



Minutes

NORTH HAMPTON PLANNING BOARD Public Hearing and Work Session Monday, July 21, 2003

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These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription. An audio recording of the meeting is available in the Town Office. In the event that a question arises about verbatim comments, it can be answered by listening to the recording.

Attendance

Present: (1) Phil Wilson, Chair; (2) Ron Todd, Vice Chair; (3) Joseph Arena; (4) Judy Day; (5) Shep Kroner; (6) Beth Church, Alternate, seated for Don Gould;

Krystina Deren Arrain, Recording Secretary/Planning & Zoning Administrator

Absent: (1) Don Gould; (2) Allen Hines, Selectman; (3) Richard Place, Alternate

Present, not Seated: Laurel Pohl, Alternate

Mr. Wilson called the meeting to order at 7:06 PM.

Items Considered

Review of NHMA Access Discussion and the Record of that Discussion in the Minutes of the June 3, 2003 Meeting of the Board

Laurel Pohl addressed the Board and read the following statement into the record.

EXHIBIT "A"

On June 3rd, in response to Chairman Wilson's request for clarification regarding the reasoning behind the decision to restrict access to the NHMA, Mr. Hines knowingly distorted the facts and presented false statements. Since they appear as part of the official record, I believe that it is imperative that I answer and correct these misrepresentations. First I would like to address six statements made by Mr. Hines and then I intend to refute them.

- 1) I have never been in contact with the NHMA or any representative of the NHMA at any time.*
- 2) I have never used the NHMA as a legal advisor.*
- 3) On no occasion did Judy Day, Jennifer Landman or any other member of any committee in the town of North Hampton provide me with unauthorized access to the NHMA.*
- 4) At no time did the NHMA, a representative of the NHMA, Judy Day, Jennifer Landman or any member of any other committee in the town of North Hampton share any privileged information with me, or with anyone associated with me.*

- 5) *At the Board of Selectmen's meeting, I did not ask the question "where am I going to get my information" as Mr. Hines stated, I asked if a citizen could not ask other town officials about what the Board is doing, especially when it is believed that what they are doing is illegal.*
- 6) *On no occasion were any responses from the NHMA used against our municipality's interest.*

On May 29th, a few days before the Planning Board meeting on June 3rd, Mr. Hines unexpectedly showed up at my home. My husband witnessed my response to Alan's suggestion that afternoon, that I had fraudulently obtained legal advice from the NHMA. At that time, I had made it perfectly clear to Mr. Hines that I had had my own attorney who had checked into RSAs 32:8-a, 32:7 and 31:5-b (and I have the legal bill and copies of several emails to my attorney to prove it).

Secondly, as a citizen I did not have access to the NHMA.

Thirdly, I informed Mr. Hines that it was a male town official who was the person that I had asked about the legality of the board's decision on funding and that he had merely confirmed, at a later date, what I already knew from my own research and my own attorney -- that I was correct about the illegality of switching the funding source. During the Board of Selectmen's Meeting on April 14th, this town official urged the board to proceed with the Highway Garage project according to the warrant article. He had asked that the Board of Selectmen hold a procedural defect meeting to cure the defect, go ahead with the bond and then use the undesignated fund to pay off the bond. Clearly, at this point, the funding issue had already been called into question publicly, not only at this meeting but also during several prior Board of Selectmen's meetings. As a result of the latest announcement by Mr. Hines and Mr. Sullivan of it's intentions to proceed with the project in a manner that I thought was illegal, I stopped this town official after the meeting and asked if he also thought that switching the funding from a bond, as the warrant article had stipulated, to the undesignated fund was illegal. I told him that it did not make sense that a town needed a vote to appropriate funding for bonds but that it did not need one to appropriate funding for the same project out of the undesignated fund. At no time did I ask this town official to provide free legal advice from the NHMA - because at that time, I had no knowledge of the NHMA or it's function. My attorney researched the question regarding the legality of switching the source of the funds. My attorney's response was that switching the source of funding changes the intent of the warrant article and would render the vote and the article invalid according to RSA 32:7.

Fourth, the interpretation of a state statute cannot be construed as privileged information because any attorney, including my own, can, and did, provide an opinion regarding the meaning of RSA 32:7.

Fifth, the attorney/client relationship cannot be construed as having been violated, because, as attorneys, the NHMA was ethically bound to respond and report conduct, which is not in conformance with the laws of this state. The fact that Mr. Hines and Mr. Sullivan disregarded this town officials' plea to honor the warrant article as it was written, that they disregarded similar pleas from other town officials, and that they disregarded pleas from citizens as well, for more than a full month, clearly demonstrated that the protocol of keeping mistakes confidential but expecting the responsible town officials to correct their mistakes was a closed avenue.

