

WETLANDS COUNCIL

MINUTES

May 11, 2010

The Wetlands Council met on Tuesday, May 11, 2010 in rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

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

Absentees: Larry Ballin, Sharon Champagne, Paul Dionne, and Seth Prescott,

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 9:00 with introductions and a quorum present.

1. Approval of Minutes

- ***Motion made by Councilor Thompson to approve the April 13, 2010 minutes with the corrections noted, second by Councilor Henderson. Motion passed unanimously.***

204.3c was reviewed regarding the decisions on appeals that are dismissed. The Decisions on dismissed appeals will no longer come back to the Council.

Docket No. 08-38 Pickman and Sons Development, LLC Appeal

This had been sent out in the packet. The date will be changed to today's date for the Decision and then it will be mailed.

Docket No. 08-01 Newington Conservation Commission Appeal

- ***Councilor Thompson made a motion to accept the Decision as written, second by Councilor Sloan. Motion passed unanimously, with Councilor Morse abstaining.***

3. Wetlands Bureau Report

Mary Ann Tilton, Wetlands Bureau, reported that on May 7th the JLCAR did vote to approve the Env Wt 100 & 900 and a vote on the 300, 500, and 800 rules was a tie, so the vote failed. It was decided to take those rules up again May 21st. The Department will adopt the 100 and 900 rules before the May 21st meeting. She thanked all those who helped in support of these rules. Trainings will be provided on the new rules.

The DES Wetlands Bureau has been participating in a Surface Water Work Group. The subcommittees that the Wetlands Bureau is going to be serving on are Definitions, working on Impaired Waters, Designated Uses, and Enforcement.

Work is being done on 3 grants: 1) Wetlands Program Development Grant – the process as it relates to water quality 2) NOAA Grant to improve database, and 3) Climate Change to update

NWI maps. A Wetlands base map has been completed which ties the NWI in with the hydrography layer.

Applications received maybe up about 10%.

9:33 Councilor Dari Sassan arrives.

6. Old Business:

SB 480 is out of the judiciary committee and will be voted on May 12th. The House has given subpoena power to the hearing officer in lieu of the appellants being allowed to go to Superior Court. Now a decision will be required 90 days after a hearing.

5. Other Business

Councilor Morse spoke to HB1305 & HB1348 and the Water Quality Standards Committee work and the possible changes that may occur.

4. Status of Appeals

Amy Sampson, Appeals Clerk, reviewed the following:

I. New Appeals

Docket No. 10-07 WtC – Pomeroy Limited Partnership

Subject: 3/3/10 Application denial, Wetlands File No. 2009-02747

Presiding Officer: Larry Morse

Status: Appeal received on March 25, 2010.

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

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

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 and is attached to the Status Report.

- ***Motion made by Councilor Henderson to adopt the Decision subject to review of counsel, second by Councilor Morse. Motion passed unanimously.***

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. Final Decision will be ready for the Council's approval on 6/8/10.

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. When Counsel approves it, it will be sent out.

Docket No. 10-01 WtC – Julie and Earle Jenkins

Subject: 12/10/09 Decision on Reconsideration

Presiding Officer: Larry Ballin

Recused: Chip Kimball

Status: Council did not accept the appeal at the 2/9/10 meeting. A written decision needs to be finalized then it will be sent out.

III. Hearings or PHCs scheduled.

All PHC scheduled dates are subject to change and official notice requirements.

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 hearing is scheduled for 6/8/10 at 10:00 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: PHC needs to be scheduled.

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 6/16/10 at 12:00 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: PHC scheduled for 5/26/10 at 9 a.m. in room 313.

Docket No. 09-21 WtC - John Penaskovic

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

Presiding Officer: Chip Kimball

Status: A PHC was held on 4/20/10 at 9 a.m. If the submitted plans as discussed at the PHC are not approved by DES, another PHC will be held on 5/11/10 at 11 a.m. in room 112. Plans have been approved so there was no PHC.

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 PHC was held on 4/20/10 at 9 a.m. If the submitted plans as discussed at the PHC are not approved by DES, another PHC will be held on 5/11/10 at 11 a.m. in room 112. Plans have been approved so there was no PHC.

