

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

October 21, 2008 * 9:00 AM
NH Legislative Office Building, Room 305, Concord, NH

Commissioners Present:

Chairperson Representative Sue Gottling, NH House of Representatives, member of the
Resources, Recreation and Development Committee
Vice-chairperson Erin Darrow, representing American Council of Engineering Companies of NH
Senator Harold Janeway, NH Senate
Representative Chris Christensen, NH House of Representatives
Jerry Little, representing NH Bankers Association
Cheryl Killam, representing NH Municipal Association
Peter Stanley, representing 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 Associated General Contractors of NH
Peter Walker, representing NH Association of Natural Resource Scientists
Charles Miner Jr., representing NH Fish and Game Department
Paul Morin, representing Home Builders and Remodelers Association of NH
Laura Deming, representing NH Audubon Association
Jasen Stock, representing NH Timberland Owners Association
John Doran, representing NH Association of Realtors
Johanna Lyons, representing NH Department of Resources and Economic Development
Rene Pelletier, representing NH Department of Environmental Services

Other Attendees:

Representative Thomas Fargo, NH House of Representatives
Representative Judith Spang, NH House of Representatives
Susan Olsen, NH Municipal Association
Ari Pollack, Gallagher, Callahan & Gartrell Law Firm
Carolyn Russel, NH Department of Environmental Services
Jillian McCarthy, NH Department of Environmental Services
Dana Bisbee, Mount Washington Resort
Mike Brunetti, Celebration Associates/Mount Washington Resort
Michael Licata, Business and Industry Association
Bruce Berke, Mount Washington Resort/Sheehan Phinney
Charlie Hood, NH Department of Transportation
Kathryn Fox, Environment NH
Christine Perran, NH Department of Transportation
Donald Sienkiewicz, Rath, Young and Pignatelli, P.C.
Gary Abbott, Associated General Contractors of NH
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association

Joel Anderson, Staff, NH House of Representatives
Karen Beaujouan, Bianco P.A.

Commission Staff:

Dari Sassan, NH Office of Energy and Planning

I. ROLL CALL AND INTRODUCTIONS

Representative Gottling called the meeting to order at 9:00 AM. Commissioners introduced themselves by name and representation. Agendas and draft minutes from the September 16, 2008 meeting were distributed to commissioners.

II. APPROVAL OF MINUTES FROM SEPTEMBER 16, 2008 MEETING

Chairperson Gottling identified the following changes to the minutes:

- At the bottom of page 2, “*Wildlife Action Plan Tools include:*” has been changed to, “*Some Examples of Wildlife Action Plan Tools include:*”
- At the top of page 3, “*Wildlife Action Plan Strategies include:*” has been changed to, “*Some Examples of Wildlife Action Plan Strategies include:*”

Mr. Stanley moved to accept the minutes of the September 16, 2008 meeting. Ms. Czysz seconded. The minutes were accepted unanimously.

Chairperson Gottling introduced the following statement entered by John Kanter of the NH Fish and Game Department as clarification to a response Mr. Kanter gave to a question asked at the September 16, 2008 meeting:

The success of the NH Wildlife Action Plan (WAP) is tracked through a database that records activities by conservation strategy. This database includes work done by New Hampshire Fish and Game (NHFG) and our many partners. Here are examples of how the WAP is being implemented through conservation planning.

NHFG and UNH Cooperative Extension (UNHCE) have partnered to provide presentations and workshops offering tools, suggestions, and guidance on how other agencies, non-profit organizations, towns, consultants, and individuals can utilize parts of the WAP. Since 2005, over 70 WAP workshops have been attended by over 850 individuals from 167 towns. Participants receive periodic WAP email newsletters that allow NHFG and UNHCE an opportunity to highlight new tools that have been initiated as a result of the WAP, volunteer opportunities to help fulfill a WAP strategy, and examples of how others are using the WAP.

NHFG works closely with individuals, organizations and agencies to provide technical assistance to any aspect of the WAP. The WAP is being used to create natural resources inventories and local conservation plans, assess conservation acquisitions, evaluate wetland mitigations, and prioritize funding. Several

conservation organizations, such as the Society for the Protection of New Hampshire Forests, The Nature Conservancy and Bear Paw Regional Greenways have used these in short and long range planning for habitat protection and management. The WAP is used by EPA to help assess wetland permits, by DES to assess wetland mitigation, by DOT to integrate wildlife into transportation planning and by DRED for the Pisgah State Park Management Plan.

