

HAMPTON PLANNING BOARD – MINUTES
March 21, 2007– 7:00 PM

PRESENT: Tracy Emerick, Chair
Robert Viviano, Vice-Chair
Fran McMahon, Clerk
Jim Workman, Selectman Member
Keith Lessard
Tom Higgins
Tom Gillick
Donna Mercer, Alternate
James Steffen, Town Planner

Chairman Emerick began the meeting at 7:00 PM by announcing that reorganization of the Board would take place first. He then turned the gavel over to Mr. Workman for this portion of the meeting.

I. REORGANIZATION OF THE BOARD

Mr. Emerick was nominated and voted unanimously to continue as Chairman.

Mr. Viviano was nominated and voted unanimously to continue as Vice-Chair.

Mr. McMahon was nominated and voted unanimously as Clerk.

Chairman Emerick then returned to the chair, introduced the Board members and led the Pledge of Allegiance to the flag.

II. PUBLIC HEARING – SITE PLAN & SUBDIVISION REGULATIONS AMENDMENTS

Mr. Steffen reviewed the status of the amendments to the Site Plan and Subdivision Regulations.

The draft amendments to the Site Plan Regulations were then reviewed and modified as follows:

Page 7 – H. Minor Field Modifications – paragraph 1 – add “Building Inspector” and “Conservation Coordinator”.

Appendix B – the draft Fee Schedule for Planning Board applications was then reviewed and adjusted as follows:

Increase proposed application fees of \$75.00 to \$100.00 and do not add a Legal Notice fee of \$25.00 per application.

Optional Preliminary Consultation – to remain “no charge”

Optional Design Review – to remain “no charge”

Increase Abutter Notification Fee from \$5.00 to \$7.50

The increases in application and notification fees are needed to offset increased administrative costs and expenses.

PUBLIC

No comments

MOVED by Mr. Viviano to accept Site Plan Regulations and Appendix B as modified.

SECOND by Mr. Gillick

VOTE: 7-0-0

MOTION PASSED

Mr. Steffen then reviewed the amendments to the Subdivision Regulations. No changes were made by the Board.

PUBLIC

No comments

MOVED by Mr. Gillick to accept the Subdivision Regulations, including the Fee Schedule, as modified.

SECOND by Mr. Viviano

VOTE: 7-0-0

MOTION PASSED

It was noted that these changes will go into effect as soon as they are certified by the Town Clerk.

III. CONTINUED PUBLIC HEARINGS

- 7-02) Shawn & Shawna Pelletier
Special Permit to Impact Wetlands Conservation District at
7 Pearl Street
Map 223 Lot 50
Owner of Record: Shawn & Shawna Pelletier

Mr. Lessard commented that he works in the same building as Mrs. Pelletier and asked the applicants and the Board if there was any objection to his hearing this application. The applicants and the Board members did not object to Mr. Lessard sitting for this application.

Mr. Steffen reviewed his written summary of the course of events for this application, including four exhibits. He explained each of the documents in his summary documentation package.

Craig Salomon, Attorney, then reviewed the applicants' Special Permit request to keep a deck and hot tub on the premises and in the 50-foot wetland buffer, which is the topic to

be addressed this evening. The Pelletiers were also present, as well as Sherrie Davis, a representative of New Hampshire Soil Consultants. Mr. Salomon then cited the decision in *Simplex versus Town of Newington*. He indicated that the question the Board needs to answer is whether reasonable use of the Pelletiers' land is being made. He then summarized the findings of New Hampshire Soil Consultants in their study of the property.

He then asked Ms. Davis to speak to their findings.

Mr. Higgins asked if this argument should have been made to the Conservation Commission. Mr. Gillick asked why this argument was coming before the Planning Board. Mr. Salomon indicated this particular argument was being made to the Planning Board for the first time. It was not presented in 2004. He takes the position that the Conservation Commission would not listen to this new argument. Mr. Gillick stated that it appeared the reason the Board is hearing this new application is because conditions of the 2004 Special Permit were not met. There was further discussion of this subject. Mr. Gillick asked what mistake the Planning Board made in 2004. Mr. Salomon said that in 2004 the Board and The Conservation Commission didn't have the benefit of soil scientists to explain the impact of what the Pelletiers planned to do in the future.

Mr. Steffen indicated the Building Inspector signed off on the project in December of 2005. He showed the Board the structure elevation signed off on at that time. The deck was added after this signoff.

Mr. Viviano indicated his recollection was that there was no enclosure on the first floor at the time of the 2004 Special Permit. What was approved by this Board at that time was an addition with no enclosure on the first floor, and the addition was to be 4 feet above the ground.

Chairman Emerick stated that this current application is a new application and all that went on in the past is "water under the bridge". Mr. Viviano reiterated that the applicant had agreed to no enclosure at the first floor level in 2004.

