

WETLANDS COUNCIL

MINUTES

January 11, 2011

The Wetlands Council met on Tuesday, January 11, 2011, 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Ryan Crosbie, Thomas Sloan, Russ St. Pierre, Seth Prescott, and David Thompson

Absentees: Councilors: Larry Ballin, Paul Dionne, Carol Henderson, Larry Morse, and Dari Sassan,
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**

Minutes from December 14, 2011 meeting were not ready for review. They will be taken up at the next meeting.

2. **Election of Officers**

- ***Councilor Sloan made a motion to nominate Chairman Kimball to remain as chair and Councilor Ballin to be Vice Chair, second by Councilor Thompson. Motion passed unanimously.***

4. **Wetlands Bureau Update**

Collis Adams, Administrator

The fee fund is nearly balanced and should be balanced soon with the transfer of personnel to other bureaus. Applications are still down. Staffing: there has been a significant reduction but there seems to be enough to handle the workload at this point. The number of complaints remains at a steady rate so we will have to triage the complaints according to those with the most environmental impact.

Rulemaking:

Focus on HB 384 which required rulemaking regarding timber harvesting and other activities within the prime wetland or the prime wetland buffer. A work group has met twice and framed up rules.

Rulemaking was required regarding mapping standards for prime wetlands and will be more difficult. The mapping includes what to do with the old maps, how are standards set for the future, and who is qualified to do them. Work will also be done with the municipalities and their rules within the prime wetlands.

Legislative Activity:

3 senate bills have been introduced and have hearings set: SB 19, SB 20, and SB 21. Letters of Testimony are being prepared for all three.

3. **2010 ARM Fund Annual Report**

Lori Sommer, Wetlands Bureau

Copies of the report were distributed and Lori reviewed the activities. This summary is required on a yearly basis of the improvements made to the program and the accomplishments completed over the past year. This past year nine projects paid into the fund representing 16 acres of loss but it accumulated \$2 million dollars of contributions. 2011 has the potential of 9 payments coming in with a large payment coming to the Merrimack River Watershed.

6 watersheds were released for awards. 15 total awards were made setting aside 2600 acres of land preservation, upland and wetland combined. For the year a little over \$2 million dollars were awarded. This leveraged \$6.5 million dollars which speaks to the success of the program. The watershed summaries are included at the end of the report. This will be posted on the website.

9:45 AM – Councilor Morse arrives.

3. Status of Appeals

Amy Sampson, Appeals Clerk

I. New Appeals

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: Council to vote whether or not to accept the appeal.

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

Amy will let the attorney general's office know who is available to be hearing officer.

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: The appellant has until the February 8, 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.

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

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

Presiding Officer: Chip Kimball

Status/Action: A Motion for Reconsideration was denied on December 14, 2010. Attached is a Decision and Order for review and approval.

- ***Councilor Sloan made a motion of adopt the Decision and Order, second by Councilor Morse. Motion passed unanimously.***

Councilor Sassan arrives at 9:55 AM.

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

Recused: Larry Morse

Status/Action: October 4, 2010, a Motion for Rehearing was filed and an objection was filed. 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.

The following docket was skipped as it is going to hearing at 10 AM:

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: The parties are close to a settlement agreement and assented to a continuance of the hearing. A hearing is now scheduled for March 8, 2011.

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; and December 14, 2010. The parties will be filing Findings of Fact and Conclusion of Law by January 17, 2011. The Council will need to review the information once received and schedule a date for deliberations.

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; and December 14, 2010. The parties will be filing Findings of Fact and Conclusion of Law by January 17, 2011. The Council will need to review the information once received and schedule a date for deliberations.

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 is scheduled for January 26, 2011 at 10:00 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 January 26, 2011 at 10:30 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: ~~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

Status: PHC is scheduled for February 23, 2011 at 2 p.m.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Status: A PHC is scheduled for February 23, 2011 at 2:00 p.m.

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

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

Status: A PHC is scheduled for February 23, 2011 at 2 p.m.

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

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

Status: A PHC is scheduled for January 26, 2011 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

Status: A PHC is scheduled for January 26, 2011 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

Status: A PHC is scheduled for February 23, 2011 at 9:00 a.m.

Councilor Henderson arrives at 10:57 a.m.

Meeting takes a break at 10:59 for the Hearing scheduled.

At 11:20 meeting is reconvened with Chairman Kimball and Councilors present: Sloan, Prescott, Sassan, St. Pierre, Henderson, Thompson, and Crosbie.

Docket No.:13 WtC – Jeffrey Costura

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

Status: This has been settled; expecting withdrawal from appellant. A request for status has been sent via certified mail and regular mail for the parties to respond by the February 8, 2011 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

Status: A request for status has been sent via certified mail and regular mail for the parties to respond by the February 8, 2011 Council meeting.

Docket No.: 08-55 WtC - Tracy Middleton Revocable Trust of 1992

Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087

Status: A request for status has been sent via certified mail and regular mail for the parties to respond by the February 8, 2011 Council meeting.

Docket No.: 09-09 WtC - Christopher and Sally Norton

Subject: 01/09/09 Reconsideration Denial, Wetlands File No. 2008-01265

Status: This has been settled; expecting withdrawal from appellant. A request for status has been sent via certified mail and regular mail for the parties to respond by the February 8, 2011 Council meeting.

Docket No.: 09-20 WtC - Dana Belletete

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

Status: A PHC will need to be scheduled once a presiding officer is assigned by the AGO.

Docket No.: 09-21 WtC - John Penaskovic

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

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

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: Chip Kimball

Recused: Larry Morse

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 directly after today's hearing.

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

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

Status: A PHC will need to be scheduled once a presiding officer is assigned by the AGO.

Docket No. 10-19 WtC – Grouse Point Club

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

Status: 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
Status: A PHC will need to be scheduled once a presiding officer is assigned by the AGO.

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

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

The Council prepared to deliberate on Docket No. 09-30 WtC Reconsideration for Proposed Parking Area at Main Street School in Exeter, Wetlands Bureau Dredge and Fill Permit #2008-00233. After discussion it was determined that the Councilors that have not been part of the Sunapee Appeals (09-07, 09-08, and 09-35) had not received the relevant documents for this reconsideration. The reconsideration will be considered at the Council's next meeting February 8, 2011.

6. New Business -

7. Next Meeting – Next meeting will be Tuesday; February 8, 2011.

8. Adjournment

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

Meeting adjourned at 12:40 p.m.