

WETLANDS COUNCIL

MINUTES

June 26, 2007

The Wetlands Council met on Tuesday, June 26, 2007 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Lawrence E. Morse, John S. Cobb, Paul W. Goodwin, Brian Fowler, Dan Lynch, Seth Prescott, Thomas Sloan, Jack Ruderman, and David Thompson

Absentees: Sharon Champagne, Thomas Chrisenton, Dennis Danna, and Camilla Lockwood

The meeting was called to order by Chairman Larry Morse at 9:20 a.m.

1. Approval of Minutes of April 10, 2007 Council Meeting

7 members were present at this time. Approval of the minutes were tabled until later in the meeting. A new position may be appointed in the future.

2. Status of Appeals

Michael Sciafani, Appeals Clerk, distributed an Appeals Status Report and reviewed the report with the Council members.

- Docket No. 04-21 WtC – Lake Shore Realty Trust: WB #2001-01294
On June 14, 2007 DES filed a Pre-Hearing Memo. The Appellant filed an Pre-Hearing Memo on June 18, 2007. Appeal Hearing scheduled for June 26, 2007. Appeal will be heard today by the Council.
- Docket No. 05-04 WtC – Philip and Georgette Smith: WB #2000-00914
On May 21, 2007 Assented-to- Motion to Stay granted. No action was needed or taken by the Council.
- Docket No. 06-03 WtC – Donald and Mary Larson: WB #2005-02387
On May 24, 2007 Appellant withdrew this Appeal. No action was needed or taken by the Council. This Appeal is closed.
- Docket No. 06-10 WtC – Ralph and Virginia Sanborn: WB #2006-00325
This Appeal is scheduled for Rehearing on July 10, 2007. No action was needed or taken by the Council.
- Docket No. 06-11 WtC – Dennis Proulx: WB # 2006-00769
This Appeal is scheduled for Hearing on August 14, 2007. Chairman Morse was assigned to be presiding Officer.

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- Docket No. 06-12 WtC – Bodanza et al.: WB #2002-02483
On June 12, 2007 the Appeal Hearing convened and the Council voted 5-4 to deny the Appeal. Decision and Order to deny this Appeal has not yet been issued.
No action was needed or taken by the Council.
- Docket No. 06-16 WtC – Shane Forest: WB#1999-01294
This Appeal, at the request of the parties, is stayed.
No action was needed or taken by the Council.
- Docket No. 06-18 WtC – Richard Totaro: WB#2006-01921
On June 19, 2007 the Appellant withdrew this Appeal.
No action was needed or taken by the Council. Appeal is closed.
- Docket No. 07-01 WtC – Robert and Betty Howland: WB#2006-01654
A Stay remains in effect pending settlement discussions.
No action was needed or taken by the Council.
- Docket No. 07-02 WtC – Town of Barrington: WB#2004-02817
On June 4, 2007 a Pre-Hearing Conference was held. The parties are actively working towards settlement. A Hearing has been set for September 25, 2007. On June 6, 2007 a Pre-Hearing Order and Appeal Hearing Notice were distributed. June 12, 2007 Attorney Peter Roth withdrew his Appearance for DES and Attorney Richard Head filed an Appearance on behalf of DES.
No action was needed or taken by the Council.
- Docket No. 07-03 WtC – James Watson: WB#2006-01302
Stay remains in effect pending settlement discussions.
No action was needed or taken by the Council.
- Docket No. 07-06 WtC – Patricia Woolson: WB#2006-02796
March 1, 2007 Notice of Appeal filed, 17th day after Decision was issued. This Appeal was missing the required 15 copies. On April 30th the required number of copies were filed. Receipt of Appeal letter was distributed on May 1, 2007.

Jack Ruderman joins the meeting.

A motion was made by Councilor Sloan and seconded by Councilor Cobb to accept this Appeal and it was voted unanimously.

Councilor Goodwin was assigned as Hearing Officer.

- Docket No. 07-07 WtC – Wendy McCarthy: WB#2006-02581
Timely filed on May 9, 2007 and Receipt of Appeal letter was distributed on May 17, 2007.

A motion was made by Councilor Goodwin and seconded by Councilor Prescott to accept this Appeal and it was voted unanimously.

Chairman Morse was assigned as Hearing Officer.

