

HAMPTON PLANNING BOARD

MINUTES

October 17, 2012 – 7:00 p.m.

PRESENT: Fran McMahon, Chair
Mark Olson, Vice Chair
Tracy Emerick
Rick Griffin, Selectman Member
Keith Lessard
Ann Carnaby, Alternate
Brendan McNamara, Clerk
Jamie Steffen, Town Planner

ABSENT: Mark Loopley

I. CALL TO ORDER

Chairman McMahon began the meeting at 7:00 p.m. by introducing the Board members and leading the Pledge of Allegiance to the flag.

II. ATTENDING TO BE HEARD

III. CONTINUED PUBLIC HEARINGS

12-030 52 Nudd Avenue (Continued from 6/6/2012 & 7/18/2012 & 9/5/12)

Map: 274, Lot: 137

Applicant: Richard Atwood

Owner of Record: Richlor Realty Trust

Special Permit: Installation of new drainage system into existing driveway to create effective stormwater management system & general site improvements.

Appeal of disapproval of driveway permit application.

Attorney Peter Saari of Casassa & Ryan appeared along with Alex Ross of Ross Engineering. Attorney Saari discussed the flooding situation that he stated is not the Atwood's doing. He noted that the Atwood's have owned the property since 1974. That section of the road flooded often. The Atwood's contractor went to the Town and was told they did not need a driveway permit. No one at the time asked about the wetlands impact. The Atwoods went ahead and paved. He discussed the small section of the driveway which is approximately 35 square feet. He stated that the accusations are that this is causing horrible damage to the Nudd Avenue drainage situation. The Atwood's have tried to fix it anyway. The Conservation Commission did not like the plan, but had no alternatives to offer. The DPW approved the first plan and the second plan. The Conservation Commission did not like the second plan, but had no alternative. He asked how it is expected to be solved. He asked if taking out 35 square feet of pavement would fix it. In his opinion, taking out the

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35 square feet will not fix the problem. The applicant needs guidance from someone from the Town stating what needs to be done.

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Mr. Olson asked about the pavement in front of the building. Attorney Saari does not think that's the Atwood's situation. Mr. Olson discussed pictures of the work that has been done and wetlands impact of the 35 square feet. He expressed his disfavor with the way the Atwood's did the paving. Mr. Olson stated he thinks this involves more than 35 square feet and is a serious problem. Mr. Emerick stated he would like more detail. Mr. McMahan discussed the driveway permit situation and noted that he went out earlier in the day and observed one car parked out into what looked like the public way.

Mr. Ross discussed the prior driveway. He explained that the same grades have been kept and the footprint has only been expanded by a small amount. The driveway was widened by a small amount. The ponding of water at the driveways was discussed. He explained that there was a 6" drop prior to the applicant resurfacing the driveway. He noted that Exhibit 2 shows what exists today. Mr. Ross discussed the NHDES attachment/email. He stated that the first two plan sets were approved by DPW that but afternoon DPW removed their support. Mr. Ross explained that small areas of pavement could be removed which would bring the driveway back to its original state, but the driveway would still be higher.

Mr. McNamara asked where the catch basin was going to be placed. It was stated that DPW does not support a catch basin. Mr. McNamara asked who would maintain it and it was stated there will be no catch basin.

Mr. Ross discussed DPW's most recent letter. Mr. Ross indicated that he will do what is requested by the Planning Board. Mr. Olson asked where the nearest catch basin is. Lowest and highest grades were discussed. Mr. Ross indicated that he would like DPW to address their issues.

PUBLIC

Mr. Henry Boyd of Millennium Engineering appeared. He stated that they were the surveyors who worked for the abutter at 50 Nudd Ave., Mr. Barrett. He explained that the road is inundated by stormwater. He stated that the grades Mr. Ross discussed are not, in his opinion, accurate. He stated that the Barretts went through the proper channels in getting their new driveway approved. He discussed the conflicting elevations. Mr. Barrett has asked Mr. Boyd to re-measure his property. He explained that water flows from the east across Mr. Barrett's driveway and he believes this is a Town drainage problem. He stated that the Atwood's have raised the grade of the driveway. He indicated that he isn't sure about the square footage of the driveway, but stated that the widening the driveway to the east spills over to Mr. Barrett's property. He explained in more detail the grade changes – they have changed vertically. He explained that the green areas (noted on hand-out) are pre-existing grades. There is a 6.9' grade at the house in question. Then it's 7.1 and then 6.9. The grade

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of the street didn't change, but he did verify grades recently. The grades in orange are what exist today. He asked Mr. Barrett to show the grades of the pavement at the bottom step.

