

Town House

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TOWN OF HAMPDEN MASSACHUSETTS



Planning Board

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John Matthews, Chair
Judge Robert Howarth
Phillip Schneider
M. Paige Gore
Edward Loiko

Associate Member: Richard R. Green

MINUTES OF THE HAMPDEN PLANNING BOARD Wednesday, May 13, 2015 Regular Meeting

Approved 7/29/2015

In Attendance: Judge Robert Howarth, Co-Chair
M. Paige Gore
Phillip Schneider
Ed Loiko

Others Present: Atty. Dave Martel, Counsel for Town of Hampden, Planning Board
Atty. Thomas Miranda, Counsel for Paul and Theresa Bechard
Atty. John Drost, Counsel for Hampden Country Club
Jonathan Murray, Hampden Country Club

Staff: Joanne Fiore, Adm. Assistant

General:

Call to Order – Judge Robert Howarth called the meeting to order at 8:12 PM

Mail –

Bills – Payroll signed.

Approval of Minutes – Minutes tabled to May 27, 2015 meeting.

1) Review of Conditions for Special Permit with Site Plan Approval for Hampden Country Club, Case 2014-K
Phillip Schneider recused himself for this discussion.

Atty. John Drost stated this meeting is to discuss Condition 9 of the Special Permit with Site Plan Approval for Hampden Country Club, Case 2014-K. This condition states the Planning Board shall hold meetings in May and November 2015 to receive comments on (i) compliance with conditions set forth in this Special Permit and (ii) the effectiveness of the conditions in this Special Permit in protecting against any danger from misdirected golf balls and in meeting the requirements of the Zoning Bylaws and this Special Permit regarding landscaped buffer strips, etc. Atty. Drost stated nothing has been done due to two issues they were not aware of in November—the appeal and the lawsuit. Atty. Drost told the Country Club to do nothing until they have final approval to go forward. At that point, they would proceed with selecting the trees. The process was to go forward with the berm in late March/early April. Atty. Drost indicated if you remove the berm now, there would be a great deal of dust and also the possibility the plantings would die due to the dry season. The plan is to start the process slowly and have it finished in September. Judge Howarth asked when the berm will be taken down. Atty. Drost indicated by September. Judge Howarth asked what the problem in taking it down is. Atty. Drost stated the process is with the landscaping aspect of it. Once the berm is removed, grass and trees must be planted on a large piece of land. Judge Howarth stated you have to put back what was there before the berm. Atty. Drost said the time to do this is not in the middle of the summer. Judge Howarth stated there is no excuse-- the dust could be dealt with by spraying water. Atty. Drost stated they are following what was approved in November; two dates were decided for informational purposes on compliance—May and November. Judge Howarth stated they had time to do something on this once the snow started to melt; they could have started to take the berm down.

A resident asked if the berm be removed by the opening of the Country Club. Judge Howarth stated they will deal with that. Dorothy Simonds stated from her observation they have been planting grass, and tons of dirt generated as they are using the road. She feels the Country Club doesn't want to be working on this with the golf course opening. She looked at the Planning Board for more support than she is feeling tonight. Another resident stated it doesn't matter when the planting season is—you can't do anything until the berm is removed.

Atty. Miranda addressed Atty. Drost's comment that they (the Country Club) have to wait until the appeal period to pass before they can do anything. Atty. Miranda stated that means the Special Permit is not even in effect until the appeal period passes; and that they should not be opening the golf course until they have a Special Permit. Atty. Miranda said they are here to review what was supposed to have been done up until now; it has not been done. Atty. Miranda stated that as Atty. Drost indicated, this case was dismissed on Feb. 13, 2015, so there is no longer been an appeal. It was dismissed with the understanding that the Bechard's property would be dealt with, and they agreed to withdraw all the appeals and do the work around the Bechard's property. At the end of Condition #9 of the Special Permit, it states, "To the extent that the Planning Board finds non-compliance with conditions imposed by the Special Permit then the Planning Board shall refer such matters to the Building Inspector for investigation and enforcement". Atty. Miranda stated that the enforcement is until the work is done; they have not complied with the terms of the Special Permit, and they should not be allowed to open. It is as simple as that.

Judge Howarth stated the berm will be down by June 17th. A motion will be made by the Board. Atty. Martel stated this is enforcement action as they are not complying. Judge Howarth stated the Planning Board has the right to enforce this June 17th date on the Bechard's property, and the same date for the berm to be taken down. Then they will look at the planting, etc. and how long that will take.

