

## WETLANDS COUNCIL

### MINUTES

February 14, 2012

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The Wetlands Council met on Tuesday, February 14, 2012 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

**Absentees:** Councilors: Sharon Champagne and Susan Slack

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 9:00 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Sloan made a motion to approve the January 10, 2012 minutes, second by Councilor Thompson. Motion passed unanimously.***

5. **New Business**

**Wetlands Bureau Report**

Collis Adams, Bureau Administrator

Staffing - Executive Secretary position has been filled by Liz Knowland. No other staffing changes. Funding – Wetlands Fee Fund is in black this month. Shoreland account is slightly in the red. Very busy on the legislative front. Internally, still working on general re-write of general rules to make them more coherent and understandable by the general public.

There was discussion on HB 514.

2. **Public Input:** None

3. **Status of Appeals**

Paula Scott, Appeals Clerk, reviewed the following appeals:

**I. New Appeals**

**Docket No.: 10-31 WtC – Larry Crocker**

Subject: 10/24/10 Denial of Reconsideration regarding a permit issued to Christopher Hemingway, File #2009-03021

Presiding Officer: Not Assigned

Action: Nov. 4, 2010, the Wetlands Bureau received a letter from Mr. Crocker purporting to appeal the Decision on Reconsideration. Because it was improperly addressed and incomplete it was never received in the office of the appeals clerk. Appeal Clerk received the appeal on 1/3/12 from the bureau. Letter was issued by Legal Coordinator on 2/13/12. Council to act on appeal (considered timely or not) at its Mar. 13, 2012 meeting.

**Docket No.: 12-02 WtC – Rene Montplaisir & Barbara Fraser**

Subject: 12/30/11 Administrative Order No. 11-037 WD

Presiding Officer: Not assigned

Action needed: Appeal filed timely on 1/20/2012, issued receipt of appeal letter. Council to accept or decline appeal at its Mar. 13, 2012 meeting.

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

Subject: 8/30/11 Rescission of Administrative Order No. 10-025 WD

Presiding Officer: Not assigned

Action needed: Appeal filed timely on 9/29/11. Rec'd Motion to Summarily Dismiss Petition on 10/5/11. Council to act on Appeal and Motion at Nov. 8, 2011 Council Meeting. Received Objection to Motion to Summarily Dismiss on 10/14/11. Council voted to table this appeal until further action is taken on Docket No. 10-20 WtC. Council will need to accept or decline appeal and/or act on Motion to Summarily Dismiss Petition.

**II. Decisions that need to be written/finalized and issued.**

**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. 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 was, by agreement of the parties, the deadline for DES to rule on the Porter's motion for reconsideration is Oct. 29, 2011. 11/11/11 Appellant filed updated status report, the deadline by which NHDES is to rule on the Motion for Reconsideration has been extended by agreement of the parties to Nov. 30, 2011. Order Requesting Legal Memorandum was issued on 12/13/11. 1/11/12 rec'd Assented-To Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. 1/12/12 issued Ruling Granting Motion to Extend Deadline Requesting Legal Memorandum.

**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: Chip Kimball appointed by AG on 11/16/11

Recused: Larry Ballin, Carol Henderson, and James Kennedy

Status/Action: Draft Order was before the council 1/10/12, and was adopted. Decision and Order was issued and mailed on 1/10/12. 2/9/12 received Motion for Reconsideration. 2/14/12 received Fish & Game and DES' Objection to Motion for Reconsideration. Council to act on Motion and Objection at March meeting.

**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 Oct. 25, 2011 at 9 a.m., notice issued Sept 23, 2011. Draft order is before the council 12/13/11, and was adopted. Decision and Order on Notice of Appeal was issued on Dec. 13, 2011 and mailed. 1/12/12 received Motion to Reconsider. 1/20/12 received via email Objection to Motion to Reconsider and on 1/24/12 received council's 15 copies. Draft Ruling on Motion to Reconsider is before the Council today 2/14/12, for consideration.

- ***Councilor St. Pierre made a motion to adopt, second by Councilor Crosbie. Councilor Snelling abstained. Motion passed unanimously.***

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

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

Presiding Officer: Chip Kimball appointed by AG on 11/16/11

Recused: Larry Ballin, Carol Henderson, James Kennedy

Status/Action: Deliberations held on June 14, 2011. Draft order was before the council 1/10/12, and was adopted. Decision and Order was issued and mailed on 1/10/12. 2/9/12 received Motion for Reconsideration. 2/14/12 received Fish & Game and DES' Objection to Motion for Reconsideration. Council to act on Motion and Objection at March meeting.

