

1 **Hampton Conservation Commission**
2 **Tuesday, October 26, 2021**
3 **Draft Minutes**

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5 **Present:** **Deborah Wrobel, Chair**
6 **Jay Diener, Vice-Chair**
7 **Pat Swank, Clerk**
8 **Rayann Dionne**
9 **Sharon Raymond**
10 **Pete Tilton**
11 **Bob Fox**
12 **Diane Shaw, Alternate**

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14 **Staff Present:** **Brianna O'Brien, Conservation Coordinator**
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17 **I. Call to Order:**

18 The meeting was called to order by Chair Wrobel at 7:00 PM in the Town Hall Selectmen's
19 Meeting Room.

20 **II. Review Minutes**

- 21 1. September 28, 2021

22 **MOTION:** Mr. Diener motioned to approve the September 28, 2021 minutes with the edits
23 provided.

24 **SECOND:** Mr. Tilton seconded the motion.

25 **VOTE:** 7-0-1 (Ms. Shaw abstained)

MOTION PASSED

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28 **III. Applications**

- 29 1. **210 Woodland Road (21-049)**

30 Michael Fryer, property owner, presented the proposed plans for adding a 8x16 ft shed to the property for
31 storage of 3 power wheels and several pedal pikes.

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33 The Commission was not comfortable with the proposed position of the shed, 7.2 ft from the wetland
34 edge and was concerned with the absence of mitigation indicated on the plan. The Commission
35 recommended alternative locations and thorough mitigation be added to the plan.

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37 Mr. Fryer explained that his main concern is maximizing safe spaces for his children to play in the yard
38 away from the main road. He also expressed concern about moving the shed to the opposite side of the
39 house where there are additional trees, more of a slope, and utilities.

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41 The Commission remained that it was not typical to support a wetland permit for a structure so firmly in
42 the buffer when feasible alternatives exist. The Commission also reminded Mr. Fryer that there was
43 construction debris around his property within the buffer that needed to be removed. Lastly, the
44 Commission stated that the built tree-house structure in the yard is a wetland violation and needs to be
45 removed.

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47 The Commission explained they did not feel a motion would be appropriate. They would like to see a
48 new plan with impacts the buffer minimized and a mitigation plan.

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50 Mr. Fryer continued his application until next month.

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52 **IV. New Business**

53 **1. PREPA Grant – Draft edits to existing land use regulations**

54 Jason Bachand, AICP, CFM, Town Planner introduced the PREPA grant project. The Town of Hampton
55 has received grant funding, from the Piscataqua Region Estuaries partnership grant to audit and make
56 amendments to the local land use ordinances for 2023 in order to better mitigate the impacts of sea level
57 rise and climate change. The town is working with Resilience Planning and Design to present
58 recommendations for integrating New Hampshire's Coastal Flood Risk Guidance. Mr. Bachand
59 introduced the first round of edits to the existing Wetland Conservation District Zoning Ordinances as
60 well as the Floodplain Zoning Ordinances. Feedback is not due until December 1, 2021.

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62 The Commission asked if it would be possible to have a representative from Resilience at the next
63 Commission meeting to answer questions related to the proposed changes and/or see notes made that led
64 to these proposed changes.

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66 Mr. Bachand was not confident that it would be possible to bring someone from Resilience, but he could
67 probably attend the meeting himself. He also didn't know of any notes other than the edits themselves
68 that came from the original audit that was done but he will look into what material exists.

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It was decided that any questions or comments about the draft edits would be sent to Ms. O'Brien and forwarded to Mr. Bachand by November 9, 2021.

The Commission will review these edits in much more detail at the November meeting.

2. Warrant Article Review

Mr. Bachand introduced the proposed ordinance amendments that will be going to warrant articles in March 2022. They have been reviewed by the town attorney, the building inspector, and the planning board.

He first reviewed the amendment to ordinance 1.4 with the section that defines “impervious surface” as it relates to decks. The proposed changes are intended to give homeowners more flexibility on their properties where appropriate, without compromising the protection of the Aquifer Protection Zone and the Wetland Conservation District. The proposed changes are intended to clarify some wording, provide specification about measurements, and allow a deck that is elevated a minimum of 3 ft off the ground, constructed with planks not wider than 8 inches with a minimum of ¼ inch space between each plank, and 160 sq ft or less, to be considered pervious. It is written with two subsections of conditions. The proposed amendment states that any deck that is greater than 160 square feet in size, but otherwise meets the requirements of the first subsection, shall be subject to 50% of the total surface area above 160 square feet being considered impervious. And finally, that a deck that is located within the Wetlands Conservation District shall only be considered impervious if it is 6 ft off the ground and meets the requirements of the first subsection.

