

Hampton Conservation Commission

Minutes

Tuesday, January 26, 2016

Present: Jay Diener, Chairman
Peter Tilton, Jr., Vice Chairman
Gordon Vinther
Diane Shaw
Pat Swank, Alternate

Also Present: Rayann Dionne – Conservation Coordinator
Mary Louise Woolsey, Board of Selectmen
Francis McMahon, Planning Board

I. CALL TO ORDER

The Meeting was called to order by Mr. Diener at 7 p.m. in the Town Hall Selectmen’s Meeting Room.

II. REVIEW OF MINUTES

Minutes from December’s meeting will be reviewed at the February 23rd meeting.

III. APPOINTMENTS

There were no appointments

IV. APPLICATIONS

1. 26 Island Path

Town

Wetlands Permit

Owner: Kenneth and Debra Fisher

Installation of a side boundary privacy fence that will connect to an existing fence along the rear of the property. The fence will be a combination of wooden stockade and chain linked fencing.

Ken & Debra Fisher of 26 Island path appeared before the Commission. Mr. Fisher requested permission to install a fence along the east boundary that will attach to the existing rear fence. He explained, the fence would partially comprised of wooden stockade, as well as a chain link fence and it will be attached to an existing fence. The purpose of the proposed fence is to allow for his dogs to be outside while contained in the yard.

The Commission:

Mr. Diener inquired if the proposed fence will be installed on the property line or inside, and Mr. Fisher acknowledged it will be installed a few inches in from the property line.

Mrs. Dionne inquired where they currently park vehicles. Mr. Fisher replied there is a two-car garage under the house, and they utilize the front of the home for a vehicle.

Mr. Fisher confirmed with the Commission that the fence needs to be 6” from the ground.

PUBLIC COMMENT: There was no public comment.

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MOTION: Mr. Tilton made the motion to recommend approval of the installation of the fence with the understanding there be a 6” gap between the fence and the ground, as well as the following stipulations:

Wetland buffer markers be installed on the fence posts.

Fertilizer is not permitted in the rear within the 50’ buffer, only use of lime application.

No storing of grass clippings or yard waste in the buffer.

Buffer should remain undisturbed to the degree possible with the construction of the fence.

Homeowner needs to notify the Conservation Coordination at the beginning and completion of the project for a final inspection.

Permit is good for two years.

SECONDED: Mr. Vinther

VOTE: 4 in favor, 1 abstained (Mr. Diener)

MOTION PASSED

2. 298 Exeter Rd

NHDES Dredge and Fill & Town

Wetlands Permit

Owner: Seacoast Crossroads Realty Company, LLC

Agent: SPL Development Group, LLC and Gove Environmental Services, Inc.

Construction of a 124 bed assisted living facility with proposed 21,218 sq. feet of wetland fill and 98,763 sq. feet of permanent buffer impacts.

Steve Paquette of SPL Development Group, LLC, Brendan Quigley of Gove Environmental Services, Inc., and Corey Colwell of MSC Engineers appeared before the Commission. Mr. Colwell summarized the purpose of this application as it had been presented last month to the Commission. He highlighted the proposed assisted living facility, including the proposal to fill in approximately 21,000 sq. ft. of wetland fill, as well as approximately 98,000 sq. ft. of buffer impacts.

Mr. Colwell summarized the meeting he had with the Department of Environmental Services (DES) regarding mitigation. DES stated all that would be necessary for the NHDES Dredge and Fill would be to provide funding to the ARM Fund and, the DES was not concerned with local mitigation. Following last month’s Conservation Commission Meeting where local mitigation was discussed, there was another meeting held with DES and some members of the Conservation Commission where they argued that local mitigation does have value. DES felt the ARM fund was in their best interest, but also understood it does not directly benefit the town. Mr. Colwell presented a map depicting three parcels his team considered for mitigation to the Town of Hampton and confirmed all three parcels are currently owned by the same owners as the parcel for the proposed assisted living facility. The first site Mr. Colwell discussed is the one near the water tower. He explained there is large portion of wetland with a stream running through it. However there is a large residential development abutting it. Mr. Colwell discussed the water tower site as not likely to be developed in the future as it has a Class 6 road on it, as well as a large organized group from the abutting neighbors that are against development of that property. The other two parcels he pointed out on the map are located on Timber Swamp Road. He described each parcel containing approximately 6+/- acres. These parcels are identified as Map 66/Lot 1 and Map 66/Lot 3. Mr. Colwell said both lots are considered developable. He went on to state that after much

