

HAMPTON PLANNING BOARD

DRAFT MINUTES

April 6, 2022 – 7:00 p.m.

PRESENT: Tracy Emerick, Chair
Ann Carnaby, Vice Chair
Keith Lessard
Alex Loiseau
Brendan McNamara
Sharon Mullen, Clerk
Richard Sawyer, Selectman Member
Jason Bachand, Town Planner
Laurie Olivier, Office Manager/Planning

ABSENT:

I. CALL TO ORDER

Mr. Emerick commenced the meeting by leading the Pledge of Allegiance and introducing the Planning Board members. Mr. Emerick noted the applicant for 64 Mooring Drive wishes to continue to June 1, 2022.

MOVED by Mr. McNamara.

SECOND by Mr. Loiseau.

VOTE: 6 – 0 – 0 (Mr. Lessard not present)

MOTION PASSED.

Mr. Emerick noted that the applications for 465, 467 & 469 Ocean Boulevard have been withdrawn.

II. ATTENDING TO BE HEARD

- **Jennifer Rowden, Rockingham Planning Commission – Discussion of Draft Amendments to the Aquifer Protection District Ordinance**

Ms. Jennifer Rowden, Land Use Program Manager with the Rockingham Planning Commission appeared. They received a grant from the DES Coastal Program to help increase resiliency to coastal hazards and enhance overall community resiliency. Technical assistance is being offered to craft model regulations. Amending the Town’s Aquifer Protection District in our Zoning Ordinance was discussed. Protecting drinking water resources was discussed.

The 2019 Assessment and Recommendations Summary Report was discussed. Wellhead Protection Areas were discussed. They are not fully protected under Hampton’s Ordinance. The stratified drift aquifers portion is also not fully covered under our Ordinance. Should we expand the existing Regulations to cover those areas and take care of what is not fully protected was asked and discussed. The majority of Hampton is serviced by Aquarion. Hampton gets water

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from North Hampton and Hampton. North Hampton increased their protection of its Aquifer. The systems are connected through Aquarion.

Mr. Lessard thought the map was confusing; layers need to be removed. It is difficult for the public to follow. **Ms. Rowden can do this at the office, and she can provide that to the Board.**

Ms. Rowden discussed upgrades to our Ordinance. This is not to re-write the Ordinance. It is to enhance it. The Authority and Purpose section was discussed. This gives the Planning Board some authority over these Regulations. We have a Conditional Use Permit requirement currently. It also lets the Planning Board decide if there is a dispute on boundaries. An option Ms. Rowden wants to know about is if the Planning Board wants to be responsible for the entire Ordinance. If someone wanted to propose a prohibited use, they would currently go to the ZBA for a variance. Any prohibited use or variation, instead of zoning relief, would go through a conditional use process that the Planning Board would oversee. It is an option for the Planning Board to consider. The Planning Board, who deal with site plans, etc., are typically more versed in this subject in most communities. Other than going to the ZBA, which deals with prohibitive uses through isolation. The Conditional Use Permit is what the Planning Board decides upon. Authority is on line 37 (of the draft amendment). Appeals go to the Superior Court. The ZBA only deals with it from a variance standpoint. The Planning Board would have complete oversight over the Aquifer Ordinance.

Mr. Emerick asked about problems - he does not see where we have problems with the Aquifer now. Mr. Lessard said we did have some issues with Loy Drive and a house at end of Mace Road, to name a few, but he noted there are not many.

Mr. Sawyer said currently the ZBA would deal with any zoning variances. Would we be cutting into their lane was asked. Mr. Bachand said he discussed that question with Ms. Rowden, and there is an option to expand the Conditional Use Permit so it gets handled under that instead of going to the ZBA.

