

WETLANDS COUNCIL

MINUTES

December 8, 2009

The Wetlands Council met on Tuesday, December 8, 2009 in room 112 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Lawrence E. Morse, Larry Ballin, Carol Henderson, Chip Kimball, Dennis Lydon, Seth Prescott, and Thomas Sloan, and David Thompson

Absentees: Sharon Champagne, Paul Dionne, Dari Sassan, and Russ St. Pierre,

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

The regular Wetlands Council meeting was called to order by Chairman Morse at 9:04 with a quorum present.

1. Approval of Minutes of October 13, 2009 Council Meeting

It was decided to table the minutes until the end of the meeting in, giving the council time to review.

2. Status of Appeals

Only the Appeals below requiring action by the Council were reviewed verbally.

Amy Samson, Council Clerk, reviewed the following:

I. New Appeals

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

Subject: Administrative Order No. 09-22 WD dated April 6, 2009 (**Please note: The Appellant filed an appeal on 5/11/09. The document was not filed with my office. The document was addressed correctly, but did not make it to me. A member of the Wetlands Bureau questioned it because he received a copy. The original appeal was clearly addressed appropriately so I contacted the Appellant and they've filed another copy, which was sent in your package.)

Presiding Officer: Not Assigned

Action: Accept or Deny the Appeal

- ***Councilor Sloan made a motion to Table this appeal until confirmation of the receipt of this appeal is investigated, seconded by Councilor Kimball. Motion passed unanimously.***

Docket No. 09-37 WtC – Ossipee Bluffs Association

Subject: 10/22/09 Decision on Reconsideration, Wetlands File No. 2008-02822

Presiding Officer: Chairman Morse

- ***Councilor Kimball made a motion to accept the appeal, second by Councilor Thompson. Motion passed unanimously with abstentions by Councilors Henderson and Prescott.***

Docket No. 09-35(corrected to 09-38) WtC – Town of Newbury

Councilor Henderson and Councilor Ballin recused themselves from this appeal.

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Not Assigned

Action: Accept or Deny the Appeal

Chairman Morse asked Councilor Ballin to reconsider his position on this appeal to meet quorum.

Councilor Ballin agreed to this.

- ***Councilor Kimball made a motion to accept the appeal, second by Councilor Thompson. Motion passed with a 6 aye and 1 nay vote, with Councilor Prescott abstaining.***

It was agreed at the Pre-Hearing Conference(PHC) that when this appeal came before the Council it would not be combined with the other Town of Newbury Appeal as the other is regarding a shoreland permit. It was agreed that the PHCs would be held back-to-back on the same day.

Ms. Samson then continued verbally at Docket No. 08-01 WtC.

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

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 is complete. The decision will be forwarded to the presiding officer and the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 12/22/09 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 issued on June 16, 2009 to grant the appeal. The matter was remanded to the Bureau for further proceedings consistent with the requirements of the Order. Motion for Reconsideration was filed on 7/16/09. On 9/22/09, Council denied the Motion for Reconsideration. A decision and order will need to be finalized.

Docket No.: 08-16 WtC - Jumanna Stark

Subject: 10/19/07 Decision on Reconsideration, Wetlands File No. 2007-00473

Presiding Officer: Dennis Lydon

Action: Decision is complete. The decision will be forwarded to the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 12/22/09 meeting.

Docket No.: 08-32 WtC - William J. Wilson

Subject: 6/20/08 Wetlands & Non-Site Specific Permit No. 2007-02744 – Approval Condition #1

Presiding Officer: David Thompson

Action: Decision is complete. The decision will be forwarded to the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 12/22/09 meeting.

Docket No.: 08-37 WtC - Kenneth Ivester

Subject: 4/29/09 Application Denial, Wetlands File No. 2007-02731

Presiding Officer: Chip Kimball

Action: Decision is complete. The decision will be forwarded to the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 12/22/09 meeting.

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

Action: Decision is complete. The decision will be forwarded to the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 12/22/09 meeting.

Docket No.: 09-17 WtC - Joseph and Suzanne Labrecque

Subject: 3/17/09 Request for Reconsideration, Wetlands File No. 2008-02086

Presiding Officer: Larry Morse

Action: Decision is complete. The decision will be forwarded to the presiding officer and the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 12/22/09 meeting.

III. Hearings or PHCs scheduled.

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: PHC scheduled for 1/20/10 at 9:00 a.m.

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: Need to schedule a PHC.

Docket No.: 08-04 WtC - Porter Trust

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

Presiding Officer: Chip Kimball

Status: On 11/2/09, Atty. Devine filed an Amended Appearance. A PHC is scheduled for 12/30/09 at 9:00 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: A PHC is scheduled for 12/30/09 at 12:00 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: An appearance was filed by Ms. Magoon representing DES. A hearing is scheduled for 1/12/10 at 10:00 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: A PHC is scheduled for 1/20/10 at 9:00 a.m.

Docket No.: 09-13 WtC - Dillon Investments, LLC

Subject: Administrative Order No. 09-004
Presiding Officer: Dave Thompson
Status: A PHC is scheduled for 12/30/09 at 2:30 p.m.

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: A PHC is scheduled for 12/30/09 at 12:00 p.m.

Docket No.: 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD
Presiding Officer: Chip Kimball
Status: On 11/5/09, Atty. Noether filed an appearance representing DES. A hearing is scheduled for 4/13/10 at 10:00 a.m.

Docket No.: 09-22 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD
Presiding Officer: Chip Kimball
Status: A hearing is scheduled for 4/13/10 at 10:00 a.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: Larry Morse
Status: A PHC is scheduled for 1/20/10 at 1:00 p.m.

