

- A. CALL TO ORDER – 7:00 PM:** Chairman Brown called the meeting to order.
- B. ROLL CALL:** C. Brown, Chairman; L. Smith, Co-Vice Chairman; A. Tonry, Co-Vice Chairman; R. Duchaney, C. Gordon, D. Mitchell, Members; R. McDermott, Alternate Member; M. Carriel, Rockingham Planning Commission Circuit Rider Planner; R. Vigneau, Building Inspector; L. Ruest, Secretary  
NOT PRESENT: F. Ferreira, Jr., Selectmen’s Representative; J. Caunter, Alternate Member

Six voting members were present for this meeting.

**C. PUBLIC HEARINGS**

- 1.** The review and adoption of amendments to Chapter 7 - Municipal Facilities & Services of the Hampton Falls Master Plan. The proposed chapter contains an updated inventory and recommendations which address existing and anticipated deficiencies.

C. Brown opened the public hearing. Copies of the draft chapter have been provided to the Board members and made available to the public. Discussion was opened to members of the Board. L. Smith stated his concern with respect to the DARE program referenced on page 7-8. He questioned whether the town has reassessed this program given recent clinical reports that indicate the program is not working. C. Brown and E. N. Small indicated that this information came from the Police Chief who has indicated he gains good rapport with the youngsters and feels the program provides a service to school children and their families.

L. Smith also inquired as to the need to replace police vehicles as often as in the past given the better quality of vehicles today. Discussion took place with respect to keeping an older vehicle as surplus and the number of hours of use of the engine as well as past experience with repairs once a cruiser exceeds 100,000 miles.

No amendments were proposed. The committee was commended for its efforts and a job well done. Discussion was opened to the public. Hearing no comments, C. Brown closed the public hearing.

**MOTION:** To accept the amended Chapter 7, Municipal Facilities and Services of the Hampton Falls Master Plan as proposed in the draft dated 9/10/04.

**MOTION: L. SMITH  
SECOND: R. DUCHANEY  
UNANIMOUS**

- 2.** The review and adoption of an amendment to the selected methodology and fee cap for assessing impact fees, based on the “Methodology for the Assessment of Public Schools Impact Fees” (dated June 6, 2003 and adopted by the Planning Board on July 22, 2003).

C. Brown opened the public hearing. Documents outlining the current impact fee policy and procedure, the proposed impact fee policy and procedure, the impact fee calculation assessment

form used by the Building Inspector (current and proposed) and new impact fee assessment policy, definitions and procedures were reviewed by the Board.

The proposed change reduces the cap from \$15,000 to \$10,000 and includes language as to what the impact fee applies to and what it does not apply to. The square footage rates stay the same.

Discussion was opened to comments of the Board. Lengthy discussion took place with respect to the impact fee being assessed for additions whether it is living space or not. C. Brown indicated that she felt it should not be all inclusive and that additions that include a bedroom should be assessed an impact fee. The point of the impact fee is to help the schools and this has been related to the determination of bedrooms.

Discussion of the issue of demolishing a smaller home to build a larger home took place. This issue has been addressed by the committee and is reflected in the Impact Fee Assessment Policy, Definitions and Procedures. Following discussion, revision was made so that the document now reads:

**Impact Fee Assessment Policy, Definitions and Procedures**

**The impact fee will be applied to:**

- New dwelling units built on previously undeveloped lots, and;
- Replacement dwelling units on previously developed lots (except as exempted below).

**The impact fee will not be applied to:**

- Dwelling units that replace those damaged from any source or reason, and replacement in-kind (as referenced on the property tax card);
- Additions (defined as newly-created floor space, whether for living space or other);
- Homes for the elderly (defined as age-restricted housing where the minimum age of all permanent residents is 55 years), and;
- Any undeveloped lot which the Planning Board invoked jurisdiction of from 8/11/99 to 8/11/03.

The fee assessment will be applied to living space at the rate of \$2.73 per square foot, up to a limit of \$10,000 per dwelling unit (as determined in the original study by Bruce Mayberry).

Living space is defined as finished space that can be occupied year round. This change shall take effect upon Planning Board adoption and be retroactive to 8/11/03. This was adopted by the Planning Board at their regular monthly meeting held on September 28, 2004.

D. Mitchell stated that he felt voters thought they voted for an impact fee that would be assessed to new people building in town and that existing property owners were exempt. The Board agreed that the issues of mudrooms and finished basements were not of issue, but rather when additions include bedroom(s). C. Gordon noted that when a bedroom is added it affects the need to address the septic system. Concern was expressed with respect to property owners indicating that they are adding a family room when in fact it could be a bedroom. A. Tonry noted that those currently living in town are not likely to add a bedroom, whereas new persons might consider a smaller home with a plan of an addition. L. Smith stated that all should be treated equally and if a bedroom is added, an impact fee is to be assessed. It was noted that current information on the property tax card can be used when assessing the fee for additional square footage/bedrooms.

