

HAMPTON CONSERVATION COMMISSION PUBLIC HEARING

MINUTES

April 23, 2013

PRESENT: Jay Diener, Chair  
Peter Tilton Jr., Co-Chair  
Gordon Vinther (arrived at 7:05)  
Mark Loopley, Alternate/Planning Board Representative  
Diane Shaw, Alternate  
Rayann Dionne, Conservation Commission Coordinator  
Tracy Emerick, Planning Board Representative (left at 7:10)

**CALL TO ORDER:**

The meeting was called to order at 7:00 p.m. by the Chairman, Jay Diener, at the Hampton Town Office Meeting Room.

**CONSIDERATION OF MINUTES**

MOTION by Mr. Diener to approve the December 18, 2012 minutes with those edits provided.

SECOND by Mr. Tilton

VOTE: 3-0-1, Mark Loopley abstained

MOTION by Mr. Tilton to approve the February 26, 2013 minutes with those edits provided.

SECOND BY Ms. Shaw

VOTE: 3-0-1, Mark Loopley abstained

MOTION by Mr. Tilton to approve the March 26, 2013 minutes with those edits provided.

SECOND BY Ms. Shaw

VOTE: 3-0-1, Mark Loopley abstained

**APPLICATIONS**

A. 1042 Ocean Blvd

Applicant: Mark and Janet Gacek

Agent: Steve Riker – Certified Wetland Scientist from Sandpiper Environmental

Application Type: Special Permit and NHDES Minimum Expedited Permit

**PUBLIC COMMENT**

This project involves redevelopment of this lot by tearing down the existing non-conforming structure and constructing a new more nearly conforming structure (within building setbacks). The property owner is also proposing to rebuild the seawall within its existing foot print. Mr. Riker commented that Altus Engineering prepared the seawall design and the drainage analysis and stormwater plan required by NHDES because the amount of impervious surface on the lot exceeds 20%. The proposed work within the 50' buffer will result in a reduction of approximately 300 sq ft of sealed surface. Mrs. Dionne asked whether the proposed patio area will have a second story deck that is within the foot print of patio. This was confirmed by Mr. Riker. Mr. Diener asked if all of the seawall work will be done within the footprint of the seawall and whether any Town property will need to be accessed to complete the project. Mr. Riker explained that it is anticipated that all of the seawall work will be done within the existing

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foot print of the wall. A majority of the wall is on Town property but it is anticipated that all of the equipment access and material storage will be on the owner's property. The plan is to tear down the existing structure, rebuild the seawall, then construct the new dwelling. However, a seawall contractor has not been chosen. If that contractor decides that access from Town property is necessary permission will be obtained from the Board of Selectmen (BOS). Mr. Diener reminded that applicant that work on Town land will most likely require a bond. Mrs. Dionne questioned the purpose of the buried layer of rocks at the top of the seawall as shown on the seawall construction detail. Mr. Riker commented that he is not an engineer but believed this is a way of tying the seawall in. Although this is a new technique to the Commission, Mr. Tilton did not see any issue with it.

MOTION by Mr. Tilton to have the Chair sign the NHDES Minimum Expedited Permit application.

SECOND by Mr. Loopley

VOTE: 4-0-1, Mr. Diener abstained.

MOTION by Mr. Tilton to recommend the granting of the Special Permit at 1042 Ocean Blvd for the demolition of the existing building, construction of a new dwelling, and reconstruction of the existing seawall per the plan signed and dated by the Chair with the usual stipulations.

SECOND by Ms. Shaw

VOTE: 4-0-1, Mr. Diener abstained.

B. 52 Tide Mill Rd

Applicant: Lisa and Brian Arakelian

Agent: Ted Morris, attorney

Application Type: Special Permit

Mr. Morris stated that the amended Special permit is seeking permission to retain/maintain the lawn area within the 50' buffer. The Arakelians purchased the house in 2007. At that time the developer had installed a lawn area that was partially within the 50' buffer. The Arakaliens were not made aware of the buffer's location at the time of purchase.

