

WETLANDS COUNCIL

MINUTES

August 11, 2009

The Wetlands Council met on Tuesday, August 11, 2009 in room 112 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Lawrence E. Morse, Carol Henderson, Chip Kimball, Russ St. Pierre, Thomas Sloan, and David Thompson

Absentees: Sharon Champagne, Paul Dionne, Dennis Lydon, Seth Prescott, and Dari Sassan

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

The meeting was called to order by Chairman Morse at 9:04 with a quorum present.

1. **Approval of Minutes of June 23, 2009 Council Meeting**

- ***A motion was made by Councilor Kimball to accept the June 23, 2009 minutes, second by Councilor Henderson. Motion passed unanimously.***

2. **Status Report** -

Amy Samson, Council Clerk, reviewed the following:

I. New Appeals

No new appeals at this time.

II. Action Required.

Docket No.: 08-09 WtC - John Goode, et al.

Subject: 1/15/08 Decision on Reconsideration, Wetlands File No. 2007-00933

Presiding Officer: Dennis Lydon

Status: Decision was issued on June 16, 2009 to grant the appeal. The matter was remanded to the Bureau for further proceedings consistent with the requirements of the Order.

Action: Motion for Reconsideration was filed by Mr. Goodwin on 7/16/09. Grant or deny Motion for Reconsideration. Chairman Morse did not participate in the adjudication of this appeal but for a quorum did not recuse himself but will abstain from voting for that purpose.

- ***Motion made by Councilor Kimball to table this appeal at this time to be brought up later in today's meeting, second by Councilor Henderson. Motion passed unanimously.***

Docket No.: 08-52 WtC - Michael and Karen Miles

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

Presiding Officer: David Thompson

Status: PHC will need to be scheduled in September.

Chairman Morse is conflicted on both 09-21 WtC and 09-22 WtC below.
Pre-Hearing Officer, Chip Kimball, accepted the motions on both appeals below.

Docket No.: 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD
Presiding Officer: Chip Kimball
Status: Appeal was received on 5/13/09. Council accepted the appeal on 6/23/09. PHC is scheduled for 9/30/09 at 9:00 a.m.

Action: Motion to Intervene filed by David Eisler and Susan Eisler. Grant or deny Motion to Intervene. Also, Motion to Intervene filed by Lori Fitzsimmons. Grant or deny Motion to Intervene.

Docket No.: 09-22 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD
Presiding Officer: Chip Kimball
Status: Appeal was received on 5/13/09. Council accepted the appeal on 6/23/09. PHC is scheduled for 9/30/09 at 9:00 a.m.

Action: Motion to Intervene filed by David Eisler and Susan Eisler. Grant or deny Motion to Intervene. Also, Motion to Intervene filed by Lori Fitzsimmons. Grant or deny Motion to Intervene.

Action Required items continued until later in meeting.

3. ARM Fund Report

Lori Sommer, Wetlands Bureau Mitigation Coordinator, provided an update of the Aquatic Resources Mitigation(ARM) Fund and provided recommendations from the site selection committee. The Merrimack River Watershed account had \$650,000 available for wetlands restoration and preservation parcels. 8 applications were received for the funds. Ruth Ladd, Army Corp of Engineers, and Mark Kern, USEPA participated in this process as this was the first release of funds. All parcels were visited, scored on a point score system, and then were ranked after evaluation. Per statute, the Wetlands Council's role is to approve dispersals of the fund. There is also a Memorandum of Understanding between DES and the Corp. The four projects recommended are:

- | | | |
|----|--|------------|
| 1) | Stewart Property, Frankestown, 55 acres | \$ 45,500 |
| 2) | Clay Pond Headwaters Protection Project, Hooksett, 733 acres | \$ 216,000 |
| 3) | Concord Regional Solid Waste/Resource Recover Center, Canterbury, 294 acres | \$ 300,000 |
| 4) | Nesenkeag Brook Headwaters Project, Londonderry, a study | \$ 20,000 |

Upon the Wetland's Council review and the Corp's review it will go to the Governor and Council.

