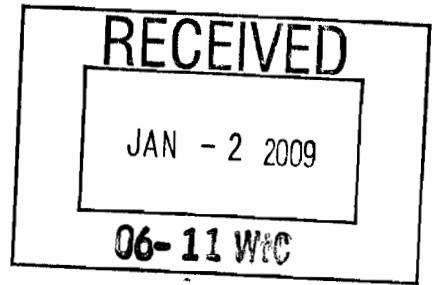


THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS COUNCIL

Dennis Proulx Appeal

Docket No.06-11WtC



**OBJECTION TO APPELLANT'S
MOTION TO CONTINUE**

NOW COMES the State of New Hampshire Department of Environmental Services (State/DES), through counsel, the Office of the Attorney General, and objects to the Motion to Continue filed by the Appellant on or about December 26, 2008, stating as follows:

BACKGROUND

1. A pre-hearing conference in the above-captioned appeal is currently scheduled for January 21, 2009. Appellant is requesting that the pre-hearing conference be continued and that the appeal be essentially stayed pending the outcome of a petition for declaratory judgment that appellant has filed in Superior Court. The State objects to any such continuance.

2. In his Motion to Continue, the Appellant states that, "The Parties have filed a Petition for Declaratory Judgment in Superior Court to declare the location of the high water mark in this case." See, Motion to Continue, ¶ 2. The State is the only other party in this matter, and the State did not agree to, or join in such a filing, and has no knowledge of any such filing.¹ Further, counsel for the State contacted the clerk's office at the Belknap County Superior Court and was advised that no such declaratory judgment petition has been filed in that Court.

3. Appellant originally filed this notice of appeal in August of 2006. A pre-hearing conference was held in this matter on April 2, 2007. A hearing on the merits was scheduled for

¹ In addition, counsel for the Appellant did not contact the counsel for the State contrary to the statement in paragraph 3 of the Motion to Continue.

August 14, 2007. On July 20, 2007, Appellant filed a Motion to Stay the Proceedings. In his Motion to Stay, Appellant alleged that there was a title dispute which formed the basis of DES's denial of reconsideration, and that the Wetlands Council did not have jurisdiction to resolve that dispute. Therefore, Appellant argued that it desired to enter into negotiations with the State to attempt to resolve the dispute.

4. The State did not agree with Appellant's interpretation that the denial of the Appellant's application for an after-the-fact permit was based solely upon a claim by DES that the State owned the subject property, or that the Wetlands Council did not have authority or jurisdiction to hear the appeal, but the State assented to Appellant's Motion to Stay as a cooperative gesture in order to allow the parties additional time to engage in negotiations.

5. The parties did not meet until May of 2008. Following the meeting, the State advised the Appellant that it was willing to reconsider the timeliness issue as a ground for its denial of Appellant's request for reconsideration. However, State also advised the Appellant that it would not enter into any borderline agreement that would vest title to the land in question to the Appellant.

6. DES's denial of reconsideration was based both on a finding that the retaining wall was within the lake and upon a finding that the location of the new wall was approximately one-to-four feet lakeward from the old wall, which fails to meet the criteria of Rule Wt. 404.05, and was not an appropriate method of shoreline stabilization. This second basis of denial is independent of any alleged boundary line dispute. In addition, DES made its decision to deny the after-the-fact permit based upon the plans the Appellant submitted, which clearly showed that the existing boundary line at the existing wall. As such, DES maintains that its denial of the

Appellant's request for reconsideration and the after-the-fact permit application was lawful and reasonable.

7. Based on the foregoing, the State maintains that the Wetlands Council has jurisdiction and authority to hear this appeal. RSA 482-A:10. Moreover, Appellant has had ample time to test his theories in Superior Court having first raised this claim in July of 2007. Any further delay based upon these grounds would be unreasonable.

WHEREFORE, the State respectfully requests that the Wetlands Council:

- A. Deny the Appellant's Motion to Continue; and
- B. Grant such other and further relief as is just and proper.

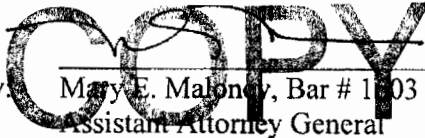
Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys

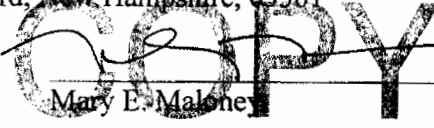
KELLY A. AYOTTE
ATTORNEY GENERAL

Date: January 2, 2009

By: 
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Certificate of Service

I hereby certify that a copy of the foregoing was mailed this day, postage prepaid, to Peter McGrath, 20 Montgomery Street, Concord, New Hampshire, 03301


Mary E. Maloney