However, after a discussion with the Building Inspector, of the amount of impact fees that would likely be raised by assessing bedroom additions, which was determined to likely amount to no

more than several thousand dollars per year, it was decided in the interest of simplicity and ease of administration to not assess impact fees on additions, even if the addition included a bedroom.

Question was raised with respect to the fees collected and whether they should be returned. M. Carriel suggested having a waiver allowance in the ordinance and if found warranted, could be granted. Discussion of the definition of the term “development” took place as well as the possible need to amend the ordinance. Discussion concluded with amending the wording of the Impact Fee Assessment Policy, Definitions and Procedures so that the term “development” is not used.

Hearing no further comments from the Board, discussion was opened to members of the public. Hearing none, C. Brown closed the public hearing.

**MOTION:** To adopt an amendment to the impact fee ordinance calculation and collection as originally adopted by the Planning Board on July 22, 2003, to include the latest revisions by the committee as posted for public hearing with non-substantive changes through the September 28, 2004 meeting.

**MOTION:** A. TONRY  
**SECOND:** L. SMITH

The Board agreed that the changes made this evening are not substantive and were made for clarification.

**UNANIMOUS**

3. Consideration of an amendment to the Hampton Falls Zoning Ordinance Article III, Section 11 – *Elderly Housing and Multi-Family Housing*. The proposed amendment would add the following as new Section 11.7:

**11.7, Growth Control Does Not Apply**

- a. The provisions of Article VI – *Growth Control*, of the Town of Hampton Falls Zoning Ordinance, shall not apply to Elderly Housing or Multi-Family Housing developments.

C. Brown opened the public hearing. Discussion was opened to members of the Board. It was noted that although this issue was discussed at the time the Multi-Family/Elderly Housing ordinance was created, it was not included in the ordinance and this corrects an omission that was unintended.

Hearing no further comments from the Board, discussion was opened to members of the public. Hearing no comments from the public, C. Brown closed the public hearing.

**MOTION:** To forward the amendment to the Board of Selectmen to schedule a deliberative and special town meeting. This is to correct an unintended omission during the drafting of the ordinance.

**11.7, Growth Control Does Not Apply**

- a. The provisions of Article VI – *Growth Control*, of the Town of Hampton Falls Zoning Ordinance, shall not apply to Elderly Housing or Multi-Family Housing developments.

**MOTION: A. Tonry  
SECOND: L. Smith  
UNANIMOUS**

4. **Case 04-07-02:** Application from Suzynne D. Cummings for **Lucy Kat** for a Final Public Hearing requesting a waiver of requirements regarding submitting a new site plan and an affidavit for modification of the permitted use(s). (69 Drinkwater Road Map 1 Lots 70 & 70-3)

Suzynne D. Cummings was present. No abutters or members of the public were present. C. Brown acknowledged a letter and draft site review agreement received from Planning Board counsel dated September 14, 2004, as requested at the August meeting. S. Cummings requested the Board accept the proposed site agreement as presented and approve the applicant's request for waiver to the need for a new site plan.

C. Brown noted that the appropriateness of the applicant's request has been addressed by Attorney Beliveau and asked for the pleasure of the Board. C. Brown stated that the issue is whether or not the Board is, first of all, willing to accept an agreement in place of the need for a revised site plan. The approved site plan is on file with the Rockingham County Registry of Deeds ((D-29859). Referring to item number three of the site review agreement, L. Smith suggested adding "Parking shall be limited in accordance to limits of the March 5, 2002 approval." thus repeating the need to meet the terms and conditions of the March 5, 2002 approval. Given the contentious history of this property, it is felt necessary to repeat this condition.

C. Brown asked if the Board is willing to allow changes to the site plan to begin with. Request is to add the uses of acupuncture and life guidance counseling. S. Cummings explained that no physical change to the property is planned. There are two rooms being used, one large and one small. The larger room is used for yoga and tai chi classes. The smaller room is used for massage therapy and is proposed for use for acupuncture and life guidance counseling. In response to C. Brown, S. Cummings stated that life guidance counseling is assistance to persons to help them deal with challenges such as death or health issues. A counselor would provide this service. These two uses are an expansion of the approved uses of this property.

