

## WETLANDS COUNCIL

### MINUTES

May 13, 2008

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The Wetlands Council met on Tuesday, May 13, 2008 in room 112 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Lawrence E. Morse, Thomas Chrisenton, John S. Cobb, Chip Kimball, Dennis Lydon, Seth Prescott, Jack Ruderman, Thomas Sloan, Russ St. Pierre and David Thompson

**Absentees:** Sharon Champagne, Paul Dionne and Steve Perry

Also present were: Amy Samson, Council Appeals Clerk and Carolyn Guerdet, Council Clerk

The meeting was called to order by Chairman Larry Morse at 9:00 with a quorum present.

#### 1. Approval of Minutes of April 8, 2008 Council Meeting

*A motion was made by Councilor Kimball, second by Councilor Thompson to approve the April 8, 2008 minutes with corrections. Motion was voted unanimously. Councilor Sloan abstained from the vote.*

#### 2. Status of Appeals

- Docket No. 07-02 WtC – Town of Barrington: WB#2004-02817  
Chairman Morse was conflicted so he stepped down as chair and from deliberations. The meeting was then chaired by Councilor Sloan.

*A motion was made by Councilor Ruderman to rescind the prior motion(to Table this appeal made on March 11, 2008), second by Councilor Lydon. Motion was voted unanimously.*

*A motion was made by Councilor Ruderman to re-open the deliberations, second by Councilor Lydon. Motion was voted unanimously.*

*A motion was made by Councilor Cobb to deny this Appeal, second by Councilor Kimball.*

*A motion was made by Councilor Kimball to go into closed session, second by Councilor Ruderman. Motion was unanimously voted.*

Closed meeting began at 9:13.

Meeting reconvened at 9:35. Discussion ensued.

**Councilor Cobb moved the motion to deny the Appeal. Vote taken was 4 yes and 4 no, motion failed.**

**A motion was made by Councilor Ruderman to grant this Appeal and that there be specific information given that shows by clear and convincing standard that there will be no detrimental impact to wetland #40, second by Councilor Prescott. Vote was 5 yes and 3 no, motion carries.**

Chairman Morse returns as Chair.

Meeting went into recess at 9:55.

**\*\* Hearing: Docket No. 08-02 WtC – William D. Hughes Appeal \*\***

Wetlands Council meeting reconvened at 11:10 A.M. by Chairman Morse.

Status of Appeals continued:

- Docket No. 07-02 WtC – Town of Barrington: WB#2004-02817  
Council voted earlier today to grant the Appeal, 5 to 3.
- Docket No. 08-03 WtC – David Johnson-Johnngis Realty LLC Appeal: WB #2006-00700  
The appeal was timely filed but the appeal was received insufficient. The parties have submitted a sufficient appeal.

**A motion was made by Councilor Kimball to remove this from the table, second by Councilor Thompson. Motion was voted unanimously.**

Complete copies of the appeal were distributed to Council members at the beginning of today's meeting.

**A motion was made by Councilor Chrisenton to accept this Appeal, second by Councilor Thompson. Motion was voted unanimously.**

Pre-Hearing Conference to be on June 16<sup>th</sup>, presided by Councilor Lydon.

- Docket No. 08-12 WtC – Bill K. Lau Appeal: WB #2007-00398  
Original complete appeal was received on April 4, 2008. On April 8, 2008 DES made a Motion to Summarily Dismiss. Also, the original appeal was not timely filed.

**A motion was made by Councilor Sloan to dismiss the Appeal, second by Councilor Lydon. Motion was voted unanimously.**

- Docket No. 07-06 WtC – Patricia Woolson: WB #2006-02796  
Pre-Hearing Conference was held on May 12, 2008 at 9 AM. And it was agreed that a hearing needed to be scheduled. A hearing is scheduled for July 22, 2008 at 10 A.M. Presiding Officer is Chairman Morse.