The Commission liked the clarification of the measurements of the planks and space between each plank needed to be considered impervious as well as the stipulation that within the WCD, a deck is only considered impervious if it is 6 ft off the ground. It was discussed that the wording of the conditions was confusing and could be simplified by using a table or bulleting in a more concise way. It was also discussed that the ordinance does not specify that, to be considered impervious, nothing can be stored underneath a deck. It was mentioned that maintaining a pervious system under a 3ft deck might be challenging. Also, The Commission mentioned that enforcing no storage under a deck is not easily done.

The Commission would like to see the Wetland Conservation District caveat that is proposed for the end of the ordinance, be put at the beginning.

103 The Commission suggested that, within the Aquifer Protection Zone, a deck lower than 6 ft should not be
104 considered impervious, even if it met the proposed stipulations.

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106 Several members of the Commission suggested that any deck under 6 ft and above 3ft should only be
107 considered 50% impervious, regardless of square footage.

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109 The Commission also unanimously recommended that, within the Aquifer Protection Zone, any square
110 footage beyond 160 sq ft of a deck below 6 ft off the ground should be considered impervious.

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112 Mr. Bachand introduced the second of the proposed ordinance amendments. Section 2.3.4 C, Section
113 2.3.5 and Section 2.3.7 were amended with the intent of making meaning clearer. Mr. Bachand indicated
114 that this section of the ordinance should be re-worked in its entirety over the next year but to improve the
115 existing flaws, there are several minor amendments proposed for the March 2022 vote.

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117 The changes in Section 2.3.4 C were wording changes intended to clarify the meaning and Mr. Bachand
118 stated that Mark Gerald, town attorney, had a last-minute edit that was submitted late in the afternoon and
119 wanted to cross reference section 1.4 from the Town Zoning Ordinance. The Commission felt those
120 changes were appropriate and were in support.

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122 The Commission brought up several concerns about a granted zoning variance from the ZBA taking away
123 the Conservation Commission's authority over the wetland conservation district. The Commission asked
124 if an applicant gets a variance, where it is indicated that the applicant also needs a wetlands permit.

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126 Mr. Bachand directed the Commission to the proposed changes to 2.3.5. He stated that these changes do
127 indicate that there are two steps to doing certain work within the Wetland Conservation District, the first
128 being a variance from the ZBA and the second a Wetlands Permit from the Planning Board. It was
129 suggested by the Commission to make those two steps abundantly clear in the language of the ordinance.

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131 The Commission also clarified that the concern is even if there are two steps, if the ZBA grants a
132 variance, for example, reducing the wetland buffer to 25 ft, when the applicant comes before the
133 Conservation Commission, the Commission must work within the parameters set forth by the ZBA. It was
134 asked if there was a way to change the wording so that the applicant knows that a granted variance from
135 the ZBA does not mean that the Conservation Commission has to work within the same conditions.

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137 It was suggested by one commission member, that as the process exists, the Conservation Commission
138 will need to pay close attention to the applications going before the ZBA and for any projects with
139 impacts in the WCD, a representative from the Conservation Commission or Ms. O'Brien should go to
140 the meeting and speak on behalf of the WCD and ask for the variance to be denied or for it to be granted
141 with certain, specific conditions. The rest of the Commission agreed that that was the best way to handle
142 things as they are now but it is worth exploring other options to make the process simpler.

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144 There was brief discussion about pulling the Wetland Conservation District ordinances out of the town
145 ordinances. As they are written, applicants can always take their projects to the ZBA to get permission to
146 do something within the WCD instead of coming to the Conservation Commission.

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148 It was suggested that the approved wetland permit should be the first step and then the applicant can go to
149 the ZBA for a variance after, should the wetland permit be approved.

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151 The changes to Section 2.3.5 and 2.3.7 were more involved and the Commission found them confusing
152 and were worried they did not clarify the meaning or further protect the WCD as was intended. The
153 Commission felt that the last sentence of 2.3.5 and the addition of 2.3.7 was advertising a solution to do
154 something prohibited in the WCD. The Commission also felt that the language was not any clearer than it
155 originally was and that it would be very difficult to interpret them and guide applicants or residents with
156 questions.

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158 The Commission discussed with Mr. Bachand that re-organizing the section of the ordinance that lists
159 permitted, restricted, and prohibited uses into separate subsections by use type would be a helpful
160 amendment.

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162 Ms. O'Brien reminded the Commission that the ZBA recently changed their variance application to state
163 that a granted variance does not eliminate the need for additional required permits like state or town
164 wetland permits, building permits, etc. Bill O'Brien, ZBA Chair, had stated in the past that he tries to
165 remind all applicants of that fact.

