

WETLANDS COUNCIL

MINUTES

August 14, 2007

The Wetlands Council met on Tuesday, August 14, 2007 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Lawrence E. Morse, Thomas Chrisenton, John S. Cobb, Dennis Danna, Seth Prescott, Jack Ruderman, and David Thompson

Absentees: Sharon Champagne, Paul W. Goodwin, Camilla Lockwood, and Thomas Sloan

The meeting was called to order by Chairman Larry Morse at 9:12 a.m.

There will be a new appointment from Fish and Game, John Magee, replacing Dan Lynch.

1. **Approval of Minutes of June 26, 2007 Council Meeting**

6 members were present at this time.

As there was no quorum, approval of the minutes was postponed until the next meeting.

2. **Status of Appeals**

Moved to later in the meeting.

3. **Wetlands Bureau Update**

Mary Ann Tilton:

The Commissioner, Harry Stewart and Collis Adams met with auditors to review the draft report and are making comments. It is due to be finalized by the end of the summer and will be posted on the website. The Department has made several commitments to change rules over the next year. There will be rule making changes on: clarifying amendments, clarifying issues, turn-around times, administrative completeness, and requests for more information. There will also be work on a formal policy manual for standard office protocol.

The first meeting of the Stream Crossing Work group was held with about 20 people in attendance. The next meeting is to include what rules are in place now in relationship to streams and rivers, how they're defined by the rules, the different categories and assessments, and then identify ways to improve them.

The Department has received a grant from EPA to set up a model watershed analysis for the Merrimack River watershed. Lori Summer will have a contract go out to bid to identify opportunities for purchasing land or restoring areas for that watershed. A similar grant amendment has been made for training DES staff and town road agents on the stream crossing issues.

The standard wetlands application is still being revised to make it more user friendly and to satisfy the department's requirements. The Army Corp does require the secondary impact checklist which is independent of the wetlands application but is included as an attachment. As part of the PGP the bureau is screening for impaired waters within a mile of the proposed project. The condition will have a statement that the applicant will certify that their project will not cause any water quality degradation or add any additional loading. On the secondary impact checklist it does require applicants to identify vernal pools.

Darlene Forst reported on the Shoreline Protection Act that had 15 changes approved by this last legislature and created a shoreland permit requirement with new standards. There will eventually be 6 new positions in the bureau. The first 2 posted will be for enforcement and outreach/permitting. The permit requirement must be ready April 1, 2008, work has started on the existing shoreland rules to develop the new rule set. It was noted Forestry is exempt and is covered by DRED.

a. Proposed Fetch Rules

A comment letter was distributed from Paul Goodwin.

Darlene Forst explained the need for the changes to the fetch rules as these are commonly disputed. This issue goes back to the early to mid-90s. A scientific approach to wave height documentation was sought for break water or permanent dock needs. The Thomas Seville model was chosen in 2000 to predict the wave heights/fetch. The package now proposed puts forth the original proposal 2001 with corrected fetch. She then reviewed the other changes to the proposed fetch rules.

Jack Ruderman arrives and there is now a quorum.

The Council was in agreement that at this time a decision on recommendations would be made at a later date. It was agreed that the rule-making process should continue at this time.

b. Vernal Pools

Karla McManus reviewed the proposed rule-making schedule.

Councilor Chrisenton recommended proceeding with the public information meetings. It decided to hold them in Plymouth, Lancaster and Hillsboro/Manchester the last week of September. Councilor Chrisenton will work to set these up.

Rene Pelletier requested that the rule process be allowed to start and as the 15 days for Council comment has passed there were no objections. The first public hearing to be held by the Department will now be in October with the rules to go to JLCAR in November.

Mary Ann Tilton then gave updates on the Permit by Notification, the New Hampshire Heritage Bureau interview, and the Fish and Game sign-off. Our Commissioner has committed to bringing the three agencies together to revise the MOA to reflect the changes in the process and the statutory changes in the law.

A recess was taken at 10:40 am.

At 10:45 am the meeting was reconvened by Chairman Morse.

It was noted that a new Conservation Commission member will be needed in November as Camilla Lockwood's replacement.

Minutes:

A motion was made by Councilor Cobb and seconded by Councilor Thompson to accept the minutes of June 26, 2007. It was unanimously voted.

2. Status of Appeals:

- Docket No. 04-21 WtC – Lake Shore Realty Trust: WB #2001-01294
Appeal Hearing was held on June 26, 2007, Council vote 8-0 to grant the Appeal. The written Decision and Order was issued on July 19, 2007. On July 25, 2007 DES files a Motion for Reconsideration and Clarification. On August 3, 2007 a Response and Objection to Motion for Reconsideration and Clarification was filed by the Appellant.