Mr. Diener elaborated on the history of the site by stating that when this house was sold there was a deed restriction put in place by the developer which required that the 50' buffer be maintained in the naturally vegetated state. This deed restriction came to light when the current owners came before the Commission and Planning Board for approval of a perimeter fence. At that time the Arakelians asked to keep the lawn area, however it was explained that permission to do something that conflicted with a deed restriction could not be granted. The Arakelians were advised that if the deed restriction was lifted then a Special Permit requesting permission to maintain that area as lawn could be entertained.

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Mr. Morris responded that they have contacted the developer and have a signed deed restriction release but this document has not yet been recorded at the Rockingham Registry of Deeds. Mr. Diener recognizing this deed release stated that the Commission is now only tasked with discussing whether the lawn area within the buffer can be maintained as lawn.

Mrs. Arakelian added there are new planting such as azaleas proposed along the backside of the fence and that they had already planted arborvitaes to compensate for trees that had been removed as required under their previous fence Special Permit. Mr. Tilton raised a concern about fertilizer application in that area and would like to see a drought tolerant native grass. Mr. Tilton also recommended a barrier of vegetation, preferably evergreens, along the backside of the fence that would create a screen for wildlife. Mr. Vinther asked if the property owner's had an issue about not using fertilizers and Mrs. Arakelian responded that they have not been using any as the Wetland Ordinance requires. Mr. Vinther was pleased to see that no materials or yard waste are being dumped over the fence. Ms. Shaw requested that there be a stipulation requiring the deed release to be recorded.

Mr. Diener wanted to make sure that whatever is agreed upon meets the spirit of the original purpose for having the buffer left in a naturally vegetated state. Mr. Diener proposed the installation of a low growing ground cover that would run along the fence, and creep in from the corner. Ground cover provides more absorption and infiltration than grass. Mrs. Arakelian was concerned that the ground cover would spread across the whole lawn. Mr. Diener responded that a very slow growing ground cover is easy to manage. Mr. Morris commented that the Arakelians have been doing mitigation on their property by installing the fence and reducing the size of the lawn. Mr. Tilton and several Commission member did not agree that these activities qualify as mitigation but instead a repair, especially since the buffer was supposed to be left alone. Mrs. Arakelian reminded the Commission that the backyard had already been installed with lawn when they purchased the property. The Commission acknowledges that this encroachment was not the result of activities specific to the Arakelians. Mrs. Dionne proposed the concept of having a planting area perhaps more like a garden area that could run along the edge and rear of the fence and could be 4-5 feet wide. The Arakelians requested that whatever plants were agreed upon that their placement be outside of the fence. The Commission had a lengthy discussion about whether there were added benefits of having the plantings on the inside of the fence versus outside. Mr. Loopley felt strongly that there was no difference and supported the idea of having plantings such as arborvitaes on the outside of the fence. Mrs. Dionne recommended that if plantings are to be allowed on the outside of the fence then perhaps they should run the entire length of the rear fence which would include an area that is outside of the buffer.

### NO PUBLIC COMMENT

MOTION by Mr. Tilton to recommend the Special permit at 52 Tide Mill Rd for the continued maintenance of the 50ft buffer as lawn per the plan signed and dated by the chair and including the usual stipulations. Provided that the following stipulations are met:

1. Arborvitaes shall be planted along the outside of the entire length of the rear fence as indicated on the signed plan.

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2. The spacing of the arborvitae shall be such that at maturity they will interweave to create a hedge row. The appropriate spacing to achieve a hedge row should be specified in the planting guidelines for the chosen species of arborvitae.
3. The Commission grants one year (May 2014) to complete the plantings to allow enough time to order plants through the NH State nursery, if desired.
4. The plants shall be a minimum of 2-3ft in height when installed.
5. A planting plan shall be approved by the Conservation Coordinator prior to installation.
6. There shall be no fertilizer applied to the lawn area.
7. The deed restriction release must be recorded at the Registry of Deeds.