For the record, it was noted that acupuncture was specifically denied as part of the prior approval. R. McDermott asked how the many uses could take place in two rooms. S. Cummings explained that the uses of massage therapy, acupuncture and life guidance counseling would need to take place in the smaller room for privacy reasons. Basically, one service would be swapped by another in the smaller room within the hours listed on the plan. Hours of operation and parking will need to stay the same as approved. S. Cummings indicated she is asking for an expansion of use, not an expansion of the restrictions of the site plan. R. McDermott asked if this is it for planned uses. S. Cummings stated yes, however, asked to further define yoga. It was noted that the approved uses are included on the plan and that there is a requirement to apply

to the Board of Selectmen for a special permit for anything other than the approved uses. The Board expressed frustration with events being held at the property without proper approval of the town.

S. Cummings inquired as to the addition of a resident of the property. This resident conducts acupuncture. L. Smith indicated that the use of acupuncture was specifically denied. A cease and desist order is in place for this use. This is the reason the applicant is back before the Board. Concerns of health issues, disposal of needles, state licensure requirements, et cetera were discussed at this time. It was noted that this information relating to the acupuncture use has been provided to the Board. Questions were then raised with respect to licensure requirements for life guidance counseling.

It was noted that the approved site plan allows one employee/volunteer plus the owner. Question was raised as to how this requirement would be met. S. Cummings stated that an additional employee would need to be included as part of the site review agreement. A. Tonry noted that with two rooms, there would be two total at any one time. Some Board members were not amenable to changing the employee/volunteer requirement.

C. Brown asked the Board if they are willing to waive the need for site plan. D. Mitchell suggested that if this is a matter of trust, consideration could be given to denying the request or requiring a new site plan. It was noted that the approved site plan has not been followed by the property owner and all conditions of approval are spelled out. L. Smith added that the property is in non-compliance and request is to add additional uses. L. Smith indicated he is not concerned with the use of acupuncture but is concerned with Life guidance counseling. Following further discussion, the Board indicated it is willing to use the site review agreement.

**MOTION:** To accept the application as complete.

**MOTION: L. SMITH**  
**SECOND: A. TONRY**  
**UNANIMOUS**

The Board was polled with respect to its willingness to consider the waiver request to the need for a new site plan. All members, but one, agreed to consider the waiver. The Board was polled with respect to approving increased use of the property. All members, but one, agreed to consider an increase of use to the site plan. The Board was polled to consider allowing acupuncture as an additional use. All members, but one, agreed to consider acupuncture. The Board was polled with respect to approving Life guidance counseling as an additional use. Of the six members, four stated no and two stated yes. S. Cummings asked the Board to consider just acupuncture.

Discussion took place with respect to whether the request is an expansion, abandoning the vehicle of site plan review, setting terms and conditions to add to the agreement, and limiting this request to no further expansion of use.

Discussion was opened to abutters and members of the public. None were present and no comments were heard from the newsperson in attendance. C. Brown closed the public hearing.

**MOTION:** To approve the applicant's request to waive site plan requirements requiring the submission of a new site plan and instead allow a site review agreement as prepared by Planning Board counsel Mark Beliveau as amended tonight.

**MOTION:** A. TONRY  
**SECOND:** L. SMITH  
**5 IN FAVOR, 1 OPPOSED, PASSES**

**MOTION:** To approve the additional use of acupuncture with no change to buildings or site layout, as spelled out in the site review agreement drafted by Planning Board counsel, Attorney Mark Beliveau, and amended this meeting with the following conditions:

1. That any and all fees due be paid before the agreement is signed.
2. That the agreement be recorded at the Rockingham County Registry of Deeds.

**MOTION:** D. MITCHELL  
**SECOND:** A. TONRY

Further discussion concluded that the cease and desist order stands until the conditions are met. Item number two of the agreement was amended to include the additional use of acupuncture only, deleting "life guidance counseling."

**5 IN FAVOR, 1 OPPOSED, PASSES**

**E. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES – July and August**

**MOTION:** To accept the July minutes as amended.

**MOTION:** L. SMITH  
**SECOND:** A. TONRY  
**UNANIMOUS**

**MOTION:** To accept the minutes of the August meeting as written.

**MOTION:** L. SMITH  
**SECOND:** C. GORDON  
**4 IN FAVOR, 2 ABSTENTIONS, PASSES**

**F. OTHER BUSINESS**

**1. Marston / Swain Subdivision – Relocation of Cistern, Record Cistern Easement, Reference Prior Recording Number of Subdivision Plan on Amended Plan as well as Easement**

L. Ruest explained to the Board that the cistern location on the approved subdivision plan has been changed and the cistern installed in the new location. The Road Committee has been working with the applicant regarding this. Jones and Beach Engineers and the Hampton Falls Fire Chief have approved the cistern. The question raised is whether the developer needs to submit an application and amended plan to the Planning Board or whether it could be permissible to submit an as-built plan to the town. Concern is raised with respect to the location on the recorded plan being different from the actual location.

