

HAMPTON CONSERVATION COMMISSION PUBLIC HEARING

MINUTES

August 27, 2013

PRESENT: Jay Diener, Chair
Peter Tilton Jr., Vice-Chair
Barbara Renaud
Gordon Vinther, alternate
Diane Shaw, alternate
Mark Loopley, Planning Board Representative
Rayann Dionne, Conservation Commission Coordinator

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 Ms. Renaud to approve the July 23, 2013 minutes with edits provided.

SECOND by Mr. Tilton

VOTE: 4-0-2, Mr. Loopley and Mr. Diener abstained

Concerned Resident – Phragmites and Flooding adjacent to Highland Ave

Mr. Richard Reniere of 29 Highland Ave asked the Commission if he could very briefly share his concerns about phragmites control and flooding near his property at 29 Highland Ave. He had noticed that the meeting's agenda was going to discuss phragmites control along Landing and Drakeside Roads and thought it might be appropriate to share his concerns for another area in town. The meeting format does not have an open public section, but the Commission was agreeable with hearing Mr. Reniere's concerns.

Mr. Reniere shared that the tidally influenced area near Church St, Charles St, and Chase St connects to a tide gate on Brown Ave. This area contains a tidal ditch that is currently being choked with phragmites. Mr. Reniere noted that during astronomically high tides and storm events, the properties near this tidal ditch are experiencing substantial flooding. He presented a sketch/map of the affected area. He also shared that the property owner of 7 Chase St, Mr. Maurice Chenard, sent a letter to NHDES, explaining the concern and asking what type of aid/relief was available. Mr. Reniere felt that clearing out the ditch to provide better tidal flow would help significantly as well making sure the tide gate is functioning properly. He hoped that his concerns would be discussed by the Commission and that some type of resolution could be reached.

APPOINTMENTS

A. 595 Ocean Blvd

Jerry Flynn – property owner and David Beati – Greater Lowell Engineering Associates
Parking on the Town land parcel behind 595 Ocean Blvd.

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Mr. Flynn, owner of both of 595 and 779 Ocean Blvd, is interested in redeveloping 595 Ocean Blvd. The current condition of the property is very poor and he would like to build an eight-unit condominium complex that would consist of parking on the first level plus four additional levels with two 2-bedroom units on each floor. The building would be approximately 55 ft. high. Mr. Flynn believes this type of redevelopment would require a total of 16 parking spaces. A draft plan and project narrative was presented to the Commission. The wetland edge shown on this plan was based on the Hampton on-line GIS and was used as a guide with the understanding that a true wetland delineation would be needed. Eight of the 16 parking spaces would be provided underneath the building and the additional eight would be on the Town parcel directly behind the building. The previous owner had a lease with the Town in 2010 for 8 parking spaces, although only 5 were accessible. An accessory structure was blocking the additional spaces. The current owner would like to have a perpetual lease or purchase a section of this parcel from the Town to accommodate the additional parking needed to complete this project. Mr. Flynn was also considering the option of leasing parking spaces from the State on the Ocean Blvd side of the property.

There was a brief discussion on the number of spaces needed because it was believed that additional spots may be required for guest parking. Mr. Diener reminded the Commission that their objective is to provide feedback to the Board of Selectmen as to whether Town owned parcel should continue to be leased or sold for parking. Mrs. Dionne reminded everyone that this same question was asked of the Commission in 2009. The Commission at that time was not in favor of this area being leased because a large portion if not all of the land adjacent to 595 Ocean Blvd is either wetland or within the 50ft buffer. Parking in the wetland or its buffer is not permitted under the Wetland Conservation District Ordinance. However, the Board of Selectmen decided to lease some parking spots to address an ongoing use that had not been officially approved by the Town. This lease agreement was a temporary solution and not a permanent or grandfathered use.

Mr. Tilton shared that he was not in favor of leasing this section of Town land for parking especially given its proximity to the salt marsh. He was concerned that the parking area has experienced unpermitted filling/expansion over the years which is a NHDES violation. Mr. Tilton believes that NHDES Standard Dredge and Fill application would most likely be necessary to retain this area for parking.

Mr. Loopley raised the concern that based on a RSA restriction the property can only be leased for certain number of years before it has to be sold (RSA 41:11-a)

Mr. Diener had major concerns about selling marshland and also noted that this not something he has seen the Town support. It has also been a long term goal of the Commission to try to protect as much marshland as possible and selling off a section would be counterproductive.

