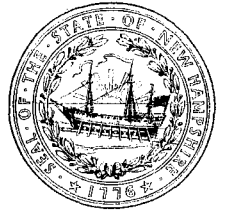




The State of New Hampshire
Department of Environmental Services
Wetlands Council

PO Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Appeals Clerk Telephone (603) 271-6072 - TDD Access: Relay NH 1-800-735-2964
DES Website: www.des.nh.gov - Council Website: www.des.state.nh.us/councils/



STATE OF NEW HAMPSHIRE
WETLANDS COUNCIL

Docket No. 06-02 WtC

Appeal of Bodanza et al.
In Re: Wetlands File No. 2002-02483

Decision & Order
on
Notice of Appeal

Background

On November 15, 2002 Mr. Richard Reid / The Wilds Christian Association, Inc. ("the Applicant") filed a Wetland Permit Application ("the application") with the Department of Environmental Services, Wetlands Bureau ("DES") to install two 6 ft x 40 ft piers connected by a 6 ft x 60 ft seasonal wharf, a 6 ft x 40 ft seasonal pier with a 6 ft x 19 ft seasonal "L", and a 5 ft x 91 ft tube slide extending 16 ft lakeward of the normal high-water line on an average of 2,500 ft of frontage on Page Pond in Meredith, New Hampshire. Each of the seasonal piers shall be accessed by a 6 ft wide walkway constructed over the bank of Page Pond. Impact 41 sq ft to drive pilings and replace bridge over Page Brook to allow emergency vehicle access. Impact 58 sq ft to drive pilings and construct two footbridges over Lower Page Pond for trail system. Dredge and fill 4,425 sq ft of forested wetlands to construct access roads, 1,497 sq ft of forested wetlands to construct an athletic field, and temporarily impact 75 sq ft of forested wetlands for septic line installation. And impact 83,430 sq ft of man-made wetlands to reclaim two quarries for water-based recreation activities ("the project"). DES assigned Wetlands Bureau File No. 2002-02483 to the application.

On December 2, 2005 DES approved the application.

George and Sandi Schussel, Mark and Martha Billings, Jellicle Investors, Inc., and Hornet's Nest Point, LLC are abutters to the project.

On December 21, 2005 Attorney David P. Bodanza filed a Request for Reconsideration with DES on behalf of George and Sandi Schussel, Mark and Martha Billings, Jellicle Investors, Inc., and Hornet's Nest Point, LLC. The subject of the Request for Reconsideration was the December 2, 2005 application approval.

On February 16, 2006 DES issued a Decision on Reconsideration ("the decision") which reaffirmed its decision to approve the application.

On March 14, 2006 Attorney David P. Bodanza filed a Notice of Appeal ("the Appeal") with the NH Wetlands Council ("the Council") on behalf of George and Sandi Schussel, Mark and Martha Billings, Jellicle Investors, Inc., and Hornet's Nest Point, LLC ("the Appellants"). The subject of the Appeal being the New Hampshire Department of Environmental Services, Wetlands Bureau ("DES") February 16, 2006 Decision on Reconsideration in Wetlands Bureau File No. 2002-02483.

On April 11, 2006 the Council accepted the Appeal. The appeal was assigned Docket No. 06-02 WtC and captioned "The Bodanza et al. Appeal."

On August 8, 2006, following proper notice to all parties, and a pre-hearing conference on May 9, 2006, the Council convened an adjudicatory hearing on the subject appeal in accordance with RSA 21-O:5-a, RSA 482-A:10, VIII, and Env-WtC 205. Present were Attorney Jeanne P. Herrick representing the Applicant, Attorney David P. Bodanza representing the Appellants, and Mary Ann Tilton representing DES. As soon as the hearing began Ms. Tilton informed the Council that on February 16, 2006 the Appellants were sent a different decision from the decision that was posted to a DES website. Ms. Tilton explained that the December 2, 2005 application approval resulted in a Request for Reconsideration by the appellants in this appeal as well as a separate Request for Reconsideration by another party who is not a party to this appeal.

While Ms. Tilton claimed that DES rendered a separate Decision on Reconsideration in each Request for Reconsideration she informed the Council that the decision addressed to and sent to Attorney Bodanza and his clients was not the decision that should have been sent to them. Ms. Tilton also explained that because Attorney Bodanza and his clients were sent the wrong decision the findings in that decision did not address all of the points raised by Attorney Bodanza and his clients in their Request for Reconsideration. These facts sparked an in-depth discussion among the Council. After considerable discussion the Council concluded that it was not practical or even possible to move forward with a hearing given the fact that the Appellants were never sent the actual Decision on Reconsideration nor was the actual Decision on Reconsideration part of the record below. Furthermore, the Council concluded that given these facts an adjudicatory hearing was not necessary because DES' error in sending the Appellants the wrong decision in itself rendered that decision unlawful and/or unreasonable. This matter is remanded to DES for issuance of a Decision on Reconsideration that addresses all of the issues raised by the Appellants in their December 21, 2005 Request for Reconsideration.

Decision & Order

The subject Appeal is **GRANTED**.

Reconsideration

In accordance with, and as prescribed by, RSA 482-A:10 any party aggrieved by this decision and order of the Council may apply to the Council for reconsideration within 20 days of the issuance of this Decision & Order.

So Ordered for the Council:

COPY
Michael P. Sciafani, Appeals Clerk

September 5, 2006