Mr. Salomon agreed they built a deck that was closer than 4' to the ground. He indicated that he had tonight a letter from the builder saying he added a 4' x 20' deck for egress from the house.

Mr. Higgins said that, previously, the applicant had agreed to plantings as recommended by the Conservation Commission for mitigation. There was discussion between Mr. Salomon and Mr. Higgins regarding the course of events with respect to a planting plan. Mr. Salomon said the applicant stands ready to negotiate a planting plan with the Conservation Commission.

There was discussion of what had taken place with respect to negotiation with the Conservation Commission.

In response to a question from the Board, Mr. Salomon stated the current Special Permit application is for the deck as it exists. However, when they met with the Conservation Commission, there was discussion of removing part of the deck. He would like guidance from the Chair. He would also like the Board to hear the science of the wetland and buffer from New Hampshire Soil Consultants.

Ms. Davis then reviewed what she had presented at the February 7th meeting of the Planning Board:

- Tidal versus non-tidal wetlands - their opinion is that it is non-tidal and therefore a Town wetland issue.
- Functional value - capable versus principal functions – their opinion is that the property is a low functioning wetland.

She then described the mitigation planting plan proposed to the Conservation Commission to serve as a natural fence line along the wetland.

Ms. Davis noted that the whole property is in the wetland buffer and a Town permit would be needed for anything done to the property.

Mr. Gillick asked for confirmation that the phragmites are fresh-water. Ms. Davis stated that their rule-of-thumb is that if phragmites are higher than your head, it is almost always fresh-water.

Mr. Salomon then resumed his presentation. He indicated that he had a transcript done of the Conservation Commission's last meeting and provided it to them. He then went through the Conservation Commission's March 6th memo. He noted that it is an inexact science. He reiterated that this is a wetland buffer issue. He then addressed the State DES issue and stated, based on NH Soils review, this is non-tidal and not a State issue. He then reviewed the December 27th letter, referencing the State tidal buffer. Mr. Salomon then summarized, saying he believes there are 3 questions for the Board to address:

1. What is the standard (2.3.1) that the Board needs to be apply
2. What function does the wetland perform, e.g. how valuable is it.
3. What impact does the deck have on the functions the wetland does perform?

Mr. Lessard asked for a to-scale version of the wetlands delineation done by Mr. Cote.

PUBLIC

Ellen Goethel, Conservation Commission, stated her first comment was with regard to the value of the wetland. NH Soils evaluated only the wetland within the property boundary, not the adjacent wetlands. She then addressed the fact that the applicants did have benefit of a soil scientist in 2003. She then indicated that the delineation she received for this property was very different from a delineation NH Soils had done in December at an adjacent property. This indicates there may be a problem with where the augurs were

taken. Ms. Goethel said the Conservation Commission has consistently asked on new applications that any addition in a buffer be 4 feet above ground on pilings. She indicated that the Planning Board has upheld this in this past. She also noted that the Conservation Commission was not notified when the project was finished. She then indicated there is not a channel cut from this property to Meadow Pond, but there is hydrology between them underground. Water moves from one wetland complex to the other. She noted that we are also looking at major flooding in this area. Every piece that becomes sealed surface in the area becomes a flooding problem for someone in the neighborhood. She indicated that the Conservation Commission said the planting plan that the applicant had come with was not enough to mitigate the sealed surface that had been added. She described the counterproposal made by the applicants that included less deck and the addition of pavers on the ground. She then asked if the Board had any questions about the Conservation Commission's determination.

Chairman Emerick asked about the benefit of having the deck up higher. Mrs. Goethel explained. She indicated that this type of project has not been permitted by the Planning Board for several years.

Mr. Lessard asked if it would be adequate mitigation if the applicants put a channel in. Mrs. Goethel advised that would be illegal. A State permit would be required to do that.

Mr. Gillick asked when salt water comes in on the tides, does it come any where near the Pelletier's property. Mrs. Goethel guessed that a high storm tide would reach the property. She said the State is doing a phragmites mitigation project at Meadow Pond. That will increase the amount of salt water going into the area. She then stated phragmites could, in fact, grow higher than your head in salt water. She takes exception to NH Soils' conclusion on this issue.

Sharon Raymond, Conservation Commission, indicated she is a civil engineer who deals with water resources and storm water management. She described what had occurred at two of the Conservation Commission meetings with respect to this property. Putting a deck 6 inches off the ground essentially creates impervious surface. She reiterated that the buffer needs to be valued for the functions it serves. Every square foot taken away devalues the surrounding wetlands.

