

WETLANDS COUNCIL

MINUTES

January 22, 2013

The Wetlands Council met on Tuesday, January 22, 2013 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 and Frank Byron

Also present was: Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball at 11:33 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Sloan made a motion to approve the December 11, 2012 minutes, second by Councilor Snelling. Motion passed unanimously with Councilor Henderson abstaining.***

2. Public Input: None

5. New Business -

Chairman Kimball referred to the draft Annual Report that has been prepared. As the Council is now caught up on the appeals meetings will just be held on the second Tuesday and no meeting on the 4th Tuesday. It was noted that no one from the Department of Safety attended any meetings in 2012. It was decided to add a spreadsheet of the status of the appeals that were dealt with in 2012. The Final Report will be voted on in March.

Also reviewed was a draft letter that has been prepared to Commissioner Burack regarding grandfathered docks and rights of abutters. Discussion was held and appropriate changes were made. Paula will get the letter to Commissioner Burack.

b. Election of Officers:

- ***Councilor Sloan moved to retain the slate of officers currently installed, seconded by Councilor Kennedy. Motion passed unanimously.***

a. Wetlands Bureau Report –

Collis Adams, Wetlands Bureau A

Staffing: Nina Buckman has filled the Env. Tech II position, filling Vanessa Burnes' position.

Funding: Wetlands and Shorelands fee accounts are in the black.

Budget: FY13/15 DES budget has been submitted. Now awaiting the Governor's proposed budget. 30 – 35% of the budget is general funded and if more cuts are asked for it will mean cuts to staffing.

Rule Making: Comprehensive Wetland rule package is being worked on. Most likely an extension will be asked for to finalize.

Certified Culvert Installer Training Program: is continuing to be developed with UNH.

Legislation: New session has just begun and it looks to be a pretty light session. Collis reviewed a few LSRs that touch the Wetlands Bureau.

3. Status Report

I. New Appeals

Docket No: 12-13 WtC – Edward Kimball

Subject: 10/16/12 Letter of Deficiency LRM 12-029 issued to Wayne Killam

Hearing Officer: Not Assigned

Status: On Nov. 15, 2012 received Notice of Appeal. 11/16/12 issued insufficient appeal letter. On December 17, 2012 received Amended Notice of Appeal. 12/18/12 issued receipt of revised appeal letter. Council to accept or decline appeal at its January meeting.

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

Docket No: 12-14 WtC – Mastoran Corporation and B & P Realty Ventures, LLC

Subject: 11/8/12 Denial on reconsideration of Denial of Application File #2012-00768

Hearing Officer: Not assigned

Status: November 27, 2012 received Notice of Appeal and Motion to Stay Appeal. 11/28/12 issued insufficient appeal letter. December 28, 2012 received supplement to Notice of Appeal and Motion to Stay Appeal. January 3, 2013 issued receipt of revised appeal. Council to accept or decline appeal at its January meeting.

- ***Councilor Sloan made a motion to accept the appeal, second by Councilor Crosbie. Motion to Stay will be ruled on by the Hearings Officer.***

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. 12/14/12 received Objection to DES' Motion to Summarily Dismiss Appeal.

- ***Councilor Sloan made a motion to accept the appeal, second by Councilor Kennedy. Motion passed with one nay.***

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

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 2nd 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). Draft Order was emailed to the Council earlier today. Vote to be held later in the meeting.

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

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. The hearing and deliberations were held on Dec. 11, 2012. Decision and Order to be issued in 90 days(3/11/13).

III. Hearings or PHCs Pending

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. 11/20/12 issued rescheduled hearing notice for hearing to be on January 22, 2013 at 9 a.m. January 14, 2013 received Assented to Motion to Continue. 1/15/13 issued letter granting Assented to Motion to Continue. No date has been set.

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. 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. December 19, 2012 received Motion to Approve Settlement Agreement and to Dismiss Appeal with Prejudice. 12/21/12 Hearing Officer granted Motion to Approve Settlement Agreement and Dismiss Appeal with Prejudice.

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 January 22, 2013 at 1 p.m. 1/11/13 received DES' Witness and Exhibit List. 1/14/13 received Appellant's Witness and Exhibit List. Hearing is scheduled for today at 1 p.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: 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. 1/18/13 received appearance of Mark Johnson and Michael Klass for permittee.

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: David Conley, Esq. appointed by AG on 12/12/12

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. December 13, 2012 issued appeal accepted letter. January 4, 2013 received Appearance from Atty. Allen Brooks.

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 received 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.

Break taken at 12:50. Hearing to convene at 1:30 p.m.

Upon reconvening:

Docket No: 10-31 WtC – Larry Crocker

Review of Larry Crocker Order was held by the Council.

- ***Councilor Slack made a motion to adopt the Decision, second by Councilor Sloan. Motion passed with Councilors Snelling, Prescott, and Crosbie abstaining.***

4. **Old Business** - None

6. **Next Meeting** –
March 12, 2013 with a hearing. No meeting in February.

7. **Adjournment**

- ***Councilor Lievens made a motion to adjourn, second by Councilor Snelling. Motion passed unanimously.***

WETLANDS COUNCIL

HEARING MINUTES

January 22, 2013

The Wetlands Council met for
Docket No. 12-02 WtC – Rene Montplaisir & Barbara Fraser Appeal Hearing
Tuesday, January 22, 2013 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, Seth Prescott, Russ St. Pierre, Susan Slack, Thomas Sloan, and Robert Snelling

Absentees: Councilors: Frank Byron and Sharon Champagne

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 1:30 p.m.

The Hearing concluded at 2:30 p.m.

Deliberations were held at 2:45 p.m.

There was a 7 to 3 vote to remand the appeal back to the Bureau.