

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

PRESENT: Brendan McNamara, Chair
Tracy Emerick
Fran McMahon, Vice Chair
Mark Olson
Keith Lessard
Ann Carnaby, Clerk
James Waddell, Selectman Member
Jason Bachand, Town Planner
Laurie Olivier, Office Manager/Planning

ABSENT:

I. CALL TO ORDER

Chairman McNamara began the meeting at 7:00 p.m. by leading the Pledge of Allegiance and introducing the members of the Planning Board.

II. ATTENDING TO BE HEARD

- **Change of Use:** 25 K Street – Single-family dwelling (summer home) to two-family dwelling (permanent residence with small apartment).

Mr. and Mrs. Panarelli appeared. Mr. Panarelli wants to put an addition on the house and winterize it.

BOARD

Mr. Emerick said it's an approved use and he does not know why they are here. Mr. Lessard agrees with Mr. Emerick. The plans look appropriate and it appears it will look nice. Mr. Lessard asked about meeting setbacks. Mr. McMahon said it looks good as did Ms. Carnaby, Mr. Olson and Mr. Waddell. Mr. Bachand said they came before the Board because it is a part of the newly-adopted definition of "use change". Mr. Bachand noted that the applicant must still go through the Building Department and obtain all required permits/approvals for this project. This is before the Planning Board for the change of use only.

MOTION by Mr. Lessard to grant the use change.

SECOND by Ms. Carnaby.

VOTE: 7 – 0 – 0

MOTION PASSED.

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

- **Discussion with John Nyhan, Hampton Beach Area Commission Chairman regarding the Transportation Grant and Hampton Beach Master Plan Update.**

Mr. John Nyhan appeared. He thanked the Board for meeting tonight. Mr. Nyhan wants to discuss three things. He will discuss the Beach Commission and what it does. He then wants to discuss a document regarding clarification on the RSA. Then, he will move onto the transportation grant. The third topic is to discuss the strong efforts of the Beach Commission with the reconstruction of Ocean Blvd.

Mr. Nyhan said when the Commission was established, there was an effort within the Master Plan to create the Beach Master Plan. A Committee was then established. The Master Plan was reviewed by the Planning Board. It went to the Board of Selectmen on November 25, 2002 and the Hampton Beach Plan was supported by the Board of Selectmen and adopted. Legislation called for an oversight committee. The HBAC was established in 2003. The HBAC would be made up of public and private members. There are nine members: two appointed by the Board of Selectmen (they have to be Hampton residents—John Nyhan and Rick Griffin and Bob Preston), an RPC member is included (Fran McMahan), one Commissioner-At-Large (Dean Merrill), two positions by the HBVD (Chuck Rage and Bob Ladd), two members from the State level (Bill Watson (DOT) and Mike Housman (State Parks). The Hampton Beach State Park is one of the largest success stories. That was a top priority.

The Commission now applies for Federal money; grant money. Mr. Nyhan discussed the transportation grant. The HBAC should be advising officials around the Master Plan and there should be a periodic review of the Master Plan. The HBAC is 6 to 9 months away from making recommendations and he is not clear who can approve the recommendations.

Senator Stiles was approached for support and guidance. Senator Stiles' response was vague according to Mr. Nyhan. Mr. Nyhan thinks they should look at the RSA and get an amendment that speaks to the approval process regarding the Master Plan. Mr. Nyhan is not sure how fast this can happen. Mr. Nyhan thinks the Planning Board, the Board of Selectmen and the State Agencies need to be supportive. The Planning Board has strong responsibility to be the approver. He is asking for consideration from the Board. He wants to identify the Planning Board in a recommended amendment to be added to the RSA. He believes it is the role of the Planning Board to have a significant role in the process.

BOARD

Mr. Lessard discussed the input of the Planning Board. Mr. Lessard thinks the HBAC has done a nice job. He is interested in seeing the letter before it goes to Concord. He did not know the HBAC was talking about updating the Beach Master Plan. He feels the Planning Board is out of the loop. Mr. Lessard wants the community of Hampton to be improved and wants to participate in the Master Plan for the Beach. Creation of ordinances to improve the beach was discussed.

