

WETLANDS COUNCIL

MINUTES

August 10, 2010

The Wetlands Council met on Tuesday, August 10, 2010 in rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Larry Ballin, Ryan Crosbie, Carol Henderson, Russ St. Pierre, Dari Sassan, Thomas Sloan, and David Thompson

Absentees: Sharon Champagne, Paul Dionne, Lawrence Morse, and Seth Prescott,

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

The regular Wetlands Council meeting was called to order by Chairman Kimball at 8:07 with introductions and a quorum present.

1. Approval of Minutes

- ***Motion made by Councilor St. Pierre to approve the June 8, 2010 minutes, second by Councilor Ballin. Motion passed unanimously.***

3. Wetlands Bureau Report

Mary Ann Tilton

A full-day regulator training is being held tomorrow on the Stream Crossing Rules and technical aspects of how these are being applied and interpreted. An outreach advisory group may be formed to develop a plan for a list and scheduling of where to target training. Also updating will be worked on the BMP manuals and guide books. Council members interested in outreach are Tom Sloan, Larry Morse, and Chip Kimball.

When the budget is finalized the positions in the bureau will be determined. Other grants have been applied for.

Discussion was held as to reason for the drop in the number of appeals.

2. Status of Appeals

Amy Sampson, Appeals Clerk, reviewed the following:

I. New Appeals

Docket No. 10-11 WtC – Thomas and Margaret Ettinger

Subject: 5/7/10 Shoreland Impact Permit No. 2009-02747

Presiding Officer: Chip Kimball

Status: Council needs to vote to accept or dismiss. On June 18, 2010, an appearance and a Motion to Summarily Dismiss Appeal was filed by Attorney Smith. On June 25, 2010, Attorney Malia filed an Objection to Pomeroy's Motion to Summarily Dismiss Appeal. On August 9, 2010, Attorney Smith

submitted copies of a recorded deed by which Pomeroy Limited Partnership has gifted land to the Nature Conservancy. Much discussion was held.

- ***Councilor Henderson moved to accept the appeal based on the fact that they were an abutter at the time of the application and to deny the motion to summarily dismiss, second by Councilor Ballin. Discussion was held. Motion passed with 7 yes votes and 1 no vote.***

Chairman Kimball noted the Governor did sign SB480.

Docket No. 10-12 WtC – Provençal One Family Trust

Subject: 6/4/10 Administrative Order No. 10-013 WD

Presiding Officer: Chip Kimball

Status: Council needs to vote to accept or dismiss.

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

Docket No. 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: Not Assigned

Status: Council needs to vote to accept or dismiss at the September 14, 2010 Council meeting.

Docket No. 10-15 WtC – Steven and Mary Pruchansky

Subject: 6/10/10 Decision on Reconsideration, Wetlands File No. 2009-023600

Presiding Officer: Not Assigned

Status: Council needs to vote to accept or dismiss at the September 14, 2010 Council meeting.

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

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: Council granted the Assented-To Motion to Dismiss. A decision and order needs to be finalized.

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: A decision and order is finalized. Once reviewed by Council's attorney a copy will be forwarded to all Council members for approval.

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: A hearing was held on 6/8/10. A decision and order needs to be finalized.

III. Hearings or PHCs scheduled.

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 needs to be rescheduled

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 was scheduled for 7/28/10 at 9 a.m., but a request was filed by Atty Devine to reschedule. A PHC has been rescheduled for 8/13/10 at 9 a.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: PHC was held on 7/21/10. A hearing is scheduled for 11/9/10 at 10 a.m.

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: PHC was held on 6/16/10 at 2:00 p.m. A 2nd PHC is scheduled for 9/15/10 at 10 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
Recused: Larry Ballin, Carol Henderson
Status: PHC was held on 6/16/10 at 2:00 p.m. A 2nd PHC is scheduled for 9/15/10 at 10 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: Chip Kimball
Recused: Larry Morse
Status: PHC was held on 6/23/10 at 9 a.m. A hearing is scheduled for 9/14/10 at 10 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: A was scheduled for 8/10/10 at 9:00 a.m. An Assented-To Motion to Continue was filed by Atty. Licata. The hearing has been rescheduled for 12/14/10 at 10 a.m.

