

**Hampton Conservation Commission
Minutes
April 26, 2016**

Present: Barbara Renaud, Chairman
Jay Diener, Vice Chairman
Peter Tilton, Jr.
Diane Shaw, Financial Administrator

Also Present: Rayann Dionne – Conservation Coordinator

I. Call to Order

The meeting was called to order By Ms. Renaud at 7 p.m. in the Town Hall Selectmen’s Meeting Room.

II. Review of Minutes

MOTION: It was moved by Ms. Shaw to approve the March 22, 2016 Minutes with appropriate edits.

SECONDED: Mr. Diener

FAVOR: 3 in favor, 1 abstained (Ms. Renaud)

MOTION PASSED

III. Applications

1. 18 Johnson Ave	Town	Wetlands
Permit		

Owner: Edward Miville

Install a boundary fence, which will be a combination of solid PVC and chain-linked fence.

Mr. Miville appeared before the Commission to present his plan for a boundary fence. He stated the plan includes the installation of a 6’ PVC fence on the east side of the property with 4x4 pressure treated posts, as well the installation of a 5’ chain link gate on the west side of the property. He would also like to install a 3’ high wire fence along the marsh side of the property, along with 3’ walk-in chain link gates with 3” galvanized posts towards the house. Mr. Miville concluded the PVC fence will be solid and be 6” off of the ground. He said the wire fence will be installed to the ground.

Mrs. Dionne confirmed with the owner and the Commission that there is an existing stockade fence along the back of the property that will remain there, as well as an existing wire fence along the west side that will remain.

Ms. Renaud confirmed with the homeowner that the entire project will be within the 50’ buffer zone of the Wetlands Conservation District (WCD).

Mr. Diener inquired about the railroad ties along the marsh side. Mr. Miville replied the railroad ties are not on his property.

Public Comment:

Mr. Thompson explained that many homeowners along the seacoast have wooden stairwells that they drop over in the summer. He conveyed The Coast Guard is not happy with that, as storms can take those out to sea. He plans to remove the existing riprap, have a concrete buttress poured, stairway installed and the riprap relocated along the ocean side of stairwell. The concrete stairs will be anchored with a 1" mechanical rod system. Mr. Thompson concluded that this is a simple and common sense approach to reinforce the wall, as well as provide access to the beach.

The Commission:

Ms. Renaud inquired whether there have been any conversations with the homeowners regarding sharing stairs, rather than having so many installations. Mr. Thompson replied that this approach was discussed, however, concerns arose if there was an easement on their properties how it would impact possible future sales.

Mr. Diener commented that good stairs make good neighbors.

Mrs. Dionne commented that none of the stairs will be on private property, they will be on town property, so that issue really does not exist.

Mr. Diener expressed concern for maintaining the same footprint. He affirmed they cannot go beyond the existing footprint of where the riprap is. Mr. Thompson referred to Plans from 2007 for repairs that depict the riprap originally went 13' out onto the beach. He confirmed that they are only going out 7' from the base of the wall, and 5.5' from the top of the face of the wall. Staying in the existing footprint of the 2007 plans.

Mrs. Dionne expressed concern regarding 1064 and 1070 Ocean Blvd when putting the riprap back at the top of the stairs. She stated the red line drawn on the plans is bumping right up against the edge of the riprap. Mrs. Dionne's concern is the challenge they face if it expands beyond the red line on the plans, then it would be exceeding the footprint. Mr. Thompson responded that the drawings are a snap shot in time of when the wetland engineers were at the site. He said it changes constantly and can move daily. Mrs. Dionne explained that they rely on an as built plan to match up, and questions how this is going to happen. Mr. Thompson stated his intention is to put it back the way it was the day it was when it was excavated. He also noted he is not looking to go further out onto the beach, he would even prefer to bring it closer to the wall.

Mrs. Dionne recommended when he excavates down, he should update the plans based on the location of where the riprap is as opposed to the portion of revetment that is visible above the sand. She does not want it to expand any further beyond the original footprint. Mrs. Dionne expressed her concern is for the town residents and their right to walk the beach freely.

