

WETLANDS COUNCIL

MINUTES

July 13, 2010

The Wetlands Council met on Tuesday, July 13, 2010 in rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Larry Ballin, Carol Henderson, Lawrence Morse, Russ St. Pierre, Seth Prescott, Dari Sassan, and Thomas Sloan

Absentees: Sharon Champagne, Paul Dionne, and David Thompson

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 St. Pierre to approve the June 8, 2010 minutes with the corrections noted, second by Councilor Ballin. Motion passed unanimously, with Councilor Morse abstaining.***

4. ARM Fund – Winnepesaukee River Watershed

Mary Ann Tilton and Tim Drew, NH DES

The distribution of \$153,000 was reviewed from the Winnepesaukee River Watershed.

A. Birch Ridge Project, New Durham

The Site Selection Committee voted to fund \$100,000. Discussion was held by the Council.

- ***The Council recommends partial funding of \$100,000. for Birch Ridge in New Durham. The Council noted that the selected project provides the greatest potential to replace or protect specific wetland functions and values lost by the impacts in the Winnepesaukee River watershed. The parcel has been under threat of development throughout the past years and it has the potential to connect existing conservation lands. If complete funding is unavailable the ARM funds will be returned to the watershed fund. And the costs and benefits separation of this project by watershed between Salmon Falls and Winnepesaukee should be reviewed before distribution. Prior to the expiration of one year's availability of the funds a project funding status update be presented to the council with a request to extend the funding.***

This Motion was tabled until later in the meeting.

B. Tioga River Wildlife & Conservation Area

The Site Selection Committee voted to fund \$31, 000.

- C. Coffin Brook Road Floodplain Connectivity Improvement Plan
The Site Selection Committee voted to fund \$23,000.

3. **Wetlands Bureau Report**
Mary Ann Tilton

A full-day regulator training is being held tomorrow on the Stream Crossing Rules and technical aspects of how these are being applied and interpreted. An outreach advisory group may be formed to develop a plan for a list and scheduling of where to targeted training. Also updating will be worked on the BMP manuals/guide books. Council members interested in outreach are Tom Sloan, Larry Morse, and Chip Kimball.

When the budget is finalized the positions in the bureau will be determined. Other grants have been applied for.

Discussion was held as to the number of appeals being down, and what would be the reasons.

2. **Status of Appeals**

Amy Sampson, Appeals Clerk, reviewed the following:

I. New Appeals

Docket No. 10-08 WtC – Robert Reich

Subject: 4/19/10 Decision on Reconsideration, Wetlands File No. 2009-02050

Presiding Officer: Chip Kimball

Status: Council to vote whether or not to accept.

- ***Councilor Henderson made a motion to accept, second by Councilor Prescott. Motion passed unanimously.***

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File NO. 2008-01253

Presiding Officer: Chip Kimball

Status: Council to vote whether or not to accept.

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

The Petition to Intervene, the Motion to Dismiss, and the Objection to the Motion to Dismiss to be reviewed and addressed at a Pre-Hearing Conference (PHC).

Docket No. 10-11 WtC – Thomas and Margaret Ettinger

Subject: 5/7/10 Shoreland Impact Permit No. 2009-02747

Presiding Officer: Not Assigned

Status: The appeal was received in two pieces. One piece was not directly received by my office but later received before the 4th of July holiday. Council clerk needs extra time to review. This will be addressed at the August meeting along with the other documents received in regard to this appeal.

Docket No. 10-12 WtC – Provençal One Family Trust

Subject: 6/4/10 Administrative Order No. 10-013 WD

Presiding Officer: Not Assigned

Status: Appeal received on 7/2/10. Council to vote whether or not to accept at the next Council meeting.

Regular meeting took a recess at 10:15 a.m. to hear the following report from the parties involved in 06-16 WtC Shane Forest Appeal.

Linda Magoon, NH DES, and John Levenstein, Attorney for Shane Forest reported that an agreement has been reached and the appeal will be withdrawn. Attorney Levenstein will be sending the original and 15 copies of the withdrawal letter.

The Council returned to their regular meeting at 10:17 a.m.

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

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: Council granted the Assented-To Motion To Dismiss. A decision and order needs to be finalized.

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 need to be reviewed and approved at the 8/10/10 meeting.

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 hearing was held on 6/8/10. A decision and order needs to be finalized.

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: An agreement was reached and the appeal will be withdrawn.

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: A PHC needs to be rescheduled

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 7/28/10 at 9 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 7/21/10 at 9 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

Recused: Larry Ballin, Carol Henderson

Status: PHC was held on 6/16/10 at 2:00 p.m. A 2nd PHC is scheduled for 9/15/10 at 10 a.m.

Discussion was held as to the possibility of combining of 09-07, 09-08, and 09-35 into two hearing days in October. It was decided to have the clerk send the parties a letter that we are looking at holding the hearings either on 10/11 and 10/12 or on 10/12 and 10/14 with a start time of 9 a.m. They will be given the options and instructed to come back with a consent statement as to hearing dates.

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 was held on 6/16/10 at 2:00 p.m. A 2nd PHC is scheduled for 9/15/10 at 10 a.m.

