



**MEETING MINUTES  
NORTH HAMPTON PLANNING BOARD &  
Conservation Commission  
Joint meeting  
Monday, October 15, 2007  
Mary Herbert Conference Room**

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*These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.*

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**Planning Board Members present:** Phil Wilson, Chairman; Joseph Arena, Laurel Pohl, Barbara Kohl, Tom McManus and Craig Salomon, Selectman's Representative.

**Members absent:** Shep Kroner

**Others present:** Jill Robinson, RPC Circuit Rider, and Wendy Chase, Recording Secretary.

**Alternates present:** None

**Conservation Commission members present:** Chris Ganotis, Chairman; Stanley Knowles, Lee Brooks, Lisa Wilson and Emily Creighton, Selectman's Representative.

Mr. Wilson convened the Joint Meeting at 7:02pm and noted that the Planning Board had a quorum

Mr. Ganotis performed a roll call of the Conservation Commission members and noted that the Conservation Commission had a quorum.

The topic of discussion was Zoning Ordinance section 409.9 – Buffer Zone Restrictions. (The 100-foot wetlands setback was adopted in March 2003).

Mr. Wilson explained that the Joint Meeting was not intended to “second guess” the Zoning Board of Adjustment's decisions on wetland variance requests but, rather, to figure out if the requests for variances are a result of the change to the Ordinance to inland wetlands setbacks from 50-feet to 100-feet and tidal wetlands setbacks from 75-feet to 100-feet. He further explained that Mr. Ganotis researched Zoning Board applications from 2003 through 2007 and created a list of wetlands setback variance request applications and their dispositions. Mr. Wilson went over each of the case files on the list prepared by Mr. Ganotis and the minutes pertaining to them. Mr. Wilson created an excel spreadsheet depicting each of the wetland setback variance requests from 2003 to 2007 and distributed them to those present.

Mr. Wilson stated the following:

- 25 cases for wetlands setback variance requests (all granted by the ZBA)
- 5 of the 25 cases were the consequence of the 100-foot setback requirement
- 2 of the 5 cases were considered “transition” cases, where applicants planned to build prior to the 100-foot wetlands setback went into effect
- The other 20 cases were those applicants that would have had to apply for the variance even before the change to the 100-foot setback

Mr. John Anthony Simmons, Chairman of the ZBA was present on behalf of the Zoning Board and explained that he was not present to participate in the discussion of possible amendments to the Ordinance, but to address any questions anyone may have regarding the ZBA decision making process on granting variances. He requested that he be able to do so before the meeting went any further because of a prior engagement that he had. The Boards allowed him to continue.

Mr. Simmons explained that the Zoning Board members must determine whether or not the applicant meets the five criteria established by law, which are:

1. It would not be contrary to the public interest
2. It would do substantial justice
3. It would not be contrary to the spirit and intent of the ordinance
4. It would not result in a decrease in the value of surrounding properties
5. Denial of the variance would result in unnecessary hardship

Dr. Arena asked Mr. Simmons how the Board determined if an applicant has met #3, *Spirit of the Ordinance*.

Mr. Simmons said that common sense plays a part in determining whether the applicant has met the *Spirit of the Ordinance* criterion. He further explained that there have been two historical cases regarding use and area variances. (1) Simplex Technologies v. Town of Newington (use variance) and (2) Michael Boccia v. City of Portsmouth (area variance).

Mr. McManus stated that the list provided by Mr. Wilson showed all the wetland variance requests from 2003 to 2007 being granted by the ZBA and asked Mr. Simmons if the list contained all applications filed with the ZBA in that time period? Mr. Simmons said that he had not seen the list till he was given it at the meeting and did not know if it was a complete list. Mr. Simmons said that some applications within that time period were withdrawn and explained that if an applicant had an inkling that their application would be denied by the ZBA, then they would withdraw the application prior to a final decision so they would not relinquish their right to reapply for that same variance in the future.

Mr. Salomon explained that if a variance application is denied by the Board then the applicant can never reapply for the same request for relief. Ms. Creighton questioned how an applicant would know if the application may be denied. Mr. Wilson said that most applicants before the ZBA have legal representation.

