



**MEETING MINUTES  
NORTH HAMPTON PLANNING BOARD  
Thursday, October 2, 2008 at 7:00pm  
Mary Herbert Conference Room**

---

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

**Members present:** Phil Wilson, Chairman; Shep Kroner, Vice Chairman; Joseph Arena, Laurel Pohl, Barbara Kohl, Tom McManus and Craig Salomon, Selectmen's Representative.

**Others present:** David West, RPC Circuit Rider and Wendy Chase, Recording Secretary.

**Alternates present:** None

Mr. Wilson called the meeting to order at 7:06pm and noted for the record that there was a quorum.

## **I. Old Business**

- #08:10 – Derek Burt, 1360 North Road, Parsonfield, ME 04047.** The applicant requests a change of use from a bookstore to office space that will house medical records and x-ray storage that includes a "dark room" facility. Property location: 200 Lafayette Road, North Hampton, M/L 021-027-001, Zoning district I-B/R. This case is continued from the September 4, 2008 meeting.

In attendance for this application:

Robert Elliott, representative to the applicant  
Ed Smith, Director of Operations for Mobilex

Mr. Elliott supplied copies of the operations manual for the automatic x-ray developer machine that the board requested at last month's meeting. He said that he gave a copy to the Fire Department along with a copy of the material safety data sheets (MSDS) for their review, and they did not respond back to them.

Dr. Arena commented that after a thorough review of the MSDS he determined that all the chemicals to be utilized are toxic and he needed to be convinced that the chemicals would be retained within the developing system; never to enter the septic system. Dr. Arena commented on the 0.22 gallons of water/minute of the final phase and asked if the system was totally enclosed.

Mr. Smith said that the processing fluids go into the system from tanks then goes back into tanks that are taken off site. He said the discharge water goes into a silver recovery.

Mr. Wilson asked where the water came from in the final phase of the developing process. Mr. Smith said that it comes directly from the faucet provided by Aquarion water.

Mr. Wilson asked if the water used to rinse the x-rays goes directly into the tanks for the silver recovery and never enters the leach field. Mr. Smith confirmed that that was correct. He also stated that the processor only runs 1 to 1 ½ hours per day.

**Mr. Kroner moved and Dr. Arena seconded the Motion to take jurisdiction of the application for case #2008:10.**

**The vote was unanimous in favor of the Motion (7-0).**

Board Deliberation

Dr. Arena thanked Mr. Smith for the added information.

Mr. Wilson opened the public hearing 7:15pm.

Mr. Wilson closed the public hearing at 7:16pm without public comment.

**Mr. Salomon moved and Dr. Arena seconded the Motion to approve the change of use application, case #2008:10.**

**The vote was unanimous in favor of the Motion (7-0).**

## **II. New Business**

- #08:11 – Laurie Booth, 20 Woodknoll Drive, North Hampton.** The applicant requests a change of use by conducting a food service business in the MVP Lounge of the Harley Davidson Building. Property owner: Black Marble Realty Trust, PO Box 679, Rye, NH. Property location: 17 Lafayette Road, North Hampton, M/L 003-086, Zoning district I-B/R.

In attendance for this application:

Laurie Booth, Applicant

Mr. Salomon disclosed that he was friends of applicant but did not feel it necessary to recuse himself from the case.

Ms. Booth explained that she owns and operates Laurie's N.Y Dirty Dogs, LLC, a hotdog vendor company, and currently conducts business outdoors of Harley Davidson in the parking lot. She was granted permission from the owners of Harley Davidson to move her business inside of their building in the MVP lounge. She further explained that Harley Davidson currently offers coffee and popcorn to their

employees and guests and she would be expanding on that with hotdogs, soft pretzels and drinks. Ms. Booth said that she would occupy an 8' x 10' section of the store's lounge. Ms. Booth said that she has received approval from the North Hampton Fire Department and received approval from the State as well.

Mr. Kroner asked if any dishes would be washed on site.

Ms. Booth explained that she intends to install a 3-bay sink and would only be rinsing off the condiment trays. She said that her customers would be served using paper containers.

Dr. Arena asked if Ms. Booth planned on installing a grill.

Ms. Booth said that the hotdogs are boiled in an electric warmer with the boiling water on the bottom of the warmer.

Ms. Pohl asked if she provides catering service, and she answered "no" and explained that she does cater to birthday parties on her own with her traveling hotdog cart.

Mr. Wilson asked if she planned to add seating, and she replied "no".

Mr. McManus asked if she planned on adding a fryerlator, and Ms. Booth said that it was not allowed and she had no intentions of adding one anyway.

