

**HAMPTON CONSERVATION COMMISSION PUBLIC HEARING
MARCH 25, 2014
MINUTES**

PRESENT:

Jay Diener, Chair
Peter Tilton, Jr., Vice Chair
Barbara Renaud, Clerk
Sharon Raymond
Gordon Vinther
Pat Swank, alternate

Also Present: Rayann Dionne, Conservation Coordinator

CALL TO ORDER:

The meeting was called to order at 7:00 p.m. by Chairman, Jay Diener, at the Town Hall Selectman's Meeting Room.

CONSIDERATION OF MINUTES:

MOTION by Mr. Tilton to approve the February 25, 2014 minutes, with edits provided.

SECOND by Mr. Diener

VOTE: 3 in favor 3 Abstain (Renaud, Swank and Raymond)

APPOINTMENTS – There were no appointments this evening

ELECTION OF OFFICERS:

Mr. Diener requested nominations from the Commission.

MOTION: Ms. Renaud moved to nominate Jay Diener as Chairman of the Conservation Commission.

SECOND: Ms. Raymond

VOTE: 5 in Favor, 1 Abstain (Diener).

MOTION: Ms. Renaud moved to nominate Peter Tilton, Jr., as Vice Chairman of the Conservation Commission

SECOND: Ms. Raymond

VOTE: 5 in Favor, 1 Abstain (Tilton).

MOTION: Mr. Tilton moved to nominate Barbara Renaud as Clerk of the Conservation Commission.

SECOND: Mr. Diener

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VOTE: 5 in Favor, 1 Abstain (Renaud)

REAPPOINTMENTS.

Mrs. Dionne reported that on Monday evening, the Board of Selectmen approved the following three-year reappointments to the Conservation Commission: Barbara Renaud, Nathan Page (Alternate), Diane Shaw (Alternate), and Mark Loopley (Alternate). She requested the appointees see the Town Clerk to be sworn in as soon as possible.

APPLICATIONS:

- 1. 1042 Ocean Blvd. Mark and Janet Gacek. Agent – Sandpiper Environmental Services, LLC. Additional grading and construction of a retaining wall. This is a Special Permit Application postponed from the February meeting.**

Attorney Steve Roberts, Mr. Steve Ricker, Sandpiper Environmental Services, Mr. Eric Weinrieb, Altus Engineering, and Mr. Gacek were present for this portion of the meeting.

Mr. Roberts stated that this is the third time this application has been before the Commission. This, he said, is a new Special Permit Application to review the addition of a retaining wall along the northern boundary and an increase in elevation and grading around the new building. The new grades will be 1-3 feet higher than the existing grades.

He stated that approval was granted for a Special Permit in the spring of 2013 for the reconstruction of the seawall and building of a new home; however, issues arose during the summer, and the applicants came back with an application for an Amended Special Permit. An Amended Special Permit application was required because the reconstructed seawall did not match the approved plan. The Amended Special Permit included an as-built for the seawall but also included the installation of a retaining wall and additional proposed grading. However, only the issues with the seawall were discussed during a fall presentation to the Commission. The Planning board approved the seawall and requested that the applicant return to Conservation to discuss the retaining wall and grading.

Mr. Roberts noted that only a portion of 25 feet of retaining wall is within the wetlands buffer. The engineers updated the plan to include a retaining wall and grading to create a swale to capture and redirect stormwater to the front and back of the property, and a proposed average finished grade 6 feet out and around the building of 20.5' which means the building will meet the 35' maximum height requirement.

Mr. Roberts stated that there was a meeting with the Town Building Inspector. The Inspector felt the revised plans met all of the FEMA and Town Building requirements/concerns.

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Mr. Weinrieb spoke to the drainage issues noting that a drainage analysis was done in April 2013, required under the Shoreland Protection Act. This drain analysis is on record with the Town of Hampton. The building, he stated, was pushed back to bring the building into set back compliance and reduce the amount of impervious surface in the 50' buffer.

Mr. Weinrieb also noted, as shown on the design plans before the Commission, that the original design, compared current drainage on-site versus proposed drainage. After these were analyzed, there was less water leaving the property. The retaining wall also will divert water away from the abutter. Also, the creation of a swale about six inches deep will convey small amounts of water coming off the roof. The plan is meeting the intent of DES requirements.

Ms. Raymond stated her concerns with the seawall construction and the extension onto Town Property. Mr. Roberts stated that the applicant is not before the Commission on the seawall wall issue. Mr. Diener stated that the Commission is aware of this.

Mrs. Dionne noted there is no walkway from the back to front of the building, and suggested that a permeable walkway could serve as a reservoir to hold water as well as provide a more functional use than the proposed swale.

