

WETLANDS COUNCIL

MINUTES

September 12, 2017

The Wetlands Council met on Tuesday, September 12, 2017 in Rooms 112, 113, 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentees: Councilor: Sheridan Brown

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

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:00 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Henderson made a motion to approve the June 13, 2017 meeting minutes, second by Councilor Snelling. Motion passed unanimously.***

2. **Public Input:** None

3. **Status of Appeals**

Paula Scott, Appeals Clerk

I. New Appeals

Docket No. 17-08 WtC – Robert C. Puff, Jr., et al. Appeal

Subject: 5/8/17 Approval of Wetlands Permit #2017-00756 issued to Joseph Bussichella

Hearing Officer: Not assigned

Status: June 6, 2017 received Petition for Appeal. 6/9/17 issued Insufficient Appeal letter. 6/12/17 received Certification of Susan A. Maus joining Appeal as Appellant. 6/13/17 received Amended Petition for Appeal. 6/14/17 issued Receipt of Amended Appeal letter. Council to accept or dismiss Appeal today.

- ***Councilor Slack made a motion to accept the Appeal, second by Councilor St. Pierre. Motion passed unanimously.***

Docket No. 17-09 WtC – Samuel B. Rowse, Trustee Appeal

Subject: 5/19/17 Denial of Application to repair a boathouse over water, File #2016-00635

Hearing Officer: Not assigned

Status: June 16, 2017 received Appearance for Regina Nadeau and Petition for Appeal. 6/20/17 issued receipt of Appeal letter. Council to accept or dismiss Appeal today.

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

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

Docket No. 16-12 WtC – William M Ranney Appeal

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

Hearing Officer: David Conley, Esq. appointed by AG on 11/8/16

Status: July 5, 2016 received Request for Appeal. Council accepted the appeal September 13, 2016. 9/23/16 received Motion to Intervene from Permittee. November 7, 2016 issued Appeal accepted letter. A Motion to Intervene has been filed. November 7, 2016 issued Appeal accepted letter. December 2, 2016 Hearing Officer granted Motion to Intervene. 12/24/17 received Appearance of Attorney John Cronin for the Intervenor and Intervenor's Witness and Exhibit List. 2/27/17 received Appellant's Witness and Exhibit List. March 10, 2017 received Motion to Include Deborah Forte as Appellant and Motion to Extend Deadlines and Hearing Date in Pre-hearing Order. 3/10/17 received Motion to Amend Applicant-Intervenor's Witness and Exhibit List and Motion for Clarification of Appellant's Witness and Exhibit List. 3/17/17 received Objection to Appellant's Motion to Extend Deadlines and Hearing Date in Pre-hearing Order. 3/21/17 received Motion to Bar Thomas Gregsak as Intervenor and Strike His Filings. 3/22/17 issued Decision and Order on Appellant's Motions to Add Additional Appellant and to Extend Deadlines and Hearing Date. Hearing to be held on May 9, 2017 at 9 a.m. 3/24/17 received Objection to Appellant's Motion to Bar Thomas Gregsak as Intervenor and Strike His Filings. 3/27/17 received Reply to Gregsak 3/24/17 Objection to Appellants' Motion to Bar. 3/28/17 issued letter ruling on Motion to Deny Thomas Gregsak Intervenor Status. April 7, 2017 received Motion for Relief For Orderly Proceedings In Case. 4/10/17 received Intervenor's Updated Witness and Exhibit list. 4/11/17 received Appellants' Potential Witness and Exhibit List. 4/12/17 received Permittees Exception to Appellants' Nine Witnesses not identified. 4/18/17 issued ruling re: Motion for Relief for Orderly Proceedings In Case. 4/18/17 received Appearance from Alec McEachern for Appellants and Motion to Exclude Evidence of Conviction. 4/20/17 issued ruling regarding Permittee's Letter Taking Exception to Appellants' Unidentified Witnesses. 4/24/17 received Objection to Motion to Exclude Evidence of Conviction. May 1, 2017 requested copy of proposed exhibit for Hearing Officer to review before issuing an Order on the Motion. 5/2/17 issued letter ruling granting Appellants' Motion to Exclude Evidence of Conviction. 5/4/17 received Appearance of Atty. Laura Cartier for the Intervenor. 5/8/17 received Appearance of Collis Adams for the Department. Hearing was held May 9, 2017. 5/24/17 received Appellants' Hearing Memorandum. 5/30/17 received Intervenor's Hearing Memorandum. Deliberations were held June 13, 2017. Decision and Order on Petition for Appeal before the Council today.