Ms. Rowden discussed (the largest decision to make) expanding the Aquifer Protection District. All public water systems, wellhead protection areas, transmissivity areas, etc. It would be expanded to include it in the stratified drift aquifer. This protects wells and wellhead protection areas. Even on-site private wells will be protected; not just public water systems. Mr. Emerick asked if we did that, would it cover areas in blue (hand-out sheet) and all wellhead protection areas. These get defined by the DES per Ms. Rowden. Mr. Emerick said businesses and residences would be non-conforming, potentially. Ms. Rowden discussed impervious surface; especially for residential. This is very important to consider. Impervious surface could be changed as well. This is not being decided tonight. This would go to the Town meeting next March if this goes forward. There may be another meeting to give additional feedback and go over draft language to see what the Board may want put to the public warrant in the future.

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Definitions were discussed. The Public Water System definition should be added and regulated substances were discussed. Ms. Rowden discussed toxic or hazardous materials. Line 134 (of the draft amendment), toxic materials. Lines 145 and 146 (of the draft amendment) -it states that the Planning Board can decide whether something is toxic or hazardous. No authority and no criteria is given for a judgment. She recommends taking that out. There is no strong legal backing in that.

Aquifer Boundaries—that is a big decision. Think of the implications as we go forward.

Line 214 (of the draft amendment) - maximum lot coverage was discussed. It can stay as it is or it can be lowered. Normally, towns do not want above 15 to 20 percent maximum lot coverage. This may not be a good fit in Hampton. Ms. Rowden likes a non-residential change as a consideration. Stating it cannot go above 60 percent impervious for non-residential was discussed. Performance standards can be shown how it can go above. Make businesses mitigate, groundwater recharge and stormwater. Covering sites with pervious surface is important. Anything coming off the site is clean. Make sure water can go back in the ground.

Performance standards were discussed. Requiring that self-treatment be done in a way to reduce chlorides getting into drinking water. This is the biggest man-made contaminant. Add separation between the seasonal high-water table and stormwater drainage. It gives more teeth when being implemented.

Line 244 (of the draft amendment), optional. Spill control and response plan. Any uses that would require a Conditional Use Permit. Auto detailers, gas stations, woodworking. It keeps track of what is being stored on site. Especially if there is a fire.

Mr. Lessard asked who maintains the list and who provides it to the Town. Ms. Rowden stated the DES maintains it. Contractors or businesses who have certifications, it helps limit liability if there is an accident. How will the Town be assured someone is certified. It can be a condition for site plan and subdivision approval. How will it be enforced was asked by Mr. Lessard. He asked if someone has to drop a dime and then there is a follow up. We (the Town) do not have a Code Enforcement Officer.

Mr. McNamara sees redundancy in the article we already have. Chloride is redundant. Some things are vague. Ms. Rowden said streamlining is great and can be addressed.

Line 289 (of the draft amendment) - discusses the ability for the Planning Board to require a hydrogeologic study on a case-by-case basis. This makes it more clear for an applicant and the Board for suggested language on why we want the hydrogeologic study, what we can ask for and it gives the Planning Board the ability to judge whether one is warranted. Retail shop versus automotive business is an example; some would not require a study.

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Prohibited Uses. Item G. Development or operation of petroleum bulk – oil refinery. Probably low risk of that use in our area. We could prohibit it outright per Ms. Rowden.

Line 328 (of the draft amendment) – automotive service and repair shops. We currently have a clause . . . “unless in accordance with NH State statutes, rules and regulations approving such use.”. It’s very hard to enforce. If we’re going to prohibit it, just prohibit it per Ms. Rowden.

Line 331(of the draft amendment) - development of gasoline stations. Any that currently exist can continue. If they go to expand or a new one comes in, it would have to go through relief. We can do mitigation of greenhouse emissions.

Ms. Carnaby asked about requirements by the State. If there is a new gas station, does there need to be an electric charging station along with it was asked. Southern Maine has a good model.

Line 337 (of the draft amendment), prohibiting outdoor storage in flood hazard areas. Sea level rise as defined by the State’s Coastal Risk summary was discussed.

