

**Hampton Conservation Commission
Draft Minutes
July 26, 2016**

Present: Barbara Renaud, Chairman
Pat Swank
Peter Tilton, Jr.
Diane Shaw

Also Present: Rayann Dionne – Conservation Coordinator
Francis McMahon – Planning Board Representative

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. Swank to approve the June 28, 2016 Minutes with approved edits.

SECONDED: Mr. Tilton

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

MOTION PASSED

III) Appointments

1. 24 Island Path – Review deck installation and proposed stairway within 50' buffer. Sandra Glansberg of 24 Island Path appeared before the Commission.

Ms. Dionne reviewed that the Commission had visited the neighbor residing at 26 Island Path for a permit for a fence installation earlier this year. She stated the boundary fence has been installed between the two properties. Ms. Dionne said that there was a bit of confusion as to where the property line existed. Each property owner had their property surveyed which resulted in two different property lines. Since then, the property owners have come to an agreement as to where the property line falls. Ms. Dionne refers to a deck that was constructed on the back of 24 Island Path along with a staircase without a wetlands permit. Now that the land survey has been completed, Ms. Dionne asked Ms. Glansberg to meet with The Commission before she moves forward with the town wetlands permit and the possible variance.

Ms. Glansberg began by stating she would like to have the deck remain that is installed over a cement slab, and she would also like to install stairs toward the street so that she can access the street from the deck. She stated there is a 5/8" gap between the trex decking to allow for rain flow.

Ms. Dionne provided aerials of the property dated 2013 from google earth depicting where the cement pad was, however it is a grainy image and difficult to confirm exactly. She stated they took pictures of the site this weekend, under the deck and noted it is very shallow. Ms. Dionne said the land survey identified the wetland from the back of the fence and measured 50'. She noted the deck and the existing stairs along with the proposed new stairs fall within the 50' buffer.

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The Commission:

Ms. Swank noted there is so little permeable surface in that area. She felt it would have been better to remove the cement slab under the deck, however she understands that is a huge undertaking. She noted the gutters should be redirected for rain overflow.

Ms. Shaw also expressed concern for the permeable issue. Ms. Shaw expressed disappointment that the deck was built without permission from the Conservation Commission, however she does understand the need for a stairway at this point.

Mr. McMahon questioned whether Ms. Glansberg was leaving the stairs in the back as well and confirmed that there will be two sets of stairs. He inquired if the homeowner could remove some of the deck boards to fracture the concrete slab.

Ms. Glansberg responded that she financially is unable to remove the concrete slab. She noted it was there when she purchased the house, and she doesn't know if she can do that. She said if the Commission wants the deck to come down, she still will not financially be able to remove the concrete.

Mr. McMahon corrected her, stating that he is only requesting to fracture the concrete slab to allow water to penetrate. He is not requesting to have it removed.

Ms. Renaud inquired if Ms. Glansberg is filing for a variance. She confirmed she will be.

Ms. Dionne remarked that she needs to apply for a variance due to the setbacks.

Mr. Tilton wondered how much actual harm the deck and stairway are doing. He remarked fracturing the slab could let water through, however, he noted it is such a high water table.

Ms. Renaud suggested for variance purposes, if Ms. Glansberg is required to reduce the size of the deck some of the concrete should be fractured. However, she understands the need for an egress.

There is a lengthy discussion of several other possibilities or even having just one staircase for access. Ms. Glansberg responded that she would need to open up a wall for a door access as egress, and she financially cannot afford that. Ms. Renaud stated she would like to see an option to offset the proposed staircase. Perhaps removing something else to compensate that.

Ms. Dionne commented if the deck meets the size of the concrete, she is comfortable with that. As far as the stairs, she understands the need for egress for safety purposes.

Ms. Renaud recommended if we are okay with the staircase being installed in the buffer in the front, then we should request the decking be reduced in size in the back to allow for better rain flow.

