

# WETLANDS COUNCIL

## MINUTES

January 8, 2019

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The Wetlands Council met on Tuesday, January 8, 2019 in Rooms 112, 113, 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Lee Carbonneau, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Seth Prescott, Wendy Weisiger and Gretchen Young

**Absentee:** Councilors: Jim Gove and Robert Wolff

Also present was: Carolyn Guerdet, Council Clerk and Paula Scott, Appeal Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:02 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Henderson made a motion to approve the December 11, 2018 meeting minutes as amended, second by Councilor Weisiger. Motion passed unanimously with Councilor Prescott abstaining.***

2. **Public Input:** None

3. **Status of Appeals**

Paula Scott, Appeals Clerk

### I. New Appeals

**Docket No. 18-13 WtC – William R. Davis Appeal**

Subject: 9/5/18 Approval of Wetlands Permit #2018-01848 issued to Kimberly A. Wesson Revocable Trust  
Hearing Officer: Not assigned

Status: October 5, 2018 received Petition for Appeal. 10/9/18 issued Insufficient Appeal letter. November 8, 2018 received Supplemental to Petition for Appeal. 11/9/18 issued Receipt of Revised Appeal letter. Council to accept or dismiss Appeal at today's meeting. Discussion was held. Motion to Deny was passed on 12/11/18. 12/12/18 issued Ruling denying Acceptance of Appeal.

**Docket No. 18-14 WtC – Kathleen McDonald Appeal**

Subject: 9/17/18 Approval of Wetlands Permit #2017-00818 issued to Regina Gordon Revocable Trust  
Hearing Officer: Not assigned

Status: October 12, 2018 received Petition for Appeal. 10/15/18 issued Insufficient Appeal letter. 11/14/18 received Revised Petition for Appeal. November 19, 2018 issued Receipt of Revised Appeal. December 4, 2018 received Appearance of Patricia Paniccioco for permittee. Motion to Intervene and Motion requesting Summary Dismissed. January 4, 2019 received addition to Appeal. Council was made aware of a date discrepancy. Council to accept or deny appeal January 8, 2019.

- ***Councilor Klass made a motion to accept the Appeal and to deny the Motion for Summary Dismissal, second by Councilor Lievens. Discussion was held. Motion passed unanimously.***

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

**III. Hearings or PHCs Pending**

**Docket No. 17-10 WtC – Patricia A. Rose Appeal**

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer

Hearing Officer: Not Assigned

Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-Hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. January 9, 2018 received Appearance from Mary Ann Tilton for the Department. Hearing was held on January 9, 2018 and continued until March 13, 2018 at 9 a.m. January 18, 2018 received Appellant's Witness and Exhibit List. Motion to Remand received on 1/23/18. 1/30/18 issued Ruling on Motion to Remand, which was granted. Appeal is stayed and continued hearing scheduled for March 13, 2018 is cancelled. February 8, 2018 received Motion for Reconsideration. February 20, 2018 received Response to Motion for Reconsideration. 2/21/18 issued letter denying Motion for Reconsideration. Appeal is stayed. Request for status update to be sent. August 14, 2018 received a copy of letter from Appellant to Collis Adams. 8/23/18 issued letter giving Appellant 30 days to file a revised appeal. Discussion was held. September 20, 2018 received Revised Petition for Appeal. October 3, 2018 received motion for Summary Dismissal. Chairman Kimball noted that a Hearing Officer has already been named so he will handle the motion. November 6, 2018 issued rule granting in part and denying in part Permittees' Motion for Summary Dismissal. 11/8/18 issued Notice of Pre-hearing Conference scheduled for December 7, 2018 at 9 a.m. 11/8/18 issued revised Rulings Denying Permittees' Motion for Summary Dismissal. December 7, 2018 issued Pre-hearing Order scheduling hearing for April 9, 2019 at 9 a.m. January 7, 2019 received Motion to Compel.

**Docket No. 18-03 WtC – New Castle Conservation Commission Appeal**

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 15, 2018 received Notice of Appeal. 2/20/18 issued Insufficient Appeal letter. March 21, 2018 received revised Petition for Appeal. 3/22/18 issued receipt of revised Appeal letter. April 10, 2018 received Appearance of Jonathan Springer for the permittee and a Motion for Summary Dismissal. 4/13/18 received Appearance of Nathaniel Morse for the appellant. 4/16/18 received Appellant's Objection to Motion for Summary Dismissal. Council accepted Appeal May 8, 2018. 5/11/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 5/22/18 issued notice of Pre-hearing Conference scheduled for June 13, 2018 at 3 p.m. June 13, 2018 issued Pre-hearing Order scheduling hearing for January 8, 2019 at 9 a.m. October 29, 2018 received Appellant's Motion for Summary Judgment. 11/2/18 received Partially-Assented to Motion for extension of Time to Respond. November 5, 2018 received Permittee's Motion for Summary Judgment and Motion to Extend Time for Filing Objection. 11/6/18 issued rulings Granting Applicant's Motion to extend Time for Filing Objection and Appellant's Partially-Assented to Motion for Extension of time to Respond to Applicant's Motion for Summary Judgment. 11/14/18 received Objection to Motion for Summary Judgment. 11/14/18 received Certification of service for Town of New Castle's Select board's 11/7/18 Request to Intervene. 11/20/18 issued letter granting Motion to Intervene. 11/29/18 received Partially Assented-to Motion Modify Pre-Hearing Order. December 3, 2018 received Appellant's Witness and Exhibit List. 12/5/18 issued letter granting Partially Assented-to Motion to Modify Pre-hearing Order and Issued Hearing Notice rescheduling Hearing for February 12, 2019 at 9 a.m. 12/7/18 issued Order denying Appellant's Motion for Summary Judgment. 12/20/18 received Appellant's Objection and Cross Motion for Summary Judgment. January 4, 2019 received Applicant's Objection to Appellant's Cross Motion for Summary Judgment and Appellant's Motion to Clarify Cross Motion. 1/04/19 received Appellant's Motion for Reconsideration of December 7, 2018 Order.