- ***Councilor Slack made a motion to adopt the Decision with the change on page 2 of June 13, 2017, second by Councilor Henderson. Motion passed unanimously with Councilor Prescott abstaining.***

III. Hearings or PHCs Pending

Docket No. 16-17 WtC Robert C. Brown Appeal

Subject: 8/19/16 permit #2009-01521

Hearing Officer: Not assigned May 2, 2017 requested Hearing Officer be assigned.

Status: September 19, 2016 received Petition for Appeal and Motion to Extend Time. November 21, 2016 issued receipt of Appeal letter. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. December 13, 2016 Council voted to issue a ruling declining to accept Appeal as untimely filed. 12/12/16 received letter dated December 9, 2016 from Appellant. Council needs to issue ruling declining to accept Appeal. 12/29/16 received letter dated December 28, 2016 from Appellant. Discussion was held to clarify the 30 days according to the statute and interpretation. Councilor St. Pierre is to send the 2013 Supreme Court ruling he found to Chairman Kimball. It was decided to have legal counsel review. He will also send the ruling to Council Clerk to be sent to the total Council. January 10, 2017 Council decided to get opinion from their attorney. February 14, 2017 Council voted to rescind 12/13/16 vote of untimely filed and issue Rulings on Timeliness of Appeal and Motion to Extend Time. 2/15/17 issued Insufficient Appeal letter. March 17, 2017 received Revised Notice of Appeal. 3/21/17 issued receipt of Revised Notice of Appeal. This appeal still appears to be insufficient. Council to accept or decline Appeal at April 11, 2017 meeting. April 12, 2017 issued ruling on Acceptance of Appeal - accept provisionally giving him 10 days to say that there was no transmittal letter and certify that he sent the prior copies and whatever response he has here, to the town of Meredith and Atty. Brooks. 4/12/17 received Appearance of Atty. Allen Brooks. 4/21/17 received Certification all parties served. May 2, 2017 issued Appeal accepted letter. 5/11/17 issued Notice of Pre-hearing Conference scheduled for May 25, 2017 at 1 p.m. 5/24/17 received Assented-to Motion to Extend Pretrial Conference. 5/25/17 issued letter granting Motion and rescheduling Pre-hearing Conference for July 17, 2017 at 11:30 a.m. June 7, 2017 issued Notice of postponed Pre-hearing Conference and rescheduling it for July 24, 2017 at 12 noon. 7/21/17 received Motion to Vacate Appearance of

Conflict and Motion for Recusal of K. Allen Brooks. 7/24/17 issued Pre-hearing Order scheduling hearing for Oct. 10, 2017 at 9 a.m. 7/28/17 received Objection to Motion to Vacate Appearance of Conflict and Motion for Recusal of K. Allen Brooks. August 7, 2017 received Appellant's Witness and Exhibit List. 8/9/17 issued Decision and Order denying Appellant's Motions to Vacate Appearance of Conflict and Motion for Recusal. 8/10/17 received DES' Witness and Exhibit List. 8/14/17 received Motion to Strike Exhibits. 8/16/17 received Motion in Limine. 8/21/17 received Objection of Improper Filing of DES Motion in Limine, Objection Due to Improper Filing of DES Motion to Strike Exhibits, Objection of Improper Filing of DES Witness and Exhibit List, and Claim of Improper Action of Wetlands Council Hearings Officer and Request for Intervention. September 6, 2017 received Clarification of Appropriateness of 3 Recent Motions Filed. 9/7/17 issued Notice of Decisions addressing prior Motions and Objections.

