

**BUSINESS MEETING
FINAL**

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

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

Other Business:

1. Fitzgerald Special Exception:

A. Dittami acknowledged a July 16, 2010, report from the Building Inspector as well as other documents relating to a special exception granted to the property owners of Map 5, Lot 46. He noted that the Building Inspector had requested guidance on a possible violation of the special exception granted and was asked to approach the property owners for more information and report back to the Board.

Building Inspector, K. Kelley stated he was unable to make any attempt in this regard due to work load and that he hopes to have better information at a later date. He stated that he feels the property owners acted in good faith over time. M. Farinola stated he thought the Building Inspector talking with the property owners was an effort not to start a process before the Town and stated the ZBA has no authority to ask the property owners to do anything. A. Dittami stated there are two questions: Will the Code Enforcement Officer be recommending any more action than what has taken place and is there a need to request an appeal to a decision or to reaffirm the decision made in the past. Depending on which direction is taken, there is a question as to who is to pay the fees for the application process before the ZBA. K. Kelley stated he will try to get voluntary compliance of a situation that has existed a long time. A. Dittami asked if the ZBA agreed there is nothing further for its Board to consider at this time. The Board agreed. K. Kelley stated he would follow up with the Fitzgeralds and added that if the matter is to go further, he will go to the Board of Selectmen for direction on enforcement action. No further questions or comments were heard.

2. Case #10-04: T. Park Realty Trust:

Property Owner David Benoit and Engineer William Evans were present at the request of the Chairman to provide information with regard to the relief granted to the Building Code for a septic system to support the use of a function hall at 1 Lafayette Road, Map 7, Lot 70.

A. Dittami reviewed the decision granted in this case noting the condition that relief was granted based on the plan presented to the ZBA. He stated that subsequent information received identified differences and requested confirmation that the resulting septic system meets the conditional approval granted by the ZBA.

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M. Farinola stated he didn't recall the Board voting to send the applicant the letter forwarded by the ZBA Chair on November 2. A. Dittami stated there was no vote but that he took it upon himself as Chairman based on indication of possible nonconformance to attempt to resolve a conflict in order not to delay an occupancy permit for the property owner. M. Farinola disagreed and stated he felt it is not the responsibility of the ZBA but the responsibility of the Building Inspector. A. Dittami stated the ZBA has ability to place conditions and ability to follow up on the conditions. At this time, he requested an opportunity to understand the matter better and allow the ZBA to make a decision as to whether additional action is needed or not and added that he feels he is being proactive by addressing a potential problem.

M. Farinola restated the question of whether the ZBA has authority as well as the Building Inspector's responsibility to determine if a permit is to be granted based on Rockingham County Conservation District (RCCD) and State approval. A. Dittami stated he is looking for an answer as to whether the results match or not. P. Young stated she hasn't seen anything from the Building Inspector, who should be informing the ZBA of a matter such as this, and that her concern is that the Chair made an arbitrary decision to send a letter. A. Dittami stated that the practice of the ZBA Chairmen over time has been to obtain information and act or decide on agenda items. He reviewed the issues identified by the RCCD with the Board.

Discussion took place with regard to Board members receiving all information the Chairman is provided. M. Farinola offered the following motion.

MOTION: That this matter not be brought before the ZBA as there is no legitimate reason to be brought forward, or note from the Building Inspector or other source that would cause question to the decision and that the matter is here with no authority.

MOTION: M. FARINOLA
SECOND: P. YOUNG

J. Deleire pointed out that all parties are here and that the applicant has decided to attend, lay out the plans and see what there is to say whether binding or not and at least provide an opportunity to review with the Building Inspector to determine if there is an issue. M. Farinola and P. Young withdrew the motion.

W. Evans reviewed the plan submitted with the application and the plan approved by the State in conjunction with plans submitted for review at this meeting. Board members reviewed the differences from plan to plan identifying that the septic tank is in a different location and that a grease trap, pump chamber and D-box have been shown that relate to the designed system. W. Evans reviewed the six conditions of approval granted with relief to the Building Code. He confirmed that the resulting system is in fact an EnviroSeptic system and that the remaining conditions have been addressed. He noted that he has also added the complete ZBA decision on the final mylar to be recorded.

A. Dittami stated that the differences in the plans presented to the ZBA this meeting are different with regard to the tank, trap, and D-box. W. Evans stated that he did not submit a definitive

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design, however, submitted a plan that complied. He identified relocation of the septic tank, an added grease trap for the prep kitchen, an outfall to the inlet of the septic system and a duplex pump station. K. Kelley stated that the differences are physical but that the design and intent are the same.

