

**HAMPTON CONSERVATION COMMISSION PUBLIC HEARING
NOVEMBER 25, 2014**

MINUTES

PRESENT:

Jay Diener, Chair
Peter Tilton, Vice Chair
Gordon Vinther
Sharon Raymond
Anthony Cioffi, Alternate
Pat Swank, Alternate
Nathan Page, Alternate

Absent: Diane Shaw
Barbara Renaud

Also Present: Rayann Dionne, Conservation Coordinator
Mark Olson – Planning Board Representative

CALL TO ORDER:

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

CONSIDERATION OF MINUTES:

MOTION: Ms. Raymond moved to approve the October 23, 2014 minutes, as edited

SECOND: Ms. Swank

VOTE: 4 in favor, 3 abstain (Mr. Cioffi, Mr. Tilton, Mr. Page)

Mr. Diener announced a change in Agenda order, with Applications being heard prior to Appointments.

NEW APPLICATIONS:

- 1. One Park Ave. One Park Ave Condominium Association. Agent – Henry Boyd of Millennium Engineering, Inc. Reconfigure and reconstruct the dumpster location. Remove existing asphalt pad (202 sf) and relocate it with a concrete pad (276 sf). Enclose new dumpster area with a chain link fence. This is a Town Special Permit.**

Present were Henry Boyd, Millennium Engineering; Eileen Nevens, Condominium Association President; and Joseph Simeone, property manager.

Mr. Boyd stated that the plan has not been revised other than to correct an error with regards to the fence type. . The association would like to remove the tar, pour a concrete pad, and fence the dumpster area with a trex-type material supported by steel supports. There will be posts to the rear to protect trucks from pushing the dumpsters toward the wetland areas. The structure is larger in that two dumpsters are proposed and they would not fit into the current area. The current area is 202 sf and the proposal is to increase to

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276 sf. One dumpster is for trash, the other for recyclables. There would be no intrusion into the resource area.

Public Comment: No public comment

MOTION: Mr. Tilton moved to recommend the Planning Board approve the Town Special Permit to One Park Avenue to reconfigure and reconstruct the dumpster location, remove existing asphalt pad and replace with a concrete pad, and enclose the new dumpster area with a fence, based on the plan dated 11/24/14, signed by the Chairman with the following stipulations:

- 1. Use of Wetlands Conservation District markers along the wetland buffer at the owner's expense. The Commission agreed that one marker shall be placed where the 50' buffer touches the southeast edge of the building.**
- 2. 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.**
- 3. Removal of trees that are not dead, diseased, or unsafe must be performed in compliance with the NHDES Shoreland Protection Act Section Env-Wq 1403.05**
- 4. Proper erosion control will be in place before construction begins and remain in place until the area is stabilized and removed after construction is complete.**
- 5. The buffer should remain undisturbed to the degree possible in the process of construction and elevations not be changed. No additional fill is allowed. No change in elevation is allowed.**
- 6. There are to be no additional structures such as sheds, swimming pools, gazebos, patios or other impervious surfaces, 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.**
- 7. The Conservation Commission shall be notified in writing upon commencement and completion of the project. A final inspection shall also be scheduled with the Conservation Coordinator upon completion of the project.**
- 8. 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. Raymond

VOTE: 5 in Favor, 2 Abstain (Mr. Diener and Mr. Page)

MOTION PASSED

- 2. 140 King's Highway #14. Nancy Meagher Mills and Richard Mills. After-the-fact installation of a 71 sf eco-paver patio area. This is a Town Special Permit.**

Present were: Mr and Mrs. Mills.

Mr. Mills stated that an error was made in that they had been given approval for the front walk-way, but not the back. The back area has a 71 square foot patio area which was installed without a permit. The contractor has completed the project. They propose to plant six swamp azaleas behind and along the line. The installer measured and 6.5 inches of crushed stone and permeable pavers, filled with crushed stone, were installed. Mr. Mills stated that they had planned for a step off the house.

Mr. Diener wants to ensure the patio is of permeable materials, and Mrs. Dionne stated that the Mills have provided documentation that the paver patio is permeable.

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Public Comment: No public comment.