Docket No.: 09-33 WtC – Norman and Patricia Bureau

Subject: 11/4/08 Administrative Order No. 08-044 WD - Alteration of Terrain at 5 Christopher Road & 6 Steep St., in Merrimack
Presiding Officer: Larry Morse
Status: A PHC is scheduled for 1/20/10 at 9:00 a.m.

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: Dennis Lydon
Status: A PHC is scheduled for 1/27/10 at 9:00 a.m.

IV. Previously pending cases.

Verbal reading of status report resumes:

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: A PHC was held on 9/16 to get a status report. A hearing is currently scheduled with the court in May 2010. An Assented-To Motion to Stay was filed by Atty. McGrath on 9/22/09.

Chairman Morse granted the Assented-To Motion to Stay. No objection by the Council.

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: At the Hearing on 8/25, Atty. Mulholland announced that a hearing will not be held due to the fact that the parties negotiated a settlement. A withdrawal has not been received. A letter will be sent to the parties requesting status.

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 11/24/09, a Motion to Dismiss or, in the Alternative, to Deny the Appeal was filed by Atty. Turner. On 11/25/09, an Assented-To Motion to Enlarge Time Allowed to Respond to Motion to Dismiss was filed by Atty. Callen. On 12/3/09, an Objection to PDA's Motion to Dismiss was filed by Atty. Callen.

Action: Grant or Deny Motion to Dismiss.

Chairman Morse noted that review of this case and others that are related needs to take place with counsel prior to the next meeting.

- ***Councilor Kimball made a motion to Table until the January meeting, second by Councilor Henderson. Motion passed unanimously with Chairman Morse abstaining.***

There has been a request made for Chairman Morse to recuse himself from the case. This is being taken under advisement at this point in time. He has represented a mutual client to one of the attorneys on the appeal but it didn't involve any of the issues associated with this specific appeal.

The next appeal reviewed was 09-01 WtC Kevin Price Appeal.

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.

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: Appeal withdrawn on 10/30/09.

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.: 08-52 WtC - Michael and Karen Miles

Subject: 8/8/06 Decision on Reconsideration Denial, Wetlands File No. 2008-00037

Presiding Officer: David Thompson

Status: Appeal has been withdrawn.

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: The parties are negotiating settlement.

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 withdrawn on 10/29/09.

Verbal review began again:

Docket No.: 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse

Status: On 10/29/09, a Motion to Intervene was filed by Atty. Callen on behalf of Bruce Guckert. On 11/9/09, an Objection to Motion to Intervene was filed by Atty. Scott. On 11/13/09, Atty. Roth filed an appearance representing DES. On 11/13/09, Atty. Roth filed a Response to the DES to Appellant's Objection to Motion to Intervene. On 11/16/09, Atty. Callen filed a Reply to Appellant's Objection to Motion To Intervene. On 11/23/09, Atty. Scott filed an Objection to Motion for Late Entry. On 11/23/09, Atty. Callen filed an Objection to Appellant's Motion for Late Entry on behalf of Bruce Guckert. On 11/25/09, Mr. Smith, Executive Director of Ossipee Lake Alliance sent a letter requesting a PHC to be scheduled.

Action: Grant or Deny Motion to Intervene.

Chairman Morse granted Motion to Intervene, which will make the other motions moot that follow it.

No further appeals were verbally reviewed.

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 was held on 6/17/09. Stay appeal until issuance of Wetlands permit then reconvene PHC.

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 was held on 6/17/09. Stay appeal until issuance of Wetlands permit then reconvene PHC.

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 withdrawn.

Docket No. 09-31 WtC – Donald Prudhomme

Presiding Officer: Not Assigned

Status: Appeal received insufficiently. A letter was sent to the Appellant. A sufficient appeal would need to be filed by the Council's 1/12/10 meeting.

Docket No. 09-32 WtC – Patricia Prudhomme

Presiding Officer: Not Assigned

Status: Appeal received insufficiently. A letter was sent to the Appellant. A sufficient appeal would need to be filed by the Council's 1/12/10 meeting.

Discussion was held as to the process used for dissemination of information to the Councilors and time needed for review of information received.

3. Wetlands Bureau Report

Collis Adams, Wetlands Bureau Administrator

Staffing - Down one technical reviewer and down 2 full time and 1 part time support staff. At this time applications are down approximately 30%. This also affects the fee account which is running low. It does seem to be flattening out and hope this is the bottom.

Stream Crossing Rules – this has been a 2 year process. 5 public hearings were held throughout the state. Written and verbal comments have been received and are being reviewed. They will then be taken to JLCAR.

Timber Harvesting Rules – these are the result of statute change last session. The goal is to have the first draft out in January.

Utility Line Maintenance Rules – specifically working on the best management practices manual that addresses utility line maintenance. The goal is to have ready the first of the year.

Legislation:

HB 222 – secondary(indirect) impacts to wetlands. Copies were distributed to the Council members. This has come out of committee and will be heard by the full House. Concerns are:

- 1) “may consider”, as this opens up items to appeal.
- 2) Does not provide additional funding that will be required for increased staff.
- 3) Statute sets the fee.
- 4) Statutory time frames are not addressed and more time will be needed.

The Department feels that the Land Use Commission needs to finish its report in November 2010 before changes to rules and statutes.

4. Other Business –

At 9:45 A.M. the council went into a non-meeting with Counsel.

10:20 A.M. Chairman Morse called the Wetlands Council meeting back into session.

It was agreed to Table the minutes to the next meeting.

Procedure for disseminating information on upcoming appeals was discussed. It was decided to send out packets 10 days before the meeting(mailing it on Monday). When Council receives motions on cases, they will be transmitted via email by Carolyn to the hearings officer for evaluation.

5. **Old Business** - None

6 **Next Meeting** – Next meeting will be January 12, 2010

7. **Adjournment**

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

Meeting adjourned at 10:25.

DRAFT