

CONSERVATION COMMISSION PUBLIC HEARING
June 28, 2011

FINAL

The meeting was called to order at 7:00 p.m. by the Chairperson Jay Diener at the Hampton Town Office Meeting Room. Commission Members present were Ellen Goethel, Sharon Raymond, Barbara Renaud, Steve Scaturro and Peter Tilton. Alternates Mark Loopley and Diane Shaw were present. Rayann Dionne, Conservation Coordinator, was present. Keith Lessard was present representing the Planning Board.

The Minutes of May 24, 2011 were accepted with corrections noted.

The site walk was held on Saturday, June 25, 2011 meeting at the Town Hall Parking Lot at 9:00 a.m.

1. 8 Battock
2. 571 Winnacunnet Rd.

NHDES APPLICATIONS

- A. 571 Winnacunnet Rd
Sandpiper Condominiums
Frank Enwright (Director) and Bob Dockham (Contractor) - Agents

This Standard Dredge and Fill Application is for the repair of damaged deck footings and foundations for 16 condominium units. During the discussion, Mr. Diener opened the comments to the Public. Mr. Gordon Vinther gave comments on the footings and number of metal ice breakers/diverters. Mr. Diener then brought back the comments to the Board. Mr. Tilton motioned to not oppose the granting of the wetlands permit for the repairs to the damaged deck supports and foundations as well as the installation of riprap underneath the decks. The Commission would like the inclusion of the following stipulations:

1. All work shall be performed at low tide.
2. All digging shall be done by hand.
3. The proposed angle iron ice breakers/diverters should be increased from 1 to 3 per outer deck column /post.
4. The applicant shall notify the Conservation Coordinator when the method (wheel barrow or tubing from a concrete mixer) for transporting the concrete to the rear of units for foundation work is determined.
5. Buffer tracks made from plywood or two-by-fours shall be placed along the westerly marsh access route to prevent the wheel barrow from damaging the salt marsh.
6. The southerly material storage area shall be moved outside of the 50 ft buffer.
7. Debris under the decks shall be bagged and hauled off-site for disposal.
8. The westerly down spouts on each unit shall terminate underneath the decks approximately 4 to 4.5 ft Before the salt marsh edge of each deck.
9. Any marsh grass that is damaged shall be replaced. The applicant is encouraged to contact Frank Richardson with NHDES for a list of nurseries that carry marsh grasses.
10. The applicant has agreed to submit post-construction photos of the work area.
11. The Conservation Commission approved of the applicant's proposal to incorporate a preventative maintenance plan into the condominium by-laws. The maintenance plan involves biannual inspection reports on the deck supports. The Conservation Commission requests that the wording in the by-laws specifically state that the copies of the inspection reports shall be filed with the Conservation Commission.
12. The Conservation Commission is to be notified at the beginning and end of the project.

Mr. Scaturro seconded the motion. All were in favor.

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SPECIAL PERMITS

- A. 451 Winnacunnet Rd
Sandpiper Condominiums
Frank Enwright (Director) and Bob Dockham (Contractor)

This special permit is for the repair of the damaged deck footings and foundations for 16 condominium units. Mrs. Goethel motioned to recommend the granting of the Special Permit with the stipulations as mentioned in the DES application on Page 1. Ms. Renaud seconded the motion. All were in favor.

- B. Esker Road
Ronald Remick
Altus Engineering, Agent (Jeff Clifford) and Eric Saari

This Special Permit is for the installation of a driveway and alterations to a drainage swale. A very lengthy discussion regarding the necessity and impact of the driveway and retaining wall proposed for lot 208-50 ensued. The Agents presented the proposal on how the driveway and retaining wall met each of the five conditions described in the Wetland Conservation District (WCD) Ordinance (Section 2.3.3.B-7 a through e) which must exist for such a project to be permitted. Mr. Diener responded to the reasonableness or applicability of each of these conditions with respect to this project as follows:

