



**Meeting Minutes**  
**North Hampton Planning Board**  
**Thursday, June 2, 2011 at 6:30pm**  
**Town Hall**

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

**Members present:** Barbara Kohl, Chair; Shep Kroner, Vice Chair; Laurel Pohl, Tim Harned, and Phil Wilson, Selectmen's Representative.

**Members absent:** Dr. Arena and Mike Hornsby

**Alternates present:** Mike Coutu

**Others present:** Brian Groth, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Ms. Kohl convened the meeting at 6:30pm and noted for the record that there was a quorum, and confirmed with the Recording Secretary that the Agenda was properly posted.

Ms. Kohl introduced members of the Board and noted that Dr. Arena and Mr. Hornsby were both absent.

Ms. Kohl seated Mr. Coutu for Dr. Arena.

**New Business**

**1. #11:07 – Edward M. Sunshine, 1500 Lafayette Road, Portsmouth, NH 03801.** The Applicant proposes a site plan change to allow a hot dog trailer to remain as a permanent structure at the Home Depot parking lot pursuant to Article V, Section 505.5.A. Property owner: W/S North Hampton Properties, LLC, 1330 Boylston St, Chestnut Hill, MA 02467; property location: 35 Lafayette Road; M/L 007-053-000; zoning district: I-B/R.

Ms. Kohl commented that there was no one in attendance for the first case #11:07 and, without objection, continued to the second Case, #11:08.

**#11:08 – Brian and Dottie Ann Chevalier, 27 Lovering Road, North Hampton.** The Applicants propose a two-lot subdivision with the following waiver requests 1) VIII.B.15 – Topographic contour boundaries, and 2) VIII.B.16 – Natural features, 100-year flood elevation contour. Property owners: Brian and Dottie Ann Chevalier; property location: 27 Lovering Road; M/L 018-068-000; zoning district: R-2.

In attendance for this Application:

Brian Chevalier, Applicant/Owner

Mr. Harned recused himself stating that he is a neighbor and friend of the Chevaliers.

Mr. Chevalier explained that he has over four (4) acres of land and proposes to subdivide it to create a buildable house lot.

Mr. Kroner wanted to make clear to the Applicant that, if approved, and a Mylar is recorded, the new lot becomes taxed separately.

Mr. Chevalier said that he was aware of the tax implications.

Mr. Kroner commented that he is familiar with Mr. Chevalier's lot and also compared the lot against the wetlands map. He said that, in his opinion, the entire lot consists of "uplands"; thus the reason for the waiver requests. Mr. Chevalier said that that was an accurate assumption.

Mr. Chevalier commented that the Winnicut River is approximately 600-700 yards west of his property.

Mr. Wilson pointed out that the Zoning Map, included in the Zoning Ordinances, depicts the wetland areas, shaded in gray. It shows that Mr. Chevalier's property is probably 98% "uplands".

Mr. Wilson pointed out that the Engineer, Mr. Ernie Cote, had drawn up the plan on the basis that it was in the "R-3" zoning district. He explained that the "R-3" zoning district was dissolved a couple of years ago and absorbed by either the "R-1" or "R-2" zoning district. Mr. Chevalier's lot is in the "R-2" zoning district. Mr. Wilson said that the plan would need to be updated to include the correct zoning district and the correct side-yard setback depicted as 35-feet to 30-feet. He said that "note #2" will also have to be corrected to reflect the "R-2" zone.

Mr. Wilson commented on the two waiver requests made by the Applicant. Mr. Chevalier represented that the topography of the lot gradually up-slopes away from Lovering Road with no steep slopes, and that there is no known ledge on the property.

Mr. Wilson explained to Mr. Chevalier that the Board cannot approve a subdivision if it doesn't create a "buildable" lot.

Mr. Coutu referred to the test pits depicted on the plan and questioned if they were supposed to be within the setback requirements of the "R-2" zone.

Mr. Wilson explained that the building "envelope" is where it's possible to build a structure; the septic system is required to be 75-feet from wetlands. He said that the "leach field" is not considered a "structure" and the side, front, and back yard setbacks only pertain to "structures". Mr. Groth agreed with Mr. Wilson's assessment.