**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: Hearing was held Jan. 24, 2012 @ 9 a.m., notice sent Sept. 21, 2011. Draft order is before the council today 2/14/12, for consideration. Discussion was held and changes made.

- ***Councilor St. Pierre made a motion to adopt, second by Councilor Thompson. Motion passed unanimously.***

**Docket No. 10-08 WtC – Robert Reich**

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

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

Status: Hearing was held on Oct 11, 2011. Order was adopted and issued on 11/8/11. 12/7/11 received Appellant's Motion for Reconsideration. Draft Ruling on Motion for Reconsideration was before the council 1/10/12, for consideration. Ruling on Motion for Reconsideration was issued and mailed on 1/10/12.

**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: Hearing scheduled for Dec. 13, 2011 at 10 a.m. per PHO issued on 8/8/11. Issued notice of hearing time change on Nov. 9, 2011. 12/8/11 received Assented to Motion to Continue. 12/8/11 Motion Granted and hearing is rescheduled to Feb. 28, 2012 @ 9 a.m. notice was issued on 12/8/11.

**Docket No. 08-20 WtC – Anthony Pivero**

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

Presiding Officer: David Conley appointed by AG on 11/17/11

Status: 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 was 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 11/7/11. Council to vote on Motion. Council granted motion for reconsideration. PHC held Dec. 12, 2011 @ 1 p.m., notice sent 11/16/11. PHO was issued on 12/12/11 with a hearing scheduled for May 8, 2012 @ 9:00 a.m., notice given per PHO.

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

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

Presiding Officer: Chip Kimball assigned 10/31/11

Status: PHC was scheduled for 11/28/11 @ 9 a.m., noticed issued 10/19/11. Nov 29, 2011 rec'd Motion to Continue Pre-hearing Conference. Motion was Granted and PHC was rescheduled to Dec. 16, 2011 @ 9 a.m., notice was issued Nov. 30, 2011. 12/16/11 Notice given by PHO, hearing scheduled for May 22, 2011 @ 9:00 a.m.

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

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047  
Presiding Officer: David Conley, Esq. appointed by AG on 12/22/11  
Status: Written ruling on Motion to Continue was issued on Nov. 8, 2011. 11/14/11 received Supplement to Appeal. Hearing Notice was issued on 12/9/11. Rescheduled hearing for Feb 14, 2012 @ 9 a.m., notice sent on Dec. 30, 2011. Jan 4, 2012, appellant filed Assented-To Motion to Continue. Jan 9, 2012, PO granted Motion to Continue. Hearing has been rescheduled to June 12, 2012 @ 9 a.m., notice given 1/18/12.

**Docket No. 10-29 WtC – Constance Klefos Trust**

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit  
Presiding Officer: David Conley, Esq. assigned 10/31/11  
Status: Appeal Accepted at 10/11/11 meeting, notice issued on 10/18/11. 10/27/11 Applicant filed Motion to Summarily Dismiss Appeal. 11/3/11 Appellant filed Objection and Answer to the Motion to Summarily Dismiss. Order on Motion to Summarily Dismiss was issued on 12/9/11 and mailed on 12/13/11. PHC scheduled for Jan. 18, 2012 @ 10 a.m. notice sent on 12/13/11. Hearing scheduled for June 26, 2012 @ 9 a.m., notice given per PHO issued on 1/18/12.

**Docket No. 10-30 WtC – Dana Belletete**

Subject: 08/27/10 Administrative Order No. 10-026 WD  
Presiding Officer: David Conley, Esq appointed 12/19/11  
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 I sent a receipt of appeal letter with an 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. 11/28/11 received revised Petition for Appeal. Receipt of revised appeal letter was sent 12/7/11. Council accepted appeal on 12/13/11, notice sent on 12/16/11. PO needs to schedule PHC. PHC is scheduled for Feb. 15, 2012 @ 10 a.m., notice given 1/12/12. Appearance for Linda Magoon was filed on 2/13/12.

