

FINAL MINUTES
HB 1579 COMMISSION TO STUDY LAND DEVELOPMENT REGULATIONS
AND THE EFFECTS OF LAND DEVELOPMENT WITHIN UPLAND AREAS
THAT MAY AFFECT WETLANDS AND SURFACE WATERS OF THE STATE

August 26, 2008 * 10:30 am
NH Legislative Office Building, Room 305, Concord, NH

Commissioners:

Paul Dionne, representing NH Association of Conservation commissions
Cheryl Killam, representing NH Municipal Association
Peter Stanley, NH Association of Regional Planning Commissions
Jennifer Czysz, representing NH Office of Energy and Planning
Pat Corso, representing Business and Industry Association
Jim Gove, representing Association of General Contractors of NH
Peter Walker, representing NH Association of Natural Resource Scientists
Charles Miner Jr., representing NH Fish and Game
Representative Chris Christensen, NH House of Representatives
Chairperson Representative Sue Gottling, NH House of Representatives, member of the
Resources, Recreation and Development Committee
Erin Darrow, representing American Council of Engineering Companies of NH
Paul Morin, representing Home Builders and Remodelers Association of NH
Laura Deming, representing NH Audubon Association

Attendees:

Susan Olsen, NH Municipal Association
Ted Diers, NH Department of Environmental Services
Paul Currier, NH Department of Environmental Services
Michael Brunetti, Mount Washington Resort
Dana Bisbee, Mount Washington Resort
Bruce Berke, Mount Washington Resort/Sheehan Phinney
Dave Juret, Business and Industry Association
Kathryn Fox, Environment NH
Phil Braley, Brown, Olson & Gould
Gina Rotondi, Rath, Young and Pignatelli/NH Snowmobile Association
Adam Schmidt, Bianco P.A./NH Association of Realtors
Representative Judith Spang, NH House of Representatives, member of the Resources,
Recreation and Development Committee
Representative Bill Brennan, NH House of Representatives

Commission Staff:

Dari Sassan, NH Office of Energy and Planning

I. ROLL CALL AND INTRODUCTIONS

Representative Gottling called the meeting to order at 10:34 am, distributing copies of an agenda and of HB1579. She announced that of the twenty members to be enlisted on the commission, seventeen had been named.

II. REVIEW OF COMMISSION DUTIES

Representative Gottling read the duties of the commission as they appear in the HB1579:

294:3 Duties. The commission shall study:

- I. The effects of land development on surface and ground water quality and quantity, and terrestrial and aquatic habitat.*
- II. The adequacy and consistency of local, state, and federal programs as they relate to the regulation and management of land development, including regulations of wetland buffers and setbacks, stormwater management, and cumulative effects of development.*
- III. The opportunities for integration of land use controls, open space protection techniques, and environmental and public health protection laws to promote land development patterns that maintain ecosystem health and integrity while providing desirable communities in which to live and work. This shall include study of any programs of this kind underway in other states or nations.*
- IV. The potential legal, fiscal, regulatory, and technical obstacles for creating an integrated approach to land development.*
- V. Legislation that may be necessary to implement the recommendations of the commission.*

Representative Gottling indicated that a Stormwater Commission (HB1295) has also been formed and that issues relating specifically to stormwater will be examined closely by that commission and their conclusions will be shared with the Land Use Commission. She indicated that the Department of Environmental Services (DES) and the Office of Energy and Planning (OEP) have been in discussions regarding how the two commissions will work in concert and without excessive overlap.

Representative Gottling acknowledged Mr. Diers and requested that he provide a brief synopsis of how the two commissions would fit together. Mr. Diers indicated that one possibility could be that the land use commission focus on *where* land development takes place and the stormwater commission focus on *how* it is executed.

Ms. Darrow asked for clarification regarding the land use commission's expectations for addressing stormwater and expressed that stormwater issues are an important component of land use decisions. Representative Gottling stated that the two commissions should continue to develop avenues for communication.

III. INTRODUCTION OF COMMISSION MEMBERS

Commission members and staff introduced themselves by name and representation/affiliation.

IV. DESIGNATION OF CHAIR AND VICE CHAIR

Representative Gottling nominated Senator Harold Janeway to be commission chairperson. Representative Christensen responded that Senator Janeway's other responsibilities would make it difficult for him to chair the commission and nominated Representative Gottling. Mr. Stanley seconded the nomination. With herself abstaining, Representative Gottling was unanimously voted in as commission chair.

Following an offer from Ms. Darrow to serve as vice chair, Representative Gottling advanced Ms. Darrow's nomination. Mr. Dionne seconded the nomination. By a unanimous vote, Ms. Darrow was named vice chair.

Ms. Czysz offered OEP planner, Mr. Sassan, to serve as commission clerk/staff. Commissioners unanimously accepted Ms. Czysz's offer. Chairperson Gottling extended her gratitude toward Ms. Czysz, Mr. Sassan and OEP for the contribution.