Mrs. Dionne shared a concern that even though 8 spots are indicated as available in the 2010 lease, she is not convinced that a majority of those spots do not experience regular tidal flooding and would not be useable on a full time basis for parking. The engineer commented that it is their intention to raise these spots by approximately 1-2ft to meet the elevations of neighboring

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property because they feel the elevation difference is causing the flooding. Commission members shared their objections to filling in Town land especially that which is within a wetland or its buffer. Plus when fill is added the flooding issue is simply displaced to a new area which is not acceptable. The engineer commented that the fill that would be added would result in a 1000th of cm displacement across the entire marsh which is negligible. The Commission was not convinced by this statement because it has been incremental filling of the salt marsh over time that has created and exacerbated the amount of flooding that Hampton experiences today.

Ms. Shaw shared her concerns about too much encroachment on the salt marsh which should not be tolerated on Town land.

Mr. Diener commented that he was appreciative of the property owner's willingness to improve the property but did not believe that this project proposal contained any features that would cause the Commission to change its recommendation in 2009 about not leasing this land for parking.

The Engineer asked what type of options the Commission would be in favor of. The overall consensus was a project that could be entirely accomplished within the owner's property and not require the use to Town land.

MOTION by Mr. Tilton to recommend that the Board of Selectmen not lease or sell this section of Town land because of its location within the Wetland Conservation District and the Town's obligation to abide by its ordinances. Mr. Tilton also recommended a delineation by a certified wetland scientist.

SECOND by Ms. Shaw

VOTE – 6-0-0

APPLICATIONS

B. 599 Ocean Blvd

Applicant: Edward and Patricia Grogan

Application Type: NHDES Standard Dredge and Fill

This project is for the addition of a 10' x 12' deck at 599 Ocean Blvd. The deck is located outside of the 50' buffer but within the NHDES 100' buffer. The project will involve removing the existing back stairway, construction of a new deck on sonotube supports, and a new stairway that will be parallel to the house. The project will not encroach any further towards the marsh than the current stairway. Mr. Diener asked how the sonotubes will be dug and the applicant believed that the contractor will do so by hand.

NO PUBLIC COMMENT

MOTION by Ms. Renaud to not oppose the NHDES Standard Dredge and Fill application for the addition of a 10' x 12' deck at 599 Ocean Blvd. The Conservation Coordinator will be notified at beginning and end of project

SECOND by Mr. Vinther

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VOTE: 5-0-1, Mr. Diener abstained.

C. 16-32 Nor'East Lane

Applicant: Michel & Charlotte Lapierre

Agent – Dennis Moulton – MSC Engineers

Application Type: NHDES Standard Dredge and Fill and Special Permit applications

This project involves the reconstruction of the riprap along 5 seawalls stretching from 16 Nor'East Lane to 32 Nor'East Lane. All of the seawalls are located on Town property with the exception of a portion of the seawall at 32 Nor'East Lane. Mr. Moulton explained that the work involves adjusting and adding to the stone riprap that is located in front of a concrete wall that runs across each of these properties. The stones would be set in a step-like pyramid fashion similar to the seawall at 12 Nor'East Lane. Mr. Moulton also explained that this work is needed to protect against potential sea level rise and increasing storm surges. Mr. Moulton used a larger plan to further explain details of the construction. Starting at the southern end, the stone wall will begin at the same level as the stone steps adjacent to 12 Nor'East Lane and the height of the wall will step down as it crosses 16 Nor'East Lane until it reaches an elevation of 18-21' to meet the existing height of the concrete wall. The stone wall will range from 12" to 18" above the concrete wall depending on the location. However, the overall wall height will be approximately 1-2 ft. lower than the wall at 12 Nor'East Lane. There are stone staircases proposed for each of the properties with the exception of 32 Nor'East where there will only be an opening. The slope at 32 Nor'East Lane is gradual and does not require stairs. Mr. Moulton acknowledged that there were concerns about the length of the staircases raised at the site walk. The new staircase designs will result in the stairs extending approximately 6 additional feet from the base of the seawall onto the Town Land. Mr. Moulton explained that this configuration is preferred because it allows the stairs to be curved as opposed to perpendicular to the wall which helps protect the properties from storm surges and waves. Perpendicular staircases are a weak point in a wall because they provide a path of least resistance for water. Mr. Moulton did share an alternative design, where the stairs would run parallel to the wall. However, as the stairs angle downwards it creates a thinner wall which offers less protection. There was also a safety concern with the parallel stairs that an outer railing would be needed due to the drop off. A railing located on the outer edge of the stonewall would also have a greater chance of being damaged during storm events. Mr. Moulton asked the Commission to strongly consider the original design based on the greater protection being offered.

