

## WETLANDS COUNCIL

### MINUTES

April 10, 2012

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The Wetlands Council met on Tuesday, April 10, 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, Susan Slack, Thomas Sloan, Robert Snelling, 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 9:05 a.m. with introductions and a quorum present. Hearing scheduled for 10 a.m. was continued. Hearing scheduled for April 27 has also been continued.

#### 1. Approval of Minutes

- *Councilor Snelling made a motion to approve the March 13, 2012 minutes with corrections, second by Councilor Henderson. Motion passed unanimously.*

2. Public Input: None

#### 3. Status of Appeals

Paula Scott, Appeals Clerk, reviewed the following appeals:

#### I. New Appeals

##### Docket No.: 12-04 WtC – Fillmore Industries, Inc.

Subject: 02/14/12 Administrative Order No. 12-005 WD

Presiding Officer: Not Assigned

Action: 3/15/12 received Notice of Appeal. 3/15/12 issued insufficient notice of appeal letter. 3/22/12 received revised Notice of Appeal. 3/27/12 issued receipt to revised appeal letter. Council to accept or decline appeal at its May 8, 2012 meeting.

##### Docket No.: 12-03 WtC – Hixon Realty Trust

Subject: 01/24/12 Denial of Reconsideration regarding a permit issued to Christopher Hemingway, File #20011-01061

Presiding Officer: Not Assigned

Action: 2/22/12 received Notice of Appeal. 2/22/12 issued insufficient notice of appeal letter. 3/22/12 received addendum to Notice of Appeal. 3/23/12 issued receipt of revised appeal letter. Council to accept or decline appeal at its May 8, 2012 meeting.

##### 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. 2/17/12 notice sent regarding Council's plan to discuss at the Mar.13, 2012 meeting the timeliness of the appeal. Council found appeal had been timely filed at its March 13, 2012 meeting. ON 3/14/12 sent insufficient appeal letter. 4/2/12 received revised petition for appeal and sent receipt of revised petition. 4/6/12 Mary Ann Tilton filed an appearance on behalf of DES. Council to accept or decline appeal at its May 8, 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 through court action. Council will need to accept or decline appeal and/or act on Motion to Summarily Dismiss Petition. 3/27/12 received appellants' Notice of Withdrawal of Appeal.

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

**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 was scheduled for Dec. 13, 2011 at 10 a.m. 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 was held Feb. 28, 2012 @ 9 a.m. Decision and order to be issued within 90 days (5/28/12).

**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. 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 adopted Ruling on Motion for Reconsideration and issued it 3/13/12.

**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 adopted Ruling on Motion for Reconsideration and issued it 3/13/12.

**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. The Council adopted the Ruling on Motion to Reconsider which was denied and issued on 2/14/12. On 3/14/12 on Council received Motion for Reconsideration. Chairman Kimball submitted a draft Ruling on Motion for Reconsideration of Appeal today and it was reviewed, discussion held, and changes made as noted.

Councilor Slack arrives at 9:19 a.m. Councilor Kennedy arrives at 9:20 a.m.

- ***Councilor Crosbie made a motion to accept with the stated edits, second by Councilor Thompson. Motion passed unanimously.***

**III. Hearings or PHCs Pending**

**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. 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 granted Motion for Reconsideration. PHC held Dec. 12, 2011. PHO was issued on 12/12/11 with a hearing scheduled for May 8, 2012 @ 9:00 a.m., notice given per PHO. April 6, 2012 received DES' Witness and Exhibit List.

**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. 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. 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. 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. 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. Hearing scheduled for June 26, 2012 @ 9 a.m., notice given per PHO issued on 1/18/12. 3/2/12 received Assented-To Motion to Extend Filing Period for Witness & Exhibit Lists. Ruling on

Motion to Extend Filing Period was granted and issued on 3/16/12. 3/22/12 received Assented-To Motion to Extend Filing Deadlines. 3/27/12 Motion was granted.

**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 a receipt of appeal letter was sent 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. PHC was held on Feb. 15, 2012. Appearance for Linda Magoon was filed on 2/13/12. Hearing scheduled for July 10, 2012 at 9 a.m., notice given per PHO on 2/15/12.

**Docket No. 11-02 WtC – 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. 1/12/12 changed name of appeal to correctly reflect appellants name. PHC held Feb. 15, 2012. Hearing scheduled for July 24, 2012 at 9 a.m., notice given per PHO on 2/15/12.

**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. Hearing was set for March 13, 2012 @ 9 a.m. 12/27/11 Received DES' and Appellant's Witness and Exhibit Lists. 3/9/12 Motion was granted and notice sent. Hearing scheduled for March 13 was continued. Councilor Crosbie spoke with Atty. English regarding Motion to Modify Hearing Date. It was decided to wait on this.

