

WETLANDS COUNCIL

MINUTES

January 27, 2009

The Wetlands Council met on Tuesday, January 27, 2009 in room 112 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Lawrence E. Morse, Carol Henderson, Chip Kimball, Dennis Lydon, Dari Sassan, Thomas Sloan, Russ St. Pierre, and David Thompson

Absentees: Sharon Champagne, Paul Dionne, and Seth Prescott

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

The meeting was called to order by Chairman Morse at 9:05 with a quorum present.

1. **Approval of Minutes of December 9, 2008 Council Meeting**

A motion was made by Councilor Kimball to accept the December 9, 2008 minutes as presented, second by Councilor Lydon. Motion was passed unanimously.

4. **Other Business**

Collis Adams, Wetlands Bureau Administrator, gave an update on current legislation being followed:

HB 222 (same as SB 435 in 2008) Proposes the Wetlands Bureau consider indirect impacts when issuing permits. The Land Use Commission is to make their report back to the legislature in November 2009. The Department will be opposing this bill as it is premature.

HB 384 – NH Timber Owners Association wants to create an urban exemption for prime wetlands and to exempt timber harvesting activities from the 100 ft. prime wetland buffer and all that are on poorly drained soils. The Department supports it in concept. Details would be worked out in the rulemaking process.

HB 498 will increase the public members of the council appointed by the governor from 8 to 9 by adding a residential construction member to the Wetlands Council.

Lori Sommer, Wetlands Bureau Mitigation Coordinator, presented the first annual report of the Aquatic Resource Mitigation Fund and gave an update on the funds received and those to be dispersed through RFPs later in 2009. Wetlands Council review of the requests will probably be sometime in September.

2. **Status Report** -

Amy Samson, Council Clerk, reviewed the following:

I. FYI.

Docket No.: 09-01 WtC [Kevin Price d/b/a Ossipee Lake Marina](#)
Subject: 12/9/08 Administrative Order No. 08-050 WD
Status: Appeal received 1/8/09 insufficiently. A letter was sent to the Appellant's representative on 1/16/09. All materials need to be received by February 24th.

Docket No.: 08-55 WtC [Tracy Middleton Revocable Trust of 1992](#)
Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087
Status: Appeal received 10/13/08 insufficiently. A sufficient appeal has yet to be received and there is still time for a complete filing.

II. Cases awaiting Council action.

Docket No.: 06-12 WtC [Bodanza et al.](#)
Subject: 08/14/06 Decision on Reconsideration Denial, Wetlands File No. 2002-02483
Presiding Officer: Larry Morse

Motion to accept and issue the Decision made by Councilor Lydon, second by Councilor Thompson. Motion passed unanimously.

Docket No.: 07-10 WtC [Renate Ranniger](#)
Subject: 04/17/07 Decision on Reconsideration Denial, Wetlands File No. 2004-01185
Presiding Officer: John Cobb

Motion to accept and issue the Decision made by Chairman Morris, second by Councilor Lydon. Motion passed unanimously. Councilor Sloan abstained.

Docket No.: 08-02 WtC [William D. Hughes](#)
Subject: 12/11/07 Decision on Reconsideration, Wetlands File No. 2007-01174
Presiding Officer: Chip Kimball

Motion to accept and issue the Decision made by Councilor Lydon, second by Councilor Thompson. Motion passed unanimously. Councilor Sloan abstained.

Docket No.: 08-05 WtC [Rick Belanger](#)
Subject: 12/13/07 Decision on Reconsideration, Wetlands File No. 2007-01624
Presiding Officer: Chip Kimball

Motion to accept and issue the Decision made by Councilor Kimball, second by Councilor Lydon with the correction of the date as appropriate. Motion passed unanimously.

Docket No.: 08-37 WtC (formerly Docket No. 08-25 WC) [Kenneth R. Ivester](#)
Subject: 04/29/08 Application Denial, Wetlands File No. 2007-02731
Presiding Officer: Chip Kimball

Motion to accept and issue the Decision made by Councilor Lydon, second by Councilor Kimball. Motion passed unanimously.

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

Docket No.: 07-24 WtC [Town of Holderness Conservation Commission](#)
Subject: Reconsideration Denial, Wetlands File No. 2006-02635
Presiding Officer: Not Assigned.
Status: Notice of dismissal drafted and Chairman reviewed.

