



Meeting Minutes
North Hampton Planning Board
Thursday, September 1, 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; Dr. Joseph Arena, Laurel Pohl, Mike Hornsby, and Phil Wilson, Selectmen's Representative.

Members absent: Shep Kroner, Vice Chair and Tim Harned

Alternates present: Michael Coutu

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

Ms. Kohl convened the Meeting at 6:27pm and noted for the record that there was a quorum. Ms. Kohl confirmed with the Recording Secretary that the September 1, 2011 Agenda was properly posted.

Ms. Kohl introduced the Members of the Board, as well as, Brian Groth.

I. Old Business

There is no "Old Business" before the Board.

II. New Business

Ms. Kohl explained that the Board was in receipt of correspondence from three of the four applicants and decided to act on that first.

1. **#11:09 – Guy Marshall, Lamprey Energy, 63 Atlantic Avenue, North Hampton.** The Applicant requests a waiver, through a Conditional Use Sign Application, from Article V, Section 506.6.G – Size. The Applicant proposes to replace the existing 40 square foot "Lamprey Brothers" sign with a 24 square foot "Lamprey Energy" sign where 18 square feet is allowed. Property location: 63 Atlantic Avenue; Property owner: Golden KS, LLC, c/o Guy Marshall, 63 Atlantic Avenue; M/L 005-038-000; zoning district R-2.

The Board was in receipt of a letter from Guy Marshall, dated August 29, 2011, informing the Planning Board that he has withdrawn his Conditional Use Sign Application. There was no action necessary for the Board to take; the application was withdrawn.

3. #11:11 – Gary Stevens, 69 Lafayette Road, North Hampton. The Applicant proposes, through a Change of Use Application, to change the existing “sign shop” retail business to a “donor drop off” facility with a “drive thru” service. Property owner: Stevens E. Inc., c/o Gary Stevens, 69 Lafayette Road, North Hampton; property location: 69 Lafayette Road; M/L 007-065-000; zoning district: I-B/R.

The Board was in receipt of a copy of an E-mail communication, dated August 31, 2011, from Gary Stevens, Owner/Applicant, requesting a continuance of his Change of Use Application to the October 4, 2011 Meeting.

Mr. Coutu moved and Mr. Wilson seconded the Motion to continue Case #11:11 – Gary Stevens, to the October 4, 2011 Meeting.

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

4. #11:12 – Brian Thibeault, 300 Gay Street, Manchester, NH 03103. The Applicant proposes, through a Change of Use Application, to change the previous Mitsubishi Car Dealership to a Cellular Sales Retail Business (Verizon). Property owner: Brian Thibeault, 300 Gay Street, Manchester, NH 03103; Property location: 25 Lafayette Road; M/L 003-087-000; zoning district: I-B/R.

The Board was in receipt of a letter from William Brayton of Brayton Construction, Inc., on behalf of Verizon, requesting a continuance of their Change of Use Application to the October 4, 2011 Meeting.

Mr. Wilson moved and Dr. Arena seconded the motion to continue Case #11:12 to the October 4, 2011 meeting.

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

2. #11:10 – Sylvia Cheever, 264 Atlantic Avenue, North Hampton. The Applicant was granted a Variance from Section 508.4 from the Zoning Board of Adjustment on April 30, 2010 to allow Ms. Cheever, specifically, to house 30 hens at her residence. A condition in the variance is a “sunset” provision to expire July 31, 2011. The Applicant request, through a Conditional Use Permit Application to allow the continuance of housing the 30 hens on her lot of less than four (4) acres under the newly adopted Agriculture Ordinance, Article V, Section 508.5.B.2.b.2&3. Property owner: Sylvia Cheever; Property location: 264 Atlantic Avenue; M/L 014-034-000; zoning district: R-1.

In attendance for this application:

Sylvia Cheever, Owner/Applicant

Ms. Cheever explained that she is before the Planning Board with a Conditional Use Permit Application under Article V, Section 508.5.B.2.b.2. & 3., to allow her to keep her existing thirty (30) hens on her premises, a lot less than four (4) acres, where a minimum of four (4) acres is required. She explained that she was granted a Variance from the Zoning Board that had a “sunset clause” that expired July 31, 2011 that allowed her to have thirty (30) hens. The Town adopted the new Agriculture Ordinance, Article V, Section 508, in May 2011 with the purpose of promoting agricultural activities in Town, while ensuring that these activities are suitable for the context in which they occur.

Ms. Cheever explained that she has had no complaints from her neighbors over the past year in regards to her hens and she has been practicing Best Management Practices, except for the restrictions placed as “Special Conditions” on her Variance approval. Ms. Cheever explained that the pen she currently

houses the hens in has been established as being "too small" according to *Best Management Practices*. The Board was in receipt of a report from the Agriculture Commission in support of Ms. Cheever's application. They did however comment on concerns they have with the small size of the exercise/grazing area. The Commission stipulated in their report that each chicken requires ten (10) square-feet of exercise area; Ms. Cheever would need 300 square-feet of exercise/grazing area for her thirty (30) hens; she currently has 180 square-feet of grazing area for the chickens.

