

WETLANDS COUNCIL

MINUTES

July 12, 2011

The Wetlands Council met on Tuesday, July 12, 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, Russ St. Pierre, Thomas Sloan and David Thompson

Absentees: Councilors: Sharon Champagne, Seth Prescott and Dari Sassan

Also present were: Peter Demas, DES Legal Coordinator, Paula Scott, Appeals Clerk, Rebecca Swanwick, Intern, 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 Thompson made a motion to approve the June 14, 2011 minutes as corrected, second by Councilor Crosbie. Motion passed unanimously with Councilor Henderson abstaining.***

2. Wetlands Bureau Update

Collis Adams, Wetlands Bureau Administrator

Regarding the budget - Shoreland account is in pretty good shape. The Shoreland program survived the budget intact with the fees as they were. The Wetlands fee account is running around \$40,000 in the red. Applications have not increased. The shift of personnel will affect the number of review days and make it difficult to maintain level of service. We are still keeping within statutory requirements. Any general funded vacant positions are now permanently cut. Hoping to fill the part time secretarial position. Budget cuts have almost eliminated travel, training, and computer and equipment replacements.

EPA grant RFPs have come out and are due on July 18th. We will submit 2 proposals to EPA in the area of \$200,000 each. We have been informed there will be significant cuts in grants in the future.

Chairman Kimball suggested having the Bureau update report every other month. The next report will be in September. He also suggested the ARM Fund reports not be given at the same meeting as bureau reports.

Councilor Sloan arrived at 9:10 a.m.

3. Status of Appeals

Peter Demas, DES Legal Coordinator, introduced Paula Scott as the new Appeals Clerk. She will be transitioning in this month. Rebecca Swanwick is continuing to help with these files.

Chairman Kimball worked with Rebecca on the status of all the appeals files. There will be continued work on this. They will work with the active files first then may take remedial action on older files.

I. New Appeals

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

Subject: April 11, 2011 Appeal of Administrative Order 11-014 WD

Presiding Officer: Not Yet Requested

Status: New Appeal. Council to decide whether to accept or deny appeal at July 12 meeting.

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

Assented to Motion to Stay Administrative Order to be dealt with by DES after the appeal is processed.

Councilor Ballin to be the Presiding Officer.

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

Presiding Officer: Not Yet Requested

Status: New Appeal. Council to decide whether to accept or deny appeal at July 12 meeting. The applicant filed a Motion to Strike portions of the petition on July 8. The appellant submitted a Response to Motion to Strike via email on July 11, 2011. These will be addressed at the Pre-Hearing Conference(PHC).

- ***Councilor Ballin made a motion to accept the appeal, second by Councilor Henderson. Motion passed unanimously.***
- ***Councilor Crosbie made a motion to grant the applicant intervener status, second by Councilor Ballin. Motion passed unanimously.***

Chairman Kimball to be the Presiding Officer.

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

Docket No. 06-11 WtC - Dennis Proulx

Subject: 07/13/06 Decision on Reconsideration Denial, Wetlands File No. 2006-00769

Presiding Officer: Larry Morse

Status: Council granted the Assented-To Motion to Dismiss. The decision and order will be signed by Chairman Kimball.

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)

Recused: Larry Ballin

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. Decision and Order is complete. Motion was delayed until later in the meeting to allow time for review.

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, 2011 and April 12, 2011. Decision and order to be prepared.

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.

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)

Recused: Larry Morse

Status: A PHC is scheduled for July 27, 2011 at 1:00 p.m. Notice was issued on June 27, 2011.

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 Crosbie

Status: The appellant said negotiation discussions occurred 6-8 months ago but hasn't heard anything back from the Wetlands Bureau. The appellant has requested another PHC. A PHC is scheduled for July 20, 2011 at 10 a.m. Notice was issued on June 29, 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

Recused: Larry Morse

Status: A PHC scheduled for July 27, 2011. Notice was issued on June 27, 2011.

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.

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 WtL 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. A PHC is currently scheduled for July 27, 2011 at 9 a.m. Notice was issued on June 27, 2011.

Docket No. 9-25 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: A hearing is scheduled for August 23, 2011 at 9:00 a.m. Notice will issue.

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

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

Presiding Officer: Dave Thompson

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 discussion ongoing but appears to have stalled because petitioner is waiting on information from the program. A status request will be sent to reply within 30 days.

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: A PHC was held on January 26, 2011. A hearing was scheduled for May 24, 2011, but postponed by the Presiding Officer(PO) for administrative reasons. A hearing is scheduled for September 13, 2011 at 9:00 a.m. Notice to be issued. Regular business meeting will begin at 8 a.m.