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

Mr. Emerick wants to resolve this with rules; not by amendment. An amendment to the RSAs, he stated...the more things you say you can do; there's so much you can't do. Mr. Emerick wants to know if there's another way to go about it. It was asked if it is going to be controlled by the Town or State. The Planning Board takes money in for fees, but there are no funds.

Mr. Nyhan asked about establishing rules and the process in Concord. Mr. Emerick wants to keep this a Hampton process; keep it local.

Ms. Carnaby asked about the Planning Board being involved. She asked about other groups and individuals to be involved. Mr. Nyhan said it may be just the transportation grant or other components to start looking at. Mr. Nyhan has started a project and is getting good feedback and now will soon be ready to go home with the project. It's the transportation grant. That is the project. To get from 3rd base to home, they need to put something into place. He wants the Planning Board to be a vehicle to approve whatever recommendations the Beach Commission is making. Mr. Nyhan said once the Planning Board makes a decision, then it goes to the Board of Selectmen. That would be the next step.

Mr. Nyhan said they need to inform the different State agencies. It would be DOT and State Parks.

Ms. Carnaby wants them to be clear about the Planning Board, i.e. the mechanism to use – majority of all parties, etc. She asked if the Planning Board gets seven votes or one vote. She asked if the process is in steps.

When the Beach Commission comes with a final recommendation, it would then come to the Planning Board with changes to be made within the Beach Master Plan. Then, the Planning Board reviews, receives comments and gives comments. The Commission wants to come to the Planning Board for the first stage of approval.

Mr. Emerick said it would be a change of the Master Plan. Mr. Bachand said the Planning Board is responsible for approving this. RSA 674 (1 through 4) involves the Planning Board's role in approving the Master Plan. The HBAC can endorse the plan update and then send it to the Planning Board. Mr. Emerick asked how the grant will be handled. The HBAC manages funds as well.

Ms. Carnaby wants the steps outlined clearly.

Mr. McMahon discussed the statute. It could be more of a conflict. On the one hand it says the Planning Board has authority to amend the Master Plan. Mr. McMahon said both this Board and the Board of Selectmen have to be brought up to speed. The Board of Selectmen should be brought up to speed sooner rather than later.

Mr. Nyhan thinks this project would be a State project. The HBAC received a grant from Federal Highway; \$300,000. They are subcontracting that out.

Mr. Waddell agrees with Mr. Emerick and the RSA. He thinks it's better to take the ball in his own court rather than bringing it to the State House. Make sure ducks are in a row. He discussed keeping this Board informed.

Mr. Olson discussed changes to the Master Plan. He asked if the Commission is doing this on a whim. The Master Plan is written with certain input. He asked if Mr. Nyhan is

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

going to interpret it. He asked if Mr. Nyhan wants the change just for the funding of this project. He asked if the Commission wants to change the content of the Master Plan.

Mr. Nyhan said within the document it talks about a number of recommendations that should be implemented within 50 years of the Master Plan. Impact of land development; conservation, etc. Many topics. The present situation is also noted. The Commission pursues options that are feasible and then take it to the approval process. Mr. Olson asked if this is to get more control. Mr. Nyhan wants clarification; not control. The State Park's redevelopment project was discussed. This was done in conjunction with the Town of Hampton. Funds were put through State Parks and the project happened.

What would be included in the amendment was asked by Mr. Olson. The Planning Board is not privy to many things going on down at the Beach.

Mr. Emerick said the Commission is like a consultant. They are consulting on our Master Plan and making recommendations to the Planning Board. The Planning Board says yes or no, and then it goes through the public hearing.

Mr. Olson said having someone going full force at the Beach is good.

Mr. McMahon discussed basic infrastructure improvements. Reconstruction of Ocean Blvd is essential. Changing the nature of the function of the beach is not happening; these are infrastructure issues—sidewalks, etc.