Docket No. 09-31 WtC – Donald Prudhomme

Subject: 8/7/09 Application Denial, Wetlands File No. 2009-01412
Presiding Officer: Larry Ballin
Status: PHC was held on 7/20/10 at 3:00 p.m. A hearing is scheduled for 9/28/10 at 10 a.m.

Docket No. 09-32 WtC – Patricia Prudhomme

Subject: 8/7/09 Application Denial, Wetlands File No. 2009-01412
Presiding Officer: Larry Ballin
Status: PHC was held on 7/20/10 at 3:00 p.m. A hearing is scheduled for 9/28/10 at 10 a.m.

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, Carol Henderson
Status: PHC was held on 6/16/10 at 2:00 p.m. A 2nd PHC is scheduled for 9/15/10 at 10 a.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: PHC is scheduled for 8/25/10 at 9:00 a.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: Chip Kimball
Status: PHC is scheduled for 8/25/10 at 12:00 p.m.

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

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187
Presiding Officer: Chip Kimball
Status: PHC is scheduled for 8/25/10 at 9:00 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
Status: PHC was held on 6/23/10 at 11:00 a.m. A hearing is scheduled for 8/10/10 today at 11:00 a.m.

Docket No. 10-08 WtC – Robert Reich

Subject: 4/19/10 Decision on Reconsideration, Wetlands File No. 2009-02050
Presiding Officer: Chip Kimball
Status: Council accepted the appeal on 7/13/10. A PHC is scheduled for 9/22/10 at 9:00 a.m.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253
Presiding Officer: Chip Kimball
Status: Council accepted the appeal on 7/13/10. The Council needs to vote on the Petition to Intervene and the Motion to Dismiss.

- ***Councilor Sloan made a motion accept the Motion to Intervene filed by the Ossipee Bluffs Association, second by Councilor Ballin. Motion passed unanimously.***
- ***Councilor St. Pierre made a motion to deny the Motion to Dismiss the Appeal, second by Councilor Ballin. Discussion was held. Motion passed unanimously.***

IV. Previously pending cases.

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: Appeal withdrawn on 7/13/10.

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 continue to negotiate settlement. A status request was sent requesting a response by the 9/14/10 Council meeting.

Docket No.: 08-16 WtC – Jumana Stark

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

Presiding Officer: Dennis Lydon

Request for Reconsideration filed

- ***Councilor Sassan made a motion to deny the Request for Reconsideration, second by Councilor Balling. Discussion was held. Motion passed with 7 yes votes and 1 no vote.***

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 a status update will be sent for the parties to respond by the next Council meeting.

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 continue to negotiate settlement. A status request was sent requesting a response by the 9/14/10 Council meeting.

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: The parties continue to negotiate settlement. A status request was sent requesting a response by the 9/14/10 Council meeting.

Docket No.: 09-20 WtC - Dana Belletete

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

Presiding Officer: ~~Dennis Lydon~~ Chip Kimball

Status: The parties continue to negotiate settlement. A status request was sent requesting a response by the 9/14/10 Council meeting.

Docket No.: 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of 7/1/10 is complete.

Docket No.: 09-22 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of 7/1/10 is complete.

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: At PHC on 6/24/10, parties requested the proceedings to be stayed for 60-days pending settlement discussions. If discussions are not fruitful, the parties will request a new PHC to be scheduled. [60 days will be up at end of August]. A status request was sent requesting a response by the 9/14/10 Council meeting.

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.

5. Old Business:

6. New Business - Councilor Ballin will not be in attendance at the 9/14/10 meeting. Chairman Kimball will not be in attendance at the hearing on 9/28/10.

7. Next Meeting – Next meeting will be September 14, 2010.

8. Adjournment

Meeting adjourned at 10:05 a.m.