**Mr. Kroner moved and Ms. Pohl seconded the motion to grant the waiver request from Section VIII.B.15 – Topographic contour boundaries of the Subdivision Regulations.  
The vote was unanimous in favor of the motion (5-0).**

**Mr. Coutu moved and Ms. Pohl seconded the motion to grant the waiver request from Section VIII.B.16 – Natural features, 100-year flood elevation contour of the Subdivision Regulations.**

**The vote was unanimous in favor of the motion (5-0).**

**Ms. Kohl noted that there was no one from the public present, but for procedural reasons, opened the Public Hearing on the waiver requests from Section VIII.B.15 and VIII.B.16 at 6:45pm, and closed the Public Hearing at 6:45:05 without public comment.**

**Mr. Kroner moved and Mr. Coutu seconded the motion to accept the plan for Case #11:08 as complete.**

**The vote was unanimous in favor of the motion (5-0).**

**Mr. Kroner moved and Mr. Coutu seconded the motion to approve the 2-lot subdivision – Case #11:08 – Brian and Dottie Anne Chevalier with the following conditions: (1) Certificate of Monumentation, (2) Recordable Mylar, (3) the plan to be corrected to reflect the 30-foot side setback, change the zone from R-3 to R-2, and change note #2 to reflect the R-2 zone, and (4) to add a note to the plan stating that the lot is 100% “uplands”.**

The Board discussed the 4<sup>th</sup> condition.

Mr. Wilson made a friendly amendment to note for the record that there is very little “wetland”, and the Board has found that there is over 1 acre of contiguous “upland”.

Mr. Coutu accepted the friendly amendment, and Mr. Kroner accepted the friendly amendment.

**The vote was unanimous in favor of the motion (5-0).**

Mr. Harned rejoined the Board.

The Board discussed Case #11:07 – Edward Sunshine. It was determined that Mr. Sunshine did not have proper authority to represent the property owners regarding the Site Plan Application.

**Mr. Wilson moved and Mr. Kroner seconded the motion to deny the Application for Case #11:07 on the basis that it is incomplete, and there is no representative of the Applicant in attendance, and there is no record of the person who submitted the Application being authorized to submit it on behalf of the owner of the property.**

**The vote was unanimous in favor of the motion (6-0).**

Mr. Kroner asked if the Board would reconsider if the Applicant did come to this meeting.

Mr. Wilson said that the Board could vote to reconsider the motion to deny, if the Applicant does show up.

The Board discussed the Tavano lot line adjustment. The Board was in receipt of a letter, dated March 31, 2011 from Attorney Eileen Nevins, Counsel for Charles Tavano, 50 Mill Road, regarding a lot line adjustment approved by the Planning Board in 2003 that involved his property without his knowledge. The Board was also in receipt of a response letter from Town Counsel, Attorney Matthew Serge, dated May 13, 2011.

It was explained that the previous owners of 9 Pine Road, Bruce and Diane Kelly, applied for a lot line adjustment and represented that both "parties" were applying for it (the Kelleys and Charles Tavano and Kathy Champagne). The lot line application was approved by the Board in June 2002, and recorded at the Registry of Deeds – plan #D-30181. Mr. Tavano and Ms. Champagne never received a copy of the Notice of Decision or that a plan had been recorded. The Kelley's have since sold the property to Furmer and Mary Souther. Mr. and Mrs. Souther rent the property, and the new tenants have been using land that they thought the Souther's owned, but is actually owned by Mr. Tavano, because the land was never transferred. Attorney Nevins states that her client, Mr. Tavano, wants the Board to revoke the lot line adjustment, and is seeking damages from the Town.

Mr. Kroner said that he drove by the property and Mr. and Mrs. Souther appear to have relocated the driveway so that they are not encroaching on Mr. Tavano's property.