Mr. Boyd discussed a remedy involving the catch basin at the end of the street. He discussed altering features - removing bricks that he thinks will fix the drainage flow. Mr. Boyd also discussed restoring the "parabolic" swale to help with the drainage.

Debra Barrett of 50 Nudd Avenue appeared. She discussed following the rules and how she and her husband spent a lot of money for landscaping and rain gardens to do things right. She stated that in early June of 2011 she photographed what her neighbor was doing. She further stated that he dug up the front yard with no permit and it was all done in one day. Since the neighbor did this they have had flooding problems. They've had to replace their lawn three times. Four other families to the east are also involved. She requested that he dig up the entire pavement he put in illegally and do the process appropriately. She asked why Town would have to fix the neighbor's problem at the cost of the taxpayers.

Mr. Jay Diener of the Conservation Commission appeared. He discussed that the 35 square feet is not the problem. The Conservation Commission became involved because of the existing catch basin issue and the repaving of the driveway causing flooding issues for the abutters. He explained that they looked at the numbers, elevations and pictures. They looked at the change to the front steps - the rise is a couple of inches from the ground which shows more paving than was originally there. The new catch basin he feels may not solve the problem. He asked why the Town should take responsibility for something the Town did not create. It looks like more pavement was put down. Other abutters are affected by this paving as well.

Walter Janulewicz of 46 Nudd Avenue appeared. He's lived there for 10-12 years. He noted that water does not go uphill. He also stated it affects two other properties beyond his property.

Richard Atwood appeared for his father who is elderly. Mrs. Barrett stated there was no malice in how the work was done. His father came to DPW and was told he did not need a permit. He just wanted to fix the driveway. The land next door to them has always been full of water. Letters have been provided to the Town discussing the flooding issue. The water is now trapped in front of the property. When the driveway was done Mr. Barrett asked that the swale be put back to help prevent water from going into his yard. They've spent thousands of dollars trying to resolve the issue. He then addressed the front step. He stated that it has always been a short step.

Mr. Paul Barrett, 50 Nudd Avenue appeared. He discussed the grade changes and reshaping of the swale. He stated that when Mr. Atwood was doing the work, he showed him his plans and he said he'd take care of it and never did. He wishes he called the Town right away about the Atwood's paving without a permit. The Barretts have to sandbag their driveway now.

Mr. Ross stated that he agrees that the Town shouldn't have to deal with the problem that Mr. Atwood created but Mr. Atwood did not create a problem. He explained the relationships between the plans those that he did and those that Mr. Boyd prepared dated June 22, 2009. He discussed the new DPW letter regarding connecting the drain and Mr. Jacobs change in his opinion based upon the influence of the tides. He explained that in 2009 water

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from Mr. Barrett's property did not flow to the catch basin. If a swale is created, it will flow to the catch basin and it will add drainage to an existing system.

Mr. Chris Jacobs, of the Hampton DPW, appeared. He agrees with Mr. Boyd's assessment of the situation. The pavement goes upward from Nudd Ave. to almost the top of the Atwood's bottom step. In November of last year, the DPW met with the Barrett's and the Atwood's and five or six other residents to discuss the flooding problem on the road. They asked the Atwood's to put in a swale with a gutter line. A gutter line needs to be maintained. The Town tried to get Mr. Atwood to cut back the driveway. Mr. Atwood did not maintain a gutter line 4' off of the edge of the pavement. That's why he was denied the driveway permit. He was then again denied because he did the work without the permit. He explained that when edges of the driveway are cut and grades are adjusted that triggers the need for a permit. He feels that cutting the pavement and repaving will solve the problem.

Mr. McMahan asked who is responsible for lowering the catch basin. Mr. Jacobs answered it is DPW's responsibility. This would get done next year due to it being so late in the year.

Mr. Lessard asked about the driveway permit. He noted that the way it is written even if it is just an overlay versus modifications/reconstruction or even type of material of driveway a permit is required. If one completely removes existing pavement, a permit is needed.