Sixth, Mr. Sullivan finally conceded on April 22nd only when the DRA rethought it's position and officially withdrew authorization for funding, and the DRA only did this because Ms. Baker of the DRA had, and I quote, "an epiphany" when she received a call from a citizen who told them what the Town Administrator had withheld from official correspondence: that there had

never been a hearing on the bond as required by RSA 32:8-a and that that was how the warrant article was written. Further, since the meaning of RSA 32:7 was completely disregarded by Mr. Hines and Mr. Sullivan, and since it had nothing to do with why the project had failed in the first place, it can hardly be said with any validity that the NHMA response had been used against the municipality's interest.

Seventh, it is public knowledge that during a budget committee meeting on April 22nd, a member of the committee questioned this town official on why he had shared NHMA information with private citizens. Because the Board of Selectmen has representation on this committee, Mr. Hines had knowledge, or should have had knowledge of the fact that Jennifer Landman and Judy Day were not involved in anyway regarding this incident with the NHMA, and he had this information well before he made statements to the contrary on June 3rd and he was aware that his statements would be taken as a genuine part of the Planning Board minutes.

Eighth, because Mr. Hines had been corrected on two prior occasions as to the truth of the matter, and because he had the opportunity to confirm these facts on his own, the defamatory remarks promoted by Mr. Hines are based upon speculation and false assumptions and were made in order to damage the reputations of Judy Day, Jennifer Landman and myself. The fact that the victims of Mr. Hines' conjectures are all females should not be ignored.

I believe that the decision made by Mr. Hines and Mr. Sullivan to restrict access to the NHMA is indefensible and it should be reversed because it was justified based on conjecture and false statements. Lastly, I believe that Mr. Hines should retract his statements made on June 3rd and apologize to Ms. Landman, Ms. Day and myself.

Laurel Pohl
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Ms. Day stated that the June 3, 2003 minutes do not accurately reflect her response to the above issue. She wanted the minutes amended to show her response, although she was not sure exactly what she said. Mr. Wilson stated that when he read the RSA, it was clear to him that the warrant was in error and he contacted the Attorney General who said it was referred to the DRA and ultimately the DRA said the warrant was defective.

Ms. Jenifer Landman, Selectman, suggested that the Board write to the Board of Selectmen asking for direct access to the NHMA. She referenced that during the "All Board Night" session, Susan Slack, NHMA, stated that a verbal response is clearer than a written response and a written response increases the probability of error or incomplete clarity. Mr. Wilson stressed that it is the lack of getting a timely response that is troublesome to him. Having inquiries cleared through the Town Administrator, who is not always accessible, is a problem. Mr. Wilson stated that the process is not efficient or convenient.

When Dr. Arena asked Ms. Landman about the NHMA restriction, she responded that she did not know about the restriction because she had missed two meetings. She added that Susan Slack, responding to Mr. Wilson's question, had stated that the Town had not pestered the

NHMA. Matter of fact, Susan Slack stated that the NHMA encourages towns to contact them for assistance. Mr. Wilson commented that he believed the NHMA restriction is strictly political. Bob Landman, 34 Post Road, questioned the significance of restricting NHMA access. Mr. Wilson responded that the Board of Selectmen felt the Planning Board was inappropriately using NHMA access against the town's interests. He thought the process was absurd.

Arthur Brady, 16 Cherry Road, asked if other towns have delegated the Town Administrator to manage NHMA restrictions. Larry Miller, 141 Mill Road, commented that Susan Slack stated that this type of restriction is common for a city, such as the size of Manchester. Mr. Landman commented that Susan Slack did not think the Town's inquiries were disproportionate. She added that the NHMA maintains an 800# to encourage contact with towns. Ms. Day thanked Ms. Pohl for correcting the record and she added the point is to make the record correct.

Minutes from prior meetings

Minutes of the June 16, 2003 Work Session Meeting

Action on the minutes was postponed until the next work session meeting on August 18, 2003.

Minutes of the July 1, 2003 Regular Meeting

Mr. Kroner moved and Dr. Arena seconded the motion to accept the minutes as amended. The vote was 5-0 with Ms. Church abstaining.

