

WETLANDS COUNCIL

MINUTES

December 11, 2012

The Wetlands Council met on Tuesday, December 11, 2012 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentees: Councilors: Sharon Champagne, Carol Henderson, and Seth Prescott

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 8:04 a.m. with introductions and a quorum present.

1. Approval of Minutes

- *Councilor Sloan made a motion to approve the November 27, 2012 minutes, second by Councilor Byron. Motion passed unanimously with Councilor Crosbie abstaining.*

2. Public Input: None

3. Status Report

I. New Appeals

Docket No: 12-12 WtC – William & Elizabeth Frago, Trustees-William S. Frago Trust & Elizabeth Hall Frago Trust

Subject: 9/18/12 Denial of Reconsideration of permit #2011-01677 issued to Hopgood Bixby Shore Family Trust
Hearing Officer: Not Assigned

Status: On Oct. 17, 2012 received Petition for Appeal. Oct. 18, 2012 issued receipt of appeal letter. Nov. 6, 2012 rec'd Appearance of Attys. Gregory Smith, Mark Rouvalis and Michael Walls. Also received Motion for Summary Affirmance pursuant to Env-WtC 204.01. Nov. 15, 2012 received Objection to Applicants' Motion for Summary Affirmance. Council to accept or decline appeal today.

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

Docket No: 12-15 WtC – Michael Griffin

Subject: 5/21/10 Shoreland Impact Permit #2010-00767 issued to Tamra Kennedy
Hearing Officer: Not Assigned

Status: On Nov. 28, 2012 received Petition for Appeal, which was untimely filed. Nov. 29, 2012 issued receipt of Appeal letter. Dec. 4, 2012 rec'd Appearance for Gretchen Hamel and Motion to Summarily Dispose of Appeal. Council to accept or decline appeal at its Jan. 8, 2013 meeting.

II. Decisions that need to be written/finalized 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. 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 were held on September 11, 2012. Draft Decision and Order on Notice of Appeal to be acted upon by the council November 13, 2012. Council adopted the draft decision as presented, which was then issued on Nov. 13, 2012.

Docket No: 12-09 WtC – Fillmore Industries, Inc.

Subject: 8/27/12 Notice of Compliance and Release of Recordation for Administrative Order No. 12-005 WD
Hearing Officer: Not Assigned

Status: On September 27, 2012 received Notice of Appeal, which was untimely filed on the 31st day. Council to accept or decline appeal at its November 13, 2012 meeting. Discussion was held. 11/13/12 issued appeal declined letter.

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 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. PHC was held on 10/2/12. The hearing time was changed to 9:30 a.m. on 10/23/12. 10/16/12 received Assented-To Motion to continue hearing. 10/17/12 Motion was granted and notice was issued. Hearing rescheduled to Dec. 11, 2012 at 1 p.m. 12/10/12 rec'd Assented-To Motion to Withdraw Appeal. 12/10/12 Hearing Officer granted motion which was issued 12/11/12. This docket is closed.

8:23 Councilor Slack arrives.

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: Council accepted appeal on 12/13/11. PHC is scheduled for Feb. 15, 2012 @ 10 a.m. Appearance for Linda Magoon was filed on 2/13/12. PHC was held on 2/15/12, hearing scheduled for July 10, 2012 @ 9 a.m. 6/21/12 rec'd Assented-To Motion to Continue. 6/25/12 Hearing Officer granted Motion to Continue and issued. 8/16/12 issued Hearing Notice with hearing scheduled for Jan. 22, 2013 at 9 a.m. 11/06/12 rec'd Assented-To Motion to Dismiss. 11/15/12 issued letter granting the Assented to Motion to Dismiss.

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. 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. July 31, 2012 received Request for 2rd PHC from

Appellant. August 10, 2012 issued ruling on Request for 2nd PHC which was denied. Sept. 28, 2012 received Motion to Supplement the Record. Motion was granted and letter issued on 11/5/12. 11/2/12 received Appellant's Witness and Exhibit List. 11/14/12 rec'd Appellant's Exhibits. 11/19/12 Hearing Officer issued an order regarding intervenor's presentation time and exhibit submissions. 11/26/12 rec'd Appearance for Collis Adams. 11/27/12 Hearing and Deliberations were held. Decision to be issued within 90 days (2/25/13).

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. 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. Original hearing date set for January 8, 2013 at 9 a.m. 11/20/12 issued rescheduled hearing notice for hearing on January 22, 2013 at 9 a.m.