Mr. Jacobs stated that an after-the-fact driveway permit was submitted on November 29, 2011. They were waiting for a plan that everyone could agree upon.

Mr. Ross asked for a solution. He stated that if the swale is agreed solution that is what they will do. He asked if the swale can be in the Town right-of-way. Mr. Jacobs stated yes. He needs the applicant to get the rim down and the swale to a certain pitch and then the Town will take it from there. Mr. Jacobs knows it will be a puddle, but just not a "duck pond".

Mr. McMahan stated that if the Board upholds the denial, then the applicant could re-apply and go with the above solution. The Board could also deny the special permit with the stipulation that they remove 35 square feet or we can approve it with stipulations. Mr. Lessard asked if it would be better to leave 35 square feet of impact. There are wetlands plants on the drawings for mitigation. Mr. McNamara discussed stipulation #4 in the Conservation Commission's letter about the temporary shed and also discussed the plantings. Mr. Ross proposes the plantings on the plan and supports what is shown on the plan. He said it would be fine with the applicant to have the sheds removed.

MOTION by Mr. McNamara to deny the appeal of the disapproval of the driveway permit application and allow the applicant to re-apply for the driveway permit. The applicant will work closely with the DPW in designing and constructing a satisfactory driveway.

SECOND by Mr. Emerick.

VOTE: 6 – 0 - 0

MOTION PASSED.

Mr. Olson noted that he is still not happy with the proposed pitch of the drainage solution and is not ready to agree to that issue.

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MOTION by Mr. Emerick to approve the special permit with the stipulations contained in the Conservation Commission's letter dated October 3, 2012.

SECOND by Mr. Griffin.

VOTE: 5 – 1 (Olson) – 1 (McNamara)

MOTION PASSED.

12-036 372 Exeter Road (Continued from 8/1/12 and 9/19/12)

Map: 51, Lot: 8

Applicant: John D. Lovetere

Owner of Record: Same

Subdivision & Special Permit Applications: Three-Lot Subdivision

Attorney Peter Saari appeared with Joe Coronati of Jones & Beach Engineering. They stated that the issues have been addressed and the plans revised per the latest requests.

Mr. Coronati stated that on August 1st the Planning Board had wanted more information from PSNH use agreement. They have received a letter from PSNH which he has provided to the Board. The new location of the driveway was discussed. The Fire Department had concerns as did PSNH. The applicant has talked with their abutter Paul Montrone and has come up with an agreement for the portion of the driveway to go onto his property. Easements will be exchanged. Everything else remains the same.

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Mr. Olson asked about Lot 8-3. He asked about the leach field underneath the roadway. Mr. Coronati said it's a reserve area only. The septic system will not be that large. Test pits can be re-dug in the future.

MOTION by Mr. Emerick to approve the special permit with the stipulations contained in the Conservation Commission's letter dated October 3, 2012.

SECOND by Mr. Griffin.

VOTE: 7 – 0 – 0

MOTION PASSED.

MOTION by Mr. Emerick to approve the three-lot subdivision with the conditions contained in the Town Planner's memorandum dated October 12, 2012.

SECOND by Mr. Olson.

VOTE: 7 – 0 – 0

MOTION PASSED.

IV. NEW PUBLIC HEARINGS

12-047 437 Winnacunnet Road

Map 221, Lot 11

Applicant: Richard Roy

Owner of Record: 437 Winnacunnet Realty LLC, c/o Richard Roy

Special Permit: Installation of grassed swale in order to improve storm water drainage at the site.

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Mr. Alex Ross appeared. He stated that this is for an existing developed site. He explained that in 2007 the development came before the Town to build the condominiums. It was approved and built, but the parking lot was not built as approved. Ambit Engineering did the review and construction inspections for the project but didn't catch that a small portion of the parking lot is inside the 50' wetlands buffer. That was not being proposed in the plans in 2007. The grades of the parking lot and ponding of the stormwater was discussed. The low spot in the parking lot was discussed and Mr. Ross stated that he wants it to go back to the original design. They are proposing to remove the pavement within the 50' buffer, and install rip rap at the lower elevation and have the runoff travel to a small swale. He also discussed another swale to be installed to collect additional water. He noted that they have had two site walks with the Conservation Commission and received good recommendations from them. The Conservation Commission would like new signage to make sure that the snow storage does not get placed in the buffer. Their letter is dated October 3, 2012.

