

**Hampton Conservation Commission
Meeting Minutes
Tuesday, June 27, 2023**

Present:

Deborah Wrobel, Chair
Robert Fox
Peter Tilton
Pat Swank
Marc Hiller
Sharon Raymond
Diane Shaw, Alternate

Staff Present:

Brianna O'Brien, Conservation Coordinator

I. Call to Order: 7:00 pm

II. Review Minutes

- Ms. Swank noted that item C did not have the complete address.
- Ms. Shaw noted to change Brown Rd. to Brown Ave.

Ms. Swank MOTIONED to accept the May 23, 2023 minutes with edits. SECONDED by Ms. Shaw.
Vote: 6-0-1. Ms. Raymond ABSTAINED.

III. Applications

- **972 Ocean Blvd**
NHDES Expedited Min Impact
Applicant: Robert Moses
Agent: n/a
Property Owner: Robert Moses
- Robert Moses, property owner and trustee, presented this application.
 - Mr. Moses received emergency authorization from NHDES to perform emergency repairs after winter impacts. He followed up with a Town Wetlands permit and received that in May. This application is for the NHDES permit for the same project.
 - The project is to do some additional repairs to shore up the wall beyond what was done under the emergency authorization as well as to reconstruct the stairs within the same footprint of the wall but curve them so they are not perpendicular to the ocean to prevent further erosion. The stairs will also have a railing.
- No questions or comments from the Commission.
- Public comment closed at 7:03pm

Mr. Tilton MOTIONED to sign the NHDES Expedited Minimum Impact permit application. Ms. Swank SECONDED. Vote 7-0-0.

- **465 & 467 Ocean Blvd**
NHDES Major Impact Standard Dredge and Fill
Applicant: 465 Ocean Blvd LLC; Rick Smith
Agent: Brendan Walden, CWS, Gove Environmental
Property Owner: 465 Ocean Blvd LLC; Rick Smith
- Brendan Walden of Gove Environmental presented this application.
 - The project proposes a residential redevelopment to construct a new multi-unit condominium on two previously developed lots. None of the work is within the 50 ft buffer. 1965 sq ft of permanent impact is proposed in the previously developed tidal buffer zone. The project has already received a Shoreland Permit. The previous project application from several years ago was denied due to timing but there was a note in the Request for More Information about the Prime Wetland delineation. The applicant is not challenging the Prime Wetland delineation as part of this application.
 - Mr. Walden mentioned that the Heritage Commission expressed interest in photo documenting one of the sites.
- Mr. Tilton asked if any of the 1965 sq ft is new impact.
 - Mr. Walden explained that there will be new sealed surface but the areas that are being converted to grass to hardscape will be pervious pavers and eco-raster (vegetated pavers).
- Mr. Tilton noted that he doesn't like to see any new sealed surface where the Town has jurisdiction.
 - It was noted that there is no impact in the 50 ft buffer.
- Ms. Swank expressed concern about the models showing marsh migration into the lot by 2050.
 - Mr. Walden agreed that it is possible based on how the sea level rises. He also stated that marsh migration requires undeveloped areas and this entire area is developed.
- Mr. Tilton clarified the location of these lot.
- Public comment closed at 7:12pm

Mr. Hiller MOTIONED to not oppose. Ms. Wrobel SECONDED.

The Commission discussed their concerns about supporting new development in a vulnerable area.

Ms. Shaw asked about the photo-documentation. It was explained that it was likely already done as both lots were demolished. Ms. Wrobel noted that she felt comfortable with this proposal given that there is some distance between the development and the edge of the marsh. She felt doubtful that as it is available real estate on Ocean Boulevard it would remain undeveloped. It has gone through two PRC meetings with many eyes reviewing the plans. She also noted that at the site walk the property owner said during the December 2022 storm the flood waters did not reach these properties.

Vote 6-0-1 Mr. Tilton ABSTAINED.

- **514 High St (23-024)**
Town Wetlands Permit
NHDES Standard Dredge and Fill
Applicant: Christopher Griffin
Agent: Paige Libbey, P.E., Jones & Beach
Property Owner: Christopher Griffin

This wetland permit application was CONTINUED.