Ms. Carnaby asked if the Commission wants to implement another portion of the Beach Master Plan of 2003 that is part of the Town of Hampton Master Plan; not introduce new activity. Another piece of the Master Plan is being selected to be worked on. Mr. Nyhan said he wants to implement a portion of the plan. Steps need to be outlined as to the process of who approves.

Mr. McNamara discussed lack of communication. There are members on the Commission and they report what is happening; The Planning Board does not see it. The Planning Board still has the responsibility to look out for the Beach. The Planning Board makes amendments to the Zoning at the beach. If the Planning Board doesn't know what's going on, it cannot do the job efficiently.

Mr. Nyhan said the HBAC meets 9 times a year/once a month; September through May. Agendas are posted. After the State Park's project, they decided to take another piece of the Master Plan. The Commission looks at where the Beach is 15 years into this plan. Transportation came to light. The HBAC is a volunteer Board. They have the power to seek funds; public and private. The Commission submitted the application through a target grant program to conduct a study of the Master Plan. It was approved by the Town; it went to the State. Hampton was given the \$300,000; Hampton came up with a match of \$75,000 (not from Town revenue). It was supported by the Town to sub this out to the Department of Transportation. Bill Watson and (DOT) became the lead person on this and public transportation. They hired VHB to be the consultant to review the Master Plan and looked at areas. An Agreement was signed with the DOT in 2013. There have been many public meetings/hearings. One was in June of 2015; one in October of 2015. Both were televised and were noticed. The first public hearing was more of a listening hearing. Hampton Seabrook Bridge to Winnacunnet is discussed (including Ashworth Avenue). Mr. Nyhan

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

said they are about 55 percent completed as of now as far as thought process and recommendations.

Part II is \$150,000 to come up with thoughts and ideas about recommendations about transportation and the other \$150,000 is to go into a detailed design to establish the cost of the recommendations. Three topics are involved including a change of Ocean Blvd (it would be widened); sidewalks; bicycle paths, etc.

Ashworth Ave is #2. Some people want it to remain one way; some want it two ways. Right now, the consensus is keeping it one way.

The third is parking in the middle of Ocean Boulevard. Moving the State Park Parking to the Ocean was discussed; creating a two-way straight out. There would be traffic control devices. **Mr. Nyhan will give Mr. Bachand copies of the material.**

Mr. Nyhan would come to the Planning Board with changes. Mr. Nyhan discussed Ocean Blvd. and the new development. There are nine layers of asphalt on Ocean Blvd. It's made sidewalks go away and major drainage issues are occurring. This should be a top priority. The Commission is looking for Federal money to take care of this. TIGER did not approve the money. Fifty-five percent of funds went to Illinois. Hampton was not showing up on the 10-year plan (NH). The Senator and Town Officials and Chris Sununu obtained money to put into the Master Plan for 2018 to do Ocean Blvd reconstruction (2 years ago). The Commission spearheaded another push; The Beach needs \$5 to \$6 Million to make a dent. It hasn't been signed by the Governor, but it has been approved by the Executive Council, House, Senate and being sent to the Senator. By 2020 and 2021 we should have it. We will then be in the 10-year plan. The TIGER grant will cover some of the costs to do the project. Mr. Nyhan said this job is 5 or 6 years out.

Ms. Carnaby said Ocean Blvd. has a lot of problems. She asked if anyone is looking at exiting the Beach and not just having one lane on Church Street. Mr. Nyhan noted Church Street as well as Highland Avenue. One recommendation is taking Highland and turning it into a two-lane in and out. Mr. Nyhan discussed the \$45 Million bridge project – it's been recommended and it may be put in the 10-year Master Plan. That would give an additional lane. No draw bridge; make it higher.

Mr. Lessard asked if the Commission has a mission statement. He's not in support of a 64-foot/high bridge. He asked if we are on the 10-year Transportation Plan. Mr. Nyhan said if the Governor signs it in June, they will see the State has contributed close to \$6 Million.