Mr. Dionne Conservation Coordinator appeared. She asked if the Planning Board accepts the as-built plan. The design may change and the Conservation Commission may want to see it again. The drainage easement area is substantial in size. Mr. Steffen stated that there are to be no structures placed in the easement – he read what is written in the deed. It was noted that the drainage easement language was not accepted by the Town or the Board of Selectmen, but it is shown on the approved plan. It is a drainage feature. This issue also impacted the Nathaniel Court development. Mr. Steffen stated that the original condition of approval dated 8/25/2005 stated proper drainage and easements needed be provided. Mr. McNamara stated that we should deal with the “as built” plan.

Mr. Olson asked about the as-built plan. There is no as-built. Ms. Dionne stated that the parking area is outside of the 50' wetlands buffer. The dumpster is outside the 50' wetlands buffer. New problems can arise. Ms. Dionne stated that the plan was reviewed at the meeting and the Board thought it would be built accurately at that time. She doesn't know if the way it is now is better than what was approved by the Planning Board.

Mr. McMahon stated we may need a revised site plan. Mr. Ross stated that the plan reflects what is currently there. The current structures don't impede the flow of water. The two items in the Conservation Commission letter have been added to the plan – Sheet 2, notes 7 and 8. The dumpster location was discussed. It was stated since the easement was not accepted by the Town it is not a legal drainage easement. It could go away. The Conservation Commission does not have control over that but it is a drainage feature. Mr. Lessard thinks this should go out for department review. Mr. Olson agrees it should go to department review and that the easement should be accepted.

PUBLIC

Mr. Maher of 437 Winnacunnet Road, Unit 204 appeared. He stated that he has lived there for over three years. He has had problems with drainage. The general contractor went bankrupt on this project and the condominium association is dealing with it now. The elevation of 12 feet was discussed. He stated they are stuck with needing to pump water into the Town

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drainage pipe that is on their property by easement. He stated that Ambit Engineering was out multiple times doing inspections and he is shocked that this did not get noticed.

Ms. Sharon LeBlanc, 441 Winnacunnet Road, appeared. She stated that in 2006, she had flooding in the basement. She recently learned of the 2007 engineering plan. She noticed that excavation work was occurring and vegetation being cleared around the detention pond. The storm water management system was discussed. Wetlands are a part of her backyard.

She further stated that her tenant wrote her a letter of her unhappiness due to flooding. She wants the proposed design reviewed. She further discussed the detention pond and cutting of trees. FEMA updating their maps was discussed. Coastal wave damage and high floods were discussed.

Mr. Maher appeared again. He discussed the elevation and a wetland area that belongs to Old English Village apartments.

Mr. Ross stated that there is no tree removal proposed. He discussed a proposed swale and a small detention pond that will be about 1 foot to 1.5 feet of the existing grade. It will be done by hand or by a small “Bobcat” machine. The 100-year storm event was taken into consideration. He discussed getting the runoff to the same location with no change from the prior plan. Instead of pumping all of the water they are trying to get the surface runoff out into the wetland buffer where it is currently being pumped.

Mr. Lessard asked about the drain in the driveway and asked where it's getting pumped into. Mr. Ross responded that it is being pumped into the Town's line as approved in 2007. There is currently a trench drain.

Mr. Emerick stated that there are two issues – one, the permit to make water flow better. The other issue is the as-built not being followed up upon (there is no as-built). He wants them to get work done so it will help in the spring. Mr. Lessard stated that he would like the departments to look at the changes. He is okay with modifications, except for the dumpster location. He has empathy for the abutters and owners but he would like the other departments to take a look at it.

Mr. McNamara said timing is of the essence. They are pumping now and surviving. Mr. Ross stated that the applicant wants to get this done now. It's been occupied for a few years now. It was asked by Mr. Lessard if the Town can go back to Ambit Engineering for errors and omissions. Mr. McNamara stated it was built differently than was approved. He wants to expedite it. Mr. Olson asked if this becomes a DPW issue. Mr. Griffin stated that the Town has been working with the applicant. Ross Engineering has not worked with DPW on this. A pump was shown on the 2007 plan and a swale into the wetlands. All the water right now is pumped into the DPW line. Mr. Griffin stated that the Town is looking into that.