A motion was made by Councilor Cobb and seconded by Councilor Thompson to deny the Motion for Reconsideration and Clarification. Motion was voted down by a vote of 2 to 4.

A motion was made by Councilor Ruderman and seconded by Councilor Prescott to grant the Motion for Reconsideration and Clarification. Motion was passed by a vote of 4 to 2.

Hearing is to be scheduled for September 11, 2007 and Councilor Morse will be the Hearing Officer.

- Docket No. 05-04 WtC – Philip and Georgette Smith: WB #2000-00914
On July 02, 2007 DES files a joint Motion to Vacate and Withdrawal, which the Council grants on July 5, 2007.
Appeal is closed. Councilor Ruderman requested an attorney general's opinion on this.
- Docket No. 06-10 WtC – Ralph and Virginia Sanborn: WB #2006-00325
On July 10, 2007 Appellant files a Conditional Withdrawal of this Appeal
Appeal is closed.
- Docket No. 06-11 WtC – Dennis Proulx: WB # 2006-00769
On July 20, 2007 Appellant files a Motion to Supplement the Record and a Petition to Stay Proceedings, which are granted on July 24, 2007. No action is needed by the Council as Appeal is stayed until the Appellant withdraws the Appeal or a party requests that a new Pre-Hearing Conference be scheduled.
- 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 was issued on July 19, 2007.
No action was needed or taken by the Council. A request for Reconsideration will be handled at the September 11, 2007 meeting.

Wetlands Council Meeting Minutes

August 14, 2007

Page 4

- 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
A Stay remains in effect pending settlement discussions.
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
Appeal accepted on June 26, 2007. Pre-hearing Conference scheduled for July 30, 2007. DES files Certified Record with the Council on July 13, 2007. Mary Ann Tilton files an Appearance on behalf of DES on July 26, 2007. On July 30, 2007 the Pre-Hearing Conference convened and parties request that proceedings be stayed for 90 days pending settlement discussions.
No action was needed or taken by the Council.
- Docket No. 07-07 WtC – Wendy McCarthy: WB#2006-02581
Appeal accepted on June 26, 2007. Pre-Hearing Conference scheduled for July 30, 2007. DES files Certified Record with the Council on July 17, 2007. Mary Ann Tilton files an Appearance on behalf of DES on July 26, 2007. On July 30, 2007 the Pre-Hearing Conference convened and parties request that proceedings be stayed for 90 days pending settlement discussions.
No action was needed or taken by the Council.
- Docket No. 07-09 WtC – Derry Conservation Commission: WB#2006-00773
Appeal accepted on June 26, 2007, from which Chairman Morse had recused himself. Pre-Hearing Conference scheduled for July 30, 2007. DES files Certified Record with the Council on July 17, 2007. Mary Ann Tilton files an Appearance on behalf of DES on July 26, 2007. On July 30, 2007 the Pre-Hearing Conference convened and it was realized that the Applicant (K & M Realty Trust) was not noticed of the Pre-Hearing Conference. The Pre-Hearing Conference was adjourned and on July 31, 2007 a new Pre-Hearing Conference was scheduled for September 10, 2007 at 9 AM
No action was needed or taken by the Council.

- 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. On June 26, 2007 the Council votes to Table this Appeal until their next meeting.

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

John Cobb was assigned as Hearing Officer.

- Docket No. 07-12 WtC – David Potter: WB#2005-02913
On June 26, 2007 a Notice of Appeal was timely filed and Receipt of Appeal letter distributed on July 10, 2007.

A motion was made by Councilor Chrisenton and seconded by Councilor Cobb to Table this Appeal until Councilor Goodwin's participation and statutory authority are determined. It was voted unanimously.

- Docket No. 07-13 WtC – Thomas and Kellie Greer: WB#2006-00460
On July 17, 2007 a Notice of Appeal was timely filed and a Receipt of Appeal letter distributed on July 25, 2007.

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

Larry Morse was assigned as Hearing Officer.

- Docket No. 07-14 WtC – Courtney Galluzzo: WB#2007-00291
On July 20, 2007 a Notice of Appeal was timely filed and a Receipt of Appeal letter distributed on July 26, 2007.
The Council will accept or dismiss this Appeal at the September 11, 2007 meeting.
- Docket No. 07-15 WtC – Charles W. Kalil: WB#2006-02611
On July 24, 2007 a Notice of Appeal was timely filed and a Receipt of Appeal letter distributed on August 1, 2007.
The Council will accept or dismiss this Appeal at the September 11, 2007 meeting.

4. **Old Business**

Include stream rules so the public knows what is going on.

5. **Other Business**

6. **Next Meeting**

The next meeting will be September 11, 2007 with a hearing.

7. **Adjournment**