Ruth Ladd then spoke to the experience of working through this with NH DES.

- ***Councilor Thompson made a motion to accept the four Merrimack River Watershed site selections with comments as noted, second by Councilor Henderson. Motion passed unanimously.***

Status of Appeals, continued...

II. Action Required

Docket No.: 08-09 WtC - John Goode, et al.

Subject: 1/15/08 Decision on Reconsideration, Wetlands File No. 2007-00933
Presiding Officer: Dennis Lydon

- ***Councilor Kimball made a motion to remove the appeal off the table, second by Councilor Thompson. Motion passed unanimously.***

Discussion ensued and it was decided to consult with council attorney, Anthony Blenkinsop.

- ***Councilor Kimball made a motion to table the appeal until the August 25, 2009, meeting and seek advise of counsel, second by Councilor Henderson. Motion passed unanimously with Chairman Morse abstaining.***

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

Docket No.: 07-01 WtC - 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.: 07-06 WtC - Patricia Woolson

Subject: 2/13/07 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.: 07-14 WtC - 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 - 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.

Docket No.: 08-16 WtC - Jumanna Stark

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

Presiding Officer: Dennis Lydon

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

Docket No.: 08-32 WtC - William J. Wilson

Subject: 6/20/08 Wetlands & Non-Site Specific Permit No. 2007-02744 – Approval Condition #1

Presiding Officer: David Thompson

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

Docket No.: 08-37 WtC - Kenneth Ivester

Subject: 4/29/09 Application Denial, Wetlands File No. 2007-02731

Presiding Officer: Chip Kimball

Status: Council denied Motion for Reconsideration on 5/12/09. Decision needs to be drafted.

Docket No.: 08-58 WtC - Mark & Kristen Begor

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

Presiding Officer: David Thompson

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

Docket No.: 09-17 WtC - Joseph and Suzanne Labrecque

Subject: 3/17/09 Request for Reconsideration, Wetlands File No. 2008-02086

Presiding Officer: Not Assigned.

Status: Council denied the appeal on 6/9/09. A decision needs to be written.

IV. Hearings or PHCs scheduled.

Docket No.: 06-11 WtC - Dennis Proulx

Subject: 07/13/06 Decision on Reconsideration Denial, Wetlands File No. 2006-00769

Presiding Officer: Larry Morse

Status: PHC scheduled for 9/16/09 at 1:00 p.m.

Docket No.: 06-16 WtC - Shane Forest

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

Presiding Officer: Larry Morse

Status: A notice was sent to Mr. Forest on 5/11/09 after receiving verification of address. The notice is to inform him that the Water Council appeal has been transferred to the Wetlands Council. The Council will address the appeal from the Water Council and the Wetlands Council. PHC scheduled for 10/21/09 at 9:00 a.m.

Docket No.: 07-09 WtC - Derry Conservation Commission

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott

Status: PHC scheduled for 8/17/09 at 2:30 p.m.

Docket No.: 07-23 WtC - Steve Bragg

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

Presiding Officer: Chip Kimball

Status: A hearing is scheduled for 8/25/09 at 10:00 a.m.

Docket No.: 07-30 WtC - Thomas and Kellie Greer

Subject: 9/18/07 Decision on Reconsideration Denial AO WD 07-025, Wetlands File No. 2006-00460

Presiding Officer: Dennis Lydon

Status: PHC was held on 4/22/09. A hearing is scheduled for 9/22/09 at 10:00 a.m.

Docket No.: 08-01 WtC - 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: PHC scheduled for 9/16/09 at 9:00 a.m.

Docket No.: 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball

Status: PHC held on 5/27/09 at 9:00 a.m. The parties are negotiating settlement. A 120 day stay was granted by the presiding officer. Another PHC is scheduled for 9/23/09 at 9:00 a.m.