Mr. McNamara asked about gas grills. It was noted 55 gallon drums are regulated; not 5 gallons. Performance standards can be put in place. Mr. Lessard asked if we have adopted sea level rise in our ordinances. Not yet per Mr. Bachand.

A Conditional Use Permit was discussed. Ms. Rowden said any industrial, manufacturing...everything requires a Conditional Use Permit in our Ordinance now. Consider only requiring for subdivisions with more than 2 lots. Some municipalities only want one (a Conditional Use Permit) if it is creating a larger subdivision. It’s just one more step for people to go through.

Line 349 (of the draft amendment) – any other specified use. It goes back to the first conversation. The Planning Board having full authority over this Ordinance was discussed. The Planning Board would grant all relief that does not comply. If we want to stick with the ZBA, it comes off.

Line 350 (of the draft amendment) – criteria used in granting a Conditional Use Permit. The first 6 exist in the Regulations. Number 7 is an addition to get additional input from the Conservation Commission. If they have input, the Planning Board should consider it.

Line 384 (of the draft amendment) - permitted uses were discussed. What are permitted uses was asked.

Non-conforming uses were discussed. There may be sites that become non-conforming, but mostly if impervious surfaces percentages are lowered.

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Do we want to increase the description of why we have Aquifer Protection regulations was asked by Ms. Rowden. Citing simpler, easier-to-read terms was discussed. The Aquifer Protection District – possibly changing it to “Groundwater” to make it clearer for the public. Many people do not know what an Aquifer District is.

Ms. Rowden asked if she should come back or work with a sub-set of the Planning Board. Mr. Emerick said he wants enumerated decisions to be made.

Ms. Mullen asked about not taking some of these on. What is the value. Ms. Rowden said if we contaminate our drinking water source, the cost impact to remedy that problem is incredibly expensive. This is the intent of reducing the risk from sources most likely to impact our groundwater. Is there a hierarchy of recommendations was asked by Ms. Mullen. Ms. Rowden said to expand the district is of utmost importance to cover what our primary drinking water sources are.

Mr. Sawyer said without enforcement, we don’t have anything. New positions get voted on by the public. Expansion of the zone is something to start with.

Ms. Mullen said if we don’t have the ability to enforce, it would be challenging. She discussed whether elements of education would obviate the need for enforcement in some cases. Calling it groundwater makes sense.

Mr. Henry Boyd said they deal with this subject a lot. Seabrook says everything west of 95 is in the Aquifer. All industrial is located in the Aquifer – west of 95. There is limited ability to check these things out. There is some control. He noted when our Planning Board does its work, it looks at issues. This Board approves and signs off on everything. It’s in place. An as-built is also required. Mr. Boyd discussed residential homes in the Aquifer. In the RA Zone, we would need a 20,000 s.f. lot – it’s one third larger in the Aquifer than the rest of the zone. With 25 percent sealed surface, there is no room for expansion. He noted residents’ private rights to do what they want needs to be realistic. There should be some sliding scale. Ms. Olivier noted that not all projects come before the Planning and Zoning Boards. Permits for structures in Town are directly obtained through the Building Department. With much turnover in that Department, there is no training (discussions) and many times permits in the Aquifer may be overlooked.

III. NEW PUBLIC HEARINGS

21-051 17 & 19 L Street

Map: 293 Lot: 55 & 56

Applicant: T.R.D Entertainment Co., LLC

Owner of Record: Same and Town of Hampton (Leased Land #19)

Site Plan: Proposed permanent outdoor seating for restaurant/bar at #17 & #19. Existing residential use of #19 to be abandoned and become commercial.

Waiver Request: Section V.E.-Detailed Plans.

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Mr. Henry Boyd, Millennium Engineering, appeared with Terry Daidone and Jake Magro. The seating plan was discussed. The Planner's Memo was discussed. The PRC discussed sealed surface. Lot 55 has 89.4 percent sealed surface. There is 76.5 sealed surface on other lot. The buildings will exist as they are. Use of the buildings at 19 L Street for commercial storage was discussed. Safety concerns were discussed along with egress issues. Police presence occurs often at this site. There are 14 recommended conditions of approval. There is a residential apartment (at 17 L Street). Terry Daidone spoke with Police and Fire today.

