

PUBLIC HEARING AND BUSINESS MEETING
FINAL

Call to Order – 7:00 p.m.: A. Dittami called the meeting to order at 7:00 p.m.

Roll Call: A. Dittami, Vice Chairman; J. Deleire, D. French, M. Farinola, P. Young, Members; L. Ruest, Administrative Assistant
Not Present: T. Parker, P. Robart (excused), Alternate Members; K. Kelley, Building Inspector

A. Dittami asked Board members if anyone needed to be recused from voting. Hearing none and with five voting members present, Alternate Member P. Robart was excused from this meeting.

Case # 10-04: Application from **T. Park Realty Trust** requesting relief from Building Code Section(s) 7.13.1, and 7.13.2 to permit design and installation of a septic system to treat and dispose of wastewater generated from the proposed 275 seat function hall in accordance with NHDES Administrative Rules and Regulations promulgated under RSA 485-A. Relief from these sections will result in a much better system design for the proposed facility in Zone B on property located at 1 Lafayette Road. (Map. 7 Lot 70)

Attorney John Colliander, Owner David Benoit and Engineer Bill Evans were present. A. Dittami acknowledged that there was a question as to proper abutter notification for this application. L. A. Ruest reported that the matter has been resolved with Attorney Colliander's verification of abutters. Hearing no questions of Board members, A. Dittami indicated that the application can proceed.

J. Colliander referred the Board to the plan submitted with the application and identified the property as the former Dexter Shoe store located on the Hampton Falls/Seabrook town line and stated that the applicant plans to develop the property for use as a function hall. He added that the 10-acre parcel is rectangular and that relief is needed to allow a septic system on-site that does not conform to the seasonal high water table (SHWT) requirement. Although the 10 acres has suitable soils for a leach field, there is no area that conforms to the 24" SHWT requirement; most areas being 21". J. Colliander added that the present system that served the store is not adequate for the use of a function hall; the applicant plans to abandon the existing septic system.

M. Farinola inquired as to Bill Evans' background and learned that Mr. Evans is a licensed engineer in the State of NH and that he worked for the Department of Environmental Services for 30 years in charge of on-site wastewater programs.

B. Evans stated that relief is needed from the SHWT requirement, septic reserve area (SRA), as well as the depth to bedrock requirement in order to design a septic system that meets Department of Environmental Services (DES) requirements. B. Evans reported that Mike Cuomo of the Rockingham County Conservation District (RCCD) witnessed test pits on behalf of the Town and has submitted a report saying all didn't pass. B. Evans indicated that he disagrees with M. Cuomo's position with regard to fill and reviewed the results of test pits with the Board. J. Colliander added that Hampton Falls requires 24" to SHWT in a naturally occurring state without fill whereas State requirements allows for a SHWT wherever it might be unless poorly or very poorly drained soils are identified. Discussion of soils, in general, and

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those soils on site took place at this time as well as new technology and products available for septic systems. B. Evans stated that relief from the Hampton Falls building code would allow a septic system to be designed and built in accordance with State standards and if it is decided to build the system on this parcel, he will place his stamp on the design.

Chairman Dittami asked what area is available for the septic reserve area (SRA) and what is needed. B. Evans stated he doesn't need any SRA in order to propose a design. J. Colliander clarified that the applicant is not asking the ZBA to waive the 5,000 square foot reserve area in its entirety, just the area that does not conform to SHWT which will be anywhere from 18" to 21". B. Evans stated concern with over-sizing the leach bed and that relief is requested to design a system according to NH DES standards. A. Dittami asked members whether anyone knew what the State standards are; no member knew. A. Dittami asked for more information as he felt the Board would be remiss in its responsibility to simply approve State standards. J. Deleire asked if there is anywhere on the lot that conforms to Hampton Falls standards. B. Evans reported no. J. Deleire stated that it sounds like B. Evans feels the town standards are technically indefensible. B. Evans stated that the Town's existing regulations whether over or underdone is immaterial. M. Farinola stated that Hampton Falls has requirements and the State has requirements and that the ZBA is being asked to relieve certain sections of the rules; the system will be designed appropriately for the soils.

