

April 10, 2006

Rm 305, LOB, Concord

Minutes

Commission to study the Comprehensive Shoreland Protection Act

Minutes of April 10, 2006 Meeting

Rm 305, Legislative Office Building, Concord, NH

10:00 am – 12:00 pm

Members Present

Interest Represented

House of Representatives

Office of Energy and Planning

Regional Planning Commissions

At large waterfront owner

NH Farm Bureau Federation

NH Home Builders and Remodelers

NH Association of Realtors

NH Municipal Association

NH Rivers Council

NH Timberland Owners

Landscaping Consultant

NH Marine Trades Association

NH Attorney General

NH Wildlife Federation

NH Waterworks Association

Representative

Michael Whalley

Jennifer DeLong (designee)

Robert Snelling

Eric Herr

John McPhail

Joe Landers

Tom Howard

Carol Granfield

Kathryn Nelson

Tom Hahn

George Pellettieri

Paul Goodwin

Jennifer Patterson (designee)

James Kennedy

Stephen Del Deo

Members absent

Senate

Senate

House of Representatives

NH DES

NH Lakes Association

At large waterfront owner

UNH (estuary experience required)

NH Conservation Commissions

NH Natural Resource Scientists

Carl Johnson

John Gallus

David Currier

Rene Pelletier (designee)

William Smith PhD

Michele Grennon

Jeff Schloss

Diane Hanley

Cindy Balcius

Others in Attendance

Representing

Staff

Pillsbury Lake Management

Self

Sheehan Phinney Capitol Group

NH DES

Name

D. Forst

M. J. Turcotte

Tom Stawasz

Kathy Veracco

Arlene Allen

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10: 05 am Meeting opened by Mr. Snelling. He had been previously appointed temporary Chairman by Rep. Currier, Chairman, and Mr. Smith, Vice Chairman, who were unable to attend the meeting.

After review of the March minutes, motion was made and seconded to accept the minutes. The motion passed unanimously.

Mr. Snelling explained that Mr. Smith was unable to attend and asked that the buffer discussion be deferred until a later meeting. As Ms Patterson was not in attendance the discussion of RSA 483-B:6 was also deferred. He noted that the Commission had received a white paper from the Marine Trades Association.

Ms. Nelson stated that Carl Paulsen and the NH Rivers Council were close to completing a white paper as was Max Stamp of the Pemi River Local Advisory Committee. She noted that both papers would request the inclusion of the Pemi and Saco rivers under the CSPA.

Mr. Snelling asked if they were specifically exempted and if so why.

Ms. Forst explained that rivers in the Designated Rivers Program prior to 1993 were exempted from the CSPA.

Mr. Kennedy asked what was necessary to remove the exemption.

Ms. Forst explained that they need to be brought under the CSPA through legislation.

Mr. Kennedy asked why the exemption existed.

Ms. Nelson explained the originally it was hoped that these rivers would be managed by local advisory committees, however those committees had either failed to materialize or had not been able to be effective and now the committees themselves were asking for inclusion under the CSPA.

Mr. Schloss stated that he did not know if it was appropriate for the Commission to act on this issue.

Mr. Snelling asked where the exemption was in the law.

Ms. Forst stated that it was in RSA 483-B:20.

Ms. Nelson asked who had requested the inclusion of the Rivers.

Ms. Forst explained that the local advisory committees had asked.

Mr. Snelling asked Mr. Goodwin to present the Marine Trades Association's white paper.

Mr. Goodwin summarized the paper, explaining that no one wanted another permit. Most of those in the Marine Trades owned non-conforming structures and were concerned about the ability to maintain them. They were also concerned about the lack of education and outreach and the overlap between wetlands permitting and the CSPA.

Mr. Snelling welcomed Ms. Patterson and asked if she could discuss RSA 483-B:6

Ms. Patterson explained that the CSPA required the town to issue permits in a manner that complied with the Act. The original plan had been that the towns would play a key role in the implementation of the Act but the prohibition on unfunded mandates meant that the towns could not be required by the state to do something that would cause them to incur cost without state funding. To counter this she had proposed language to require the state to issue permits in towns that did not have local zoning boards. She had also added specific references to the existing waiver and variance processes and language clarifying whether the approvals would be sought from the town or the state. The revised language did not require a permit for things like cutting but did serve to put owners on notice of the requirements of the CSPA.

Mr. Nelson asked if the state would issue variances.

Ms. Patterson stated that the state would continue to issue variances and did so now.

Mr. Snelling asked if all permitting would be done locally with exceptions only coming from the state.

Ms. Patterson answered yes.

