

WETLANDS COUNCIL

MINUTES

May 12, 2009

The Wetlands Council met on Tuesday, May 12, 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, Seth Prescott, Russ St. Pierre, Dari Sassan, and David Thompson

Absentees: Sharon Champagne, Paul Dionne, and Thomas Sloan

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

The meeting was called to order by Chairman Morse at 9:08 with a quorum present.

It was announced that an Assented-to-Motion had been received for the 08-53 WtC Vintage Trust Appeal and the Hearing for today will be postponed to another day.

1. **Approval of Minutes of March 24, 2009 Council Meeting**

A motion was made by Councilor Thompson to accept the March 24, 2009 minutes, second by Councilor Kimball. Motion passed unanimously.

2. **Status Report** -

Amy Samson, Council Clerk, reviewed the following:

I. New Appeals

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: Appeal was received on 2/10/09. Council tabled action on this appeal on 3/24/09.

- ***Motion made by Councilor Kimball to conditionally accept the appeal based on the formal review of the certified postal stamp, second by Councilor Lydon. Motion passed unanimously.***

Pre-Hearing Conference(PHC) set for July 15th with time to be announced.

Docket No.: 09-13 WtC - Dillon Investments, LLC
Subject: Administrative Order No. 09-004
Presiding Officer: Not Assigned
Status: Appeal was received insufficiently on 3/25/09. A sufficient appeal was filed on 4/27/09.
Action: Council to vote to accept or deny the appeal at the 6/9/09 meeting.

Docket No.: 09-16 WtC - Terry Cronin and Christine Ojendyk
Subject: 3/18/09 Request for Reconsideration, Wetlands File No. 2007-01769 (Roy Garber is the permittee)
Presiding Officer: Not Assigned
Status: Appeal was received on 4/17/09. Council to vote to accept or deny the appeal at the 5/26/09 meeting.

Docket No.: 09-17 WtC - Joseph and Suzanne Labrecque
Subject: 3/17/09 Request for Reconsideration, Wetlands File No. 2008-02086
Presiding Officer: Not Assigned.
Status: Appeal was received on 4/20/09. Council to vote to accept or deny the appeal at the 5/26/09 meeting.

II. Action Required.

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 4/8/09, Atty. Mulholland sent a letter to the clerk indicating that DES mistakenly informed Mr. Goodwin that the appeal had been settled. In fact, DES stands by its original decision to deny Mr. Bragg's application for a permit. DES is requesting a hearing to be scheduled in this matter. Atty. Mulholland's letter is attached to this status report. A Hearing/PHC will be set up.

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 is scheduled for 5/26/09 at 10:00 a.m. On 4/22/09, a Motion to Dismiss was filed by DES. On 4/22/09, an Objection by the Appellant's representative was received via e-mail and then regular mail.
Action: This will be taken up at the May 26, 2009 hearing.

Docket No.: 08-37 WtC - Kenneth Ivester
Subject: 4/29/09 Application Denial, Wetlands File No. 2007-02731
Presiding Officer: Chip Kimball
Status: The appellant filed a Motion for Reconsideration on 3/28/09. An objection was filed on 4/9/09.

Action:
➤ ***Councilor Kimball made a motion to deny the Reconsideration, second by Councilor Thompson. Motion passed unanimously.***

Councilor Kimball to write the Decision.

III. Summarily Dismissed by the Council on January 27, 2009.

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
Action: Decision will be complete and ready for the Council to review and approve by the next meeting.

Docket No.: 07-14 WtC - Courtney Galluzzo
Subject: 6/22/07 Decision on Reconsideration Denial
Presiding Officer: Larry Morse
Action: Decision will be complete and ready for the Council to review and approve by the next meeting.

Docket No.: 07-27 WtC - Robert Bourgeois
Subject: 10/19/07 Decision on Reconsideration, Wetlands File No. 2007-00473
Presiding Officer: Larry Morse
Action: Decision will be complete and ready for the Council to review and approve by the next meeting.

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

Docket No.: 07-06 WtC - Patricia Woolson
Subject: 02/13/07 Decision on Reconsideration Denial, Wetlands File No. 2006-02796
Presiding Officer: Larry Morse
Action: Decision will be complete and ready for the Council to review and approve by the next meeting.

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: Decision will be complete and ready for the Council to review and approve by the next meeting.

