

TOWN OF HAMPDEN
MASSACHUSETTS

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John Matthews, Chair
Judge Robert Howarth
M. Paige Gore
Phillip Schneider
Edward Loiko
Associate Member: Richard R. Green

**HAMPDEN PLANNING BOARD
PUBLIC HEARING MINUTES/128 WILBRAHAM ROAD – HAMPDEN COUNTRY CLUB, LLC
Wednesday, May 13, 2015
Town House**

Approved 7/29/15

Judge Robert Howarth opened the Public Hearing at 7 PM and alerted the applicant and the audience that the hearing is being recorded by Paul Bechard of 125 Wilbraham Road, Hampden, MA and the Town of Hampden Planning Board.

The Public Hearing was scheduled on the application of Hampden Country Club, LLC of 128 Wilbraham Road, Hampden, MA, to amend the Special Permit with Site Plan Approval granted on November 25, 2014 (Case Number 2014-K) by adding additional conditions as shown on Exhibits A and B to the application.

Members Present: Judge Robert Howarth, Co-Chair; M. Paige Gore, Edward Loiko and Richard Green, Associate Member.

Others Present: Atty. Dave Martel, Counsel for Town of Hampden, Planning Board
Atty. Thomas Miranda, Counsel for Paul & Theresa Bechard, 128 Wilbraham Road
Atty. John Drost, Counsel for Hampden Country Club
Jonathan Murray, Hampden Country Club
Members of the Hampden Country Club Berm Committee
Ted Zebert, Conservation Commission

Introduction of Board Members: Judge Howarth introduced the Planning Board members and Atty. David Martel, Legal Counsel for the Town of Hampden, Planning Board. Atty. Martel explained that in order to achieve the necessary quorum, Mr. Richard Green, who is the Associate Member, will sit on this matter. Mr. Martel advised that under Section 8.4.2, of the Zoning Bylaw, and in the specific circumstances of this case, the Associate Member would be allowed to vote on both the Special Permit Application and the Site Plan Review. Mr. Schneider would not take part in the hearing.

The second issue deals with comments received from other town boards. Mr. Martel referred to Section 10.72 of the Bylaw which indicates that within 10 days of receiving an Application for Special Permit /Site Plan Approval notice is to be given to various town officials and boards such as the Building Inspector, Board of Health and other town boards to allow them 30 days to comment and respond to the project. Section 10.72 4b states the hearing should not be held until the responses have been received or the 30 day period had expired. Attorney Martel confirmed that the 30-day period has expired.

Statement of Authority: Judge Howarth read the Statement of Authority.

Legal Notice: The Legal Notice was read by Judge Howarth.

Reports from Other Agencies: The following boards did not make recommendations within 30 (thirty) days of the referral, therefore, it was deemed lack of opposition as indicated on transmittal:

The Building Inspector
The Board of Health Inspector
The Conservation Commission
The Historical Commission
The Fire Department
The Police Department
The Highway Department
The Zoning Board of Appeals

The Tax Collector reported the applicant's account is current.

Applicant's Presentation/Board Questions: Atty. John Drost addressed the board on behalf of Hampden Country Club. His office is located at 46 Center Square in East Longmeadow. Atty. Drost provided background information regarding the Special Permit with Site Plan Approval that was approved on November 25, 2014. The Decision was appealed with the Hampden County Superior Court in December 2014. The lawsuit was consolidated with another lawsuit involved in the redevelopment process and all parties agreed to a resolution and a settlement was reached before trial. On February 13, 2015, the lawsuits were dismissed. The settlement established a landscape plan for a portion of the golf course that borders 125 Wilbraham Road, the property owned by Paul and Theresa (Exhibit B – Attachment to the application that shows the landscape plan). Part of the settlement agreement required that the Planning Board approve the Bechard landscape plan as an additional condition of the permit that was approved in November 2014. The Country Club now has to file an application to amend that initial permit to reflect this change, specifically, Condition (4) of the Special Permit with Site Plan Approval, and replace it with the following provision (Exhibit A of application):

"Hampden Country Club will provide vegetative buffer screen plantings around the perimeter of the property located at 125 Wilbraham Road, Hampden, MA (the "Bechard Property") in accordance with the landscaping plan dated January 25, 2015 attached as Exhibit "B" (the "Landscape Plan").

