

WETLANDS COUNCIL

MINUTES

June 9, 2009

The Wetlands Council met on Tuesday, June 9, 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, Thomas Sloan, and David Thompson

Absentees: Sharon Champagne, Paul Dionne, and Dari Sassan

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

The meeting was called to order by Chairman Morse at 9:00 with a quorum present.

1. **Approval of Minutes of May 12, 2009 Council Meeting**

- ***A motion was made by Councilor Kimball to accept the May 12, 2009 minutes with noted changes, second by Councilor Thompson. Motion passed unanimously with one abstention by Councilor Sloan.***

4. **ARM Fund Program Update** – Lori Sommer

Lori reported that 8 of the 16 watersheds have received funds that are accruing. A Request for Proposal (RFP) was sent out for the Merrimack River Watershed account which has accrued \$650,000. There were 8 applications received. The plan is for the committee to inspect the sites, score the applications and then see if there is consensus on projects to be funded. The recommendations will then come to the Wetlands Council and the Army Corp of Engineers for approval.

Councilor Tom Sloan volunteered to be the representative from the council for the selection process.

2. **Status Report** -

Correct date for the Status Report to read June 9, 2009 was noted.
Amy Samson, Council Clerk, reviewed the following:

I. New Appeals

Docket No.:	09-13 WtC - Dillon Investments, LLC
Subject:	Administrative Order No. 09-004
Presiding Officer:	Dave Thompson
Status:	Appeal was received insufficiently on 3/25/09. A sufficient appeal was filed on 4/27/09. Carol Henderson recused herself from this appeal.

Action:

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

Discussion was held regarding policy and the timely filing of appeals.

- **Motion made by Councilor Prescott to amend the original motion to include a condition that the date filed must be timely and if not the appeal will come back to the Council, second by Councilor Lydon. Motion passed unanimously.**

Pre-Hearing Conference(PHC) was scheduled for 7/29/09 at 1 p.m.

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: Chip Kimball
Status: Appeal was received on 4/17/09.

- **Motion made by Councilor Henderson to accept the appeal, second by Councilor St. Pierre. Motion passed unanimously.**

PHC was scheduled for July 29, 2009 time to be announced.

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.

- **Councilor St. Pierre made a motion to deny the appeal, second by Councilor Sloan. Discussion was held. Motion passed unanimously.**

Councilor St. Pierre will write the letter of explanation.

Docket No.: 09-20 WtC – Dana Belletete
Subject: 3/26/09 Request for Reconsideration Denial, Wetlands File No. 2009-00366
Presiding Officer: Dennis Lydon
Status: Appeal was received on 4/23/09. Timely filed.

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

PHC will be scheduled.

Docket No.: 09-21 WtC - John Penaskovic
Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD
Presiding Officer: Not Assigned
Status: Appeal was received on 5/13/09. Council to vote to accept or deny the appeal at the 6/23/09 meeting. Chairman Morse is conflicted out of this appeal.

Docket No.: 09-22 WtC – John Penaskovic
Subject: 4/17/09 Administrative Order; Administrative Order No. 09-040 WD

Presiding Officer: Not Assigned
Status: Appeal was received on 5/13/09. Council to vote to accept or deny the appeal at the 6/23/09 meeting. Chairman Morse is conflicted out of this appeal.

Docket No.: 09-23 WtC – Brendan and Dana Keegan
Subject: 4/6/09 Administrative Order; Administrative Order No. 09-22 WD
Presiding Officer: Not Assigned
Status: Appeal was received insufficiently on 5/11/09.

Docket No.: 09-25 WtC – Town of Hooksett
Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016
Status: Appeal was received on 6/4/09 and distributed to the council on 6/9/09. Council to vote to accept or deny the appeal at the 7/14/09 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 5/22/09, Atty. Mulholland sent a Consented to Motion to Continue the Appeal Process Without a Pre-Hearing Conference. A hearing was scheduled for 8/11/09 at 9 a.m.
**Note – on August 11, 2009 the regular Council meeting will begin at 8 a.m. with the 2 hearings scheduled for later in the day.

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 today 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: Council tabled action until prior to the hearing.

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 was held on 5/20/09. The parties are negotiating a settlement. A status report will be requested for the next meeting.

