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THE STATE OF NEW HAMPSHIRE
WETLANDS COUNCIL

APPEAL OF GOODHUE MEREDITH REAL PROPERTY, LLC

Docket No. 24-25 WtC

NOTICE OF APPEAL

(NHDES Wetlands Major Impact Permit File Number: 2024-00754)

Goodhue Meredith Real Property, LLC (the “Applicant”), through their Authorized Agent, Horizons Engineering, Inc., and their attorneys, Donahue, Tucker & Ciandella, PLLC, submits this Notice of Appeal (“Appeal”), pursuant to RSA 482-A:10, RSA 21-O:14, I-a, and Ec-Wet 203.01, of the New Hampshire Department of Environmental Services (“DES” or the “Department”) decision dated November 27, 2024 (“Decision”) to deny a standard dredge and fill major impact project for the proposed reconstruction of a major docking system, in addition to a proposed reconfigured boat launch and new cantilevered negative well with piers.

I. APPELLANT

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IV. JURISDICTION

Pursuant to RSA 21-O:5-a, V and RSA 21-O:14, I-a, the Wetlands Council (the "Council") is authorized to hear appeals of Department decisions.

V. STANDING

Goodhue Meredith Real Property, LLC has standing to bring this appeal as the recipient of the Decision.

VI. DESCRIPTION OF LAND

The land involved in the Decision is located at 20 Lovejoy Sands Road, Tax Map U35 Lot 8A, approximately 12.00 acres and 502' shoreline frontage, and 31 Lovejoy Sands Road, Tax Map U35 Lot 11, approximately 0.25 acres and 226' shoreline frontage, in Meredith, New Hampshire according to the Town's records, with shoreline frontage along Lake Winnepesaukee. The Applicant also owns and utilizes as part of the Marina adjacent Lot 12, which has approximately 0.56 acres and 99' shoreland frontage. These lots were acquired by Goodhue Meredith Real Property, LLC as portions of all lands conveyed in warranty deed dated August 18, 2017, recorded August 21, 2017, in the Belknap Country Registry of Deeds at Book 3123 Page 110 (the "Property").

VII. Decision Being Appealed

On December 2, 2024, the Department denied a wetland permit application to repurpose an existing commercial boat launch, construct a new cantilevered negative well with piers (rather than a dug-in basin as originally proposed), and reconfigure a portion of the existing major docking System. The Department denied the permit application based partially on the interpretation of one of the property line extensions over the water partially precluded the Applicant's reconfiguration of its existing grandfathered docking system. However, DES staff, during an on-site meeting with the Applicant, recommended the Applicant submit the proposed major docking system reconfiguration layout with a waiver request conditioning a potential permit approval on the Municipality and the Applicant mutually agreeing to, prior to construction, a boundary line adjustment to resolve the issue of docking setbacks offset from property line extensions over water.

VIII. Facts and Grounds for Appeal

The Applicant has included select items below from the *Finding of Fact* and *Rulings in Support of Denial* sections of the Decision with responses in *italics* of which the Applicant believes are unlawful and/or unreasonable.

Finding of Fact (only those with responses have been included)

4. Upon review of the Application the Department determined that the Application failed to include a plan illustrating the proposed reconfiguration of the dock structures.

➤ *The Department contacted Horizons shortly before the May 10th RFMI was sent to notify us that they received an 11x17 copy of the docking plan, but not a full size. The Department told us that it was not worth sending the sheet at that time. While we do not dispute the Department's statement that the sheet was not included, it was not excluded intentionally by the Applicant and it therefore is unreasonable to use this fact in support of a denial.*

6. The RFMI also requested, among other things, a revised plan and project proposal demonstrating that the proposed docking structure modifications would include any modifications necessary to ensure that no boat or boat slip would be located beyond the extension of any abutter's property line to ensure compliance with RSA 482-A:3XIII, (b).

➤ *On July 23, 2024, the Applicant and Agents met with the Department at the DES office in Concord to discuss the response the RFMI letter. We specifically discussed the Applicant's request to provide an approval conditioned upon a*

boundary line adjustment (BLA) agreement with the Town of Meredith. The proposed BLA would create a new boundary line adjacent to the lake that would allow the proposed docking structures to be placed as planned in a compliant location with respect to the new property line projection in accordance with RSA 482-A:3XIII, (b). This BLA would also allow the Town to proceed with its desired expansion of the Town docks, which project could not occur without the BLA occurring as proposed on both sides of the Town's Lot 10. The Department recommended that the Applicant submit the docking plan as proposed with a request for conditional approval. That is what was submitted.

13. On November 14, 2024, the Department contacted the Agent representing the Applicant and explained that proposed docking structures are not approvable because they provide for an increase in boat slips, a greater number of which are located beyond the imaginary extensions of the abutting property lines.

