

WETLANDS COUNCIL

MINUTES

September 11, 2012

The Wetlands Council met on Tuesday, September 11, 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, Deborah Lievens, Russ St. Pierre, Seth Prescott, Susan Slack, Thomas Sloan and Robert Snelling

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 8:06 a.m. with introductions and a quorum present. Chairman Kimball introduced Vicki Quiram, the new Assistant Commissioner for DES. She shared her background and career history.

1. Approval of Minutes

- ***Councilor Lievens made a motion to approve the August 14, 2012 minutes, second by Councilor Snelling. Motion passed unanimously with Councilor Sloan abstaining.***

2. Public Input: None

5. New Business

a. ARM Fund Report – Lori Sommers, Wetlands Bureau

The Aquatic Resource Management Fund (ARM) has funds available for wetland restoration, land conservation, or habitat improvement projects. Legislation was passed in August so there are now 9 watersheds instead of the original 16 that have funds with all monies available now advertised every year. 6 watersheds were competitive this year. First advertised in March, they were asked to submit a pre-proposal. 38 pre-proposals were submitted for the 6 watersheds with a final number of 19 full applications submitted. There is \$2.2 million available for the Merrimack Watershed and Lower Connecticut \$500,000 has available. The Committee, comprised of 8 governmental representatives and 4 non-governmental organizations, does a critical review of applications, schedules site visits, and then there is a final scoring meeting at the end of October. Army Corp. of Engineers, Fish & Game and others will have looked at these also. The finalists will be brought forward to the Wetlands Council on November 13th with final recommendations. The Council has authority and responsibility in these decisions as part of a check and balance system. November 13th meeting will be dedicated to this review as no hearings have been scheduled. They will then go to G & C for approval. Councilor Sloan noted that he audited this committee 2 years ago and that decisions were judiciously handled.

3. Status of Appeals

Paula Scott, Appeals Clerk, reviewed the following appeals:

I. New Appeals

Docket No. 12-07 WtC – Joseph DeVelis

Subject: 6/20/12 Denial on reconsideration of Permit application #2012-00368

Hearing Officer: Not assigned

Status: On July 20, 2012 received Notice of Appeal. July 24, 2012 issued Receipt of Appeal letter. Council to accept or decline appeal at its September 11, 2012 meeting.

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

Chairman Kimball suggested that the 11-03 hearing be continued and at the upcoming PHC have the parties review and decide whether 12-07 and 11-03 should be combined.

Docket No. 12-08 WtC – Renate U. Ranniger

Subject: 7/23/12 Granting of Shoreland Impact Permit No. 2012-01713 to Anna and James Coleman

Hearing Officer: Not assigned

Status: On August 22, 2012 received Petition for Appeal. Aug. 29, 2012 issued Insufficient Appeal letter. September 5, 2012 received additional information and appeals clerk issued Receipt of Appeal letter. Council to accept or decline appeal at its October 9, 2012 meeting.

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 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. Assented-to Motion to Extend Deadline Requesting Legal Memo was granted for 75 days from May 8, 2012, notice issued on May 10, 2012. July 19, 2012 received 3rd Assented-to Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. July 20, 2012 Assented-to Motion was granted and issued.

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. Pre-Hearing Conference(PHC) was held Feb. 15. Hearing scheduled for August 14, 2012 at 10 a.m., notice given per Pre-Hearing Order(PHO) on 2/15/12. 2/24/12 received appellant's request for certified copy of DES' file. July 30, 2012 received DES' Witness and Exhibit List. July 31, 2012 received Appellant's Witness, Expert and Exhibit List. August 6, 2012 received Appearance for Darlene Forst and DES' Objection to the Submittal of new Evidence and Witnesses. August 9, 2012 received Appellant's Response to DES' Objection to Submit New Evidence and Witnesses. August 9, 2012 issued Order on Objection to Submit New Evidence. Hearing was held on Aug. 14, 2012 with deliberations scheduled for September 11, 2012. Decision and Order to be issued within 90 days (November 12, 2012). Aug. 27, 2012 received Appellant's Request for Findings of Fact and Conclusions of Law and DES' addendum to Proposed

Findings of Fact and Conclusions of Law. Sept. 4, 2012 received Appellants' Objection to the Department's Addendum to Proposed Findings of fact and Conclusions of Law. Deliberations scheduled for 9 a.m. today.

III. Hearings or PHCs Pending

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 on 10/31/11

Status: Nov 29, 2011 rec'd Motion to Continue PHC. 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. Also, received on 5/9/12 Motion to Continue Hearing and For Expedited Ruling. 5/10/12 issued Ruling on Motion to Continue which was granted, hearing now scheduled for Oct. 23, 2012 at 9 a.m. June 25, 2012 received Assented-To Motion for 3rd PHC. Hearing Officer granted Motion and scheduled 3rd PHC for Oct. 2, 2012 @ 9 a.m., notice given June 29, 2012.

Docket No. 10-30 WtC – Dana Belletete

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

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

Status: 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. June 21, 2012 received Assented-To Motion to Continue. June 25, 2012 Hearing Officer granted Motion to Continue and issued. August 16, 2012 issued Hearing Notice with hearing scheduled for January 22, 2013 at 9 a.m.

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: David Conley, Esq. appointed on May 30, 2012

Action: 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 accepted the appeal at its May 8, 2012 meeting. 5/9/12 issued appeal accepted letter. June 4, 2012 issued Notice of PHC which is scheduled for 6/20/12 at 11 a.m. PHC was held on June 20, 2012 and a hearing has been scheduled for November 27, 2012 @ 9 a.m. notice given per PHO on June 20, 2012. June 25, 2012 received Motion to Intervene and an Appearance of Attorney Brad Wilder for the applicant/permittee. June 26, 2012 Hearing Officer granted Motion to Intervene and issued it on the same day. July 31, 2012 received Request for 2nd PHC from Appellant. August 10, 2012 issued ruling on Request for 2nd PHC which was denied.