Motion to accept and issue the Notice of Dismissal made by Councilor Lydon, second by Councilor Thompson. Motion passed unanimously.

Docket No.: 08-12 WtC [Bill K. Lau](#)
Subject: Decision on Reconsideration, Wetlands File No. 2007-00398
Presiding Officer: Not assigned.
Status: Notice of dismissal drafted and Chairman reviewed.

Motion to accept and issue the Notice of Dismissal made by Councilor Lydon, second by Councilor Kimball. Motion passed unanimously.

Docket No.: 08-38 WtC [Pickman & Sons Development, LLC.](#)
Subject: 05/29/08 Reconsideration Denial, Wetlands File No. 2007-01160
Presiding Officer: Not Assigned
Status: Notice of dismissal drafted and Chairman reviewed. A draft was sent to Council's attorney for final review. This decision will be presented to the Council at the next meeting for approval.

Docket No.: 07-06 WtC [Patricia Woolson](#)
Subject: 02/13/07 Decision on Reconsideration Denial, Wetlands File No. 2006-02796
Presiding Officer: Larry Morse
Status: Notice of dismissal drafted and Chairman reviewed. A draft was sent to Council's attorney for final review. This decision will be presented to the Council at the next meeting for approval.

IV. Hearings or PHCs scheduled.

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: PHC scheduled was held on January 21, 2009 (9 a.m.–11 a.m.). The appellant and/or the appellant's representative did not show. The notice to the appellant was returned unclaimed on 1/26/09. ***A hearing is scheduled for April 14, 2009.***

Docket No.: 07-30 WtC [Thomas and Kellie Greer](#)
Subject: 9/18/07 Decision on Reconsideration Denial Administrative Order WD 07-025, Wetlands File No. 2006-00460
Presiding Officer: Dennis Lydon
Status: ***PHC scheduled for February 18, 2009 (9 a.m.-11 a.m.).***

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Docket No.: 08-03 WtC [David Johnson – Johngis Realty LLC](#)
Subject: 12/04/07 Decision on Reconsideration, Wetlands File No. 2006-00700
Presiding Officer: Dennis Lydon
Status: PHC was held on 12/1/08 at 9:30 a.m. ***A hearing is scheduled for February 24, 2009 at 1:00 p.m.***

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 scheduled for February 25, 2009 (9 a.m.-11 a.m.).***

Docket No.: 08-09 WtC [John Goode, et al.](#)
Subject: 1/15/08 Decision on Reconsideration, Wetlands File No. 2007-00933
Presiding Officer: Dennis Lydon
Status: ***A hearing is scheduled for today at 10:00 a.m.***

Docket No.: 08-13 WtC [Jeffrey Costura](#)
Subject: 1/25/08 Decision on Reconsideration, Wetlands File No. 2007-01416
Presiding Officer: Dennis Lydon
Status: PHC was held on 12/1/08 at 11:00 a.m. The parties need to work out details with Fish & Game, but have requested a hearing (unless settlement is reached before). ***A hearing is scheduled for March 10, 2009 at 1:00 p.m.***

Docket No.: 08-16 WtC [Jumanna Stark](#)
Subject: 10/19/07 Decision on Reconsideration, Wetlands File No. 2007-00473
Presiding Officer: Dennis Lydon
Status: ***A hearing is scheduled for February 24, 2009 at 10:00 a.m.***

Docket No.: 08-24 WtC [127 Water Street Realty, Inc.](#)
Subject: 04/25/08 Reconsideration Denial, Wetlands File No. 2007-01794
Presiding Officer: Chip Kimball
Status: ***PHC scheduled for January 28, 2009 (1 p.m.-3 p.m.)***

Docket No.: 08-32 WtC [William J. Wilson](#)
Subject: 06/20/08 Wetlands & Non-Site Specific Permit No. 2007-02744 – Approval Condition #1
Presiding Officer: David Thompson
Status: A hearing was scheduled for 2/10/09, however the appellant's representative is not available. ***The date will need to be changed. I recommend March 24, 2009, if the parties agree with the new date.***

Docket No.: 08-35 WtC (formerly Docket No. 08-19 WC) [Frank Faticanti](#)
Subject: Waiver Application Pursuant to RSA 483-B
Presiding Officer: Chip Kimball
Status: A PHC was held 12/19/08. ***A hearing is scheduled for March 10, 2009. Time TBA.***

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

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Status: A PHC was held on January 21, 2009. **A hearing is scheduled for May 12, 2009. Time TBA.**

Docket No.: 08-56 WtC Robert Davis

Subject: 10/7/08 Decision on Reconsideration Denial, Wetlands File No. 2008-00265

Presiding Officer: Chip Kimball

Status: Appeal received 10/21/08. The appeal was received timely.