Ms. Cheever explained that she plans to follow *Best Management Practices* and will be working in the Spirit of the Ordinance by adhering to the Agricultural Ordinance. She said that she does not see a detrimental effect to the Public for having these "pets".

Mr. Coutu commented on the schematic submitted with the Application depicting the existing chicken pen and coop, that they appeared to be in view of Atlantic Avenue. Ms. Cheever said the whole orientation of the house is perpendicular to the road so the larger part of the property is considered the back area where the pen and coop are currently located. She said the pen and coop are not seen from Atlantic Avenue.

Ms. Cheever said that she is "looking into" solar powered electric fencing that she can mount, but easily move in the winter months. She said it is hard to establish a permanent location at this time because of natural obstacles and the configuration of her property. She said she has to figure out a way to put in a fenced-in area in the back of her house without obstructing passage to the back-yard.

Dr. Arena said that the Board needs to use "common sense" and to look at each individual case and determine how it impacts the Ordinance; it is not necessary to put undue stress on the Applicant.

Ms. Kohl said that the Board is not "picking on" the Applicant, she said that the Ordinance is specific on *Best Management Practices* that they are scientifically established practices that are part of the Ordinance the Board needs to enforce.

Mr. Hornsby voiced concern over the safety of the animals being housed near the dilapidated barn. He said that, in his opinion, the location of the pen should be moved, and suggested locating it in back of the second house on the property.

Ms. Cheever said that the actual chicken coop is a separate building from the barn and that they plan to raze the barn. She said that she would like the flexibility of being allowed to have all thirty (30) hens even though she may not have that many at one given time.

Ms. Cheever said that she wants to construct the fencing off of the existing coop somehow.

Mr. Wilson voiced concerns over the fact that Ms. Cheever did not have a proposed schematic of the coop with the 300 square-feet of fenced-in area for grazing/exercising. He said that it is required as part of the Conditional Use Permit Application, and without it, the Application is incomplete and the Board is unable to take jurisdiction.

Dr. Arena suggested the Board conduct a "site walk" on the property to allow the Members of the Board to see exactly where Ms. Cheever plans to place the coop and fenced-in area.

Dr. Arena moved and Ms. Pohl seconded the motion to conduct a “site walk” on the premises, giving the Board Members the opportunity to view the premises and “see” what Ms. Cheever plans to do.

Ms. Kohl said that she has raised chickens in the past and intends to do so in the future at her property in North Hampton. She said that when the Ordinance was written last year, it was designed to support Agricultural uses in North Hampton. Ms. Kohl voiced concern over the current conditions of the barn and the potential it has of collapsing around her children and/or the chickens. She said that when she drove by the property it looked as though the coop faced Atlantic Ave., and the Ordinance specifically states that it should be sited in the rear of the property. She also said that she did not know how the Board would be able to consider an approval without a plan/sketch of where the grazing area is going to be.

Mr. Wilson agreed with Ms. Kohl and referred to Section 508.5.B.2.b.4.a. – “A hand-drawn not-to-scale rendering of proposed operations shall be acceptable for the application”.

Ms. Cheever said that she was not aware of the requirement to allow ten (10) square-feet of grazing area per chicken until after she had already submitted her Application to the Board.

Ms. Cheever explained that raising her chickens has been a “family affair”. She has different species and they are the family’s pets. She also explained that she intended to have the barn razed over the summer but the Company that she thought would do it never called her back. She said that she is still looking for a Company to raze the barn, and hopes to have it down this fall.

Mr. Wilson said that the sense of the Board is to allow Ms. Cheever to keep her thirty (30) hens but the Board needs to have a “hand drawn” sketch depicting the pen and grazing area that complies with the provisions of the Ordinance, as well as with, *Best Management Practices for Agriculture* for the Board to review and the Public to review.

Dr. Arena said that in his opinion the Board is make a “big case” over this and the Applicant is being put under undue stress. He said North Hampton is a “rural” town. He wanted to conduct a site walk.

Ms. Pohl asked if the “site walk” would be in lieu of the “hand drawing” the Board asked Ms. Cheever to provide.

Mr. Wilson said that when the Ordinance was drafted, the intent was to make the process simple. He said that if every Applicant that comes before the Board is required to schedule a “site walk” then it is not a simple process. Ms. Kohl agreed.

The Board voted on the motion made to conduct a site walk at the Applicant’s property. The vote was 1 in favor, 5 opposed and 0 abstentions. (Dr. Arena was in favor). The motion failed.

The Board advised Ms. Cheever to “hand draw” the proposed pen with the 300 square-foot grazing/exercise area on the schematic she submitted with her original application.