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consideration of the sites, their team feels one of the parcels on Timber Swamp Rd (Map 66/Lot 1) is better suited for mitigation to the Town due to the fact that it has a pond which is a valuable resource, as well it is linked to other conservation land. Mr. Colwell summarized that they took into consideration all that was presented by the Conservation Commission, went back to the State and the owners of the properties, and they have all agreed this seems the best option for local mitigation. Mr. Colwell explained by conveying this lot to the town of Hampton under the Conservation Commission, the pond would remain protected as well as providing a link to larger tracks of conservation land. He conveyed that DES acknowledged the need for local mitigation, however his team is still obligated to submit the full payment to the ARM Fund. That being said, he recognized this as an effort to provide direct mitigation to the town.

In conclusion, Mr. Colwell provided the Commission with a letter from the owner of lots 66/1 and 66/3 solidifying their involvement and willingness to help the town preserve this land. Asset Title Holdings also mentioned in the letter their plan to reserve parcel 66/3 as possible mitigation to help offset future projects.

Commission:

Ms. Woolsey asked for clarification on the map of lots 66/1 and 66/3. Mr. Diener explained there are two lots, each one containing 6+/- acres. The lot being discussed as mitigation is 66/1, containing most of Car Barn Pond. He summarized the developers would consider giving the second 6 acre lot (66/3) in the future as possible mitigation.

Mr. Tilton inquired if parcel 66/1 directly connects to the conservation easement on the Batchelder Farm. Mr. Diener responded there is no direct access to the property with the conservation easement. However, Mrs. Dionne pointed out it is connected to parcel (51/8/3) which has a deed restricted portion not allowing further development and there is sliver of property that in the future could be obtained through conservation easement and that would allow a direct connection. She went on to say that both parcels 66/1 & 66/3 touch the deed restricted properties.

Mr. Tilton expressed he thinks the proposed mitigation property is a much better quality of property than the one we are losing to the proposed project. He also suggested the Commission could possibly still apply for ARM Fund money, and Mr. Diener confirmed that is an option.

Mr. McMahon asked for clarification of the total acres being offered for mitigation and inquired about the water tower site. Mr. Diener confirmed it is a total of 6 acres being offered for mitigation with parcel 66/1. Mr. Diener stated with regard to this project, the water tower site is off the table, and this is a reasonable alternative.

Mr. Vinther expressed this offer is better than what was discussed at the last meeting. He inquired about a small parcel on the site of the proposed project at 298 Exeter road that contains some wetland and some upland. Mr. Colwell responded that parcel is a separate lot of record and not being purchased as part of the project. Mr. Diener inquired the size of the lot, and Mrs. Dionne responded it is 2.4 acres. Mr. Diener noted it is much smaller than the Car Barn Lot. Mr. Vinther inquired if they have future plans of expansion with regards to that lot. Mr. Paquette responded there are no plans of future expansion. He again stated that lot is a separate lot of record, and he

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does not know what the owner plans to do with that land. Mr. Vinther hypothesized in the future if the owner approaches the Conservation Commission to fill that wetland in as well, it is his understanding that 66/3 would be a possibility for mitigation. Mr. Paquette confirmed, if in the future, applications should require further mitigation, 66/3 will be available as possible mitigation.