SECOND by Mr. Loopley

VOTE: 4-0-1, Mr. Diener abstained.

C. 13 Huckleberry Lane

Applicant: George and Karen Toscano

Agents: Michael Jacobs – Certified Wetland Scientist and John Chaggon of Ambit Engineering

Application Type: Special Permit and NHDES Shoreland Permit

Mr. Chaggon gave a brief overview of the project indicating that the property owner would like to put on an addition which is within the Shoreland Protection Zone (greater than 100' from a tidal wetland). In order to mitigate for the additional sealed surface they are proposing to install a rain garden and remove a portion of the asphalt driveway and replace it with grass pave and lawn. The rain garden will handle the roof run off from the addition and some of the existing house roof runoff. Overall this will result in an improvement of on-site drainage. The proportion of this project that falls within the 50' buffer is the removal of asphalt and installation of grass pavers and lawn. The proposed plan also shows the removal of crushed stone some of which is located on Town Land. There will be a reduction of impervious area in the 50' buffer of 439 sq ft.

Mr. Chaggon shared some additional concerns raised at the site walk. The first being that not all of the wetland flags were placed on the plan and this had been addressed in an updated plan. The pile of debris observed in the buffer area will be removed and the area reseeded.

Mr. Loopley was concerned about the removal of stone from Town land. Mr. Chaggon responded that they were aware that permission from the BOS will be needed before the stone on town land can be removed. They are also going to ask permission to keep the tree planter.

Mr. Tilton asked about the vegetation around the brush pile and if it is native. Mrs. Dionne showed pictures of the area showing that it was a collection of tree brush, leaves, and lawn clippings. Mr. Vinther asked where the trailer which is currently on Town land and within the 50' buffer will be stored. Mr. Toscano did not see the harm of leaving it where it is because it's sitting above a pine needle bed. Several Commission members did not agree with the use of

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Town land for personal benefit. Mr. Vinther asked about what would be done with the wood pile. Mr. Toscano said that he would remove the wood pile and take it to the dump and the brush pile would be removed by hand using a shovel and wheelbarrow.

Mr. Jacobs noted that the wetland area adjacent to 13 Huckleberry is mostly composed to welling up groundwater. He believes there are wetlands soils underneath the brush pile but was unable to dig through the pile to verify.

Mr. Diener shared that he was very bothered by the fact that Town land is being maintained as lawn. Several other Commission members agreed. Mr. Toscano commented that in 1978 when he purchased the property the vegetation in the backyard area was dead and he seeded that area.

Mrs. Dionne commented that on the plan, the depicted brush pile seems further back than where it was on the site walk. She did recognize that the scale on this plan is large, 1 inch equals 10 feet.

NO PUBLIC COMMENT

MOTION by Mr. Vinther to write a letter to the NHDES Shoreland application that we do not oppose the permit with respect to removing the asphalt and crushed stone as proposed and the installation of a rain garden, grass pave and construction of the addition. Also indicate that the applicant has been reminded that permission from the Town is required before work can begin on town land.

SECOND Ms. Shaw

VOTE 3-0-2, Mr. Diener and Mr. Loopley abstained

MOTION by Mr. Vinther to recommend the granting of the Special Permit for the addition, construction of a rain garden and removal of pavement and stone, and the installation of grass-pave and lawn at 13 Huckleberry Lane per the plan signed and dated by the chair. Include the following stipulations and the usual stipulations.

1. The brush pile, wood pile and trailer storage must be removed from the buffer and Town property.
2. Brush pile shall be removed by hand using hand tools and a wheelbarrow.

SECOND by Ms. Shaw

VOTE: 3-0-2, Mr. Diener and Mr. Loopley abstained

MOTION by Mr. Diener to write a letter to BOS that activities on Town land should be consistent with the Wetland Conservation District Ordinance, meaning that in this instance the buffer should be left in its naturally vegetated state. The letter should also encourage the BOS to visit the site.

