

WETLANDS COUNCIL

MINUTES

February 9, 2010

The Wetlands Council met on Tuesday, February 9, 2010 in room 112, 113, & 114 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, Russ St. Pierre, Dari Sassan, Thomas Sloan, and David Thompson

Absentees: Sharon Champagne and Paul Dionne

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

1. Council went into closed session for a meeting with Council attorney at 9:05.

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

2. Election of Officers

Chairman Morse has chosen not to run for Council Chair but will remain on the council.

- ***Councilor Sloan nominated Councilor Kimball as chair, second by Councilor Henderson. Motion passed unanimously.***
- ***Councilor Lydon made a motion to nominate Councilor Morse as Interim Vice Chair, second by Councilor Sloan. Motion passed unanimously.***

10:00 Deliberation on Motions –

Docket No. 08-01 Town of Newington Conservation Commission

Chairman Morse moved into the Deliberations on 08-01 Town of Newington Conservation Commission Appeal.

- 1) The Town of Newington requested that Larry Morse, Pre-Hearing Officer, recuse himself from the proceedings. Upon review, Councilor Morse removed himself from the proceedings so there is not an appearance of conflict. Chairman Kimball will now be the Pre-Hearing Officer.
- 2) Chairman Kimball assumed the chair.
 - a) Motion to Dismiss filed by the Pease Development Authority, 11/24/09. Discussion was held as to whether the Council has authority to rule in this case.
 - ***Councilor Lydon made a motion to dismiss the case based on the fact that we do not have any authority to hear this appeal because there is no DES decision to be appealed, second by Councilor Henderson. Motion passed unanimously.***

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A written determination will be made.

Return to regular Wetlands Council meeting.

4. Status of Appeals

Amy Sampson, Appeals Clerk, reviewed the following:

I. New Appeals

Councilor Ballin recused himself from the 09-07, 09-08, and 09-38

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

Recused: Carol Henderson

Status: The Water Council held a PHC relative to the Alteration of Terrain Permit (which is also being appealed). The Water Council has scheduled a hearing for 10/13/10. It is preferred that a hearing in this matter be scheduled for 10/12/10, which will be easier for all parties as far as scheduling witnesses, etc. PHC scheduled for 4/21/10 at 9:00 a.m.

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: The Water Council held a PHC relative to the Alteration of Terrain Permit (which is also being appealed). The Water Council has scheduled a hearing for 10/13/10. It is preferred that a hearing in this matter be scheduled for 10/12/10, which will be easier for all parties as far as scheduling witnesses, etc. PHC scheduled for 4/21/10 at 9:00 a.m.

Docket No.: 09-35 WtC - Town of Newbury

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Not Assigned

Status: The Water Council held a PHC relative to the Alteration of Terrain Permit (which is also being appealed). The Water Council has scheduled a hearing for 10/13/10. It is preferred that a hearing in this matter be scheduled for 10/12/10, which will be easier for all parties as far as scheduling witnesses, etc. PHC scheduled for 4/21/10 at 9:00 a.m.

Chairman Kimball moved back to the agenda to review the minutes.

3. Approval of minutes of December 8, 2009 Council Meeting

- *Councilor Thompson made a motion to approve the December 8, 2009 minutes as corrected, second by Councilor Ballin. Motion passed unanimously.*
- *Councilor Thompson made a motion to approve the minutes of October 13, 2009, second by Councilor Ballin. Motion passed unanimously.*

4. Status of Appeals - Coninued

Amy Sampson, Appeals Clerk, reviewed the following:

I. New Appeals

Docket No. 09-31 WtC - Donald Prudhomme

February 9, 2010

Presiding Officer: Larry Ballin

Status: Appeal received on 9/8/09 insufficiently [did not receive correct number of copies]. Correct number of copies have been received.

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

Docket No. 09-32 WtC – Patricia Prudhomme

Presiding Officer: Larry Ballin

Status: Appeal received insufficiently. Correct number of copies has been received.

Action: Accept or Deny the Appeal.

