

# WETLANDS COUNCIL

## MINUTES

October 8, 2019

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The Wetlands Council met on Tuesday, October 8, 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, Lee Carbonneau, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, and Gretchen Young

**Absentee:** Councilor Wendy Weisiger

Also present were: Carolyn Guerdet, Council Clerk, Sarah Richos and Paula Scott, Appeal Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:00 a.m. with introductions and a quorum present. Sarah Richos was introduced as the new Council Clerk.

1. **Approval of Minutes**

- ***Councilor Lievens made a motion to approve the August, 2019 meeting minutes as written, second by Councilor Bosiak. Motion passed unanimously with Councilors St. Pierre and Carbonneau abstaining.***

2. **Public Input:** None

3. **Status of Appeals**

Paula Scott, Appeals Clerk

### I. New Appeals

**Docket No. 19-10 WtC – Fay’s Boat Yard, Inc. Appeal**

Subject: May 24, 2019 denial of Permit by Notification, File No. 2019-1444

Hearing Officer: Not Assigned

Status: June 24, 2019 received Notice of Appeal. 6/25/19 issued Insufficient Appeal letter. July 16, 2019 received Amended Petition for Appeal. 7/17/19 issued Receipt of Amended Appeal letter. 7/23/19 issued Corrected Receipt of Appeal letter. Council to accept or dismiss Appeal today (9/10/19).

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

**Docket No. 19-15 WtC – Town of Ossipee Appeal**

Subject: July 8, 2019 Administrative Order No. 19-025 WD

Hearing Officer: Not Assigned

Status: August 7, 2019 received Appearance of Richard Sager and Petition for Appeal. August 9, 2019 issued Receipt of Appeal letter. September 6, 2019 received Appearance of Atty. Heather Neville for the Department. Council to accept or dismiss Appeal today (9/10/19). Discussion was held.

- ***Councilor Klass made a motion to accept the Appeal, second by Councilor Mellor. Motion passed unanimously with Councilor Lievens abstaining.***

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

**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.

Recused: Councilor Gove

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 Panicocco 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 22<sup>nd</sup> at 9 a.m. 2/22/19 issued Pre-hearing Order scheduling Hearing for May 14, 2019 at 9 a.m. 4/17/19 received Motion to Compel. 4/25/19 received Permittee's Witness List. 4/30/19 issued letter ruling granting Motion to Compel. 4/30/19 received Response to Appellant's Objection to Motion to Compel. May 2, 2019 received Intervenor's Amended Witness List. May 14, 2019 the Hearing and Deliberations were held. June 7, 2019 distributed the draft Decision and Order to the Council for comments. June 20, 2019 issued Final Order on Revised Petition for Appeal. July 22, 2019 received Motion for Rehearing. 7/31/19 received Objection to Motion for Rehearing. Motion for Rehearing was denied at August 13, 2019. August 14, 2019 issued Ruling on Motion for Rehearing.

**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: February 14, 2019 David Conley was appointed by AG.

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. February 12, 2019 Council granted Motion for Reconsideration. 2/14/19 issued ruling granting Motion for Reconsideration. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 9 a.m. March 18, 2019 issued Pre-hearing Order scheduling hearing for June 11, 2019 at 9 a.m. May 13, 2019 received Appellant's Witness and Exhibit List. Hearing and deliberations held June 11, 2019. Council voted to deny the Appeal. Order to be issued within 90 days.

**III. Hearings or PHCs Pending**

**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. May 1, 2019 received Assented-to Motion to Continue Pre-hearing Conference. 5/2/19 issued ruling granting Assented-to Motion to Continue Pre-hearing Conference and rescheduled it to June 10<sup>th</sup> at 8:30 a.m. June 3, 2019 received Assented-To Motion to Continue Pre-hearing Conference. 6/6/19 issued letter granting Assented-To Motion to Continue PHC and rescheduling it for September 12<sup>th</sup> at 9 a.m. September 9, 2019 received Appearance of Atty. Kerry Barnsley for the Department and Assented-to Motion to Continue.

**Docket No. 19-04 WtC (PNA) – Sagamore Landing Association and Daid and Margarete Witham Appeal**

Subject: 02/25/19 Approval of Wetlands Permit #2018-03677 issued to Joan and Jon Dickinson

Hearing Officer: June 14, 2019 David Conley was appointed by AG.