Mr. Tilton affirmed this concern and suggested that Mr. Thompson document what is there after he pulls the sand back and before construction begins. Mr. Thompson replied a lot of the riprap that is out there has been buried in the sand. Mr. Tilton expressed that is why it should be documented on plans once excavated, prior to construction.

Mrs. Dionne questioned the need for the 5' wide steps and feels it is too wide. Mr. Thompson replied they will have to put a railing on the outside of the stairs and that has to come in about 6". He also stated it needs to have a removable top rail that can be removed for the winter months.

Mr. Diener inquired how they plan to access the site. Mr. Thompson responded that he will be accessing the site through North Hampton Beach State Park. He confirmed they have permission from the State. Mr. Diener noted that Mr. Thompson will still need to receive approval from the Board of Selectmen to proceed with the work on the Town Beach.

Mr. Diener inquired how long the construction will approximately take, understanding that they have to work with the tides. Mr. Thompson answered the concrete work should take approximately eight days, and they will need 2 days prior and 2 days after that.

Mr. Thompson also inquired about applying for a maintenance permit, so in the future if there is a storm, they could perform emergency repairs as needed. Mrs. Dionne responded that if the property is in harm if there is a delay in repair due to the permitting process, then they can apply for an after-the-fact permit. However, she affirmed if they need to add more rocks, they would require a separate permit.

Mr. Diener asked Mrs. Dionne if the Conservation Commission can approve wetlands permit for maintenance only. Mrs. Dionne replied this permit would be valid for two years and suggests they can write in this permit that applicants can adjust rocks if needed, but no new rocks may be added. She reminded the applicant/agent that they would need permission from the Board of Selectmen to obtain access on the town beach.

Mrs. Dionne asked Mr. Thompson if there is any leeway on 1064 Ocean Blvd to shift the stairs. It is the tightest property when it comes to putting riprap back. Mr. Thompson replied that it looks as if there is only a couple of feet there, but he will try to do that.

Public Comment: There was no public comment.

MOTION: Mr. Diener recommended not to oppose the NHDES Dredge and Fill for 1064-1072 Ocean Blvd.

SECONDED: Mr. Tilton

FAVOR: 3 in favor, 1 abstained (Ms. Renaud)

MOTION PASSED

MOTION: Mr. Tilton recommended the granting of the Town Wetlands Permit for 1064-1072 Ocean Blvd for the stairwells with the stipulation that they receive updated plans when the sand is pulled back and prior to construction that show the correct line of the ripraps.

SECONDED: Mr. Diener

FAVOR: 3 in favor, 1 abstained (Ms. Renaud)

MOTION

PASSED

**3. 4 Ocean Drive
Permit**

Town Wetlands

Owner: 4 Ocean Drive, LLC

Agent: Edward N. Herbert Associates, Inc.

Installation of a 2.75' x 7.5' generator pad (20.6 sq. ft.). This increase in impervious surface will be offset by the removal of the west side deck stairs (29.7 sq. ft.). Replacement of *rosa rugosa* shrubs (337 sq. ft.) removed during construction. Installation of a perimeter fence, outdoor shower with associated drywell, irrigation system, and identified areas that will be converted to lawn.

Peter Zohdi with Edward N. Herbert Associates, Inc. and John Alosso, general contractor with John Alosso Associates, LLC. appeared before the Commission. Mr. Zohdi stated they have come to request an amendment to an existing approved special wetlands permit. The amendment is for the addition of a generator pad. He noted they will be adding 20.6 sq. ft. of impervious surface with the pad, however they will be removing 29.7 sq. ft. with the removal of a stairwell. Also included in the amendment is the request to add an irrigation system, landscape lighting, addition of a privacy fence around the entire property and an outdoor shower which will drain into a drywell.

The Commission:

Mr. Tilton stated it is his understanding that they are not going to be planting grass within the 50' buffer and inquired what would be planted. Mr. Alosso responded they do not know at this time.