Mrs. Lisa Wilson asked Mr. Simmons what specific criteria the ZBA uses when determining what is in the public's best interest.

Mr. Salomon explained that the criterion for public interest is that the ZBA does not have to determine if the variance request is in the public's best interest; they must determine if the variance request is not **contrary** to the public interest.

Mr. Wilson reminded everyone that the meeting tonight was intended to discuss policy issues and to try and determine whether the ordinance regarding the wetlands setbacks is a hardship on the entire Town. He further stated that after reviewing all the material on the wetland variance request cases it was determined that only 5 of the 27 cases were because of the 100-foot wetlands setback requirement. (27 cases includes the two cell tower applications).

Mr. Salomon opined that it didn't appear that the 100-foot setback was the problem and maybe the Planning Board needed to take a more scientific approach.

Mr. Simmons suggested that the Boards take a look at other surrounding Towns wetlands Ordinances.

Mr. Gould stated that he was present not as a Selectmen, but rather as a former member of the Planning Board. He explained that he was on the Board when the Ordinance was adopted to increase the wetlands buffer setback to 100-feet and that he was outvoted 6-1 when the ordinance was enacted.

Mr. Gould informed the Boards that he asked Mr. Mabey to contact the Rockingham Planning Commission to prepare an overlay chart of all wetlands buffers at 50', 75' and 100' setbacks. The disks are available at the Town Office for anyone wishing to review them.

Mr. Gould stated that other communities have taken different approaches when dealing with wetlands setbacks. He suggested that perhaps consideration should be taken for soil types such as poorly drained soils and very poorly drained soils.

Mr. Knowles agreed with Mr. Gould and added that 33% of the Town is wetlands. He also suggested that the Building Inspector could work with people in determining wetlands areas.

Mr. Wilson said that he doesn't see evidence that the 100-foot setback requirement is not working. Rather, it appears that it is doing what it was designed to do and that those who need relief are getting it through the ZBA process.

Larry Miller, 141 Mill Road, commented on the fact that the ZBA, on the recommendation of a soil scientist allowed a septic field to be constructed 10-feet from wetlands on the property located on Tax map 019, lot 042.

Mr. Ganotis spoke on behalf of the Conservation Commission and said that the Commission doesn't get overly excited about an applicant requesting a variance a few feet from the wetlands. rather, it is for example, when an applicant is allowed to put a septic system or structure next to an environmentally sensitive wetlands or a stream that flows directly into a drinking water aquifer that gives the Commission concerns. Such an environmental sensitive aquifer in Town is the Winnicut River watershed and the drinking water aquifer off of Lovering Road. There have been two reported cases of coliform bacteria in Town: (1) there has been coliform flowing somewhere in the Route 1 area behind the outlet mall into the conservation land and then through the conservation land onto private property, and (2) there is a reported incident of coliform bacteria in the Little river. It is these types of public health threats that arise from septic failures that are allowed too close to wetlands.

Mr. Ganotis said that the Commission reviewed an upcoming ZBA application where the applicant wishes to put in an in-ground pool less than 100-feet from the wetlands. The property abuts the Little River salt marsh so the DES has to get involved because the DES has jurisdiction over tidal buffer zones. The Conservation Commission is concerned because the increased storm water run off from that particular parcel would cause more fresh water to drain into a salt-water ecosystem and that could support or introduce invasive species into the marsh.

Mr. Salomon stated that the State uses a table with 12 to 15 criteria that have to be met when dealing with wetland setbacks. He opined that it may be a useful tool for the ZBA and Planning Board to use regarding wetland variance requests.

Mr. Wilson said that beyond the soils issues and water issues there are also the preservation of habitat issues to consider. He cited the document "Buffers for Wetlands and Surface Waters: A Guidebook for New Hampshire Municipalities" that was developed by the Audubon society, Natural Resources Conservation Service, UNH Cooperative Extension, and NH Office of State Planning. He quoted passages from the document that explained reasons that the study recommended a standard 100' feet setback as a minimum setback in most circumstances and reasons that establishing differing setback based on soils types had been rejected in the study. He also cited the various factors that affect setback requirements that go beyond soil types.