Mr. Daidone discussed the sidewalk concerns. There will be additional door staff in place. Keeping patrons off the sidewalk was discussed. He met with Chief Hobbs. He also met with the Fire Protection Officer, Matthew Newton. Adding a small ramp was discussed. Three egress exists were discussed.

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Mr. McNamara asked about the patio and people getting to the third egress location. Adding a small ramp needs to be done per Mr. Boyd. Ms. Mullen asked about the fire situation. If 19 is on fire, how will people be evacuated on the patio when you're down to two egresses. Is an easement to egress on someone else's property needed was asked by Mr. Lessard.

Mr. Lessard asked if the area is illuminated – the Ashworth Avenue side. Mr. Daidone said it will be if it is not right now. There are no gates. There will be a gate installed. Ms. Mullen asked about people coming in. There will be additional staff.

Mr. Lessard asked if there will be umbrellas over the tables. Yes, not on the round tables. Does that add to impervious surface was asked. It does not per Mr. Boyd. Ms. Carnaby asked if the tables are fire pits. They are. What is the fire source was asked; it is propane.

Mr. McNamara asked about the safety of the sidewalk. It was noted the Police Chief and Deputy Police Chief had concerns. Keeping people against the fence was discussed. Ms. Carnaby asked how spacing between people eating and waiting to get in will be operated

Mr. Loiseau thinks it is an improvement.

Is the covered porch to remain was asked by Ms. Mullen. It is. Ms. Mullen asked about restrooms. Right now there are four restrooms.

PUBLIC

Susan Mercier, 6 L Street, appeared. Where will the speakers go was asked. She is 51' away from the Tavern. When entertainment starts, her windows have to be closed. Jake (Mr. Magro) has been great to deal with. If she calls, the sound is turned down minutes later, but then it is back super loud.

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Mr. Bachand said there is a standard condition for this. Mr. Bachand read the condition about amplified noise. This was included on past projects.

Ms. Mercier asked if she should call Mr. Magro or the Police Department if it is too loud. Mr. Sawyer said to call the Police. The Police have decibel meters. They will check if they are in violation. It can then be brought back to the Town.

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Add **“and/or their successors”** to the conditions per Mr. Lessard.

Ms. Mullen asked about entertainment. She noted the stage is near the street. Is there one speaker was asked. It gets amplified through the speaker. It faces from the north to the south. In towards the courtyard.

Mr. Lessard asked about disbursing speakers. Mr. Lessard asked about deliverance of live entertainment. Ms. Mullen said to use something to help mitigate the problem. Avoid the issue or eliminate it as much as possible was discussed. Mr. Magro said they’ve never had a noise violation in three years.

Ms. Mullen asked if they have live entertainment going on inside. Yes, they do.

Mr. McNamara asked about snow removal. They have not used it in the wintertime. No snow spot is noted on the plan for snow. It can’t be taken off site; the area cannot fit a vehicle there.

Mr. McNamara does not like this from a safety standpoint. But if an agreement is reached, he is fine with that.

Mr. Bachand spoke with the Chief. He liked Mr. Bachand’s proposed condition (#3). They both agreed there should be no barricades placed on the public sidewalk.

Mr. Bachand said we received an email from the owner on 27 L Street with comments and concerns. The applicant received this as well. Mr. Bachand asked if the applicant wished to comment. It was stated “no”.

Mr. Bachand said they have a temporary dining permit in place for 2022. Mr. Bachand discussed the black metal fence - he needs clarification. Mr. Daidone said it will be decorative, i.e. like a black pool fence. No more than 3’ in height. Mr. Bachand explained his suggested conditions. He noted a waiver request also needs to be voted on tonight. If the Board wishes to approve the application, he recommends the approval include the conditions in his Memo dated April 6, 2022.