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167 The Commission was asked to submit all comments about these amendments to Ms. O'Brien by
168 November 5th.

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170 Mr. Diener, vice chair, introduced the third warrant article that involves the Commission. The warrant
171 article proposes to make the Conservation Coordinator one of the code enforcement officers for the town
172 for Wetland Conservation District ordinances.

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174 The Commission was in support of the article but thought that some minor wording changes would be
175 needed so it was clear that the Coordinator would not be the only code enforcement officer and would not
176 take away those responsibilities from the building inspector.

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178 Chair Wrobel introduced the last warrant article which is to make the Conservation Coordinator a full-
179 time position. This was reviewed by the Board of Selectman as part of their budget review at their
180 October 25th meeting. There were several selectpersons interested in supporting it but felt it would be
181 best put forth as a warrant article so as to be more transparent with the voters and in case the proposed
182 budget was denied, this would give this budget change a better chance of approval. The Commission will
183 be drafting the wording for this article.

184 **3. Review permitted and prohibited uses in the WCD**

185 Ms. O'Brien reminded the Commission, as it came up through the discussion of the warrant articles, that
186 a whole re-write of the WCD ordinances would be helpful to make things more coherent. The
187 Commission was encouraged to pay close attention to where there was confusion or questions and where
188 things could be made more clear so that when it is time to draft warrant articles next year the Commission
189 can be ready to make those changes.

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191 **V. Old Business**

192 **1. Public Outreach- Land Steward of The Year Award & Conservation Newsletter**

193 Ms. O'Brien re-introduced the annual environmental award that was mentioned as a tool for outreach at
194 the August 2021 meeting. The Commission members received a final draft of the award information
195 sheet, the application, and the judging criteria. These materials included a timeline that would be
196 followed yearly for the award. The Commission was asked for their feedback.

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198 Some members of the Commission felt that it might be nice to honor Barbara Renaud in some way with
199 the award. It was also mentioned that the timeline of the award should be shifted so that the award itself
200 is always available and the deadline, announcement of the winner and presentation of the award are all
201 within the school year. Applicants can submit any work or project that has been completed within 15
202 months of the application deadline. It was asked if a site visit would be appropriate in the judging phase.
203 It was decided that it would depend on the number of applicants but might be good for finalists.

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The Commission asked if a material award could be given to each winner in addition to the recognition. That is something that can be looked into.

Ms. O'Brien also introduced a mockup of a quarterly Conservation Commission newsletter and explained it can be an electronic publication as it has live links, but it can also be printed and distributed at the town hall and/or library. Ms. O'Brien explained that this newsletter will be a great way to connect with the town, educate on certain issues and the material can correspond with the seasons as it comes out quarterly. She stated that it is a simple process to put everything together and the Commission can keep a running list of topics for material. The Commission was asked to send Ms. O'Brien at least one topic as well as indicate if any of the topics in the mockup should remain or be modified or replaced via email by November 23, 2021.

VI. Conservation Coordinator and Chair Update

1. Barkley Property Update

Chair Wrobel stated that the town attorney is developing a purchase and sale agreement. The property is 25 acres. 2 acres will be subdivided for the Barkley's home, the town will purchase the remaining 23 acres. A Conservation Easement will be developed for the property by SELT, the homeowner and the Conservation Commission. The homeowner will then donate the easement to SELT. The purchase and sale is planned to be signed by early November 2021. The Conservation Commission will need additional funds than what can be obtained through grants so a warrant article will be put forth for the remained of the funds needed, it may be up to \$130,000. Because the Commission is asking for the money for this property specifically, they will not be going forward with the warrant article that the Commission typically puts forward annually for \$20,000. The goal is to own the property by the end of September 2022 but no later than December 2022. Mr. Diener explained what would happen if the warrant article didn't pass and explained what other funding sources were available and how that would change the timeline. The Commission mentioned showing off the property and involving residents, so they have a better understanding of what the money is going towards. Chair Wrobel stated that they have been considering several fundraising ideas.

Ms. O'Brien updated the Commission as to what she has been working on including organizing and following up on old and expired permits, wetlands violations, establishing a system for tracking new permits, and updating the website and increasing traffic specifically on the conservation and public lands section of the website.

238 Ms. Swank reviewed the quarterly budget with the Commission.

239 **VII. Adjourn**

240 **MOTION:** Mr. Tilton motioned to adjourn at 9:56 PM

241 **SECOND:** Ms. Shaw seconded the motion.

242 **VOTE:** 8-0-0

MOTION PASSED