- **38 Huckleberry Lane (23-025)**
Town Wetlands Permit
Applicant: CNA Realty Trust
Agent: n/a
Property Owner: Same
- Ms. O'Brien briefly introduced the application noting that the Conservation Commission reviewed this project in 2018 and worked with the applicants to come up with a plan that was acceptable. They were not able to complete the work within the life of the permit and did not get an extension. All of the other permits needed for this project have been obtained except the Building Permit. The property owners are looking to re-apply for the same project that they were given a Town Wetland Permit for in 2018. They are proposing following all the same conditions the Commission indicated in their 2018 recommendation letter.
- Maria and James Chouinard, the property owners presented their project to build a new home on the newly formed lot of record exactly at it was approved by the Town and NHDES in 2018.
- Ms. Raymond asked if there was a more detailed site plan than what was in the permit application.
 - It was explained that the subdivision plan that was recorded at the registry was more detailed and included a planting plan that was approved by NHDES.
 - That site plan will be included with the letter of recommendation from the Commission as well as the original letter of recommendation from 2018. All of the original conditions will be included as well as the updated standard stipulations, some of the language may be duplicate.

Ms. Swank MOTIONED to recommend the Town Wetlands Permit for 38 Huckleberry Lane with the following site-specific stipulation: the recorded subdivision plan with the planting plan is referenced and included with the letter. Mr. Hiller SECONDED. Vote 7-0-0

The standard stipulations were read:

1. Install two Wetlands Conservation District markers at the wetland buffer edge. Consult with the Conservation Coordinator to determine the appropriate location. The markers must be permanently affixed to a structure such as a dwelling, fence or a post cemented into the ground. Wetland markers can be purchased at the Hampton Planning Office.
2. The application of fertilizer, pesticides, insecticides, or herbicides is prohibited the Wetland Conservation District. However, the application of limestone is permitted within the buffer. (Section 2.3.4 B 4)
3. No storage of grass clippings or yard waste is permitted in the wetland or its buffer. (Section 2.3.4 B 5)
4. Removal of dead, diseased, or unsafe trees is permitted. The stumps and root systems shall be left intact in ground. (Section 2.3.3 A 2)
5. 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.
6. 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. Silt fence and hay bales (salt hay bales for tidal areas) unless another more stringent approach is proposed by the applicant.

7. The buffer should remain undisturbed to the degree possible in the process of construction. Only those temporary impacts described in the permit are allowed. Elevations shall not be changed. No additional fill is allowed. (Section 2.3.4 B 2)
8. 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 Wetlands Permit is required for the erection of any additional structure(s) in the buffer. The applicant must come back before the Commission should any of their approved plans change. (Section 2.3.4 B 2 and (Section 2.3.4 B 3)
9. The Conservation Coordinator shall be notified upon commencement and completion of the project. A final inspection shall also be scheduled with the Conservation Coordinator upon completion of the project.
10. The Conservation Coordinator shall not sign the occupancy permit until all of the Town Wetlands Permit conditions have been met. The Conservation Coordinator shall be given a minimum of 72-hour notice to allow for file review.
11. A favorable decision from the Planning Board does not eliminate the need for any other regulatory processes. Where applicable you must still seek deed restriction relief, approval from the Department of Public Works, State approval, Federal (FEMA) approval, a building permit from the Town, etc.
12. 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.

- **I95 Northbound Liquor Store**

[NHDES Permit Amendment](#)

Applicant: New Hampshire Liquor Commission

Agent: Christopher Danforth

Property Owner: New Hampshire Liquor Commission

- Paul Godfrey, HNTB and Chris Danforth, CWS, Keach-Nordstrom associates presented the application before the Commission.
 - The last time they were before the Commission they were discussing the adjustment of the prime wetland boundary which has since been accepted by NHDES. They are now applying to amend the original NHDES permit for the development of the site to modify the approved mitigation. The original approved mitigation was to put the remainder of the undeveloped portion of the northbound lot into conservation. The Liquor Commission is now proposing to remove 11.21 upland acres from protection on the northbound side and put 11.21 acres into protection on the southbound side. All remaining and proposed protected areas will be placed into a conservation easement which will replace the existing conservation covenants.
 - Ms. Wrobel asked how many additional acres on the southbound side are available outside of what is currently developed and what is proposed to be put in conservation.
 - It was clarified that the 11.21 acres proposed to be put into conservation is the majority but not all of the undeveloped area on the southbound side.
 - Most of the 11.21 acres are developable upland.
 - Ms. Wrobel asked who the holder of the easement will be.
 - That has not been identified yet.
 - Mr. Tilton asked if the access on the southbound side from the parking lot to the river would remain as open and accessible for people who have been using it for ice fishing in the winter.
 - Mr. Danforth explained that the area is outside of the proposed easement area so there is potential it could be developed. It will depend on how the area gets developed, who holds the easement and what the conditions of the easement are.

