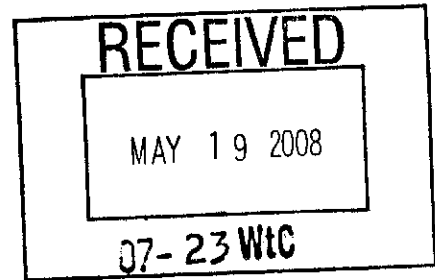


NH DES Wetlands Council
Docket #07-23 WtC

Appeal of Steve Bragg
Wetlands File #2006-01494



**REQUEST FOR RECONSIDERATION
OF DENIAL OF MOTION TO EXPAND THE RECORD
May 6, 2008**

We respectfully request reconsideration of the denial of the motion to expand the record dated May 6, 2008. We believe that this denial is potentially a restriction of rights regarding fair consideration of the Department's Findings of Fact in this matter.

Specifically, please note it is the Department that addressed, in Findings of Fact, the issue of "*administrative gloss*" in its denial of the reconsideration request dated 8/9/07 (see Bates number 59, Finding #4):

"...the way the agency that adopted the rule has applied it to similar prior cases and the consistency with which the agency applies the rule is considered in determining how the rule will be interpreted and applied."

As the Council must consider the Department's decision lawful and reasonable, the burden is on the appellant to prove that the findings are unlawful and unreasonable. The Department addressed the "*administrative gloss*" doctrine in the denial of reconsideration dated 8/9/07 not in the original denial dated 8/28/06.

Therefore, the appellant has not had opportunity to rebut these Findings of Fact in any proceeding and the only way to show the inconsistency of these decisions is to show examples contrary to the file at hand (see Bates number 59, Findings #4, 5, 6, 7, and 9).

As the only opportunity to rebut these Findings of Fact is the Council proceedings, it is unreasonable and unlawful to not consider the issue of "*administrative gloss*", as brought forth by the Department, at the appeals hearing. The only way to reasonably address these Findings of Fact is to consider these prior cases in the context of consistency in the decision making process.

As the Council process is non-evidentiary, and these six files are clearly mentioned in the record on more than one occasion, these are the only six files available for consideration regarding "*administrative gloss*" during this appeal. Please note; this is not an attempt to expand the record to any consideration beyond the six specific files already described in the existing record of the Bragg decision making process.

These files will show the lack of consistency in similar cases as applied by the Department regarding permanent docks and modification. This directly relates to the Department's Findings of Fact and these files are the only way for the appellant to prove the unreasonableness and unlawfulness of the decision making regarding these issues.

Based upon the time-line and the fact that these issues were not addressed by the Bureau prior to the denial of reconsideration (the final decision), the appellant has not had any opportunity to rebut the lawfulness and reasonableness of the Findings of Fact.

The burden is on the appellant and these files clearly speak to the consistency of the departments decisions. As the issue of "*administrative gloss*" was not addressed previously, the only forum for this consideration is the Council appeals process. As these specific and particular files are included, at least in part, in the record at hand, it is only reasonable that these are the only files to be considered at this point in the process.

These previously approved files were "...contained in the department's files relating to the matters on appeal...", "...available to the department at the time that it made a final decision...", and are "...relevant to the appeal..."

However, not including these complete files severely restricts the ability to address an issue, raised by the Department during its "*final decision*", at a point in the process where the appellant has not yet had an opportunity to rebut the Findings of Fact.

Further, we have discovered that the Bureau sought additional time to prepare the record in the case of Bourgeois (07-27 WtC – see attached), and specifically notes that the record is being expanded beyond the file at hand, to include previous files discussion during the application process. Granted, this files are all in the Bourgeois name, however, this is expansion of the record to include other files discussed as a component of the review. We believe that as the files we are seeking to included are mentioned in the record, and were obviously considered by the Bureau (note the wind fetch data print-outs previously discussed), they should also be included in the review of this appeal.

Based upon the above we respectfully request the Council reconsider and grant the Motion To Expand the Record and order the Bureau to amend the Certified Record to include these six files.

Respectfully Submitted

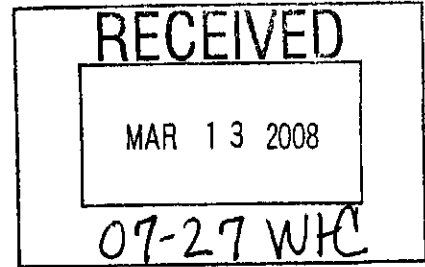
COPY
Paul W. O'Connell

Agent for Steve Bragg

5/16/08
Date

SERVICE

I certify that a copy of this reconsideration request has been sent via first class mail on May 16, 2008 to Evan J. Mulholland, Attorney for NH DES.



STATE OF NEW HAMPSHIRE
Department of Environmental Services
Wetlands Council

COPY

ROBERT BOURGEOIS
RE: Appeal Docket No. 07-27 WtC

DES WETLANDS BUREAU MOTION TO EXTEND TIME FOR RECORD FILING

Now comes the Department of Environmental Services, Wetlands Bureau ("DES"), which is required to prepare and file with the Council, a copy of the record of the decision being appealed ("the Certified Record") on or before March 17, 2008, in accordance with the letter from the Wetlands Council dated February 27, 2008.

WHEREFORE, the DES respectfully requests the Council to grant an extension of time, in accordance with Env-WtC 205.02, for preparation of the copy of the Certified Record until April 21, 2008.

This time extension is needed due to the following facts:

- a. This record is unusually large and includes three files; and
- b. The unusually high number of appeals that DES has been processing.

Respectfully submitted,

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL
SERVICES, WETLANDS BUREAU

Date: March 13, 2008

By:

COPY

Mary-Ann Tilton, Assistant Administrator
NHDES Wetlands Bureau

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing DES Wetlands Bureau Motion to Extend Time for Record Filing has been forwarded this day, March 13, 2008, by first-class mail, postage pre-paid, to Robert Bourgeois, Appellant and his agent Robert C. Brown.