

WETLANDS COUNCIL

MINUTES

November 8, 2011

The Wetlands Council met on Tuesday, November 8, 2011 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Larry Ballin, Ryan Crosbie, Carol Henderson, James Kennedy, Seth Prescott, Russ St. Pierre, Thomas Sloan, and David Thompson

Absentees: Councilors: Sharon Champagne

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 8:03 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Ballin made a motion to approve the October 11, 2011 minutes as corrected, second by Councilor Thompson. Motion passed unanimously.***

2. Status of Appeals

Paula Scott, Appeals Clerk, reviewed the following appeals:

I. New Appeals

Docket No. 11-11 WtC – Robert M. Pinato

Subject: Rescission of Administrative Order No. 10-025 WD

Presiding Officer: Not assigned

Action needed: Appeal filed timely on 9/29/11. Received Motion to Summarily Dismiss Petition on 10/5/11. Received Objection to Motion to Summarily Dismiss on 10/14/11. Council to act on Appeal and Motion at November 8, 2011 Council meeting.

Docket No. 11-12 WtC – George R. and Denise Scholl

Subject: Denial on Reconsideration for Wetlands Permit #2011-00314

Presiding Officer: Not assigned

Action needed: Appeal appears to have been filed timely on 10/21/11. Attorney Hanna filed an appearance for the appellant on 10/21/11. Receipt of Appeal letter was issued on 10/21/11. Council to act on Appeal at its December 13, 2011 meeting.

II. Decision and Orders that need to be written, finalized and issued.

Docket No.: 07-03 WtC – James Watson

Subject: 1/18/07 Decision on Reconsideration Denial Wetlands File No. 2006-01302

Presiding Officer (PO): To be assigned.

Action needed: Per Nov. 13, 2007 Council Meeting Minutes "Permit has been issued. A Motion to Dismiss will be filed". September 19, 2011 Appeals Clerk requested DES to file Motion to Dismiss.

October 7, 2011 received Motion to Dismiss. 10/7/11 received Motion to Dismiss. Council voted to dismiss, Order was issued on October 25, 2011 and mailed on October 26, 2011.

Docket No.: 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball (assigned by AGO on January 5, 2011)

Status: On June 14, 2011, Council voted to deny LBC's Motion to Dismiss. Council also voted to continue deliberations until 60 days after reconsideration of issuance of new permit (permit issued on 4/6/11). Decision and order sent on 7/14/2011. Council requested a status report, specifically on the Reconsideration decision on 10/13/11. On 10/13/11 received via email response to request for status report. By agreement of the parties, the deadline for DES to rule on the Porter's Motion for Reconsideration is October 29, 2011. No response received from DES. Will review in January.

Docket No. 08 – 20 WtC - Anthony Pivaro

Subject: 02/19/08 Administrative Order No. 08-007 WD

Presiding Officer: Jim Kennedy

Status: The appeal (received in April 2008) was not timely filed (should have received it by March 20, 2008.) Council never accepted or denied the appeal; the department has taken no action on this case. Council voted to dismiss appeal as untimely. Decision and Order was issued on 10/21/11 and mailed on 10/24/11. Received Motion for Reconsideration on 10/26/11, which included copies of insufficient appeal letter dated Mar. 4, 2008, and April 4, 2008 receipt of appeal letter. On Nov. 1, 2011, a letter mailed explaining the Motion for Reconsideration is insufficient and gave 30 days to correct the insufficiencies. Received the corrected filing of Motion for Reconsideration on 11/6/11. Council to vote on Motion.

- ***Councilor Henderson moved to accept the Motion for Reconsideration, second by Councilor Ballin. Motion passed unanimously.***

Docket No.: 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and Town of Newbury

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: Hearings were held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. Deliberations were held on March 8 and April 12, 2011. Decision and Order to be prepared with 90 days (July 11, 2011).

Docket No.: 09-35 WtC – Town of Newbury

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: Deliberations held on June 14, 2011. Decision and Order to be prepared with 90 days (Sept. 12, 2011).

Docket No. 09-44 WtC – Thomas and Joan DiPace

Subject: 10/13/09 Administrative Order No. 09-082 WD

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status/Action: Hearing was held on 9/13/11 at 9 a.m. Draft Order and Decision to be adopted by Council. Order was issued on October 11, 2011 and mailed on October 12, 2011.