- Mr. Tilton asked if there would be access to the easement itself?
 - Mr. Danforth explained that the access would likely be through the parking lot. There is a draft easement in the appendix of the application. Fish and Game has indicated an interest in having a dock/access point to the Taylor River.
 - Mr. Tilton noted that if Fish and Game gets access with a dock, it would likely be open to the public.
- Ms. O'Brien clarified that whatever remains in conservation on the northbound side and whatever is put into conservation on the southbound side will all be put into a conservation easement.
- Ms. Wrobel asked who will own the land.
 - Mr. Godfrey explained that it is to be determined. It is currently still owned by the State but there will be a buyer who will buy and redevelop the north and southbound side, with the exception the ramps which the NHLC will retain ownership of and pads on both lots that the NHLC will retain for stores. The buyer will become the owner of properties with a conservation easement on them.
- Ms. O'Brien asked Mr. Danforth and Mr. Godfrey if they were aware that the Conservation Commission was expected to give an answer to NHDES regarding the application by tomorrow (June 28th). The Conservation Commission was given 14 days from the date of submittal to the Town.
 - Mr. Godfrey and Mr. Danforth were not aware and explained that this was a different timeline than they had understood.
 - Ms. O'Brien explained that it was not the timeline they had expected either. The recommendation to the Conservation Commission was to respond to DES with acknowledgement that they had received the application and were pursuing additional review and would not be providing an opinion at this time. The opinion from the Town would come at a later time.
 - Ms. Wrobel explained that she did not feel the Commission could provide an opinion at this time because it is a large project and they were anticipating more time for review. There were still unanswered questions.
 - Ms. O'Brien read the letter from NHDES
 - Mr. Godfrey asked if she felt that the Town would still have the ability to provide comment after the Conservation Commission responds to this letter. Ms. O'Brien believes that they will.
 - Mr. Godfrey acknowledged that they had anticipated and expected a longer timeframe for review from the Town. The 14-day timeframe was not their understanding of the procedure.
 - Ms. Wrobel repeated that the Commission needs more time for review. This is the first time the whole Commission is looking at it together and it is a substantial project. The 11 acres that was set aside for protection on the northbound side was mitigation for the impact of the development of the liquor store and the parking lot and the ongoing impact of the use of that area. Ms. Wrobel expressed that additional development on the northbound side will further impact the wetlands in that area. The southbound side wetlands were and are providing inherent mitigation on their own because they are functional wetlands and are inherently protected because they are wetlands, whether or not those acres are placed in an easement. Even though it is exact acreage being swapped for mitigation, she is not convinced that the proposed new mitigation is sufficient for the ongoing impact. The Commission's role is to be as protective of the prime wetlands as possible. This proposal needs a thoughtful approach and more discussion. The Commission is not ready to say to NHDES that they are

okay with what is being proposed at this time. There are still unanswered questions like who will hold the easement and what the conditions will be. The Commission would like to be more involved in that process.

- Mr. Godfrey noted that is what they anticipated. They are very open to the Commission's thoughts and feedback on the easement including if the Town is open to being the holder of the easement.
- Ms. O'Brien read the draft letter.

Mr. Tilton MOTIONED to send a letter to NHDES acknowledging that the Conservation Commission had received the Liquor Commissions Standard Dredge and Fill Permit Amendment and did not have enough information to provide an opinion at this time. Ms. Shaw SECONDED. Vote 7-0-0

IV. New Business

- Conservation Commission Alternate
 - Katherine Derochers is in attendance. She also joined the site walk this past Saturday. She is interested in joining the Commission as an alternate.
 - Ms. Derochers noted that she was impressed with the Commission's diligence.
 - The Commission came to a consensus to send a letter to the Selectboard recommending that she be appointed. The Selectboard will put her appointment on their consent agenda so Ms. Derochers does not need to attend the meeting but afterwards will need to be sworn in by the Clerk and then Ms. O'Brien will orient her.