Mr. Diener inquired if there will be no grass there, then should we assume there will not be any sprinkler heads installed. Mr. Alosso confirmed there won't be, unless the homeowners decide to add some other type of vegetation. Mr. Diener responded if they were to add beach grass, that would be fine, but any other vegetation would need further approval from the Conservation Commission.

Mr. Diener voiced his concern for the location of the proposed generator pad with the exhaust relative to the plantings. Mr. Alosso stated there will be an area of gravel around the generator pad.

Mrs. Dionne referred to Kohler, the manufacturer of the generator, and their specs for the generator require 4' footprint for the generator pad. However, she said you also need gravel in back for the exhaust, and that gravel pad 3'x4'. Based on Kohler's manufacturer specs the homeowners would be over by 4'. She stated that would increase their new impervious to 25 sq. ft.

There was a discussion amongst the Commission of options other than the gravel. Mrs. Dionne suggest a uniform shape stone won't compact and will maintain its footprint.

Mr. Diener inquired what materials they will be using for the fencing. Mr. Alosso responded they are looking at several options, one option is a 6' PVC privacy fence, with ocean side fencing maybe being wrought iron or aluminum. Mr. Diener responding without knowing the types of fencing being proposed, he feels they are not able to approve the amended permit.

Mrs. Dionne inquired if the fence is going to go right up to the generator, and questioned if it can be that close to the generator.

Public Comment:

Christopher Whitley of 79 Plymouth St. approached the Commission. He is concerned with the generator placement. He spoke with Kohler, and he conveyed they require an 8' setback on 2 exhaust vents. He went on to say it is from the points of the generator out, so 8' should be from both sides. He said the plans currently depict bushes, *rosa rugosa*, that were removed for construction and are supposed to be restored. He explained with the 8' radius around the generator per manufacturer specs, there would be no room for the proposed *rosa*

rugosa. He went on to say it was permitted that natural growth would be restored, and it has not been. He pointed out if they replace the bushes that have been removed, they will not meet the 8' setback for the generator.

Mr. Whitley strongly feels as an abutter, the meeting should be postponed, as they do not have any set plans regarding the proposed fences. He went on to voice the purpose of the notice to the abutter is so that he can be part of the discussion. He concluded with no specifications on fences or the posts or the lighting, the meeting should be postponed.

The Commission:

Mr. Tilton suggested on the side of the proposed fence, perhaps install a louver that would provide venting for the exhaust on the generator.

Ms. Shaw expressed disappointment of the destruction of the *rosa rugosa*. She also agreed there should be more firm plans presented to the Commission with regards to the fencing, the generator, and more definition on what we would be voting on.

Mr. Tilton conveyed he understands the frustration of the abutter about changes, but sometimes those are made to satisfy the Commission by what we need to see. He also agreed the Commission needs more concrete information on what materials will be used. He stated he is not comfortable making a recommendation at this point until he knows exactly what fencing will be used, and how the generator setbacks will affect the new plantings.

Mr. Alosso stated to the Commission that as the contractor, he is responsible for the *rosa rugosa*. He explained he needed to be able to get his machines around the property.

Mrs. Dionne noted the *rosa rugosa* specification is 2'x3'.

Mr. Tilton questioned whether the shrubbery and vegetated area are going to be coming right up to the fence, or will there be grass back there as well.

Ms. Renaud stated the fence is problematic in a number of different ways.

Mr. Diener indicated there are unanswered questions. We know there isn't going to be a lawn, but we don't what is going to be there, either inside or outside the fence within the 50' buffer. He affirmed he also feels uncomfortable making a recommendation without further specifics.

The Commission further discusses how to proceed.

Ms. Renaud announced the sense of the group is we are not in the position to recommend the approval to the Planning Board.

Mr. Diener stated we can either make a motion to approve, deny or continue the amendment.

Mrs. Dionne suggested the applicants review what the Commission needs. She suggested the issue with the generator is if you add more *rosa rugosa*, then the generator would have to be moved, and that would be a Building Inspector issue.

