

WETLANDS COUNCIL

MINUTES

October 13, 2009

The Wetlands Council met on Tuesday, October 13, 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, Dennis Lydon, Seth Prescott, Dari Sassan, Russ St. Pierre, and Thomas Sloan, and David Thompson

Absentees: Sharon Champagne, Paul Dionne

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

At 9 A.M. the council went into a non-meeting with Counsel.

The regular Wetlands Council meeting was called to order by Chairman Morse at 9:30 with a quorum present.

1. **Approval of Minutes of September 22, 2009 Council Meeting**

- ***A motion was made by Councilor Henderson to accept the September 22, 2009 minutes as amended, second by Councilor Henderson. Motion passed unanimously.***

2. **Status of Appeals**

Amy Samson, Council Clerk, reviewed the following:

I. New Appeals

Chairman Morse recused himself from this appeal. Vice Chairman Lydon presides.

Docket No. 09-30 WtC – Philips Exeter Academy

Subject: 6/26/09 Decision on Reconsideration for Proposed Parking Area at Main Street School in Exeter. Wetlands Bureau Dredge and Fill Permit #2008-00233

Status: Appeal received insufficiently on 7/27/09. On 9/14/09, appellant filed sufficient appeal, which you received on 9/22/09.

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

Councilor Lydon will preside as Hearings Officer. A Pre-Hearing Conference (PHC) will be scheduled before Thanksgiving.

Chairman Morse resumes the chair.

Docket No. 09-31 WtC – Donald Prudhomme

Presiding Officer: Not Assigned
Status: Appeal received insufficiently on 9/8/09.

Docket No. 09-32 WtC – Patricia Prudhomme

Presiding Officer: Not Assigned
Status: Appeal received insufficiently on 9/8/09.

II. 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 10/27.

Councilor Prescott leads the following:

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 has been finalized and is attached.

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

Dari Sassan arrives.

Chairman Morse resumes chair.

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. Motion for Reconsideration was filed on 7/16/09. On 9/22/09, Council denied the Motion for Reconsideration. A decision and order will need to be finalized.

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 10/27.

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 10/27.

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 is 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 10/27.

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. Decision will be complete and ready for the Council to review and approve by 10/27.

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 11/18/09 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 is scheduled for today at 10:00 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: A PHC is to be scheduled for 12/30/09.

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 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 will be scheduled for 10/21/09 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 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 will be 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 will be 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 will be scheduled for 11/25/09 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 will be 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 will be scheduled for 11/25/09 at 12:00 p.m.

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. PHC scheduled for 10/28/09 at 9:00 a.m.

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. PHC scheduled for 10/28/09 at 9:00 a.m.

Docket No.: 9-25 WtC – Hooksett Land Development

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016
Presiding Officer: Dave Thompson
Status: Appeal accepted on 9/22/09. PHC to be scheduled for 11/18/09 at 9:00 a.m.

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

Subject: 11/4/08 Administrative Order No. 08-044 WD - Alteration of Terrain at 5 Christopher Road & 6 Steep St., in Merrimack
Presiding Officer: Larry Morse
Status: Appeal accepted on 9/22/09. PHC to be scheduled for 11/18/09 at 9:00 a.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.: 07-23 WtC - Steve Bragg

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

October 13, 2009

Presiding Officer: Chip Kimball

Status: At the Hearing on 8/25, Atty. Mulholland announced that a hearing will not be held due to the fact that the parties negotiated a settlement.

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.

- ***Chairman Morse, as Presiding Officer, made a decision to table all motions and objections until the November meeting.***

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. A request for status will be sent.

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. A request for status will be sent.

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: Appeal has been withdrawn.

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: The parties are negotiating settlement. A request for status will be sent.

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.

3. Wetlands Bureau Report

Collis Adams, Wetlands Bureau Administrator

Staffing: Down one technical reviewer, down one Wetlands inland reviewer, and down 3 support staff. The workload is down, for example in the last 5 years an average of 215 -220 applications in September. At this time there have only been 160 application in September, down approximately 25%.

Legislative Service Requests (LSRs) have been submitted. Subjects covered property rights, dock design, definition of certified wetland scientist, citations and cease & desist orders, and authority of CSPA.

4. Other Business - None

5. Old Business - None

6. Next Meeting – Next meeting will be November 10, 2009

7. Adjournment

- ***Councilor Lydon made a motion to adjourn, second by Councilor Ballin. Motion passed unanimously.***

Meeting adjourned at 10:05.