

WETLANDS COUNCIL

MINUTES

December 14, 2010

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

Attendees: Chairman Chip Kimball, Larry Ballin, Sharon Champagne, Ryan Crosbie, Lawrence Morse, Russ St. Pierre, Seth Prescott, and David Thompson

Absentees: Paul Dionne, Carol Henderson, Dari Sassan, and Thomas Sloan

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 8:00 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Motion made by Councilor Thompson to approve the November 9, 2010 minutes with correction, second by Councilor St. Pierre. Motion passed unanimously.***

2. ARM Fund

Lori Sommer, Wetlands Bureau

Lori handed out the following recommendations:

1. **Pemigewasset Watershed.** This watershed had an amount of \$140,000 available. There were 2 applications received. Lori answered questions regarding each application. It was recommended to fund Strolling Woods Project, Franklin for \$113,500.

- ***Councilor Morse made a motion to approve the recommended expenditures of the Water Resource Mitigation Fund for the Pemigewasset River Watershed to fund the project in Franklin as described in the report, second by Councilor Ballin. Motion passed unanimously.***

2. **Salmon Falls/Piscataquog.** This watershed had \$1,596,000 available that came from 9 projects. There were 11 applications received.

It is recommended to fully fund 5 projects:

1. Sprucewood Forest - Durham, for \$500,000
2. Evans Mountain - Strafford, for \$367,750
3. Exeter River Water Quality Improvements & Buffer Preservation – Brentwood, for \$78,468
4. Carl Siemon Family Charitable Trust Jones Brook Property Conservation Easement Project – Milton, \$29,300
5. River Road Marsh Restoration, New Castle Tidal Restoration, for \$27,993

Partially fund 3 projects:

1. Berry Brook Watershed Restoration - Dover, for \$400,000
2. Upper Oyster River Channel & Fish Passage Restoration Project – Barrington, for \$100,000

3. Odiorne State Park Beach & Coastal Salt Pond Marsh Restoration – Rye, for \$43,000

Lori will add a notation to clarify in the approval that it is to be only in the Salmon Falls Watershed.

- ***Councilor Crosbie made a motion to accept the recommendations of the committee, second by Councilor Morse with the understanding that a statement will be included regarding the separation of the watershed funds to the Evans Mtn. Motion passed unanimously. Motion was then amended subject to receipt of the Army Corp approval, amendment passed unanimously.***

Lori will have the Annual Report ready for the January 11, 2011 meeting.

4. Wetlands Bureau Update

Collis Adams, Administrator

Application numbers, budget numbers, and staff numbers are all down but the bureau is holding steady. Personnel has been shifted so that accounts are operating marginally in the black. Wetland applications are being turned around in about 45 days. Shoreland permits are being turned around in 15 days. An EPA wetlands plan is being finalized which is a step towards securing long-range funds.

The timber harvest prime wetlands rulemaking effort is being worked on. A rough draft is being prepared by the stakeholder group. The goal is to get them to JLCAR and to the public in mid to late February.

With 170 new legislators there is a lot of education going on and a large learning curve. There are a lot of LSRs being introduced with no bill language.

2. Status of Appeals

Chairman Kimball reviewed the following:

- 1) Request for Re-Hearing on the 08-01 Town of Newington
- 2) Request for Reconsideration on 10-11 Ettinger Appeal
- 3) Request from 09-30 Philips Exeter, Chairman Kimball will now be the hearing officer.
- 4) DiPace Appeal, regarding abutters/interveners; will get comments from Atty. Blenkinsop
- 5) 10-20 Pinato Appeal to be accepted or denied.
- 6) Sunset Ranch Appeal

- ***Councilor Thompson made a motion to close the council meeting, second by Councilor Champagne. Motion passed unanimously at 8:45 a.m.***
- ***Councilor Ballin made a motion to reopen the council meeting at 8:47 a.m.***

Discussion was held as to a possible meeting on January 18th to go through reconsiderations and other matters. Exeter will be addressed on January 11th if possible.

- ***Councilor Morse made a motion to adjourn the meeting at 8:51, second by Councilor Thompson. Motion passed unanimously.***

Meeting was reconvened after the hearing later in the day.

Councilors present: Morse, Kimball, Prescott, Thompson, Crosbie, Champagne and St. Peierre. Councilor Ballin was not present for the afternoon session.

3. Status of Appeals

Amy Sampson, Appeals Clerk

I. New Appeals

Docket No. 10-24 WtC – Sunset Ranch Camp, Inc.

Subject: Decision on Shoreland Permit Application, Wetlands File No. 2010-00764

Presiding Officer: Not Assigned.

Status: Appeal was received on November 1, 2010 via USPS Express Mail (appellant shipped on October 28, 2010). Grant or deny appeal.

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

Docket No. 10-23 WtC – Charles and Patricia Sem

Subject: Administrative Order No. 10-033 WD dated September 21, 2010

Presiding Officer: Not Assigned

Status: Appeal received on October 20, 2010 via hand-delivery. The appeal is not sufficient and a letter was sent to the appellants. A sufficient appeal is expected to be filed by the January 11, 2011 Council meeting.

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 tabled the appeal at its October 12, 2010 Council meeting. A copy of the decision was not attached and a copy of proof date this appeal was sent. The appellant has until the January 11, 2011 Council meeting to correct the appeal.

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.

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: The Appellant's representative plans on filing a Motion for Clarification regarding the scope of evidence the Council is allowed to consider on January 14, 2011. Any objections by the other parties will be filed by January 24, 2011. The PHC has been continued to March 11, 2011 at 1:00 p.m. An appeal hearing will be held on May 10, 2011.