A. Dittami stated that standards are in place that have been changed and not changed at times given advances in technology. When granting waivers, proof has been provided to the Board that a new technology or specific item needing relief would not jeopardize soil or conditions of land in Hampton Falls. He added that the ZBA does not give carte blanche relief and that the ZBA is responsible to the town and voters and that Hampton Falls has an inspector who reports test pits failed. B. Evans stated he takes exception to M. Cuomo's report and that he could argue technical points with him. J. Colliander interjected noting that the parcel has a SHWT of at least 18", the depth recognized by the State of NH, with soils that can be built on. He added that M. Cuomo is not recommending not granting relief; he is reporting that relief is needed as the results do not conform to Hampton Falls' building code. J. Colliander reported that there is 48" to bedrock and a 5,000 square foot septic reserve area, however, none of this conforms to 24" to SHWT; there is nowhere on the ten acres that conforms to 24" using natural soils. The Board reviewed M. Cuomo's report dated June 24, 2010.

Discussion took place with regard to Section 7.13.2: *7.13.2 All subsurface sewage disposal systems must be designed and constructed in accordance with the most recent edition of the manual of NH DES "Subdivision and Individual Sewage Disposal System Design Rules" – Env-Ws-1000 as that the minimum area of the leach field shall be 1.25 times the appropriate size recited in the tables of that manual. The observance and approval of all tests, plans and constructions herein named shall be performed at the convenience of the Planning Board's Agent(s). (Amended September 2006).* B. Evans stated that he felt there is no technical merit to this requirement and stated he could argue that making a bed larger is not better treatment and stated there is no cost savings to doing so. He stated that at the end of the day he would like the ability to build according to the State's administrative rule which will protect the environment, allow good treatment and flexibility to put the leach bed in an appropriate place such as under the parking lot.

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Discussion took place with regard to Building Code relief applications before the Hampton Falls ZBA and the manner in which the RCCD has advised communities regarding septic system requirements. A. Dittami reported that he spoke with the Building Inspector before this meeting who asked that the Board ensure that the town's agent is satisfied with whatever design is reached and that the septic system not be placed under the asphalt as was done at the property across the street (Faro Gardens). Relief from setbacks is not part of this application and the applicant will need to come back to the ZBA should this relief be found to be needed. P. Young inquired as to whether the applicant can request to amend this request. J. Colliander stated that public and abutter notification would be affected; therefore, the applicant cannot amend the request.

J. Colliander stated that:

Enforcement of these regulations would do manifest injustice in that the parcel consists of ten acres, none of which conform and the septic system cannot be put anywhere without relief. The property owner would have an abandoned building and ten unusable acres if denied.

Enforcement of these regulations would be contrary to the spirit and purpose of the building codes as septic rules are to promote safe and sanitary systems. The proposed system is state of the art and conforms to State regulations. Given technology and good soils, there is no problem for a septic system; would probably be safer than a system that does conform in other parts of Town.

Enforcement of these regulations would be contrary to the public interest. J. Colliander stated that it is in the public's interest to put the property to productive use with no adverse impact on abutters and no diminution of property values. He suggested that the proposal will help the abutters, the economy and neighboring businesses.

Discussion was opened to members of the Board. M. Farinola asked if the Board could incorporate as part of the wording of approval that the Board wants to give permission to put in the best system. J. Colliander stated that he felt the minutes should reflect that the Board would encourage the applicant to come back for relief from setback requirements. A. Dittami inquired as to how technology of septic systems is different from 10 years ago. B. Evans provided information on the Enviro Septic System.

Hearing no further questions of the Board, A. Dittami opened discussion to abutters and members of the public. No abutters were present. Hearing none, he closed the public hearing.

MOTION: To grant the applicant's request for relief from Building Code Section(s) 7.13.1, and 7.13.2 to permit design and installation of a septic system to treat and dispose of wastewater generated from the proposed 275 seat function hall in accordance with NHDES Administrative Rules and Regulations promulgated under RSA 485-A. Relief from these sections will result in a much better system design for the

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proposed facility in Zone B on property located at 1 Lafayette Road. (Map. 7 Lot 70) with the following conditions:

1. That the only relief being granted is that the seasonal high water table measurement be reduced to 18" or more and that the size of the system requirement of 1.25% be reduced to 1%.
2. That the system built is an Enviro Septic System specifically as shown on the plan provided with the application dated 7/30/10.
3. That with respect to construction of the plan, the applicant will otherwise abide by state and local laws and rules as applies to construction and maintenance of this particular septic plan.
4. That no portion of the septic plan will be constructed underneath pavement or covered at any time by pavement.
5. That the Town's agent, RCCD, is satisfied that the septic system, as designed, will adequately service the property.
6. That a notation concerning this decision be placed on the final plan for the ZBA file and State of NH.