Ms. Shaw expressed concern if the Commission votes to accept 66/1 for mitigation for the assisted living facility, with the idea that 66/3 will be there in the future, what happens if down the road if lot 66/3 may be developed. Mr. Paquette replied that he and Mr. Colwell had a conference call with the owners to request something in writing regarding future use of 66/3. Mr. Paquette said the owners have confirmed it is their intent to hold that piece in reserve for the future. Ms. Shaw inquired if it was guaranteed in writing. Mr. Vinther responded the letter from the owners states they would consider this, it is not a guarantee. Mrs. Dionne responded she understand it would be difficult to guarantee that. Mr. Diener stated if the Commission accepts Lot 66/1, they are receiving it as mitigation for the assisted living proposed project. He went on to state the owners' letter says they will consider lot 66/3 as mitigation in the future. Mr. Diener feels it is a good letter, and appreciates having it, however it would not hold up as a guarantee in court. Ms. Shaw also inquired if the Commission accepts the proposal as it is, then there would be no reconfiguring the plan. Mr. Diener replied there is a proposal before them for mitigation for the project as planned with the identified impacts.

Mr. McMahon, representing the Planning Board, responded that repositioning may occur in the PRC process, as well as by the Planning Board. However, He does not see the Planning Board making any changes or reconfigurations. Mr. Diener confirmed with Mr. McMahon that if there is any reconfiguration at this point, it would be minor.

Ms. Swank inquired where the woodland boundaries are on the proposed mitigation site. Mr. Colwell pointed out on the map the lot and its values. Mr. Quigley of Gove Environmental Services also responded that there is a variety of wildlife habitat on the property, as well as the Pond.

Mr. Diener questioned the relative value for the town for parcel 66/1 vs parcel 66/3. He expressed both have some development potential. However, Mr. Diener explained parcel 66/3 may have more potential, as there are greater uplands on this parcel. Mr. Diener inquired if it would be possible to consider parcel 66/3 as mitigation for this project. Mr. Colwell agreed parcel 66/3 does have more potential for development, however his team felt 66/1 with the value of the pond was more beneficial for the Town to protect. Mr. Diener replied both parcels possess merit and it is difficult to choose one over the other. However, his concern is with the number of house lots that could be placed on lot 66/3, and what the direct impacts would be if developed. Mr. Colwell responded, as it stands now, the owners are reserving lot 66/3 for mitigation for the development of future properties. He went on to say that if lot 66/1 were to be developed, there would be more adverse effects on the pond. He feels the resource of the pond needs protection, and that is why they have chosen parcel 66/1 for proposed mitigation.

Mr. Diener spoke of the State having a formula and ratio they use for mitigation. He stated that this proposal came up incredibly quickly, but Mrs. Dionne has investigated ratios so the

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Commission could better negotiate adequate mitigation for wetlands and buffer, and perhaps have a basis for future reference.

Mrs. Dionne passed out a handout she developed depicting different types of mitigation & ratios. She stated the overall intent is to understand if we have impacts to wetlands and impacts to buffers, what the Commission would consider reasonable mitigation. She went on to say there may be more sources available, and this might be expanded in the future. The resources she compiled for this data are from New Hampshire Department of Environmental Services (NHDES), New England Army Core of Engineers (NE USACE), Montana Army Core of Engineers (Montana USACE), Washington State, and Michigan Department of Environmental Quality (Michigan DEQ). Mrs. Dionne included types of mitigation such as creation, restoration, enhancement, wetland preservation and upland preservation. She conveyed that ideally what the Town would like to see at the local level is zero net loss. She went on to explain if someone proposes to preserve another wetland as mitigation for one a project is impacting, the ratios tend to be higher by the amount of acreage of what is being protected vs. what is being impacted.

Mrs. Dionne reviewed that with the proposed 298 Exeter Rd project, there is ½ acre of wetland impacts, and 2 acres of buffer impacts. She pointed out on the handout an overview of what is being offered. Parcel 66/1 consists of 4 acres of wetland and 2 acres of upland. That is an 8:1 ratio for wetlands and a 1:1 ratio for uplands.