- Docket No. 07-09 WtC – Derry Conservation Commission: WB#2006-00773
Notice of Appeal was filed on May 17, 2007 timely filed and Receipt of Appeal letter was distributed. Appellant had participated in the Reconsideration process.

Chairman Morse noted that as council is a client of his, he will be not be participating in this decision. Vice Chair, John Cobb was asked to preside the meeting at this time.

A motion was made by Councilor Prescott and seconded by Councilor Sloan to accept this Appeal and it was voted unanimously.

Councilor Prescott was assigned as Hearing Officer.

At this time Chairman Morse again led the meeting.

- Docket No. 07-10 WtC – Renate Ranniger: WB#2004-01185
On May 16, 2007 Notice of Appeal was timely filed. Applicants are James and Anna Coleman. May 22, 2007 the Receipt of Appeal letter was distributed.

A motion was made by Councilor Sloan and seconded by Councilor Cobb to accept this Appeal and it was voted unanimously.

Councilor Sloan withdrew the above motion and the motion was changed to Table until next meeting. Second by Councilor Cobb. Vote was unanimous.

David Thompson joins the meeting.

4. Wetlands Bureau Update

Harry Stewart, Director of the Water Division, for Collis Adams:

Programmatic General Permit (PGP):

The PGP expired 2 weeks ago but comments from the agency have continued as the Corp is close to issuing the PGP. There are concerns with the secondary/indirect impacts. Director Stewart referred to the letter from Jennifer Patterson of the Attorney General's office. This letter refers to how New Hampshire is handling the secondary/indirect impacts of developments. The context is that the view of the state of New Hampshire is that secondary/indirect impacts from development are being handled by the entire current sweep of permits on projects. Permits are required from Wetlands, Alteration of Terrain, Subsurface and the 401 Water Quality Certificate.

With regard to secondary impacts, as federal and state statutes are not in harmony they will be attaching a Secondary Impact check list. This will be a mechanism for the Corp requiring the applicant to provide a certain level of information that is not required by the NH process that they can review to see if they want to take a closer look at it. There is also language asking applicants to provide a calculation of the wetlands impact and the secondary impacts from a project. The goal is to get the end note consistent with federal law, federal rule and enforceable policy.

Vernal Pools – DES prefers that the Corp hold off incorporating vernal pool language until the State rule making is complete. The Corp will probably incorporate language and identify

200 foot buffers around vernal pools for projects. They have suggested minimization criteria. They have agreed to eliminate any reference to the Stream Crossings Guidelines

Impaired waters – the Corp and EPA are very concerned about any federal action(a wetlands permit under PGP is a federal action) in areas that are within watersheds of impaired waters. There are a number of impaired waters in New Hampshire, mostly with bacteria, nutrients, or macro invertebrates. Work continues on the process to be used.

Rene Pelletier reviewed the legislation that has been passed that pertains to wetlands. Changes were noted in the 1) Wetland fee structure 2) Terrain Alteration fee structure 3) New permit system created for shoreland protection.

Mary Ann Tilton noted a Stream Rules workgroup is being set up, meeting the first time on July 23, 2007. A new staff person has been hired, Mark Mirabella to do permit reviews. Comments have been received regarding the New Hampshire Heritage Bureau, and further refining is being done to streamline this tool. A draft of the Vernal Pool rules was distributed. It was noted the PGP has a separate definition of a vernal pool. The Corp is willing to amend the PGP to include the state definition once it is in effect. Comments on the Vernal Pool rules were asked for by July 16th.

Motion to go into recess was made by Councilor Fowler and seconded by Councilor Sloan. Vote was unanimous.

At 1:50 PM meeting was reconvened by Chairman Morse.

6. **New Business**

A motion was made by Councilor Sloan and seconded by Councilor Lynch to accept the minutes of April 10, 2007. It was unanimously voted.

7. **Old Business**

None

8. **Other Business**

A letter from Paul Goodwin to the Commissioner was distributed in regards to the NHHB process. Discussion was moved to the next meeting.

9. **Next Meeting**

The next meeting will be July 10, 2007 with a hearing. This will be Brian Fowler's last meeting. Comments for vernal pools will also be on the agenda of the next meeting.

10. **Adjournment**

A motion was made by Councilor Fowler and seconded by Councilor Cobb to adjourn and was unanimously voted.

The meeting adjourned at approximately 1:55 PM.