Representative Gottling asked Representative Spang to provide a background on the commission and the legislation through which it was created. Representative Spang stated that the discussions leading to the formation of the commission were borne from consideration of the viability of a statewide mandatory wetland setback requirement of 75 feet. Questions that came up as such a regulation was considered (e.g. "What is a structure?" or "What wetlands shall be protected?") shed light on the need for a commission to look at some of the broader aspects of land use management and regulation. Representative Spang, reported that, in the Senate, Senator Janeway had illuminated the concern that cumulative impacts of development within wetlands needed to be properly addressed. Circumstances at the Fallsway subdivision also brought up concerns of cumulative impacts of a development that may go unrecognized when handled permit-by-permit.

Representative Spang next stated that a need exists to study the relationship between uplands and wetlands. She indicated that DES Commissioner Thomas Burack is interested in combining regulatory and permitting processes that relate to wetlands, stating that he sees an opportunity to remove confusion and administrative work. In contrast to the current system, of addressing a development proposal on a permit-by-permit scale, potentially allowing for certain impacts to fall through the cracks, an opportunity exists to pull all the various regulating groups together and create a more streamlined, comprehensive policy.

Also requiring further study, continued Representative Spang, is the way in which the various levels of land use regulation fit together. Particularly, there exists a need for a commission to weight the costs and benefits of local control against those of uniform state standards. While local control is very important to NH citizens, some developers have expressed that they would prefer uniform, predictable standards. Also, the potential

environmental impacts of weak local ordinances are significant enough to warrant the initiation a discussion regarding state regulatory standards.

V. STATEMENT FROM EACH COMMISSIONER HIGHLIGHTING IMPORTANT ISSUES BEFORE THE COMMISSION

Chairperson Gottling requested that, when called upon, each commission member issue a very brief statement of issues that they see as most important to the commission.

Mr. Morin expressed a need to create statewide uniformity regarding wetlands regulations. He contrasted Londonderry's regulations, which he feels are the product of a very professional staff, to the regulations of other towns, which may be quite different and are not as well staffed.

Mr. Walker explained that he once ran the permitting branch of the Wetlands Bureau at DES and has spent the last five years as a private consultant. Mr. Walker suggested the commission should address the following questions:

- How do we handle activity in the uplands regarding the impacts of that activity on wetlands?
- How to organize the various land use regulations?
- How does the department (DES) publicize regulations?

Mr. Stanley indicated that, in his profession, he works to apply existing tools to protect resources. He said that he has experienced frustration with a lack of broad understanding of regulations and with poor enforcement of regulations. Mr. Stanley expressed a feeling that rules must be simplified. He conveyed great hopes for the new Comprehensive Shoreland Protection Act (CSPA) and felt it would be great if every town would use the CSPA as a springboard toward uniform regulations. In summary, Mr. Stanley called for simplicity and clarity from regulations that effectively address the final goal.

Representative Christensen also expressed a feeling that statewide consistency is important. On the other hand, said Representative Christensen, local control has value as well. Statewide regulations that contain "must-meet-or-exceed" clauses can contribute to loss of uniformity. Representative Christensen concluded by observing that regulations bearing simplicity and consistency lend themselves to efficient enforcement.

Ms. Killam stated that two recent episodes of flooding in Raymond, NH have shed light on the potential benefits of state-level uniform setbacks. Ms. Killam has experienced frustration over the "grandfathering" that allowed for structures to rebuild in the same footprint where they experienced extensive flood damage. Ms. Killam also feels the increase in impervious surface that development can cause is a topic of concern that must be addressed.

Mr. Miner expressed that NH Fish and Game is interested in maintaining habitat. His personal Conservation Commission and Planning Board experience has elucidated the trials and tribulations of developers. Mr. Miner would like to see improved up-front communication between regulators and developers.

Mr. Dionne expressed interest in combining the various DES permits. He stated that the development community would benefit from permitting that is predictable and consistent. Mr. Dionne would like to see a balance struck between the needs of developers and wetlands protection.

Ms. Darrow said that she became a civil engineer because she was seeing considerable development in the Upper Valley region and she wanted to affect responsible, positive development. She said that she is a proponent of low impact development (LID) with strong interests in stormwater. Ms. Darrow said that the commission should promote activity that ensures a strong NH economy while protecting the state's valuable natural resources.

Ms. Deming explained that she is a wildlife biologist with NH Audubon. She emphasized that shoreland buffers and other mechanisms focused on the protection of surface waters may not necessarily protect upland habitat. She indicated a need to look beyond water quality and identify other measures of resource protection, which account for health and biodiversity of the entire watershed.

Mr. Gove explained that he was once a soil scientist and is now a consultant. He recalled that in his past dealings with the Soil Conservation Service, there was always a point person within the organization who was able to walk folks through the various permits and programs that might apply to the individual's project/parcel. He referred to the Land Use Management Program (LUMP) that is currently under development as a program that might offer similar utility. While he feels it will require legislative changes, Mr. Gove sees a benefit to having a single person within the Department (DES) look at a proposed project and walk the developer/landowner through all necessary permitting processes. He concluded by saying that the Association (NH Association of General Contractors) would be very supportive of consistent regulations within a unified permitting process.