Mr. Emerick said if they are doing what the Master Plan says, there is nothing to re-do. Just keep doing what the Commission is doing.

Mr. Nyhan will send HBAC RSA's regarding membership, powers and duties, etc.

Mr. Bachand is happy the Planning Board will get more involved.

Mr. Lessard asked about architectural review; it is still active per Mr. Nyhan. Mr. Schultz asks the Commission to look at upcoming projects.

III. CONTINUED PUBLIC HEARINGS

IV. NEW PUBLIC HEARINGS

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

V. CONSIDERATION OF MINUTES of April 6, 2016

MOTION by Mr. Emerick to approve the April 6, 2016 Minutes.

SECOND by Mr. McMahon.

VOTE: 7 – 0 – 0

MOTION PASSED.

VI. CORRESPONDENCE

The letter on Bernie's Beach Bar was discussed. It was provided to Kevin Schultz, Building Department. The applicant should be given a copy. Mr. Lessard asked about the appeal process. Mr. Bachand doesn't know if the complainant knows about the appeal process. It was noted that the letter was strong and needs attention.

Attorney Gearreald said this project is approved. Attorney Gearreald is not privy to this new material, but notes it appears there is a concern about an issue. Attorney Gearreald said on any project, within 30 days after approval, if someone on the Board has second thoughts, on their own initiative, they can move to undo it and re-open it. Our time period is short; it is 30 days. The Bernie's application was approved on April 6th. The Planning Board could take the letter under advisement. It can inform the applicant of it, and let the person who wrote the email that they can consider it at the next meeting. The person who sent the email should be informed of two avenues of appeal within this time period per Attorney Gearreald. One avenue is to appeal to the Superior Court and the other is to appeal to the Board of Adjustment.

Mr. McNamara asked if someone has a concern, he doesn't want to set a policy that the Board will contact them about options. He asked if this is the Planning Board's job. Attorney Gearreald said as a matter of courtesy, it is good to do. We give notices to abutters. This person was not a direct abutter. Anyone who wants to appeal a matter has to prove they have a standing to do that. Abutters have a standing; someone (not an abutter) in the neighborhood would have to show they are directly affected. Mr. McNamara does not think this Board should talk to a person with the problem and give options. Attorney Gearreald said the Board is not required to do so. Statutory references for appeal can be given to the person complaining and it can go from there.

Mr. Lessard said it looks like there should be some sort of feedback. Mr. Emerick said we can forward this information to the applicant. Mr. Lessard said some people are ignorant (understandably) of what options they have.

Mr. Bachand said he can acknowledge receipt of the email and conditions. He noted a noise study is being done on this project also.

Mr. McNamara said the Noise Study is a condition.

Mr. Lessard said Mr. Bachand does not need to go through that much detail. Mr. **Bachand can just forward it to the applicant (information)** as a courtesy. Letting them know they can come in and talk to the Town Planner.

Attorney Gearreald said generally, if some representations made to a Board in the course of its proceedings are not true, there is an opportunity within 30 days to rescind and re-visit the approval on the Board's own initiative.

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

Ms. Carnaby noted that the Planning Board won't know if there's a problem until after the 30 days are up. The people with concerns watched the meeting on line. Police did go back; there was only one citation. **Mr. Lessard reiterated we should respond.**

VII. OTHER BUSINESS

- Hotel Deed Restriction - 299 Exeter Road (Attorney Mark Gearreald)

Attorney Gearreald said this application has a site plan review pending. One PRC meeting has already taken place. The Legal Department assists the Town Planner by looking at deeds. On this application for the hotel there is a 1972 restriction that states "no hotels". Mr. Bachand said the applicants did not seem concerned by this issue during the PRC meeting. The applicant was told to address the situation. Two Releases of the Deed restriction were brought in covering three parties noted in the chain of title. The applicant's attorney feels the restriction has thereby been lifted. Attorney Gearreald discussed case law. For whose benefit was the restriction to benefit was discussed. Mr. Gearreald agrees with the applicant's attorney that the entities in the middle of the chain of title probably do not have standing to enforce the no-hotel restriction, as none of them are hoteliers and none of them still own property in Hampton. However, Attorney Gearreald does not want our Board to be exposed to litigation for having proceeded without releases from them, and so he has drafted a Hold Harmless and Indemnification Agreement. The applicants have agreed to sign it. Attorney Gearreald is fine with the Planning Board proceeding to go forward once that it is in hand.