Mr. Tilton expressed concern whether there is enough vegetation being replaced. He suggested using aerial photos to calculate the square footage of vegetation that was previously there.

Ms. Shaw stated they would need new impervious figures with the changes in the generator pad as well as all the fence posts.

Ms. Renaud suggested the applicants continue this review at the Commission's May 24th meeting in order to address the following concerns:

- a. Provide additional details on the generator location with regards to the exhaust outlet and the necessary setbacks presented in the Kohler manufacture's specifications. Update the impervious surface calculations to include the full concrete pad and also include fence post footprints in the calculations and specify the gravel material to be placed adjacent to the exhaust.
- b. Review pre-construction aerials and previously approved plans to verify that the proposed location of the replacement plants accurately reflect the square footage of plants removed. Add to the plan the size and number of plants to be installed.
- c. Clarify the fencing material type and the locations where the fence will change from a privacy style to a more open style.
- d. The property owner has agreed to not install a lawn area in the 50' buffer area. It is the Commission's preference for this area to remain in a natural state. However, the addition of native plantings such as beach grass is an option. Please address how this area will be treated and/or planted.

Mrs. Dionne suggested they email The Planning Department and reschedule their meeting with the Planning Board until after the next Conservation Commission Meeting which is scheduled for May 24th where they can present the updated amendment to the approved special wetlands permit for review.

**4. 299 Exeter Rd
Permit**

NHDES Standard Dredge and Fill

Owner: AG Hampton Hospitality, LLC

Agent: Edward N. Herbert Associates, Inc.

Construction of a 104-room hotel and 40,000 sq. ft. office building.

Neither the owner, AG Hampton Hospitality, LLC nor the Agent Edward N. Herbert Associates, Inc. appeared before the Commission that evening.

Ms. Renaud stated that there is a 40 day window to respond with a letter to the State for the Dredge and Fill after the DES application has been submitted. Mrs. Dionne said the parties are aware of that and she is surprised they did not appear.

Mr. Diener proposed they talk about it a bit, and send a letter to NHDES and let them know the applicant wasn't here.

Mr. Tilton expressed it is up to the applicant to be here to discuss it. He suggested they let the NHDES know the applicants weren't here, and request an extension.

Mr. Diener explained the impact on this site is not enough to trigger compensatory mitigation with DES. He also said there are a lot of storm water management features that are being proposed that are complex and not ones we usually see. He concluded that at this time, the applicants have recognized the need for local mitigation, but nothing has been officially presented to the Commission.

MOTION: Mr. Diener recommended that NHDES does not approve this application, unless we can delay NHDES review of this application until we can meet with the applicant at our May 24 meeting. We will ask the applicant to request such a delay. Without information from the applicant, we have no choice but to oppose the applicant's request, unless we hear

from them. Our concerns are that we are not convinced the storm management feature is appropriate for the location and/or is adequate to handle the storm water that may come off that location. Also, we have talked with the applicant about mitigation for the town wetland buffer impacts, however nothing has been agreed to as of this date.

SECONDED: Mr. Tilton

FAVOR: 4 in favor, 0 opposed.

MOTION PASSED

5. Hampton Sewer Line Permit

NHDES Standard Dredge and Fill

Owner: Town of Hampton – DPW

Emergency authorization to repair a sewer line breach.

This was not discussed as the Commission had no input from the Department of Public Works (DPW).

IV. New Business

1. 298 Exeter Rd – 50-year Conservation Easement

Ms. Renaud began by stating the Commission needs to come to an agreement of whether or not they would consider supporting the termination of the Conservation Easement for its *remaining* six years. Ms. Renaud read from the original Easement from the Randalls and the Chases. It states the above described premises shall be subject to a conservation easement to be conveyed to the Conservation Commission. This Conservation Easement is for the period of fifty (50) years from the date of this instrument at which time said Conservation Easement shall expire and be of no legal effect. This Conservation Easement is subject to a Warranty Deed from the Grantors herein to Wheelabrator-Frye, Inc, which grants to Wheelabrator-Frye the right to the immediate construction and maintenance of a road upon and across the subject premises. This Conservation Easement was dated October 7, 1972.