Jay Diener, Conservation Commission, referred to the next-door deck picture that was circulated. He indicated this deck was outside of the buffer and not relevant to this discussion. He referred to the surface under the Pelletier deck and its relative value with different heights. He said he was not aware that this was a new application at the first the Conservation Commission meeting. His understanding was that it was an amended plan. He described the problems that are created for the Town as more surface is sealed. He indicated the interests of the Townspeople are not being served when sealed surface is increased. This has to be balanced with the interests of the property owners.

BOARD

Mr. Higgins asked for clarification of the status of the application. It was a new application submitted in December 2006 and noticed at that time. He does not feel that the application is complete. There is no plan in the package with a deck and plantings.

Mr. Salomon stated the plantings issue did not come up until the February 7th meeting. He then read from the transcript of the Conservation Commission's meeting.

There was discussion of the "4-foot" portion of the deck (which is 24 inches off the ground). Mr. Salomon stated that his understanding was that this portion of the deck was required for egress, but he has not discussed this with the Building Inspector. Mr. Higgins stated that this "4-foot" portion of deck is not permitted.

Mr. Salomon stated he is hearing from the Conservation Commission tonight that they would like them to reduce the size of the deck and come up with a plantings plan.

Mr. McMahon stated he was at the February 27th meeting of the Conservation Commission. He described his understanding of what transpired. His impression was that it did not appear that the applicants had a concrete plan with respect to reducing the size of the deck. He agreed with Mr. Higgins that, until the Board sees a plan, it is not in a position to make a decision on the application.

Mr. Gillick asked the Planner if, in his opinion, the Board had a complete application. This is a continued public hearing. Is the application complete enough for the Board to make an intelligent and informed decision? Mr. Gillick indicated that he has served the Town of Hampton on the Wetlands Estuaries project for 15 years. He said that at one time everything west of Kings Highway was wetland and under water. He suggested that if a reasonable compromise is not reached, everything on the west side of the house, outside of the main building, would have to be removed. He feels that this is extreme.

MOVED By Mr. Gillick to continue this application to April 18th for a detailed complete plan based on a reasonable compromise agreement with the Conservation Commission.
SECOND By Mr. Viviano

Mr. Lessard stated he has other questions about the application. He asked about the various portions of the deck. He also asked for more elaborations from the soil scientist on the value of the adjacent wetlands. He would also like to see a distinction with respect to the pavers that are used in other projects where wetlands are crossed. He said he would like to see the planting plan before the meeting so that it can be reviewed. He stated he understands they need the hot tub for therapeutic reasons, but the sense of the Board at this time is not favorable.

There was a discussion of acceptable plantings and State requirements.

Mr. Steffen asked if phragmites removal could be done. Ms Davis said it would require a State permit since the property runs along the wetland boundary. Mr. Salomon said the applicants would allow phragmites removal on their property.

Mr. McMahon asked where the Conservation Commission fit in. Mrs. Goethel asked for the application to be postponed until after their April meeting.

Mr. Gillick stated that the Board should have everything necessary to make a decision before them when the application is next heard.

MOVED by Mr. Gillick to amend his motion to continue the application to the May 16th meeting of the Planning Board. A complete detailed plan will be submitted that is based on a reasonable compromise agreement with the Conservation Commission.

SECOND by Mr. Viviano

VOTE: 6-1-0 (Higgins)

MOTION PASSED

Mr. Salomon reviewed the steps to be taken:

1. Larger scale plan with the specific changes proposed (and made).
2. Planting plan.
3. Depict the portion of deck that will be removed, with dimensions.
4. Feedback from the Building Inspector on the 4' by 20' section of deck.
5. Meet with the Conservation Commission.

IV. CONSIDERATION OF MINUTES of March 7, 2007

Page 4 – paragraph 4 – add “for square footage per dwelling unit and for number of units in a Residence B zone.”

- Paragraph 5 - add “He was concerned about adding kitchens and/or second stories at a later date. He was also concerned how the lot would be considered conforming with six separate units with six owners.”

MOVED by Mr. Lessard to accept the minutes as amended.

SECOND by Mr. Gillick

VOTE: 7-0-0

MOTION PASSED

V. CORRESPONDENCE

None

VI. OTHER BUSINESS

- Maplecroft Building & Development
18- 20 Keefe Avenue
Site Plan Approval – Impact Fee Adjustment

Mr. Steffen said he calculated the impact fee incorrectly. It should have been for six rather than eight units.

MOVED By Mr. Lessard to amend impact fees to six units, based on the fact that there are 10 units proposed and 4 currently exist.

SECOND By Mr. Gillick

VOTE: 7-0-0

MOTION PASSED

MOVED by Mr. Gillick to adjourn.

SECOND by Mr. Viviano

VOTE: 7-0-0

MOTION PASSED

Meeting adjourned at 9:10 PM.

Respectfully Submitted,
Barbara Renaud
Planning Board Secretary