The WAP has been found to be cited in numerous town natural resource inventories, parcel assessments, maps, and graduate student research projects. Six towns have received detailed technical assistance through NHFG contracts, and Conservation License Plate funds are providing assistance to others. There are several strategies that individual landowners, towns, and non-profit groups can participate in including: conservation planning, habitat management, local regulation and policy, and land protection. To help quantify and describe how individuals and organizations are using the WAP there will be a survey in an upcoming issue of the WAP newsletter. Additional surveys targeting town officials, non-profit groups, and schools may help to gather more of this information in the future.

III. PRESENTATIONS

Mr. Corso explained that Mr. Brunetti would give a presentation representing a large-scale development case study.

Mr. Brunetti stated the name of his employer and explained that his company is an advocate of smart growth principles. Mr. Brunetti's presentation about a large development in Carroll, NH is available online at:

http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/large-scale_development_case_study.pdf

Referring to five development options that Mr. Brunetti's company presented to stakeholders, Mr. Gove asked how, in hindsight, Mr. Brunetti might have avoided the need to process so many alternative proposals. Mr. Brunetti responded that perhaps earlier identification of wetlands would have eliminated the need for two of the plans. He added that he was pleased with the process that was conducted and was not sure that he would want to change anything. Because it took only thirty days to go through all five plans, Mr. Brunetti stated that at the end of the process, everyone had met their goals.

Mr. Gove asked which agencies were most involved in discussing secondary impacts. Mr. Brunetti answered that the NH Department of Environmental Services (DES), the NH Fish and Game Department, The US Environmental Protection Agency, and the US Fish and Wildlife Department were the most involved.

Representative Christensen asked how working in New Hampshire was different from working in other states. Mr. Brunetti replied that in New Hampshire, his company received straightforward answers. He added that New Hampshire was open to collaborative problem solving. Representative Christensen followed by asking if Mr.

Brunetti has experienced anything that is occurring in other states that New Hampshire ought to consider adopting. Mr. Brunetti said that he would think about a response to Representative Christensen's question and submit a reply to the Commission.

Mr. Little asked if the process that Mr. Brunetti's company undertakes is representative of what generally occurs amongst Mr. Brunetti's competitors. Mr. Brunetti replied that his competitors conduct a less-thorough process.

Representative Spang stated that, as lawmakers, she and her colleagues are constantly walking the line between scripting laws that are explicit enough to keep agencies from being bullied and leaving enough leeway to allow for compromise and collaboration. She asked Mr. Brunetti how he would rate New Hampshire in terms of its allowing for collaborative solutions. Mr. Brunetti awarded New Hampshire a grade of A-. He stated that while the rules are not easy, they are clear. He said that the "no"s that he received in New Hampshire were actually preferable to the "maybe"s that he received in other states.

Mr. Pollack said that the size, scale and level of investment in Mr. Brunetti's project allowed for an expensive conceptual process, which many small developments would not be able to afford. He asked whether Mr. Brunetti experienced pressure to build less or pressure to build smarter. Mr. Brunetti responded that, at first, when his company was seen as threat to the community, the pressure was mainly to build less. As the community became more familiar with the process that Mr. Brunetti was undertaking, the focus shifted to a desire to build smarter.

Ms. Deming acknowledged all that had been done to avoid environmental impacts. She asked if anything would be done following construction to provide continued protection. As an example, she identified lawn care practices as an area where environmental damage could potentially occur. Mr. Brunetti referred to association documents, which call for the use of low-nitrogen fertilizers and establish design guidelines. He also cited a community charter, which includes a salt minimization plan. Furthermore, stated Mr. Brunetti, on each lot, a lot portfolio predetermines what the developable area of each lot shall be. Mr. Bisbee added that all required restrictions, which appear in the charter, are recorded at the registry of deeds.

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Mr. Morin began his presentation of a mid-size subdivision case study by indicating that it would likely be more typical of what transpires in the state, than the previous presentation. The handouts for Mr. Morin's presentation about a multi-unit subdivision in Londonderry, NH can be found online at:

http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/mid-size_development_case_study.pdf

Following, are comments made by Mr. Morin that are not captured in the handouts:

Issues with traffic safety and road construction specifications led to the need for a wetlands crossing and a large amount of otherwise unnecessary impervious surface.

As a means of mitigating the threat of down-street flooding, Mr. Morin was forced to reduce impervious surface elsewhere in the subdivision and also had to implement some off-site mitigation. Complications resulted from the fact that the Town wanted all state permits to be in place before it would act on approving the development. Further complications were caused by the fact that the Town did not allow for Low Impact Development (LID) techniques to be utilized, and that permits from one entity were subject to expiration while matters with another entity were being resolved.

Mr. Stanley asked why the Town restricted LID applications. Mr. Morin replied that skepticism exists toward the long-term functionality of LID systems, which have not been time-tested to the extent that more conventional stormwater techniques have. Referring to an instance where Mr. Morin had already received a wetlands permit from DES but had to go back for another after the town public works department forced changes, Mr. Gove asked if Mr. Morin ran into difficulties with the DES the second time around. Mr. Morin replied that although DES was not thrilled to be revisiting the matter, it was accommodating.

