

HAMPTON CONSERVATION COMMISSION PUBLIC HEARING  
MINUTES  
OCTOBER 22, 2013

**PRESENT:**

Jay Diener, Chair  
Peter Tilton, Jr., Vice Chair  
Barbara Renaud  
Sharon Raymond  
Diane Shaw, alternate  
Nathan Page, alternate  
Rayann Dionne, Conservation Commission Coordinator

**CALL TO ORDER:**

The meeting was called to order at 7:02 p.m. by Chairman, Jay Diener, at the Hampton Town Hall Office Meeting Room.

**CONSIDERATION OF MINUTES:**

MOTION by Ms. Renaud to approve the September 24, 2013 minutes with edits provided.

SECOND by Mr. Tilton

VOTE: 3 in favor; 0 opposed- Ms. Raymond, Mr. Page, and Mr. Diener abstained.

**APPOINTMENTS:**

1. Liberty Lane Master Planning for undeveloped lots. Joe Valle of Valle Group.

Mr. Valle presented development concepts, supported by an Aerial photograph and plan. He stated that he has been working with the owners of the land for fifteen years and has presented to the Planning Board the various concepts for informational purposes. The Planning board, last month, recommended that the Valle Group share their ideas with the Conservation Commission. Using the photograph, he described the substantial amount of property owned, over and around Liberty Lane.

The owners are looking toward developing a 20 – 25 year Master Plan for all of the owned land and attaining a sense of the property, what is there, and what are the potential uses.

He spoke to Liberty Lane East, which is the former Fischer Science Headquarters, noting there is sewer, water and gas in place. On West Liberty Lane there are 35 acres and the group is contemplating having this area rezoned for residential. Currently both Liberty Lane East and West are zoned industrial. The areas on Drakeside and Towle Farm Roads would be left in the general zone. The ten acres across from the restaurant, Bonta, is currently zoned industrial; however, there are thoughts to rezone to residential use with the area next to the restaurant to be kept as industrial. The 125 acres in back of the water tower has approximately 25 buildable acres. The balance of this land is unsuitable for building as it is wetlands. Further, the 25 acres on Route 27 are currently zoned as AA Residential and rezoning would be proposed as industrial.

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After review of the proposed zoning changes, Mr. Valle stated that the wetlands would need to have reflagging and delineation.. The owners have concern for the wetlands and whatever is done will be appropriate. Over the next year, more specific plans will be developed which would be reviewed by the Planning Board, Conservation Commission and the DPW to ensure that the 20 year plan can be utilized. The goal of the owners is not to sell the land, but to leave it to their heirs and develop over time. The owners also want to work with the Town and, should they find they are not going to be able to accomplish the Master Plan,, the alternative would be to sell in bulk or individual parcels. Lastly, he stated that Liberty Lane East was created while respecting the wetlands.

As the Valle Group progresses with their plan, they will come, once again, with presentations to the Town.

Mr. Diener asked Mr. Valle what he had meant when he stated that the Liberty Lane would be developed appropriately with regards to wetlands. Mr. Valle clarified that development was consistent with the Wetland Ordinance, meaning outside of the wetlands and their buffers. On questions from the members, Mr. Valle stated there are no current plans that delineate the wetlands; that there is a need to respect buffers; and, they will look to protect all wetlands. Mr. Diener stated that the wetlands ordinance does not give a grade/value to wetlands and all wetlands are protected equally. It is the Commission's charge to protect them through the Ordinances. Ms. Raymond commented on the large amounts of vegetation; and, that there are significant storm water regulations that will impact the areas. Further, she is looking at services and access to utility capacities.

Mr. Tilton stated that, values seen over the last 30 years, it is easier to monitor industrial development and a single owner is easier to manage than several. Ms. Renaud, with regard to rezoning, questioned the change from RAA to industrial on Rt 27. Mr. Valle stated that would be at the interchange across from Timber Swamp Road, near the Unutil property.

On question from Mr. Page, Mr. Valle stated that Liberty lane West has capacity for sewer and water, and the utilities are sized to accommodate. However, Mr. Valle stated that he has no idea whether or not there is enough capacity to tie into Mary Batchelder Road.

