

WETLANDS COUNCIL

MINUTES

April 13, 2010

The Wetlands Council met on Tuesday, April 13, 2010 in room 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Larry Ballin, Carol Henderson, Dennis Lydon, Lawrence Morse, 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.

Council met with council attorney in closed session at 9 a.m.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 9:37 with introductions and a quorum present.

1. Approval of Minutes

- ***Motion made by Councilor Thompspon to approve the February 9, 2010 minutes with the corrections noted, second by Councilor Sloan. Motion passed unanimously, with Councilor Ballin abstaining.***
- ***Motion made by Councilor Thompspon to approve the March 9, 2010 minutes with correction noted, second by Councilor Sloan. Motion passed unanimously.***

3. Wetlands Bureau Report

Collis Adams and Mary Ann Tilton, Wetlands Bureau and Gretchen Hamel, DES Legal Unit began with the following discussion:

4. Other Business:

c. Stream Crossing Rules -

Collis reviewed what has been done the last 3 years - meetings with different groups, convened a stakeholders group, a set of rules formulated, revisions and still addressing issues raised. Support has been received from Dept. of Transportation, Dept. of Resource & Economic Development, Dept. of Agriculture, NH Timber Owners Assoc., Corp of Engineers, Assoc. of Public Works Directors, NH Assoc. of Natural Resource Scientists, and Fish and Game.

Gretchen shared that it will next be heard April 30th or the May regular meeting.

The rules had been emailed to the council last week. The final Objection Response version will include annotated copies of the rules showing all of the changes that are proposed. A letter will be included that explains what was changed, what wasn't changed, the reasons, and the annotated rules with changes from the final proposal that was filed in January. It will be posted on the website along with

the date of the JLCAR hearing. The Council's approval is not needed to file the Objection Response. The Council is only required to review and send a comment letter to the commissioner.

Councilor Ballin reported the NH Municipal Association(NHMA) is writing a letter to the Commissioner with a formal request that the proposed rules be withdrawn. He made available copies of the memo from NHMA. Concerns were 1) unfunded mandates for cities & towns 2) failed to offer clear process and set of criteria for obtaining approval for using alternative stream crossing designs.

Councilor Prescott reported DRED appreciates what has been done. Trails and Forestry Bureaus are both happy.

Councilor Morse reported the NH Association of Natural Resource Scientists is in agreement with the rules as presented.

Councilor Thompson reported the County Conservation Districts were generally in favor.

Councilor Lydon reported no comments from the Non-marine Construction Industry.

Councilor Sloan asked again for the impetus for the work being proposed. Collis said there are really 3 reasons for the stream crossing rules: 1) public safety 2) environment, aquatic organism passage 3) regulatory consistency with the federal agencies. Next steps will be education and outreach. Councilor Sloan volunteered to help with any training for agricultural practitioners.

Councilor Sassan has not met with OEP planners or director. He will try to get a letter of support from his director.

Councilor Henderson reported Fish and Game is in support. and has committed to writing a letter of support to DES.

Councilor St. Pierre reported the Dept. of Transportation is satisfied that the concerns have been addressed and will be supporting the rules with a letter of support.

Chairman Kimball reported the Timberland Owners strongly supports this set of rules as they apply to forestry. And the rules were satisfactory to the Farm Bureau.

Gretchen addressed the standard for granting approval of an alternative is whether complying with the rule is not practical.

Councilor Morse thanked all the council members and DES for the effort put into this.

Gretchen noted there is no need legally for the council to take any vote at all or assert any kind of position officially on the record for purposed of rulemaking.

- ***Councilor Sloan proposed a motion to thank the commissioner and his staff at DES for allowing the council to comment and review the Stream Crossing Rules. The council's main purpose in this process has been to ensure that the public interests associated with these proposed rules have been properly addressed. Through the recent review process that has occurred, we feel that goal has been achieved. Second by Councilor Morse. Motion passed unanimously.***

3. Wetlands Bureau Update - continued:

Collis then continued the Wetlands Bureau Update:

- 1) Now will move to Timber Harvesting and Prime Wetlands Rules.
- 2) Staffing – fee revenues are down a third, the account has a \$20,000 deficit. They have shifted 2 employees from the Wetlands Bureau to the Drinking Water Ground Water Bureau, which is a temporary move.
- 3) Legislation – he shared where certain bills that are still being heard were in the process.

4. Other Business

- b. Chairman Kimball spoke to the SB 480 hearing. The subcommittee agrees the support is needed but there are those who would like the appeals be allowed to go to Superior Court. An amendment has been added to address this. Chairman Kimball had attended a Waste Council meeting and reported that Air and Waste Councils are against this change.

Council took a recess at 11 a.m. Council resumed the meeting at 11:10 a.m.

Other Business continued:

- a. Council Membership – Chairman Kimball has spoken with the Dept. of Safety, if a quorum is needed or if there is a case with a navigation issue they will attend. He also spoke with the NH Association of Conservation Commission chair and they are working to get a new representative.

2. Status of Appeals

Amy Sampson, Appeals Clerk, reviewed the following:

I. New Appeals

Docket No. 10-07 WtC – Pomeroy Limited Partnership

Subject: 3/3/10 Application denial, Wetlands File No. 2009-02747

Presiding Officer: Not Assigned

Status: Appeal received on March 25, 2010. Council to vote whether or not to accept the appeal at its next Council meeting.

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

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 and Order is complete and attached for Council's approval.

- ***Councilor Lydon made a motion to accept the Decision and Order on the Motion for Reconsideration, second by Councilor Morse. Motion passed unanimously.***

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 be forwarded to the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 5/11/10 meeting.