**Dr. Arena moved and Mr. McManus seconded the Motion to take jurisdiction of the application for case 2008:11.**

**The vote was unanimous in favor of the Motion (7-0).**

Board Deliberation

Mr. Wilson commented that there would be no additional parking needed, it was approved by the Fire Department and State, and that there would be no impact to the septic system.

Mr. Wilson opened the public hearing at 7:24pm.

Mr. Jim Booth stated that because they are adding three high top tables with stools the State Food Inspector informed Ms. Booth that she would need a higher class permit from the State. She said that she has applied for it. Mr. Booth said that they will not receive a copy of the actual license until all of the equipment is moved inside and a successful pre-opening inspection is done by the State.

Mr. Wilson said that the board will need a copy of the actual license for the record.

Dr. Arena remarked that it was a "smart" move on the applicant's part to move into the Harley Davidson building.

Mr. Wilson closed the public hearing at 7:27pm.

**Mr. Kroner moved and Dr. Arena seconded the Motion to approve the change of use application for case #08:11 to allow a food service business in the lounge of the Harley Davidson building with the following condition: that a copy of the final State approval be provided to the Town and Planning Board prior to the Building Inspector's issuance of the Certificate of Occupancy. The vote was unanimous in favor of the motion (7-0).**

### **III. Other Business**

#### **1. Salomon case #07:28 Engineering fee discussion**

Mr. Salomon stepped down.

Mr. Wilson referred to the letter from Mr. Salomon addressed to Ms. Wendy Chase regarding his outstanding engineering invoices. Mr. Wilson quoted sections of the letter and said that he was surprised that a fellow member of the board, colleague and friend made the comment "I believe that the Court will not only reverse the decision of the Planning Board but also take the Board to task for its utter disregard of the law".

Mr. Wilson asked Mr. Salomon to explain some of the comments he made in the letter.

Mr. Salomon said that his letter is fairly "straight forward" in the relief it seeks, which is that Mr. Salomon is not going to deal with the engineering fees until after the Court rules on his Planning Board case. He said if the Court upholds the Planning Board decision then he will promptly pay the outstanding engineering invoices and if the Court does not, then that would be a good time to discuss the contents of the letter.

Ms. Pohl asked Mr. Salomon why he wrote a letter if he didn't want to discuss it at this time. Mr. Salomon explained that he received a bill for engineering services provided by KNA from Ms. Chase and wanted to explain his intentions to defer his decision regarding payment until after the Court decision.

Mr. Salomon said that in his experience an engineering firm, when representing a municipality, would review a multi-lot subdivision with roads and drainage for a bill less than what Mr. Salomon was charged for review of his two-lot subdivision. Mr. Salomon said that he did not want to discuss the contents of the letter because it was contentious and he suggested waiting for the outcome of the Court decision, and then take up the discussion of the contents of the letter.

Mr. Wilson said he understood what Mr. Salomon said and he agreed that he too would not like it to be contentious, but opined that the letter makes allegations of malfeasance on members of the board.

Mr. Wilson referred to a comment made by Mr. Salomon in his letter that he was not treated under the usual customary practice regarding the engineering invoice.

Mr. Wilson explained that in prior practices the Planning and Zoning Administrator set up separate escrow accounts based on estimates provided by KNA of how much an engineering review would cost for each particular case. The Applicant would then need to set up the engineering escrow account prior to the board taking jurisdiction of the application. Ms. Chase informed Mr. Wilson that she has never followed that practice and that the current practice is that the applicant signs a letter of authorization stating that they are responsible for all fees associated with the application including engineering fees and that Ms. Chase does not record the Mylar at the Rockingham County Registry of Deeds until all fees are paid in full.

Mr. Salomon said that it is important to discuss the contents of his letter, but not until after the Court ruling on his Planning Board case.

Mr. Wilson opined that the contents of the letter should be discussed now and said that Mr. Salomon should explain himself to the public and to the board and provide evidence regarding the suggestions he made in the letter where the board or members of the board had acted inappropriately.

Mr. Salomon stated that even though Mr. Wilson had recused himself from his two-lot subdivision case, Mr. Wilson sat in on a non-public Select Board's meeting when the Select Board discussed the action that they would take in terms of hiring Counsel to defend the appeal brought forth by Mr. Salomon. Mr. Salomon further stated that he would not be able to comment on something that he thought was inappropriate because it was during a non-public meeting.

Mr. Wilson explained that once the decision was rendered on Mr. Salomon's case Mr. Wilson no longer had any conflict regarding Mr. Salomon's case.

Mr. Salomon opined that no one from the Planning Board should have participated in the discussion to choose Counsel regarding his Planning Board appeal.

Mr. Salomon requested the board to defer the discussion of the letter until after the Court has ruled.

Mr. Wilson said that due to the difference of opinion between himself and Mr. Salomon he recused himself from the decision the board should take regarding the request to defer discussion of the letter until after the Court's ruling.