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IV) Applications

1. 299 Exeter Rd

Town Wetlands Permit

Owner: AG Hampton Hospitality, LLC

Agent: Opechee Construction Corp.

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

Barry Stowe of Opechee Construction Corporation appeared before the Commission. He discussed the proposed 4 story, 104-room hotel with frontage on Rte. 27 to be built by his clients. Mr. Stowe stated he is there to obtain approval to fill in two low-valued isolated wetlands, each approximately 4,000 sq. ft. in size for a total impact of 8,049 sq. ft. Additionally he is requesting approval of the impact of the 50' buffer associated with those wetlands. Area of the buffer impact would be 46,637 sq. ft. The project proposes to offer the wetland and buffer impacts by proposing a land donation in conjunction with the landowner across the street for a prospective assisted living facility. The donation is parcel known as Map 66 Lot 3 and 6.6 acres in size. Four acres in that parcel is contributed by this proposed project. The project also includes state improved storm water runoffs. Mr. Stowe confirmed they have received comments from NHDES Alteration of Terrain and NHDOT. They have addressed the NHDOT concerns and submitted to their department for a second review. They anticipate receiving AOT approval before the next meeting with Planning Board.

The Commission:

Ms. Renaud would like a condition attached to a motion made that this is subject to a successful land donation that is serving as the off-site land donation for mitigation.

Public Comment:

No Public Comment.

MOTION: Mr. Tilton moved to recommend the Town Wetlands Permit Application to the Planning Board for the 299 Exeter Road hospitality project with the stipulation suggested by the Chairman, that it be subject to a successful land donation that is serving as the off-site land donation for mitigation.

SECONDED: Ms. Swank

FAVOR: 4 in favor, 0 opposed

MOTION PASSED

2. 230 Exeter Rd

Town Wetlands Permit

Owner: Two Hundred Thirty Exeter Rd, LLC – Peter Ross

Agent: Jones and Beach

Relocation of an existing drain line to prevent conflict with the location of a proposed single family dwelling.

Mr. Peter Ross appeared before the Commission as owner of 230 Exeter Rd. He is requesting a wetlands permit because he is within the 50' buffer. There is an existing storm water drain that needs to be moved over and install a new drain pipe for the proposed single family residence.

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Ms. Dionne recapped the proposed impacts are temporary to move to the storm water drain and improve the piping.

Public Comment:

No Comment

MOTION: Ms. Shaw moved to recommend to the Planning Board the relocation of an existing drain at 230 Exeter Rd with the appropriate notes for the construction.

SECONDED: Mr. Tilton

FAVOR: 4 in favor, 0 opposed

MOTION PASSED

3. 11 Merrill Industrial Dr.

Town Wetlands Permit

Owner: Foss Manufacturing

Installation of utility poles, braces and wires from the end of Merrill Industrial Drive to the east end of Foss manufacturing site. This is to provide supplemental and backup power to operate the facility. Eighteen new utility poles proposed, nine of which will be within the 50' buffer.

Alan Plue of Foss Manufacturing appeared before the Commission to discuss the proposed addition of utility poles at 11 Merrill Industrial drive along the property to the East end of the property.

The Commission:

Ms. Dionne explained that the poles are along the driveways and roadways. There may be some tree trimming that needs to take place, but they have done a good job to plan the pole installations with the least amount of impacts.

Public Comment:

No public comment.

MOTION: Ms. Swank moved to recommend the approval of the installation of utility poles, braces and wires at 11 Merrill Industrial Drive with stipulations.

FAVOR: 4 in favor, 0 opposed

MOTION PASSED

V. Old Business

1. Dune restoration at Plaice Cove – Ms. Swank reported that no work will be taking place until the fall due to the draught.