Mr. Diener noted this data range establishes bench marks for future projects. He inquired whether anyone had any thoughts or comments.

Mr. Quigley expressed the data provided by Mrs. Dionne allows for more certainty to the process when approaching the Conservation Commission in future proposing plans. He went on to say parcel 66/1 with his calculations for the direct impacts, are well over the 10:1 ratio and just about on the line with 50% of it being upland (1:1 ratio). Mrs. Dionne confirmed the 10:1 ratio would be with the full 12 acres combined of both parcels 66/1 & 66/3. She also noted the Army Core of Engineers has a 15:1 ratio.

Mr. Diener commented the data provides more consistency when looking at projects and mitigation for the future. He inquired whether anyone has questions as to how Mrs. Dionne assembled the data, and he also inquired how the Commission feels about this project.

Mr. Tilton disclosed in this particular case, he feels the mitigation is good.

Mr. Diener explained if another project comes along, and parcel 66/3 is still on the table, the Commission can utilize these ratios, or whatever they adapt as a good benchmark.

Mrs. Dionne recognized the Town's Wetland Ordinances value all wetlands equally. However, if there is a rare species or habitat, and if we have a range of ratios, we may give consideration to parcels with higher value.

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Mr. McMahon is not familiar with the parcel on the proposed development site, but feels the one being offered is a higher quality. He also noted it would be helpful in the future to have guidelines, but for right now there is no adopted set.

Mr. Vinther agrees the quality issues of the parcel being offered are fair, however in his opinion he would rather hold out for parcel 66/3, as it has greater potential for a larger development.

Ms. Woolsey expressed appreciation of the efforts the Conservation Commission does to protect the Community.

Mr. Colwell asked Mr. Paquette to explain to the Commission how time sensitive the project is. Mr. Paquette explained what he conveyed to the Planning Board. The reason they are trying to render a vote of recommendation is because these projects take vast segments of time and are time sensitive in terms of the market. Mr. Paquette feels this is a good project, and good for the Town of Hampton. Their goal is to begin construction in early spring.

Mr. Diener inquired whether the Commission is ready to render a decision with regards to the DES Dredge and Fill as well as the Town Wetlands Permit. He summarized they are being offered parcel 66/1 for mitigation for wetland and buffer impacts, and the Commission has to decide if that is appropriate mitigation, and if it is not, what recommendations should be made to DES and the Planning Board.

Mr. Tilton noted with the quality of what is currently being offered, and if parcel 66/1 were developed first, it would cut off all access to the pond. In this case, he is willing to accept it.

PUBLIC COMMENT: No public comment

MOTION: Mr. Tilton made the motion to not oppose the DES Dredge and Fill Application in consideration of the property of Lot 66/1 being offered to the Town as mitigation.

SECONDED: Ms. Swank

VOTE: 4 in Favor, 1 abstained (Mr. Diener)

MOTION PASSED

MOTION: Mr. Tilton made the motion to approve the Town Wetlands Permit and the acceptance of Lot 66/1 that includes a large portion of The Car Barn Pond being offered as mitigation to be deeded over to the town.

SECONDED: Ms. Shaw

VOTE: 4 in favor, 1 abstained (Mr. Diener)

MOTION PASSED

V. OLD BUSINESS

1. Update on 2016 Warrant articles – Mrs. Dionne updated that the Commission is moving forward with 3 zoning warrant articles that cannot be amended. The contiguous area warrant article; the warrant article that would provide a 100’ buffer to select 1st through 4th order streams and their tributaries. Only certain streams were selected to be protected (*Ash Brook, Drakes River, Little River, Nilus Brook, Old River, Taylor River, and the Winnicut River*); and the warrant article that adds vernal pools to the purpose section and adds examples to the Inland Wetland definition.