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

Councilor Lydon made the announcement that he has been asked to resign the Wetlands Council by his company. He will continue on the Council until AGC finds a replacement. He does not have any active cases at this time.

Councilor Thompson announced that his term ended in December and he will continue until a replacement is made.

Discussion was held as to the vacancies on the Council. Department of Safety, both Moorings and Marine, and Municipal Conservation Commission representatives have not been attending and the Marine Contractors and the Audubon/NH Society for the Protection of Forests have not nominated a new representative since 2008. Chairman Kimball will look into this.

Docket No. 09-36 WtC – Brendan and Dana Keegan

Subject: Administrative Order No. 09-22 WD dated April 6, 2009 (**Please note: The Appellant filed an appeal on 5/11/09. The document was not filed with my office. The document was addressed correctly, but did not make it to me. A member of the Wetlands Bureau questioned it because he received a copy. The original appeal was clearly addressed appropriately so I contacted the Appellant and they've filed another copy, which was sent in your package before the last Council meeting.)

Presiding Officer: Dave Thompson

Action: Accept or Deny the Appeal

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

Docket No. 09-44 WtC – Thomas and Joan DiPace

Subject: 10/13/09 Administrative Order No. 09-082 WD

Presiding Officer: Chairman Kimball

Status: The appeal was received on 11/9/09. The correct number of copies was not received at the time it was received. Copies have been received and are enclosed with this status report.

Action: Accept or Deny the Appeal.

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

Docket No. 10-01 WtC – Julie and Earle Jenkins

Chairman Kimball recused himself from this appeal. Councilor Ballin assumed the chair.

Subject: 12/10/09 Decision on Reconsideration

Presiding Officer: Not Assigned

Status: Please see attached additional information, which was not originally included in your package.
Action: Accept or Deny the Appeal

- ***Councilor St. Pierre made a motion to accept the appeal, second by Councilor Thompson. Discussion ensued. Councilors St. Pierre and Thompson retracted the motion.***
- ***Councilor St. Pierre moved to not accept the application because it does not contain a clear and concise statement of the relief sought specifying every ground on which it is claimed that the decision or order is unlawful or unreasonable, second by Councilor Lydon. Motion passed unanimously.***

Chairman Kimball again presides.

Docket No. 10-02 WtC – Grappones Appeal

Subject: 12/21/09 Ellakona Realty, LLC's Shoreline Impact Permit No. 2009-02802
Presiding Officer: Not Assigned
Action: Accept or Deny the Appeal at the next meeting.

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 is complete. Please see attached.

- ***Councilor Thompson made a motion to accept the Decision with the correction, second by Councilor Ballin. Motion passed unanimously.***

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
Action: Decision is complete. The decision will need to be forwarded to the Council's attorney for final approval. The decision will need to be reviewed and approved at the 3/9/10 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
Action: Decision is complete. Please see attached.

- ***Councilor Henderson made a motion to confirm the Decision, second by Councilor St. Pierre. Motion passed unanimously.***

Docket No.: 08-37 WtC - Kenneth Ivester

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

Presiding Officer: Chip Kimball

Action: Decision is complete. Please see attached.

- ***Councilor Sloan made a motion to accept the Decision on Motion for Reconsideration, second by Councilor Sassan. Motion passed unanimously.***

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

Action: Decision is complete. Once approved, the decision will need to be reviewed and approved at the 3/9/10 meeting.

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

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

Presiding Officer: Larry Morse

Action: Decision is complete. Once approved, the decision will need to be reviewed and approved at the 3/9/10 meeting.

III. 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 3/17/10 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 3/29/10 at 2:30 p.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 scheduled for 3/24/10 at 9:00 a.m.

Docket No.: 08-13 WtC - Jeffrey Costura

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

Presiding Officer: Dennis Lydon

Status: Send request for a status report.

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: An Assented-to Motion to Continue the hearing was granted. The parties are negotiating settlement. Send request for a status report.

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 3/17/10 at 9:00 a.m.

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

Subject: Administrative Order No. 09-004
Presiding Officer: Dave Thompson
Status: Send request for a status report..

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 set for 3/24/10 at 1 PM.

