

WETLANDS COUNCIL

MINUTES

May 8, 2012

The Wetlands Council met on Tuesday, May 8, 2012 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Ryan Crosbie, James Kennedy, Seth Prescott, Russ St. Pierre, Susan Slack, Thomas Sloan, and Robert Snelling

Absentees: Councilors: Sharon Champagne and Carol Henderson

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 9:03 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Sloan made a motion to approve the April 10, 2012 minutes with corrections, second by Councilor Crosbie. 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 meeting today.

- ***Councilor Sloan made a motion to accept the appeal, second by Councilor Snelling. Motion passed unanimously.***

Docket No. 12-03 WtC – Hixon Realty Trust

Subject: 01/24/12 Denial of Reconsideration regarding a permit issued to Steve McKallagat, File #2011-01061

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 meeting today.

- ***Councilor Snelling made a motion to accept the appeal, second by Councilor Prescott. Motion passed unanimously.***

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 meeting today.

- ***Councilor Prescott made a motion to accept the appeal, second by Councilor Sloan. Motion passed unanimously.***

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). A quorum of the council must be present for the hearing and a quorum of the whole council must be present to vote on the decision. A call is into the Attorney General's office as to clarification of who must vote on the decision and order. Review of the Decision & Order is held later in this meeting.

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. 4/13/12 received second Assented-To Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. Presiding Officer to act on Motion.

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. Council adopted the draft ruling at its April10, 2012 meeting and issued it on the same day.

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. Received the corrected filing of Motion for Reconsideration on 11/7/11. Council granted Motion for Reconsideration. Pre-Hearing Conference(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 Pre-Hearing Order(PHO). April 6, 2012 received DES' Witness and Exhibit List. 4/26/12 received Assented-To Motion to Continue Hearing Date. 5/2/12 Motion was granted. Hearing is rescheduled to August 28, 2012 at 9 a.m., notice sent 5/4/12.

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. 5/8/12 received DES' Witness and Exhibit List.

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 appellant's 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. Hearing has been rescheduled to October 9, 2012 at 10 a.m., notice issued 5/3/12.

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. 2nd PHC held Feb. 15, 2012. Hearing scheduled for April 10, 2012 at 10 a.m. 2nd 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. Hearing has been rescheduled to September 11, 2012 at 10 a.m., notice issued 5/3/12.

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. 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. 4/6/12 received Motion for Reconsideration. 4/16/12 received Intervener's Objection to Petitioners' Motion to Reconsider. Presiding Officer to act on Motion and Objection. Council to consider draft ruling on Motion for Reconsideration at May 8, 2012 meeting. Council reviewed and discussed the draft.

- ***Councilor Sloan made a motion to adopt the ruling on Motion for Reconsideration, second by Councilor Snelling. Motion passed unanimously.***

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. 4/19/12 received an appearance for Atty. Maureen Smith and Atty. Rachel Goldwasser for the appellants.

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 was scheduled for May 2, 2012 at 10:30 a.m., notice issued 3/26/12. 4/10/12 received appearance from Linda Magoon. PHC was held on 5/2/12, a second PHC is scheduled for 8/13/12 at 9 a.m. and a hearing is scheduled for August 28, 2012 at 1 p.m. Notice given per Pre-Hearing Order issued on May 2, 2012.

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.

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 to issue order summarily dismissing this appeal. 4/17/12 issued order to summarily dismiss this appeal and mailed.

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. Sent status request to the Town of Bristol on 4/10/12 with 20 days to respond; did not receive a response. Council to act on this docket.

- ***Councilor Sloan made a motion to Summarily Dismiss per Env. WtC 204.04(g), second by Councilor Crosbie. Motion passed unanimously.***

4. Old Business

Mr. Adams gave a report on the following appeals:

09-21 Penaskovic – a letter of compliance has been issued and Mr. Penaskovic is going to withdraw his appeal.

08-04 Porter Trust – they are near an agreement.

Lake Sunapee Protective Association and Town of Newbury have filed an appeal with the Supreme Court. Wetlands issues are not being appealed with the appeal relating to shoreland issues.

Chairman Kimball reported regarding the Joint Council Chair meeting. In April they reviewed the councils' rules. They are working to consolidate all the rules to a consistent set of rules with Waste, Air and Water Councils. It was also noted that there needs to be meeting minutes of the hearings. This will just record the attendance and the type of meeting/hearing held. Chairman Kimball reported the Joint Council Chairs are to meet with Attorney General's office in June.

5. New Business

a. Wetlands Bureau Report – Collis Adams, Wetlands Bureau Administrator

Staffing – Liz Knowland is the new administrative assistant.

Emily Nichols resigned for a position in the Air Division. Jay Aube moved into that position.

Funding – Wetlands account is \$135,000 in the black. There is a bit of an upswing in the activity. Shoreland is running in a deficit by about \$25,000.

Legislative - quiet at this time, minor amendments being made.

Rule making – movement to reorganize rules with no substantive changes, will make it easier to follow and more predictable by resource type and project type. They are meeting almost weekly within the bureau to move it forward and would like to have it to JLCAR by the end of the summer.

There is an initiative from the Governor's office called the Business One-Stop designed to guide the public with a yes/no process to the documents you must file through a logic tree.

NH SPGP expires in June, public comment period is closed and it will be going forward. US Army Corp of Engineers, NE District, wants to develop a general permit for the region that applies to all 6 states.

b. Review of Correspondence from Commissioner Burack

The Council reviewed the response from Commissioner Burack and made comments. The impetus for this letter was the Council's concern as to how to ask the commissioner about certain issues.

482A:10(5) was discussed regarding abutter notification.

Break taken at 10:16; meeting resumed at 10:37. Councilor Crosbie leaves the meeting.

Docket No. 07-09 WtC - Derry Conservation Commission

Decision & Order reviewed and corrections noted by the Council.

- ***Councilor Slack made a motion to adopt the Decision and Order on Reconsideration of Appeal 07-09 as amended, second Councilor St. Pierre. Discussion was held. With Councilors Snelling and Sloan abstaining. Councilor Slack withdrew this motion.***
- ***Councilor Slack made a motion to approve as edited, second by Councilor St. Pierre. Motion passed unanimously. Councilors Snelling and Sloan abstained.***

6. Next Meeting –

Next regular meeting will be Tuesday, June 12, 2012 beginning at 8 a.m. with Akwa Marine Yacht Club hearing at 9 a.m. There is also a hearing on May 22, 2012 at 9 a.m. for Brendan and Dana Keegan.

7. Adjournment

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

Meeting adjourned at 12:10 p.m.

