

WETLANDS COUNCIL

MINUTES

February 24, 2009

The Wetlands Council met on Tuesday, February 24, 2009 in room 112 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Lawrence E. Morse, Carol Henderson, Dennis Lydon, Seth Prescott, Dari Sassan, Russ St. Pierre and David Thompson

Absentees: Sharon Champagne, Paul Dionne, Chip Kimball, and Thomas Sloan

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

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

1. **Approval of Minutes of January 27, 2009 Council Meeting**

A motion was made by Councilor Henderson to accept the January 27, 2009 minutes with edits as noted, second by Councilor Thompson. Motion was passed unanimously.

2. **Status Report** -

Amy Samson, Council Clerk, reviewed the following:

*Upcoming Hearings: March 10, 2009 – Please see Docket Nos. 08-35 WtC and 08-13 WtC
March 24, 2009 – Please see Docket Nos. 08-32 WtC and 08-24 WtC*

I. New Appeals

Docket No.: 08-55 WtC

Appellant: Tracy Middleton Revocable Trust of 1992

Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087

Presiding Officer: Not Assigned

Status: Appeal received 10/13/08 insufficiently. On 1/5/09 a notice was sent for the appellant to file a sufficient appeal within 30 days. On 2/2/09, appellant filed a timely and sufficient appeal.

Action: Council to vote to accept or deny the appeal at the next Council meeting.

Docket No.: 09-06 WtC

Appellant: Ronald T. Sliwinski

Subject: 01/02/09 Administrative Order No. 09-001 WD

Presiding Officer: Not Assigned

Status: Insufficient appeal received on 2/2/09. You do not have a copy because only one copy was filed. A letter was sent to Mr. Sliwinski on 2/6/09. Mr. Sliwinski has 30 days to file a sufficient appeal.

Action: None at this time. This is an FYI for the Council.

Wetlands Council Meeting Minutes

February 24, 2009

Page 2

Docket No.: 09-07 WtC

Appellant: Lake Sunapee Protective Association (LSPA)

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Not Assigned

Status: Appeal received 2/6/09

Action: Council to vote to accept or deny the appeal at the next Council meeting.

Docket No.: 09-08 WtC

Appellant: Town of Newbury

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Not Assigned

Status: Appeal received 2/6/09

Action: Council to vote to accept or deny the appeal at the next Council meeting.

Docket No.: 09-09 WtC

Appellant: Christopher and Sally Norton

Subject: 01/09/09 Reconsideration Denial, Wetlands File No. 2008-01265

Presiding Officer: Not Assigned

Status: Appeal received 2/10/09.

Action: Council to vote to accept or deny the appeal at the next Council meeting.

III. Summarily Dismissed by the Council on January 27, 2009.

Docket No.: 07-01 WtC

Appellant: [Robert and Betty Howland](#)

Subject: 12/07/06 Decision on Reconsideration Denial, Wetlands File No. 2006-01654

Presiding Officer: Larry Morse

Action: Decision will be complete and ready for the Council to review and approve by the next meeting.

Docket No.: 07-14 WtC

Appellant: [Courtney Galluzzo](#)

Subject: 6/22/07 Decision on Reconsideration Denial

Presiding Officer: Larry Morse

Action: Decision will be complete and ready for the Council to review and approve by the next meeting.

Docket No.: 07-27 WtC

Appellant: [Robert Bourgeois](#)

Subject: 10/19/07 Decision on Reconsideration, Wetlands File No. 2007-00473

Presiding Officer: Larry Morse

Action: Decision will be complete and ready for the Council to review and approve by the next meeting.

Dari Sassan joins the meeting.

II. Cases awaiting Council action.

9:16 A.M. Council goes into Attorney/Client session.

9:37 A.M. Chairman Morse calls the meeting back to order.

Chairman Morse conflicted himself out of this case and Vice Chairman Lydon led the meeting.

Discussion was held as to the action taken by the Council.

Docket No.: 07-09 WtC
Appellant: [Derry Conservation Commission](#)
Subject: 04/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773
Presiding Officer: Seth Prescott
Status: Motion for Reconsideration filed 1/7/09.

Councilor Sassan moved to accept the Motion for Reconsideration to clarify the 3 points in the original reconsideration, second by Councilor Thompson. Motion passed by vote of 5 in ayes and 1 nay.

Attorney Hugh Lee, Council for the Town of Derry Conservation Commission, would support the Pre-Hearing Conference. It was agreed to hold a PHC on March 25, 2009 and if no settlement a Hearing on May 12, 2009.

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

Docket No.: 07-06 WtC
Appellant: [Patricia Woolson](#)
Subject: 02/13/07 Decision on Reconsideration Denial, Wetlands File No. 2006-02796
Presiding Officer: Larry Morse
Action: Decision will be complete and ready for the Council to review and approve by the next meeting.

Docket No.: 08-09 WtC
Appellant: [John Goode, et al.](#)
Subject: 1/15/08 Decision on Reconsideration, Wetlands File No. 2007-00933
Presiding Officer: Dennis Lydon
Status: Decision needs to be finalized.