Dr. Arena also recused himself from the discussion of Mr. Salomon's request from the board.

Mr. Kroner assumed the Chair.

Mr. Kroner noted for the record that he did not vote in favor of the Salomon two-lot subdivision, but rather he voted against the motion to deny the application. Mr. Kroner said he did not want to lend credibility to the letter but would rather focus the board's time on the engineering fee discussion. Mr. Kroner explained that traditionally when there is an application that requires any level of engineering it has been passed onto the Town's engineer for review. He commented that it was normal procedure to have Mr. Salomon's application reviewed by the Town's engineer. Mr. Kroner commented that there were two individuals before the board this evening to discuss engineering fees.

Ms. Pohl asked Ms. Chase how the billing process worked. Ms. Chase explained that KNA sends invoices to the Town and Ms. Chase bills the applicant. The applicant makes the checks payable to the Town of North Hampton which is deposited in an engineering account and then the Town turns around and pays KNA out of that account. Ms. Pohl asked if Mr. Salomon's engineering invoices were paid and Ms. Chase said that the Town Administrator authorized payment of the invoices to later be reimbursed by Mr. Salomon.

Ms. Pohl commented that basically the Town is "loaning" Mr. Salomon the money until the case is resolved.

Mr. McManus asked whether or not the engineering fees were due regardless of the outcome of the application. The board confirmed that they would still be due regardless of the outcome.

Ms. Kohl opined that her integrity and ethics were questioned as well as her fellow colleagues' in the letter sent by Mr. Salomon. She further stated that Mr. Salomon owes the money for the engineering fees regardless.

Ms. Pohl commented that there were never any objections from the applicant at the time when the board asked for further review from the engineer.

Mr. Salomon said that there were substantial comments about the drainage from the roof and driveway even though there was no wetlands issue and he had previously submitted a wetlands impact statement voluntarily. He said the premise of the issue is that his application was reviewed to a greater extent than a normal two-lot subdivision. Mr. Salomon further stated that he had consulted with another engineering firm and they said they would have billed an applicant with a major subdivision with roads and drainage for the same amount of money that Mr. Salomon was billed for his two-lot subdivision application review.

Ms. Pohl said that Mr. Salomon's lot had special circumstances regarding the water issue with the proximity to the wetlands.

Dr. Arena spoke from the audience and said that Mr. Salomon feels that he was overcharged by the engineering firm KNA and that the issue is between Mr. Salomon and the Engineers; not Mr. Salomon and the Planning Board.

Mr. Wilson spoke from the audience and referenced the two-lot subdivision on Maple Road that went before the Planning Board where significant engineering reviews were conducted because there was complex engineering work being proposed that needed more engineering reviews.

Mr. Kroner said that it is not a Planning Board issue, but rather a Town Administrator issue. He further commented that the past can't be changed but the board can work on changing the process for the future.

Mr. Rudy Nadilo spoke from the audience. He said that he was surprised to receive an engineering bill from an outside engineering firm regarding his site plan review application for "wings your way" restaurant. He said that the board needs to be aware of the costs to the applicants for the engineering reviews and common sense needs to come into play.

Mr. Kroner said that the board is charged with the task of ensuring the health and welfare of the Town. He said that even if applicant has hired an engineer themselves that engineer is working on the applicant's behalf resulting in a conflict of interest because they are being paid by the applicant. He said the Planning Board has to have independent input from an engineer that does not have a conflict of interest to ensure the Town is protected. He further explained that the board is usually dealing with applications involving water quality, and water runoff on abutting properties and if the board did not hire an independent engineer to review what the applicant's engineer has done then that would be a disservice to the community.

Ms. Pohl suggested setting criteria around the level of service that is necessary or required for each particular type of application.

Dr. Arena disagreed and said the Planning Board should never be involved in setting engineering fees or requirements.

Mr. Wilson suggested that the topic of setting up the engineering process be placed on the next work session agenda. Mr. Wilson also reminded the board that each applicant signs an agreement to pay engineering fees form as part of the application process.

Mr. Wilson resumed the Chair.

Dr. Arena was reseated.

**2. Rudy Nadilo to discuss Engineering fees for “Wings your Way” case #08:08.**

In attendance for this discussion:

Rudy Nadilo, Owner of Wings your Way restaurant

Mr. Nadilo thanked all those who support the restaurant and comment to Ms. Chase that he has paid his engineering fees. Ms. Chase was not aware that payment was made and had no proof that it was.