Mr. Corso identified himself and his group as "the developer in the room." He said that he would like to see a balance between conservation and prosperity. His organization supports such concepts as Smart Growth, New Urbanism, and multi-use districts. He also supports the thorough vetting process that a developer undergoes as its projects are reviewed by US Fish and Wildlife, NH Fish and Game, DES, the US Environmental Protection Agency and the Army Corps of Engineers, where in the end, the agencies and the developer come up with a project that works for both buyers and regulators. Mr. Corso pointed out that consumers now concern themselves with a developer's commitment to sustainable practices. He said that he aspires to be a model developer that works with the state and its agencies to take on upon projects that foster conservation, environmental protection and economic development.

Ms. Czysz, recognizing that she would be the last to speak, prefixed her comments by saying that many reoccurring themes had surfaces throughout the comments of the other commissioners and that she would reiterate some of those themes. First, she said that

OEP works every day to equitably balance economic development with resource protection. Additionally, she said that OEP would like to help by serving as a bridge between the two commissions (land use and stormwater). Ms. Czysz's stated that her work as a planner at both the regional and state level has given her a first-hand look at the level of variation that exists between the policies from one NH town to another. She also said that, in recent years, flooding has provided a sterling example of the fact that better choices can and must be made.

Chairperson Gottling said that living in Sunapee has opened her eyes to some of the misunderstandings that can take place when changes are made in complex laws like the CSPA. She expressed her understanding that people have a need to obtain a clear understanding of what they can and cannot do with their land. Chairperson Gottling stated that prior to the groundbreaking of a development, she sees an opportunity for improved engagement by the state in public education.

VI. FUTURE STRUCTURE/ACTIVITIES OF COMMISSION

Chairperson Gottling proposed the following possibilities for future proceeding and requested comment:

- Formation of sub-committees.
- Conduct educational sessions at commission meetings (e.g. presentations before the commission).
- Investigation of "case studies."

Mr. Corso offered to present the development activities at Mount Washington Resort as a case study. Mr. Morin suggested that, in addition to Mr. Corso's example, another case study of a development of smaller scale might help to provide a more complete cross section of typical development in NH. Ms. Darrow added that including a third case study, which goes down to the single-parcel level would provide still more insight into the full realm of regulatory considerations and hurdles that are faced throughout the state.

Ms. Darrow proposed that, in addition to monthly commission meetings, sub-committees might also take shape. Mr. Stanley proposed that one sub-committee might review and define some minimal standards for the protection of wetlands and surface waters. Mr. Gove added that the achievement of an understanding of the current regulatory climate and current level of interaction between the various permitting groups would be a good place to start. He said that gaining an understanding of each regulatory group's practical jurisdiction would help to identify components, which are susceptible to falling through the cracks. Ms. Czysz, Chairperson Gottling and Mr. Walker concurred with Mr. Gove's comments, citing a need to gain a concrete sense of the current environment before moving forward. Mr. Walker added that it would also be useful to gain insight into the gamut of how regulations are interpreted, not only by individuals, but also by local land use boards.

Mr. Gove suggested that the NH Municipal association might be able to provide data to inform a discussion regarding variation in regulations between towns. Ms. Czysz added that OEP might also have data that would contribute to a fact-based discussion on

inconsistencies between local regulations. Mr. Stanley suggested that still more information might be available through the regional planning commissions. Ms. Czysz and Mr. Stanley agreed to work together to amalgamate existing data in to a digestible format.

Ms. Darrow expressed a desire to involve wastewater and drinking water professionals and asked that the commission consider involving the Wastewater Bureau. Mr. Miner offered to conduct a presentation regarding the ways in which land use regulations and development impact fish and game habitat.

Chairperson Gottling proposed the following for the next commission meeting:

- Presentation by NH Fish & Game- How land use regulation and development impact fish and wildlife habitat. (15-30 minutes)
- Presentation by DES- Current permitting systems (1 hour)
- Presentation by OEP/NH Association of Regional Planning Commissions- The quilt of municipal regulations in NH. (10-15 minutes)

Chairperson Gottling proposed that presentations of three case studies depicting large, mid-sized, and single parcel developments take place at a future meeting. Mr. Corso, Mr. Morin and Ms. Darrow will coordinate the three presentations.

VII. FUTURE MEETING DATES

<u>Date</u>	<u>Time</u>	<u>Location</u>
September 16, 2008	9 am	LOB* room 305
October 21, 2008	9 am	LOB* room 305

*NH Legislative Office Building, 33 North State Street, Concord, NH

VIII. ADJOURNMENT

At 11:44 am, Chairperson Gottling moved that the meeting be adjourned. Mr. Stanley seconded the motion, which carried unanimously.