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. The decision will be forwarded to the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 5/11/10 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. The decision will be forwarded to the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 5/11/10 meeting.

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

Subject: 12/10/09 Decision on Reconsideration

Presiding Officer: Larry Ballin

Recused: Chip Kimball

Status: Council did not accept the appeal at the 2/9/10 meeting. A written decision needs to be finalized.

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 was held on 3/17/10. A hearing is scheduled for 6/8/10 at 10:00 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 5/3/10 at 2:30 p.m.

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

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse

Status: On 2/19/10, Atty. Callen filed a Motion to Amend to Intervene to Add Named Party. Motion to Amend to Intervene to Add Named Party granted by PHC Officer Morse. PHC to be 5/19/10 at 9 a.m. On March 12, 2010 a settlement agreement was reported to be worked out.

- ***Councilor Morse made a motion to confirm an intervention by Kathleen Keenan, second by Councilor Lydon. Motion passed unanimously.***

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 scheduled for 4/28/10 at 2:30 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: A third PHC is scheduled for 4/20/10 at 9 a.m. A hearing is scheduled for 5/11/10 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 third PHC is scheduled for 4/20/10 at 9 a.m. A hearing is scheduled for 5/11/10 at 10:00 a.m.

Docket No. 09-25 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 5/19/10 at 2:00 p.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: PHC scheduled for 4/21/10 at 2:00 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 4/28/10 at 2:30 p.m.

Docket No. 09-31 WtC – Donald Prudhomme

Subject: 8/7/09 Application Denial, Wetlands File No. 2009-01412

Presiding Officer: Larry Ballin

Status: Council accepted the appeal on 2/9/10. A PHC is scheduled for 5/26/10 at 3 p.m.

Docket No. 09-32 WtC – Patricia Prudhomme

Subject: 8/7/09 Application Denial, Wetlands File No. 2009-01412

Presiding Officer: Larry Ballin

Status: Council accepted the appeal on 2/9/10. A PHC is scheduled for 5/26/10 at 3 p.m.

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

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: David Thompson

Status: Council accepted the appeal on 2/9/10. A PHC is scheduled for 5/26/10 at 1 p.m.

Docket No. 09-37 WtC – Ossipee Bluffs Association

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

Presiding Officer: Larry Morse

Status: PHC scheduled for 5/19/10 at 12:00 p.m.

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

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

Presiding Officer: Chip Kimball

Status: Council accepted the appeal on 2/9/10. A PHC is scheduled for 5/26/10 at 11 a.m.

Docket No. 10-02 WtC – Grappones Appeal

Subject: 12/21/09 Ellakona Realty, LLC's Shoreline Impact Permit No. 2009-02802

Presiding Officer: David Thompson

PHC scheduled for 5/26/10 at 1 p.m.

Docket No. 10-03 WtC – Richard and Donna Mills Appeal

Subject: 1/5/10 Decision on Reconsideration, Wetlands File No. 2009-01534
Presiding Officer: Dennis Lydon
PHC scheduled for 5/26/10 at 9 a.m.

Docket No. 10-04 WtC – Thomas J. Murray Appeal

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187
Presiding Officer: Larry Morse
PHC scheduled for 6/16/10 at 9 a.m.

Docket No. 10-05 WtC – William and Sue Conaty Appeal

Subject: 1/5/10 Reconsideration Denial, Wetlands File No. 2009-00233
Presiding Officer: Chip Kimball
PHC scheduled for 5/26/10 at 11 a.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: Appeal has been stayed.

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: Kimball
Recused: Larry Morse
Status: On 11/24/09, a Motion to Dismiss or, in the Alternative, to Deny the Appeal was filed by Atty. Turner. On 11/25/09, an Assented-To Motion to Enlarge Time Allowed to Respond to Motion to Dismiss was filed by Atty. Callen. On 12/3/09, an Objection to PDA's Motion to Dismiss was filed by Atty. Callen. The Council granted the Motion to Dismiss. A decision and order has been finalized and sent to the Council's attorney, Anne Edwards.

Docket No. 08-03 WtC - David Johnson – Jhngis Realty LLC

Subject: 12/04/07 Decision on Reconsideration, Wetlands File No. 2006-00700
Presiding Officer: Dennis Lydon
Status: The parties are negotiating settlement.

Docket No. 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705
Presiding Officer: Chip Kimball
Status: The parties are negotiating settlement.

Docket No. 08-13 WtC - Jeffrey Costura

Subject: 1/25/08 Decision on Reconsideration, Wetlands File No. 2007-01416
Presiding Officer: Dennis Lydon
Status: 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 sent a copy of his permit as a way to inform me that he's "all set". I will send a request for a formal withdrawal.

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 continuing to negotiate settlement.

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: The parties are continuing to negotiate settlement.

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: Larry Ballin & 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 5/19/10 at 2 p.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

Recused: Larry Ballin & 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 5/19/10 at 2:00 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 was held on 3/17/10 at 9:00 a.m. A 90-days continuance was granted by the presiding officer while the parties negotiate settlement.

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

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

Presiding Officer: Larry Morse

Recused: Larry Ballin and 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. On 2/4/10, Lake Sunapee Protective Association filed a Petition to Intervene and Petition to Appeal. Because here is standing, petition granted by PHC Officer Morse at March meeting. PHC scheduled for 5/19/10 at 2:00 p.m.

- ***Councilor Morse moved that the Council grant the intervention of Lake Sunapee Protective Association, second by Councilor Lydon. Motion passed unanimously, with 2 abstentions.***

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. Councilor Morse will write this.

5. **Old Business** - None.

6. **Next Meeting** – Next meeting will be May 11, 2010 with a hearing.

7. **Adjournment**

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

Meeting adjourned at 11:45 A.M.