➤ *During a phone call with Horizons staff and the Department on the afternoon of November 14, 2024, the Department recommended supplying them with an informal exhibit or sketch showing a docking structure layout which reduces the boat slip count and reduces the docking square footage in the post-construction condition. We understood from the Department during the call that a reduction of docking impacts beyond the existing property line extensions over water could be considered to meet the intent of Env-Wt 513.17 (b). The Department requested to receive an informal exhibit on November 14th, or by*

the 15th at the latest, as time was of the essence in order to schedule a public meeting within 30 days of receiving a complete request for more information response. A request was made by Horizons to the Department to reference statute or rule that required an approval or denial instead of a request for more information since it was unclear to Horizons why there was such urgency to schedule a public meeting. These requests by phone and email went unanswered on November 14 and 15, 2024.

14. On November 15, 2024, the Department received an updated plan by Horizons Engineering dated November 15, 2024, which showed no changes to the proposed docking structures but instead identified several slips as "temporary" or "service" slips and implied that other proposed slips would simply not be used.

➤ *We believe the Department has misinterpreted the intent of the exhibit. Some of the docking in question was near the shore with insufficient water depth to be considered slips. We requested by email on November 14, 2024 that the Department call to discuss it if there were any questions prior to making any decisions. We received no response to this request by phone or email.*

Within approximately 4 working hours of a phone call between Horizons and the Department on the afternoon of November 14, Horizons prepared and delivered an exhibit which depicted eliminating various slips and docking structure from the plan. We found 21 existing slips to be located beyond the

property line extensions over water. The informal exhibit showed the proposed slips and docking structure to over the property line projection (magenta dots). The updated plan received by the Department on November 15, 2024 noted a reduction in overall dock area and slip count, and a reduction in the docking structure and number of slips projecting over the property line extension. The plan had dots indicating slips and docking that was shown over the projected property line.

The existing condition has 21 slips and 1,040 sf over the projected property line. The proposed exhibit has 16 slips and 1,039 sf over the projected property line. The plan also acknowledged the portions of dock structure that were previously shown as transient slip areas to be counted in the total slip count. The intent, as noted, was to quantify all slips created by new docking “regardless of permanent or transient use.” Overall slip count is noted to be reduced from 109 to 108.

See also our comment to Finding of Fact #13.

Rulings in Support of Denial

1. The Department finds that "temporary" or "service" slips are slips, and as such the proposal to reconfigure the docking structures to provide an additional 15 slips for a

total of 124 slips on the property frontage fails to meet Env-Wt 513.17 (b), and therefore, the application is denied in accordance with Rule Env-Wt 313.01, (a)(4).

- *We agree with the Department's findings that the revised proposal submitted on November 6, 2024 (see Finding of Fact #12) incorrectly included additional temporary or service slips, rather than one total permanent slip count; however, as stated in our comments to Findings of Fact #13 and 14, this was a topic of ongoing discussion and not a reasonable or lawful basis for a denial at this time.*

As previously stated, the intent of the informal exhibit provided was to meet the intent of Env-Wt 513.17 (b) (no additional slips requested) and 513.23, (a). That intent was fully communicated to the Department. So, if the Department felt that the exhibit was not clear or that it did not reflect the intent discussed, we expected the Department to notify the Applicant. It is unreasonable to treat this rushed exhibit as the final proposed plan and to base a decision on it. RSA 482-A XIV (3) (D) provides ample opportunity for the Department to extend the time for rendering a decision as was requested by the Applicant in writing in an email.

(3) Where the department requests additional information pursuant to subparagraph (a)(2), within 30 days of the department's receipt of a complete response to the department's information request:

- (A) Approve the application, in whole or in part, and issue a permit; or
- (B) Deny the application and issue written findings in support of the denial;
or
- (C) Schedule a public hearing within 30 days in accordance with this chapter and rules adopted by the commissioner; or
- (D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant;

It is unreasonable for the Department to make a decision based on an informal exhibit without any discussion. This is completely unprecedented in Horizons experience with the Department. We have always collaborated with the Department to gain approval for permit applications. Sometimes with four rounds of RFMI, but sometimes that is part of the process.

2. The Department finds that the proposal to additional 15 slips for a total of 124 slips on the property frontage fails to meet Rule Env-Wt 513.23, (a), and therefore, the application is denied in accordance with Rule Env-Wt 313.01, (a)(4).

➤ *As stated above, it is unreasonable to include this as a finding of fact given the fact that the Applicant requested more time to discuss the changes and to ensure the Department understood the informal exhibit provided prior to making a decision. RSA 482-A XIV (3) (D) provides ample opportunity for the*

Department to extend the time for rendering a decision as was requested by the Applicant in writing in an email.

The exhibit provided very clearly states the intent is to reduce the slip count from 109 to 108. It is unreasonable to state that the correspondence from the Applicant proposed an increase in the slip count to 124.

3. The Department finds that the reconfiguration of the docking structures along the Property resulting in a greater number of slips in which boats would be secured beyond the extension of the abutter's property line is not approvable pursuant to RSA 482-A:3, XIII(b), therefore, the application is denied.