Mr. Loopley asked if all of the seawall work would be done at the same time. Mr. Moulton confirmed that this would be the case. Mr. Loopley commented that past multi-seawall projects have been delayed because not all property owners are ready for the expense.

Mr. Tilton commented that he did not have an issue with curved staircases as long as it does not impede the public from walking the beach. Mr. Moulton did not believe that it would. However, Mrs. Dionne commented that an unpermitted curved staircase was recently installed just south of these properties and it does limit beach access during high tides. Mrs. Dionne was not certain if this would be the case for these properties but felt there was high probability.

Mr. Vinther shared his concern about approving a seawall stair design that resulted in further

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encroachment and what type of precedent that would set. Every ocean front owner will want the additional use of Town Land and this could cause issues. Mrs. Dionne agreed with this concern and felt strongly that the seawall and its staircase should stay within its current foot print. The only exception to this would be a couple of the seawalls which have almost no riprap in front of the concrete wall. These should be expanded but only to the extent that it matches the other adjacent seawalls.

Ms. Renaud acknowledged that there are concerns or issues with either staircase configuration but shared the similar reservation about allowing more encroachment on Town land.

PUBLIC COMMENT

Ted Vitas, one of the property owners, shared a concern for having safe access to the beach for family members. He asked the Commission if there was staircase preference and suggested a gap in the wall where a wooden stair case could be constructed. The Commission commented that breaks in a seawall are not safe during storm events.

Mr. Diener asked Mr. Moulton what was the design rationale or scientific preference for a pyramid step-back stone design versus the typical more random placement of stones. Mr. Moulton responded that it's mostly through trial and error that they have found this design to be superior. The locking of large angular rocks provides greater stability.

Mr. Diener asked for clarification on how far the stone wall will extend out past the existing concrete wall versus the current width of the riprap. Mr. Moulton explained that currently the riprap extends between 3-6 ft. from the concrete wall and the new stone wall will not exceed a distance of 6ft from the concrete wall. Mr. Diener verified that the stairs would be an additional 6ft past the new stone wall and Mr. Moulton agreed. Mr. Diener shared the same reservation that use of Town land for this purpose was not justifiable. It was his preference that the stairs be constructed within the foot print of the seawall. If additional space is needed, it should be within the owner's property.

Mrs. Dionne asked Mr. Moulton to briefly explain how machinery and materials would enter the site. Mr. Moulton explained that permission would be requested from the Board of Selectmen to use Plaice Cove for machinery access and that materials would enter the work area using a section of land between 16 and 20 Nor'East Lane. There would be some temporary impacts for the removal of fence and a partial deck which would be replaced in-kind at the end of the project.

MOTION by Ms. Renaud to recommend the granting of the Special Permit for the reconstruction of the seawall at 16-32 Nor'East Lane subject to the following conditions and the usual stipulations:

1. The foot print of the seawall will encroach no further on Town Land than the current maximum seawall width.
2. The Commission recommends the configuration of the stairways as shown on the alternative plan presented.

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SECOND by Mr. Vinther

AMENDED by Ms. Renaud to restate that any staircase configuration may be chosen by the property owners as long as the stairs do not extended beyond the current maximum encroachment on Town Land.

SECOND by Mr. Vinther

VOTE: 5-0-1, Mr. Diener abstained.

MOTION by Mr. Tilton to not oppose the NHDES Standard Dredge and Fill application for the reconstruction of the seawalls in front of 16-32 Nor'East Lane with the preferred scheme for the stairs being the alternate configuration, no further encroachment on Town property for accessory stairways. Sheet C2A provided by the applicant.