Second by Mr. Loopley

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Vote 4-0-1, Mr. Diener abstained

D. 190 King's Highway

Applicant: Ocean Crest Condominiums

Agent: George Dovas, Charlie Ryan – Board members, Brian Murray an associate with engineering expertise

Application Type: Special Permit

This project involves re-paving the parking lot within its existing foot print. The grades within the 50' buffer will remain the same. The applicant proposes to elevate a portion of the parking lot that is outside of the buffer and closest to the garage because it has experienced some substantial settling. It was noted during the site walk that parking has been allowed off of the pavement and along the back of the parking lot. The condominium did not believe this was an issue because the Town allows people to park adjacent to the wetland on High St. Mr. Diener responded that Commission does not always have a say in what occurs on Town property. Mr. Diener also informed the applicants that if they wanted to seek permission to park outside of the parking lot area then they would need to seek an approved Amended Site Plan from the Planning Board since the original site plan designated this rear area for grass. Mr. Murray asked if the Commission be in favor of that area being used as parking and Mr. Diener said that he would not because this area is closest to the wetland and there is a concern with the runoff from cars harming the wetland. Several other Commission members indicated agreement with Mr. Diener.

Mr. Diener asked the applicants why the earthen berm along the back edge of the parking lot which is shown on the original approved Site Plan was not seen on-site. The applicants not sure why the berm was never installed. Although it was not specifically stated on the approved plan, Mr. Diener believed it was quite likely that the purpose of the berm was to contain runoff and keep cars on the pavement. It was also noted that the proposed drainage pipe and catch basin shown on the approved plan were also not installed. Ms. Shaw asked where snow is stored because it appeared on the site walk that it was being pushed into the buffer area at the rear of the parking lot. The applicants confirmed that snow is pushed and stored in this area. Mr. Vinther asked if a silt fence would be installed and where it would be placed. It was explained that it would be along the wetland side of the parking lot and would be in place during the removal of the asphalt and re-paving. Mr. Vinther commented that he also supported that no cars should be parked in the back area off of the pavement. Mr. Dovas added that area at the rear is not used for car storage but only guest cars that are monitored and identified by parking tags. Mr. Loopley would like to see the original approved plan followed and the berm installed. Mr. Ryan shared that the Condominium does not believe they have enough parking. Mrs. Dionne commented that based on the approved plan there are two spaces per unit plus an additional six spaces for guests which is more than most condominiums near the beach have.

NO PUBLIC COMMENT

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MOTION by Ms. Shaw to recommend the granting of the Special Permit for the re-paving of the existing parking area at 190 King's Highway per the plan signed and dated by the chair. Include the usual stipulations and the following stipulations:

1. Construction of a berm in the location shown on the May 1983 approved Site Plan. The berm shall be a minimum of 18" in height and include installation of PVC pipes with a minimum diameter of 4" or larger to facilitate drainage through the berm during large storm events. The berm shall also be seeded/planted following construction.
2. The Condominium Board members shared a preference for railroad ties over a berm, however the Commission prefers a berm because they are low maintenance and provide greater water infiltration.
3. "No parking or Snow Storage" signs shall be installed every 25-30 ft. along the western edge of the parking area.
4. Except for filling some depressions near the garages, the elevations and grading of the parking area will not change.
5. The applicant will submit spot elevations at the completion of the project to demonstrate that the elevations and grading has not changed, except where requested.

SECOND by Mr. Tilton

VOTE: 4-0-1, Mr. Diener abstained

E. 11 Ina Ave

Applicant: Karl and Holly Jacobson

Application Type: Special Permit and NHDES Dredge and Fill

This project involves the demolition of the existing buildings and construction of a 2-story house that will be located further from the wetland. The new design will reduce the impact in the buffer by 600 sq ft. Mrs. Dionne asked whether there would be any steps from the deck within the 50' buffer, Mr. Jacobson said, "No". Mrs. Dionne also asked whether the deck in the 50' buffer would be open and Mr. Jacobson said that it would not have a roof. There was a portion that would be constructed as a porch but that was outside of the buffer. The Commission members were glad to see a project where the impact was being reduced and pulled back further from the wetland.