Mr. Diener stated that the plan is not what was built. He stated from a wetlands perspective it's good, but we aren't engineers. He asked if an as-built is acceptable. Mr. Ross stated that the only difference from 2007 is the actual configuration of the parking lot.

Mr. Olson asked if the accepted design had been implemented does Mr. Ross feel there would have been a problem. Mr. Ross thinks it would relieve storm water as it is now. Mr. Ross said this is why they have a problem.

Mr. Lessard stated that he would like shared ownership of the decision. Mr. Griffin stated that the Town Manager was trying to do what was possible. Mr. Welch had someone from

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the Building Department go to view the property and someone from the Conservation Commission. Mr. Lessard wants DPW and the engineers to approve this as well.

MOTION by Mr. Lessard to continue the application for one month to have it sent out to appropriate departments heads (DPW) for review and comment for the November 7, 2012 meeting.

SECOND – None

MOTION by Mr. McNamara to accept the as-built plan and to approve the special permit with the stipulations contained in the Conservation Commission's letter dated October 3, 2012.

SECOND by Mr. Emerick.

VOTE: 5 – 0 – 2 (Griffin & Lessard)

MOTION PASSED.

(Rick Griffin excused himself for the remainder of the meeting)

V. CONSIDERATION OF MINUTES of October 3, 2012.

MOTION by Mr. Emerick.

SECOND by Mr. Olson.

VOTE: 5 – 0 – 2 (Lessard & Carnaby)

MOTION PASSED.

VI. CORRESPONDENCE

The letter from Mike Schwotzer was discussed and read by Mr. Steffen regarding 20 Keefe Avenue. Mr. Olson stated it was a preliminary conceptual consultation only. We are waiting for the site plan application. Mr. McMahon stated, yes, we need an application. It was discussed that the Planning Board did not review and comment much on the project because it was a conceptual review only. A formal application has not been submitted yet. Mr. Steffen will do a letter to the Chairman of the Board of Selectmen stating that the Planning Board has done a preliminary conceptual consultation, but no formal application has been submitted by the developer. The Board stated once that is done it will then deal with the details.

Mr. Steffen read aloud an email sent from Mr. Tony Fallon regarding planning issues for the Beach area.

VII. OTHER BUSINESS

- **IMPACT FEES** (discussion continuing from 10/3/12 Meeting)

Mr. Emerick stated that he does not want impact fees. Mr. Olson asked how much could be accumulated. Mr. Emerick stated fees are collected for residential properties. Impact fees on commercial and residential properties were discussed. The Town's tax base should satisfy that per Mr. Olson. Mr. McMahon does not think it makes sense. Mr. Steffen discussed Bruce Mayberry's study on additional fees. There was not a basis substantiated for recreation impact fee. Mr. McMahon stated that we should encourage people to move to our Town and not charge significant amounts of money to move in - impact fees may scare people away.

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MOTION by Mr. Emerick that we end the impact fees conversation at this time but reconsider them annually - i.e. next October (2013).

SECOND by Ms. Carnaby.

VOTE: 6 – 0 – 0

MOTION PASSED.

- Zoning Work

The Board decided to hold off on this until Mr. Loopley returns at the next meeting on November 7, 2012.

Mr. McNamara brought up the driveway permit letter from Fred Welch to Chris Jacobs back in November of 2011. He noted that the Planning Board was to be copied on it, but he does not believe we were. It was noted that the Planning Office may have assumed that the Town Manager's office copied it directly to the Planning Board.

Mr. Lessard stated that on 437 Winnacunnet Road that he would like someone in our department to investigate the inspection timeline to determine when and what Ambit Engineering approved for the site. He is curious how that went so wrong and does not want that repeated. He wants to know why Ambit may have signed off on something that was not completed according to the approved plans. He questioned how the parking lot was constructed with a different configuration and location. Mr. Steffen responded that maybe we should start requiring as-built plans before CO's are given.

VIII. ADJOURN

MOTION by Mr. Emerick to adjourn.

SECOND by Mr. McNamara.

VOTE: 6 – 0 – 0

MOTION PASSED.

MEETING ADJOURNED: 9:41 p.m.

Respectfully submitted,
Laurie Olivier
Administrative Assistant