**Docket No. 18-11 WtC – Stephen Silk Family Trust Appeal**

Subject: 07/10/18 Denial of Wetlands Permit, File #2018-01276

Hearing Officer: November 21, 2018 David Conley was appointed by AG.

Status: August 6, 2018 received Petition for Appeal. 8/8/18 issued Insufficient Appeal letter. 8/22/18 received Revised Petition for Appeal. 8/24/18 issued Receipt of Revised Appeal letter. Appeal is still insufficient. Council denied Appeal at September 11, 2018 meeting. 9/12/18 issued ruling dismissing Acceptance of Appeal. October 4, 2018 received Request for Reconsideration. Council to act on Request for Reconsideration at November meeting. November 11, 2018 Council accepted the Request for Reconsideration. 11/15/18 issued Ruling granting Motion for Reconsideration. December 7, 2018 issued Notice of Pre-hearing Conference scheduled for January 22, 2019 at 12:30 p.m.

**Docket No. 18-15 WtC – Nancy Hall and Edward Benway, Trustee Appeal**

Subject: 9/18/18 Administrative Order No. 18-015 WD

Hearing Officer: December 17, 2018 David Conley was appointed by AG

Status: October 18, 2018 received Petition for Appeal. 10/19/18 issued Receipt of Appeal Letter. Council to accept or dismiss Appeal at today's meeting. Appeal was accepted on December 11, 2018. 12/12/18 issued Appeal Accepted letter. January 4, 2019 issued Notice of Pre-hearing Conference scheduled for January 28, 2019 at 1 p.m.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**V. Misc.**

Paula Scott, Appeals Clerk, will prepare the detailed docket log for the 2018 Annual Report.

**4. New Business**

c. Council Members RSA 15-A Filings

Council members were reminded to get a copy to the Council Clerk who will give them to the Commissioner's Office so that there will be a record of those submitted.

**5. Old Business**

b. Proposed LSR Progress –

Senator's Bradley's office is still working on the text for LSR 849. It covers certified application providers and the boxes to check, where the appeal goes, and changes of may to shall – they 'shall' either implement the decision or appeal to Supreme Court. Remands were discussed.

**4. New Business - continued**

a. Orientation Training/ Council Rules Review

RSA 20-B:1 Need a list of members, what we do, when we meet, and what our procedures are. Also add the Council meets the second Tuesday of the month.

ARM Fund Approval – orientation to the process was discussed. RSA 21-O:5-a VIII. Discussion then followed as to the Arm Fund and that it is good to see how the monies are spent. Money is used towards conservation vs. restoration of a wetland. Council would like to know about committee membership and how their decisions are made.

Discussion was held regarding making comments, discussions and letters to the Department/Commissioner. It was suggested to make more of an effort to catalog questions to address. The Council does not oversee the Wetlands Bureau and the potential conflict of interest was discussed. The LSR is to have the remand decision sent to Commissioner so he is aware and can take action if he believes it necessary.

Appeals – 2 past Supreme Court cases had been sent out by the Chairman. The highlight in Garrison was we can't replace our judgment with the judgment of the department. The facts we determine have to show an unreasonable or unlawful department decision. Prior appeals were discussed. The Hearing Officer, David Conley, shared some of what goes on in a Pre-Hearing Conference. Shadowing a Pre-Hearing Conference was discussed and suggested.

Break from 10:20 to 10:30

Chairman Kimball reviewed the Ec-X rules and their history. It was intended to make the rules of the four councils more consistent. In 2013-2014 meetings were held and these rules were developed. This was to try and make it clearer the councils are separate from DES.

Discussed were:

1. Definition of the 'Presiding Officer'.
2. Definition of 'Unreasonable'
3. Council Organization
4. Recusals
5. Access to Records
6. Rules of Practice
7. Initial vs. Final Service List
8. Sufficient vs. Insufficient
9. Motion for Summary Dismissal
10. Motion for Reconsideration
11. Declaratory Rulings
12. Council Decisions

**6. Next Meeting –**

The next meeting is February 12, 2019 at 8 a.m. with the New Castle Conservation Appeal at 9 a.m. The next Pre-Hearing Conference is January 22<sup>nd</sup> at 12:30 p.m. in room 110.

**7. Adjournment**

- ***Councilor Lievens made a motion to adjourn, second by Councilor Prescott. Motion passed unanimously.***

Meeting adjourned at 11:46 a.m.