2. Ice Pond Dam Status – Ms. Dionne reported she had a meeting with Chris Jacobs from Public Works to obtain an understanding of what they can do and what they cannot do in terms of The Public Works Department. Ms. Dionne stated after the next meeting with Mr. Jacobs, The Commission should decide how to move forward, or if they need a warrant article for outsourcing.

VI. New Business

(Out of Order)

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1. Financial Report – Ms. Shaw submitted a report from the Town Treasurer as of June 30, 2016. The report indicated The Commission has \$139,546 credit, and a breakdown of Conservation records has indicating there is \$103,000 in the Conservation Fund, \$164 in Town Forest, \$5,700 in Salt Marsh and \$30,000 in the General Operating Fund, and the grand total agreeing with the Treasurer’s Report. She has also indicated incoming and expenses in June totaling \$812 credit to the general operating account and payments in April of \$16.49 to record a deed and that was deducted from the Conservation Fund. Also in April she noted they had signs for the town forests deducting \$194.

Ms. Renaud made the suggestion to establish a green infrastructure account with The Commission and take the \$812 proceeds from the rain barrels, and let the Town Treasurer know that we would like to establish a separate account for those funds.

2. Review list of usual stipulations – Ms. Dionne passed out the list of proposed stipulations to the Commission to review and discuss at the next meeting.

(Out of Order)

3. Harbor Rd – Town Attorney, Mr. Gearreald, appeared before the Commission. The town received a deed from the Federal Government back in the 1930’s for two under water lots next to the Pier that leads from the yacht club down in Hampton Harbor, as well as an old right of way shown on a 1910 Plan to allow access to the lots. The idea was that these two under water lots were going to be pocket park. They are not usable and the right of way runs through some buildings that are on top of it. One is Ocean Wok, another being Duston Ave. condominiums and the third being newer condominiums that are built next to Harbor Rd. The issue came to head when the Ocean Wok wanted to install a deck on the premises on top of this right of way. Given the conveyances that were on the deed from the Federal Government it could not be allowed. After some years negotiating with the State, the Town was allowed to abandon the Right of Way. Mr. Gearreald reported the Commission has a deed to an Easement over Harbor Rd. that is a bit to the south of that so that we could get close to the same point of the old right of way. He went on to explain The Commission is giving up the old right of way in return for a release of liability from Ocean Wok and also from the Duston Ave. condominiums. He noted they have accomplished two out of the three releases of the old right of way. Mr. Gearreald stated the remaining and more difficult one is the Hampton Harbor condominiums. The Right of Way runs through the corner of one of their buildings, Unit #16. The underwater lots run next to the Pier jetting out. Mr. Gearreald reviewed this approval was a massive one to go through for the Planning Board, and when it was approved it had over 31 conditions. In the beginning they didn’t depict the Right of Way. He noted after a couple of more years with the Planning Board, what resulted was an 8’ boardwalk was built off the curbing at Harbor Rd that allows access down to the beach. He also stated that separately, what is called “the Pool”, an observation deck was built from another Planning Board approval. Mr. Gearreald proposed If The Commission is going to release this shaded Right of Way, we want to at least have some way to access the underwater lots, how little valuable they may be. So we would need some link from Harbor Rd. to have access to those lots. Mr. Gearreald suggested one way to do that would be the little boardwalk there, and another way is to also somehow secure for the public the little observation

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deck. He informed the Commission that earlier in the day the Chairman, Coordinator and himself went out to take a look at it.

Ms. Dionne displayed an imagine depicting the right of way, as well as the boardwalk. She noted one idea is to have a right of way or an easement that covers maybe a foot off of the boardwalk to have connectivity and access. She noted in some of the previous discussions with the Board of Selectmen there was a discussion of also creating a parking space. Ms. Dionne feels it is too narrow and not enough room. She pointed out possible parking spots that could be given to the Commission, however at this time, they are not certain who actually owns those parking spaces.

Mr. Gearreald feels it may be a benefit for the condominium association to release one of the spaces. He feels it may be helpful to have amended site plans to show the new easement and show the observation deck.