Docket No.: 08-07 WtC - Joseph and Rose Marino

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

Presiding Officer: Larry Morse

Status: PHC will be scheduled for 9/16/09 at 9:00 a.m. (Subsequently it was found to have been withdrawn on June 16, 2009.)

Docket No.: 08-13 WtC - Jeffrey Costura

Subject: 1/25/08 Decision on Reconsideration, Wetlands File No. 2007-01416

Presiding Officer: Dennis Lydon

Status: PHC will be scheduled in September.

Docket No.: 08-34 WtC (formerly Docket No. 08-15 WC) - Ronald E. Gocht

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

Presiding Officer: Larry Morse

Status: PHC scheduled for 9/16/09 at 1:00 p.m.

Docket No.: 08-55 WtC - Tracy Middleton Revocable Trust of 1992

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

Presiding Officer: David Thompson

Status: PHC scheduled for 8/26/09 at 9:00 a.m.

Docket No.: 08-60 WtC - Peter J. Kirk

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

Presiding Officer: Chip Kimball

Status: PHC scheduled for 9/23/09 at 1:00 p.m.

Docket No.: 09-09 WtC - Christopher and Sally Norton

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

Presiding Officer: Larry Morse

Status: PHC scheduled for 9/16/09 at 1:00 p.m.

Docket No.: 09-13 WtC - Dillon Investments, LLC

Subject: Administrative Order No. 09-004

Presiding Officer: Dave Thompson

Status: Appeal was received insufficiently on 3/25/09. A sufficient appeal was filed on 4/27/09. Council accepted the appeal on 6/9/09. PHC scheduled for 8/26/09 at 9:00 a.m.

Docket No.: 09-16 WtC - Terry Cronin and Christine Ojendyk

Subject: 3/18/09 Request for Reconsideration, Wetlands File No. 2007-01769 (Roy Garber is the permittee)

Presiding Officer: Chip Kimball

Status: Appeal was received on 4/17/09. Council accepted the appeal on 6/9/09. PHC scheduled for 9/23/09 at 1:00 p.m.

Docket No.: 09-20 WtC - Dana Belletete

Subject: 3/26/09 Request for Reconsideration Denial, Wetlands File No. 2009-00366

Presiding Officer: Dennis Lydon

Status: Appeal was received on 4/23/09. Council accepted the appeal on 6/9/09. PHC will be scheduled in September.

V. No action required; previously pending cases.

Docket No.: 08-03 WtC - 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 2/24/09. The parties requested a continuance, which was granted. The parties are negotiating settlement.

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

Subject: Waiver Application Pursuant to RSA 483-B

Presiding Officer: Chip Kimball

Status: Mr. Faticanti received his permit, but there was an error on the property address and the date. Once DES corrects it, he will withdraw his appeal.

Docket No.: 08-53 WtC - 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 was scheduled for today, but the parties have requested a continuance, which was granted. The parties are negotiating settlement.

Docket No.: 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse

Status: PHC was scheduled for 5/20/09. The parties are negotiating settlement. Request for status was sent to the parties. Status reports are due by 8/25/09.

Docket No.: 09-07 WtC - 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: Larry Morse

Status: PHC was held on 6/17/09. Stay appeal until issuance of Wetlands permit then reconvene PHC.

Docket No.: 09-08 WtC - 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: Larry Morse

Status: PHC was held on 6/17/09. Stay appeal until issuance of Wetlands permit then reconvene PHC.

Docket No.: 9-25 WtC - Town of Hooksett

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Status: Appeal was received on 6/4/09. Council requested the Appeals Clerk to send a notice to the appellant notifying them of an insufficient filing. The Town of Hooksett must file a sufficient appeal by the next Council meeting.

4. **Old Business** - None

5. **Next Meeting** – Next meeting will be August 25, 2009

6. **Adjournment**

- ***Councilor Thompson made a motion to adjourn, second by Councilor Sloan. Motion passed unanimously.***

DRAFT