

WETLANDS COUNCIL

MINUTES

May 10, 2011

The Wetlands Council met on Tuesday, May 10, 2011 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentees: Councilors: Sharon Champagne

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 9:05 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Ballin made a motion to approve the April 12, 2011 minutes, second by Councilor Thompson. Motion passed unanimously with Councilor Henderson abstaining.***

2. Wetlands Bureau Update

Mary Ann Tilton, Wetlands Bureau Administrator

Regarding the budget - regarding the wetland plan, which EPA said was the best plan in New England, it is being reviewed. It addresses 5 major goals – enforcement, regulation, outreach, water quality monitoring, and restoration and ties it in with efficiency and lean initiatives. A public assistance team has been started to talk about ways the bureau can improve. They are now looking at creating a simplified application form. Chairman Kimball noted that people didn't understand the current one and were intimidated.

There has been a 30% loss of staff so supervisors are helping with the public calls. Many calls are on shoreland, docks, and which forms to file. They are looking at all different process and program improvements. We want to make a more automated program online. Any suggestions are welcome from people wanting to help.

The ARC(Application Receipt Center)was created to process all the applications in Land Resources in one day. Still working on improving the administrative process with the phone calls received. Outreach has been eliminated due to funding. HB 621 sets up a Stream Rules commission and they are looking at the rules for improving and updating. Councilor Prescott noted that the outreach is very important.

Abutter Notification

Chairman Kimball spoke to abutter notification and the current process and how it can be improved. If a permit appeal comes and the Council notices anything that could be a problem, including notification, the attorney general's office has said we can bring it up even if not brought up by the appellant.

He than asked Mary Ann what the department does for abutter review. She noted that the statute requires that the town clerk certifies that the abutters have been notified. There is a question whether it is a civil matter vs. an administrative order to be done. Statute says only have to try - do not have to have to have the green card.

The council has seen applications with a certain number of abutter notifications and it doesn't match with the tax map. If it is obvious they can ask for more information right now Wetlands relies on the certification. Question is whether they made an attempt. Then there are the projects on multiple properties. Who do you notify then? Mary Ann will return next month regarding this.

Abutter notification is more defined in shoreland than in wetlands. 483B it defines an abutter and then describes the process for notification. Applicants should use the municipal tax map. Under the statute it is the town's responsibility to make the determination that the abutters have been notified. Under 482:A, the statute does not require that the tax map be submitted but does require that abutters be notified. The Rules and application requires that the tax map be used to notify abutters.

Other issues: work on multiple parcels, grading and working on culvert, the exclusions in 501.01 – utility right-of-ways & exclusions (also trail work is not excluded), and then public highway construction. These need to be clarified as to what is being talked about and who needs to be notified.

9:50 Councilor Morse leaves the meeting.

Discussion was held regarding 304.04 which allows the abutter veto power if within 20 feet of their property line, 483-B shorelands, and notification to those across a public road.

Discussion was then held as to – what is the current tax map and how do we make sure it is used? Due diligence is required be everyone.

Break taken at 10:15.

4. Status of Appeals

Amy Sampson, Appeals Clerk

I. New Appeals

None at this time.

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. 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball (assigned by AGO on January 5, 2011)

Status: Please see attached order. Council delays decision until later in the meeting.

III. Hearings or PHCs scheduled.

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: Hearings were held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. Deliberations were held on March 8, 2011 and April 12, 2011. Deliberations will continue today at 1 p.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 (assigned by AGO on October 27, 2010)

Recused: Larry Morse

Status: **A hearing is scheduled for August 23, 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: Hearings were held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. Deliberations were held on March 8, 2011 and April 12, 2011. Deliberations will continue today at 1 p.m.

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

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

Presiding Officer: Dave Thompson

Status: A PHC needs to be scheduled.

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 January 26, 2011. **A hearing is scheduled for May 24, 2011 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 (assigned by AGO on January 26, 2011)

Status: PHC was held on February 23, 2011 at 9:00 a.m. **Hearing scheduled for July 12, 2011 at 10:00 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 (assigned by AGO on January 26, 2011)

Status: PHC was held on February 23, 2011 at 10:30 a.m. **A hearing is scheduled for June 14, 2011 at 10:00 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 (assigned by AGO on January 26, 2011)

Status: A PHC is scheduled for May 25, 2011 at 11:00 a.m.