It was noted that the July 8, 2008 Wetlands Council meeting will be postponed until the 4<sup>th</sup> Thursday, July 22, 2008 due to the holiday.

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- Docket No. 07-27 WtC – Robert Bourgeois: WB # 2007-00473  
A withdrawal was not submitted by May 13, 2008 so a Hearing is scheduled for July 22, 2008 with time to be decided. Presiding Officer is Chairman Morse.
- Docket No. 07-28 WtC – Concord Country Club: WB #2005-00474  
At the Pre-Hearing Conference on March 3, 2008, the parties requested the proceedings to be stayed for 30 days pending settlement discussions. Collis Adams reported new plans have been submitted. Will request a status from them.
- Docket No. 07-30 WtC – Thomas & Kellie Greer Appeal: WB #2006-00460  
Pre-Hearing Conference is scheduled for June 9, 2008 at 9 AM. Presiding Officer is Councilor Lydon.
- Docket No. 08-01 WtC – Town of Newington Conservation Commission: WB #2007-0829-01  
The Assented-To Motion has been filed, the Decision and Order is being finalized to deny the appeal. Presiding Officer is Chairman Morse. All parties agreed it was a matter of law and needed to be resolved in court. There was a Motion to Intervene by Pease Development Authority which was granted. A Decision needs to be issued on this motion.
- Docket No. 08-02 WtC – William D. Hughes Appeal: WB #2007-01174  
A Hearing was held today and the Appeal was denied. Presiding Officer was Councilor Kimball.
- Docket No. 08-04 WtC – Porter Trust Appeal: WB #2006-02705  
At the PHC on April 7, 2008, the parties agreed that a hearing needed to be scheduled. A hearing is scheduled for June 10, 2008 – time TBD. Presiding Officer is Councilor Kimball.
- Docket No. 08-05 WtC – Rick Belanger Appeal: WB #2007-01624  
At the PHC on April 7, 2008, the parties agreed that a hearing needed to be scheduled. A hearing is scheduled for June 10, 2008 – time TBD. Presiding Officer is Councilor Kimball.
- Docket No. 08-07 WtC – Joseph and Rose Marino Appeal: WB #2007-00926  
Pre-Hearing Conference was scheduled but due to a conflict will need to be rescheduled. Presiding Officer is Chairman Morse.
- Docket No. 08-09 WtC – John Goode, et al Appeal: WB #2007-00933  
Pre-Hearing Conference is scheduled for June 2, 2008 at 8:30 AM. Presiding Officer is Councilor Lydon.
- Docket No. 08-13 WtC – Jeffrey Costura Appeal: WB #2007-01416  
Pre-Hearing Conference is scheduled for June 2, 2008 at 10 AM. Presiding Officer is Councilor Lydon.
- Docket No. 08-16 WtC – Jumanna Stark Appeal: WB #2007-00473  
Pre-Hearing Conference is scheduled for June 2, 2008 at 11:30 AM. Presiding Officer is Councilor Lydon.