In addition to following the Landscape Plan, HCC also agrees to:

- a. pay for the cost to identify the northwest and southwest corners of the Bechard Property and place survey pin markers no later than April 15, 2015;
- b. complete the plantings described in the Landscape Plan by May 26, 2015;
- c. not construct a cart path, such as a paved or gravel path, beyond the location delineated on the Landscape Plan along the western side of the Bechard Property and place a sign just to the north of the 2nd tee, facing the 2nd tee stating "No Carts Beyond This Point. Maintenance Vehicles Only" and a sign just to the south of the cart path crossing the bridge facing the cart path stating "No Carts Beyond This Point, Maintenance Vehicles Only";
- d. agree to replace any trees as directed by the Planning Board;

- e. loam and seed the area around the cart path on the northern side of the Bechard Property leading to Wilbraham Road; and
- f. loam and seed any degraded lawn area in the southwest corner of the Bechard Property.”

Atty. Drost stated that the Country Club was here tonight to request the Planning Board to approve the amendment which adds this landscape plan to the approval that was obtained in November 2014. The only modification they requested to the original application that was submitted in March concerns the May 26th date in subsection (b) on Exhibit A as the deadline to complete the plantings. Due to the waiting time for an approval decision to become effective, the Country Club will not meet the May 26th deadline due to the 20-day appeal period once the decision is filed with the Town Clerk. The decision would not be effective until June sometime. Atty. Drost requested the new date be July 26th. Atty. Miranda requested the work be completed before the golf course opens. Jonathan Murray indicated they plan to open the golf course on Memorial Day weekend. He indicated it would take about 1-2 weeks to put in the plantings. Judge Howarth asked if they could put in the plantings “at their risk”.

Atty. Miranda indicated that this proposed amendment only affects the Bechard property. No one else would have standing to appeal this even as an abutter as it does not affect anyone else. There is a “presumption” that abutters have standing, but they have to show they are affected by the amendment. Atty. Drost stated the Country Club does not want to take any risk. There is no guarantee that no one will appeal and he cannot tell his client that. Atty. Miranda stated that under the terms of the November 2014 special permit the abutters were scheduled to come before the Planning Board in May to review what the Country Club had done so far and he stated that they have not done anything.

Judge Howarth asked what would be the earliest date the planting could be completed. Jonathan Murray stated the Country Club could have it done by June 26th at the latest. The Country Club needed to order plants and wait for the appeal period to end.

Atty. Miranda said he was not agreeable to the Country Club opening before the work is completed. Atty. Drost stated he sees no requirement that the work be done before the club opens. He stated there is no bylaw that indicates this.

Judge Howarth suggested that Atty. Miranda and Atty. Drost discuss this on the side and the Board suspended the hearing.

Public Hearing suspended at 7:20 PM.
Public Hearing resumed at 7:37 PM.

Atty. Drost stated that he and Atty. Miranda were at a standstill in their discussions. The earliest date the Country Club could complete the plantings would be June 15th. Atty. Martel asked how many members the Country Club currently had. Atty. Drost stated they have 85 members and the chance that all 85 members would be playing is very minimal. There will not be a huge influx of golfers in the next couple weeks. The Country Club hired staff to start working.

Atty. Miranda stated his clients are concerned about the safety and privacy. The safety concern all the way around the golf course is what is at issue. The Special Permit as originally granted back in November stated the Country Club would put in a certain number of trees and plantings around the Bechards. He said the Country Club has not even ordered the trees or even started the project. Atty. Miranda stated the safety is their concern.

Judge Howarth asked what greens are the issues. Atty. Drost stated the 14th and the 8th greens. Judge Howarth asked if temporary fencing or border could be put up to protect those areas for safety reasons. Jonathan Murray stated they could put up a snow fence to delineate the property line.

Richard Green stated the residents feel a lack of “good faith” by the Country Club as they have not seen anything happen yet.

Judge Howarth asked if the Board agreed to have a recess to discuss a matter. The Board agreed.

Public Hearing recessed at 7:47 PM

Public Hearing resumed at 7:55 PM.

