

**East Hampton Planning and Zoning Commission  
Regular Meeting  
November 2, 2011  
Town Hall Meeting Room**

<b>Unapproved Minutes</b>
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1. **Call to Order and Seating of Alternates:** Chairman Zatorski called the meeting to order at 7:00 p.m.

Present: Chairman Ray Zatorski, Vice-Chairman Mark Philhower, Members Roy Gauthier, Richard Gosselin, James Sennett, Alternate Members Darin Hurne, Kevin Kuhr, and Planning, Zoning & Building Administrator James Carey were present.

Absent: Members Peter Aarrestad, Rowland Rux, and Alternate Member Meg Wright, were not present.

Alternate Members Darin Hurne and Kevin Kuhr were seated at this time.

2. **Approval of Minutes:**

**A. October 5, 2011 Regular Meeting:**

*Mr. Sennett moved, and Mr. Philhower seconded, to approve the Minutes of the October 5, 2011 meeting as written. The motion carried unanimously.*

3. **Communications, Liaison Reports, and Public Comments:**

**Communications:**

Mr. Carey explained that Agenda Item 7.A, 8-24 Review of Sears Park Easement has been postponed until further notice.

Mr. Carey reported that updated Planning and Zoning Regulations have been included in the Commission's packets this evening.

Mr. Carey reported that the 13 Summit Street building changed ownership today in a foreclosure action. The property has been purchased by an individual who came to the Planning and Zoning Office today to discuss the plans for the building. They expressed interest in the IHZ regulation.

**Liaison Reports:**

Mr. Zatorski requested that Mr. Carey update the Commission on the Theater Square wetland mitigation project. Mr. Carey indicated that to his knowledge the mitigation is complete. The minutes for the regular meeting of the IWWA is available for viewing online and in the Town Clerk's Office.

Mr. Sennett reported that the ZBA did not meet last month. He does expect them to meet this month.

Mr. Gauthier reported that the EDC is about to award a contract for the design of the gazebo at Sears Park. They are working to close out the two existing STEAP Grants active in Town in order to be eligible for more grants. They are still working toward a blight ordinance for

commercial property. They have had a considerable discussion regarding the parking lot used by 82 Main Street.

Mr. Kuhr reported that the Conservation-Lake Commission did not meet last month.

Mr. Philhower reported that Midstate Regional Planning Agency will not be meeting in November.

**Public Comments:** There were no comments at this time.

4. **Set Public Hearing(s) for November 2, 2011:** None.

5. **Read Legal Notice:** Mr. Carey read the legal notice.

6. **Public Hearing for November 2, 2011:**

**A. Application of Hubert E. Butler Construction Company, LLC, 9 Young Street, for a Special Permit Renewal of Excavation Plan - Map 12/Block 33/Lot 7A:**

Gregg Fedus of Fedus Engineering was present to discuss the application with the Commission. He displayed a plan depicting the status of the excavation and explained that he was before the Commission to request the annual extension of the special permit. The plan on display is a color rendering of Sheet No. 1 of 7 already distributed to the Commissioners. The yellow area indicated the three-phase excavation project. Changes have been surveyed to revise the contours as they have changed. They have been following the requirements of the previous approvals. Questions regarding the blasting and day-to-day operations were referred to the applicant.

Brian Gombotz, General Manager of Butler Construction and East Hampton Aggregates, was present to discuss the application. He reported that not much has changed with the project since last year. The economy has slowed things down. The completion, at this point, will not be for awhile. If the economy turns around, they will begin to look into completing the industrial park plans as approved. Mr. Gombotz estimates that they have probably excavated about 50% of the material to be removed. There are no changes made from the last special permit they received.

The Chairman opened the meeting up to the public at this time.

Ed Todd, 169 Clark Hill Road, questioned the location.