Mr. Olson noted Mr. Bachand said the Applicants did not have any reaction to this, which he thought was strange. It was discussed that thorough title searches are apparently not being done before closing.

- **Draft Amendments to the Site Plan Review Regulations**

Mr. Bachand discussed the proposed Amendments to the Site Plan Review Regulations. These Amendments are available in the Planning Office for anyone in the public to review.

Mr. Bachand discussed Form Base Code and noted that information was provided to the Board. Mr. Bachand thinks this is more of a zoning related topic; not site plan related. It could be re-visited in the future. Ms. Carnaby thinks it's an interesting concept.

Ms. Carnaby made comments on her revisions to the Architectural Design Amendment and provided them to Mr. Bachand. Multi-family is not included. This is non-residential only.

Mr. Bachand said the changes are simply based on comments from the last meeting. He also noted that the sample guidelines from other communities were provided to the Board for reference.

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

Mr. Bachand discussed Use Change. These changes can be provided in the Planning Department as well. Definitions were discussed with Mr. Schultz. ADA requirements were also discussed with Mr. Schultz. The Board has no problem with the changes.

Mr. McNamara said a consensus was taken to take out “color changes”. He noted that color does not affect one’s quality of life. This is for non-residential and residential. Lighting will stay in; color is out.

Mr. Bachand discussed ADA requirements. He said we have to follow ADA requirements. The term ‘handicap’ was discussed; he said Mr. Schultz advised to use ‘ADA accessible’. Mr. Bachand made those changes.

Decision letters can have a reference to verifying compliance with ADA requirements added to them.

Mr. Bachand said whatever the ADA standards are, they have to provide that to the Building Department before an occupancy permit is granted. It is vetted with the Building Department.

Mr. McMahan asked if the applicant will know this ahead of time. Mr. Bachand said the ADA law is complicated; it’s hard for the Planning Board to dissect this. Mr. Emerick said it comes down to best efforts.

Mr. McMahan said many people do not read the Regulations.
Housekeeping changes were made.

Mr. Emerick asked about the earlier application. The Change of Use this evening – do they need ADA requirements was asked. Maybe residential should be scratched. Just have ‘non-residential’ per Mr. McNamara.

Mr. Bachand said it was part of the definition in zoning. Mr. Bachand said it can’t be changed except by Town vote. Changing the definition at a later date was discussed.

Mr. Bachand said the definition of use change is based on the definition in zoning. That is what the amendment was in zoning. The Site Plan Regulations need to be consistent with Zoning. Mr. Lessard said ADA requirements must be more specific in the Building Department’s book. Mr. Bachand said they will have to go through the Building Department for this to be squared away.

Mr. Bachand discussed the Amendment with corrections and consistency changes. The requested changes have been made.

Mr. Bachand asked the Board if they would like these Amendments scheduled for public hearing.

MOTION by Mr. Emerick to bring these Amendments to a public hearing.

SECOND by Mr. McMahan to move this all forward.

VOTE: 7 – 0 – 0

MOTION PASSED.

- Request for One Year Extension of Site Plan Approval – 47 Ocean Boulevard

Mr. Bachand stated the applicants for 47 Ocean Boulevard are requesting a one-year extension. The current approval expires May 6, 2016, so the extension would expire May 6,

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

2017. Condominium documents are with the Town Attorney. The applicants are running out of time; this application will expire soon.

MOVED by Mr. Emerick to extend the site plan approval to May 6, 2017.

SECOND by Mr. Lessard.

VOTE: 7 – 0 – 0

MOTION PASSED.

