

MINUTES
WETLANDS COUNCIL MEETING
Tuesday, June 9, 2020

The Wetlands Council met on Tuesday, June 9, 2020, at 9:00 a.m. via Zoom.

Attendees:

- Chairman Chip Kimball, Councilors Lee Carbonneau, Carol Henderson, Deborah Lievens, Richard Mellor, Russ St. Pierre, Seth Prescott, Wendy Weisiger, and Gretchen Young; Sarah Richos, Council Secretary; Paula Scott, Appeals Clerk; David Conley, Hearing Officer; Robert Scott, Commissioner, NH Department of Environmental Services; Rene Pelletier, Assistant Director, Water Division, NH Department of Environmental Services; Mary Ann Tilton, Assistant Administrator, Wetlands Bureau, NH Department of Environmental Services; Marc McConkey, member of the public

Absentees:

- Councilors Matthew Bosiak, Jeff Cloutier and Michael Klass

The regular Wetlands Council meeting was called to order at 9:00 a.m. by Chairman Kimball with introductions. Quorum present. Chairman Kimball read the Governor's Emergency Order.

1. **APPROVAL OF MINUTES**: Discussion held. Motion made by Councilor Henderson to approve the March 10, 2020 meeting minutes, as revised. Seconded by Councilor Lievens. Motion passed by Council without dissent.
2. **PUBLIC INPUT**: No public input presented before the Council.
3. **STATUS OF APPEALS**: Paula Scott, Appeals Clerk

I. NEW APPEALS

No new appeals.

II. DECISIONS TO BE WRITTEN. FINALIZED. ISSUED.

None.

III. HEARINGS OR PHCs PENDING

- **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: David Conley appointed by AG on 9/23/19.

Status: 6/24/19 received Notice of Appeal. 6/25/19 issued Insufficient Appeal letter. 7/16/19 received Amended Petition for Appeal. 7/17/19 issued Receipt of Amended Appeal letter. 7/23/19 issued Corrected Receipt of Appeal letter. 9/10/19 Council voted to accept Appeal. 9/10/19 Appeal Accepted letter. 9/23/19 Received Appearance of Joshua Harrison. 9/27/19 Pre-Hearing conference scheduled for 10/21/19 at 10:00 a.m. 10/21/19 Pre-Hearing Order scheduled hearing for 12/10/19 at 9:00 a.m. 11/12/19 received Joint Motion to Extend Dates in Procedural Schedule and for the Hearing.

11/19/19 issued ruling granting Joint Motion to Extend Dates in Procedural Schedule and for the Hearing. Scheduling hearing for 4/14/20 at 9:00 a.m. 2/13/20 received Second Joint Motion to Extend Dates in Procedural Schedule and the Hearing. 2/18/20 issued ruling granting Second Joint Motion to Extend Dates in Procedural Schedule and the Hearing. Hearing scheduled for 6/9/20 at 9:00 a.m. 3/24/20 received Parties' Third Joint Motion to Extend Dates in Procedural Schedule and the Hearing. 3/26/20 issued letter granting Parties Third Joint Motion to Extend Dates in Procedural Schedule and the Hearing. **The hearing is scheduled for August 11, 2020.**

- **DOCKET NO. 19-18 WtC (PNA) – KREISLER FAMILY II, LLC APPEAL**

Subject: September 6, 2019 Approval of Wetlands permit #2017-03657 issued to David Brewster

Hearing Officer: David Conley appointed by AG on 2/20/20

Status: 11/13/19 received Notice of Appeal. 12/2/19 issued Insufficient Appeal letter. 12/23/19 received Revised Notice of Appeal. 12/24/19 issued Receipt of Revised Appeal letter. 1/17/20 received Appearance of Stephan Nix for the permittee. 2/11/20 Council to accept or decline appeal today. 2/11/20 issued Appeal Accepted letter. 2/13/20 received Appearance of Lisa Wade and Maureen Smith for the appellant. 2/21/20 issued Notice of Pre-hearing Conference scheduled for 3/17/20 at 10:00 a.m. 3/2/20 received Assented to Motion to Continue Pre-hearing Conference. 3/5/20 issued letter granting Assented to Motion to Continue PHC and rescheduling it to 4/2/20 at 9:00 a.m. in Room 110. 3/10/20 received Appearance of Mary Ann Tilton. 3/23/20 issued Notice of PHC being postponed due to Covid-19. 5/27/20 issued Notice of Pre-hearing Teleconference scheduled for 6/24/20 at 10 a.m.