Docket No.: 08-38 WtC
Appellant: [Pickman & Sons Development, LLC.](#)
Subject: 05/29/08 Reconsideration Denial, Wetlands File No. 2007-01160
Presiding Officer: Not Assigned
Action: Council's attorney had a question with regards to the first paragraph of the decision. Decision will be complete and ready for the Council to review and approve by the next meeting.

V. Hearings or PHCs scheduled.

Docket No.: 06-11 WtC
Appellant: [Dennis Proulx](#)
Subject: 07/13/06 Decision on Reconsideration Denial, Wetlands File No. 2006-00769
Presiding Officer: Larry Morse
Status: **Councilor Lydon will cover the hearing on April 14, 2009 as Chairman Morse will be unavailable.**

Docket No.: 07-30 WtC
Appellant: [Thomas and Kellie Greer](#)
Subject: 9/18/07 Decision on Reconsideration Denial Administrative Order WD 07-025, Wetlands File No. 2006-00460
Presiding Officer: Dennis Lydon
Status: **PHC scheduled for 3/18/09 (9 a.m.-11 a.m.).**

Docket No.: 08-03 WtC
Appellant: [David Johnson – Johngis Realty LLC](#)
Subject: 12/04/07 Decision on Reconsideration, Wetlands File No. 2006-00700
Presiding Officer: Dennis Lydon
Status: **A hearing was scheduled for today at 1:00 p.m. The parties are negotiating a settlement agreement & asked for it to be postponed.**

Docket No.: 08-04 WtC
Appellant: [Porter Trust](#)
Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705
Presiding Officer: Chip Kimball
Status: **PHC scheduled for 3/25/09 (9 a.m.-11 a.m.).**

Docket No.: 08-13 WtC
Appellant: [Jeffrey Costura](#)
Subject: 1/25/08 Decision on Reconsideration, Wetlands File No. 2007-01416
Presiding Officer: Dennis Lydon
Status: PHC was held on 12/1/08 at 11:00 a.m. The parties need to work out details with Fish & Game, but have requested a hearing (unless settlement is reached before). **A hearing is scheduled for 3/10/09 at 1:00 p.m.**

Docket No.: 08-16 WtC
Appellant: [Jumanna Stark](#)
Subject: 10/19/07 Decision on Reconsideration, Wetlands File No. 2007-00473
Presiding Officer: Dennis Lydon
Status: **A hearing is scheduled for today at 10:00 a.m.**

Docket No.: 08-24 WtC
Appellant: [127 Water Street Realty, Inc.](#)
Subject: 04/25/08 Reconsideration Denial, Wetlands File No. 2007-01794
Presiding Officer: Chip Kimball
Status: **A hearing is scheduled for 3/24/09. Time TBA.**

Docket No.: 08-32 WtC
Appellant: [William J. Wilson](#)

Wetlands Council Meeting Minutes

February 24, 2009

Page 5

Subject: 06/20/08 Wetlands & Non-Site Specific Permit No. 2007-02744 – Approval Condition #1

Presiding Officer: David Thompson

Status: **A hearing is scheduled for 3/24/09. Time TBA.**

Docket No. 08-35 WtC (formerly Docket No. 08-19 WC)

Appellant: Frank Faticanti

Subject: Waiver Application Pursuant to RSA 483-B

Presiding Officer: Chip Kimball

Status: **A hearing is scheduled for 3/10/09 at 1:00 p.m.**

Docket No.: 08-52 WtC

Appellant: Michael and Karen Miles

Subject: 8/8/06 Decision on Reconsideration Denial, Wetlands File No. 2008-00037

Presiding Officer: David Thompson

Status: A request for status was sent on 12/26/08. Atty. Pollack responded. The parties drafted and reviewed settlement documents, which will be executed in connection with a Wetlands permit from DES. Atty. Pollack requests that the appeal remain pending so that final settlement can be effectuated. **PHC scheduled for 3/25/09 (9 a.m.-11 a.m.).**

Docket No.: 08-53 WtC

Appellant: Vintage Trust c/o Enthusiasts, Inc.

Subject: 8/7/08 Decision on Reconsideration Denial, Wetlands File No. 2006-01506

Presiding Officer: Dennis Lydon

Status: **A hearing is scheduled for 5/12/09. Time TBA.**

Docket No.: 08-56 WtC

Appellant: Robert Davis

Subject: 10/7/08 Decision on Reconsideration Denial, Wetlands File No. 2008-00265

Presiding Officer: Chip Kimball

Status: **PHC scheduled for 2/25/09 (9 a.m.-11 a.m.)**

Docket No.: 08-58 WtC

Appellant: Mark & Kristen Begor

Subject: 10/7/08 Decision on Reconsideration Denial, Wetlands File No. 2008-00271

Presiding Officer: David Thompson

Status: **PHC scheduled for 2/25/09 (9 a.m.-11 a.m.). (If Dave is not available, Chip will be the presiding officer.)**

Docket No.: 08-60 WtC

Appellant: Peter J. Kirk

Subject: 9/30/08 Application Denial, Wetlands File No. 2008-00752

Presiding Officer: Chip Kimball

Status: **PHC scheduled for 2/25/09 (9 a.m.-11 a.m.)**

VI. No action required; previously pending cases.

Docket No.: 06-16 WtC

Appellant: [Shane Forest](#)