- Proposed Standardized Bond Estimate Sheet

Mr. Bachand discussed the DPW's bond estimate sheet. Various engineers work on projects. Dollar values vary. This spreadsheet would be for developers and their engineers to use as a starting point. Bonds for off-site improvements need to be streamlined. Prices are in there. If, say four years later, the amounts go up, etc. would it be updated yearly by DPW was asked. Mr. Bachand asked if the Board wishes to use this. Mr. Lessard said it should be tried out for one year.

MOTION by Mr. Waddell to approve the standardized Bond Estimate Sheet for one year.

SECOND by Mr. Emerick.

VOTE: 7 – 0 – 0

MOTION PASSED.

- Board of Selectmen Policy – Solid Waste and Recycling Collection from Condominiums

Attorney Gearreald discussed the policy (provided to the Board). The Selectmen wanted input from Department Heads. Attorney Gearreald has a chart of 60 examples of waste and recycling from Condominium Documents that the Legal Department has reviewed. A recent condominium conversion of property on King's Highway was discussed. This was reviewed by the DPW. Where carts and dumpsters are placed was discussed. Where are carts placed off-site was discussed. Curbside dumpsters and mechanical packers were discussed. This policy has been adopted by the Board of Selectmen.

Mr. Emerick said our Site Plan Regulations may need changing. Mr. Lessard said this is commercial, new construction and conversion. Mr. Lessard noted that as far as commercial condominiums go, Mr. Lessard thinks that commercial property can generate a lot of waste. Maybe it should be a volume thing. The Board could recommend that single-family homes can have a dumpster. Attorney Gearreald said it is an operational consideration for the Board of Selectmen to decide what they pick up and what they do not pick up.

Mr. Lessard asked about the language of this. It was asked if we need to change the Site Plan Regulations. This is adopted now. The Planning Board cannot enforce this per Mr. Emerick. Our past projects are putting out carts because the Planning Board approved this. It is part of our authority per our Site Plans. The Board of Selectmen don't write Site Plan Regulations per Mr. Emerick. Site Plans are the Planning Board's responsibility. If the Board of Selectmen wants the Planning Board to change the Site Plan Regulations, Mr.

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

Emerick thinks the Selectmen should request the Planning Board re-do our Site Plan Regulations. Mr. Waddell asked if this should be part of the Site Plan Regulations.

If Selectmen control public health, should trash be part of this was asked. Mr. Emerick said this is the Board of Selectmen running the Planning Board's Site Plan Regulations. He noted it is not the Board of Selectmen's job to write the Site Plan Regulations.

This all started because of a condo conversion per Mr. Lessard.

It was noted that for residential; people take care of their own trash. Retail puts trash out in the barrels. The Board has to decide that we have to change our Site Plan Regulations. The Site Plan Regulations are silent on this per Mr. Bachand.

Attorney Gearreald said he can bring this to the Selectmen's attention.

Mr. Emerick said if we take a vote on trash, we could go to Court.

Attorney Gearreald will look at the Regulations. Mr. Emerick asked how the Planning Board can say "no". It either gets picked up by Town or not. Mr. Emerick said there is no basis now to say "no" to applicants.

Mr. Lessard agrees that we may need to adopt this in our Site Plan Regulations.

Mr. Bachand said Attorney Gearreald and Mr. Waddell can relay these comments to the Board of Selectmen.

Mr. McNamara asked **for a roll call vote** in public session to allow the Planning Board to go into non-public session under RSA 91-A:3,II(c).

MOVED by Mr. Emerick.

SECOND by Mr. McMahan.

ROLL CALL VOTE: 7 – 0 – 0

MOTION PASSED

The Planning Board entered the non-public session at about 9:40 p.m.

Attorney Gearreald handed out 372 Exeter Road material. It was noted that at the end of this non-public session, the Planning Board can decide whether to seal the minutes or not and there are criteria for that, and a recorded vote is taken (with 2/3rd of the members in favor) in order to seal the minutes.