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 hearing is scheduled for January 11, 2011 at 9:00 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 (assigned by AGO on October 27, 2010)
Status: A hearing is scheduled for January 11, 2011 at 10:00 a.m.

Docket No.: 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and 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 (assigned by AGO)
Recused: Larry Ballin, Carol Henderson
Status/Action: A hearing was held on October 12, 2010; October 26, 2010; and November 9, 2010. Day 4 of the hearing will continue today. On November 5, 2010, Atty. Mulholland filed a Motion to Submit Written Testimony (includes written testimony). Grant or deny Motion to Submit Written Testimony.

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 (assigned by AGO on October 27, 2010)
Recused: Larry Morse
Status: A hearing is scheduled for March 22, 2011 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: Larry Morse (assigned by AGO)
Recused: Larry Ballin, Carol Henderson
Status/Action: A hearing was held on October 12, 2010; October 26, 2010; and November 9, 2010. Day 4 of the hearing will continue today. On November 5, 2010, Atty. Mulholland filed a Motion to Submit Written Testimony (includes written testimony). Grant or deny Motion to Submit Written Testimony.

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

Subject: 10/13/09 Administrative Order No. 09-082 WD
Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)
Status/Action: A PHC was held on October 27, 2010 at 12:00 p.m. On October 28, 2010 a letter was sent to the parties and a second PHC is scheduled for December 29, 2010 at 11:00 a.m. On November 10, 2010, Atty Bianco filed Intervenor's Statement of Issues. On November 24, 2010, Atty. Pollack filed a Motion to Limit Intervenor's Participation in Appeal. On November 24, 2010, Ms. Magoon filed a Response of DES to Intervenor's Statement of Issues. On November 30, 2010, Ms. Magoon filed a Supplement to Response of DES to Intervenor's Statement of Issues and Request to Strike Exhibit 2.

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 December 29, 2010 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: ~~Larry Morse~~ Chip Kimball (assigned by AGO on October 27, 2010)
Status: A 2nd PHC was held on October 27, 2010 at 9:00 a.m. The parties requested additional time to review the amended plan. A 3rd PHC is scheduled for January 26, 2011 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: PHC is scheduled for December 29, 2010 at 10:30 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: A PHC is scheduled for December 29, 2010 at 2:00 p.m.

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

Subject: 5/7/10 Shoreland Impact Permit No. 2009-02747
Presiding Officer: Chip Kimball
Status/Action: A Motion for Reconsideration was filed on October 15, 2010 by Atty. Malia. On October 19, 2010, an Objection to the Motion for Reconsideration was filed. These filings were submitted before the Decision and Order was issued, which was October 22, 2010. Grant or deny the Motion for Reconsideration.

- ***Motion made by Councilor Thompson to deny the Motion for Reconsideration, second by Councilor Morse. Motion passed unanimously.***

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

Subject: 6/4/10 Administrative Order No. 10-013 WD
Presiding Officer: Not Assigned
Status: A PHC is scheduled for December 29, 2010 at 9:00 a.m.

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

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047
Presiding Officer: Chip Kimball
Status: Council accepted the appeal on September 14, 2010. A PHC is scheduled for December 29, 2010 at 9:00 a.m.

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

Subject: 6/10/10 Decision on Reconsideration, Wetlands File No. 2009-023600
Presiding Officer: Chip Kimball
Status: Council accepted the appeal on September 14, 2010. A PHC is scheduled for December 29, 2010 at 9:00 a.m.

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: George Kimball
Status: Council accepted the appeal on October 12, 2010. An appearance was filed by Atty Hilts representing the Department of Transportation. A pre-hearing conference is scheduled for December 29, 2010 at 1:00 p.m.

IV. Previously pending cases.

Docket No.: 08-01 WtC – Newington Conservation Commission

Subject: December 3, 2007 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: Chip Kimball

December 14, 2010

Recused: Larry Morse

Status/Action: October 4, 2010, a Motion for Rehearing was filed. An objection to the Motion for Rehearing has not been filed.

- ***Councilor St. Pierre made a motion to deny the Motion for Rehearing, second by Councilor Thompson. Motion passed unanimously.***

This case is assigned to Attorney Anne Edwards as the Council's attorney.

Docket No.: 08-13 WtC - Jeffrey Costura

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

Presiding Officer: Dennis Lydon

Status: This has been settled; expecting withdrawal from appellant.

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. Schedule another PHC once a hearing officer has been assigned by the AGO?

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. Schedule another PHC once a hearing officer has been assigned by the AGO?

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: This has been settled; expecting withdrawal from appellant.

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 are still negotiating a settlement. Schedule another PHC once a hearing officer has been assigned by the AGO?

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.: 09-30 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:

Status: Mentioned in the morning session that this would be taken up on 1/18/11 but Council will be able to take this up on 1/11/11. Amy will contact the parties so they are aware.

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 withdrawn on December 13, 2010.

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: The parties are still negotiating a settlement. Schedule another PHC once a hearing officer has been assigned by the AGO?

Docket No. 10-19 WtC – Grouse Point Club

Subject: Decision on Reconsideration Denial, Wetlands File No. 2010-00808

Presiding Officer: David Thompson

Status: Council accepted the appeal on October 12, 2010. A PHC will need to be scheduled once a presiding officer is assigned by the AGO.

Docket No. 10-20 WtC – Robert Pinato

Subject: August 19, 2010 Administrative Order, Administrative Order No. 10-025 WD

Presiding Officer: Not Assigned.

Status: Council accepted the appeal on November 9, 2010. On November 14, 2010, Atty. Mulholland filed an Appearance. A PHC will need to be scheduled once a presiding officer is assigned by the AGO.

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** -

7. **Next Meeting** – Next meeting will be Tuesday; January 11, 2011.

8. **Adjournment**

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