Ms. Robinson stated that a wetland is a wetland and even man-made wetlands have a functional value. She said that the Planning Board may want to go through the process of evaluating the wetlands in Town designating the "prime" wetlands and explained that any projects dealing with prime wetlands would ensure the involvement of the Department of Environmental Services (NHDES) with field inspections and public hearings. She also explained that wetlands buffers for habitat wildlife is valuable, but it usually requires a 300 to 500-feet setback, making the standard 100-feet setback much less restrictive. Ms. Robinson also opined that it is a good idea to give an ordinance great detail but it may not be fair to place the burden on the Building Inspector because he is not a wetlands expert, and it is not a traditional role for that position.

Mr. Knowles disagreed with Ms. Robinson regarding the Building Inspector's suggested role and opined that the Building Inspector is a public employee who would have the best interest of the Town in mind when dealing with wetlands issues. He also added that the Town would provide him with access to a soil scientist for professional guidance.

Mr. Ganontis said that the Conservation Commission has been deliberating on using some of the current use penalty funds to hire an independent soil scientist to work for the Conservation Commission to help "police" the wetlands violations in Town and to support the Building Inspector with enforcement issues.

Dr. Arena stated that the Code Enforcement Officer is ruled by the guidelines of the Ordinances. Mr. Ganotis said that the RSA states that the Code Enforcement Officer *may* take action not *shall* take action.

Mr. Salomon stated that whether or not the Code Enforcement Officer chooses to take action there needs to be something in place on which he can base his action. Mr. Salomon added that he would be happy to volunteer in drafting agreed upon amendments to the wetlands ordinance if the Boards decided to do so.

Mr. Kroner was not in attendance but sent an email with some of his suggestions, and Mr. Wilson read them into the record as follows:

*He suggested that the Ordinance be kept as is or explore whether the Conservation Commission could embark on a plan to identify prime wetlands and nonprime wetlands and give the nonprime wetlands a 50-foot setback and prime wetlands a 150-foot setback. He identified the prime wetlands to be the entire length of the Winnacut River watershed, the entire length of Little River, the unnamed brook which runs from behind Home Depot to Shirley Carter's land between Atlantic, Pine and Cedar and under Mill Road, behind Aquarion; out through Seavey Rideout's property; back over to Little River and also back over by Homer and Mrs. Oldson's land behind Aquarion to Nilus stream, the entire Little River Salt Marsh and the entire Philbrooks Pond Marsh.*

Mr. Wilson explained that the Winnicut River and Little River watersheds together cover most of the Town and going the "prime wetlands route" may make the wetlands setback more burdensome on the residents of North Hampton, especially if the setback is increased from 100-feet for prime wetlands. Mr. Wilson opined that the 100-feet setback is reasonable, especially when trying to balance the rights of the property owner to do what they want on their property and the property owner's rights to protect property.

Mr. Wilson suggested making the Ordinance more beneficial by adding language in the introduction of the ordinance that would express more clearly why the ordinance was adopted as a Town and maybe by adding standards that the Code Enforcement Officer could apply and the ZBA could use when dealing with requests for variances.

Ms. Kohl opined that most of the residents have been in Town since the setbacks were put into place and for those moving into Town they should first do their “homework” and know what the setbacks are prior to purchasing property.

Mr. Knowles stated the fact that a prominent expert on wetlands systems had stated that one acre of tidal wetlands is ten times more valuable than one acre of fresh water wetlands. Mr. Wilson agreed and added, however, that many of the inland wetlands in North Hampton are in the Winnicut or Little River Watershed and therefore directly contribute to the health of either the Great Bay or the Little River Salt Marsh.

Mr. Wilson explained that joint board meetings are meant for discussion where no action is taken. He said that the Planning Board would take up the topic at a future work session and that the Conservation Commission would take up action that it deemed appropriate.

Ms. Robinson reminded everyone of the wetland buffer workshop that will be held on October 29, 2007 at the Hugh Gregg Coastal Conservation Center in Greenland and encouraged members to attend.

A motion was made and seconded to adjourn the joint meeting at 8:45pm with all in favor.

Respectfully submitted,

Wendy V. Chase  
Recording Secretary