

WETLANDS COUNCIL

MINUTES

February 12, 2019

The Wetlands Council met on Tuesday, February 12, 2019 in Rooms 112, 113, 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentee: None

Also present were: 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. Councilor Wolff has retired and Matthew Bosiak was introduced as the new designee for the Dept. of Agriculture, Markets and Food.

4. **New Business**

a. Commissioner Scott

Staffing update of the Water Division -

1) A Manager of the Land Resources Management Bureau has been added which oversees the Wetlands Program, Subsurface Program, and AoT Program. He introduced Sarah Yuhas-Kirn, who previously oversaw the Oil Remediation and Compliance Bureau and also helped as assistant Commissioner.

2) Resume and letter of intention from Thomas O'Donovan had been distributed as potential Water Division Director. Thursday, February 14th in the trailer bill HB2, there is language to remove the PE requirement from the Water Director's position. That qualification has been hampering the candidates for the position. After consultation with Water Council, he will make a recommendation to nominate Mr. O'Donovan to the Governor, which is in accordance to statute.

Wetlands Rules Update

Public input is now closed and comments are being reviewed. This extensive rule change will not be done again. Issues will now be dealt with in rules as necessary, incrementally in the future.

Legislative Update

A bill to increase fees has been proposed. These fees have been in place for 11 years. Staffing level has increased along with general funding lost. The fees will be 2-2 ½ times what they are now and new fees to begin. This is to align fee structure with fees for service, match workload with fees so it can be supported, and keep current staff and current services. In the new bill fees will be merged. Fee increase is for next 4 years. Perhaps put a consumer price index vs. the long time to increase. Councilor Gove clarified the Association of General Contractors want a side-by-side fee comparison to other surrounding states and how would they match. The Commissioner noted this fee increase puts us more on par with other states. April 12th the audit report will go to the Fiscal Committee. Under HB1104 – certified application preparer rule making will be independent. HB543 – Buffers Bill was not asked for by DES and DES will not take a position on the bill. Discussion was held with questions and comments shared.

1. **Approval of Minutes**

➤ ***Councilor Lievens made a motion to approve the January 8, 2019 meeting minutes, second by Councilor Henderson. Motion passed unanimously.***

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. January 11, 2019 received Motion for Reconsideration. Discussion was held.

- ***Councilor Klass made a motion to grant the Motion for Reconsideration given the fact that 203.03 could be construed as unclear, second by Councilor St. Pierre. Discussion was held. Motion passed with one nay.***

There will be discussion in the future regarding 210.14 and other rules.

Docket No. 19-02 WtC – Timothy & Jean Pineau and Jean Pineau, Trustee Appeal

Subject: 12/19/18 amendment to Administrative Order No. 18-020 WD
Hearing Officer: Not assigned

Status: January 11, 2019 received Appearance from Regina Nadeau and Petition for Appeal. 1/15/19 issued receipt of Appeal letter. Council to accept or dismiss Appeal in today's meeting (2/12/19).

- ***Councilor Prescott made the motion to accept the Appeal, second by Councilor Carbonneau. 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. 1/17/19 issued letter granting 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. 1/8/19 received Appearance of Christopher Aslin for the Department and received the Department's Witness and Exhibit List. 1/9/19 received Permittee's Witness and Exhibit List. 1/11/19 received Objection to Appellant's Motion for Reconsideration. 1/14/19 received Assented-to-Motion for Extension to Close Record for Filing Requests. 1/15/19 received Permittee's Motion to Exclude. 1/17/19 issued Notice of Pretrial Hearing on Applicant's Motion for Summary Judgment and Appellant's Objection and Cross Motion for Summary Judgment to be held on 1/22/19 at 11 a.m. in room 110. 1/17/19 received Appellant's Objection to Applicant's Motion to Exclude. 1/18/19 issued ruling denying Motion to Exclude. 1/23/19 issued rulings on Motions remanding Appeal to the Department for purposes of soliciting additional public comment.

The Department did open it up to additional public comments. Discussion was held.

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. 1/22/2019 issued Pre-Hearing Order noting Appellant verbally withdrew his Appeal. Docket now closed.

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: January 11, 2019 David Conley was appointed by AG.

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 accepted appeal and denied Motion for Summary Dismissal on January 8, 2019. 1/11/19 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/11/19 received Objection to Letter Request by McDonald to Supplement the Appeal record. 1/17/19 issued Notice of Pre-hearing Conference scheduled for February 22nd at 9 a.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. 1/18/19 received Motion to Continue Pre-hearing Conference. 1/23/19 received Appearance from Collis Adams and issued Letter granting Motion to Continue PHC rescheduling it for May 6, 2019 at 10 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

V. Misc.

5. Old Business

a. Audit Status

Chairman Kimball noted the draft audit report was just received and there has not been enough time to review.

Schedule – request was for 3 steps –

- 1) Possible meeting with auditors
- 2) Review the draft just received
- 3) Exit conference – possibly in March

April 12th meeting Councilor Kimball will attend.

In terms of the process - Councilor Lievens noted items still not in agreement on in the earlier packet received. The rejoinders were not a surprise. The January 14th letter is not included in the draft report just received. Every observation is in the report. There will be another draft report after the council's responses. It was decided to discuss these documents in the next 2 weeks and get them back to the auditor.

Steve Grady, Senior Audit Manager, gave an overview of how the audit report proceedings will happen in the future. Look at rejoinders and respond to a couple of items. Chairman Kimball and the Council reviewed what is to be done in the next meetings in response to the audit. Chairman Kimball will now send out an email draft response to the January 14th comments and everyone was asked to respond individually. Mr. Grady shared a letter is requested to be sent from the Council at the end to be included in the appendix of the final report. He also noted a review of the total report is suggested as the Council could be mentioned within different parts of the audit report.

A break was taken at 10:20 a.m. until 10:28 a.m.

4. **New Business**

b. Election of Officers

- ***Councilor Mellor made a motion to re-nominate the current slate of officers, Chairman Chip Kimball and Vice Chair Deborah Lievens, second by Councilor St. Pierre. Motion passed unanimously.***

The Draft 2018 Wetlands Annual Report was reviewed. The Marine Trades position has been vacant since 2007 and filling this position was discussed. Appeals Clerk's data report will be attached.

- ***Councilor Henderson made a motion to approve the report as amended, second by Councilor Lievens. Motion passed unanimously.***

5. **Old Business**

b. SB203 – Chairman Kimball presented this to the committee. Atty. Demas was there to represent the Department. It was voted by the committee ought to pass with the amendment. It needs to pass the Senate and then go to the House.

HB 543 – Representative Spang's bill regarding high quality buffers. Concerns were shared. It was questioned as to whether this would increase the number of our appeals. This will be watched and the Council may speak at the Senate.

6. **Next Meeting** –

The next meeting is March 12, 2019 at 9 a.m. To be discussed is the audit and have Collis give an update on the bills that the department is following. The Chairman urged all to attend the upcoming AG training. A Wetlands Council orientation packet was discussed and will be sent to Matthew Bosiak with a copy to all members.

The Council inquired about a response to their wetlands rules comments. It was suggested in March to have an update to the comments received. Sufficiency of appeals to the Council needs to be discussed. A new sentence on the acceptance letter has been added regarding the 'ccs', and who will receive further correspondence. Also brought up were: 1) an insufficiency letter that includes check boxes of required items 2) include what is needed in appeal 3) need of a form/application on the website.

7. **Adjournment**

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

Meeting adjourned at 11:16 a.m.