SECOND by Ms. Renaud

VOTE: 4-0-2, Mr. Diener and Mr. Loopley abstained

D. 133 North Shore Rd

Applicant: Nicholas and Cornelia Bolton

Agent: Henry Boyd of Millennium Engineering

Application Type: Special Permit

This project involves the construction of a new single family home within 25 ft. of a wetland edge as opposed to the 50 ft. which is required. Mr. Boyd shared that the configuration of the house is similar to what was shown during the subdivision review process. The proposed house is slightly smaller and a deck is now shown at the rear of the building. All of the proposed work including permanent and temporary impacts will be located between 25 ft. and 50 ft. from the wetland edge. The proposal does not show any impacts between the wetland edge and 25ft landward. Mr. Boyd shared that all of the rear roof run off will be directed to stone trenches positioned parallel to the back of the house and the entire area underneath the deck will be constructed as a stone reservoir to provide additional storage and infiltration. The front roof and driveway run off will be directed to a rain garden located at the eastern side of the property. A berm is also proposed along and close to the southeastern edge of the 25ft buffer that will help to direct water away from the wetland and towards the rain garden. Mr. Boyd noted that there were limited LID (Low Impact Design) features that could be added to this site to help off-set the proposed impervious surface.

Mr. Diener reminded the Commission that the Zoning Board granted a conditional variance to allow construction within 25 ft. of the buffer that is dependent upon approval of the those Boards concerned. One of those Boards concerned is the Planning Board through the Special Permit process to which the Conservation Commission is allowed to provide a recommendation.

Mr. Tilton commented that we do not typically see variances for Wetland Conservation District (WCD) requirements because the Special Permit process is used to request/approve an exception. Mr. Diener noted that in fact requesting a variance from a WCD requirement or going through

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the Special Permit is acceptable from a procedural standpoint. However, if a variance for work within the WCD is granted then during the Special Permit process that work cannot be denied only the process for completing can be critiqued.

Mr. Tilton asked if there was any existing development on Lot 2 and Mr. Boyd responded that there is a cottage on Lot 2. There is also a third lot further west that is undeveloped. Mr. Boyd also pointed out that there is a large section of this parcel that is a mix of upland and wetlands that has a "No Build" easement that was put in place during the subdivision process. Mr. Boyd commented that he believes the preservation of this upland habitat is just as important as preserving wetlands. He also gave his opinion that the quality of the wetland on this parcel is far from pristine and mainly a result of storm water runoff. Although he understands that the WCD protects all wetland equally.

Mr. Tilton commented that the building envelop is small and oddly shaped, even with using an additional 25ft of the buffer. Mr. Boyd noted that he has tried his best to incorporate ways to improve stormwater infiltration, the only LID feature not used is permeable pavers for the driveway, which could be installed.

Mrs. Dionne shared concerns about the location of the deck and its close proximity to the 25 ft. buffer edge. A deck in this area is only going to entice future property owners to expand their backyard activities into the 25' buffer. She was not comfortable with a design that encourages encroachment and may result in a future violation. Ms. Renaud shared the same concern and asked how we can ensure no further encroachment.

Mr. Diener asked why the rain garden is located so far from the house. Mr. Boyd explained that its location maximizes the lawn space and all of the grading in this area pitches to the garden. The stormwater from the driveway will cross the lawn area, adding infiltration before reaching the rain garden. He also noted that there is a berm near the buffer edge that directs the stormwater away from the wetland and towards the rain garden.

Mrs. Dionne asked about the possibility of flipping the garage and house orientation, so that the deck could be placed along the eastern side of the house closest to the lawn area. This would help direct future property owners to use the side yard instead of the backyard. There was a lengthy discussion about this idea. There was a consensus of the Commission to support flipping the garage and house in conjunction with the installation of 4ft high metal posts every 25 ft. along the 25ft wetland buffer edge. To also help maximize the side lawn area, reshaping of the rain garden was found to be acceptable as long as the overall square footage remained constant. The Commission also discussed the need to add protection against cutting or recreational development of the section under the "No Build" easement. The addition of a Conservation Easement with a 5' pedestrian path was agreed upon. The pedestrian way would only be for monitoring purposes not for public access. Mr. Boyd did not see any major issues with these changes and would be sharing them with his client.