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Mr. Diener noted there is also the warrant article for a \$20k appropriation to the Conservation Commission Fund. He summarized the history of this Fund. In 1987 the first warrant article was to appropriate monies to the Conservation Commission to protect land. At that time it was under the titles the Conservation Commission Accumulation Fund. In the 1990's, a subsequent allocation was made to what was called the Conservation Land Fund. Looking back, Mr. Diener could not find any rationale given for the name changes. After 2000 there was another change and it was named the Acquisition Fund. We reworded the Warrant Article under RSA 36(a) which governs the Conservation Commission. It will now be titled the Conservation Fund. In the Warrant Article it refers to all the previous fund names and that moving forward will be one fund, the Conservation Fund. Mrs. Dionne and Mr. Diener asked the Commission to support these Warrant Articles by attending the Deliberative Session and be available for any pending questions.

2. Land between Route 101 and North Hampton – Update – Mrs. Dionne suggested they discuss this with new business.

3. Ice Pond Dam Update – Mr. Diener stated there is no update. The pond is currently frozen and kids are skating on it, which was great. He suggested the Commission still needs to develop a plan moving forward. For now, he stated, the beavers are doing a good job, and the Town Manager, Mr. Welch, has talked about the DPW installing a pipe to keep the water level from getting too high.

4. Dune Restoration at Plaice Cove – Ms. Swank informed the Commission she needs to move this ahead a month to bring it to the selectmen in March, because she will not be available in April to meet with the Selectmen. She said Alyson Eberhardt recommended stabilizing the sand dunes with shrubs, and suggested specific kinds of shrubs. Ms. Eberhardt is donating shovels for this process, but unable to provide funding for the purchase of the shrubs. Ms. Swank inquired if the Commission has any funding for this. Mr. Diener suggested she discuss with Ms. Eberhardt the types of shrubs suggested and how many need to be purchased and the cost as the Commission does have some funds that could be used for this. Mr. Diener inquired about the sand replenishing suggested by Ms. Eberhardt. Ms. Swank confirmed it does need to be fine grade beach sand. Mr. Tilton suggested when there is spring cleanup along Ocean Blvd. that the sand be collected and bought to the site. Mrs. Dionne inquired who is responsible for cleaning the beach sands off the streets after the winter, and Mr. Tilton believes DPW maintains the side streets along Ocean Blvd.

VI. NEW BUSINESS

1. Land donation – Mrs. Dionne remarked she has received a letter of intent from Paul & Pamela Fitzgerald to donate two parcels to the Conservation Commission. The first parcel is between Route 101 and North Hampton. The second parcel is in the White's Lane area. That parcel is about 11 acres. They are willing to donate (deed) these over to the Town under the care of the Conservation Commission. Mrs. Dionne will request Town Attorney Mark Gerald draft the deeds, and the Commission will pay the recording fees at the Rockingham County Registry of Deeds.

MOTION: Ms. Swank made the motion to accept land donations of the property on parcel 18/1 as well as the property on parcel 74/1.

SECONDED: Ms. Shaw

VOTE: 4 in favor, 1 abstained

MOTION PASSED

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Mr. Diener expressed thanks to Paul & Pamela Fitzgerald for their land donations, as well as Nathan Page for helping to facilitate this process.

2. Mileage reimbursement for site walks – Mrs. Dionne shared with the Commission there is a line item in their budget for mileage reimbursement. Forms for reimbursement can be obtained from her. Mr. Diener went on to state any business conducted on behalf of the Conservation Commission is eligible for mileage reimbursement, such as site walks, travel to conventions, etc...

3. Gulf of Maine 2016 Council Awards – nominations – Mrs. Dionne briefed the Commission on this. She heard from the Gulf of Maine Counsel on Marine Environment regarding their annual recognition rewards. The following description is from the Gulf of Maine Counsel:

The Gulf of Maine Council on the Marine Environment has over the years recognized efforts by individuals, groups or organizations that seek to protect, enhance and restore the ecosystem of the Gulf of Maine region and safeguard and improve the wellbeing of the communities that depend on its resources. The Council has established awards to bestow on individuals and organizations for their exemplary work as stewards of the ocean. Each year the Council accepts nominations for the awards which include: Visionary awards, the Sustainable Community awards, the Industry award, the Art Longard award, and the Susan Snow-Cotter award.