A. Dittami asked Board members if it is felt that the plan submitted this meeting is different from the plan submitted with the application. T. Parker stated he was not clear that the plan submitted with the application was a preliminary design and feels it should have been presented with an indication that final approval was pending from the Department of Environmental Services. A. Dittami stated that he sees a discrepancy and added that had an explanation been provided by the applicant that the Board could have changed the language of the decision. W. Evans stated that relief was granted for an EnviroSeptic system disposal area, not how you get to the area. He added that he understood the ZBA to mean an EnviroSeptic system the same as the plan submitted with the application and final plan. He stated that elevations are set by the design in conjunction with soils through the RCCD and that all have to agree on the water tables; all was driven by these criteria and was granted relief. A discussion of how an EnviroSeptic system works took place at this time.

J. Deleire stated that typically when the ZBA votes, it looks and expects to be exactly as presented but he finds the terminology different in this case. He stated that he agreed the resulting plan is different but that based on discussion this meeting doesn't feel it matters. Although the Board thought "Enviro Septic system" meant the entire system, it learned that only the area where the effluent was treated, and not the entire septic system, was addressed with this application. The Board found that the applicant had not changed that part of the septic system and was in compliance with the ZBA decision. No further questions were heard from the Board. All agreed there is no need to act on the matter and thanked the applicant and his engineer for attending.

3. Building Inspector – Septic System Permit Process:

K. Kelley explained a step by step application process that is taken in regard to replacement, new or subdivision matters. He explained that once an application and fee is submitted, the application is forwarded to the RCCD to witness test pits. The applicant, or its contractor, is responsible to contact the RCCD to set a date and time. Once all concur on soils, a report is written and plans are drafted. A copy of the plans is submitted to the RCCD for approval of Hampton Falls' requirements and then forwarded to the State for approval. If it is found that the plans do not meet Hampton Falls' requirements, a report is written to the Town outlining the concerns.

At the time approval for construction is granted, the Building Inspector's role is to conduct a bed bottom inspection ensuring there are no rocks, tree roots, etc. The system is then set up and the State inspects to verify the design and location; sometimes changes are made. Once approval for operation is received, the structure is usually completed and a certificate of occupancy is issued. The remaining item is to ensure the area is seeded and stabilized. K. Kelley added that there is a waiver process for existing systems and that some matters can be addressed by waiver without

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the need to appear before the ZBA. He added that it is important that the system is placed in the best location and that he defers to experts when needed.

In response to A. Dittami, K. Kelley confirmed that no work should be done before the RCCD report. He added that in the case of a failed system, the Health Officer approaches the homeowner and allows time to correct the problem or pump the system. A. Dittami asked whether the ZBA can refer matters that come before the Board to the RCCD. J. Deleire noted that most members do not have the scientific expertise to evaluate and that there should be someone to assist the ZBA with its questions. A. Dittami suggested that an opinion be obtained from an expert to determine if relief, as requested, is appropriate, however, questioned how this person would be hired and compensated. M. Farinola stated he felt the ZBA has only the ability to waive requirements based on a plan signed by an engineer. T. Parker expressed concern as it is his experience that State approved designs have failed. P. Young stated she felt Hampton Falls has snob zoning and that Hampton Falls doesn't want building in town.

4. ZBA Fees:

Referring to past discussion of ZBA rules and fees, A. Dittami asked if Board members wished to recommend a change in fees. P. Young stated there are employees being paid a salary for this service and that she is not in favor of increasing application fees. No change to fees was recommended.

5. ZBA 2011 Meeting and Deadline Schedule:

A revised meeting schedule outlining deadline and meeting dates for 2011 ZBA meetings was provided to Board members.

6. Zoning Amendment Calendar:

A copy of a calendar of key dates with regard to proposed zoning amendments as prepared by the Rockingham Planning Commission was provided to Board members.

A. Dittami asked whether Board members wanted to receive all communications that he receives as Chairman. P. Young stated that she had no problem with all communications going to the Chair but disagreed with the Chair sending out a letter without discussion of the Board. Following a poll of the Board, A. Dittami stated he would send all communications he receives to Board members. He also stated that should members want something on the agenda, to feel free to contact him.

Review of Minutes of the Previous Meeting

MOTION: To approve the minutes of the August meeting as written.

MOTION: A. DITTAMI
SECOND: J. DELEIRE

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4 IN FAVOR, 1 ABSTENTION, PASSES

Comments or Questions from the Floor: No comments or questions were heard.

M. Farinola took issue with the action of the Chair in sending a letter to T. P. Realty. A. Dittami stated that a concern was brought forward and he decided to send the letter. M. Farinola indicated that the Chairman is not the Board.

Adjournment

MOTION: To adjourn the meeting at 8:29 p.m.

MOTION: A. DITTAMI

SECOND: D. FRENCH

3 IN FAVOR, 2 OPPOSED, PASSES