Mrs. Dionne stated that the 125 acres, as shown in the photograph, are not all developable.

Mr. Diener announced that there is not, normally, a public comment period on appointments as there is for applications; however, he invited one representative from the neighborhood to speak.

Jenna Nadeau, 121 St. Cyr Drive and Patti Robinson, St. Cyr Drive spoke to the current population of the area of Falcone Circle and St. Cyr Drive, stating that there are new families as well as retirees who are new or who have lived in the area for years. They all share the same concerns regarding the watershed and the protection of the river. They also want to ensure that anything that is developed is done through proper Federal, State, and local regulations. The people in the neighborhoods affected should have an opportunity to be involved in the planning stages and decisions.

Mr. Diener encouraged the residents to speak once the plans are before the Zoning and Planning Boards; and, this Commission. Mr. Valle stated that the Group has reached out to the neighbors; however, have not had the call returned. He assured the neighbors he would work with them and hear their thoughts.

Ms. Shaw questioned whether any of the 125 acres go into North Hampton. Mr. Valle stated that they do.

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Adam Viscenes, Falcone Circle, stated that changing zoning increases/impacts land values. Mr. Diener explained that this Commission does not review zoning issues, that it is a Zoning Board charge. Further, changing zoning is a difficult process in that it requires a Town Meeting vote.

1. 155-165 Island Path. Aaron Brown. Town Special Permit – remediation time frame.

The property owner is before the Commission to discuss the remediation time frame that was required under the 2012 Special Permit, which required that all remediation/corrective activities take place during the first year of the permit and must be completed before a building permit to begin new work can be issued for the properties.

Mr. Brown stated he was issued a cease and desist order by NHDES because an abutter appealed the DES permit extension. It has taken six months for DES to complete their investigation and render a decision. DES recently decided and issued a letter stating that they were upholding their permit extension; however, there is a 30-day appeal.

Mrs. Dionne read aloud for the Commission, the Special Permit approval letter which specifically states that the remediation activities must be completed within the first year of the permit. Mr. Brown is concerned that he will not be able to complete the remediation activities during the time remaining because several of them are weather dependent and involve plantings. Further, that some of the work was put on hold because of economics. Mr. Brown presented an alternative time line and requested a recommendation to the Planning Board. It was noted the State DES permit is in effect for five years, while the Town of Hampton permit is for a two year period.

It was also explained that after the town permit expired, and by process, he went through and got a new . Town Special Permit. The DES wetlands permit was also close to expiring and an extension was requested from DES. DES extensions are for an additional five years. Mr. Brown stated that he would like to complete the remediation work then get a building permit for the duplex unit. He stated that the remediation work could be done within a 12 to 18 month time frame. Further, the goal is to complete by January 2015. Currently the town permit expires January 16, 2015.

MOTION by Mr. Tilton to send the Planning Board a letter recommending the extension of the Town Special Permit to September 30, 2014, in order to complete the remediation work. After the violations are corrected, the owner can then apply for the Building Permit.

SECOND by Mr. Page

VOTE: 5-0-1 Mr. Diener abstained

2. Stephens Associates – present preliminary design for Ice Pond Dam.

On August 27, 2013, it was reported that Stephens Associates 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, Stephens wanted the Commission to decide upon a material. It was moved, seconded and voted 4-0-1 to select reinforced concrete as the material for reconstructing the dam.

Mr. Stephens, supported by a PowerPoint Presentation, stated he was most interested in the bones of the permanent design. The plan of the proposed structure is 90% complete and shows the Woodland Road, culverts, and the island. The design has construction easements to extend across both openings and the island and will be constructed of concrete. The Elevation of Woodland Road is 33, and the elevation of

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the dam would be slanted to 30.2 in the final design. There are two proposed spillways which will enable redundancy and maintaining the structure in the future. For the two spillways, the top elevation is 30 and bottom varies from 27 to 28 which is the most favorable working with the ground conditions at the site. There is a possibility these may be altered. The spillways are designed for a 50-year flood with a foot of freeboard. The freeboard design provides a margin of safety.

Mr. Stephens addressed questions by the Commissioners as follow:

The ground elevations dictate the heights of the spillways. If there is a need to change, that is possible. Looking at the spillways, the concrete will have stop logs put in one by one (Shown in detail A7) which is helpful when sediments back up. This makes it easier to work on and maintain.