➤ *As stated in #6, the Department recommended that the Applicant submit the docking plan as proposed with a request for conditional approval. It is unreasonable for the Department to include this in Rulings in Support of Denial when they did not provide the Applicant a reasonable opportunity to modify the plan the Department recommended the Applicant submit. We knew there was a good possibility that after reviewing our request for a conditional approval, the Department might decide that approach was not feasible. We expected to see a subsequent RFMI to allow us an opportunity to modify the plan.*

As noted in Comments 1 and 2, we found 21 existing slips to be located beyond the property line extensions over water and 16 proposed slips as shown on the

exhibit. The proposed exhibit provides 108 total slips and 16 slips over the property line, meeting the intent of Env-Wt 513.17 (b) (no additional slips requested) and 513.23 (a).

In addition to the above comments, we understand the Department's legal counsel advised the Reviewer that there was no provision in the law or rules to allow him to extend the application review process past the first RFMI response from the applicant. In other words, DES was only allowed to issue one RFMI and then was forced to approve or deny within 30 days of the applicant's response to that letter. To reiterate previous statements, this has not been our experience with very senior staff in the Wetlands Bureau with recent applications that went to as many as four (4) RFMI letters to sort through project details with significant public interest. This decision is not in keeping with the Department's typical process in similar situations.

RSA 482-A XIV (a)(2) does allow for the Applicant to request additional time with the 60-day RFMI time period, which the Department acknowledges the Applicant had completed on two occasions (see Finding of Fact #8) prior to the Denial. However, RSA 482-A XIV (a)(3) very clearly provides an opportunity for the Department to send another RFMI letter. In addition, the Department had until December 6, 2024 to respond to the Applicant's letter. There was additional time for discussion and collaboration to come to a mutual agreement on the intent of the exhibit before rendering a decision.

On-going efforts to resolve any Department concerns were and are warranted as part of good faith due process evaluation of this Project, especially in light of the fact that the Applicant has been diligently working with the Department and the Town for over six years to develop a satisfactory plan to reconfigure this long existing Marina, in part to relocate the bulk of the Applicant's boat launching activities from the existing negative well at the end of Lovejoy Sands Road adjacent to the shared public boat ramp. This is a public safety concern of both the Applicant and the Town, the solution of which is frustrated by the Department's current unreasonable and unlawful Decision.

IX. Statement of Relief Sought

The Appellant requests that the Wetlands Council, pursuant to RSA 482-A:10, VI, remand to the Department the Decision along with a Council determination that the Decision was unlawful and unreasonable, based on the following grounds:

- A. The Decision was unlawful and unreasonable because the Department erroneously failed to consider Site Plan Sheet C2.2 which was included for consideration, as requested, in the request for more information response dated November 6, 2024; and
- B. The Decision was unlawful and unreasonable because the Department failed to uphold their July 23, 2024 recommendation for the Applicant to submit a major docking System reconfiguration plan as proposed with a request for conditional approval; and
- C. The Decision was unlawful and unreasonable because the Department failed to consider an informal exhibit requested on November 14 and provided on November 15 showing a docking structure layout which reduces the boat slip count and reduces the

- docking square footage in the post-construction condition, including the consideration of a waiver request for the conditional approval of a boundary line adjustment; and
- D. The Decision was unlawful and unreasonable because the Department failed to consider following RSA 482-A XIV (a)(3) which provides an opportunity for the Department to request additional information; and
- E. The Decision was unlawful and unreasonable because the Department declined to request an additional request for more information, as allowed by RSA 482-A XIV (a)(3)(D), to clarify the boat slip counts since the intent of the informal exhibit previously mentioned, which had been prepared and delivered to DES within four working hours, eliminated the "temporary" or "service" slip identifications; and
- F. The Decision was unlawful and unreasonable because the Department has not kept with the typical process as with prior recent applications having more than one request for more information with significant public interest; and
- G. The Decision was unlawful and unreasonable because the Department seemingly rushed the Decision and failed to utilize the entire review time period following a request for more information response.

X. Conclusion

For the reasons set forth above, the Appellant believes this Decision was unlawful and/or unreasonable and respectfully requests that the Wetlands Council vacate and remand the Decision to deny Permit 2024-00754. Included with this Notice of Appeal are the following Exhibits:

- Exhibit A – Tax Map, with notation markups

- Exhibit B - Original Wetland Permit Application Submittal, File No. 2024-00754, March 20, 2024
- Exhibit C - Additional Certified Abutter Notices for Indirect Abutters, March 20, 2024
- Exhibit D - Department Request for More Information, May 10, 2024
- Exhibit E - Time Extension Request, July 9, 2024
- Exhibit F - Department Request for Existing and Proposed Site Plans, July 24, 2024
- Exhibit G - Time Extension Request, September 9, 2024
- Exhibit H - Response to Department Request for More Information, November 6, 2024
- Exhibit I - Department Request for Informal Exhibit, November 15, 2024
- Exhibit J - Application Decision, December 2, 2024
- Exhibit K - Preliminary Notice of Appeal and Offer to Enter Into Settlements Discussions (PNA), December 19, 2024
- Exhibit L - Department Response to PNA Declining to Enter into Settlement Discussions, December 24, 2024

Respectfully Submitted,

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By Its Authorized Agent,

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Dated: January 22, 2025

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