**Mr. Wilson moved and Mr. Coutu seconded the motion to proceed with rescinding the subdivision approval of Charles Tavano's property according to the decision that was rendered by the Planning Board on June 4, 2002.**

Mr. Wilson said that the registration of a lot line adjustment approved by the Planning Board is not the same as a conveyance of property. The Planning Board acted in "good faith" on an application presented to them. He commented that the property deeds would determine what was conveyed to the Southers from the Kelleys.

Attorney Serge explained, in his letter to the Board, that they are required to send a "notice of intent to revoke" with a reason for the revocation, and a Public Hearing will be held at the request of any person receiving the "notice". The request must be made thirty (30) days of the receipt of the "notice"; after the expiration of the thirty (30) days, if no Hearing is requested, the Board may issue its revocation and file it with the Registry of Deeds.

Mr. Harned said that a "title search" should have been done when the Kelleys sold the house, and the inconsistencies should have been noticed then.

Mr. Wilson said that any mistake made in the Deeds is not something the Planning Board caused or could even remedy. A lot line adjustment is permission to move a lot line; not an act of conveyance.

Mr. Coutu withdrew his second to the motion; Mr. Wilson withdrew his motion.

Mr. Coutu commented that Attorney Nevins alleges, in her letter to the Board, that the Town would be responsible for expenses incurred by Mr. Tavano. He suggested that the Board charge Attorney Serge to respond to Attorney Nevins on her allegations.

**Mr. Coutu moved and Mr. Wilson seconded the motion that, on the basis of Town Counsel, that the Board begin the process of considering the revocation of the lot line adjustment made June 4, 2002, relevant to the RSA, and to "notice" the "parties" of interest, and hold a Public Hearing at the July 7, 2011 Planning Board Meeting.**

**Mr. Kroner made a friendly amendment to include the correct RSA in the motion. RSA 676:4-a.**

**Mr. Coutu and Mr. Wilson accepted the friendly amendment.  
The vote was unanimous in favor of the motion (6-0).**

**Mr. Coutu moved and Ms. Pohl seconded the motion to charge Attorney Serge to respond to Attorney Nevins, Counsel for Mr. Tavano, with respect to the specific allegations Attorney Nevis made in her letter to the Board, dated March 31, 2011.**

Mr. Harned asked if Attorney Serge should look into the Deeds, because there seem to be inconsistencies.

Ms. Pohl said that if the Board cannot remedy that situation and said that she is hesitant to spend Town funds on Attorney's fees associated with that. The Board agreed.

**The vote was unanimous in favor of the motion (6-0).**

### **Continued Public Hearing on the Transportation and Recreation Chapters of the Master Plan**

Transportation Chapter – Editorial changes were made to the Transportation Chapter. The Board was in receipt of the current version.

Mr. Coutu asked if the Town of North Hampton was growing. Mr. Kroner said that the Town has grown 1% over the past 10-years.

Ms. Kohl commented that "population" is not the only thing to consider; traffic patterns have changed in Town in the last 10 years.

Mr. Kroner commented that there is much more pressure on the roads in Town.

Mr. Coutu said that the Master Plan should ask one fundamental question: "Is the infrastructure of North Hampton sustainable; that the burden of taxation can afford the services the Town offers today".

Mr. Kroner said that the Master Plan is the basis of Land Use policy.

Mr. Wilson agreed, but said that comprehensive questions, i.e. consolidation of Towns, should be addressed in the Master Plan's Vision Chapter.

Mr. Groth commented that there are recommendations in the Transportation Chapter on improving the system, but much of it is existing inventory.

Mr. Wilson commented that the Town should consider the question of sustainability very seriously, especially when considering the updates to the other Chapters of the Master Plan. He said that the purpose of the Master Plan is to look at the land use patterns and projections based on the current regulations affecting land use and the layout of what that implies for the Town. He said the implications for the Town are the demands on services, more facilities and transportation.

Mr. Groth commented that that would be more of a full blown economic analysis.

Mr. Coutu said that the following questions need to be answered:

1. Where is the survey that maps out every roadway in North Hampton within this Chapter?
2. Where is the road maintenance schedule?
3. What are the cost indications associated in maintaining those roads?