Mr. McMahon cautioned the parking spaces may be associated with the condominiums and would be noted in the condominium documents.

Ms. Dionne summed up that The Commission would support the release of the existing right of way in return for securing an access easement that would extend approximately a foot or so off the boardwalk to the viewing platform as well as securing one parking space for resident only parking. The areas that would be defined for the public access would be the boardwalk, as well as the observation deck. These two items are to be maintained by the grantor.

MOTION: Mr. Tilton moved to have the Town Attorney move forward with securing the access easement as well as securing a parking space for resident only parking.

SECONDED: Ms. Shaw

FAVOR: 4 in favor, 0 opposed

MOTION PASSED

4. Review draft deeds for Map 66 Lots 1 & 3 and Conservation Easement on Map 53 Lot 1 – Mr. Gearreald updated a proposal that was made back in June for mitigation to the Commission in return for the Commission supporting the release of the 6 remaining years of the conservation easement on the proposed Cornerstone healthcare facility site. Mr. Gearreald summarized The Commission reached an agreement in principal regarding Parcel Map 66 Lot 3 which is a 6 acre or so parcel next to the Car Barn Pond Lot that the Commission was already receiving as part of the approval by the Planning Board, and then for good measure the applicant proposed gifting the Commission two acres of another six acre lot which is Map 51 Lot 3. Mr. Gearreald concluded that The Commission received some proposed deeds from attorney Lamontagne, and The Commission delegated the task of dealing with the directives to the Chairman, the Vice Chairman and the Coordinator. On July 15th a set of reviewed documents were passed along to Attorney Lamontagne’s office. Mr. Gearreald summarized there are still some details that need to be discussed.

Ms. Renaud commented with respect to the Deeds for Map 66 Lots 1 & 3, The Commission is still waiting on surveys of the properties. Mr. Gearreald responded he received further surveys earlier in the day, and he feels that this can be worked out. He stated on Map 66 Lot 1, there a

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couple of items The Commission may want to be aware of and decide whether or not it makes much difference to The Commission.

Mr. Gearreald introduced Attorney Lamontagne with Burstein Shur, representative of the land owners that are conveying properties Map 66 Lots 1 & 3 to the Commission. Attorney Lamontagne summarized Map 66 Lot 3 is compensation for the proposed hotel wetland mitigation. He stated after the discovery of the current conservation easement with 6 years remaining for the Cornerstone project, his clients agreed to convey to the Town Map 66 Lot 1. Combined those two lots are going to be subject to a Conservation Easement and Restriction. He commented that combined these two lots will have conservation restrictions, and they are working with the Attorney General to iron out the restrictions on those lots. Mr. Lamontagne summarized the town will release a 2.7 acre Conservation Easement with 6 years remaining in exchange for 12 acres that are subject to Conservation easements. Attorney Lamontagne noted The Commission will control the property subject to the Conservation Easement. In addition to those properties, the town required further mitigation easements to fulfill the ratios. Mr. Lamontagne reviewed his clients offered an additional easement on a portion of a larger parcel they own, which is Map 51 Lot 3. He said they are simply encumbering a portion of a larger parcel to a Conservation Easement. This portion will include 1.3 acres of upland and the remaining 2 acres of easement are wetlands. Mr. Lamontagne stated his client's intend to donate this in perpetuity with restriction for development. However, he noted an issue that has arisen over the last few days is that his clients did not intend to provide public access to the 1.3 acres and larger part of the property. They agreed to provide access to the Old River part of the parcel for protection only. The issue of public access has become a significant one. It is important to his client with liability exposure or use of the property that they did not consider or intend. Mr. Lamontagne affirmed it would be a deal a breaker at this point. He commented if this is a stumble block for the Commission with issue of public access restriction, then Map 66 Lot 1 & Map 66 Lot 3 would not be conveyed and the Cornerstone and Hotel projects would not move forward. He stated his clients would not pursue the development of these properties. Attorney Lamontagne noted the construction has been delayed, the developer is losing time in terms of construction. He commented the Town has moved very expeditiously and has been extremely cooperative. However, the one issue and concern is the public access. His suggested The Commission accept the Conservation Easement with no public access to allow this project to go forward. Attorney Lamontagne questioned if his clients could still maintain the density rights on Map 51 Lot 3. He noted his client will allow access for the Conservation Commission, as well as town employees to maintain invasive species. He remarked it all comes down to access to the smaller lot. Attorney Lamontagne respectfully urged the Commission to accept the Easement without public access. He affirmed the current six-year easement has no right of public access. Mr. Lamontagne concluded this transaction will allow 12 acres for public access, they just would like restriction to public access on the 1.3 acres on Map 51 Lot 3.