- a. The proposed construction is essential to the productive use of upland outside the Wetland Conservation District (WCD). Mr. Diener responded the proposed driveway would cross lot 280-50 and connect to 436 Winnacunnet Rd which already has a driveway. Therefore access to this upland is already possible without need to pass through the WCD.
- b. The design and construction methods will be such as to minimize any impact upon the site, and will include restoration of the site as nearly as possible to its original grade and vegetation condition. Mr. Diener responded this design results in a major impact to the site because it will result in a significant reduction in natural vegetation and the size/capacity and grade of the existing swale.
- c. An alternative with less impact which does not cross the wetland or buffer is not feasible. Mr. Diener responded an alternative with less impact is unlikely given the width of the proposed driveway and narrow lot width.
- d. The crossing will be at the point of least impact to the WCD. Mr. Diener responded the 50 ft buffer encompasses the front half of lot 280-50, so there is no way to construct a driveway out side of the WCD.
- e. Applications for all necessary permits shall be made concurrently. Mr. Diener did not have a comment.

Mr. Diener opened the discussion up to the Public. Mrs. Bruette, 40 Esker Rd., had concerns with the swale, showed pictures with trees down and questioned hardship on the driveway. A concerned neighbor, Mr. Joe Hadeka had concerns of the abutting properties. Mr. Diener brought the discussion back to the Commission. Discussion continued around the table and the major Commission Member concerns are as follows:

1. No hardship was shown by the applicant for why an additional driveway to 436 Winnacunnet Rd is necessary.

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SPECIAL PERMITS (Cont)

B. Esker Rd (Cont)

2. Although the Agriculture Easement on lot 280-50 does not prohibit the installation of a driveway or parking, the necessity for this driveway and/or parking is not agriculturally based.
3. The Agricultural Easement on lot 280-50 does prohibit the construction of any structure and the Commission was unanimous in its position that the retaining wall is a structure.
4. The construction of a driveway and retaining wall within the existing swale will reduce its size by almost a third, impair its ability to retain and absorb runoff, and potentially impact the drainage on abutting properties. There is no compensation proposed for this major reduction in capacity.
5. 40 Esker Rd., which abuts lot 280-50, also contains a portion of this swale on their property and there is a very specific deed restriction which does not allow them to impede or obstruct the flow of water in the swale. It is clear that during the development of the surrounding properties that protecting the drainage systems was important.
6. Snow plowing of the proposed driveway will result in snow being directly pushed into the swale. The piling of snow in a swale can cause flooding during snow melts and redirect the flow of water through the swale during freeze and thaw cycles. It is routine practice of the Conservation Commission to not allow any snow storage within the WCD.
7. This swale is properly functioning and any reduction in its capacity or structure can result in changes in drainage to abutting properties.
8. This project does not comply with the permitted uses described in Section 2.3.3. Permitted uses specifically states that "Uses permitted in the Wetlands Conservation District are those which do not Result in the erection of any structure or alter the surface configuration by dredging or the addition of fill.

The Commission was not in favor of this project, but prior to voting the Commission asked the applicant if they would like to continue the application until our July meeting so they would have time to consider any changes/modifications they might want to make in light of the Commission's comments. The applicant said they would. Mrs. Goethel made a motion to continue the application. Since there was not second to the motion, it did not go forward. At this time the Agents requested to withdraw the Town Special Permit. The Agents were informed that a formal withdrawal must be submitted to the Planning Board prior to their July 6, 2011 meeting date.

PLANNING BOARD REFERRALS

None

APPOINTMENTS

A. 8 Battock Ave.

Mr. Tom Babotis and Mr. Tom Houe addressed the Commission to discuss the construction of a deck within the Conservation Commission District (WCD) and to determine if the Commission would support their request for relief from the Conservation Ordinances that prohibit/restrict building in the WC D. After a very lengthy discussion with the property owner, the Commission came to the following consensus:

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APPOINTMENTS (cont)