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

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

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A PHC was held on February 23, 2011. **A hearing is scheduled for June 28, 2011 at 8:00 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 (assigned by AGO on January 26, 2011)

Status: A PHC is scheduled for May 25, 2011 at 9:00 a.m.

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

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

Presiding Officer: Ryan Crosbie

Status: **A hearing is scheduled for July 26, 2011 at 9 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: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A PHC is scheduled for May 25, 2011 at 10:00 a.m.

Docket No. 10-19 WtC – Grouse Point Club

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

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: **A hearing is scheduled for August 9, 2011 at 10 a.m.**

Docket No. 10-20 WtC – Robert Pinato

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

Presiding Officer: Ryan Crosbie

Status: A PHC is scheduled June 3, 2011 at 9:00 a.m.

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

Subject: Standard Dredge and Fill Permit, Wetlands File No. 2010-00764

Presiding Officer: Ryan Crosbie

Status: **A hearing is scheduled for July 26, 2011 at 9 a.m.**

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

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

Presiding Officer: Ryan Crosbie

Status: A PHC is scheduled for July 20, 2011 at 9:00 a.m.

Docket No. 11-03 WtC Joseph and Patricia DeVelis

Subject: 01/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie (assigned by AGO on May 2, 2011.)

Status: Council accepted the appeal on April 12, 2011. A PHC needs to be scheduled.

IV. Previously pending cases.

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 (assigned by AGO)

Status: A PHC is scheduled for June 3, 2011 at 2:00 p.m.

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: A PHC needs to be scheduled. If official assignment from the AGO is received timely then it will be scheduled for June 29, 2011.

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 (available, but not officially assigned)

Status: A PHC needs to be scheduled.

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: The parties are close to a settlement agreement and assented to a continuance of the hearing until the appeal is withdrawn. A request for status has been sent for the parties to respond by June 14, 2011.

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: A PHC will be scheduled for June 29, 2011.

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 July 1, 2010 is complete. A request for status will be sent to the parties in September, per the Council's request.

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 July 1, 2010 is complete. A request for status will be sent to the parties in September, per the Council's request.

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 3rd PHC was held on February 23, 2011. The parties are in negotiations and agreed to have the clerk send a letter requesting status on May 23, 2011 (if the appeal is not withdrawn by then).

Docket No. 10-05 WtC – Steven and Mary Pruchansky

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

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011.)

Status: A PHC was held on February 23, 2011. The permit has been issued and the agent will withdraw the appeal. A request for status has been sent for the parties to respond by June 14, 2011.

V. Misc.

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

Councilor Morse to finish.

Docket No. 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball (assigned by AGO on January 5, 2011)

Status: Please see attached order. Council will deliberate and complete on June 14, 2011.

- ***Councilor Sloan moved to adopt the Order Continuing Deliberations, second by Councilor Thompson. Motion passed unanimously with Councilor Henderson abstaining.***

3. Review of Proposed Legislation

SB 21 is now being heard this morning and SB 19 will be heard this afternoon. SB 19 – the prime wetlands bill changes the definition of prime wetlands and has multiple amendments. Currently the department doesn't designate the prime wetlands, the municipalities do.

5. Old Business -

6. New Business -

Discussion was held regarding the New Hampshire Association of Conservation Commissions(NHACC) member not showing up but who hasn't resigned so he still counts towards the quorum. It was agreed that Chairman Kimball will make an attempt to get him to resign by sending a letter with a prepared letter for him to just sign and send on to the governor. A copy of the letter will be sent to the NHACC. Chairman Kimball has attempted contact with the commission but no response.

A question asked: Is it possible to write into our rules so that someone has to participate a certain number of times? Chairman Kimball will talk to Anthony or Gretchen. There is also concern regarding certain agencies showing up only at certain appeals.

The Lake Sunapee Deliberations will begin at 1 p.m. this afternoon.

- 7. Next Meeting** – Next meeting will be Tuesday, June 14, 2011 beginning at 8 a.m., with the Porter Trust Deliberations at 9 a.m. and the Robert Reich Appeal at 10 a.m.

8. Adjournment

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

Meeting adjourned at 10:45 a.m.