Subject: 10/3/06 Decision on Reconsideration Denial (AO WD 06-035)
Wetlands File No. 1999-01294

Wetlands Council Meeting Minutes

February 24, 2009

Page 6

Presiding Officer: Larry Morse

Status: An appeal from the Water Council has been transferred which is also relating to the same administrative order. A notice was sent to inform Mr. Forest informing him that the Water Council appeal has been transferred to the Wetlands Council; however the notice was returned. I will verify the address and resend. We will postpone to the March 10 Wetlands Council meeting, which the Council can decide whether or not to combine the appeals and move forward with scheduling a pre-hearing conference.

Docket No.: 07-23 WtC

Appellant: [Steve Bragg](#)

Subject: 08/09/07 Decision on Reconsideration Denial, Wetlands File No. 2006-01494

Presiding Officer: Chip Kimball

Status: On 12/29/08, Atty. Mulholland responded with a cc to me asking Paul Goodwin, if this was withdrawn. On 12/29/08, Paul responded saying this was settled on 8/26/08, but the permit has not been written. He will not forgo by withdrawing without having the permit in hand. As Collis Adams and Paul Goodwin were both present, they agreed that a hearing will be scheduled if there is no agreement by March 10, 2009.

Docket No.: 08-01 WtC

Appellant: [Town of Newington Conservation Commission](#)

Subject: 12/03/07 Declining to terminate the processing of Alteration of Terrain permit application for property within the boundaries of the Pease Development Authority. Wetlands File No. 2007-0829-01

Presiding Officer: Larry Morse

Status: On January 16, 2009, Atty. Callen filed an Assented-to Motion to Continue the Pre-hearing conference, which was scheduled for January 21, 2009. Chairman Morse granted the motion. A request was made in the motion to reschedule a pre-hearing conference sometime during the week of March 23, 2009. The parties recently held settlement discussions, and with additional time, a settlement may be possible prior to the rescheduled pre-hearing conference date.

Docket No.: 08-07 WtC

Appellant: [Joseph and Rose Marino](#)

Subject: 01/09/08 Decision on Reconsideration, Wetlands File No. 2007-00926

Presiding Officer: Larry Morse

Status: On January 20, 2009, Atty. Smith filed an Assented-to Motion to Continue the Pre-Hearing Conference, which was scheduled for January 28, 2009. Chairman Morse granted the motion. A request was made in the motion to reschedule a pre-hearing conference sometime after April 28, 2009. The appellants currently reside in Florida and each of them is currently receiving medical treatment there. Given the weather conditions, it would be too difficult for them to travel to NH to assist in preparation for proceedings in this matter. It is likely that this matter can be resolved within the next 90 days.

Docket No. 08-34 WtC (formerly Docket No. 08-15 WC)

Appellant: Ronald E. Gocht

Subject: 01/25/08 Application Denial, Wetlands File No. 2007-02750

Presiding Officer: Larry Morse

Wetlands Council Meeting Minutes

February 24, 2009

Page 7

Status: On January 12, 2009, the appellant filed a Motion to Continue, which Mr. Adams assented to. There are several open issues with the Town of Swanzey, which should be resolved before the appellant has a pre-hearing conference. A request was made in the motion for a 120 day postponement. Chairman Morse granted the motion. A pre-hearing conference was scheduled for May 20, 2009.

3. **Wetlands Update**

Collis Adams, Wetlands Bureau Administrator, gave an update on current legislation being followed:

HB 498 - will increase the Wetlands Council membership. Department has remained neutral. Will go to Executive Session on March 5th at 10:30 A.M.

HB 681 - will increase the size of the projects that can contribute to the Aquatic Resource Mitigation Fund from 1 to 3 acres. The Department supports but with an amendment to include all projects.

HB 384 - the Hearing is next Tuesday at 1:15 P.M. It will create an urban exemption for prime wetlands, which the Department supports. The bill also proposes allowing forestry activities within prime wetlands, the Department has no formal position yet.

It was agreed to go ahead and conclude the business meeting before going into the hearing by all parties involved.

HB 222 - the indirect impacts bill will probably not go anywhere. Need to let the Land Commission do its work first. The Department opposes it.

SB 65 - also has the provision to increase the size of the projects that can contribute to the Aquatic Resources Mitigation Fund from 1 – 3 acres. It also includes provisions for stream restoration to be included in the mitigation program. DES supports.

SB 134 - provides clarification to the Shoreline Protection Act. DES supports with some amendments.

SB 139 - places a moratorium on the Comprehensive Shoreline Protection Act for a year. DES opposes this.

The Stimulus Package will be arriving soon and the projects will be permitted quickly.

4. **Other Business**

None

5. **Old Business**

None

6. **Next Meeting -**

March 10, 2009

7. **Adjournment -**

Councilor Thompson made a motion to adjourn, second by Councilor Prescott. Motion was passed unanimously.

Meeting adjourned at 10:07 AM.