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 on 12/19/11

Status: On 11/30/11, 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. July 17, 2012 received appellant's Witness and Exhibit List and Proposed Stipulation of Facts. July 23, 2012 received Appearance from Mary Ann Tilton for DES and also

received Assented-To Motion to Continue. July 23, 2012 Assented-To Motion was granted and issued. Hearing notice was issued on August 15, 2012 with a hearing date of January 8, 2013 at 9 a.m.

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

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

Presiding Officer: Ryan Crosbie assigned 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. March 9, 2012 Motion was granted and notice sent. Hearing has been rescheduled to October 9, 2012 at 10 a.m., notice issued May 3, 2012. Councilor Crosbie to issue the Order to Continue the Hearing.

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 May 3, 2012. Sept. 10, 2012 received Assented-To Motion to Continue Hearing from the Department which was granted.

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. 5/11/12 received Permittee's Witness and Exhibit List. 5/11/12 also received Appellants' Witness and Exhibit List. 5/15/12 received appearance from Mary Ann Tilton. July 23, 2012 received Appellant's Motion to Stay proceedings. July 30, 2012 received Permittee's Objection to Motion to Stay Proceedings. August 1, 2012 received Permittee's Motion to Strike New Evidence and Argument. August 2, 2012 received Appellants' Objection to Applicant's Request for Findings and Other Relief. August 6, 2012 received Appellants' Objection to Motion to Strike New Evidence. August 9, 2012 issued Order on Applicant's Motion to Strike New Evidence and Argument. August 13, 2012 issued decision on Motion to Stay Proceedings, which was denied. Aug. 22, 2012 received Requests for Information from appellants addressed to Attorney Nadeau and Mary Ann Tilton. Aug. 31, 2012 received Motion for Late Filing of Dispositive Motion, Appellants' Motion for Summary Judgment and Affidavit of R. Michael Mayo. September 10, 2012 received Objection to Motion for Late Filing of Dispositive Motion.

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

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

Presiding Officer: David Conley, Esq. 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. 2nd PHC was held on August 13, 2012; hearing has been rescheduled to 9 a.m. on August 28th. Aug. 20, 2012 received appearance of Biron Bedard for the Appellant and an Assented-To Motion to Continue. Aug. 21, 2012 Hearing Officer granted Motion to Continue and issued ruling. Need to reschedule hearing.

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: David Conley, Esq. appointed on 5/30/12.

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 accepted appeal at its May 8, 2012 meeting; on May 10, 2012 issued appeal accepted letter. Jun 4, 2012 issued Notice of PHC which is scheduled for June 20, 2012 at 12 p.m. June 11, 2012 received Request for Continuance from Appellant. Request for Continuance was granted and PHC was rescheduled to July 12, 2012 @ 9 a.m. notice given June 18, 2012. PHC was held on July 12, 2012 and PHO was issued with a scheduled hearing date of December 11, 2012 and a 2nd PHC scheduled for December 3, 2012. July 12, 2012 received Appearance for Darlene Forst.

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

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

Presiding Officer: David Conley, Esq. appointed on 5/30/12.

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 accepted appeal at its May 8, 2012 meeting, on May 10, 2012 issued appeal accepted letter. June 4, 2012 issued Notice of PHC which is scheduled for June 20, 2012 at 10 a.m. June 14, 2012 received Assented-to Motion to continue PHC. June 15, 2012 received Appearance for Linda Magoon. Hearing Officer granted the Assented-To Motion to Continue and notice was issued June 15, 2012. Rescheduled PHC for September 17, 2012 at 2 p.m. Notice given August 14, 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. Appeals Clerk sent a status request letter. August 15, 2012 sent request for status with 30 days to respond. Nothing has been received.

Docket No. 10-10 WtC – Donald Lee

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

Presiding Officer: Chip Kimball assigned 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 received withdrawal of appearance from appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court.

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 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 today June 12, 2012 @ 9 a.m., notice given 1/18/12. Hearing was held June 12. Hearing was continued until a settlement agreement is made or either party requests to resume the hearing. The appellant's attorney will update the Council within 60 days as to the progress (Aug. 11, 2012). Appeals Clerk sent a status request letter on August 15, 2012 with 20 days to respond. September 4, 2012 received status report from appellant. Sept. 6, 2012 issued Hearing Officer's order for an updated status report to be submitted by December 3, 2012.

V. Misc.

Chairman Kimball made note of new member appointed, Frank Byron, who will be filling the Municipal Official seat. Council now has 12 members so there is a need for 7 for quorum. And Councilor Kennedy has been reappointed.

4. Old Business -

6. Next Meeting –

There is a hearing on September 25, 2012 at 9 a.m. for R. Michael Mayo.

It was decided to have the next regular meeting Tuesday, October 23, 2012 beginning at 9 a.m.

7. Adjournment

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

Meeting adjourned at 8:51 a.m.

WETLANDS COUNCIL

DELIBERATION MINUTES

September 11, 2012

The Wetlands Council met for
Docket No. 11-12 WtC – George and Denise Scholl Appeal Deliberations
Tuesday, September 11, 1012 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Councilors: Ryan Crosbie Carol Henderson, James Kennedy, Chairman Chip Kimball, Deborah Lievens, Russ St. Pierre, Susan Slack, Thomas Sloan, and Robert Snelling

Absentees: Councilors: Sharon Champagne and Seth Prescott

Also present was: Paula Scott, Appeals Clerk

The Deliberations were called to order by Hearings Officer David Conley at 10 a.m.

The Deliberations concluded at 10:45 a.m.