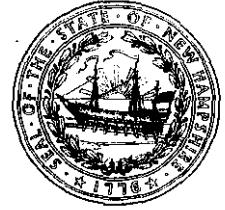




The State of New Hampshire  
*Department of Environmental Services*  
*Wetlands Council*

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](http://www.des.nh.gov) - Council Website: [www.des.state.nh.us/councils/](http://www.des.state.nh.us/councils/)



**STATE OF NEW HAMPSHIRE**  
**WETLANDS COUNCIL**

**Docket No. 06-12 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. On September 5, 2006 this matter was 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.

On August 14, 2006, prior to the issuance of the Council's September 5, 2006 written decision, DES issued a new Decision on Reconsideration which reaffirmed its November 10, 2005 decision to approve the application.

On September 11, 2007 Attorney David P. Bodanza filed a new Appeal with 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 DES August 14, 2006 Decision on Reconsideration.

On October 16, 2006 the Council accepted the Appeal. The appeal was assigned Docket No. 06-12 WtC and captioned "The Bodanza et al. Appeal."

On June 12, 2007, following proper notice to all parties, 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 Present were Attorney Jeanne P. Herrick representing the Applicant,

Attorney David P. Bodanza representing the Appellants, and Mary Ann Tilton representing DES. In accordance with the Council's April 3, 2007 Pre-hearing Order, the Appellant was allowed a maximum of thirty (30) minutes presentation time and a maximum of five (5) minutes for a closing statement. DES and the Applicant were allowed a maximum of thirty (30) minutes shared presentation time and a maximum of five (5) minutes shared time for closing statements. The Council listened to presentation and argument by the Appellant, DES, and the Applicant. Following the close of the appeal hearing the Council decided to deliberate and vote on the appeal. After deliberations the Council voted 5-4 to deny the appeal.

#### **Findings & Conclusions**

By Rule, the Wetlands Council considers decisions of DES to be *prima facie* reasonable and lawful unless an Appellant can successfully overcome this rebuttable presumption. An appellant can do this by presenting the Council with a preponderance of clear and concise evidence that otherwise persuades the Council such a decision was unreasonable and/or unlawful.

The Council finds that by Rule it cannot substitute its independent judgment of the facts and circumstances of a decision for that used by DES in its own deliberations. It can instead only decide if, given the facts and information presented to it by (a) the particular application and (b) the interested parties during the formal processes of review and reconsideration below, that the resulting DES decision was unreasonable and/or unlawful.

The Council finds that in this Appeal the preponderance of evidence in both the Certified Record and in the presentations by the Appellant at hearing failed to persuade a majority of the Council that this presumption was successfully rebutted for, *inter alia*, the following general reasons:

- Appellant fundamentally disagrees with the DES decision in this matter and on that basis contends it is unreasonable and unlawful. Council finds that such disagreement does not itself constitute evidence the DES decision is unreasonable and/or unlawful.

- Appellant argues that the Certified Record in this matter lacks clear and convincing findings of fact sufficient to support the grant of the particular permit. The Council finds, however, that ample opportunity to remedy such deficiencies was reasonably and lawfully afforded Appellant by the review and reconsideration processes below. The Certified Record shows that Appellant failed to avail itself of these two unrestricted opportunities to provide alternate clear and convincing evidence sufficient to substantiate impacts it contends were unreasonably minimized or otherwise overlooked by DES.

Accordingly, based on the Certified Record in this matter, upon presentations by the parties at hearing, and upon its independent review and deliberation, the NH Wetlands Council concludes and orders that:

- per ENV-WtC 205.17, Appellant failed to prove, by a preponderance of clear and concise evidence, that the DES decision in this matter was unreasonable and/or unlawful;
- DES did not act unreasonably or unlawfully in its review or decision-making in this matter.

**Decision & Order**

The subject Appeal is **DENIED**.

**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. Serafani, Appeals Clerk

July 19, 2007