. 12/24/14 received Amended Notice of Appeal. 12/30/14 issued receipt of appeal letter. Council accepted the appeal at the February 10, 2015 meeting. 2/11/15 issued Appeal accepted letter. 2/20/15 received Appearance from Ari Pollack for permittee. April 17, 2015 issued Notice of scheduled PHC for 4/24/15 at 9 a.m. 4/17/15 received Appearance for Collis Adams. 4/22/15 received Assented-To Motion to Continue. 4/23/15 issued letter granting Motion and rescheduling PHC for 5/13/15 at 11:30 a.m. May 13, 2015 issued Pre-hearing Order scheduling hearing for September 8, 2015 at 9 a.m. 5/15/15 issued Ruling on Validity of Permit Condition. August 6, 2015 received Permit Holder's Witness and exhibit List. 8/13/16 received Assented-To Motion to Continue Final Hearing and Continue Hearing and rescheduling hearing for November 10, 2015 at 9 a.m. 8/20/15 received Partial Objection to Permit Holder's Motion in Limine. 9/25/15 issued Order on Permit Holder's Motion in Limine. October 19, 2015 received Motion to Continue. 10/21/15 received Objection to Appellant's Motion to Continue Hearing. 10/26/15 issued letter granting Motion to Continue and rescheduling hearing for February 9, 2016 at 9 a.m. November 24, 2015 received Appellant's Witness and Exhibit List. Hearing was held February 9, 2016 and deliberations were held on 2/16/16. Hearing Officer to issue decision within 90 days(5/16/16). Councilor Henderson noted that on top of page 3 of the Decision it should be 'disturbance' of an area not 'wetlands'. Decision was adopted at the June 14, 2016. Filings: Motion for Reconsideration on July 13, 2016, a Partially Assented-To Motion on July 19th, Permittee's Objection to Appellants' Motion for reconsideration on July 22, 2016. July 25, 2016 a letter granting Assented-To Motion was sent. As this was not posted on the agenda, the Council will consider the Reconsideration at the September meeting.

III. Hearings or PHCs Pending

Docket No. 15-12 WtC – N. Miles Cook III Appeal

Subject: 10/9/15 denial of permit application #2015-00960

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 5, 2015 received Petition for Appeal. 11/9/15 issued receipt of Appeal letter. 11/20/15 received Appearance from Atty. Maloney for DES. Council to accept or dismiss at their February 9, 2016 meeting. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued notice of Pre-hearing Conference schedule for 3/28/16 at 9:30 a.m. 3/28/16 issued Pre-hearing Order scheduling hearing for June 14, 2016 at 9 a.m. May 13, 2016 received State's Witness and Exhibit List. 5/13/16 received Appellant's Witness and Exhibit List. June 2, 2016 received motion to Continue Hearing. 6/8/16 issued letter granting Motion to Continue Hearing, rescheduling it for August 9, 2016 at 9 a.m. Hearing to be held today.

Docket No. 15-15 WtC – Linda J. Giannetta, Trustee Appeal

Subject: 11/25/15 denial of permit, File #2015-01500

Hearing Officer: David Conley, Esq. appointed by AG on 5/9/16

Status: December 22, 2015 received Notice of Appeal. 12/23/15 issued Insufficient Appeal letter. January 14, 2016 received revised Notice of Appeal. 1/15/16 issued receipt of Appeal letter. April 12, 2016 Council accepted

the Appeal. 4/13/16 issued Appeal Accepted letter. May 26, 2016 issued Notice of Pre-hearing Conference scheduled for June 20, 2016 at 9 a.m. PHC was held and hearing set for September 13, 2016 at 9 a.m.

Docket No. 16-04 WtC – Maria Giakoumakis and Paul Foden Appeal

Subject: 02/17/16 Letter from AG regarding Grandfather Status

Hearing Officer: David Conley, Esq. appointed by AG on 5/9/16

Status: March 10, 2016 received Petition for Appeal. 3/18/16 received Motion to Summarily Dispose of Appeal. 3/23/16 issued receipt of Appeal letter. 3/29/16 received Appearance for Atty. Aslin and the State's Motion to Summarily Dismiss. April 12, 2016 the Council voted to accept the Appeal limited to the clarifying letter of February 17, 2016. 4/13/16 issued Ruling on Acceptance of Appeal and Motions to Dismiss. May 26, 2016 issued Notice of Pre-hearing Conference scheduled for June 20, 2016 at 10 a.m. June 20, 2016 received Notice of Withdrawal of Appeal from Maria Giakoumakis and Paul Foden. Docket closed.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action. Letter requesting status to be sent. Expecting a result in near future.

Docket No. 14–13 WtC – Ergendino Perrone and Robert Gleason Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo. Letter requesting status to be sent. Expecting a result in near future.

Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay. Letter requesting status to be sent. Expecting a result in near future.

Docket No. 15-13 WtC – John and Toby Heisey Appeal

Subject: 10/23/15 amendment approval of permit #2012-01642

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 12, 2015 received Petition for Appeal. 11/13/15 received Supplement to Certificate of Service and issued receipt of Appeal letter. 11/19/15 received Appearance from Atty. Pollack for the permittee. 11/23/15 received Appearance from Collis Adams. Council to accept or dismiss Appeal at their February 9, 2016 meeting. Chairman Kimball asked Appeals Clerk, Paula Scott, to first give a timeline of the old appeals. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued Notice of Pre-hearing Conference schedule for 3/28/16 at 10:30 a.m. 3/14/16 received Motion for Continuance. 3/15/16 issued letter granting Motion for Continuance and rescheduled PHC for April 11, 2016 at 9:30 a.m. 3/21/16 received Assented to Motion for Continuance. 3/28/16 issued letter granting the Assented to Motion for

Continuance and rescheduled PHC for May 9, 2016 at 9 a.m. May 9, 2016 issued Pre-Hearing Order staying Appeal until property rights litigation is resolved. June 21, 2016 received Assented to Motion to Withdraw Appeal from Atty. Sherman. Docket now closed.

V. Misc.

4. New Business

Darlene Forst distributed the draft updates to the Shoreland Rules. The initial proposal has been filed. Changes here are basically housekeeping. The Shoreline Advisory committee has reviewed them exhaustively. There will be more changes as others review them. Shoreland and Wetland rules will have to be worked through as beaches and dug-in houses permitting are interwoven. Also the tidal buffer zone is interwoven. Darlene then went through the changes in the rules.

5. Old Business

6. Next Meetings –

September 13, 2016 at 8:30 a.m. with the Giannetta Appeal hearing at 9:00. Councilors Slack and Brown will not be in attendance.

7. Adjournment

- ***Councilor Henderson made a motion to adjourn, second by Councilor Slack. Motion passed unanimously.***

Meeting adjourned at 9:11 a.m.

WETLANDS COUNCIL

HEARING MINUTES

August 9, 2016

The Wetlands Council met for
Docket No. 15-12 WtC – N. Miles Cook II Appeal Hearing
Tuesday, August 9, 2016 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Councilors: Sheridan Brown, Carol Henderson, James Kennedy, Chairman Chip Kimball, Deborah Lievens, Richard Mellor, Russ St. Pierre, Susan Slack, Robert Snelling, and Robert Wolff

Absentees: Councilors: Ryan Crosbie and Seth Prescott

Also present was: Carolyn Guerdet, Council Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:20 a.m.

The Hearing closed at 4:00 p.m.