**MOTION: A. DITTAMI
SECOND: M. FARINOLA**

Supporting Comments made by A. Dittami:

Enforcement of these regulations would do manifest injustice as the parcel consists of 10 acres of nonconforming property; those 10 acres have test pits but for the classification of 30 year old soil be unnatural fill, would otherwise meet requirements. The particular definition is absurd given the quality of soil indicated by the engineer and given the Enviro Septic System that is far better than traditional systems, A. Dittami believes it is inappropriate to deny.

Enforcement of these regulations would be contrary to the spirit and purpose of the building codes as the proposed design will have no adverse affect given the soil conditions and type of system. This proposal will provide a better situation with regard to requirements given the reasons outlined by the engineer.

Enforcement of these regulations would be contrary to the public interest: Any time a public rule prohibits from doing something that will better the community, because of a regulation that does not take into account advances of technology, it is appropriate and equitable to all to allow a better system to accomplish the goal of the law.

VOTE: UNANIMOUS

B. Evans requested that the Board incorporate one additional request into its decision. The request relates to making the system fit next to the parking lot and work with soils. A. Dittami noted that this request had not been previously discussed and added that the public hearing has been closed. A. Dittami asked J. Colliander if the additional request is needed. J. Colliander

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referred to Section 7.13.1 adding that there will be a large mound of soil by the parking lot without this relief.

Chairman Dittami identified that no parties have left the meeting and inquired as to whether Board members would be in favor of re-opening the hearing.

MOTION: To re-open this public hearing.

MOTION: A. DITTAMI

SECOND: D. FRENCH

UNANIMOUS

A. Dittami reported that the public hearing has been re-opened to consider one additional request. J. Colliander explained that Hampton Falls requires 48" (7.1.31.1 c) *The bottom of a proposed leaching bed shall be a minimum of 48 inches above any seasonal high water table; (Adopted March 2008)* above the SHWT and that the proposal is to reduce this depth to 30" which will meet State standards. J. Colliander stated that the system would have all the benefits indicated previously and is shown on the plan at 30". A. Dittami noted that State provisions are 24"; B. Evans stated he is allowing for an extra six inches. No comments were heard from the Board or public. A. Dittami closed the public hearing.

MOTION: To grant relief from the 48" requirement and reduce to 30" and incorporate this relief with the other conditions of the previous motion.

MOTION: M. FARINOLA

SECOND: P. YOUNG

UNANIMOUS

Review of Minutes of the Previous Meeting: A. Dittami provided some background with regard to minutes. He stated that he made proposed changes to the minutes; however, found that he did not have the authority to do so. He explained that the Board Secretary has the sole responsibility of drafting minutes and filing a copy with the Town Clerk. Any amendments to be considered other than grammatical changes must be made by full agreement of the Board at a public meeting.

Following discussion, the following changes were made:

Page 1, sixth paragraph, third line, was revised to read: "K. C. Kelley ~~stated he doesn't have time and~~ suggested he could contact other towns to see how they handle the application process...."

Page 1, last paragraph, last sentence, was revised to read: "M. Farinola stated he felt inquiries should go *to* the ZBA Chairman and not the Administrative Assistant."

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Page 3, paragraph five, was revised to read: "M. Farinola requested a point of order stating that he feels it inappropriate to be reviewing this matter when there is an ongoing case (Case 10-2 Ruest) that may be linked to this matter. He stated that evidence may be identified to be used against the Town. He noted that this subject was argued in the other case that may end up in civil court and that the Fitzgerald case was used as a precedent. ~~K. Kelley disagreed adding that he felt that M. Farinola was comparing these cases apples to watermelons.~~ A. Dittami stated the question before the ZBA is whether to do anything at all. He referred the Board to item number three on the Notice of Decision dated September 9, 1977, signed by Richard O. Bohm and the police reports provided by the Building Inspector.