Ms. Renaud stated the Commission is being asked if we would be willing to support the effort to terminate that Easement and under what conditions.

Mr. Diener told the Commission that Senator Stiles was instrumental in helping us learn from The Attorney General’s office the process to amend or terminate an easement. He went on to state that if the Commission were to support such an effort, they would have to notify the Town Board of Selectmen. If the Board of Selectmen vote to support the effort, they would then authorize the Town Attorney to begin that action.

Mr. Tilton made the comment that negotiations between the applicant for the healthcare facility and the Commission had reached a point that both sides were comfortable with, and if we did not know about this Easement, everything was fine. He does not see the town losing anything by terminating the Easement for its remaining six years. He also noted there has been previous construction on that land.

Ms. Renaud said she would agree with Mr. Tilton to a point, but she is concerned if they support terminating the Easement, they would lose the trust of the citizens of Hampton. She

is concerned how we guarantee the people of Hampton that we are going to protect easements. If we set a precedent of amending or terminating existing easements, she fears we are going to lose trust and may have trouble securing future conservation easements. Ms. Renaud stated she is feeling very protective of the interests of the land owners in the town. However, she stated, if we are able to secure something with the same purpose to protect land to replace this Easement, same amount of land and in perpetuity, that we wouldn't be losing the trust of the town.

Mr. Tilton reaffirmed it is a 50 year Easement, and no one was aware of it for the past 44 years. He feels if we can receive something in perpetuity for the remaining six years on the Easement, that is a further benefit for the Town.

Ms. Shaw agrees with Ms. Renaud's concerns and they carry over to donated land as well. However, she also agrees with Mr. Tilton, as there is only six years left on the Easement.

Mr. Diener affirmed if this was an easement for perpetuity this wouldn't be a discussion. However, this Easement was for 50 years and is set to expire. He detailed if we are going to be willing to support the process of terminating this Easement then there needs to be a quid pro quo. We need to be able to tell the Town that we walked away from this Easement, but we gained something bigger for the Town. Mr. Diener indicated limited time conservation easements are extremely rare, and he has never seen that. If there is a way for the town to come out ahead he is willing to support it. Mr. Diener conveyed a conversation he had with Attorney Peter Saari and the applicant's intention is to donate the second six-acre parcel next to the Car Barn parcel. He said Mr. Saari is in the process of drafting the letter. Mr. Diener feels there is more than twice as much property in the suggested proposed parcel than what remains with the six-year easement. Mr. Diener cautioned the Commission they will have to be careful about how we handle this.

Mr. Tilton stated it is a very odd situation the Commission is in. He also suggested they attempt to get in touch with any descendants of the original Easement donor.

Senator Stiles attended the meeting and approached the Commission. Senator Stiles has been in touch with Terry Knowles of the Attorney General's Office in charge of Charitable Trusts. She suggested they have a meeting with the prospective land owners and see what they are proposing to do with the property. The Conservation Commission would then need to discuss whether or not to file an amendment to the Easement. If they vote yes, then it would be necessary for the Conservation Commission to file with the Courts. Senator Stiles stated the Town Attorney should be involved with drafting and filing a petition. She concluded this has to be initiated by the Conservation Commission as they are the holders of the Easement.

Mr. Tilton feels it is a good idea to pursue the amendment as it is good for the town and good for the Conservation Commission.

MOTION: Mr. Diener moved to support the process of terminating/amending the Easement if there is appropriate compensation, preferably in the form of land offered.