Judge Howarth stated if the Board voted to issue a permit at this hearing, the permit would expire on June 17, 2015. The Board will have a meeting that night at 7 PM and if the work on the Bechard’s property is substantially completed, then the Board will lift the June 17 expiration. If not, the permit would expire and the Country Club would have to shut the course down. He stated that the Country Club has agreed with that date and said he felt the work would be done by that date. This will be a motion by the Board.

Atty. Drost stated the Country Club is fine with that date, and they will order what is necessary to make that date.

Atty. Miranda expressed his concern that if the course opens before the plantings are done, and someone gets hurt, it is wrong for the course to open. That is the purpose for the screening.

Atty. Martel stated that subparagraph (b) on Exhibit A should read “substantially complete the plantings described in the Landscape Plan by June 17, 2015.”

Audience Questions/Comments: Judge Howarth opened the discussion to the audience.

Dorothy Simonds of 148 Raymond Drive expressed a lack of “good faith” on the part of the Country Club. Mr. Leclerc of 156 Raymond Drive stated the Country Club was working [on tree removal] in January when snow was on the ground. He said that if they can take them down that fast, they can put them (plantings) up that fast! Paul Bechard of 125 Wilbraham Road stated they have found golf balls on their property and the course is not even open yet.

Decision: Paige Gore made a motion that the criteria contained in Section 10.81 of the Zoning Bylaw, Sub-Paragraphs 1 through 12, have been complied with. Ed Loiko seconded the motion. All in favor so approved (4-0).

Paige Gore made a motion that within Section 10.61 of the Zoning Bylaw, the Requirements for a Special Permit with Site Plan Approval are numbered paragraphs, 1 through 6, and that, as was the case with the hearing when the Special Permit with Site Plan approval was originally granted, subsections 1, 2, 3 and 5 be waived. Ed Loiko seconded the motion. All in favor so approved (4-0).

Paige Gore made a motion that as to all the other conditions in Section 10.61 that have not been waived, the Board finds that those conditions have been complied with. Rich Green seconded the motion. All in favor so approved (4-0).

Paige Gore made a motion concerning the Special Permit Amendment Petition, that the Board find that the conditions contained in Exhibit A, which was attached to the Special Permit application, are consistent with the Zoning Bylaw as it relates to a Golf Course Special Permit with Site Plan approval under Section 2.18 of the Table of Uses, and Sections 6.7 and 10.6 of the Zoning Bylaw, except that on Exhibit A, Subparagraph B, be changed to read “substantially complete the plantings described in the landscape plan by June 17,

2015 by which date the permit would expire if that condition is not complied with". Ed Loiko seconded the motion. All in favor so approved (4-0).

Paige Gore made a motion that on June 17, 2015, the Planning Board will hold a duly noticed public hearing to determine whether Subsection B, as amended, on Exhibit A has been complied with. If this condition has not been complied, the Special Permit as amended would expire. Ed Loiko seconded the motion. All in favor so approved (4-0).

Atty. Miranda asked what the process would be to shut down the course and whether it would be a cease and desist order. Per Atty. Martel, the Building Inspector would be able to take enforcement action because the Country Club was operating without a Special Permit.

Paige Gore made a motion that the Board specifically find that the amenities and improvements shown on the Site Plan that was presented with the application within 100 feet of residential areas are consistent with the requirements of the Zoning Bylaw and that all votes which are taken tonight with respect to the Special Permit also are deemed as being taken with respect to the Site Plan component of this application. Ed Loiko seconded the motion. All in favor so approved (4-0).

Paige Gore made a motion that the Planning Board approves the amendment to the Special Permit with Site Plan Approval described in the application by the Hampden Country Club, LLC, and filed with the Planning Board on March 30, 2015 except as amended with respect to subparagraph B on Exhibit A as evidenced by previous vote of the Board. Ed Loiko seconded the motion. All in favor so approved (4-0).

Meeting Adjourned: 8:07 PM.

cc: Assessor's Office
Building Dept.
Conservation Commission
Highway Dept.
Moderator
Selectmen
Zoning Board of Appeals
Office Files

Submitted by: Joanne Fiore, Adm. Assistant