The Commission:

Mr. Tilton commented that he can work with this restriction as the Town is still receiving public access to 12 acres the Town currently doesn't have.

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Mr. Gearreald suggested to Attorney Lamontagne that if the landowner is concerned with public access or liability, why not deed the property to the Town. Attorney Lamontagne responded he does not have the authority to proceed with that, and he also noted it would be much more difficult in terms of having to subdivide the property before being able to deed to the Town.

Ms. Swank noted that Herd Farm does not have public access. Attorney Gearreald corrected and said there are walking trails there, especially along the River.

Ms. Renaud commented with regards to public access, it is 2 acres on the west side and does not seem suitable for trails or hunting access, and there is no public parking. She does not have an issue with the restriction of public access. However, on the density issue, she feels strongly about that. Ms. Renaud commented the job of the Commission is to protect the natural resources of the Town and that whole property contains an important water shed for Hampton, and with the anticipated 20% increase in precipitation over the next few years, we will have more water to manage. She suggested if The Commission were to let go on the density requirement, it would it open to future development and The Commission could lose protection of the watershed.

Mr. Gearreald inquired if the clients would be okay without pursuing the density. Attorney Lamontagne will speak with his client's about that.

Ms. Renaud commented The Old River system waters are protected by the Shore Line Protection Act which is much wider than the Town's jurisdiction, and it might very well serve its own containment on the density issue, and that may be enough.

Ms. Dionne feels if there is an easement on the property and there is to be no development on it, then density should not be an issue. With regards to the public access, she noted the Town has very few easements that restrict public access, and the reasons are due to the fact that the public would have to access private property to reach the easement. In this case, she is concerned with accepting no public access for perpetuity. Ms. Dionne would like for there to be a chance in the future, if the grantor of the property changes, to allow for public access.

There is a discussion of the language of the easement and if it will state there is no public access to it. Attorney Lamontagne said the landowners can post signs stating no public access. He affirmed to The Commission at this time, his clients will not waiver, they do not want public access on the property.

Attorney Gearreald asked the Commission if they would like to indicate that they will not insist on public access to the parcel if the other two conditions were met. One condition being that this not be counted as density for future development, and also that in perpetuity the Commission and its agents have the ability to go on the Old River to maintain invasive species. The Commission agrees they will agree to no public access if those two conditions can be met.

Ms. Dionne responded she would like to see a clause that any of the conditions of the easement could be revisited in the future by both parties. Mr. Lamontagne confirms it could be worded like that, but they have to be careful as it will be in Charitable Trust. Ms. Dionne asked if there

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could be writing that the public access restriction can be changed at the landowner's discretion in the future. Mr. Lamontagne said he will discuss that with his clients.

MOTION: Mr. Tilton moved that the Commission proceed to accept the easement with the restriction of public access if the following two conditions are met: One condition being that this not be counted as density for future development, and the other condition is that in perpetuity the Commission and its agents have the ability to access the Old River to maintain invasive species. This is with the understanding that should Mr. Lamontagne's clients not agree with this, the Chairman, Vice Chairman and the Coordinator, known as the Sub Committee, has approval of the final language to be forwarded to the Charitable Trust. If the substance and intent on these three items should change, then this would need to be readdressed with the full Commission.