Mr. Herr asked what would happen if the owner or contractor applied to the town and was incorrectly issued a permit. He wanted to know who would be responsible.

Ms. Patterson stated that ultimately the owner would be responsible.

Mr. Herr asked if that seemed fair.

Ms. Patterson stated that the owner could then litigate against the town to recoup their losses.

Mr. Herr asked if Towns could go to the state to verify that the town had rendered the correct decision.

An anonymous Commission member stated yes.

Mr. Pellettieri asked how Sunapee worked with the CSPA.

Ms. Patterson explained that the Town of Sunapee was exempt.

Mr. Pellettieri stated that the system in Sunapee seemed to work.

Ms. Forst questioned the effectiveness of the process in Sunapee as the Shoreland Program continued to receive complaints from citizens in Sunapee but the state had no jurisdiction the take action.

Mr. Schloss stated that the revised language of section B:6 could be difficult in towns with zoning but that a checklist and guidance documents would help.

Ms. Nelson asked if in situations where only a local permit was required and the town issued the permit improperly could individuals sue the towns. She stated that people didn't believe the state would ever follow through on suing a town.

Mr. Snelling asked if there could be an appeal to the state without litigation.

Ms. Patterson noted that it seemed like there were more complaints about what was approved than what was denied.

Ms. Nelson stated that if the town issued a permit incorrectly and then the state issued a variance allowing the improper construction to stay it would set a bad precedence.

Mr. Snelling asked if it could be clear enough to eliminate most issues.

Ms. Patterson stated that was the goal.

Ms. Nelson stated the applicants could seek urban exceptions but that they weren't granted in Nashua but were in Meredith.

Ms Patterson explained that urban exemptions were requested by the town and not individual applicants.

Ms. Granfield asked for clarification.

Ms. Forst explained that there was a provision within the CSPA that allowed for towns to seek an exemption for certain historically developed or fully developed areas on the basis that there was no practical method of applying the Act.

Ms. Patterson stated that waivers would be issued by DES only.

Rep. Whalley asked if these were currently required.

Ms. Patterson explained that they were currently required and were only issued by the state.

Rep. Whalley warned the members that the Commission was morphing into something unintended. He stated that the Commission was not a legislative committee and that if they made a recommendation that would take away property rights then the whole thing would collapse. He stated that there was never supposed to be a permit.

Mr. Snelling stated that he disagreed.

Rep. Whalley stated that it seemed from Ms. Patterson's explanation that people may now need a permit for remodeling homes.

Ms. Patterson stated that a permit could help clarify some issues such as when the town issues a permit incorrectly. Currently the state steps in late and it is hard to resolve in a reasonable way because the owner has acted illegally but in good faith. The towns have been telling people that the CSPA is enforced by the state and the issuing permits without considering the Act.

Mr. Goodwin stated he was against a permit. He stated that this was a huge change and that the need for approval should be limited to non-conforming structures not to changes on lots that have non-conforming structures.

Ms. Patterson asked if this was a problem with the permit process or the proposed language. She stated that the draft language was only intended to be a basis for discussion.

Ms. Nelson noted that permit processes were specifically mentioned in the Commission's duties. She stated that a permit process would address many issues by providing structure to the program and it would force towns to buy into the program as well.

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Mr. Pelletier recognized the problem of seeing a lot of impacts after the fact but noted that DES was not equipped to take on another permit process.

Mr. Goodwin noted that even if you clarify the 50 ft setback to reduce issues waivers would still be necessary.

Ms. Balcius stated that clarity had to be a priority.

Mr. Snelling stated that the Commission needed to prioritize issues. He stated that the Commission had a fair picture of the deficiencies and that the buffer and setbacks subcommittee would deal with those particular issues. He noted that there were only 5 or 6 meetings left and that they needed to start working toward closure on issues.

Ms. Granfield stated that she felt a checklist would be helpful with DES' limited staffing.

Mr. Howard stated that they could not separate the woodland buffer issue because they needed to know what information would be required with applications.

Mr. Snelling noted that the time frame for the buffer was part of the problem.

Ms. Forst stated that there was no way DES could handle another permit with the current staff and resources.

Mr. Herr stated that a well crafted permit could remove a lot of uncertainty from the process.

Mr. Snelling agreed but noted that it would not address all issues.

Ms. Patterson echoed support for the checklist idea.

Mr. Snelling asked if everyone could submit checklist item that need resolution to Ms. Forst so she could consolidate a list and distribute it to the Commission.

Meeting adjourned at 11:55.

Next Meeting Rm 305, Legislative Office Building, Concord
May 8, 2006, 10:00 – 12:00