Docket No.: 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD
Presiding Officer: Chip Kimball
Status: A PHC is scheduled for 3/17/10 at 2:30 p.m. A hearing is scheduled for 4/13/10 at 10:00 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: A PHC is scheduled for 3/17/10 at 2:30 p.m. A hearing is scheduled for 4/13/10 at 10:00 a.m.

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

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016
Presiding Officer: Larry Morse
Status: PHC scheduled for 3/17/10 needs to be rescheduled as appellant unavailable.

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: PHC scheduled for 3/17/10 at 1:00 p.m.

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
Presiding Officer: Dennis Lydon
Status: PHC scheduled for 3/24/10 at 1 p.m.

IV. 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: Assented-To Motion to Stay was granted at the last Council 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: The parties are negotiating settlement. Will send status request.

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 and we have not received a withdrawal letter. Will send status request.

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. Will send status request.

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 to be scheduled.

Docket No.: 09-37 WtC – Ossipee Bluffs Association

Subject: 10/22/09 Decision on Reconsideration, Wetlands File No. 2009-02822

Presiding Officer: Morse

Status: Council accepted the appeal on 12/8/09. PHC scheduled for 4/21/10 at 2:00 p.m.

V. Misc.

3/31/09 Request for Declaratory Ruling filed by Mr. Goodwin

Mr. Goodwin sent an e-mail to the clerk on 12/8/09 requesting status. A response needs to be sent.

A five minute break was taken by the council.

Councilor Ballin leaves at 11:15 a.m.

5. Wetlands Bureau Report

Mary Ann Tilton, Wetlands Bureau

Rulemaking:

On January 20th DES filed the Stream Crossing Rules which may be heard before JLCAR on February 19th or March 5th. The PT Rules Coordinator has taken another position. The Bureau is looking into a creating a full-time position funded through all the Land Resources Programs.

There is an effort to re-write all the dock rules, which is a priority from the commissioner. There is also an over-all rule re-write that the legal unit will be working on.

Legislation:

1) A bill has been proposed to create a dock designer certification process, this has been ITLd.

2) HB 681 is to increase the administrative fee from the in-lieu fee fund payments to cover Lori's position.

3) The Department is in support of the expansion of the definition of a Certified Wetlands Scientist bill for evaluating wetlands and developing mitigation plans which ought to pass.

4) A bill to create a shoreland advisory council ought to pass. It will be comprised of 2 members from each county plus state staff.

Staffing:

A new part-time secretary, Erin Huot, has been hired.

Budget:

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Wetlands is somewhat stable but operating in the red. Shoreland is still picking up in terms of their funding.

6. **2009 ARM Fund Annual Report**
Lori Sommer, Mitigation Coordinator

An electronic version of the Annual report had been sent earlier for the Council's review. There were 14 projects that provided payment into the fund totaling approximately \$820,000. It included a summary of each watershed accounts. There were 4 awards that the Merrimack River Watershed issued and approved for \$650,000.

Significant changes achieved by SB 65 last year are:

- 1) Eliminate a threshold for the size of projects that are eligible to pay in. Now any project of any size can go to a payment option.
- 2) Provides authority to DES to assess a stream mitigation payment. This will go into a stream mitigation fund but rules need to be worked on that outlines the program.

A couple of weeks ago Bear Paw Regional Greenways were selected for one of the 4 projects to protect a parcel in Hooksett. They had a celebration which included a recognition of Steve Couture as Conservationist of the Year for Bear Paws. Steve currently is serving in Iraq but was there via webcam.

She is working with Londonderry and Canterbury to finalize.

2010 looks to be even busier with 7 watersheds that are going to be advertised with Requests for Proposals. The Site Selection Committee is working on a schedule to look at the applications, field visits and then a final meeting. The Council may possibly be voting on 2 of these in June. Councilor Sloan will continue to participate.

7. **Other Business** – None

8. **Old Business** - USA Springs Supreme Court decision was noted.

9. **Next Meeting** – Next meeting will be March 9, 2010

10. **Adjournment**

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

Meeting adjourned at 11:50 a.m.