MOTION: Mr Tilton moved to recommend the Planning Board grant the After-The-Fact Town Special Permit for the installation of a 71 sf eco-paver patio area along with 6 shrubs to be planted just inside the wetland edge, at 140 King's Highway #14, based on the plan dated and signed by the Chairman with the following stipulations:

- 1. 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.**
- 2. 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.**
- 3. Removal of trees that are not dead, diseased, or unsafe must be performed in compliance with the NHDES Shoreland Protection Act Section Env-Wq 1403.05**
- 4. There are to be no additional structures such as sheds, swimming pools, gazeboes, patios or other impervious surfaces, 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.**
- 5. 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. Tilton

VOTE: 6 in favor, 1 abstain (Mr. Diener)

MOTION PASSED

APPOINTMENTS:

- 1. Esker Road – Map 208, Lot 50. Review most recent wetland delineation and determine if a Special Permit is necessary for the installation of a porous paved driveway with a partial retaining wall. Continued from 10/28/14.**

Present for this portion of the meeting were Attorney Craig Solomon, representing Marie Remick, and Jim Gove of Gove Environmental Services;

Mr. Solomon stated that this plan has been before the Commission a number of times regarding the necessity of a Special Permit. He stated there will be no work on the swale, but only on the upland. He also noted that four wetland scientists have reviewed with three agreeing there are no wetlands; and, one in disagreement.

Mr. Diener reported that Mr. Gove submitted a letter for the Commission's review. Mr. Gove noted that the letter has been reviewed by Mr. Adams, NHDES Wetlands Bureau Administrator, and by Ms. Ladd, US Army Corps of Engineers (New England Region). The letter specifically dealt with poorly drained soils and the interpretation of same, noting that it is the interpretation of poorly drained soils, not the soils.

Mr. Diener stated the Conservation Coordinator had written to Mr. Minkein (Senior Wetland Scientist) of the US Army Corps of Engineers, specifically about this site and situation. Mr. Minkein said that all available information should be used. Further, Mr. Minkein is in support of the original soil scientist's

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approach where New England specific manuals and criteria are used. There are two different opinions before the Commission. Mr. Minkein stated it is appropriate to consult different manuals for different criteria when faced with an atypical wetland situation. Mr Diener stated there is not indisputable evidence to determine there is not a wetlands at this site, so the Conservation Commission is going to stay with the original delineation, supported by Mr. Minkein's comments.

Mr. Diener stated that the Commission has determined, therefore, that the applicant will have to file a Town Special Permit application if they are proposing to do work in this wetlands or its buffer.

Mr. Diener also stated that the work is within the 50 foot buffer, thus requiring a Town Special Permit.

Mr. Solomon questioned whether the original soil scientist took new soil samples in 2014, Mrs. Dionne stated that Mr. Cuomo reexamined the area in question and took three soil samples which were reported at the October 23, 2014 meeting. Mr. Diener reminded Mr. Solomon that it was he who had distributed Mr. Cuomo's report with the detail about those soil samples.

Mr. Diener asked about the next step for the use of the property, and Mr. Solomon stated he was not at liberty to discuss it at this time. Further, Mr. Solomon stated that the applicant will consider the option of filing the Special Permit Application in order to proceed.

Mr. Diener stated that the Commission has been very patient regarding the options for this particular site which has been ongoing since 2010. Proposals, he stated, have come before the Conservation Commission and Planning Board, as well as DES for work on the parcel; however, nothing has been approved.

Mr. Solomon stated that the proposal is different than in 2010 which involved work in the swale. This would propose work in the areas that are not a wetland.

Mr. Diener commented that looking at work in a buffer is like looking at work in the wetlands. The proposal put forth includes work in the wetlands buffer. Mr. Solomon stated that there is still a wetland in the swale, work would be in the buffer.

It was also noted there is an Agricultural Easement on this property and the Conservation Commission holds the easement. This, Mr. Diener stated, would have to be dealt with.

2. 18 Hutchinson Drive. 18 Hutchinson Dr, LLC. Agent – Lyman McCrea. Review the reconfiguration of the driveway and grading to reduce basement flooding.

Mr. McCrea was present. He stated that his property has a serious water problem which, he stated, is the Town drainage problem because most of Hutchinson Drive stormwater flows down his driveway. He said that any time there is a measurable rain, it pours into the basement of the house and fills in part of the driveway. This is a serious problem that he has addressed by filling and re-grading the driveway to direct water towards the swale located with a 5 foot Town easement. He stated he has been working with Mrs. Dionne. He dug five test holes in the gravel to determine the depth of the fill. Some reached hot top, others, grass. It is estimated there are 14 – 15 inches of fill going down to about 12 inches added to the driveway. There is an area where there could be 20 feet of parking area out of the buffer. He also stated that this is not new construction, however, he has redone the whole house, and the original house had a driveway that ran past the garage. Further, the portion of the driveway that is outside of the 50' buffer does not reach the bulk-head and he would like the driveway to allow service to the bulk-head. He stated he would put grass and stone to slow the water flow.