Sheet 3 of the design plans shows existing conditions and temporary construction. One of the important factors, as a Wetland Permit will be required for the projects.

The erosion control barriers are a result of the Town's maintenance easements.

Ms. Raymond spoke to the details, which have been thought out and allow a practical dam which can be maintained by the DPW. Further, the contractor should provide "as built" drawings for the following project completion. Mr. Stephens noted that this job will be for a small contractor, who would likely get paid as the work progresses. **The DPW director will prepare the construction contract using Town documents, and Mr. Stephens will coordinate with the DPW Director on the design and legal documents.** Funding for this project will require a Warrant Article for vote in March 2014. Mr. Tilton commented that he would prefer this Warrant Article be from the Board of Selectmen as opposed to just the Conservation Commission. Repairing the dam is a flood control issue which is taken very seriously by the residents of Hampton.

With regard to a finish, on the front of the dam, other than the concrete, Mr. Stephens stated that it could be faux stone or stone masonry, which could be done after completion; however, more costly. This is an option and could be included if there is a favorable bid and could be kept under the \$130,000 budgeted. Using the current stone to face is feasible; however, not cost effective. The existing stone will be used for the rip rap.

A Wetland Permit will govern the construction, and Mr. Stephens asked if the Commission had strong feelings about emptying the pond, diverting the water, or building coffer dams, which is more costly and time consuming. There was discussion regarding the impact on the fish in the pond and it was pointed out that DES will take that into consideration. Further, DES will send their permit to the NH Fish and Game for input.

**The Commission is in agreement that, for construction, the pond be de-watered.**

#### APPLICATIONS

- A. 12 Nor'East Lane – Daniel Hoefle – Co-Trustee of the Nor'East Lane Irrevocable Trust Agent and Cory Coldwell, MSC Engineering.

The reconstruction of the existing seawall was based on an Emergency Authorization from NHDES. The request before the Commission is for a Special Permit and a Standard Dredge and Fill permit. Mr. Coldwell presented an as-built plan for the completed seawall work. Mr. Hoefle stated that on the past Saturday's site-walk, while looking at the seawall from the beach, the right side goes on to an abutter's

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property. The abutters', Mr. and Mrs. Lyons, stated they had given permission to the contractor with regard to the Hoefle's wall crossing into their seawall. They provided a letter confirming their permission.

Mr. Coldwell, stated that, with this Emergency Authorization, the permitting channels were followed. The as-built drawing showed the wall in relationship to the buffer zone, temporary impact, and permitted impact. The wall is restored and crushed stone was placed under the deck for better support and drainage. This had a minor impact and provided a safer situation. Ms. Renaud commented that this was a small job that was done nicely.

NO PUBLIC COMMENT

MOTION by Mr. Tilton to recommend granting the Special Permit for the restored seawall at 12 Nor'East Lane  
SECOND by Ms. Renaud  
VOTE: 5-0-1 Mr. Diener abstained

MOTION by Mr. Page not to oppose the NHDES Wetland Permit at 12 Nor'East Lane.  
SECOND by Ms. Renaud  
VOTE: 5 - 0 - 1 Mr. Diener abstained

B.1042 Ocean Blvd. Mark and Janet Gazek. Review and approval of the seawall as-built plan and grading changes. This is an Amended Special Permit application.

Mr. Gazek and Steve Riker appeared before the Commission on May 23, 2013 with a proposal for lot redevelopment and reconstruction of the seawall. They appeared before the Planning Board on May 1, 2013 as well as the Selectmen, who granted permission to build the sea wall on Town owned land. However, the seawall was not constructed as shown on the approved plan. The major difference is the curved stairway. The length and height are all within the footprint of the existing seawall. DES was involved in the process; however, another permit from DES is not required.

From the beginning of construction, the project architect and engineer were involved in the grading issues and, given a storm water issue, the plan needed to be changed. The Building Inspector wanted to see pre-development on-site stormwater management to match post development management. There ended up being an adjustment based on FEMA requirements that all stormwater must be managed on -site.

Mr. Riker said there were slight changes in grading; however, no change in driveway, structure or any other items.