Mr. Weinrieb stated that the house is not yet completed, the grading is not done, and a conveyance channel may plug up over time. Further, it is expected people would walk along the lawn to get from the back to front of the house.

Ms. Raymond echoed Mrs. Dionne's concern with the lack of a walkway and also stated the swale could be filled by a future owner.

Mr. Weinrieb stated that the main entrance is on the south side, there is no concern with someone wanting to fill the swale. Further, it is not a reasonable area for a walkway.

Mrs. Dionne stated that a large stone drip edge may collect more water vs. having a swale.

Mr. Weinrieb stated that riprap could be larger/wider; however, eliminating the swale is not a good idea as conveyance may be lost. Further, it is important during a heavy rainfall.

Mr. Diener questioned how one might prevent removal/filling of the swale in the future. He also questioned whether FEMA is requiring a flow-through basement design. It was noted that FEMA requires the bottom level to be open above the Elevation Flood level.

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Ms. Renaud stated she has a problem with the visual and the planned flow of the run off toward the front of the property. Mr. Weinrieb stated that the run off had to mimic some water going to the Boulevard and some to the ocean. Ms. Raymond stated that mimicking previous conditions is a DES requirement and is about volume and what is being discharged.

PUBLIC COMMENT. There was no Public Comment

MOTION: Ms. Renaud moved to recommend the Planning Board grant the Special Permit Application for 1042 Ocean Boulevard to increase the fill/grading around the new building and add a retaining wall with the following stipulations:

- **Unused plaster is being dumped in the buffer. This must be cleaned up and no additional waste or debris shall be dumped in the buffer;**
- **The existing silt fence is in disrepair and no longer functioning properly. Repairs shall be made as soon as possible;**
- **Any deck must be open above and below allowing for vegetation to grow beneath;**
- **Use of Wetlands Conservation District markers along the wetland buffer on the sides of the house at the owner's expense;**
- **Lawn care must follow the guidelines set forth in the NHDES Shoreland Protection Act (Env-WQ 1400). No storage of grass clippings or yard waste in the wetland or its buffer;**
- **Removal of trees that are not dead, diseased, or unsafe must be performed in compliance with NHDES Shoreline Protection Act, Section Env-Wq 1403.05;**
- **There are to be no additional structures such as sheds, swimming pools, gazeboes, patios or other sealed surface, etc. in the buffer, other than that shown on the approved plan. A new Special Permit is required for the erection of any additional structure(s) in the buffer;**
- **The Conservation Commission shall be notified in writing upon commencement and completion of the project and before an occupancy permit is issued. Schedule a final inspection with the Conservation Coordinator upon completion of the project;**
- **An As-Built Plan shall be submitted following project completion; and**
- **This permit will expire two years from the date that it is granted by the Planning Board. Refer to Hampton Zoning Ordinance, Section 2.3.5 for information on permit extensions.**

SECOND: Mr. Vinther

VOTE: 5 In favor 0 Opposed 1 Abstain (Diener)

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Mrs. Dionne stated that, during the review process, the lowest existing grade should be maintained on site which would help prevent excessive fill around foundations.

Mr. Diener stated that the Commission needs to take time and be more diligent when complex and complicated plans are before them.

2. 6 Brooks Lane, Brooks Lane LLC. Agent – Geoff Rallis. After-the-fact permit for temporary disturbance in 50' buffer to create an access route for installation of a drilled well. This is a Special Permit application.

Mr. Rallis stated that, during construction of the house, he had to drill a well which was near the buffer zone. In order to bring in a truck, he had to go through the buffer and took down two small trees and one dead tree. He stated the area was cleared at one time and was an area where kids would play. He stated the area has been raked and has been left alone to return to its natural state.

Mr. Diener stated that it appeared more clearing had been done in that there were piles of branches and other debris. He also stated it is not a dump site, but is being used as one. Further, the new concrete pad above the well is close to the buffer.

Mrs. Dionne stated that the buffer loops up, and it is possible it is outside the buffer zone.

Mr. Rallis stated that cutting was done on the uphill side, and the owner brought the debris down to that area. He also stated that, with regard to the concrete pad, the Building Inspector has inspected the area.

Mr. Diener stated that where the 50' buffer line intersects and crosses over into the building envelope line on the plans, there appears to be a problem and recommended continuing the public hearing to April.

Mr. Rallis stated that there is a closing planned during the first part of April, and he still has to go before the Planning Board.

Mr. Diener stated that there should be some conservation markers and plantings along the buffer edge as the new homeowner has to know where the buffer edge is located.