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Mr. McCrea also said the driveway was broken up and old and he would like to pave out as far as to the house bulkhead.

Mr. McCrea provided photographs, on file with the Conservation Coordinator.

Mr. Diener stated that this is a violation and a decision needs to be made whether a Town Special Permit is required. He questioned if there is a way to do a partial restoration to satisfy the Commission, as well as help to solve the water problem.

Mrs. Dionne stated that the Commission can work with the applicant to resolve the situation through the restoration plan process which does not require a Town Special Permit.

Mr. Diener commented that he did not know what the previous elevations were and, now, test pits have been done that show that, adjacent to the house, fill goes down 14 inches before hitting either the previous pavement or grass. Further from the house, it goes from 12 – 10 inches. He questioned if the sloping is adequate and whether or not the Commission is comfortable paving within the buffer to the new entrance.

Mr. Page questioned if there would be a controlled area for parking. He also noted the Town has a 5-foot drainage easement and the Town is partially responsible for the ponding. Mr. McCrea said he would consider permeable pavers in the 50' buffer instead of asphalt.

Mr. Diener noted that the DPW was giving direction and offering suggestions and likely not intending to give Mr. McCrea approval to do work within the Wetlands Conservation District.

Mr. McCrea suggested putting boulders on the side and behind the parking area, not allowing for access. Mrs. Dionne stated she and Mr. McCrea had talked about a barrier at the end of the parking area with a fence and plantings, limiting cars from going beyond. Mr. McCrea is willing to pull back the parking area.

Mr. Olson noted that a good portion of the house is also in the buffer. He stated that Mr. McCrea inherited a situation and, in fairness, is trying to do the right things.

Mr. Vinther questioned what will happen to the fill, noting the blue lines on the plan. Mr. McCrea stated that the 2nd blue line indicates the requested extension of the driveway. He said he was planning on shaving out and putting lawn and plantings on a gentler slope.

Mr. Ciolfi noted that, if the stone is dug out and moved, the driveway would extend over to the edge of the house. Mr. McCrea stated the swale is on the other side of the driveway and is paved.

Discussion ensued on: sloping everything towards the swale; the pavement not going any further toward the wetland than it is; and, the fill that was brought is covering most all of the existing pavement. However, it was noted not all of that area will be repaved as some will be re-vegetated.

Ms. Raymond stated she wants to make sure there is a 1% slope. Mr. McCrea stated there is a slight slope away from the house which could be leveled to make sure it slopes away. Mrs. Dionne and Ms. Raymond agreed there is definitely a pitch and water should be sent toward the swale.

It was agreed there should be a stipulation that water slopes away from the house to the swale and not the wetlands.

Mr. Diener noted that, previously, there was a garage under the house.

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There was discussion what could be done this late in the season as the paving companies are suspending work. Mr. McCrea suggested using ground fabric on the pavement and put stone on top, and when loam is put in, there would be a barrier where nothing will move or wash. Ms. Raymond suggested putting in a silt sock or hay bales to stop the fill from creeping off.

Mr. Diener said he could work with the current information on the driveway, but it is not an ideal solution. Ms. Raymond stated there should be a topo on the site plan and there needs to be more detail on the swale.

Mr Page pointed out that, regarding the swale, the Town, through its easement, is supposed to maintain. The Town built the swale, it should maintain the swale. Mr. Tilton stated that to alleviate the flooding problem, the Town DPW should fix the swale.

Ms. Raymond said this is not a restoration in that a restoration is going back to what was originally there. She also commented by showing the existing grades of the driveway, the 1% grade may be achieved.

Mrs. Dionne suggested having the pavement end outside the 50 foot buffer and the fill that is remaining would keep water from going into the basement. If Mr McCrea should chose to have the pavement end outside the buffer area that used to be parking, the driveway could be returned to grass and planting. Although this is not a complete restoration, it does eliminate parking in the buffer which is a significant improvement over the original condition. She questioned if this would require a Special Permit.