Docket No: 12-07/11-03 WtC – Joseph DeVelis

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

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

Presiding Officer: David Conley assigned by AG on Nov. 28, 2012 (for consolidated appeals)

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 rescheduled to October 9, 2012 at 10 a.m. Hearing Postponement notice was issued on Sept. 19, 2012. Oct. 2, 2012 received letter from Atty. Bisbee regarding the Hearing Postponement letter. Status carried forward from Docket No. 12-07 WtC- Subject: 6/20/12 Denial on Reconsideration of Permit application #2012-00368. On July 20, 2012 rec'd Notice of Appeal. 7/24/12 issued receipt of appeal letter. 8/15/12 rec'd appearance from Atty. Evan Mulholland. 9/14/12 issued appeal accepted letter. Council voted Nov. 13th to consolidate this Docket and Docket No. 12-07 WtC – Joseph DeVelis. 11/13/12 Requested Hearing Officer for consolidated appeals. 12/3/12 sent notice of PHC scheduled for Jan. 28, 2013 at 9 a.m.

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 by AG on 1/19/12

Status: Council accepted the appeal letter. PHO was issued on Nov. 7, 2011 with 2nd PHC scheduled for Feb. 15, 2012. 2nd PHC was held on 2/15/12, hearing scheduled for April 10, 2012 @ 10 a.m. 4/2/12 rec'd 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. 9/10/12 rec'd Assented to Motion to Continue Hearing which was granted and a status report needs to be filed within 30 days (10/10/12). 11/7/12 rec'd update from Attorney Roth, they have finalized the settlement papers and are in the process of signing the agreement. Once signed the settlement agreement will be submitted to the Council.

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 by AG on 1/19/12

Action needed: 8/31/12 rec'd Motion for Late Filing of Dispositive Motion, Appellants' Motion for Summary Judgment and Affidavit of R. Michael Mayo. 9/10/12 rec'd Objection to Motion for Late filing of Dispositive Motion. Hearing officer granted Motion for Late Filing of Motion for Summary Judgment and issued the order on 9/13/12. 9/18/12 rec'd Partially Assented-To Motion for Extension to Close of Record for Filing Requests. 9/18/12 rec'd Appellant's and Intervenor's Exhibits. 9/19/12 issued letter regarding Motion for Filing Requests which was granted. All requests for findings and rulings are due by Oct. 15, 2012. 9/21/12 rec'd Applicant's Response to Motion for Summary Judgment. 9/24/12 rec'd Motion to Conditionally Exclude Intervenor's Exhibits. 9/24/12 Order on Appellants' Motion for Summary Judgment which was granted in part and remanded back to the Wetlands Bureau. 10/23/12 rec'd Intervenor's Request for Reconsideration. 10/29/12 rec'd Appellants' Objection

to Intervenor's Request for Reconsideration. 11/14/12 issued order on Intervenor's Request for Reconsideration which was denied.

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 by AG 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. PHC is scheduled for May 2, 2012 @ 10:30. 4/10/12 rec'd appearance from Linda Magoon. PHC was held on May 2nd, a second PHC is scheduled for August 13, 2012 @ 9 a.m. and a hearing is scheduled for August 28, 2012 @ 1 p.m. 2nd PHC was held on Aug. 13, 2012; hearing has been rescheduled to 9a.m. on August 28th. 8/20/12 rec'd appearance of Biron Bedard for the Appellant and an Assented-To Motion to Continue. 8/21/12 Hearing Officer granted Motion to Continue and issue ruling. 9/14/12 issued rescheduled hearing notice with hearing scheduled for 1/22/13 at 1 p.m.

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 by AG on 5/30/12

Actions: 2/22/12 rec'd Notice of Appeal, 2/22/12 issued insufficient notice of appeal letter. 3/22/12 rec'd addendum to Notice of Appeal. 3/23/12 issued receipt of revised appeal letter. Council accepted appeal at its May 8th meeting. June 4th issued Notice of PHC which is scheduled for June 20th @ 12 p.m. June 11th rec'd Request for Continuance from Appellant. Request for continuance was granted and PHC was rescheduled to July 12, 2012. PHC was held on July 12, 2012 and PHO was issued with a scheduled hearing date of Dec. 11, 2012 and a 2nd PHC scheduled for Dec. 3, 2012. July 12, 2012 rec'd appearance for Darlene Forst. 12/3/12 2nd PHC was held and filing deadlines were issued. 12/7/12 rec'd DES' Exhibit and Witness List and Exhibits.