The Commission, Mr. Gazek and Mr. Riker had a discussion on the reason the sea wall was changed. Mr. Riker stated that the contractor took artistic license when building the seawall on Town property. This site has the highest wave velocity on the beach, and the existing staircase acted as a chute. The contractor thought that if the staircase was at an angle, it would serve as a buffer and not act as a chute. On further question, Mr. Riker said the Selectmen were not aware there was to be a light installed on the wall.

It was pointed out that the wall is to protect the Gazek property, not Town property. Mr. Gazek stated he is frustrated in that the plans have been changed five times by FEMA, the architects and others. Ms. Raymond pointed out that they have done this project on Town land and questioned why the stairway, as

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approved, was not used. She feels that getting proper permits then building whatever one wanted, not permitted, afterward is a problem. Mr. Riker said that there was no intent to build a different wall and the owners have made a good faith effort. Mr. Diener questioned why the owner/builder did not come forward at the time of redesign. Mr., Gazek stated he did not realize the changes would be an issue because the height and base were not further encroaching the beach, Further, the Engineer was responsible for the designed plan. Mr. Diener recommended that Mr. Gazek seek the approval of the Selectmen for the proposed light on the seawall.

Mrs. Dionne commented that it is frustrating to approve something and then see the plan not followed. The issue of the stairs should be dealt with by the Board of Selectmen. Mrs. Dionne also questioned the Commission as to whether this revised seawall design would have been critiqued or denied if it had been presented at the onset. Ms. Raymond felt there would have been issues raised with the current design.

NO PUBLIC COMMENT

MOTION by Ms. Raymond to recommend the Planning Board deny the Amended Special Permit Application in that the plan was altered and does not meet the requirements of the armored wall as presented.

SECOND by Mr. Tilton

VOTE: 3 in favor (Raymond, Shaw, Page) 1 Opposed (Renaud) -2 Abstain (Mr. Diener and Mr. Tilton)

Ms. Raymond left the meeting at 9:20 p.m.

C. 611 Ocean Blvd. 611 Ocean Condominiums,

Agent - MJS Engineering. Presentation of modified plans to remove existing pavement, reconstruct the subgrade, re-grade drive area and repave lot within existing footprint and maintaining existing grades. Town Special Permit and Standard Dredge and Fill application. The application was before the Commission on May 23, 2013.

Neither the applicant or agent were present. A plan was made available to the Commission for review. Mrs. Dionne indicated that the Commission could either postpone their review until the applicant or agent could be present. However, there is a DES application review time line that would not be met if the review were delayed until November. The consensus of the Commission was to review the project with the information provided. With regard to the project, Mrs. Dionne stated, based on conversation with MJS engineers, they were able to meet Eban Lewis, DES wetland Inspector, and there is a sense that the DES is in agreement with the project as long as the current footprint is kept in place. The applicant has stated they do not want to go back to the 1984 footprint and an Amended Site Plan has been filed with the Planning Board.

NO PUBLIC COMMENT

MOTION by Ms. Renaud to recommend granting of a Special Permit at 611 Ocean Boulevard subject to the construction of a retaining wall along the marsh edge, two feet in height, to prevent the dumping of snow. Further, two or three "No Snow Storage" signs shall be placed along the retaining wall.

SECOND by Mr. Page

VOTE: 4-0-1 Mr. Diener abstained

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MOTION by Ms. Renaud to not oppose the NHDES Standard Dredge and Fill permit at 611 Ocean Boulevard subject to the construction of a retaining wall along the marsh edge, two feet in height, to prevent the dumping of snow. Further, two or three "No Snow Storage" signs shall be placed along the retaining wall.

SECOND by Mr. Page

VOTE: 4-0-1 Mr. Diener abstained

**OLD BUSINESS – No old business.**

**NEW BUSINESS:**

Two applicants have indicated interest in becoming alternates to the Conservation Commission. The Commission entertained comments and questions from Ms. Pat Swank and Ms. Laurie Mattiroi. It was recommended by Mrs. Dionne that each of the applicants forward a letter to the Selectmen indicating their interest in becoming alternates.

MOTION: Ms. Renaud moved to recommend to the Board of Selectmen that Pat Swank be appointed as an alternate to the Conservation Commission.