SECONDED: Mr. Tilton

FAVOR: 4 in favor, 0 abstained
PASSED

MOTION

2. Town Forest Clean-Up – Use of County Correction Facility Workforce – Mrs. Dionne conveyed that the Town Manager, Fred Welch, approached her suggesting that the county jail likes to help with community service projects. He inquired if there is work that can be done in the town forest with regards to clean up. Mrs. Dionne stated the Correction Facility workforce would prefer to come for a full day or a number of days if needed. She indicated the Commission would provide them with lunch, along with a scope of a plan of what needs to be done. An officer would be on-site at all times. One idea Mrs. Dionne had was Bittersweet cleanup. Mr. Tilton stated there are remnants of old vehicle parts and junk that could be cleaned out as well. There was further discussion amongst the Commission as it is a great resource to get some much needed work done. They discussed that for this time of year, perhaps cleaning up loose trash and junk near White's Lane would be favorable.
3. 2016 Ice Pond Mowing – Mr. Diener shared with the Commission he received a quote from the same gentleman that did the mowing last year. He quoted the Commission \$150 per cut. The cut is for the field from the property line to tree line and shore line once a month from May through August. He stated that last year the Commission had contracted him to cut through September, but didn't need it in September. Consensus is this is a good investment and we should proceed with the mowing again this year.
4. Donation of Map 59 Lot 1 – The property is located in the town Forest, Twelve Shares. There is a section that goes into north Hampton. Pricilla Walker, widow of former tax collector, Lewis Brown, is donating this parcel to the Conservation Commission in memory of her parents, Willard and Myrtha Emery, who owned Emery Florist. The Commission discussed a future way of noting properties and easements that are donated in honor of someone. They feel there should be a central place where people are able to look and see who donated properties and easements. Mrs. Dionne suggested they could look into creating a plaque.

MOTION: Mr. Diener moved to recommend that the Board of Selectmen accept the donation of this property.

SECONDED: Mr. Tilton

FAVOR: 4 in favor, 0 abstained

PASSED

MOTION

V. Old Business

1. Land between Route 101 and North Hampton – Update – Mr. Diener shared with the Commission that a gentleman has contacted him considering donating land.
2. Ice Pond Dam Update/Next Steps – No Update
3. Dune restoration at Plaiice Cove – There was no update on this as it is Ms. Swank's project and she was not in attendance that evening.
4. Town Property Management Agreement – No Update on this, Mrs. Dionne is continuing to review the list of properties.
5. 2016 Rain Barrel, Rain Garden and Soil Testing Programs – Mrs. Dionne confirmed all rain barrels are painted and the lobby in Town Hall for viewing. She confirmed the Rain

Garden Club plant sale is scheduled for May 21st. Mrs. Dionne will send out reminders for the newspaper. She also confirmed that applications are due tomorrow for a rain garden. Mrs. Dionne stated the soil testing program was talked about at the rain garden workshop. She expressed hope that some homeowners participate in the soil testing at the plant sale.

6. 2017 Warrant Articles – brain storming – No discussion.
7. 2017 Budget – No discussion.

VI. Conservation Coordinator and Chair update

Mrs. Dionne informed the Commission she will be out of the office next week as she will be attending a training workshop for the Community Rating System.

Mrs. Dionne shared with the Commission that tomorrow is the deadline for the applications for the summer intern position. She said there are four applicants thus far and will begin interviewing when she returns to the office after next week.

Ms. Renaud announced the need for the Commission to have more alternates. She suggested the Commission consider reaching out to people that have critical thinking skills, good negotiating skills and care for the Town of Hampton.

Mr. Diener suggested anytime there is a beach cleanup or an event such as the plant sale, to make mention of the need for the alternates. Mrs. Renaud suggested if we have a half dozen alternates that would only have to attend two or three meetings a year it would be ideal. She suggested when asking if people are interested to let them know the meetings are not televised. She stated the Commission acts as an advisor to the Planning Board, and they come to agreements with applicants prior to them going before the Planning Board.

Ms. Renaud reported she is in the process of transitioning financial documents and reports to Ms. Shaw. She also provided the Commission with the First Quarter Report.

VII. Adjourn

MOTION: Mr. Diener made the motion to adjourn at 9:50 p.m.

SECONDED: Ms. Shaw

FAVOR: 4 in favor, 0 abstained

MOTION PASSED

The next meeting of the Conservation Commission will be held on May 24, 2016.

Respectfully Submitted,
Cheryl Hildreth