Mr. Coutu said that such a plan should be included in the Transportation Chapter.

Ms. Kohl referred the Board to page T-20, number 9 where it addresses part of the concern.

Mr. Kroner said that the Transportation Chapter is intended to inventory and isolate the existing road system and, based on the community input, to move that existing roadway to an acceptable level of service (safe, reliable roads).

Mr. Wilson said that the master planning process should describe the current state of the road system and determine if it meets the needs of the population. He said that ideas on how to improve dangerous road intersections in Town should be included in the Chapter, and to include the economic impact of fuel cost increases and public transportation.

Ms. Kohl commented that 49% of the roads in North Hampton are Town Roads.

Mr. Harned said that he has read the Master Plan and agreed that it shows where the town is today, and where the town would like to be, but it doesn't explain how to "get there".

Mr. Wilson suggested adopting the Transportation and Recreation Chapters and to take the general recommendations discussed and look at what kind of actions need to be taken to dig deeper into some of the things the Board identified.

Ms. Kohl opened the Public Hearing on the Transportation Chapter at 8:28pm.

Ms. Kohl closed the Public Hearing at 8:28:05pm without public comment.

**Mr. Wilson moved and Mr. Coutu seconded the motion to adopt the Transportation Chapter of the Master Plan as presented, after the latest amendments.  
The vote was unanimous in favor of the motion (6-0).**

Ms. Kohl opened the Public Hearing on the Recreation Chapter at 8:29pm.

Ms. Kohl closed the Public Hearing at 8:29:05pm without public comment.

**Mr. Wilson moved and Mr. Coutu seconded the motion to adopt the Recreation Chapter of the Master Plan as last amended and as currently presented.  
The vote was unanimous in favor of the motion (6-0).**

Mr. Kroner informed the Board that he and Mr. Groth are working on the **Future Land Use Chapter** and the **Existing Land Use Chapter**.

Mr. Wilson suggested that they include a couple of different scenarios in the Future Land Use Chapter, i.e. "what happens, economically" when a big box retailer comes to Town, or a significant sized apartment complex comes to Town.

**Junk Yard update**

Mr. Wilson said, and Ms. Chase confirmed, that progress is being made; Mr. Fournier, Attorney Serge and Mr. Mabey drove around Town to potential problem spots and are awaiting Attorney Serge's decision on how to advise the Town to proceed.

**RPC Commissioner and Code of Ethics Committee Member Nominations**

Mr. Kroner volunteered to serve on the Rockingham Planning Commission.

**By unanimous consent, the Board nominated Mr. Kroner to serve as a Commissioner for the Rockingham Planning Commission.**

Ms. Chase will forward this information to the Select Board for Appointment.

Mr. Wilson explained that he is the Select Board's Representative to the Code of Ethics Committee. The Committee is now looking for a Representative from the Planning Board to serve.

Ms. Pohl volunteered to serve as a Planning Board Representative to the Code of Ethics Committee, but would not be available until July. Mr. Wilson did not see a problem with that. He said that one of the issues the Committee is now dealing with is whether or not to adopt the Code of Ethics as a resolution of the Select Board to take effect until the next election for the voters to decide.

**By unanimous consent, the Planning Board appointed Ms. Pohl to serve on the Code of Ethics Committee.**

Ms. Chase said that she just ran over to the Town Office and called the first Applicant, Ed Sunshine. He apologized for missing the Meeting and asked that the Board consider continuing his case #11:07 to the July 7, 2011 Meeting.

**Mr. Wilson moved and Mr. Coutu seconded the motion to reconsider the decision to deny Case #11:07.**

**The vote was unanimous in favor of the motion (6-0).**

**Mr. Kroner moved and Mr. Wilson seconded the motion to continue case #11:07 – Edward Sunshine to the July 7, 2011 Meeting.**

**The vote was unanimous in favor of the motion (6-0).**

**The meeting adjourned at 8:45pm without objection.**

Respectfully submitted,

Wendy V. Chase  
Recording Secretary

Approved July 21, 2011