Docket No. 10-03 WtC – Robert Reich Appeal

Subject: 4/19/10 Decision on Reconsideration, Wetlands File No. 2009-02050

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010.)

Status: Hearing was held on October 11, 2011. Draft Order to be adopted by the Council.

- ***Councilor Thompson moved to adopt the Order as modified, second by Councilor Henderson. Motion passed unanimously.***

III. Hearings or PHCs Pending

Docket No.: 07-09 WtC - Derry Conservation Commission

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott (assigned by AGO)

Status: PHC was held on July 27, 2011, at 1:00 pm. Hearing scheduled for Dec. 13, 2011 at 9 a.m. per Pre-Hearing Order (PHO) issued on 8/8/11. Received Witness & Exhibit list from Applicant on 9/30/11. Received Appellant's Witness and Exhibit List and Motion to Enlarge Presentation Times on 10/7/11. Objection to Appellant's Witness and Exhibit List was filed on 10/5/11. Motion to Sequester Witnesses and Motion to Exclude from Appellants Allocated Time Used by DES Witnesses to Review the DES Wetlands Bureau file were filed on 10/11/11. 10/17/11 received Co-Appearance for DES and Applicants Objection to Motions to Sequester Witnesses and Exclude Time used by DES Witnesses. 10/21/11 Applicant filed Co-Appearance of Jed Callen. Hearing is December 13, 2011 at 9 a.m.

Docket No.: 08-53 WtC - Vintage Trust c/o Enthusiasts, Inc.

Subject: 8/7/08 Decision on Reconsideration Denial, Wetlands File No. 2006-01506

Presiding Officer: Ryan Crosby

Status: Hearing scheduled for Oct 18, 2011 at 9 a.m. per PHO issued July 20, 2011. Assented-To Motion to Continue was filed on September 16, 2011. PO granted Motion to Continue for 60 days on September 30, 2011. Will set a hearing date for February 28, 2011 at 9 a.m. Notice was sent October 18, 2011.

Docket No.: 08-55 WtC - Tracy Middleton Revocable Trust of 1992

Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: A PHC was scheduled for July 27, 2011, at 10:00 am. Notice was issued on June 27, 2011. Motion to Continue for 30 days was received and granted on 7/21/11. Notice was issued on July 22, 2011. A PHC was held on 10/26/11. Appellant received compliance order from DES. Parties to work on settlement agreement over fines. Appellant will withdraw appeal once settlement agreement is finalized.

Docket No.: 09-20 WtC - Dana Belletete

Subject: 3/26/09 Request for Reconsideration Denial, Wetlands File No. 2009-00366

Presiding Officer: Chip Kimball

Status: The permit at issue was issued subsequent to the filing of the appeal. Therefore, it appears that the appeal is moot and should be withdrawn. The appellant has stated to the Wetlands Bureau that he filed an appeal of an AO arising from construction related to the appeal. There is no record of a subsequent appeal on the AO. PHO issued and mailed July 27, 2011. No Hearing scheduled, Motion to Dismiss was received August 22, 2011 (did not note this on Sept. 13th Status Report). Ruling on Motion to Dismiss was issued on 10/25/11 and mailed on 10/26/11.

Docket No.: 09-25 WtC - Town of Hooksett

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Recused: Larry Morse

Status: Rescheduled hearing for October 25, 2011 at 9 a.m., notice issued September 23, 2011.
Hearing was held on 10/25/11, decision to be issued within 90 days(Jan. 23, 2012).

Docket No. 09-36 WtC – Brendan and Dana Keegan

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: David Thompson(Requested a new PO on 10/20/11. Chip Kimball assigned on 10/31/11.)

Status: A PHC was scheduled for April 27, 2011 at 12:00 p.m. No indication as to whether PHC occurred. Notes in file reference a 60-day stay, but there is no order granting stay. Settlement discussions ongoing but appear to have stalled b/c petitioner is waiting on info from program. Sent status request with 30 days to respond on July 18, 2011. Received DES' status update on 8/22/11. DES requests a PHC be scheduled after Sept. 2011. Paula spoke with Dave on 9/22, he said he thought there was someone to take his place on the Council but it would take a few months. However, if he is still on the Council he is available for 10/25 or 11/23 in order to schedule a PHC. Per DES we actually need to schedule a hearing, as PHC was already held. We will need a new Presiding Officer. A PHC scheduled for November 28, 2011, notice issued on 10/19/11.