Ms. Renaud suggested taking a conditional vote with stipulations including cleaning up the remaining debris and putting plantings along the roadside where the access road was created in order to deter future use as a passageway. Further, to install plantings along the Wetland Conservation District (WCD) edge to deter any development within that area. A conditional vote may be a possible means of dealing with the property owner's time constraints, she stated.

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Mrs. Dionne stated she is one of the signers of the Occupancy Permit and wants all stipulations met prior to her signing off.

Mr. Tilton suggested putting a time limit on which conditions must be met. He also commented that the forest canopy does not allow light to the area and the soil is acidic. He suggested Mountain Laurels or Yews which are acid and shade tolerant.

Ms. Raymond stated she wants documentation of the slab and if and when the applicant comes back for a permit to build a garage, it would be known if the additional building would or would not be encroaching further into the buffer. She agrees with the suggestions of plantings. Further, the WCD signs may stay, but would like it to be made known that there will be no additional clear cutting.

Mr. Rallis stated it is offensive to him that dumping is going on in the area. He also said that buffer marker discs had been installed on trees but have been removed by kids in the area.

Ms. Raymond stated a way must be found to stop people from going into the area. If markers are not working, one must look at what else can be done to stop clear-cutting and dumping. Further, markers are not going to work; however, plantings will.

Ms. Swank noted her concerns with the road/cul-de-sac which allow access to dumping. Fast growing shrubs and plantings should be in the area of the cul-de-sac as well. She is in favor of “no dumping” signs.

Mrs. Dionne suggested a fence or guard rail along the vehicle access road.

Mr. Rallis noted that once owners move into the house, there will be “eyes” and things will calm down as far as people passing through the area.

PUBLIC COMMENT. There was no Public Comment

Ms. Renaud commented that the property owner may prefer plantings.

Mr. Diener is in favor of boulders and plantings.

Ms. Raymond favors vegetation combined with boulders.

MOTION: Ms. Renaud moved to recommend the Planning Board grant the Special Permit for 6 Brooks Lane with the following conditions:

- **Removal of the brush and debris piles within the 50’ buffer and conservation restricted area. There shall be no additional clearing within the 50’ buffer. The cutting of a dead, diseased or potentially hazardous tree must be**

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- documented, reviewed, and approved by the Conservation Coordinator before removal;
- Verification that the concrete garage slab is located outside of the 50' buffer shall be determined either by measuring the distance from the closest granite wetland boundary marker which will be performed on-site with the Conservation Coordinator, or submittal of an engineered as-built plan;
 - Installation of boulders and shrub like plantings along the roadside where the access route was created to deter future use;
 - Installation of shrub-like plantings along the 50' buffer edge nearest the garage to clearly define the buffer edge. Planting plans shall be approved by the Conservation Coordinator prior to installation and all plantings shall be completed on or before June 1, 2014;
 - The Wetlands buffer must be allowed to revegetate naturally.
 - Installation of Wetlands Conservation District markers along the wetland buffer at the owner's expense;
 - Removal of trees that are not dead, diseased, or unsafe must be performed in compliance with NHDES Shoreline Protection Act, Section Env-Wq 1403.05;
 - All proposed plantings shall have at least 75% success after two (2) growing seasons. Any plants that do not survive shall be replanted or replaced with another suitable plant species;
 - The buffer should remain undisturbed to the degree possible in the process of construction;
 - There are to be no additional structures such as sheds, swimming pools, gazebos, patios or other sealed surface, etc. in the buffer, other than that shown on the approved plan. A new Special Permit is required for the erection of any additional structures(s) in the buffer.
 - The Conservation Commission shall be notified in writing upon commencement and completion of the project and before an occupancy permit is issued. A final site inspection with the Conservation Coordinator shall be scheduled following completion of the project;
 - The Occupancy Permit shall not be signed by the Conservation Coordinator until all of the permit stipulations have been fully addressed or completed;
 - This permit will expire two years from the date that it is granted by the Planning Board (Refer to Hampton Zoning Ordinance, Section 2.3.5 for information on permit extensions.

SECOND: Ms. Swank

Discussion on the Motion:

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Ms. Renaud recommended delineating and verifying the buffer line with plantings. Further, verify that there has been no sealed surface within the buffer.

It was questioned whether the Building Inspector has a more detailed plan. Mrs. Dionne will review.

Ms. Raymond stated being close to the buffer, an as-built is needed.

Mrs. Dionne stated that if there is a wetland edge, it could be measured off the marker that is closest to the foundation and it would be acceptable if it is clear the slab is on the outside of the buffer.

The option of a bond was briefly discussed to allow closing on the building prior to the conditions of this permit being completed. It was determined that was the jurisdiction of the Planning Board, and that the Conservation Commission could not require a bond. The cost of the plantings might not be enough to warrant a bond; and, also, a bond for some plantings might not be enough to ensure that the work is completed.