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 was attached to this report for the Council to review and approve. Chairman Morse was not present for the hearing and abstained from the vote.
**Correct dates will be incorporated into all Decisions attached to this report.

- ***Councilor Kimball made a motion to accept the Decision and Order attached, second by Councilor Sloan. Motion passed unanimously.***

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.

- ***Councilor Kimball made a motion to accept the Decision and Order attached. Motion was withdrawn by Councilor Kimball.***

It was decided by the Council to not continue to review the appeal decisions on those appeals that are summarily dismissed. The council will continue to review appeal decisions on all others.

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 does not need to be reviewed as it was summarily dismissed.

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 finalized and will be complete and ready for the Council to review and approve.

- ***Motion was made by Councilor Lydon to accept the Decision and Order, second by Councilor Sloan. Motion passed unanimously, with an abstention by Chairman Morse.***

Docket No.: 08-37 WtC - Kenneth Ivester
Subject: 4/29/09 Application Denial, Wetlands File No. 2007-02731
Presiding Officer: Chip Kimball
Status: Council denied Motion for Reconsideration on 5/12/09. Decision needs to be drafted.

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 7/15/09 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: PHC is scheduled for 6/25/09 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 6/24/09 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. The parties are negotiating a settlement. A 129 day stay was granted by the presiding officer. Another PHC is tentatively scheduled for 9/23/09.

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: PHC will be scheduled for 7/15/09 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 will be scheduled for 7/29/09 at 9:00 a.m.

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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 6/24/09 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 7/29/09 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 7/29/09 at 1:00 p.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: A hearing is scheduled for 6/23/09. 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.: 09-07 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.

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: PHC set for 7/15/09 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
Status: A hearing was scheduled for 2/24/09. The parties requested a continuance, which was granted. The parties are negotiating settlement. It was requested that a request for status be sent out on this appeal.

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.

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 withdrawal was received today and distributed to the council.

Note on procedure: When appeals are received, the envelopes are now being kept in the files for confirmation.

3. Wetlands Update

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

SB 65 – mitigation; administrative fees; river restoration; passed the Senate but Ways and Means has made changes. A committee has been set up to study administrative fees.

HB 384 – prime wetlands; forestry; important to note that the applicant must demonstrate that there would be no net loss of values as set forth in RSA 482:A(1).

SB 124 – allowing property owners to install water control devices in beaver dams without permits from the department.

Staffing: 2 secretary positions still open; down one inspector.

Work flow: Wetland Application reviews are happening in 60-65 days(mandatory timeframe is 75 days): CSPA review are happening in 14 – 20 days(mandatory 30 day timeframe).

Stream Crossing rule making is going out to public hearing. There will be 3 public hearings held in Lancaster, Keene, and Concord.

5. Other Business

June 23, 2009 is the Mark and Kristen Begor Hearing.

Review of Petition for Declaratory Ruling received from Paul Goodwin will be discussed after today's hearing.

- ***Motion made by Councilor Lydon to adjourn the meeting, second by Councilor Henderson. Motion passed unanimously. Meeting adjourned at 10:05.***

Chairman Morse reconvenes the June 9, 2009 Wetlands Council meeting at 2:07 p.m.

Councilors in attendance: Prescott, Henderson, St. Pierre, Thompson, Kimball, Lydon and Chairman Morse.

Guest: Paul Goodwin

5. Other Business

Discussion held on Request for Declaratory Ruling submitted by Paul Goodwin. Discussed was the bureau's form 'Timeframe Review Extension by Mutual Agreement Form'. The ruling requested was whether this conforms with the statutory requirements the bureau is operating under, or not. Legal counsel had been consulted. The issue is - what is the determination of 'completeness'? It was determined there needs to be a process that the applicant can request the department to proceed with their processes deeming the response to be complete. This will allow the department to review, approve or deny, or request more time on their part for good cause. 1) Cannot commingle process events 2) must make a decision and not require the applicant to withdraw. Chairman Morse will work with Attorney Blenkinsop to have a response and recommendation to the commissioner. It was also recommended that there be two forms developed instead of just the one. It was agreed to by all present to proceed.

6. Old Business - None

7. Next Meeting – June 23, 2009

8. Adjournment

- ***Motion to adjourn made by Councilor Lydon, second by Councilor Henderson. Motion passed unanimously.***

Meeting adjourned at 2:34 P.M.