Action: **PHC scheduled for February 25, 2009 (9 a.m.-11 a.m.)**

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

Status: Appeal received 10/28/08. The appeal was received timely.

Action: **PHC scheduled for February 25, 2009 (9 a.m.-11 a.m.). (If Dave is not available, Chip will be the presiding officer.)**

Docket No.: 08-60 WtC Peter J. Kirk

Subject: 9/30/08 Application Denial, Wetlands File No. 2008-00752

Presiding Officer: Chip Kimball

Status: Appeal received 10/30/08. The appeal was received timely.

Action: **PHC scheduled for February 25, 2009 (9 a.m.-11 a.m.)**

V. No action required; 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: An appeal from the Water Council has been transferred which is also relating to the same administrative order. A notice was sent to inform Mr. Forest informing him that the Water Council appeal has been transferred to the Wetlands Council; however the notice was returned. I will verify the address and resend. We will postpone to the February 24 Wetlands Council meeting, which the Council can decide whether or not to combine the appeals and move forward with scheduling a pre-hearing conference.

Docket No.: 07-01 WtC [Robert and Betty Howland](#)

Subject: 12/07/06 Decision on Reconsideration Denial, Wetlands File No. 2006-01654

Presiding Officer: Larry Morse

Status: A request for status was sent on 12/26/08 via fax and regular mail to the appellant's representative. Also, a copy was sent to Mr. Adams. As of today, no status information was filed with the Council.

A motion for summarily dismissal due to lack of response was made by Councilor Kimball, second by Councilor Lydon. Motion passed unanimously.

Appeal is dismissed.

Docket No.: 07-07 WtC [Wendy McCarthy](#)

Subject: 04/09/07 Decision on Reconsideration Denial, Wetlands File No. 2006-02581

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Presiding Officer: Larry Morse
Status: On January 12, 2009, the appeal was withdrawn.

Docket No.: 07-09 WtC [Derry Conservation Commission](#)
Subject: 04/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773
Presiding Officer: Seth Prescott
Status: Decision was issued on 12/19/08. A Motion for Reconsideration has been received from the appellant.

Councilor Lydon made a motion to go into executive session, second by Councilor Sloan. Motion passed unanimously.

Council went into Executive Session at 9:45.

Council returned to regular meeting at 9:50.

Councilor Lydon made a motion to table the Reconsideration Request until the February meeting, second by Councilor Kimball. Motion passed unanimously.

Docket No.: 07-14 WtC [Courtney Galluzzo](#)
Subject: 6/22/07 Decision on Reconsideration Denial
Presiding Officer: Larry Morse
Status: A request for status was sent on 12/26/08. On 12/29/08, DES responded. The permit was approved on 1/16/08. The appellant has not responded.

A motion for summarily dismissal due to lack of response was made by Councilor Lydon, second by Councilor Thompson. Motion passed unanimously.

Docket No.: 07-23 WtC [Steve Bragg](#)
Subject: 08/09/07 Decision on Reconsideration Denial, Wetlands File No. 2006-01494
Presiding Officer: Chip Kimball
Status: On 12/29/08, Atty. Mulholland responded with a cc to me asking Paul Goodwin, if this was withdrawn. On 12/29/08, Paul responded that this was settled on 8/26/08, but the permit has not been written. He will not forgo by withdrawing without having the permit in hand.

Docket No.: 07-27 WtC [Robert Bourgeois](#)
Subject: 10/19/07 Decision on Reconsideration, Wetlands File No. 2007-00473
Presiding Officer: Larry Morse
Status: A request for status was sent on 12/26/08 via certified mail and regular mail to the appellant's representative. The certified mail card was received signed on 1/9/09. Also, a copy was sent to Mr. Adams. Mr. Adams informed me via e-mail that the permit was approved on 9/12/08. Have not received a response from the appellant's representative.