- **DOCKET NO. 19-19 WtC (PNA) – KREISLER FAMILY II, LLC APPEAL**

Subject: September 6, 2019 Approval of Wetlands permit #2017-03659 issued to David Brewster

Hearing Officer: David Conley appointed by AG on 2/20/20

Status: 11/13/19 received Notice of Appeal. 12/2/19 issued Insufficient Appeal letter. 12/23/19 received Revised Notice of Appeal. 12/24/19 issued Receipt of Revised Appeal letter. 1/17/20 received Appearance of Stephan Nix for the permittee. 2/11/20 Council to accept or decline appeal. 2/11/20 issued Appeal Accepted letter. 2/13/20 received appearance of Lisa Wade and Maureen Smith for the appellant. 2/21/20 issued Notice of Pre-hearing Conference scheduled for 3/17/20 at 10:00 a.m. 3/2/20 received Assented to Motion to Continue Pre-hearing Conference. 3/5/20 issued letter granting Assented to Motion to Continue PHC and rescheduling it to 4/2/20 at 9:00 a.m. in Room 110. 3/10/20 received Appearance of Mary Ann Tilton. 3/23/20 issued Notice of PHC being postponed due to Covid-19. 5/27/20 issued Notice of Pre-hearing Teleconference scheduled for 6/24/20 at 10:00 a.m.

- **DOCKET NO. 19-23 WtC – WILLIAM DENLEY APPEAL**

Subject: November 25, 2019 Denial of Shoreland Permit Application, File No. 2019-03502

Hearing Officer: Dave Connelly appointed by AG on 3/17/20

Status: 12/23/19 received Notice of Appeal. 12/27/19 issued Insufficient Appeal letter. 1/24/20 received Revised Petition for Appeal. 1/29/20 issued receipt of Revised Appeal. 3/10/20 Council to accept or decline appeal. 3/11/20 issued Appeal Accept letter. 6/1/20 issued Notice of Pre-hearing Teleconference scheduled for 6/29/20 at 11:00 a.m.

- **DOCKET NO. 20-01 WtC – RYE CONSERVATION COMMISSION APPEAL**

Subject: December 10, 2019 Approval of Wetlands Permit #2019-03146 issued to Marc Grondahl, Trustee

Hearing Officer: David Conley appointed by AG on 2/20/20.

Status: 1/8/20 received Notice of Appeal. 1/10/20 issued Receipt of Appeal letter. 1/28/20 received Appearance of Timothy Phoenix for the permittee and a Motion for Summary Dismissal. 2/11/20 Council to accept or decline appeal. 2/12/20 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 2/20/20 issued Notice of Pre-hearing Conference scheduled for March 17, 2020 at 9:00 a.m. in Room 110. 3/10/20 received Appearance of Mary Ann Tilton. 3/12/20 received Appearance from Amy Manzelli, Motion to Continue and Objection to Motion to Continue. 3/16/20 issued ruling granting Motion to Continue and rescheduling PHC for 4/2/20 at 10:30 a.m. 3/20/20 received Appearance of Monica Kieser for the permittee. 3/23/20 issued Notice of PHC being postponed due to Covid-19. 6/1/20 issued Notice of Pre-hearing Teleconference scheduled for 6/29/20 at 10:00 a.m.

IV. INACTIVE/STATUS LETTER OR PENDING SETTLEMENT/WITHDRAWAL

- **DOCKET NO. 19-02 WtC – TIMOTHY & JEAN PINEAU AND JEAN PINEAU, TRUSTEE APPEAL**

Subject: December 19, 2018 Amendment to Administrative Order No. 18-020 WD

Hearing Officer: David Conley was appointed by AG on 2/11/19.