Following discussion, M. Carriel noted that in order to approve an amendment, the Planning Board would need to hold a public hearing and what is on record now is an approved plan and easement with inaccurate information.

The consensus of the Board is to require the developer to submit an application for amendment to the approved subdivision plan. The Board might be willing to waive the application fee due to the minimal impact of the amendment and that this is being done for the sole purpose to obtain a corrected plan for recording.

**2. Case 04-06-01 (cross reference Case 04-03-04) Beverly Mutrie – Security**

**Agreement:** L. Ruest explained that the developer of this site plan is requesting that the security agreement be entered into with the prospective buyer of the project. Question is raised by the Town Administrator as to who the Planning Board wants the agreement with, the owner of record or the prospective buyer. The Board agreed that the security agreement should be in the name of the current owner and plan holder, if separate.

**3. Building Inspector's Report:** The Board acknowledged R. Vigneau's report for August. He informed the Board that he added new criteria to the report (permit value year-to-date and fees collected year-to-date).

**4. Committee Reports:**

**CIP/MASTER PLAN:** C. Brown reported that the CIP committee met twice since last meeting. They have met with department heads and reviewed requests through 2010. The committee meets again in October to prioritize and submit its final report to the Board of Selectmen.

**ROAD COMMITTEE:** The Road Committee did not meet in the month of September.

**ORDINANCE AND REGULATIONS COMMITTEE:** D. Mitchell distributed minutes of the September 28 meeting as well as three proposed amendments to ordinances. Following discussion, the Board agreed to bring these matters to the October agenda for review and discussion and then to public hearing in November.

In response to the Board of Selectmen's request of August 31, 2004, D. Mitchell reported that the committee has worked on the circuit rider fee, impact fee, floodplain development, structural requirements of the building code (perc test moratorium) and political signs ordinance. It was requested that a copy of the committee meeting minutes be provided to the Board of Selectmen.

**5. Amendment to Site Plan Review Regulations – New Forms of Security:** Subdivision Regulations have been amended to include the new forms of security. In working with the Mutrie site plan, it has been identified that the same amendment needs to be done for this section of the ordinances. M. Carriel will put the proper wording together and submit it to R. Vigneau for inclusion of the legal notice for public hearing at the Board’s October meeting.

**G. COMMUNICATIONS TO BOARD MEMBERS:** C. Brown reviewed documents provided in the packet as follows:

- Letter from Code Enforcement Officer to Bon Amigos of Hampton Falls, 122 Lafayette Road, Map 8, Lot 52-1 requiring site plan review with the Planning Board.
- Letter of thanks to Marietta Garavaglia for her service on the CIP/Master Plan Committee.
- Zoning change information from Town & City, September 2004.
- 2005 Zoning Ordinance Amendment Schedule.
- Various miscellaneous seminar information brochures.
- Various letters from Planning Board counsel regarding current legal matters.

**ZBA:** Discussion took place with regard to Case #04-10—E. Chandler Sanborn, Map 6, Lot 4-1, Sanborn Road.

**CIRCUIT RIDER CONTRACT – ROCKINGHAM PLANNING COMMISSION:** C. Brown read a request to enter into a three-month contract with the RPC for Circuit Rider services. The three-month period is from July 1, 2004 through September 30, 2004 and is in the amount of \$3,763. This is not the annual contract, but rather a three-month contract to address an administrative change.

**MOTION:** To authorize the Chairman to sign the three-month circuit rider contract with the Rockingham Planning Commission for the period July 1, 2004 through September 30, 2004 in the amount of \$3,763.

**MOTION:** L. SMITH  
**SECOND:** A. TONRY  
**UNANIMOUS**

**TRAINING – OFFICE OF ENERGY AND PLANNING:** C. Brown referred the members to this year’s training sessions and encouraged all to attend. Registration forms need to be completed and submitted to L. Ruest as soon as possible. L. Ruest will submit registrations and make arrangements for payment.

**H. ADJOURNMENT**

**MOTION:** To adjourn the meeting at 10:11 p.m.

**MOTION:** A. TONRY  
**SECOND:** D. MITCHELL  
**UNANIMOUS**

**PLANNING BOARD  
SEPTEMBER 28, 2004**

**7:00 PM  
PUBLIC SAFETY BUILDING  
PUBLIC HEARING AND BUSINESS MEETING**

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