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, Carol Henderson

Status: PHC was held on 6/16/10 at 2:00 p.m. A 2nd PHC is scheduled for 9/15/10 at 10 a.m.

Mary Ann Tilton returned with answers to the ARM Fund questions.

A. Birch Ridge Project, New Durham

The Site Selection Committee voted to fund \$100,000. Discussion was held by the Council.

- ***Councilor Morse made a motion the Council recommends partial funding of \$100,000. for Birch Ridge in New Durham. The Council noted that the selected project provides the greatest potential to replace or protect specific wetland functions and values lost by the impacts in the Winnepesaukee River watershed. The parcel has been under threat of development throughout the past years and it has the potential to connect existing conservation lands. If complete funding is unavailable the ARM funds will be returned to the watershed fund. And the costs and benefits separation of this project by watershed between Salmon Falls and Winnepesaukee should be reviewed before distribution. Prior to the expiration of one year's availability of the funds a project funding status update be presented to the council with a request to extend the funding, second by Councilor Ballin. Motion passed unanimously.***

B. Tioga River Wildlife & Conservation Area (Town of Belmont)

The Site Selection Committee voted to fund \$30, 000.

- ***Councilor Henderson made a motion to accept the Site Selection Committee's recommendation of partial funding of \$30,000.00 to the Town of Belmont for the Tioga Wildlife and Conservation project. The Committee noted the funds are contingent on the Town providing a conservation easement on the parcel for long-term protection. The Committee requests confirmation from the Town within 3***

months from the Wetland Council approval that they can secure a permanent easement on the property. If the Town is unable to secure long-term protection of the parcel, the \$30,000.00 shall be provided to the Forest Society for completion of the Birch Ridge conservation/restoration project, second by Councilor Morse. Motion passed unanimously.

C. Coffin Brook Road Floodplain Connectivity Improvement Plan (Town of Alton Hwy Dept.)
The Site Selection Committee voted to fund \$23,000.

- ***Councilor Morse made a motion to recommend partial funding of \$23,000 to the town of Alton for the purchase of the culverts. If the town is unable to secure additional funding to complete the project the funds will revert to the Birch Ridge project, second by Councilor Ballin. Motion passed unanimously***

Docket No.: 9-25 WtC – Hooksett Land Development

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

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: PHC was held on 6/23/10 at 9 a.m. A hearing is scheduled for 9/14/10 at 10 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: A hearing is scheduled for 8/10/10 at 9:00 a.m.

** Regular Council meeting will be held at 8:00 a.m. on 8/10/10.

Docket No. 09-31 WtC – Donald Prudhomme

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

Presiding Officer: Larry Ballin

Status: PHC is scheduled for 7/20/10 at 3:00 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: PHC is scheduled for 7/20/10 at 3:00 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: PHC is scheduled for 7/28/10 at 10:30 a.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: Chip Kimball

Status: PHC is scheduled for 7/28/10 at 10:30 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

Status: PHC is scheduled for 7/21/10 at 11:00 a.m.

July 13, 2010

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

Status: PHC was held on 6/23/10 at 11:00 a.m. A hearing is scheduled for 8/10/10 at 1:00 p.m. If the 1st appeal cancels, Mr. Goodwin agreed that he will arrive earlier. Council clerk will contact him a few days before to let him know.

IV. Previously pending cases.

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 request for status was sent on 5/20/10 for the parties to respond by the 6/8/10 Council meeting. The parties have not responded. Council voted at the 6/8/10 Council meeting to hold and wait for response by the 7/13/10 Council meeting.

- ***Councilor Sloan moved to dismiss this appeal based on failure to respond per 204.04(g), second by Councilor Morse. Discussion was held. Motion passed unanimously.***

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 request for a status update will be sent for the parties to respond by the next 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 negotiating settlement. A request for a status update will be sent for the parties to respond by the next Council meeting.

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 negotiating settlement. A request for a status update will be sent for the parties to respond by the next Council meeting.

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. A request for status will be sent.

Docket No.: 09-20 WtC - Dana Belletete

Subject: 3/26/09 Request for Reconsideration Denial, Wetlands File No. 2009-00366

Presiding Officer: Chip Kimball

Status: PHC held. 30-day stay granted. Parties agreed that if this is not resolved in 30-days a hearing will be scheduled (no 2nd PHC). A request for status will be sent.

Docket No.: 09-21 WtC - John Penaskovic

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

July 13, 2010

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Status request was sent to the parties. Status letter received on July 12, 2010.

Docket No.: 09-22 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Status request was sent to the parties. Status letter received on July 12, 2010.

09-21 and 09-22 are being held until agreement of 7/1/10 is completed.

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: PHC was held on 6/24/10 at 2 p.m. 60-day stay granted while parties negotiate settlement.

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: Appeal withdrawn.

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

Status: Appeal withdrawn.

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.

5. Old Business:

6. New Business - Councilor Ballin will not be in attendance at the 9/14/10 meeting.

7. Next Meeting – Next meeting will be August 10, 2010 with two hearings. Regular meeting will begin at 8 a.m. with one hearing at 9 am. and the other hearing at 1 p.m.

8. Adjournment

Meeting adjourned at 11:04 a.m.