Discussion of Joint Meeting with ZBA to Review Section 512 of the Zoning Ordinance

Mr. Wilson stated that the ZBA met on July 18, 2003 and during the hearing for an application for Servicestar Development/Peter Simmons property, the ZBA determined that 10 gas stations existed/operated in 1973. He added that Peter Simmons provided the information and list and the audience was polled for inputs and validation. Long-time Town residents in the audience participated in the process. The following is the list of gas stations:

- | | |
|----------------------------|---|
| 1. Ken's Garage | 70 Lafayette Rd. |
| 2. Amoco Gas Station | 74 Lafayette Rd. |
| 3. Shell Gas Station | 73 Lafayette Rd. [now currently Irving Gas] |
| 4. Bunny's Mobil | Ocean Boulevard |
| 5. Post Road Grocery | Post Road |
| 6. Tut's Jenny Oil Service | Elm Road/Route 1 |
| 7. Robinson Oil | Lafayette Rd. [current location of BMW Motorcycles] |
| 8. Simac Oil | 115 Lafayette Rd. [location of Callahan Motors] |
| 9. Mel's Truck & Fuel | 8 Lafayette Rd. [location of First Student Bus Svc] |
| 10. Hampton Air Field | Lafayette Rd./Route 1 |

Mr. Wilson commented that the ZBA determined it was within the ZBA's jurisdiction to determine the number of gas stations. He agreed it was the ZBA's right to interpret the

ordinance. Mr. Wilson added that Mr. Simmons had to provide good cause to the ZBA as to why the Special Exception to operate gas stations should be granted. Mr. Wilson noted that notice of the Public Hearing about Section 512 to determine the number of gasoline stations operating and in existence as of 6 March 1973 was not posted on the agenda and questioned whether it was an illegal public hearing. Mr. Wilson commented that the Board's purpose into the inquiry of a joint meeting was to meet to discuss Section 512. He added that the request for a joint meeting was denied.

Mr. Todd commented that the ZBA did not address Section 512 when they granted the Special Exception for the ProWash lube center. Mr. Wilson added that the ZBA stated a definition of a service station must be established. Ms. Day suggested that the Board should appeal the ZBA decision. Mr. Wilson commented that he did some research on the number of gas stations and consulted with the Heritage Commission. Both the Commission and he agreed that there were six (6) gas stations in 1973. He commented that the whole industry had changed and the Board raised a reasonable question in the interest of the Town. Mr. Wilson added that during the 1973 gas/oil crisis, the Town was concerned about gas/oil leakage damaging the Town's water supply. Mr. Landman suggested the dispersal of gas stations. Such dispersal would facilitate the location of perpetrators of gas/oil contamination. The Board concluded that Section 512 should be re-written to update the zoning ordinance.

Ms. Day moved and Ms. Church seconded the motion to add the review of Section 512 to the Board's work plan and prepare a proposed amendment without delay for the March 2004 ballot.

The vote was unanimous (6-0).

Ms. Day issued her concern that the individual reaping the most benefit lead the identification of the ten (10) gas stations. She further noted that it is not wise to depend on collective memory. Mr. Todd, who attended the meeting, suggested looking at documented data rather than depending upon memory in identifying the correct number of existing 1973 gas stations. Mr. Wilson commented that the Board must perform due diligence before they present an updated zoning ordinance. Mr. Todd commented that some ZBA members suggested an ordinance update that addressed the maximum number of gas pumps in town. Discussion ensued about whether the Board should challenge the granting of the Special Exception for Simmons property. Mr. Landman commented that what he said to the Chairman of Board of Selectmen still holds, that the open seats of the ZBA were filled with business people and those same business people are not going to vote against businesses and business activities. Mr. Landman questioned if those ZBA members are environmentally concerned. Ms. Day commented that she could not assume that the ZBA is predisposed to vote in any certain manner. Mr. Wilson added that when a fellow board is not operating within proper procedures, it should be pointed out.

Ms. Day moved and Dr. Arena seconded the motion for the Chair to draft a letter from the Board that appeals the ZBA decision regarding the number of gasoline stations in existence and operating in town as of 6 March 1973:

- 1) The Board understands that at the July 16, 2003 ZBA meeting the ZBA took testimony as to the number of gasoline stations and adopted a number of gasoline**

stations, under Section 512, that the testimony was largely based on the memories of interested parties and random members of the audience.

- 2) The Board received the letter from Acting Chairman Johnson that the ZBA did not grant our request for a joint meeting at which the Board believes a more sound process could have been defined including investigation at the Bureau of Weights and Measures.

- 3) The ZBA took testimony at a public hearing that was not properly posted.

The vote was unanimous (6-0).

Recommendation to the Board of Selectmen for Surety for Site Work at 9 Lafayette Road

Mr. Wilson commented that Jessica Winston of Millette, Sprague and Colwell had submitted a surety bond amount of \$175,609.00. Ed Kelly/KNA as Town Engineer recommended an 8% contingency increase as well as a 2.5% escalation for inflation. The amount for the surety bond increased to \$195,548.00. Ms. Winston approved of the upgraded surety figure.