Mr. Walker identified the decision of whether to a). use natural wetlands to detain stormwater or b). use manmade systems as a matter that had arisen in Mr. Morin's presentation which the Commission should concern itself with answering.

Ms. Czysz asked how representative this development was of what occurs throughout the state. Mr. Morin replied that the development was not a fringe example. Mr. Doran asked if the project is currently on hold. Mr. Morin replied that it was on hold.

Representative Fargo asked what the wetlands setbacks were in Londonderry, what criteria they were regulated upon and what options were available for mitigation. Mr. Morin replied that wetlands setbacks were 75 feet and that some allowances are made for replantings. Representative Fargo followed by asking if any stormwater or wastewater covenants or charters existed in the Town, providing salt reduction as an example. Mr. Morin replied that no such covenants were in place.

Representative Spang noted that many problems were caused by the wetlands crossing and asked why the decision to disallow another entry point was not revisited. Mr. Morin replied that, although he would have wanted to revisit that decision, the traffic safety concerns associated with the other entrance took precedence.

Mr. Walker commented that in resolving the issue of determining what level of government should be first in the permitting process, perhaps greater collaboration could be part of the solution. Mr. Pelletier added that, in the case of the Comprehensive Shoreland Protection Act, the state calls for all town approvals to be in place before moving forward. To accept narrower roads, rain gardens and other techniques toward reducing stormwater impacts, continued Mr. Pelletier, a paradigm shift needs to occur. Mr. Gove added that conservation commissions and other municipal bodies are often poorly synchronized.

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Ms. Darrow began her presentation of a residential property case study by indicating that the American Council of Engineering Companies of NH (ACEC) is the voice of engineering companies in New Hampshire. Ms. Darrow's presentation about the development of a single lot is captured in the slides and handouts which are available online at:

http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/residential_development_in_new_hampshire.pdf

Alluding to a statement by Ms. Darrow that many homeowners are concerned about creating a wetland in their backyards, Ms. Czysz asked how realistic it is to expect to be able to implement idealistic principles like those of LID on the average lot. Ms. Darrow responded that there is always an opportunity to realistically dissipate stormwater. Though she added that rain gardens specifically have drawn some objection, as people do not always feel comfortable in retaining stormwater in their backyard. Ms. Darrow added that New London, NH has an excellent section on stormwater in their ordinance.

Mr. Gove asked if ACEC offers a recommendation on wetlands setbacks. Ms. Darrow responded that she does not know of any specific recommendation but would submit further information to the Commission if available. Ms. Darrow said that, in general, ACEC is concerned that regulations not interfere with good engineering practices but instead promote them.

Mr. Walker observed that much focus has been placed on wetlands in recent years and asked if folks are doing enough to regulate indirect effects from the uplands. Ms. Darrow replied that guidance for stormwater and drainage is needed. She added that the Stormwater Pollution Prevention Plan from DES is a large step in the right direction.

Mr. Stock recalled that Ms. Darrow had identified a tendency for municipalities to shy away from smart growth applications and asked how communities could be better educated about the benefits of smart growth so as to become more accepting of its practice. Ms. Darrow indicated that she has had success in getting exceptions and variances by getting involved early with education and starting an early dialogue with local boards.

Mr. Fargo stated that many municipalities use environmental protection regulations as a tool for restricting growth and keeping the tax bill low by limiting school populations. Thus, people may not be as accepting of smart growth, which protects the environment without restricting growth.

IV. DISCUSSION OF FUTURE MEETING TOPICS AND DATES

Ms. Darrow announced that she has made progress in preparing a presentation about the land use impacts of transportation and would like to present at a future meeting.

Chairperson Gottling announced that the next meeting would be held at 9:00 AM on November 18 at the Office of Energy and Planning, located at 4 Chenell Drive, Concord. She added that the presenters would be Tom Irwin and Will Abbott.

V. OTHER BUSINESS

Ms. Czysz asked if any discussion should be held regarding the Interim Report due on November 1, 2008. Chairperson Gottling asked for volunteers to collaborate on the report. Ms. Czysz and Ms. Darrow volunteered.

Mr. Sassan announced that the Stormwater Commission would be meeting regularly on the first Monday of every month at 1:00 PM in room 305 of the Legislative Office Building. Mr. Sassan invited all interested parties to attend the meetings.

VI. ADJOURNMENT

At 11:33 AM, Ms. Czysz moved that the meeting be adjourned. Ms. Lyons seconded the motion, which carried unanimously.