V. Old Business

- Financial Update
 - This is ongoing. The treasurer separated the Town Forest Fund and Conservation Fund so it is being recorded correctly now.
 - Ms. O'Brien is still going through all past records to produce an organized document explaining the financial history of the Commission. This will be updated yearly and be a living document that the Commission can access at any time.
- NRI Update
 - The Commission received just under \$25,000 from the PREPA Grant to cover the entire cost of the NRI.
 - Through the Request for Proposals process, the NRI Subcommittee selected FBE Environmental. FBE completed the Estuary Management Plan for SHEA, worked on the Natural Resources chapter of Hampton's 2023 Master Plan Update and did Rye's NRI. They are well prepared to begin Hampton's NRI.
 - The kick-off meeting was held last week, face-to-face. The first leg of their work will be to review existing data and put maps together.
 - One question that arose was if the Commission feels that field work will be needed.
 - The other question was what areas around Hampton would be important to highlight as special areas of interest, whether for their beauty, uniqueness or ecological value. The Commission was asked to keep this in mind and if any ideas come to mind, they are asked to let FBE know. They also asked for any photo contributions to use within the document.
 1. Mr. Tilton mentioned Ice Pond, Batchelder field, and marsh views from the parking lot by the water tower, or anything off the railroad path, or at the end of Glade Path.

- There is a slight delay in the start of the project because of an issue with PREPA but it should not impact the project. Once this is sorted out with PREP, FBE will be ready to start.
- The NRI should be completed by the end of March 2024. There will be conversations about how to expand the audience of the NRI. FBE discussed using a StoryMap. That will be discussed when the NRI is closer to completion.
- The Commission is encouraged to be as engaged as possible.
- Mr. Hiller suggested making a video out of the final product that could be used as an additional mode of communication with a wider audience. The video could be submitted to New Hampshire Chronicle.

VI. **Conservation Coordinator and Chair Update**

- Ms. Wrobel noted that the previous minute taker had resigned and she asked Ms. O'Brien to initiate the hiring process for a new minute taker. Ms. O'Brien was told that they would not be replacing the position and that she was asked to serve as the note-taker within her existing position and hours.
 - Ms. Wrobel believes Ms. O'Brien is very busy as it is and cannot take notes during the meeting as she is actively participating. The four hours it will take her to listen to the tape and write the minutes is taking away from her other work throughout the week and the work the Commission can do through Ms. O'Brien. Ms. O'Brien cannot work any overtime.
 - Ms. Wrobel is looking for a consensus to write a letter to the Town Manager to reconsider his decision.
- Ms. O'Brien gave several additional updates related to policy.
 - The Supreme Court ruling regarding the Clean Water Act loosened the federal definition of wetlands but that does not affect New Hampshire or Hampton's definition or rules or regulations.
 - SB56 passed which allows developers to pay into the ARM fund for impacts to upland Priority Resource Areas which were previously impacts that had to be mitigated through Permittee Responsible Mitigation. NHDOT was assuming this would pass and had indicated they would pay into ARM for their dune impacts for the bridge project.
 - NHDES and ARM have changed some of their rules and the Commission received the details of those changes in an email. If anyone has any questions, reach out to Ms. O'Brien. One of the bigger changes was discussed last month regarding the change in the timeframe of review for Expedited Minimum Impact applications. The other change is related to the ARM Fund. The priority of the ARM Fund will be in-lieu payment as opposed to Permittee Responsible Mitigation. Currently about 85% of impacts are being paid for into the ARM fund anyway, so it is not expected to change much.
- Ms. O'Brien reminded the Commission that the July Edition of Conservation Talk will be coming out in the next two and a half weeks or so. If the Commission has any material, they wish to add they are encouraged to send it to Ms. O'Brien.
 - Mr. Hiller mentioned the recent story about malaria being found in the US.
- Mr. Tilton asked if Pepperweed was toxic in the way poison ivy is and if it would cause any rash if pulled by hand.
 - Ms. O'Brien will confirm but she believes it is not.

VII. **Adjourn**

Mr. Tilton MOTIONED to adjourn at 8:33pm. Ms. Raymond SECONDED. Vote 7-0-0