NO PUBLIC COMMENT

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MOTION by Mr. Tilton to grant the Special Permit for the construction of a single family residence within 25 ft. of the wetland edge at 133 North Shore Rd (Map 133 Lot 17) subject to the following conditions and the usually stipulations:

1. The orientation of the garage and house shall be flipped and the deck shall be constructed on the east side instead of the southern side of the house. The rain garden may be reconfigured to maximize lawn area while still maintaining the necessary square footage.
2. The addition of a Conservation easement with a 5' pedestrian access way shall be added to section of the property that already contains a "No Build" easement. The pedestrian way shall be located along the western edge of the Lot and connect to North Shore Rd.
3. The 25 ft. buffer shall be left in a naturally vegetated state, meaning that it shall not be seeded, cut, mowed, or maintained. Wetland buffer markers shall be installed at 25 ft. intervals on metal posts that are a minimum of 4 ft. in height along the buffer edge.
4. Note on the recorded plan that indicates the location of posts and states that the 25 ft. buffer must be left in a naturally vegetated state.
5. The Commission believes that the Conservation easement and suggested modifications adequately off set the additional sealed surface proposed by this project.

SECOND by Ms. Renaud

VOTE: 4-0-2 Mr. Loopley and Mr. Diener abstained

OLD BUSINESS

a. Hurd Farm Signage

There was no new information to discuss on the project.

b. Temporary Secretary

Mrs. Dionne shared that she is still looking for a temporary minute taker to fill in while she is on maternity leave.

NEW BUSINESS

a. Phragmite Control at Landing and Drakeside Roads

Mrs. Dionne updated the Commission with the cost estimates for herbicide treatment and native plant installation provided by Tracy Degnan. There is the potential, if volunteers are gathered for the plant installation that the cost for the whole phragmites control could be reduced. The volunteer hours can be used as match to achieve the 25% of the total cost that Commission is responsible for paying. Mrs. Dionne reminded the Commission that at the last meeting, there was no cost estimate to review, so the Commission postponed voting to proceed with the herbicide treatment and planting.

MOTION by Ms. Renaud to move forward with the herbicide treatment and native plant installation

SECOND by Mr. Diener

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

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b. Interim Conservation Coordinator

Mrs. Dionne shared that Conservation Commission alternate, Nathan Page, expressed interest in acting as the interim Conservation Coordinator while she was on maternity leave. The Commission must vote to recommend his hiring.

MOTION by Ms. Renaud to recommend the hiring of Nathan Page as the interim Conservation Coordinator.

SECOND by Mr. Tilton

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

c. Ice Pond Dam – construction material

Mrs. Dionne shared that Stephen Associates has provided a small list of potential materials with estimated costs that could be used to reconstruct the Ice Pond Dam. Before moving forward with the rest of the design, they wanted the Commission to decide upon a material.

MOTION by Mr. Tilton to select reinforced concrete as the material for reconstructing the dam.

SECOND by Ms. Shaw

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

d. Ordinance revisions for best management practices for pools and hot tubs

Mrs. Dionne presented a potential Wetland Conservation District ordinance change that would address the best management practices for pools and hot tubs. There was a lengthy discussion about how frequently we run into issues with pools and how reasonable it would be to enforce. Mrs. Dionne shared that the NHDES does not have any specific regulations for residential pools as to the quality of the pool or hot tub water prior to discharge or where discharge is appropriate. The overall objective is for the chemicals to be low enough not to cause harm and for this water to not be directly discharged into wetlands or water bodies. There was a consensus of the Commission that this information would be better suited as a fact sheet than as an ordinance change.

CONSERVATION COORDINATOR AND CHAIRMAN UPDATE

Drakeside Rd – Page’s Meadow – extent of field cutting in the easement

Mrs. Dionne requested clarification from the Commission on the location of the fields at 176-178 Drakeside Rd and why annual cutting is being required. She performed a site inspection this past week and the area out behind the apartment complex looks very lush with vegetation. There were lots of birds and bees taking advantage of the bushes and flowering plants. She shared a map outlining the field area along with photos taken at the last site visit. Mr. Tilton explained that field habitat is becoming scarcer as we begin to see less and less farming. When the Conservation Easement was drafted, it was agreed upon to continue to maintain this field because it provides a valuable habitat to different birds and wildlife. Mrs. Dionne reminded the Commission that in future easements we should make sure any area that needs to be maintained for any specific reason be adequately delineated and explained. In this situation, the property has changed ownership several times, and the vague wording in the easement made it difficult to

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understand the reasoning and location.

TREASURER'S REPORT

No Treasurer's report this month.

MOTION to Adjourn by Ms. Renaud at 10:05

SECOND by Mr. Tilton

VOTE: 5-0-0