Docket No. 10-04 WtC – Thomas J. Murray Appeal

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status: The hearing is rescheduled for January 24, 2012 at 9 a.m., notice sent September 21, 2011.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11.

Docket No. 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011) Recused himself from being PO, Larry Ballin was assigned 8/19/11.

Status: PHO issued on July 27, 2011, hearing scheduled for Nov. 8, 2011 at 9 a.m. Oct. 25, 2011 Appellant filed Witness & Exhibit List. October 26, 2011 DES filed Witness & Exhibit List. On Nov. 2, 2011, received DES Addendum to the Witness & Exhibit List. 11/07/11 Assented-To Motion to Continue was filed. Motion to Continue was granted verbally on 11/7/11 and PO will have written ruling out within a few days. Need to reschedule hearing.

Docket No. 10-20 WtC – Robert Pinato

Subject: August 19, 2010 Administrative Order, Administrative Order No. 10-025 WD

Presiding Officer: Ryan Crosbie

Status: A hearing is scheduled for October 25, 2011, at 9:00 am. Amendment to Petition for Appeal rec'd June 30, 2011. Motion to Continue was filed 8/29/11. Objection to Motion to Continue was filed 8/30/11. Reply to Objection to Motion to Continue filed 9/1/11. Motion to Dismiss was filed on Sept. 13, 2011. PO to issue decision and order on Motion to Dismiss. Ruling on Motion to Dismiss was issued Sept. 28th – Motion was granted. Received Motion for Reconsideration on 9/29/11. Objection to Motion for Reconsideration was filed on 10/5/11. PO issued ruling on Motion for Reconsideration on Nov. 2, 2011, which was granted. Council to discuss/deliberate on Reconsideration.

Councilor Crosbie shared a summary regarding reconsidering a decision to dismiss an appeal. After extensive discussion this was considered a ruling of law so the Presiding Officer will make the decision. In regards to 11-11 WtC this is tabled until 10-20 WtC is decided.

Councilor Sloan arrives at 8:50 a.m.

Docket No. 10-23 WtC – Charles and Patricia Sem

Subject: Administrative Order No. 10-033 WD dated September 21, 2010

Presiding Officer: Ryan Crosbie

Status: PHC rescheduled to Sept 21, 2011 at 9:00 a.m. Notice sent August 4, 2011. 9/21/11 received appearance notice from Linda Magoon for DES. Hearing is scheduled for March 13, 2012 at 9 a.m. per PHO issued on September 21, 2011. Received withdrawal of appeal on November 7, 2011.

Docket No. 10-29 WtC – Constance Klefos Trust

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit

Presiding Officer: David Conley (AG assigned on 10/31/11)

Status: Insufficient Appeal-letter sent September 8, 2011. Received revised appeal on 10/7/11. Appeal accepted on 10/11/11, notice issued on 10/18/11. Oct. 27, 2011 Applicant filed Motion to Summarily Dismiss Appeal. 11/3/11 Appellant filed Objection & Answer to the Motion to Summarily Dismiss. Council to act on Motion & Objection. PO to schedule PHC.

Chairman Kimball introduced Attorney David Conley as the new hearings officer. He is now serving as part time hearing officer for the AG's office. He will report back at the next meeting as to the next step in the above appeal.

Docket No. 11-03 WtC – Joseph and Patricia DeVelis

Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie (assigned by AGO on May 2, 2011)

Status: PHO issued 8/1/11 with Hearing scheduled for November 22, 2011 at 9:00 a.m. 10/24/11 received Assented-To Motion to Extend Time to File Witness & Exhibit Lists. 10/31/11 received Assented-To Motion to Modify Pre-hearing Order. Rulings on Motion to Extend Time & Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. With new Hearing date set for March 13, 2012 at 9 a.m.

Docket No. 11-06 WtC – John and Sharon Graham

Subject: April 11, 2011 Appeal of Administrative Order No. 11-014 WD

Presiding Officer: Larry Ballin (assigned by AG on 8/1/11)

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. PHC scheduled for November 7, 2011 at 9 a.m., notice sent on Oct. 17, 2011. PHO was issued on Nov. 7, 2011 with 2nd PHC scheduled for Feb. 15, 2012.