*Mr. Philhower moved to close the public hearing. Mr. Hurne seconded the motion to close the public hearing. The motion carried unanimously.*

*Mr. Philhower moved, and Mr. Sennett seconded, to approve the application of Hubert E. Butler Construction Company, LLC, 9 Young Street, for a Special Permit Renewal of Excavation Plan, Map 12/Block 33/Lot 7A, with the existing conditions of the previous Special Permit. The motion carried unanimously.*

7. **New Business:**

**A. 8-24 Review – Sears Park Easement:** At the request of the Applicant this item has been continued until further notice.

**B. Discussion - Special Meeting for Preliminary Discussion on Edgewater Hill Master Plan:** Mr. Carey explained that one of the requirements for the recently passed MUDD Regulation was that the developer meet with the Commission on a preliminary basis to

discuss the concepts in an informal fashion prior to the application being heard. With that in mind the applicant has requested the Commission schedule a special meeting sometime after the 12<sup>th</sup> of December to hear just this issue.

The Commission opted not to schedule a special meeting as the agendas for the next few months are short. They believe it appropriate for this preliminary discussion to be held in the December or January regular meeting.

**C. Discussion - Essentials of Successful Motions:** The Chairman explained that he requested Mr. Carey to give the Commission a refresher course in making motions.

Mr. Carey discussed the steps involved in an application beginning with the public hearing process. He explained that it is important that all the information necessary for the Commission to make their decision regarding an application be made public and clear during the public hearing. Once a public hearing is closed, with few exceptions i.e. staff commentary, no more testimony is permitted. It is very important that all possible conditions be a matter of public record during the hearing. Once all the information is on the record the Commission may close the public hearing. At that point the Commission may discuss and comment on the application. The discussion and commentary must also be done in public. The application may be continued to a later date but deliberations must be done in public. Town Staff is free to provide opinions and clarifications. No new information may be heard or requested. If information is not received in a timely manner for review by Staff before a meeting, the Commission may ask for an extension in order to conduct the necessary reviews. If the Commission is out of time for extension of the public hearing, it is appropriate and legitimate for the Commission to deny the application based on the inability to conduct a proper review of the information prior to closing the public hearing. The applicant often chooses to withdraw an application rather than be denied.

Once the public record is established, the public hearing is closed, and the Commission has deliberated, the Chairman will seek a motion of the Commission to approve or deny the application. The motion should contain reasons to approve (i.e. complies with Zoning Regulations, Plan of Conservation and Development, and opinions of Commissioners) or reasons to deny (i.e. does not comply with Zoning Regulations, Plan of Conservation and Development, and opinions of Commissioners). Reasons to deny are much easier to defend in court than are reasons to approve. If it doesn't comply, the Commission has no choice but to deny. The Commission is under no obligation to grant waivers. They should not be granted arbitrarily or capriciously. The motion should also identify the application as identified in the Agenda. The Maker should include any conditions mentioned during the public hearing that they would like in the motion. Finally the Motion must be seconded and should include the posting of all required bonds, notification of staff prior to construction, compliance with all requirements of other agencies. Also include effective dates of the approval for regulation changes or map amendments. The effective date should be not less than 15 days from the publication of the approval notice in a broadly circulated newspaper to allow ample time for public notice and appeal. An appellant would appeal this Commission's decision to the Superior Court and would be burdened with proving why they are aggrieved by the Commission's decision. The only time the Commission will be required to act on an appeal is when the Court has remanded an appeal back to the Commission with instructions for the Commission to settle with the appellant.

After the motion has been made and seconded, the Chairman should call for discussion on the motion. This gives the Commissioners an opportunity to make suggestions and the Maker and Secunder the ability to include anything they have omitted. The Chairman then calls for the vote, the votes are counted, and the motion either carries or fails.

**\*\* Attachment 1 \*\***

Ed Todd, 169 Clark Hill Road, questioned the use of transcripts in appeals court.

8. **Old Business:** The Commission asked for an update on the status of the Comstock Bridge.
9. **Adjournment:** *Mr. Philhower moved to adjourn the meeting. Mr. Hurne seconded the motion. The motion carried unanimously.*

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Daphne C. Schaub  
Recording Secretary