SECOND: Ms. Shaw

VOTE: 4 – 0 – 1 Mr. Diener abstained.

Ms. Mattimore's application was not included as an Agenda item for this evening; therefore, her recommendation will be voted upon at the next meeting in November.

**a. Proposed management agreement for subset of Town owned land.**

Mr. Diener stated that it is unrealistic for the Conservation Commission to monitor all 89 properties totaling over 700 acres. Further, the Commission is already responsible for the oversight of the lands under the care of the Conservation Commission. However, based on a conversation with the Town Manager, Fred Welch, it was further explained that the intention of this agreement is provide an additional set of eyes for watching these properties and allowing another avenue for residents to share their concerns if they witness activities that should not be allowed on these properties. Mr. Welch felt that a resident may feel more comfortable sharing with the Conservation Commission given the Commission's charge. The intent is not to have the Conservation Commission attempt to monitor these properties on a regular on-going basis.

MOTION: by Mr. Page to accept the Selectmen's proposed management agreement for subset of Town owned land.

SECOND by Ms. Renaud

VOTE 4-0-1 Mr. Diener abstained

**b. Ice Pond Dam – Design Invoice 10/2/13**

Amount of 10/2/13 Invoice is \$5000. The Commission did not need to vote to approve the payment of this invoice because payment is already agreed upon under the current contract with Stephens Associates.

**c. Review north Shore Rd Draft Conservation Easement Deed.**

Mrs. Dionne shared that there is currently no deed available for review. It appears that the family has not fully decided/agreed upon having a conservation easement on the back portion of one of the subdivided lots. The owners are fully aware that the easement is essential for the permission to build within 25 feet of wetland edge to stand.

**d. Phragmites Control – native salt marsh plan invoice –**

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Mrs. Dionne shared that there was no invoice available. .

**e. Alternate December Conservation site walk and meeting date (12/21/13 and 12/24/13)**

The Commission is in agreement that the Site walk will be held on December 14, 2013 and the meeting will be held on Tuesday, December 17, 2013, in the Upstairs Conference Room. (Location to be determined at a later day)

**f. Land Acquisition Fund – 10K Warrant Article for 2014**

Last year, the Commission put forth a Warrant Article for 10K to help restore the land Acquisition Fund. The Commission agreed that the same Warrant Article should be submitted again this year. The goal is to submit this Warrant Article for a total of five years..

**CONSERVATION COORDINATOR AND CHAIRMAN UPDATE**

1. Mrs. Dionne noted that some residents are not happy with the order in which Permits are being handled in that, applicants must first go to the Selectmen for seawall permits on Town land. The Conservation Commission would issue a permit and the Selectmen would deny, which becomes expensive for the applicant. In pursuit of this process, the property owners should sign the application, present to the Selectmen who would then vote to sign and confirm they are aware and authorizing projects are being done on Town property. Mr. Diener suggested that the Commission send a letter to the Selectmen saying they should be the first in this permitting process.

2. Warrant Articles for Town Meeting dealing with impervious surfaces.

Mrs. Dionne presented the two Warrant Articles to the Planning Board. The only question/revision by the Board was they wanted to have a definition of impervious surfaces with regards to gravel. DES has stated that gravel is an impervious surface.

**The Commission agreed to remove the following from Warrant Article #1 -**

**Impervious Surface Definition: The “highlighted section” which is as follows: (Shoreland Water Quality Protection Act – RSA 438-B:4.)**

3. Mrs. Dionne has been contacted by a young man pursuing an Eagle Scout Badge who would like to rebuild some of the benches and construct a weather shelter at Batchelder Pond. It would be small, open and have a roof. It is proposed to be located on the west side of the pond and within 50 feet of the pond.

**The Commission is recommending that the prospective Eagle Scout file a Special Permit application for the shelter but would request that the Planning Board waive the application fee and the abutter’s fee if possible.**

**TREASURER’S REPORT:** No Treasurer’s report this month

**ADJOURN:**

MOTION to ADJOURN by Mr. Page at 10:20 p.m.

SECOND by Mr. Tilton

VOTE 5-0-0

Respectfully submitted,

Anne Marchand, Substitute Recorder.