Dr. Arena moved and Mr. Kroner seconded the motion to approve the surety bond amount of \$195,548.00 for the 9 Lafayette Road LLC project at 9 Lafayette Road.

Mr. Todd questioned that the landscaping portion of the surety had not been separated into two components: (1) the initial landscaping and (2) the 2-year landscaping guarantee. He noted that in the future, the Town Engineer should consider such a landscaping component.

The vote was unanimous (6-0).

Discussion of the Question of Whether the Town Should Employ a Professional Planner or Continue to Use an RPC Circuit Rider as Town Planner

Mr. Wilson commented that he believes the relationship and benefit between the Planning Board and the Rockingham Planning Commission (RPC) has been extremely beneficial. The \$10,000. RPC cost includes \$6,000. for Circuit Rider services and \$4,000. for assessment dues. Mr. Wilson estimated that an entry-level planner would cost the Town approximately \$64,000. Breaking down that figure, he noted a \$32,000. salary, \$12,000. benefit-package and the remaining \$20,000. for overhead equipment and other expenses. Mr. Wilson commented that an entry-level planner would not have the experience of our current Circuit Rider. Ms. Day agreed with Mr. Wilson's evaluation. She noted that the Circuit Rider provides a perspective from other towns' experiences. Ms. Day felt the Circuit Rider services are a fiscally responsible act. She added there are other more beneficial projects on which the Town should spend its money. Dr. Arena felt that hiring a town planner would abrogate our responsibility to the Town. Mr. Landman said the Town would lose some of its grant options if the Town hires a planner. Mr. Wilson commented that the Town could hire a grant writer for a specific application. He added that the Town could subcontract extra projects as needed. Mr. Wilson noted there are other resources available at RPC of which the Town could take advantage. Mr. Kroner commented that he wanted to know about the experiences of towns that used RPC services and then hired a planner; had it improved their process and how. He also wanted to know if any town of North Hampton's size (approx. 4,000 +) that had a planner and then wanted statistical evidence to show

the benefit of hiring the planner opposed to using a regional planner. Mr. Landman commented that the RPC depends on providing services to smaller-sized communities.

Mr. Todd moved and Ms. Church seconded the motion authorizing Mr. Wilson to write a letter on behalf of the Planning Board to the Board of Selectmen summarizing the Planning Board's concerns about hiring a Town Planner.

The vote was unanimous (6-0).

At 9:45 PM, Ms. Church retired.

At 9:45 PM, Ms. Pohl was seated for Mr. Gould

Discussion of Violations of Section 505.2, General Regulations of Zoning Ordinance

Mr. Wilson suggested tabling Item VI—Discussion of Violations of Section 505.2, General Regulations of Zoning Ordinance for the next work session on August 18, 2003. He also asked that it would be the Board's intent to ask the Board of Selectmen to attend to these code violations that Mr. Wilson referred to in the June 16, 2003 work session minutes, those being:

- (a) Display trailer of gas stoves, etc. at the Hearth Shop,
- (b) Furniture Warehouse trailers (3) at Tilton Equipment,
- (c) 3 trailers, possibly being used for storage at Rollins Furniture,
- (d) Cars at Bob Hendry's Auto Repair located across from Irving Oil,
- (e) Cars and trailers between ExxonMobil and Kimball's Garage,
- (f) Cars and/or trailers between Lupoli Excavation and Port City Roasters,
- (g) Tractor Trailer and/or landscaping equipment at Fern Road,
- (h) RV's and Trailers around Wilbur's Restaurant, and finally,
- (i) Cars and Trailers at the Old Bowling Alley site that should be cleaned up shortly.

Discussion of Work Plan for the Board for the Remainder of the Year

Mr. Wilson suggested updating the signage standards, as well as lighting standards, noise standards and zoning ordinance as the work plan for the remainder of the year. The Board was in general agreement.

Other Issues

Mr. Kroner added that in a discussion with Mr. Gould, Mr. Gould stated that he was against a town planner; it was a waste of money. Ms. Day commented that it is important to have an ex-officio at the Planning Board. She asked Ms. Landman to look into this subject with the Board of Selectmen.

Mr. Wilson entertained a motion to adjourn.

**Mr. Todd moved and Dr. Arena seconded the motion to adjourn.
The vote was unanimous (6-0).**

Meeting adjourned at 10:00 PM

Respectfully submitted,

Krystina Deren Arrain
Recording Secretary