**Docket No. 11-02 WtC – Norman Davis-Kathryn Wolf**

Subject: 01/24/11 Decision on Reconsideration of File #2004-02929 (granting amended wetland application for Norman Davis)  
Presiding Officer: David Conley, Esq appointed 12/19/11  
Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed however, it was insufficient. On 11/22/11, I sent a receipt of appeal letter with an explanation about what appeared to have happened with the appeal and I also sent a insufficient appeal letter. On 11/30/11, I received a revised Petition for Appeal. On 12/7/11, sent receipt of revised appeal. Council accepted appeal on 12/13/11, notice sent on 12/14/11. PO needs to schedule PHC 1/12/12 changed name of appeal to correctly reflect appellants name. PHC is scheduled for Feb. 15, 2012 @ 11 a.m., notice given 1/12/12.

**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: Rulings on Motion to Extend Time and Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. New Hearing date set for March 13, 2012 @ 9 a.m. 12/27/11 Received DES' and Appellant's Witness and Exhibit Lists.

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

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

Presiding Officer: David Conley, Esq. appointed on 1/19/12.

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. PHO was issued on Nov. 7, 2011 with 2<sup>nd</sup> PHC scheduled for Feb. 15, 2012.

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

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

Presiding Officer: Chip Kimball assigned by AG on 9/16/11

Recused: Jim Kennedy

Status: 9/27/11 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. Hearing scheduled for March 27, 2012 at 8 a.m., notice was given per the PHO on Oct. 26, 2011. Received on 12/12/11 per PHO the Supreme Court's Dec. 8, 2011, decision in Thomas Morrissey et al. v Town of Lyme, NHDES and NH F&G. 12/19/11, Appellant sent letter informing the Council that the Appellant has filed for a Motion for Rehearing with the Supreme Court. 1/18/12 received notice that the Supreme Court denied the Motion for Reconsideration. 2/2/12 received applicant's Motion to Dismiss.

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

Subject: 09/22/11 Denial on Reconsideration for Wetlands Permit #2011-00314

Presiding Officer: David Conley, Esq appointed 12/19/11

Action needed: Appeal was 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 accepted appeal on 12/13/11, notice sent on 12/16/11. PHC is scheduled for Feb. 15, 2012 @ 12 p.m., notice given 1/12/12.

**Docket No.: 11-13 WtC – R. Michael Mayo, et al.**

Subject: 10/18/11 Denial of Request for Reconsideration

Presiding Officer: David Conley, Esq. appointed on 1/19/12

Recused: David Thompson

Action needed: Appeal was filed timely on 11/17/11 but was insufficient. Sent insufficient appeal letter on 11/17/11 and received revised Petition for Appeal on 11/23/11. Receipt of revised appeal letter was sent 11/28/11. Appeal accepted at 1/10/12 meeting, notice sent 1/13/12.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**Docket No.: 09-21 WtC - John Penaskovic**

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: 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.

**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 Rec'd Suggestion of Bankruptcy on Dec. 5, 2011. On 12/6/11 rec'd withdrawal of appearance from appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court.

**Docket No. 10-20 WtC – Robert Pinato**

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

Presiding Officer: Ryan Crosbie

Status: Presiding Officer issued ruling on Motion for Reconsideration on Nov. 2, 2011, which was granted. Interim Ruling on Reconsideration was issued on 12/1/11, staying the council's decision on reconsideration until the legal and venue considerations are defined. Parties are to provide the Council with the Superior Court decision within 5 days of issuance.

**V. Misc.**

**4. Old Business**

Council Chairman Meetings - Councilor Crosbie noted they are moving towards making website more user friendly and that the public is welcomed at the council meetings. Chairman Kimball noted the grievance process and how the councils can discuss systemic issues in the operations in regards to appeals. May package letter to commissioner in regards to issues that are generic for his response - for example, abutter notification and effective dates

Councilor Snelling was introduced as the new member representing environmental protection.

**6. Next Meeting –**

Next hearing is February 28, 2012 at 9 a.m. for Derry Conservation Appeal. Councilors Sloan and Snelling will not be able to attend.

Next regular meeting will be Tuesday, March 13, 2012 beginning at 8 a.m. The Joseph and Patricia DeVelis hearing will be held at 9 a.m.

**7. Adjournment**

- ***Councilor Sloan made a motion to adjourn, second by Councilor Crosbie. Motion passed unanimously.***

Meeting adjourned at 10:10 a.m.