SECONDED: Ms. Swank

FAVOR: 4 in favor, 0 opposed

MOTION PASSED

5. Request for Title Insurance for Map 66 Lots 1 & 3 and Easement on Map 53 Lot 1 - Mr. Gearreald pointed out to The Commission that boundary surveys have been done on all three parcels so they can easily be recognized. He mentioned a couple of items which may cause concern. On Map 66 Lot 1, there is a little area that services a portion of Hampton Oak Realty Property. Mr. Gearreald provided a map depicting a part of Hampton Oak Realty parking lot encroaching on the property. He noted there are two areas of encroachment. Corey Colwell prepared this Plan. It is a very small area, but this could be an issue where they are taking possession of it. Mr. Gearreald said the other concern has to do with an area of access to the Chinburg parcel. Ms. Dionne read Note 11 on a Plan regarding a portion of the gravel driveway: "A portion of the gravel driveway largely located on Map 51 Lot A3 encroaches onto this property. A proposed access and utility easement on the gravel driveway shown on Plan Reference 1. The deed attempting to convey the easement was from an entity that did not have title to the encumbered property. Consultation with an attorney is recommended to resolve this issue."

Mr. Gearreald stated it is a very small area. He inquired if The Commission is bothered by it. Ms. Swank inquired if there could be any legal problems with this. Mr. Gearreald suggested they contact the owner of the Car Barn Lot to inquire if they are concerned with this. He explained that with title insurance, an attorney will provide a title search, and the Commission would purchase title insurance. Mr. Gearreald has received a quote for title insurance for both lots totaling \$1,000, and noted the Conservation Fund would provide that cost under maintenance. He noted title insurance is meant for things such as this gravel area. He suggested a possible opportunity to obtain title insurance for Map 53 Lot 1, however the appraisal has not come through yet, and the value of the gift would be needed.

Mr. Tilton does not feel it is needed for Map 53 Lot 1, however should be purchased for Map 66 Lot 1 and Map 66 Lot 3.

MOTION: Ms. Renaud moved that The Commission purchase title insurance for the properties located at Map 66 Lot 1 and Map 66 Lot 3 prior to being conveyed to the Town.

SECONDED: Ms. Shaw

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FAVOR: 4 in favor, 0 opposed

MOTION PASSED

MOTION: Mr. Tilton moved to allow the Sub-Committee of three, the Chairman, Vice Chairman and the Coordinator, to allow the final language of the deeds for Map 66 Lots 1 & 3.

SECONDED: Ms. Swank

VOTE: 4 in favor, 0 opposed

MOTION PASSED

VII. Conservation Coordinator and Chair Update

Ms. Dionne discussed potential warrant articles for the upcoming year, and suggested they be conservative with proposed warrant articles. One thing they need to consider is the contribution to the Land Fund. Also, Ms. Dionne suggested a decision should be made whether they move forward with the Ice Pond Dam warrant article. Ms. Dionne's other concern that needs to be addressed is the regarding definition for impervious surface. She mentioned there is no guidance on how to calculate impervious coverage. She commented without guidance on how to calculate this, the entire lot can be included for this coverage. Ms. Dionne feels wetlands shouldn't be included in the calculations, however including the buffer is a good idea. Ms. Dionne said she will work on something for this for the next meeting.

VII. Adjourn

MOTION: Mr. Tilton made the motion to adjourn at 9:20 p.m.

SECONDED: NOT CLEAR WHO SECONDED FROM THE AUDIO

FAVOR: 4 in favor, 0 opposed

MOTION PASSED

The next Conservation Commission Meeting is scheduled for 23, 2016.

Respectfully Submitted,
Cheryl Hildreth, Recorder