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MOTION by Mr. McNamara to approve the waiver.

SECOND by Mr. Loiseau.

VOTE: 7 – 0 – 0

MOTION PASSED.

MOTION by Mr. McNamara to approve the Site Plan along with the stipulations contained in Mr. Bachand’s Memorandum dated April 6, 2022 and points noted above.

SECOND by Mr. Loiseau.

VOTE: 7 – 0 – 0

MOTION PASSED.

22-010 1026 Ocean Blvd.

Map: 116 Lot: 36

Applicant: Corinna & Greg Tucker

Owner of Record: Poseidon Realty Trust, William Zorn, Trustee

Wetlands Permit: Impact 718 SF for the purpose of replacing an existing beach access/stairway with a new beach access stairway.

Mr. Jason Aube, TFMoran, appeared. This project impacts 718 square feet. This is replacing an existing stairway/walkway to the beach area with a new walkway. It is an ‘in-kind’ project. It is in the same location. They had the site walk with the Conservation Commission. They signed off allowing them to apply through the NHDES through the expedited process. Native plantings will be installed.

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Mr. Lessard was on the walk. There was no problem with the walkway.

PUBLIC

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Mr. Bachand said the Board of Selectmen will need to be involved to go onto the beach.

MOTION by Mr. Lessard to approve the Wetlands Permit subject to the stipulations contained in the Conservation Commission letter dated March 23, 2022 plus any necessary permissions to be granted by the Board of Selectmen.

SECOND by Ms. Carnaby.

VOTE: 7 – 0 – 0

MOTION PASSED.

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22-012 64 Mooring Drive (CONTINUED TO JUNE 1, 2022)

Map: 289 Lot: 33

Applicant: Mary T. Mulligan, Trustee Living Trust

Owner of Record: Mary T. Mulligan, Trustee, Mary T. Mulligan Living Trust

Wetlands Permit & Driveway Permit Appeal: Construction to raise the existing residential dwelling structure above flood elevation and reconstruct the foundation to support the structure. Additional improvements include a deck addition. Remove impermeable driveway and replace with permeable paver driveway.

IV. CONTINUED PUBLIC HEARINGS

V. CONSIDERATION OF MINUTES of March 16, 2022

MOVED by Mr. Loiseau to approve the March 16, 2022 Minutes.

SECOND by Mr. McNamara.

VOTE: 6 – 0 – 1 (Sawyer)

MOTION PASSED.

VI. CORRESPONDENCE

VII. OTHER BUSINESS

- **13 Atlantic Avenue – Request for One-Year Extension of Condominium Conversion Conditional Approval**

Mr. Bachand said the above application was approved on April 7th of last year. They have not met all conditions yet and wish for a one-year extension.

MOVED by Mr. Lessard.

SECOND by Mr. Loiseau.

VOTE: 7 – 0 – 0

MOTION PASSED.

- **Rockingham Planning Commission – 2022 Membership Dues**

Mr. Bachand said we received a request for payment of the 2022 dues. The amount is \$13,107; it increased a bit from last year's amount (\$12,618). Mr. Bachand noted they provide a range of service. NH Seacoast Greenway project, ordinance work as well, among many other services. He requested a vote of the Board to submit payment.

MOVED by Mr. Lessard.

SECOND by Ms. Carnaby.

VOTE: 7 – 0 – 0

MOTION PASSED.

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VIII. ADJOURNMENT

MOTION by Mr. Lessard to adjourn.

SECOND by Mr. McNamara.

VOTE: 7 – 0 – 0

MOTION PASSED.

MEETING ADJOURNED: 8:46 p.m.

Respectfully submitted,

Laurie Olivier, Office Manager/Administrative Assistant

****PLEASE NOTE****

ITEMS NOT CALLED OR IN PROGRESS BY 10:00 P.M.

MAY BE CONTINUED TO THE NEXT SCHEDULED MEETING