Status: May 10, 2019 received Petition for Appeal, Appearance for Lynn Preston and Appearance for Bryanna Devonshire. 5/13/19 issued receipt of Appeal Letter. 5/16/19 received Appearance of John-Mark Turner for the appellants. 5/17/19 received Appellant's Updated Service List. June 7, 2019 received Appearances from Attys. John Bosen and Bernard Pelech for the permittee. Council voted to accept Appeal June 11, 2019. 6/13/19 issued Appeal Accepted letter. 6/20/19 issued Notice of Pre-hearing Conference scheduled for July 24<sup>th</sup> at 9 a.m. 7/3/19 received appellant's Request for Information. 7/24/19 issued Pre-hearing Order Staying the Appeal.

**Docket No. 19-08 WtC – Deborah Forte and William Ranney Appeal**

Subject: 5/8/19 Amended Shoreland Permit #2016-01071 issued to Richard Jones

Hearing Officer: August 21, 2019 David Conley was appointed by AG.

Status: June 7, 2019 received Petition for Appeal. 6/10/19 issued Insufficient Appeal letter. 6/27/19 received Appearance of Atty. John Cronin for the permittee. July 1, 2019 received revised Petition for Appeal and issued receipt of revised Appeal letter. 7/29/19 received Motion to Intervene. Council to accept or decline Appeal today 8/13/19. Appeal was accepted on August 13, 2019. 8/14/19 issued Appeal accepted letter. September 3, 2019 issued Notice of Pre-hearing Conference scheduled for September 25<sup>th</sup> at 9 a.m. 9/5/19 received Appearance of Atty. Heather Neville for the Department.

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

**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: February 14, 2019 David Conley was appointed by AG.

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). Council voted to accept the Appeal on February 12, 2019. 2/19/19 issued Appeal accepted letter. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 10 a.m. 2/26/19 received Appearance from Atty. Reimers. 3/1/19 received Appearance from Atty. Aslin. 3/11/19 received Petition to Intervene. 3/18/19 issued Pre-hearing Order granting Motion to Intervene and scheduling a second Pre-hearing Conference for May 8, 2019 at 8 a.m. April 12, 2019 issued Notice of Rescheduled Pre-hearing Conference for June 11, 2019 at 8 a.m. June 11, 2019 issued 2<sup>nd</sup> Pre-hearing Order Staying Appeal pending resolution of quiet title and ordering Appellant to file status update by December 16, 2019.

**V. Misc.**

**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. 1/04/19 received Appellant's Motion for Reconsideration of December 7, 2018 Order. February 12, 2019 received Appellant's Motion for Reconsideration. 2/19/19 received Objection to Appellant's Motion for Reconsideration. 2/19/19 received DES' Objection to Appellant's Motion for Reconsideration. 2/22/19 issued letter ruling denying Motion for Reconsideration. September 10, 2019 Council decided to remove this from further status of appeals.

**4. New Business**

Mary Ann Tilton, Wetlands Bureau Asst. Administrator

Mary Ann gave an update on the Wetlands Bureau Rules. Clarifications and corrections were noted. Discussion was held. Questions from the Council were addressed. Public hearing is November 8<sup>th</sup> at 1 p.m. here at DES.

Sarah Yuhas-Kirn, Wetlands Bureau Manager

Sarah gave an update on the Wetlands Bureau. All forms and internal changes are being made as there are new fees to be collected. New rules become effective December 15, 2019. Training sessions will be held. Significant updating of database and guidance documents. The low staffing and all the changes have caused struggles with the permit timelines. Discussion was held. Time extension letter to applicants will be provided to the Council. Hiring is now going on now that the Continuing Resolution is over.

Break taken at 10:06

Meeting resumed at 10:16

Any further comments can be sent to Mary Ann. HB 543 – Buffers will need to be monitored.

5. **Old Business**

Chairman Kimball would like a stakeholder meeting, attorneys, to go over the changes and get feedback in December.

Council reviewed the changes and discussion was held. Chairman Kimball will make the changes noted and refer this to our Council attorney.

6. **Next Meeting** –

The next meeting will be November 12, 2019, at 8 a.m. with a hearing to begin at 9.

7. **Adjournment**

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

Meeting adjourned at 11:28 a.m.