The New Hampshire Coast is considered a part of the “Gulf of Maine”. Mrs. Dionne suggested to the Commission if they know of anyone or group they feel should be nominated, please let her know. The deadline for submitting award nominations March 31st.

VII. CONSERVATION COORDINATOR AND CHAIR UPDATE

Mrs. Dionne relayed she was notified by Edible Seacoast that they are going to be producing an article on Hampton’s Rain Barrel Program. They will be speaking with Donna Boardman, teacher at the Hampton Academy and the DES. The article will come out at the beginning of May, and the auction is scheduled for the end of May. Ms. Swank requested the Commission obtain copies to be put out at the library for the public.

Mr. Diener deferred to Mr. Tilton for an update on the water quality issue in Hampton Harbor. Mr. Tilton conveyed that he spoke with Chris Nash who is conducting water tests for the DES to decide if they will be able to resume local clamming. Mr. Tilton stated over the last couple of months there has been a sudden and large increase in water bacteria. At this time, it has not been determined what or where the source of this sudden spike is originating from, however it does seem to be coming down Taylor River. Mr. Tilton explained that Mr. Nash is now conducting shoreline surveys as well as picking up water quality testing stations to attempt to track the source. Mrs. Dionne reminded the Commission of a woman that came in some time ago from Taylor River Estates stating their septic needs to be replaced. Mr. Tilton feels it sounds like a failed pipe and said Public Works is going to be doing testing as well. He concluded that the flats are closed indefinitely until it is cleaned up. Ms. Swank expressed concern for the Harbor Beaches and around Seabrook and how this could affect those areas.

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Mr. Diener informed the Commission he was invited to participate in a study of Buffer Options for the Bay, Primarily Great Bay. The group includes the DES, University of New Hampshire, Rockingham County Planning Commission, Army Core of Engineers, and others. The mission is to address regulatory and non-regulatory ordinances and how to enforce efforts to protect and restore buffers around Great Bay. It is approximately a 1 ½ - 2 year project.

Mr. Diener briefed the Commission that Alyson Eberhardt's dune restoration project in Hampton and Seabrook is coming to an end this spring or early summer and the beach grass garden that has been installed at the state park will no longer be monitored. Mr. Diener is not certain what will happen, but would like to see it maintained as this is potentially a valuable resource for the Community. Mr. Tilton suggested talking with someone who has a landscaping company or a greenhouse that would be willing to maintain it for profit. Mr. Tilton noted they would have to lease this area from the State. Mr. Diener noted Ms. Eberthart is working on a new project to preserve the sustainability of the dunes and study the social underpinnings of dune management. Dunes are not necessarily what people would like as it takes away their water views. He is interested to see where this project goes.

Mr. McMahon and Ms. Woolsey departed the meeting at 8:47 p.m.

On MOTION of Ms. Shaw and SECONDED by Ms. Swank, The Hampton Conservation Commission voted by ROLL CALL: IN FAVOR: Mr. Tilton, Mr. Vinther, Mr. Diener, Ms. Shaw and Ms. Swank, 0 Opposed to enter a Non-Public Meeting under Chapter RSA 91-A:3, II(d).

The Conservation Commission Public Hearing was suspended to enter into a non-Public Meeting at 8:48 p.m.

The Conservation Commission's Non-Public Meeting was adjourned to return to the Public Hearing at 8:58 p.m.

VIII. ADJOURN

MOTION: Ms. Shaw made the motion to adjourn at 8:59 p.m.

SECONDED: Mr. Vinther

FAVOR: 5 In favor, 0 abstained

MOTION PASSED

The next meeting of the Conservation Commission will be held on February 23, 2016.

Respectfully Submitted,
Cheryl Hildreth, Recorder