Docket No. 11-07 WtC – Clinton and Cynthia Johnson

Subject: 4/27/11 Shoreland Impact Permit No. 2011-00115

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: PHC was held and PHO was issued on September 20, 2011. Hearing scheduled for February 14, 2012 at 9 a.m., notice given with PHO. Oct. 12, 2011 Appellant filed request of Information from DES. On Oct. 13, 2011, received Applicant's Request for Information from Collis Adams & Jason Aube. Oct. 21, 2011 received Motion to Reconsider PHO or in the Alternative, to Modify the PHO to Permit Filing of an Amended Petition. On 10/24/11 received Partial Objection to Appellant's Motion to Reconsider PHO & Modify the PHO as well as Reply to Appellants' Request for Information. 10/26/11 received Appellants' List of Witnesses and Exhibits and on 10/27/11 received Applicant's list of Witnesses & Exhibits. 11/1/11 received Motion to Compel Exchange of Information. 11/02/11 Appellant filed a correction to the Motion to Compel. 11/7/11 received Applicant's Objection to Appellants' Motion to Compel. PO to act on motion and objections.

Docket No. 11-09 WtC – Thomas Morrissey and Margaret Russell, et al

Subject: 1/1/11 Wetlands Permit #2009-01574, Town of Lyme

Presiding Officer: Chip Kimball (Assigned by AG on 9/16/11)

Recused: James Kennedy

Status: Nov. 27, 2011 Ruling was issued on Request to stay, which was mailed on 9/28/11. PHC scheduled for 10/26/11 at 11 a.m., notice issued on 9/29/11. Received Collis Adams' Appearance on 10/26/11. 10/26/11 received Appellant's and Applicant's PHC submissions. Hearing schedule for March 27, 2012 at 8 a.m., notice was given per the PHO on Oct. 26, 2011.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No.: 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse (assigned by AGO on October 27, 2010)

Status: The appeal has been tentatively withdrawn, by letter dated March 7, 2011, pending completion of a settlement agreement between the parties. Status request issued 7/15/11 w/ 30 days to respond. Rec'd Status report 8/11/11-within 30 days parties will execute formal settlement and file with the Council. Paula has a call into the appellant's attorney to see where they are with the settlement. Received email from Attorney Roth, they are still working on a settlement agreement and we should be able to close this appeal within 2 to 3 weeks.

Docket No.: 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status request letter to be sent in September 2011. Received status report on 10/3/11. Appellant wants this appeal to remain open until "Gary Goodspeed completes his portion of the work agreed upon in the restoration plan agreement dated July 1, 2010." John will withdraw this appeal when Mr. Goodspeed receives a letter of compliance and a release of recordation.

V. Misc.

Docket No. 10-30 WtC – Dana Belletete

Subject 08/27/10 Administrative Order No. 10-026 WD

Presiding Officer:

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed however it is insufficient. On 10/31/11 he was sent a receipt of appeal letter with the explanation about what appeared to have happened with the appeal. On 11/3/11 insufficient appeal letter was mailed with 30 days to correct the insufficiencies.

3. Old Business

ARM Fund Report – Lori Sommers, Mitigation Coordinator, Wetlands Bureau
The Winnepesaukee River Watershed and Upper Androscoggin Watershed were advertised in March for the available ARM Funds.

- 1) Only one application received for the Androscoggin – Greeno Ponds Project for the \$89,000 available. Committee recommends approval.

- ***Councilor Thompson made a motion for approval of the fund disbursement, second by Councilor Kennedy. Motion passed unanimously.***

2) Application for \$100,000 to preserve the Baird Property along the Snake River project. Committee recommends approval.

- ***Councilor Sloan made a motion for approval of the fund disbursement, second by Councilor Ballin. Motion passed unanimously.***

5 watersheds will have funds in March 2012 to be dispersed.

4. **New Business**

Chairman Kimball reported on a Council Chairmen's meeting that was held in October. Duties of council clerk and appeals clerk were discussed as well discussion of law changes and status at the legislature. They also shared the idea that would allow provision for mediation before the PHC or at the PHC. Next meeting will be November 18th.

6. **Next Meeting** –

Next regular meeting will be Tuesday, December 13, 2011 beginning at 8 a.m. with the 07-09 Derry Conservation Appeal Hearing at 9 a.m.

Councilor Kimball asked for the report of final decisions of the appeal files. Ms. Scott will send the list to the council via email.

7. **Adjournment**

- ***Councilor Ballin made a motion to adjourn, second by Councilor Henderson. Motion passed unanimously.***

Meeting adjourned at 9:30 a.m.