A motion for summarily dismissal due to lack of response was made by Chairman Morse, second by Councilor Kimball. Motion passed unanimously.

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Docket No.: 07-28 WtC [Concord Country Club, Inc.](#)
Subject: 11/2/07 Decision on Reconsideration to Amend Permit – Permit No. 2005-474, Wetlands File No. 2005-00474
Presiding Officer: Larry Morse
Status: On January 12, 2009, the appeal was withdrawn.

Docket No.: 08-01 WtC [Town of Newington Conservation Commission](#)
Subject: 12/03/07 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: Larry Morse
Status: On January 16, 2009, Atty. Callen filed an Assented-to Motion to Continue the Pre-hearing conference, which was scheduled for January 21, 2009. Chairman Morse granted the motion. A request was made in the motion to reschedule a pre-hearing conference sometime during the week of March 23, 2009. The parties recently held settlement discussions, and with additional time, a settlement may be possible prior to the rescheduled pre-hearing conference date.

Docket No.: 08-07 WtC [Joseph and Rose Marino](#)
Subject: 01/09/08 Decision on Reconsideration, Wetlands File No. 2007-00926
Presiding Officer: Larry Morse
Status: On January 20, 2009, Atty. Smith filed an Assented-to Motion to Continue the Pre-hearing conference, which was scheduled for January 28, 2009. Chairman Morse granted the motion. A request was made in the motion to reschedule a pre-hearing conference sometime after April 28, 2009. The appellants currently reside in Florida and each of them is currently receiving medical treatment there. Given the weather conditions, it would be too difficult for them to travel to NH to assist in preparation for proceedings in this matter. It is likely that this matter can be resolved within the next 90 days.

Docket No.: 08-31 WtC [Michele Walker](#)
Subject: 06/06/08 Reconsideration Denial, Wetlands File No. 2007-02435
Presiding Officer: David Thompson
Status: On December 29, 2008, the appeal was withdrawn.

Docket No.: 08-34 WtC (formerly Docket No. 08-15 WC) [Ronald E. Gocht](#)
Subject: 01/25/08 Application Denial, Wetlands File No. 2007-02750
Presiding Officer: Larry Morse
Status: On January 12, 2009, the appellant filed a Motion to Continue, which Mr. Adams Assented-To. There are several open issues with the Town of Swanzey, which should be resolved before the appellant has a pre-hearing conference. A request was made in the motion for a 120 day postponement. Chairman Morse granted the motion. A pre-hearing conference will be rescheduled.

Docket No.: 08-36 WtC (formerly Docket No. 08-21 WC) [Susan A. Youseff](#)
Subject: Application Denial, Wetlands File No. 2008-00208
Presiding Officer: Chip Kimball
Status: On January 7, 2009, the appeal was withdrawn.

Docket No.: 08-52 WtC Michael and Karen Miles
Subject: 8/8/06 Decision on Reconsideration Denial, Wetlands File No. 2008-00037
Presiding Officer: David Thompson
Status: A request for status was sent on 12/26/08. Atty. Pollack responded. The parties drafted and reviewed settlement documents, which will be executed in connection with a Wetlands permit from DES. Atty. Pollack requests that the appeal remain pending so that final settlement can be effectuated. A pre-hearing conference will be set for a date in March.

It was agreed to conclude the business meeting before going into the hearing by all parties involved.

3. **Election of Officers**

Councilor Lydon moved to elect Larry Morse as Chairman of the Wetlands Council, second by Councilor Kimball. Motion passed unanimously.

Councilor Kimball motioned to elect Dennis Lydon as Vice Chair of the Wetlands Council, second by Councilor Sloan. Motion passed unanimously.

5. **Old Business**

Chairman Morse has officially signed the acceptance of the new rules that went into effect December 10, 2008. The new rules were distributed to the Council.

6. **Next Meeting -**

Councilor Lydon moved to have the next meeting on February 24, 2009, second by Councilor Kimball. Motion was passed unanimously.

Councilors Sloan and Kimball will not be available on February 24, 2009.

7. **Adjournment -**

Councilor Lydon made a motion to adjourn, second by Councilor Thompson. Motion was passed unanimously.

Meeting adjourned at 10:10 AM.