Docket No.: 08-16 WtC - Jumanna Stark
Subject: 10/19/07 Decision on Reconsideration, Wetlands File No. 2007-00473
Presiding Officer: Dennis Lydon
Status: Decision will be complete and ready for the Council to review and approve by the July/August meeting.

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: Decision will be complete and ready for the Council to review and approve by the next meeting.

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: Hearing was held on 3/24/09. A decision is being finalized and will be complete and ready for the Council to review and approve by the next meeting.

V. 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 will be scheduled for 6/17/09 at 1:00 p.m.

- 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: Motion for Reconsideration filed 1/7/09. The Council accepted the Motion for Reconsideration on 2/24/09. PHC is scheduled for 5/28/09 at 2:00 p.m.
- 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 was held on 4/22/09. A hearing is scheduled for 8/11/09. Time TBA.
- 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: PHC will be scheduled for 6/17/09 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 5/27/09 at 9:00 a.m.
- 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 1/20/09, Atty. Smith filed an Assented-to Motion to Continue the Pre-hearing conference, which was scheduled for January 28, 2009. PHC will be scheduled for 6/17/09 at 1:00 p.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 will be scheduled for 7/29/09 at 9:00 a.m.
- 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: PHC will be scheduled for 6/17/09 at 1:00 p.m.
- 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: PHC scheduled for 5/27/09 at 1:00 p.m.
- 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: PHC will be scheduled for 6/24/09 at 1:00 p.m.

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: A hearing is scheduled for 6/9/09. Time TBA.

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: A hearing is scheduled for 6/9/09. Time TBA.

Docket No.: 08-60 WtC - Peter J. Kirk
Subject: 9/30/08 Application Denial, Wetlands File No. 2008-00752
Presiding Officer: Chip Kimball
Status: PHC scheduled for 6/24/09 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
Status: PHC scheduled for 5/20/09 at 1:00 p.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
Status: PHC is scheduled for 6/17/09 at 9:00 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
Status: PHC is scheduled for 6/17/09 at 9:00 a.m.

VI. 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: A notice was sent to Mr. Forest on 5/11/09 after receiving verification of address. The notice is to inform him that the Water Council appeal has been transferred to the Wetlands Council. The Council will address the appeal from the Water Council and the Wetlands Council at the June meeting (allow time for Mr. Forest to receive notice). At that time, Council can schedule pre-hearing conference, if necessary.

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

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Status: A hearing was scheduled for 2/24/09. The parties requested a continuance, which was granted. The parties are negotiating settlement.

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: Mr. Faticanti received his permit, but there was an error on the property address and the date. Once DES corrects it, he will withdraw his appeal.

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
 Status: A hearing was scheduled for today, but the parties have requested a continuance, which was granted by Councilor Lydon at this meeting. The parties are negotiating settlement.

5. Other Business

Review of Petition for Declaratory Ruling has been received from Paul Goodwin. The councilors were asked to remove the 6th page from the packet received. Legal counsel is scheduled to come to the May 26, 2009 council meeting and this will be reviewed with him. Chairman Morse will request from the Wetlands Bureau a current copy of the form that is being used.

9:50 Meeting went into recess.

9:55 Meeting was called back into session.

4. Stream Crossing Rules

Karla McManus, Steve Couture, and Mary Ann Tilton

The draft of Env-Wt 101.01 and the proposed Tier Thresholds for Draft Stream Crossing Rules(revised 5/8/09) were reviewed and discussed. The Council approved the formation of a subcommittee consisting of Councilor Kimball and Chairman Morse to work with the bureau with respect to the concerns that were discussed at this meeting. Once satisfied, the Chair was then authorized to issue a memo, or letter, moving them on to JLCAR.

3. Wetlands Update

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

HB 384 - ought to pass with amendment

SB 65 – passed the Senate and ought to pass in the House.

SB 124 – passed the Senate is in House committee.

SB 134 – passed the Senate and ought to pass in the House.

Bureau Notes: secretary support is short and there will be a waiver submitted to fill the full time position; an Env III is open as this person moved into a new position; Mary Ann is working on the permitting process; there are 3 items to go before Governor & Council; there was a RFP to hire consultants to assist with the stimulus money and interviews are currently being conducted.

6. Old Business - None

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7. **Next Meeting** – May 26, 2009

8. **Adjournment**

- ***Motion to adjourn made by Councilor Lydon, second by Councilor Henderson.
Motion passed unanimously.*** Meeting adjourned at 11:40 A.M.