**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. 2<sup>nd</sup> PHC held Feb. 15, 2012. Hearing scheduled for April 10, 2012 at 10 a.m. 2<sup>nd</sup> Notice given per PHO on 2/15/12. On April 2, 2012 received Motion to Adjourn or Continue PHC and Hearing on the Merits. 4/4/12 Ruling on Motion to Continue was granted and issued. They were given 10 days to submit a new date.

**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 and Carol Henderson

Status: 9/27/11 Ruling was issued on Request to Stay. PHC scheduled for 10/26/11. Hearing scheduled for March 27, 2012 at 8 a.m. 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. Presiding Officer to act on Motion at 3/13/12 meeting. 2/16/12 received Appearance for Christopher Aslin was filed as co-counsel for the appellant. Also received appellant's Objection to Town of Lyme's Motion to Dismiss. 2/24/12 received the Town of Lyme's Reply to Objection to Motion to Dismiss. 3/2/12 received Petitioner's Response to Town's Reply to Objection to Motion to Dismiss. 3/9/12 issued Ruling on Motion to Dismiss and Summary Judgment. The appeal is summarily denied. Discussion was held as to ruling of law. 4/6/12 received Motion for Reconsideration.

**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. PHC was held Feb. 15. Hearing scheduled for August 14, 2012 at 10 a.m., notice given per PHO on 2/15/12. 2/24/12 received appellant's request for certified copy of DES' file.

**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. PHC scheduled for March 12, 2012 at 9 a.m. 2/28/12 received applicant's copy of notice that appeal had been accepted by the Council, by return mail which states he is temporarily away. 3/6/12 received phone call from applicant regarding appeal. 3/12/12 received appearance from Attorney Regina Nadeau for the applicant. PHC was held on 3/12/12 and hearing is scheduled for Sept. 25, 2012, with notice given per PHO on 3/12/12.

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

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

Presiding Officer: David Conley appointed on 3/15/12

Action needed: Appeal filed timely on 1/20/2012, issued receipt of appeal letter. Council accepted appeal on 3/13/12, notice sent 3/14/12. PHC is scheduled for May 2, 2012 at 10:30 a.m., notice issued 3/26/12.

**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. On March 27, 2012 received appellants' Notice of Withdrawal of Appeal.

**V. Misc.**

**FYI**

**Docket No. 07-15 WtC – Charles W. Kalil**

Subject: June 29, 2007 Decision on Reconsideration Denial, Wetlands File No. 2006-02611.

Presiding Officer: Not assigned

Status: Notice of Appeal was filed on 7/24/07. Receipt of Appeal was issued on 8/1/07. At the Council's September 11, 2007 meeting "A motion was made by Councilor Goodwin and seconded by Councilor Thompson to Summarily Dismiss this Appeal based on Council's past action, based on fact in council's opinion - the facts of the case have not changed since the last action and we will support our last action and dismiss the case. The motion carried with one abstention". However, a decision was never issued in this case. Chairman Kimball will draft a letter.

**Docket No. 09-42 WtC – Town of Bristol**

Subject: 11/24/09 Denial of Reconsideration for Permit #2008-00822 issued to Swiss View Condominium Beach Fence

Presiding Officer: Not assigned

Status: Notice of Appeal was received on 12/21/09. The appeal appears not to be sufficient. There is no written communications from the prior Appeals Clerk in this case.

September 2011 the current Appeals Clerk contacted the town to see if they were pursuing this appeal. She was informed that the person who filed the appeal is no longer working for the Town and upon further information the Town did not wish to pursue the appeal. The Appeals Clerk has requested several times that the Town withdraw their appeal, but has not received anything from Oct. 2011 to Feb. 2012. A status request will be sent then it will be summarily dismissed if no response.

**4. Old Business**

None

**5. New Business  
**Wetlands Bureau Report****

It will be given next month.

Chairman Kimball referred to the communication from Mr. Crocker and he has let Mr. Crocker know it is inappropriate.

Department of Justice Training was held on March 30<sup>th</sup> was reviewed:

1. How to write decisions so that they are not over turned.
2. Make a decision on credibility. State why witnesses were credible or not.
3. Requested finding of facts will still have to be responded to.
4. Emails should not be sent amongst everyone as it will then be considered a 'meeting'. Do not hit 'reply all'.
5. DOJ has website with Right-to-Know information.
6. We do not have to consider other cases as being evidence, such as other docks, as they are site specific. Base the ruling on the rules and laws.
7. Does not advise issuing a dissent.
8. Should be fair about recusals. Appearance is important.

Next Council Chair and Vice Chair meeting is April 20<sup>th</sup>.

6. **Next Meeting** –

Next regular meeting will be Tuesday, May 8, 2012 beginning at 8 a.m. The Anthony Pivero hearing will be held at 9 a.m. The hearing for the April 24<sup>th</sup> is cancelled.

7. **Adjournment**

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

Meeting adjourned at 10:35 a.m.