The Commission will request that the Zoning Board not grant the variance for construction within the WCD. The applicant would still be able to apply for such relief, but would do so via a Town Special Permit. This project, if not carefully designed and implemented, has the potential to cause substantial harm to the adjacent town owned salt marsh. The Commission would like to continue working with the property owner to develop a design that is both sensitive to the valuable habitat near by and provides the property owner with adequate use of his backyard. If the Zoning Board grants the 50 ft WCD setback variance, it will limit the Commission's ability to best ensure the Town's and the applicant's objectives are met with this project. With the changes to the plan that the applicant has agreed to it is likely the Commission will support their application for a Special Permit for this project. If the Zoning Board does decide to grant relief from the 50 ft WCD setback, the Commission will respectfully ask that it be conditional on approval from the Commission and Planning Board. There was also general agreement that the new, porous material being used for the decking is what makes the Commission more inclined to recommend approval of a Special Permit for this project, where without that material, we'd likely be less accepting of a low deck in the WCD. After the discussion, Mrs. Goethel motioned to write a letter to the Zoning Board stating the Commission's findings. Ms. Renaud seconded the motion. All were in favor.

B. Seacoast Land Trust of NH

David Viale addressed the Commission regarding the additional funding for Batchelder Easement. The estimated value of the land is \$800,000. The total paid is 90%. Mr. Viale also let the Commission know that the Farm & Ranchland grant applied for to help fund the purchase of this Conservation Easement has been approved for up to \$450,000 based on the final assessment for the property. The estimated cost of the project, including all costs, is approximately \$870,000. The cost has increased slightly because one of the parcels, which is isolated from the rest, has to be treated as a separate Easement, with its own assessment, deed, and closing documents. The Land Trust will be looking to work with the Commission to raise the additional \$46,000-50,000 necessary to complete the funding for this Easement. The closing should take place by July, 2012, if not sooner. The earliest realistic time frame for the closing is Spring, 2012.

PLANNING BOARD ACTIONS

- A. 55 Harbor Road
Dock repair due to storm damage (after-the-fact). Approved.
- B. Esker Road
Construction of gravel driveway to existing lot from Esker Road in 50' buffer from man-made Wetland in existing drainage swale. Continued to July 6, 2011.
- C. 434 High Street
Construction of 10 single-family condominium units. Continued to July 6, 2011.

ZONING BOARD ACTIONS - DECISIONS

None

DES ACTIONS

- A. 72 Island Path
Removal of one-story dwelling and construction of new building addition with deck. Construction of new pervious walk and driveway.

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OLD BUSINESS

A. Ice Pond Dam - Project Development

The proposal from Dubois & King, for an engineering study for the replacement of the Ice Pond Dam, is for \$4500.00.

NEW BUSINESS

A. Strengthening the Town's Wetlands Ordinances

Ms. Dionne is compiling a list.

B. Legal Memo - steps for accepting land donations

C. Usual stipulations - language update

Ms. Dionne handed out the list to be reviewed.

D. Review of Rush Trust Parcels

Ms. Pam Rush has parcels of land deed donations) to donate to the Conservation Commission. Mrs. Goethel motioned to accept the land donations, seconded by Mr. Tilton. All were in favor. Mrs. Goethel motioned to accept all deed parcels, seconded by Ms. Renaud. All were in favor.

E. Review of potential salt marsh donation between Drakeside Rd and Rt 1.

Mrs. Goethel motioned to accept the parcel, seconded by Mr. Tilton. All were in favor.

F. New Conservation Commission Alternate

Mr. Gordon Vinther is sending a letter to the Board of Selectmen asking to be an Alternate. Mrs. Goethel motioned to accept his letter, seconded by Mr. Tilton. All were in favor.

Mr. Diener stated that a potential Intern might be joining the Commission for the summer from UNH.

CONSERVATION COORDINATOR UPDATE

TREASURER'S REPORT

No report given

The next meeting of the Conservation Commission Public Hearing will be held on Tuesday, July 26, 2011, meeting in the Town Office Meeting Room. The site walk will be announced and will start at the Town Office Parking Lot.

Mr. Tilton motioned to adjourn at 10:35 p.m., seconded by Ms. Raymond. All were in favor.

Respectfully submitted,



Sue Launi
Secretary