Status: 1/11/19 Received Appearance from Regina Nadeau and Petition for Appeal. 1/15/19 issued receipt of Appeal letter. 2/12/19 Council to accept or dismiss Appeal. 2/12/19 Council voted to accept Appeal. 2/19/19 issued Appeal accepted letter. 2/25/19 issued Notice of Pre-Hearing Conference scheduled for 3/18/19 at 10:00 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 5/8/19 at 8:00 a.m. 4/12/19 issued Notice of Rescheduled Pre-Hearing Conference for 6/11/19 at 8:00 a.m. 6/11/19 issued second Pre-Hearing Order Staying Appeal pending resolution of quiet title and ordering appellant to file status update by 12/16/19. 12/16/2019 Received status update. 12/17/19 issued letter requesting another Status Update by 2/14/20. 2/13/20 received Status Update.

- **DOCKET NO. 19-04 WtC (PNA) – SAGAMORE LANDING ASSOCIATION AND DAVID AND MARGARETE WITHAM APPEAL**

Subject: February 25, 2019 Approval of Wetlands Permit #2018-03677 issued to Joan and Jon Dickinson

Hearing Officer: David Conley was appointed by AG on 6/14/19.

Status: 5/10/19 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. 6/7/19 received Appearances from Attys. John Bosen and Bernard Pelech for the permittee. 6/11/19 Council voted to accept Appeal. 6/13/19 issued Appeal Accepted letter. 6/20/19 issued Notice of Pre-Hearing Conference scheduled for 7/24/19 at 9:00 a.m. 7/3/19 received appellant's Request for Information. 7/24/19 issued Pre-Hearing Order Staying the Appeal. 9/24/19 received Joint Status Report. 9/26/19

letter ordering parties to submit updated status report by 11/22/19. 11/22/19 received Joint Status Report. 11/25/19 issued letter re: Joint Status Report and ordering updated Status Report be filed by 2/20/20. 2/21/20 received appellants' Status Report. 2/28/20 issued Letter regarding appellants' Status Report and order an updated Status Report be filed by 8/19/20. 3/10/20 received Appearance of Mary Ann Tilton.

V. MISCELLANEOUS

No items before the Council.

4. NEW BUSINESS:

- **Mary Ann Tilton, Assistant Administrator, Wetlands Bureau:** Wetlands Bureau update.
 - Reduction in standard application filings.
 - Increase in shoreland application filings.
 - Emergency Order allows for town clerk signatures to be submitted electronically.
 - Wetlands Rules, changes in response to Audit.
 - Hired two summer interns.
 - LAC jurisdiction - PBN wetland review process changed. Avoidance and minimization to docking changes made in response to audit.

- **Commissioner:** COVID 19 mode.
 - Stay at Home Order issued by Governor Sununu exempted state government employees; most NH Department of Environmental Services staff telework.
 - Hazen Drive open for office use when needed. Start to phase in public access. Staff are distancing from each other.
 - Budget is unknown. \$500,000-\$800,00 shortfall. Hiring freeze.
 - LBA Audit Report to be issued soon.
 - Legislature starting to move forward.

- **David Conley**
 - Hearings are evidentiary hearings – how should documentation be presented
 - Second - Remotely how to judge credibility of witness if not in room with witness
 - Public hearings – Emergency Order – Attorney General's office has given guidance.

- **Richard Mellor**
 - Enforcement issues, are they delayed; Commissioner believes issues are being taken care of.

5. ONGOING BUSINESS:

- Performance Audit – Corrective Status Report was submitted by Chairman Kimball
- On March 10, 2020, Council Rules working group met. Councilor Klass edited revisions of rules. No working group meeting held on April 24, 2020. Mid-May Chairman Kimball and Councilor Klass inserted comments into rules. Send comments to Chairman Kimball and Councilor Klass.

6. NEXT MEETING: August 11, 2020 at 9:00 a.m.

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8. ADJOURNMENT: Motion made by Councilor Prescott to adjourn. Seconded by Councilor Lievens. Motion passed by Council without dissent. Meeting adjourned at 10:00 a.m.