

WETLANDS COUNCIL

MINUTES

September 14, 2010

The Wetlands Council met on Tuesday, September 14, 2010 in rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Ryan Crosbie, Lawrence Morse, Russ St. Pierre, Seth Prescott, Dari Sassan, Thomas Sloan, and David Thompson

Absentees: Larry Ballin, Sharon Champagne, Paul Dionne, and Carol Henderson

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 9:00 with introductions and a quorum present.

1. Approval of Minutes

- ***Motion made by Councilor Thompson to approve the August 10, 2010 minutes as drafted, second by Councilor Sloan. Motion passed unanimously with Councilor Morse abstaining.***

3. Wetlands Bureau Report

Rene Pelletier, Assistant Director Water Division

Everyone is working on the 2012-13 budget. Wetland's funding is provided half by fees and half by general fund. All fee funded accounts are down in all land resource programs. An additional 5% needs to be cut from the current 2011 budget. Healthcare has gone up 11% per year. So in the last three years there has been a total of 30% increase in health costs. With 484 employees in DES the cost is quite substantial.

There is an average of 65 days on the wetlands review and 20 days on the shoreland reviews. There are 5 of 14 fee funded positions open. 4 of 11 general fund positions are open. So down a total of 9 people in Wetlands. An EPA grant was not received this year so there are 3 people who were funded by federal funds that they are working on funding. They are working on grant writing and working with EPA.

It is time for LSRs for legislation. They have met with the commissioner and some legislators to begin the process of what is important. They are also working on re-writing the 400 rules, the dock rules to make them simpler and streamlined.

2. Status of Appeals

The hearing scheduled for today 09-25 Hooksett Land Development was Continued, see below.

Chairman Kimball has spoken with the attorney general's office in regards to SB480 and assigning a hearings officer. It has been determined that when the hearing officer is assigned, he

will start with the cases that come in as of that day and not take over the previous appeals. The current appeals will be re-distributed.

Amy Sampson, Appeals Clerk, reviewed the following:

I. Action Item

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

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

Presiding Officer: Chip Kimball

Status: Per Chairman Kimball, discussion on this appeal was delayed until the end of the status report.

II. New Appeals

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

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

Presiding Officer: Larry Ballin

Status: Council needs to vote to accept or dismiss.

- ***Councilor Sloan made a motion to accept this appeal, second by Councilor Thompson. Motion passed unanimously with Councilor Morse abstaining.***

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

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

Presiding Officer: Dave Thompson

Status: Council needs to vote to accept or dismiss and Council just received this today.

- ***Councilor St. Pierre made a motion to accept this appeal, second by Councilor Morse. Motion passed unanimously.***

Docket No. 10-17 WtC – Sunset Ranch Camp, Inc.

Subject: Decision on Shoreland Permit Application, Wetlands File No. 2010-00690

Presiding Officer: Not Assigned.

Status: Council needs to vote to accept or dismiss at the October 12, 2010 Council Meeting.

Docket No. 10-18 WtC – MRAC LLC and Merchants Plaza, LLC

Subject: Application of NH Dept. of Transportation, Wetlands File No. 2010-00224

Presiding Officer: Not Assigned.

Status: Council needs to vote to accept or dismiss at the October 12, 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: Please see attached.

- ***Councilor Sassan made a motion to adopt the decision, second by Councilor Thompson. Motion passed unanimously with Councilor Morse abstaining.***

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: Please see attached.

- ***Councilor Thompson made a motion to adopt the decision, second by Councilor Sloan. Motion passed unanimously with Councilor Morse abstaining.***

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 was held on 8/10/10. 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 will be scheduled.

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 was held on 8/13/10. A hearing is scheduled for 1/11/11 at 10:00 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.

09-07 and 09-08 have been officially combined into one case so will be listed as one in the future as they both deal with the shoreline permit.

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 9:00 a.m. A hearing was scheduled for 9/14/10 at 10:00 a.m. On 8/27/10, an Assented-To Stipulated Motion to Continue was filed, which was granted by Chairman Kimball. A hearing is scheduled for 11/23/10 at 10:00 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: A hearing is scheduled 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: 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: 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 10/27/10 at 12:00 p.m. On 8/23/10, a Motion to Intervene for Frederick Gallant, the abutter to the property was filed by Attorney Bianco. On 8/27/10, an Objection to Motion to Intervene was filed by Attorney Pollack. Grant or Deny Motion to Intervene. Discussion was held.

Councilor St. Pierre leaves the meeting at 10 AM.

- ***Councilor Morse made a motion to grant the Motion to Intervene based on the fact that the Intervener is a direct abutter to the property. And that in the intervener's argument for the Motion to Intervene that they have sufficiently demonstrated to the Council's satisfaction that the activities that have occurred on the abutting property have an impact to their property. Second by Councilor Thompson. Motion passed unanimously.***

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 10/27/10 at 10:30 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: Chip Kimball

Status: A PHC was held on 8/25/10. A 2nd PHC is scheduled for 10/27/10 at 9:00 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: A PHC is scheduled for 10/27/10 at 12:00 p.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: A PHC is scheduled for 10/27/10 at 1:30 p.m.

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

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

Presiding Officer: Chip Kimball

Status: Council accepted on 8/10/10. A PHC is scheduled for 10/27/10 at 10:30 a.m.

IV. Previously pending cases.

Docket No.: 08-13 WtC - Jeffrey Costura

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

Presiding Officer: Dennis Lydon

Status: Mr. Costura needs to discuss with his wetlands scientist and will respond by the next Council meeting.

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: Ryan Crosbie

Status: The parties are still negotiating a settlement. Another PHC to be scheduled.

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 still negotiating a settlement. Possibly schedule another PHC.

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 are still negotiating a settlement. Councilor Morse stated that this has been settled so a withdrawal has been requested.

Docket No.: 09-20 WtC - Dana Belletete

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

Presiding Officer: Chip Kimball

Status: The parties are still negotiating a settlement. If they do not respond, schedule another PHC.

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. No status request to be sent.

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. No status request to be sent.

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: A status request was sent requesting a response by the 10/14/10 Council meeting.

10:13 Council took a break.

10:24 Council meeting resumes.

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

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

Presiding Officer: Chip Kimball

- ***Councilor Sloan made a motion to review and reconsider the decision made at the August, 2010 meeting, second by Councilor Thompson. Motion passed unanimously.***

Much discussion held.

- ***Councilor Morse made a motion to grant the Motion to Summarily Dismiss based as the appellant is not an abutter based on the definition found in 483-B:4(I), and the appellant did not require notice. The appellant failed to demonstrate that the activity approved by the permit will impact their property and does not have an adverse impact with respect to any activities subject to activities under the Council's jurisdiction, 483-B alleged increase use of driveway. Second by Councilor Sloan. Motion passed unanimously with an abstention by Councilor Prescott.***

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 -

Chairman Kimball has received a request from the Governor's office to continue on the Wetlands Council for another 3 years.

Councilor Morse announced he will not be seeking re-appointment and a new representative is being sought.

Councilor Morse reported on what has been happening at the Water Quality Standards Advisory Committee.

7. **Next Meeting** – Next meeting will be a hearing on September 28, 2010. The next full meeting will be on October 12, 2010.

8. **Adjournment**

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

Meeting adjourned at 11:24 a.m.