Mr Diener stated that outside the buffer can be paved. He also commented that the Commission is not insensitive to the problem; however it is in the Town's and Mr. McCrea's best interests if there is a paper trail with documentation on approvals. He also commended there should be a mandate of the Special Permit and make it the applicant's responsibility to make sure no more fill is added other than what is there.

Mr. Vinther questioned if the applicant did the paving, could he come back to the Commission with an as-built. Mr. Diener stated that there is an issue with the fill sitting there in that it is too late in the season to pave. Mr. McCrea stated that once the frost gets in the fill, it will not move anywhere.

Mr. Olson stated that the asphalt plants keep rolling until it is impossible to pave. He said it is reasonable to have a small section inside the buffer, allowing pavement up to the corner of the house, eliminating two cars on the road. This is not the Commission's issue, but 20 x 20 feet could be paved and that piece would not require a Special Permit.

Mr. Diener stated that when and if the Commission does something inconsistent, they get called on it. Mrs. Dionne stated that an addition to the plan should show how far to the end of the paved area there would be a barrier to prevent people from going beyond the fill. Mr. McCrea noted he would like to pave to the bulkhead.

Mr. Diener stated that the Commission is not unsympathetic to his plight, but they have to follow the normal procedures, be consistent, and add stipulations to the permit as appropriate. It was agreed a Town Special Permit will be required.

OLD BUSINESS:

- a. **2015 Warrant Articles.**

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- Ice Pond Dam - The Selectmen have requested additional information on the Ice Pond Dam Warrant Article. Information will be provided.
 - Land Acquisition Fund
 - Section 2.3 Wetlands Conservation District Amendments.
- b. Signage.** The Board of Selectmen have approved the proposal for signs in appropriate locations in Town. Mrs. Dionne showed samples of signs and it was agreed to have them made at the size of a typical “No Parking” sign and posted.
- c. Eco/Green tips – No report.**
- d. Green Infrastructure Subcommittee.** Mrs. Dionne spoke about the rain garden time lines and the general flow of how it will be happening as well as having DES support. More information will be forthcoming.

NEW BUSINESS:

There has been a proposal to the Board of Selectmen regarding the donation of two parcels of land from the Mertie Cogger Trust to the Conservation Commission. One parcel is at the Old Swamp, Route One Interchange between North Hampton and Route 101. It is a four acre parcel. The second is a two acre parcel located in the saltmarsh.

MOTION: It was moved by Mr. Page to recommend the Board of Selectmen accept the donation of two parcels of land from the Mertie Cogger Trust to the Conservation Commission.

SECOND: Mr. Tilton

VOTE: 7 in Favor

MOTION PASSED

Mr. Page spoke about the Hunter Property on Elkins Street. Mrs. Dionne will contact the Town Attorney to see if the property has been deeded to the Conservation Commission.

CONSERVATION COORDINATOR AND CHAIR UPDATE.

Mrs. Dionne requested the Commission’s input on NHDES “Permits by Notification” which would involve projects not having a permanent impact; however, a temporary impact. This would be for residential work outside the 50 foot buffer for which the Commission’s approval is required. She questioned whether the applicant(s) should come before the Commission for formal reviews. However, she stated she can review and, if she finds there are no major concerns, Mr. Diener, as Chairman, would sign. Mrs. Dionne noted that often there are projects that are minor and do not have any issues. She feels it is not necessary for these applicants to wait through the lengthy application process time.

MOTION: Mr. Tilton moved to designate the Chairman to sign a NHDES “Permit of Notification”, which has been reviewed and found to have no issues by the Conservation Coordinator, for property located outside the 50 foot buffer.

SECOND: Mr. Page

VOTE: 6 in Favor, 1 Abstain (Mr. Diener)

MOTION PASSED

Mr. Diener and Mrs. Dionne reported they did a site walk at a Colonial home under construction on North Shore Road that has an approved the 25 foot wetlands buffer. Stone and a paver walkway has encroached the buffer and access to the rear of the building is not possible without going into the buffer. The builder is in violation and will have to come to the Commission for an amended Special Permit.

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TREASURER's Report. No Treasurer's report.

The Next Public Hearing of the Conservation Commission will be held on December 18, 2014.

ADJOURNMENT:

MOTION: It was moved by Mr. Page to adjourn the meeting at 8:35 p.m.

SECOND: Mr. Tilton

VOTE: 7 in Favor

MOTION PASSED

Respectfully Submitted:
Anne Marchand, Recorder