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

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

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

Actions: 3/15/12 rec'd Notice of Appeal, 3/15 issued insufficient notice of appeal letter. 3/22/12 rec'd revised Notice of Appeal. 3/27/12 issued receipt of revised appeal letter. Council accepted appeal at its May 8th meeting, on May 10th issued appeal accepted letter. June 4th issued Notice of PHC which is scheduled for June 20th @ 10 a.m. 6/14/12 rec'd Assented-To Motion to Continue PHC. 6/15/12 rec'd appearance for Linda Magoon. Hearing Officer granted the Assented-to Motion to Continue. Rescheduled PHC to Sept. 17, 2012 at 2 p.m. PHC was held on 9/17/12; parties to submit a status report by Oct. 17, 2012. Hearing scheduled for Mar. 12, 2013 @ 9 a.m., notice given per PHO. 9/25/12 rec'd withdrawal of appearance for Linda Magoon, rec'd appearance from Gretchen Hamel and Motion to Dismiss. 10/1/12 rec'd appearance from Atty. Mark Rouvalis, Objection to State's Motion to Dismiss and a Motion to Consolidate. HO to rule on Motion and Objection. 10/17/12 rec'd Joint Status Report from Appellant. 11/16/12 rec'd withdrawal of appeal.

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

Subject: 7/25/12 Granting of Shoreland Impact Permit No. 2012-01713 to Anna and James Coleman

Hearing Officer: David Conley, Esq. appointed by AG on 11/28/12

Actions: On Aug. 22, 2012 rec'd Petition for Appeal. 8/29/12 issued insufficient appeal letter. 9/5/12 rec'd added information and appeals clerk issued receipt of appeal letter. 9/24/12 rec'd Appearance from Permittees' Anna and James Coleman. 11/2/12 rec'd Addendum to Petition for Appeal. 11/13/12 Council accepted the appeal and declined to accept Addendum. 11/13/12 sent appeal accepted letter. 12/3/12 sent notice of PHC scheduled for Jan. 28, 2013 at 10:30 a.m. 12/4/12 rec'd Motion to Amend Petition for Appeal and Proposed Amendments to Petition for Appeal.

Docket No: 12-10 WtC – Robert and Katherine Michele

Subject: 9/4/12 Denial of Reconsideration for permit No. 2007-02868 issued to Joseph and Linda Bremner

Hearing Officer: David Conley, Esq. appointed by AG on 11/28/12

Actions: On Oct. 4, 2012 rec'd Petition for Appeal and appearance notices for Attorneys David Rayment and Mark Derby. Oct. 5, 2012 issued receipt of appeal letter. Oct. 30, 2012 rec'd Objection to Petition for Appeal. Council accepted appeal with request for complete copies of the relevant court decision to be forwarded to the Council at its Nov. 13, 2012, meeting. 11/15/12 appeal accepted letter was issued. 11/21/12 rec'd Appearance of Gretchen Hamel for the Department. 12/3/12 sent notice of PHC scheduled for Jan. 28, 2013 at 11:30 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

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: 10-14 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: On Nov. 2, 2011, rec'd DES' addendum to the Witness and Exhibit List. 11-07-11 Assented-to Motion to Continue was filed. Motion to Continue was granted verbally on 11/7/11 and PO will have written ruling out within a few days. Written ruling on Motion to Continue was issued on Nov. 8, 2011. 11/14/11 rec'd 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. Hearing is today, June 12th. 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 progress (Aug. 11, 2012). Aug. 15, 2012 sent status request with 20 days to respond. 9/4/12 rec'd status report from appellant. 9/6/12 issued hearing officers order for an updated status report to be submitted by Dec. 3, 2012. 12/3/12 rec'd status report from appellant requesting to submit another status report in 60 days. 12/4/12 issued hearing officer's order for an updated status report be filed by Feb. 2, 2013.

4. **Old Business** - None

5. **New Business** - None

6. **Next Meeting** –

January 22, 2013 meeting will begin at 8 a.m. with 2 hearings to follow: 11-02 WtC – Kathryn Wolf at 9 a.m. and 12-02 WtC – Rene Montplaisir & Barbara Fraser Appeal at 1 p.m.

7. **Adjournment**

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

Meeting adjourned at 8:42 a.m.

WETLANDS COUNCIL

HEARING MINUTES

December 11, 2012

The Wetlands Council met for
Docket No. 12-03 WtC – Hixon Realty Trust Appeal Hearing
Tuesday, December 11, 2012 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentees: Councilors: Sharon Champagne, Carol Henderson, and Seth Prescott

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:10 a.m.

The Hearing concluded at 11:15 a.m.

Deliberations began at 11:25 a.m. and ended at 12:15 p.m.

There was a 9 to 0 vote to remand the appeal back to the Bureau.