Mr. Nadilo wanted to meet with the board and raise the board’s conscience nous to things the board may be doing without knowing the ramifications. Mr. Nadilo explained that he hired MSC Engineering to design the deck and parking lot expansion project for Wings your Way presented to the board (case #08:08) and they had given Mr. Nadilo an estimate of \$5,000.00, but ended up charging \$13,000.00. The engineers explained to Mr. Nadilo that they received many questions from the board, Mr. West and KNA that made them re-do the plans numerous times all the while charging the applicant.

Mr. Nadilo further commented on the fact that they came before the Planning Board for a sign and met the requirements of the Zoning Ordinance resulting in a cost of \$14,000.00, but his neighbor replaced an internally lit sign without Planning Board approval at a fraction of the cost.

Mr. Wilson said that the board is aware of the sign next door to Mr. Nadilo’s restaurant and explained that they never came before the board with a conditional use sign application, therefore they were never granted permission to replace the sign with the current internally lit sign.

Mr. Nadilo said that the engineering firm that he had hired is a certified engineering firm and questioned why the plans they produced were questioned so much by KNA, David West and the board.

Mr. Wilson explained that the members of the board are not engineers, so it is customary for plans submitted to the board as part of the application process to be reviewed by the Town’s engineer. Mr. Wilson further explained that because so many things were approved in the past under different circumstances, it is the responsibility of the board to ensure that certain questions are answered for the sake of the general welfare of the Town and business owners.

Mr. Nadilo said that so many questions were asked by KNA that it drove up the costs with MSC and because of those added costs they cannot afford to add the deck.

Mr. Wilson said that the problem Mr. Nadilo has is with his engineering firm and not the Town’s engineer.

Mr. Salomon said that as the board looks at the process with the board’s relationship with KNA perhaps the board can interject some common sense as the board looks at



the KNA comments and not cause applicants to spend a lot of money on their own engineers when a quick answer can be stated on the record by somebody who is licensed.

Dr. Arena said that the board cannot get involved in the fees that the engineers charge.

Mr. Nadilo said he would just like the board to be conscience of the fact that every question asked of the engineer adds to the cost for the applicant.

Mr. Wilson commented that what he has got out of the discussion is that some trivial questions the board may ask can have very expensive consequences for an applicant, and he remarked that that was a fair point to make. He also said that the board's fundamental responsibility is for the general welfare of the Town, which means that the board is going to err on the side of being very careful when it comes to a lot of things.

Ms. Pohl commented that when questions come back from KNA they go directly to the applicant's engineering firm, which then "kicks off" the process of answering the questions and charging the applicant. Ms. Pohl suggested when creating the process the board should put an intervening step in the process regarding the scope of what the board expects.

Mr. Salomon suggested that the topic be added to the next Work Session meeting.

Dr. Arena said that the Planning Board has no right to tell the Town's engineer what to do with their reviews.

Mr. Wilson agreed with Mr. Salomon to discuss the engineering process at the next Work Session.

### **Review proposed 2009-2010 Planning Board budget**

Mr. Wilson commented on the budget line item labeled *Legal*. He explained that in the past the Planning Board has considered creating a line for legal and it was raised with the Select Board and the general consensus was that it is better to have legal in a central line.

Ms. Chase explained that the budget is very preliminary and she put the \$2,500 in the legal line item and \$2,500 in the ZBA legal line. She further explained that the budget committee has requested zero budget increases for all departments. She suggested the board decide where the \$2,500 should go if it is determined that the Planning and Zoning departments will not have a separate legal budget line item.

The board decided to put the \$2,500.00 under the special studies budget line item.

Ms. Chase asked if the Federated Companies would need to come back to the board because they were approved for a bank with a drive-thru but have decided not to build a bank and won't be building the drive-thru. They have also changed the original plan of five retail business to two.

The board decided that they would not need to come back before the board if the parking calculations don't change. The board also decided to allow the Building Inspector to use his discretion in allowing them to modify the site by determining that there would be no appreciable impact. They also suggested that the Building Inspector do a parking calculation prior to any approvals.

Mr. Wilson said that the Federated Companies would need to provide an as-built plan to the board.

The board decided to place the Skowronski Conservation Subdivision Preliminary Consultation on the December 4, 2008 Planning Board agenda. They also requested copies of the application and plans for each of the board members.

Ms. Chase informed the board that Mr. Confalone owns property in both Rye and North Hampton and would like to subdivide the lot. He has requested a joint meeting with the Rye Planning Board and the North Hampton Planning Board. The frontage is in Rye but most of the land is in North Hampton. Mr. West said that generally it is handled in one Town at a time. Ms. Chase was directed to contact the Rye Planning Board and get an opinion from them and then discuss it at the next Work Session.

A motion was made and seconded to adjourn the meeting at 9:00pm  
The vote was unanimous in favor of the motion (7-0).

Respectfully submitted,

Wendy V. Chase  
Recording Secretary

Approved 12/16/2008