Docket No. 09-25 WtC - Town of Hooksett

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: On 4/16/10, received letter and photos from Mr. DiGuiseppe of Coastal Partners. PHC scheduled for 6/16/10 at 9:00 a.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: PHC was held on 4/21/10. At the PHC the Appellants agreed to resubmit copies of the original Notice of Appeal originally filed with the Water Council. The copies were filed on

4/28/10. A hearing is scheduled for 8/10/10 at 10 a.m. No appearance has been filed on behalf of DES.

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

Docket No. 09-30 WtC – Phillips 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: PHC was held on 4/28/10 at 2:30 p.m. A hearing is scheduled for 6/8/10 at 10 a.m.

Docket No. 09-31 WtC – Donald Prudhomme

Subject: 8/7/09 Application Denial, Wetlands File No. 2009-01412

Presiding Officer: Larry Ballin

Status: A PHC is scheduled for 5/26/10 at 3 p.m.

Docket No. 09-32 WtC – Patricia Prudhomme

Subject: 8/7/09 Application Denial, Wetlands File No. 2009-01412

Presiding Officer: Larry Ballin

Status: A PHC is scheduled for 5/26/10 at 3 p.m.

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

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

Presiding Officer: David Thompson

Status: Council accepted the appeal on 2/9/10. A PHC is scheduled for 5/26/10 at 1 p.m.

Docket No. 09-37 WtC – Ossipee Bluffs Association

Subject: 10/22/09 Decision on Reconsideration, Wetlands File No. 2009-02822

Presiding Officer: Larry Morse

Status: PHC scheduled for 6/16/10 at 12:00 p.m.

Docket No. 09-44 WtC – Thomas and Joan DiPace

Subject: 10/13/09 Administrative Order No. 09-082 WD

Presiding Officer: Chip Kimball

Status: A PHC is scheduled for 5/26/10 at 11 a.m.

Docket No. 10-02 WtC – Grappones Appeal

Subject: 12/21/09 Ellakona Realty, LLC's Shoreline Impact Permit No. 2009-02802

Presiding Officer: David Thompson

PHC scheduled for 5/26/10 at 1 p.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: Dennis Lydon

PHC scheduled for 5/26/10 at 9 a.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
PHC scheduled for 6/16/10 at 10:30 a.m.

Docket No. 10-05 WtC – William and Sue Conaty Appeal

Subject: 1/5/10 Reconsideration Denial, Wetlands File No. 2009-00233
Presiding Officer: Chip Kimball
PHC scheduled for 5/26/10 at 11 a.m.

IV. Previously pending cases.

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: Appeal has been stayed.

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: Chip Kimball
Recused: Larry Morse
Status: The Decision adopted today will be issued.

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: The parties are negotiating settlement. A letter requesting status will be sent.

Docket No. 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705
Presiding Officer: Chip Kimball
Status: The parties are negotiating settlement. A letter requesting status will be sent.

Docket No. 08-13 WtC - Jeffrey Costura

Subject: 1/25/08 Decision on Reconsideration, Wetlands File No. 2007-01416
Presiding Officer: Dennis Lydon
Status: The parties are negotiating settlement. A letter requesting status will be sent.

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 sent a copy of his permit as a way to inform me that he's "all set". A request for a formal withdrawal has been sent and we should expect a response by the 6/8/10 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
Presiding Officer: Dennis Lydon
Status: The parties are continuing to negotiate settlement. A letter requesting status will be sent.

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: The parties are continuing to negotiate settlement. A letter requesting status will be sent.

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

Recused: Larry Ballin & Carol Henderson

Status: PHC scheduled for 6/16/10 at 2 p.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

Recused: Larry Ballin & Carol Henderson

Status: PHC scheduled for 6/16/10 at 2:00 p.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 was held on 3/17/10 at 9:00 a.m. A 90-days continuance was granted by the presiding officer while the parties negotiate settlement.

Docket No.: 09-35 WtC – Town of Newbury

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

Presiding Officer: Larry Morse

Recused: Larry Ballin and Carol Henderson

Status: PHC scheduled for 6/16/10 at 2:00 p.m.

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. Councilor Morse will write this.

7. **Next Meeting** – Next meeting will be June 8, 2010 with two hearings.

8. **Adjournment**

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

Meeting adjourned at 10:35 a.m.