- Docket No. 06-11 WtC – Dennis Proulx : WB #2006-00769  
Proceedings are stayed. April 9, 2008 a letter was sent requesting status of appeal. A report has not been received by either party. A Pre-Hearing Conference will be scheduled. Presiding Officer is Chairman Morse.
- Docket No. 06-16 WtC – Shane Forest: WB #1999-01294  
Settlement discussions continue. Status inquiry letter was sent on April 9, 2008. Status report has not been received by either party but a withdrawal as counsel letter was received from Mr. Forest's attorney. A progress report request will be sent directly to Mr. Forest to be submitted by the next Council meeting.
- Docket No. 07-01 WtC – Robert & Betty Howland: WB #2006-01654  
Proceedings are stayed, negotiations continue. Status inquiry letter was sent on April 9, 2008. A status report was received by Attorney Doyle, which was attached to this status report. A Pre-Hearing Conference will be scheduled. Presiding Officer is Chairman Morse.
- Docket No. 07-07 WtC – Wendy McCarthy: WB #2006-02581  
Proceedings are stayed. Status inquiry letter was sent on April 9, 2008. A status report was received via e-mail by Mr. Schauer, a copy of the email was attached to this status report. A Pre-Hearing Conference will be scheduled. Presiding Officer is Chairman Morse.
- Docket No. 07-14 WtC – Courtney Galuzzo: WB #2007-00291  
DES issued the permit - Appellant should be withdrawing their appeal. Will notify the appellant that action will be taken at the next meeting if no response or withdrawal is received and the appeal will be denied.
- Docket No. 07-18 WtC – Tom McKay-Hi Spot Condominium: WB #2007-00321  
This appeal has been withdrawn.
- Docket No. 07-22 WtC – Claire Salois: WB #2006-03223  
Ms. Salois will withdraw the appeal. To date, a withdrawal has not been filed. A letter requesting status will be sent.
- Docket No. 07-23 WtC – Steve Bragg: WB #2006-01494  
Decision and Order on the Denial of the Motion to Expand has been issued. We are waiting the response time as requested by the appellant. The Decision on Reconsideration Request needs to be written which was prematurely filed.

Chairman Morse believes that the Pivero information received is actually a Reconsideration of an Administrative Order that should be handled by the Wetlands Bureau at this time. Amy will take it to the bureau for their response to that request.

### **3. Wetlands Bureau Update**

Collis Adams, Administrator, shared that there has been a 30% drop in the number of applications received over the last 6 months, primarily in Permits by Notification and Minimum Impact/Expedited Applications. The account is remaining stable though.

Still down 2 positions, one in the North country and one on the seacoast. Waivers have been submitted.

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The in-lieu fee program will be sending out Requests for Proposals to spend those monies. The Wetlands Council will have part in deciding how the monies are spent on proposals for restoration projects in watersheds. Merrimack River Watershed has close to one-half million dollars.

A trend is emerging regarding boardwalks and weeds on shoreline frontages. Rules address this but people are purchasing and wanting to develop marginal waterfront property.

Legislative Update:

HB 1471 – Public hearing discussed statutory time frame for applicants to provide a response to DES from 120 days to 60 days. The Senate changed it back to 120 days.

Rulemaking:

- 1) Vernal Pools rules have been adopted.
- 2) Continuing to look at dock rules and navigable frontage rules. The bureau desires to move something forward with something simple and straight forward.
- 3) Stream Crossing rules are making progress. It will require some legislative change next session.

SB 352 – Chairman Morse reported it was approved in the Senate and the House with amendments. Now waits for the Governor's signature. This will go into effect 60 days from which it is signed. It was decided to have presentation by Darlene Forst to explain this at the next meeting.

There will be a process to adopt interim rules, the first version was distributed to the Council at the beginning of the meeting. They will be good for 120 days then they will need to be finalized and approved by JLCAR.

SB 352 put shoreline protection under Wetlands Council purview and also changes our process from a non-evidentiary process to a normal evidentiary hearing. Testimony can now be taken towards issues and parties will now do their own discovery, develop their own case, and make their arguments based on that.

Gretchen Hamel, DES attorney, joins the meeting to speak to the rules. The draft rules distributed need to be in place by the July 1, 2008. These interim rules are to implement an amended statute and will need an impact statement. Definitions and responsibilities are amended and adjustments made to reflect changes in procedures. She then reviewed the rules as drafted. Chairman Morse will sign the transmittal memos and Gretchen will start the filings when the Governor signs the bill. Notice will be filed on June 6, 2008 and go before JLCAR on June 20<sup>th</sup>.

4. **Old Business** -
5. **Other Business** -
6. **Next Meeting** - June 10, 2008, with two hearings.
7. **Adjournment** -

***A motion was made by Councilor Lydon to adjourn, second by Councilor Kimball. Motion was voted unanimously.***

The meeting was adjourned at 12:15 P.M.