Page 4, first full paragraph, was revised to read: "*Referring to paperwork provided in member packets*, P. Young questioned whether this equipment is stored at Applecrest Farm Orchards and K. Kelley stated no. ~~P. Young stated based on her personal knowledge that she doesn't believe the Fitzgeralds' equipment is that which is being used.~~ K. Kelley stated that the Fitzgeralds are transporting vehicles down Old Stage Road, the matter was brought to his attention by the Police Department and a review of documentation back to 1973 was done by him. In 1977, the ZBA approved a road grader. K. Kelley questioned how the road grader gets to and from the property. He added that he has visited the property and that he observed a grader and other vehicles and that if the condition was not part of the decision that he would act independently of the ZBA and prepare a report for the Board of Selectmen."

MOTION: To approve the minutes of the July meeting as amended.

MOTION: J. DELEIRE

SECOND: M. FARINOLA

4 IN FAVOR, 1 ABSTENTION, PASSES

Other Business: Application, Procedures and Fees:

Application: A. Dittami reported that L. Ruest revised the application documents as discussed last meeting and that P. Young reviewed the revisions. M. Farinola suggested that the new forms be tried for a few months to see if there are any concerns and P. Young requested that portions of the application packet be copied back-to-back in order to save paper.

A. Dittami asked that each category of application be provided separately rather than all application categories in one packet. He suggested that the Building Inspector create the packet of forms for each applicant, as they relate to the request(s) for relief, stapling the sections of forms. A. Dittami took a poll of the Board with regard to his suggestion of creating application packets as needed as compared to one full packet of application documents. Four members indicated favor of continuing the practice of one packet of all forms. A copy of each year's meeting schedule is to be part of the application packet.

MOTION: To adopt the application forms as revised.

MOTION: M. FARINOLA

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**SECOND: J. DELEIRE
4 IN FAVOR, 1 OPPOSED, PASSES**

Fees: L. Ruest referred the Board to the bottom portion of each application form where a box has been added to determine fees applicable to an application. A. Dittami stated that the ZBA is not authorized to change fees but has the responsibility through its rules to review fees annually. Question was raised as to whether the \$75 application fee is appropriate to cover the costs associated with an application. Question was raised as to what the Town is paying employees for and it was noted that the ZBA should not be asking for anything of the applicants. Question was also raised as to how much time is spent as well as other costs associated with the process. A. Dittami reported that the Board of Selectmen has asked him to evaluate and put together the administrative costs to support the ZBA. It was determined that the matter of fees would be deferred until this is done.

Building Code: P. Young inquired as to where the standards set forth in the Building Code came from. A. Dittami suggested that the Building Inspector be asked to speak at the next meeting with regard to rules and regulations as well as walk members through the procedure. A poll of the Board resulted in three in favor and two opposed to this suggestion.

Municipal Law Lecture Series: A. Dittami referred Board members to the pamphlet outlining information on the next Law Lecture Series. He asked members to review and provide L. Ruest with completed registration forms should anyone wish to attend.

2011 Budget: A. Dittami reported that he has been asked to review the Planning/Zoning budget and make recommendations. A copy of the budget worksheets will be emailed to members for review. A. Dittami asked that members call him with comments by September 10.

Comments or Questions from the Floor: Laura Doyle, 5 Toppan Lane, spoke in support of Paul and Pamela Fitzgerald with regard to last month's discussion of their trucks and special exception. She outlined support for the Fitzgeralds in this regard and provided some history of her experience as an abutter, neighbor and friend with regard to the activity of the trucks. A. Dittami stated that the ZBA would like to work this matter out with the Fitzgeralds and the Building Inspector and encouraged the Fitzgeralds to talk with the Building Inspector and come before the Board. M. Farinola stated that the Town is obligated to investigate the matter based on the complaint. A. Dittami stated that the complainant could also come to the ZBA to withdraw the request or do whatever they can to help alleviate the situation.

Adjournment

MOTION: To adjourn the meeting at 8:56 p.m.

**MOTION: M. FARINOLA
SECOND: D. FRENCH
UNANIMOUS**