

WETLANDS COUNCIL

MINUTES

September 13, 2016

The Wetlands Council met on Tuesday, September 13, 2016 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentees: Councilors: Sheridan Brown, Ryan Crosbie and Susan Slack

Also present was: Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:01 a.m. with introductions and a quorum present.

1. Approval of Minutes

- *Councilor Wolff made a motion to accept the August 9, 2016 meeting minutes, second by Councilor Lievens. Motion passed unanimously.*
- *Councilor Henderson made a motion to accept the August 9, 2016 hearing minutes, second by Councilor Snelling. Motion passed unanimously.*
- *Councilor St. Pierre made a motion to accept the August 30, 2016 deliberation minutes, second by Councilor Snelling. Motion passed unanimously.*

2. Public Input: None

3. Status Report

I. New Appeals

Docket No. 16-11 – Alain Breault Appeal

Subject: 5/16/16 denial of wetlands 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. June 15, 2016 received Petition for Appeal. 6/16/2016 issued Receipt of Appeal letter. Appeal accepted at August 9, 2016 meeting.

Docket No. 16-09 Brox Environmental Citizens Appeal

Subject: 4/26/16 Decision of Complaint #3066 regarding dredge and fill at Brox Town Land.

Hearing Officer: Not assigned.

Status: Appeal filed on May 25, 2016. 5/26/16 issued receipt of Appeal. Town of Milford filed Motion to Intervene on June 30, 2016. Appeal dismissed at the August 9, 2016 meeting. Appeal denied letter sent out September 8, 2016.

Docket No. 16-12 – William M Ranney Appeal

Subject: 6/23/16 Approval of Shoreland Permit #2016-01071

Hearing Officer: Not assigned

Status: July 5, 2016 received Request for Appeal. 7/14/16 issued Insufficient Appeal letter. 7/19/16 received Revised Appeal. 7/20/16 issued Receipt of Appeal letter.

- ***Councilor Snelling made a motion to accept the appeal, second by Councilor Wolff. Motion passed unanimously.***

II. 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. 6/14/16 issued Decision and Order denying Petition for Appeal. July 13, 2016 received Appellant's Motion for Reconsideration. 7/19/16 received Partially Assented-to Motion to Extend Time to file Objection. 7/25/16 issued letter granting Partially Assented-to Motion to Extend Time to File Objection. 7/22/16 received Permittee's Objection to Motion for Reconsideration

- ***Councilor Mellor made a motion to deny the Reconsideration, second by Councilor Lievens. Motion passed unanimously.***

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 held August 9, 2016. Deliberations were held August 30, 2016. Appeal was denied on a 5-5 vote.

III. Hearings or PHCs Pending

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. Appeal withdrawn via email on 9/6/16.

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. June 16, 2016 issued request for a status report of the pending appeal. 6/24/16 received appeal status update; still pursuing appeal.

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. June 16, 2016 issued request for a status report of the pending appeal. 6/24/15 received appeal status update from Ergendino Perrone. July 8, 2016 received appeal status update from Robert Gleason.

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. June 16, 2016 issued request for a status report of the pending appeal. 6/28/16 received appeal status update.

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. 6/22/16 issued letter granting Assented to Motion to Withdraw Appeal. Docket now closed.

V. Misc.

4. New Business

Collis Adams noted Wetlands program is still working on the Rules and plan to get a draft out by the first of the year for public comment.

Responsibility of the Council is to advise the Commissioner. Please contact Chairman Kimball if you have any ideas to share.

5. **Old Business**

6. **Next Meetings** –

November 15, 2016 at 9:00 a.m. in room 208 and deal with the ARM Fund report. Bob Wolff will not be able to attend.

➤ ***Councilor Lievens made a motion to move the November meeting date from November 8th to November 15th, second by Councilor Kennedy. Motion passed unanimously.***

7. **Adjournment**

➤ ***Councilor Henderson made a motion to adjourn, second by Councilor Mellor. Motion passed unanimously.***

Meeting adjourned at 9:33 a.m.