Docket No. 16-18 WtC – Harold Lyon, Jr., Trustee Appeal

Subject: 9/1/16 denial of after-the-fact request to replace and reconfigure dock, File #2014-02205
Hearing Officer: David Conley, Esq. appointed by AG on 01/20/17
Status: September 30, 2016 received Notice of Appeal and Appearance for Regina Nadeau. October 24, 2016 issued insufficient Appeal letter. November 16, 2016 received refiled Appearance for Attorney Nadeau and Revised Petition for Appeal. 11/28/16 issued receipt of revised Appeal letter. Council to accept or decline Appeal at their January 10, 2017 meeting. 01/05/17 received cover letter, Appearance of Jason Reimers for abutters and a Petition to Intervene. January 10, 2017 Council accepted the Appeal. 1/13/17 issued Appeal accepted letter. 1/30/17 issued Notice of Pre-Hearing conference scheduled for February 22, 2017 at 11 a.m. February 2, 2017 received Appearance from Atty. Allen Brooks for DES. 2/22/17 received Appearance from William Woodbury for the Appellant and issued Pre-hearing Order with a 2nd PHC scheduled for July 17, 2017 and the hearing for Sept. 12, 2017 at 9 a.m. April 28, 2017 received Motion to Extend Time for Filing Motion for Summary Judgment. May 2, 2017 issued letter ruling granting Motion to Extend Time for Filing Motion for Summary Judgment. June 7, 2017 issued Notice of postponed 2nd Pre-hearing Conference and rescheduling for July 24, 2017 at 11 a.m. 7/24/17 issued 2nd Pre-hearing Order extending all filing deadlines to August 22, 2017 with hearing scheduled for Sept. 12, 2017. August 22, 2017 received Assented to and Joint Notice of Withdrawal of Appeal. Docket now closed.

Docket No. 17-02 WtC (PNA) - Christopher and Rebecca Crowe Appeal

Subject: 12/21/16 Administrative Order No. 16-033 WD
Hearing Officer: David Conley, Esq. appointed by AG on 5/17/17
Status: January 19, 2017 received Notice of Appeal. 1/20/17 issued Insufficient Appeal letter. February 17, 2017 received Revised Notice of Appeal. March 3, 2017 issued Receipt of Revised Appeal letter. This Appeal appears to be insufficient – no indication a copy was served on the Department. April 11, 2017 Council declined to accept Appeal. 4/12/17 issued Ruling on Acceptance of Appeal-Dismissed. 4/12/17 received Appearance of Atty. Christopher Aslin. 4/21/17 received motion for Reconsideration of Order Dismissing Appeal. May 10, 2017 issued Appeal Accepted under Reconsideration letter. June 8, 2017 issued Notice of Pre-hearing Conference scheduled for July 24, 2017 at 1:30 p.m. 6/30/17 issued Notice of rescheduled Pre-hearing Conference scheduled for August 14, 2017 at 8:30 a.m. 8/14/17 issued Pre-hearing Order scheduling a 2nd PHC for Oct. 30, 2017 at 11 a.m.

Docket No. 17-05 WtC – Mark T. Moore Appeal

Subject: 2/21/17 Denial of Wetlands Permit file #2016-01141
Hearing Officer: David Conley, Esq. appointed by AG on 5/17/17
Status: March 23, 2017 received Petition for Appeal. 3/27/17 received corrected Certification of Service and issued receipt of Appeal letter. Council accepted Appeal May 9, 2017. 5/10/17 issued Appeal Accepted letter. June 8, 2017 issued Notice of Pre-hearing Conference scheduled for July 24, 2017 at 2:30 p.m. 6/15/17 received Assented Motion to Continue Pre-hearing Conference. 6/21/17 issued letter granting Assented to Motion to Continue and rescheduling PHC to Nov. 6, 2017 at 9 a.m.

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. July 11, 2017 received appearance from Attorney Bernard Campbell and Withdrawal of Appeal with accompanying settlement Agreement. Docket now closed.

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. Status request to be sent.

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. September 1, 2017 received Withdrawal of Appeal with accompanying settlement Agreement. Docket is now closed.

V. Misc.

4. New Business

Elliot Gault is the new contact at the Governor's office. Councilors are to initiate reappointment by sending in a resume and letter asking to be reappointed and explaining the group they represent.

Chairman Kimball noted our rules are not reflective of current statues. Wetlands counsel is otherwise involved right now so lining up the rules with the statues will have to be postponed.

Councilor St. Pierre noted a bill went into effect that modifies the shoreline law.

5. Old Business

6. Next Meetings –

October 10, 2017 at 8:30 a.m. with Robert Brown Hearing at 9 a.m.

7. Adjournment

- ***Councilor Mellor made a motion to adjourn, second by Councilor Gove. Motion passed unanimously.***

Meeting adjourned at 9:30 a.m.