Attorney Gearreald discussed 372 Exeter Road (3-lot subdivision). It was approved in 2012. There was a Conservation Commission letter incorporated with the conditions.

The O&M Plan was discussed. Mr. Lessard recused himself. Attorney Gearreald said if Mr. Lessard wants to recuse himself for personal reasons, that is fine. Mr. Lessard's input can be had on this if he would like.

Mr. Lessard decided to recuse himself.

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

At this point, the meeting recessed so that the Board could conduct a non-meeting with Legal Counsel under RSA 91-A:2, I (b) with Mr. Lessard still present to discuss a subject unrelated to 372 Exeter Road.

The non-public session resumed with Mr. Lessard having departed.

Condition #5 of the October 17, 2012 approval discussed the role of the Homeowner's Association. A Declaration was recorded, but no Homeowner's Association was created. By CO time, there needs to be a Homeowner's Association. Attorney Gearreald has been working with the successor owner to the three lots in the project, i.e. Chinburg Builders, to create the HOA document. The documents look fine now, but the separate lot owners of one of the three lots will not sign it at this time due to difficulties with the rain garden as constructed on their lot. That owner cannot maintain its rain garden. The rain garden has failed. It's not functioning properly. Each rain garden is utilized for storm water management for each property. Plan E-1 shows how the garden should have been planted.

To get the HOA Declaration and bylaws signed and recorded, Chinburg has agreed to reconstruct the rain garden per Mr. Bachand's understanding. The conditions for the site plan approval have to be met. The whole project could be revoked if they are not. The Town could say to Chinburg that we (Town) agrees to enter into an agreement that the faulty one is re-done, put up the money in the form of a bond to make sure it is done and to fix the other two if they fail in the future and go from there. Chinburg wants a CO now where they have a buyer who states they need to move in by this Friday.

Mr. Bachand said in order to get a sign off, the Amended Declaration needs to be recorded.

A CO could be signed if there is a written agreement for all three properties on fixing deficiencies in the rain gardens - possibly involve CMA as well.

As security, an irrevocable Letter of Credit could be established to take care of all three rain gardens.

Mr. Bachand said they (Rayann Dionne, Conservation; Jennifer Hale, DPW; and himself) went out to the site; other items need to be addressed as well. Mr. Bachand told them (Chinburg) two weeks ago about not signing the CO until the Declaration is recorded. The Dunleavy's (owners of Lot 8-2) won't sign it. It's a problem for Chinburg to resolve.

If the Declaration is recorded and a written agreement with an irrevocable Letter of Credit is executed, and there is an escrow for CMA inspections, Mr. Bachand will sign it.

MOTION by Mr. Emerick to have Mr. Bachand take whatever action is necessary to properly implement Condition #5 to include the steps outlined by Mr. Bachand, and noted that the Planning Board supports his actions.

SECOND by Mr. Waddell.

VOTE: 7 – 0 – 0

MOTION PASSED.

HAMPTON PLANNING BOARD

MINUTES

April 20, 2016 – 7:00 p.m.

Attorney Gearreald said it could be a change of condition; abutters may be notified or it could be a field modification.

Mr. McNamara believes it is a field modification, as do Ms. Carnaby, Mr. Waddell, and Mr. McMahon and so the Board does not feel the need to re-open the project for a further public hearing as we are just talking about how best to implement Condition #5.

MOTION (roll call vote) by Mr. Waddell to not seal the Minutes of the non-public session.

SECOND by Ms. Carnaby.

ROLL CALL VOTE: 7 – 0 – 0

MOTION PASSED.

MOTION by Mr. Olson to adjourn the non-public session.

SECOND by Ms. Carnaby.

VOTE: 7 – 0 – 0

MOTION PASSED.

MEETING ADJOURNED: 10:15 p.m. without rejoining the public session.

Respectfully submitted,

Laurie Olivier, Administrative Assistant

****PLEASE NOTE****

ITEMS NOT CALLED OR IN PROGRESS BY 10:00 P.M.

MAY BE CONTINUED TO THE NEXT SCHEDULED MEETING