NO PUBLIC COMMENT

MOTION by Mr. Tilton to recommend the granting of the Special Permit for the demolition of the existing dwelling and construction of a new 2-story building further from the wetland edge at 11 Ina Ave per the plan signed and signed and dated by the chair. Include the usual stipulations.

SECOND by Ms. Shaw

VOTE: 4-0-1, Mr. Diener abstained.

MOTION by Mr. Tilton to not oppose the NHDES Standard Dredge and Fill application with the stipulation that the Commission be notified at the beginning and end of the project.

SECOND by Mr. Vinther

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VOTE: 4-0-1, Mr. Diener abstained.

### **OLD BUSINESS**

#### A. Hurd Farm Signage

Mrs. Goethel was not present to give an update.

#### B. Ice Pond Dam update

Mrs. Dionne shared that Mr. Diener and herself met this past week with DPW director, Keith Noyes, to discuss the potential of using the same engineering firm, Stephen Associates, for the work at the Grist Mill Dam. It seems like a logical choice given that the firm has already been hired to develop a design for the Ice Pond dam and since the Ice and Grist Mill Ponds are hydrologically connected, one design could influence/affect the other. Mr. Noyes suggested having both projects managed together. It was decided that there should be group meetings/updates on the proposed designs but due to funding differences each project should be managed separately.

### **NEW BUSINESS**

#### A. Review proposed changes to HCC rules and procedures– Treasurer

Mrs. Dionne shared that the current title of “Treasurer” that has been assigned Ms. Renaud is not the appropriate title because even though she keeps track of the Conservation bank accounts the actual Treasurer in charge of writing checks and making deposits is Ellen Lavin. The Commission discussed some alternative titles and decided upon “Clerk”.

#### B. Survey/Poll concerning climate adaptation and/or sea-level rise

Mrs. Dionne shared that she had come across some examples of where communities had polled their residents on their views and feelings about climate change and sea-level rise. Since this is becoming a big topic in the seacoast, she was wondering if the Commission would like to do a similar type of survey. It was discussed that it could be an interesting venture with some potential downsides. It would be a good way to gauge how the Community feels. Mrs. Dionne volunteered to compile some survey questions to help aid this discussion next month.

### **CONSERVATION COORDINATOR AND CHAIRMAN UPDATE**

Mrs. Dionne shared the following:

1. The court ruled in favor of the Town of Hampton with regards to the suit against 51 Lafayette Rd. The order requires restoration of the site, reimbursement of Hampton’s legal fees, and a \$275 fine until completion of the restoration. The date of origin for the fines is June 19, 2012 because this is when a certified notification of wetland violation was sent to the property owner from the Building Inspector.
2. The exploration into having Special permit history added to those applicable tax cards has run into to some legal obstacles. There is concern about adding this information to the land value section of the tax card because it does not actually affect the land value.

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This is still a worthwhile endeavor so Mrs. Dionne and Mr. Diener will speaker further with the both the Town Attorney and Assessor to find an alternative approach. Ms. Shaw recommended checking with the Hampton Union about the real estate booklet that is published which features a sections with facts about each town. It might be possible to have them add to Hampton a comment about the Wetland Conservation District.

3. Mrs. Dionne asked about whether the Commission wanted to select an alternative site walk date for May since it currently falls on Memorial Day weekend. There was agreement that a day during the week might be best. Mrs. Dionne will send around an email to see which week day works best.
4. Mrs. Dionne asked the Commission if they would be willing to put the proceeds from this year's Rain Barrel Auction towards supporting the Green Infrastructure project and if this project is not awarded the funds would be placed in the Land Acquisition Fund. The Commission members agreed. Mrs. Dionne reminded everyone that the auction will be held on May 18<sup>th</sup> during the Garden Club's annual plant and bake sale.

**TREASURER'S REPORT**

Ms. Renaud was absent.

MOTION to Adjourn by Mr. Tilton at 9:55

SECOND by Ms. Shaw

VOTE: 5-0-0