

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

May 18, 2009 * 1:00 PM
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
Mike Brunetti, representing Business and Industry Association
Representative Chris Christensen, NH House of Representatives
Jennifer Czysz, representing NH Office of Energy and Planning
Laura Deming, representing NH Audubon Association
John Doran, representing NH Association of Realtors
James Gove, representing Associated General Contractors of NH
Cheryl Killam, representing NH Municipal Association
Charles Miner Jr., representing NH Fish and Game Department
Rene Pelletier, representing NH Department of Environmental Services
Peter Stanley, representing NH Association of Regional Planning Commissions
Jasen Stock, representing NH Timberland Owners Association
Peter Walker, representing NH Association of Natural Resource Scientists

Other Attendees:

Representative Judith Spang, NH House of Representatives, Resources Recreation and Development Committee
Paul Currier, NH Department of Environmental Services
Lori Sommer, NH Department of Environmental Services
Susan Olsen, NH Municipal Association
Carolyn Russell, NH Department of Environmental Services
Ted Diers, NH Department of Environmental Services
Michael Licata, Business and Industry Association
Gina Rotondi, Rath, Young, and Pignatelli
Davdi Shulock, Brown, Olson, and Gould

I. ROLL CALL AND INTRODUCTIONS

Chairperson Gottling called the meeting to order at 1:07 PM. Commissioners, speakers, and staff introduced themselves by name and representation. Mr. Brunetti noted he replaced Mr. Corso, representative of the Business and Industry Association.

II. APPROVAL OF MINUTES FROM MARCH 16, 2009 MEETING

Mr. Stanley moved to approve the minutes of the April 20, 2009 meeting. Mr. Doran seconded. The minutes were accepted unanimously.

III. PRESENTATIONS

Mr. Currier and Ms. Sommer gave a presentation on ideas for integrating surface water quality standards and wetlands function and value assessment to manage the landscape for water resource protection. The presentation is available online at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/DES05-18-09Presentation.pdf>

M. Gove inquired how many water quality certifications are issued per year? Mr. Currier replied there are approximately 1-3 dozen. The 401 review includes an assurance regarding anti-degradation and no degradation is permitted without a “good” reason.

Mr. Doran asked, of the 14 functional value classifications, are all equally important? Mr. Currier replied that all are given equal weight, as well as their associated values.

Ms. Sommer noted that participation in the Aquatic Resource Mitigation Fund (ARM) is a choice of the applicant if they do not wish or cannot provide necessary wetlands mitigation on site. Eight watersheds have collected project funds totaling \$1.7 million statewide. \$650,000 has been collected in the Merrimack Watershed.

A MOU was signed with the Army Corps of Engineers to establish NH ARM as meeting their criteria for mitigation. While the Army Corps would like all in-lieu wetlands mitigation funds to be dedicated to restoration, the State is considering preservation, such as land protection, as another suitable use of the funds. DES applied for a grant to model suitable and potential restoration sites utilizing GIS data such as the National Wetlands Inventory.

Mr. Doran asked if the removal of a dam would qualify for ARM funding? Ms. Sommer stated that yes, it would, along with other restoration projects such as culvert removal, invasive species eradications, and all direct and indirect costs related to land conservation.

Ms. Killam inquired whether a municipality can apply for ARM funds even if there have not been any contributions to that watershed’s fund from that community? Ms. Sommer noted that yes, they could. However, the Merrimack Watershed is the only one analyzed at the point. DES is hoping to get three other watersheds analyzed in time for this next round of funding. Level I assessment for wetlands have been conducted for the whole state to discover wetland complexes likely to be impaired.

Mr. Doran noted that satellite imagery was used. Was terrain considered? Mr. Currier replied that no, it was not.

DES sees the opportunity for integrating the 401 Water Quality Standards, NPDES and the Construction General Permit Notice of Intents into a single smooth process. Mr. Gove asked the representatives from DES to explain how this might work? Mr. Currier used the example of the Dartmouth Brook project, which had slight wetland impacts, the SPGP was not too complicated, but could affect the total pollutant load to the Ammonoosuc River. The 401 conditions were incorporated into the Wetlands Permit. Mr. Gove followed up asking will this process be used more on very large projects? How will DES resources handle the work? Mr. Currier noted that if you fill a wetland, water quality standards don't apply, but the alteration of terrain permit will invoke monitoring of impacts.

Mr. Gove asked what the five functions are that DES used to evaluate the wetlands? Ms. Sommer listed ecological integrity, water quality, significant habitats, flood flows, and groundwater use.

Mr. Gove noted that small projects near wetlands may not require a permit. For example a house built 10 feet from a stream with a lawn going to it. How far can these go? Mr. Currier replied that theoretically, water quality standards apply to small projects. The issue is, how much of a riparian buffer is needed to prevent loss of wetland values. He would urge municipal building and land use codes to address this. Ms. Sommer followed up, noting that with a one-stop permit, a landowner could learn what all the permit issues are, at once, when planning the project. Mr. Currier stated that this would however require several years before being feasible. DES is working with Fish and Game to establish how much vegetated cover must be left in the buffer to protect the desired Eastern Brook Trout. It also must involve a decision on whether the trout should be protected in that area.

Mr. Walker asked how NPDES fits into the scenario? Mr. Currier noted that when EPA acknowledges a Notice of Intent, developers are urged to check with DES if other state criteria are being met. However, many do not.

Rep. Gottling stated that municipalities vary considerably in terms of their regulations' stringency. How can this be fixed? The judgments need to be supplemented with quantifiable standards as much as possible. Mr. Currier stated that technical assistance needs to be provided in order to obtain performance standards in the municipal review or projects. Mr. Pelletier noted that this is a much bigger issue than amending 482-A. Municipalities grant many permits that DES is never aware of.

IV. SUBCOMMITTEE REPORTS

Ms. Czysz distributed copies of the draft matrix the subcommittee to research similar efforts in other states has developed. A copy of the matrix has been posted to the commission's website at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/MatrixRev5-18-09.pdf>

Subcommittee members are currently researching each of the identified New England state level planning programs. Research will include a description of each program, measures of success, cost, implementation needs, review of how environmental and wetlands impacts are addressed, and how the program is relevant to the commission's work.

Rep. Spang gave an update on legislation including SB 384 and SB 65.

V. DISCUSSION OF FUTURE MEETING TOPICS AND DATES

Chairperson Gottling requested suggestions of topics for the next Commission meeting. Ms. Darrow reiterated interest in bringing Paul Leveille, a green building specialist, before the Commission for the June meeting.

Mr. Doran suggested the commission should concentrate on the subcommittee work over the summer.

Another suggestion was to have each of the 9 Regional Planning Commissions (RPCs) speak on what they are thinking and doing on the ground with municipalities. What is lacking? Peter Stanley will speak to the RPCs at their June meeting and can provide an update or have the RPCs present possibly in July.

Another subcommittee was suggested to address how to integrate the commission's work with municipalities and to ensure there is local level implementation. It was suggested that Carolyn Russell of DES could assist.

The commission agreed to meet in July. A suggested option for the July meeting would be to take a trip to see the new Mount Washington development with its many adaptations. Mr. Brunetti offered to help arrange this event.

Mr. Stock suggested a presentation be given by a soil conservation specialist.

Lastly, Mr. Miner distributed copies of "Effects of Land Use on Water Quality, Aquatic Habitat and Bioata" by John Magee of NH fish and Game. Copies of the report are available online at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/SummaryoftheEffectsofLandUseonWaterQuality-FINAL.pdf>

VI. ADJOURNMENT

The meeting was adjourned at 2:50 PM after a motion was duly made and seconded.