Mr. Rallis stated he can remove dead trees; but, the new owner will have to document what they are planning to do regarding additional tree removal.

VOTE: 5 In Favor 0 Opposed 1 Abstain (Diener)

RECESS.

MOTION: It was moved, seconded, and voted unanimously to recess the Conservation Commission meeting at 9:25 p.m. for the purpose of a non-meeting under 91A:2(i)b, with the Town's Legal Counsel, Mark Gearreald,

RECONVENE.

MOTION: It was moved, seconded, and voted unanimously to reconvene the Conservation Commission Meeting at 9:40 pm.

NEW BUSINESS:

a. As-built Requirements.

Mrs. Dionne stated that the As-Built Requirement has been added to the Special Stipulation Checklist for Special Permits. She said that applicants want to know what is needed/required by the Commission and whether an as-built plan needs to be completed by an engineer, landscape engineer, surveyor, etc. A surveyor may do a plan, however an engineer would be providing as-built information on the plan. Ms. Raymond stated that

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someone needs to affirm by license/stamp that the project was built per design; i.e. the Land surveyor to verify location and the engineer to verify the design.

b. Joining the NH Association of Natural Resource Scientists – NHANRS.

See Conservation Commission Minutes of February 25, 2014.

c. Open Space Committee – Postponed to April.

d. Signage – Identify Conservation Land needing signage. Postponed to April.

e. 2015 Warrant Articles.

Mr. Diener reported that the 2015 Warrant Articles will include:

1. Clean-up Regulations and changing the term “Special Permit” to “Wetland Permit”
2. Ice Pond Dam
3. Appropriate \$10,000 to obtain open spaces and conservation easements.
4. Establishment of a Town Forest

f. Emergency Authorization for Seawall Work

Mr. Diener spoke of the number of DES Emergency Authorizations which have come before the Commission, and he expects more will be coming in the future. He reported that it is taking DES approximately 75 days to process applications from receipt to completion. It was suggested the DES Wetland Inspector be invited to a future Conservation Commission meeting.

Mrs. Dionne said that, in one current situation one homeowner received an Emergency Authorization, and abutters have followed suit. DES has granted those Emergency Authorizations because it is less impact if the equipment is all in place at one time. In some cases, the seawalls in question have been deteriorating for long periods of time, not within the five days of a storm event which has been the DES standard for issuing Emergency Authorizations. Some cases, in matters of expediency, hamper the Conservation Commission’s permitting process.

Mr. Diener stated that the Conservation Commission has been going along with the DES Emergency Authorizations; however, there should be discussion as to how the Commission wants to handle this issue. DES is likely to issue more Emergency Authorizations; however, the Commission does not have to adhere to DES Standards regarding the emergency situations.

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Mr. Tilton commented that these matters take up too much time.

Mr. Diener stated that that every Emergency Authorization has to be reported to the Town and the Conservation Commission. DES, he stated, usually sends a copy to Mrs. Dionne. Mrs. Dionne stated that the Commission should find a way to get as-builts for all seawalls.

Mr. Diener stated that perhaps we should ask to have as-builts required before the Town signs a lease for a seawall.

Ms. Raymond stated that the beach is a valuable resource and walls have taken over, thus creating less beach. She also stated that the Commission should try to work collaboratively with the DES, and that DES is taking a different stance of what qualifies as an Emergency Authorization. The Conservation Commission, she stated, can take a stance as well.

Mrs. Dionne suggested trying to get as-builts, wait and see how many come in through DES, and how the Selectmen are handling the authorizations.

Mr. Diener commented that DES is over stacked with work and is short on manpower which is likely why this problem is occurring.

CONSERVATION COORDINATOR and CHAIR UPDATE.

Mrs. Dionne said she had been contacted by an Eagle Scout who would like to do a project. She asked for suggestions from the Commission.

Mr. Diener reported that, while working with the Rockingham Planning Session, it was suggested the Commission, in conjunction with the Hampton Garden Club Plant Sale, have a rain garden installation demonstration at the Library. This would focus on Hampton, Hampton Falls and Seabrook and would be a public demonstration. Signage will be provided and it will be held on Saturday, May 17, 2014.

TREASURER's REPORT - No report this evening.

ADJOURNMENT.

MOTION: Mr. Tilton moved to adjourn the meeting at 10:13 p.m.

SECOND: Mr. Diener

VOTE: 6 In favor 0 Opposed

The meeting was adjourned at 10:13 p.m.

THE NEXT CONSERVATION COMMISSION PUBLIC HEARING WILL BE HELD ON APRIL 22, 2014.

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**Respectfully Submitted,
Anne Marchand, Recorder**