M. Paige Gore made a motion that by the June 17th meeting, the berm shall be leveled and work will have started on replanting. Ed Loiko seconded the motion. All in favor so approved (3-0).

Judge Howarth asked if there are any other compliance issues. Atty. Miranda stated there have not been any plantings along Raymond Drive. Judge Howarth stated that the berm shall be removed by June 17, and as counsel stated, we can do a motion on plantings at that time. Judge Howarth indicated it will be done before September. Atty. Miranda stated he appreciates what the Board has done, but would like more. He stated they have tediously went through an agreement in November where a large group of people agreed to allow this project to go forward on a number of conditions; and one of those conditions was the plantings of the trees for safety reasons. Judge Howarth stated they cannot do the plantings until the berm is down. Atty. Miranda stated the point is it is still part of the Special Conditions—and they have not done it; and they should be told it has to be done by June 17. Judge Howarth stated they need time to take the berm down and to plant the trees, and he is thinking about three months to complete it. Atty. Miranda would like the trees done by June 17.

Dorothy Simonds stated her concern on contaminants in the dirt of the berm, and how will the berm be removed. They would like some guarantee that there are no contaminants in it. Judge Howarth stated the Condition states Hampden Country Club will remove the earthen berm as shown on the Site Plan by re-grading the soil to match and blend with the present landscaping and topography of the remainder of the Golf Course.

2. 229 Somers Road – A. McKeon – Question on Conditions of Special Permit (Case 2013-C)

Austin McKeon provided a brief history of the Solar Facility located at 229 Somers Road. He stated the minutes to this Public Hearing (Case 2013-C) reflect he asked various questions—one being his concern for the face of that rock or cliff side of the mountain. The minutes reflect Mr. Matthews asked the owners if they would hydro seed and they said yes. Mr. McKeon stated hydro seeding wouldn't do much for the rocks or the cliff side of the mountain. Mr. McKeon provided various copies of documents—one being the Decision for Case 2013-C, Decision on Petition for Special Permit, specifically Condition #1 and #7; along with a copy of Section 7.8, Earth Removal, of the Zoning Bylaws. He discussed paragraph #3, #4, and #5 (subparagraphs 1 & 2). He also discussed the original ZBA Decision, Paragraph #1, Reasons for granting the Special Permit, the Petitioner desires to remove gravel in order to lower the elevation to a gradual slop, which will then be covered with loam in order to increase the agricultural productivity of the land. He also provided a copy of the Section 6.117 Special Permit Uses within the Water Supply Protection Overlay District, Paragraph C, Subparagraph (2), upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings suitable to control erosion on the site, etc. He stated the Condition of #7 of the Special Permit (Case 2013-C) has not been complied with. The gravel pit has not been officially closed. He stated they have to follow the procedures of the bylaws. He feels the Board should deny the permit for the solar facility until they follow the conditions set forth in the Special Permit. Atty. Martel stated he thinks the Solar Farm Special Permit is at risk because there has not been compliance with the gravel pit closure requirements which are under the jurisdiction of the ZBA. The Planning Board can take notice in connection with the Solar Permit that there has been non-compliance. He feels there are two boards that could take actions. The ZBA for non-compliance for the closure compliance, Section 7.8, Sub 5; and the Planning Board could take action against Soltas Holdings, LLC, because a condition of its Special Permit has not been complied with concerning Condition #7 of Permit, Case Number 2013-C. The Board will send a letter to Alana Chain of Altus Power America (formerly Soltas Holdings, LLC) to request their presence at our next meeting scheduled for June 17 to discuss this matter. The Kibbe's will be copied on this request.

Other Business

Plans for the Police Station – Mr. Schneider stated they have changed the plans for the Police Station as they are going from modular to stick-built. The interior walls have changed; however, the footprint has not. He asked if the committee must bring this to the Planning Board for review. Judge Howarth and Town Counsel feel this does not have to be reviewed by the Planning Board.

Letter dated 5/20/15 from Al Joyce – Refer Mr. Joyce to the Building Inspector.

Adjournment – Having no further business, the meeting was adjourned at 8:53 PM. The Planning Board's next scheduled meeting is Wednesday, June 17, 2015.

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