Docket No. 10-03 WtC – Richard and Donna Mills Appeal

Subject: 1/5/10 Decision on Reconsideration, Wetlands File No. 2009-01534

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

Status: Hearing scheduled for July 12, 2011 at 10:00 a.m. The hearing date was established by Pre-Hearing Order(PHO). Notice does not appear to be an issue. Nothing has been filed by either party.

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 parties filed an Assented-to Motion to Continue the July 12, 2011 hearing. Motion was granted at the June 14, 2011 meeting. The hearing must be rescheduled. Will wait until next meeting to choose a hearing date.

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: PHC was held on February 23, 2011 at 10:30 a.m. A hearing was scheduled for June 14, 2011 at 10:00 a.m. PO granted Assented-to Motion to continue. New hearing date set for October 11, 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: PHC scheduled for July 27, 2011 rescheduled for August 31, 2011 at 9:00 a.m. Notice issued on June 29.

Docket No. 10-12 WtC – Provencal One Family Trust

Subject: 6/4/10 Administrative Order No. 10-013 WD

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

Status: A hearing was scheduled for June 28, 2011 at 8:00 a.m. The PO granted Appellant's Assented-to-Motion to Continue. New hearing scheduled for September 27, 2011 at 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: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A PHC is scheduled for July 27, 2011. Notice was issued on June 27, 2011.

Docket No. 10-17 WtC and 10-24 WtC – Sunset Ranch Camp, Inc.

Subject: Decision on Shoreland Permit Application, Wetlands File No. 2010-00690 and Standard Dredge and Fill Permit, Wetlands File No. 2010-00764

Presiding Officer: Ryan Crosbie

Status: A hearing is scheduled for July 26, 2011 at 9 a.m. The hearing date was established by 3/30/11 PHO. Notice does not appear to be an issue. On July 8, 2011 Appellant filed a Motion to Submit Photographic Images in Projected Form.

Docket No. 10-18 WtC – MRAC LLC and Merchants Plaza, LLC

Subject: Application of NH Dept. of Transportation, Wetlands File No. 2010-00224

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

Status: The PO has requested that a PHC be scheduled for August 31, 2011. Notice thereof must issue.

Docket No. 10-19 WtC – Grouse Point Club

Subject: Decision on Reconsideration Denial, Wetlands File No. 2010-00808

Presiding Officer: Ryan Crosbie

Status: A hearing is scheduled for August 9, 2011 at 9 a.m. The hearing date was established in the 3/30/11 PHO. Notice does not appear to be an issue. Reminder to be sent.

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 PHC was held on June 3, 2011. A hearing is scheduled for October 25, 2011 at 9:00 a.m. Due notice thereof was given by PHO distributed at the PHC.

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: A PHC has been set for July 20, 2011 at 9 a.m. Notice was issued on June 29, 2011. A letter will be sent to the appellants to fulfill the requirements for appeals before the PHC.

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: Council accepted the appeal on April 12, 2011. A PHC has been scheduled for August 1, 2011 at 9 a.m. Notice was issued on June 29, 2011.

III. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 09-21 WtC - John Penaskovic

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

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status request letter to be sent in Sept. 2011.

Docket No. 09-22 WtC - John Penaskovic

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

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status request letter to be sent in Sept. 2011.

Docket No. 10-15 WtC – Steven and Mary Pruchansky

Subject: 6/10/10 Decision on Reconsideration, Wetlands File No. 2009-023600

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

Status: A PHC was held on February 23, 2011. The permit has been issued and the agent will withdraw the appeal once a settlement agreement is completed. Status letter to be sent.

V. Misc.

3/31/09 Request for Declaratory Ruling filed by Mr. Goodwin

Councilor Morse to finish.

5. Old Business -

Paul Dionne has resigned and Larry Morse's resignation was effective after the last meeting. Jim Kennedy has been nominated by the Natural Resource Scientists. Letters have been sent from the Governor's office to the groups who are not currently represented – SPNF/Audubon, Association of Conservation Commissions, Marine Trades, and County Conservation(Dave is trying to get a replacement).

Docket No. 08-04 WtC - Porter Trust

- ***Motion made by Councilor Thompson to adopt the Decision and Order, second by Councilor Sloan. Motion passed unanimously with Councilors Henderson and Ballin abstaining.***

6. New Business - None

7. Next Meeting –

July 26, 2011 at 9 a.m. - Sunset Ranch Camp Hearing – Tom Sloan will not be here.

August 9, 2011 at 9 a.m. – Grouse Point Club Hearing

August 23, 2011 at 9 a.m. – Town of Hooksett Hearing – Ryan Crosbie will not be here.

Next regular meeting will be Tuesday, September 13, 2011 beginning at 8 a.m. with the Thomas and Joan DiPace Appeal at 9 a.m.

8. Adjournment

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

Meeting adjourned at 9:55 a.m.