

## WETLANDS COUNCIL

### MINUTES

September 22, 2009

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The Wetlands Council met on Tuesday, September 22, 2009 in room 112 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Lawrence E. Morse, Larry Ballin, Carol Henderson, Chip Kimball, Seth Prescott, Dari Sassan, Russ St. Pierre, and Thomas Sloan, and

**Absentees:** Sharon Champagne, Paul Dionne, Dennis Lydon, and David Thompson

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

At 9 A.M. the council went into executive session with Counsel.

The regular Wetlands Council meeting was called to order by Chairman Morse at 9:45 with a quorum present.

1. **Approval of Minutes of August 25, 2009 Council Meeting**

- ***A motion was made by Councilor Kimball to accept the August 25, 2009 minutes, second by Councilor Henderson. Motion passed unanimously.***

3. **Wetlands Bureau Report**

Collis Adams, Wetlands Bureau Administrator, reported that the Stream Crossing stakeholders had met again on September 18<sup>th</sup> to have a consensus on the rules that will now go to public hearing. There will be 5 public hearings held around the state at the end of October and into November. Stream Crossing Training will be held tomorrow, September 23<sup>rd</sup>.

Also working on Shoreland Permit By Notification Rules with a stakeholders work group. Prime Wetland Rules are also being worked on to address timber harvesting.

Staffing: down one Wetlands inland reviewer, one inland dock reviewer, and down 3 support staff.

There isn't a significant drop in the larger applications, but smaller applications are down 25%. The number of days to complete reviews will climb some with fewer staff. 31 stimulus projects have been submitted which require quick turn-arounds.

Legislative session has begun but there are no LSRs yet. There will probably be between 4 to 6 pieces of legislation relative to wetlands.

Mary Ann Tilton reported there are 900 active compliant cases and they are working on integration of Alteration of Terrain and Wetlands for permit compliance inspections. An EPA compliance grant was received to create a statewide stream crossing database. There will be another Land Resources Management Training in Lancaster on October 21, 2009.

2. **Status Report** -

Amy Samson, Council Clerk, reviewed the following:

**II. Action Required.**

**Docket No.: 09-21 WtC and 09-22 WtC – John Penaskovic**

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD and  
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  
was scheduled for 9/30/09 at 9:00 a.m. but it has been agreed to ask for a  
continuance until another date. Presiding Officer Kimball rescheduled it to  
October 28, 2009 at 9 am.

At 10 A.M. meeting was adjourned for the scheduled hearing.

At 10:30 A.M. meeting was called back to order by Chairman Morse.

All councilor members previously identified are still present.

2. **Status Report – continued**

**I. New Appeals**

**Docket No. 09-25 WtC – Hooksett Land Development**

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. A sufficient appeal has now been filed

- ***Councilor Kimball made a motion to accept the appeal, second by Councilor Sloan.  
Motion passed unanimously.***

Chairman Morse will be the Presiding Officer.

**Docket No. 09-30 WtC – Philips Exeter Academy**

Presiding Officer: Not Assigned  
Status: Appeal received insufficiently on 7/27/09. On 9/14/09, appellant filed sufficient appeal, which  
was distributed today. Council to vote to Accept or Deny the Notice of Appeal at its 10/13 meeting.

**Docket No. 09-31 WtC – Donald Prudhomme**

Presiding Officer: Not Assigned  
Status: Appeal received 9/8/09, insufficient.

**Docket No. 09-32 WtC – Patricia Prudhomme**

Presiding Officer: Not Assigned  
Status: Appeal received 9/8/09, insufficient.

**Docket No. 09-33 WtC – Norman and Patricia Bureau**

Presiding Officer: Not Assigned  
Status: Accept or Deny the Notice of Appeal.

- ***Councilor Henderson made a motion to accept the appeal, second by Councilor Ballin. Motion passed unanimously.***

Chairman Morse will be the Presiding Officer.

## **II. Action Required.**

Chairman Morse recused himself from the following appeal.

### **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 on 7/16/09. Grant or deny Motion for Reconsideration.

- ***Councilor Kimball made a motion to deny the Motion for Reconsideration, second by Councilor Sloan. Motion passed unanimously.***

Chairman Morse again is chair.

### **Docket No.: 08-04 WtC - Porter Trust**

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

Presiding Officer: Chip Kimball

Status: Attorney Britain indicated that Porter Trust and Landing Boat Club have reached a tentative settlement, which is contingent upon LBC obtaining permission from DES to extend its docking system. He understands from Kevin Devine that LBC has had some conversation with Collis Adams about an application. A PHC will be scheduled for December 30th.

## **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 10/13.

### **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: Please see attached draft decision.

- ***Councilor Kimball made a motion to accept the Decision as written, second by Councilor Sassan. Motion passed unanimously.***

### **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 10/13.

### **Docket No.: 07-23 WtC - Steve Bragg**

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

Presiding Officer: Chip Kimball

The parties are working this out. This has been tabled.

**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 10/13.

**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 10/13.

**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 10/13.

**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 10/13.

**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.: 06-16 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: PHC scheduled for 10/21/09 at 9:00 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: A hearing was scheduled for today at 10:00 a.m. This has been continued until October 13<sup>th</sup>.

**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 is scheduled for 10/28/09 at 12:00 p.m.

**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 is scheduled for 10/21/09 at 1:00 p.m.

**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 is scheduled for 10/28/09 at 2:30 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 will be scheduled for 10/28/09 at 2:30 p.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 is scheduled for 10/28/09 at 9:00 a.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 is scheduled for 10/21/09 at 1:00 p.m.

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

Subject: Administrative Order No. 09-004

Presiding Officer: Dave Thompson

Status: PHC is scheduled for 10/28/09 at 2:30 p.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: PHC is scheduled for 10/28/09 at 9:00 a.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: PHC is scheduled for 10/28/09 at 12:00 p.m.

**V. No action required; previously pending cases.**

**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: A PHC was held on 9/16. A hearing is currently scheduled with the court in May 2010. An Assented-To Motion to Stay is expected to be filed by the Appellant.

**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: A PHC was held on 8/17. The parties noted that a written decision regarding the Motion for Reconsideration, which was filed on 1/7/09 was not issued. A decision is being finalized and will be issued soon.

**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: A PHC was held on 9/16. Attorney Whitley informed the parties at the PHC that Newington Conservation Commission filed a petition with the Superior Court. Attorney Whitley stated that he will be filing a Motion to Stay, which is expected to be filed with the Council no later than 9/30/09. Any responses or other Motion s related to this appeal shall be filed no later than 10/15/09. The deadline for filing any and all written objections will be 10/26/09. It is expected that the parties be present to discuss the filing at the 11/10 Council meeting.

**Docket No.: 08-03 WtC - David Johnson – Johnqis 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. A request for status was sent and expect to have status reports by 10/27/09.

**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.

4. **Old Business** - None

5. **Next Meeting** – Next meeting will be October 13, 2009

6. **Adjournment**

➤ ***Councilor Kimball made a motion to adjourn, second by Councilor Sloan.  
Motion passed unanimously.***

Meeting adjourned.