Ms. Cheever finished the sketch and Mr. Groth reviewed it. He had no objections. Ms. Kohl invited the Public to inspect the sketch.

Ms. Kohl opened the Public Hearing at 7:32pm.

Phelps Fullerton, 281 Atlantic Avenue – Mr. Fullerton said that he lives directly across the Street from Ms. Cheever's property. He said that he was on the Ad hoc Committee to draft the current Agriculture Ordinance that was adopted this past May. Mr. Fullerton said that Ms. Cheever has complied with the conditions of her Variance Approval and has kept the animals in the back of the property where they cannot be heard, seen or smelled, which has given harmony to the neighborhood. He voiced concerns over the proposal before the Board because it looked as though Ms. Cheever would be allowed to move the 300 square-foot chicken coop area around her property at her prerogative. He commented that one of the Members made a good suggestion to have the entire coop moved out in back of the property where the grade drops down so the chickens would not be seen or heard from Atlantic Avenue. Mr. Fullerton said that after reviewing the drawing he estimated the grazing area to be 30,000 square-feet.

Mr. Wilson explained that the estimated 30,000 square-foot area is not for the use of the pen and grazing area; it is the location of where Ms. Cheever would be able to put the 300 square-foot pen and grazing area.

Mr. Fullerton said that the concept, when drafting the Agriculture Ordinance, was to keep these types of activities to the back of the properties. He said that he personally feels that living next to a property that is raising a substantial amount of chickens or conducting a "poultry business" has a direct relationship to the value of his property. Mr. Fullerton referred to the UNH Best Management Practices Publication where it requires that each fully mature chicken must have a grazing area of 10 square-feet; Ms. Cheever would need a minimum of 300 square-feet for her 30 chickens. He made a comment that the word "maximum" has a "better ring" to it than "minimum" when describing the required square-feet.

Ms. Kohl commented that she does not believe Ms. Cheever to be conducting a "poultry business". Ms. Cheever has testified that her thirty (30) chickens are her pets.

Mr. Coutu said that, it was his understanding, that Mr. Fullerton is concerned with the expansion eastwardly of the existing chicken coop and pen. Mr. Fullerton confirmed that to be true.

Mr. Coutu and Ms. Cheever made changes to the original "hand drawn" plan. The Board, as well as Mr. Fullerton, reviewed the new plan and seemed agreeable. The new plan was submitted into evidence as "Exhibit A".

Ms. Cheever said that raising thirty (30) chickens on two (2) acres does not decrease property values; there is no proof of that. She said that she has not had a single complaint about her chickens over the past year.

Cynthia Jenkins, Exeter Road – Ms. Jenkins wanted to know if Ms. Cheever agreed with the new plan.

Ms. Cheever said that she believed they came up with a good compromise and that she would be able to work within the proposed area.

Mr. Coutu said that the new plan shows that the existing pen could be expanded easterly not to exceed 7-feet without being visible from Atlantic Avenue.

Jamie Marston, 281 Atlantic Avenue – Ms. Marston thanked the Planning Board for their time and commented that what looks to be a simple problem has not been a simple problem for a number of years. She acknowledged what Ms. Cheever has been able to accomplish as a result of a difficult process they all have gone through. She said Ms. Cheever has made an effort to keep harmony in the neighborhood and she hopes that will continue.

Ms. Kohl commented that the Agriculture Ordinance is a new Ordinance and it is an obligation of the Planning Board to enforce it as they believe it was written. She said the Board also has an obligation to the abutters and neighborhood and hoped that Ms. Cheever did not feel like the Board was harassing her.

Mr. Groth asked if the Board was interested in adding a maximum amount of square-foot area. The Board agreed that they did not need to include a maximum amount to the minimum amount of 300 square-foot area.

Ms. Kohl acknowledged a letter to the Board from Robin Reid, 270 Atlantic Avenue, that stated concerns over Ms. Cheever's proposal. Ms. Kohl commented that the Board addressed all of her concerns and did not read the letter into the record.

Ms. Kohl closed the Public Hearing at 8:06pm.

Ms. Pohl referred to a section of Ms. Cheever's application that stated that she would bring excess compost to the brush dump if she needed to. Ms. Pohl said that there are restrictions on what the brush dump can accept. Ms. Cheever said that she did not receive authority to take her excess compost to the brush dump, but there are other places she can dispose of it if she has to.

Mr. Coutu moved and Ms. Pohl seconded the motion to approve the Conditional Use Permit Application with the requirement that Ms. Cheever conform with the agricultural requirement of a minimum of 300 square-feet for housing the chickens in the pen allowing that the "footprint" of the existing pens can be expanded in a generally easterly direction not to exceed 7-feet which may be widened greater than 7-feet to allow the chickens to range or graze at and beyond that point where any fencing material whether temporary or permanent, shall not be visible when viewed in a generally southerly direction from Atlantic Avenue.

Ms. Kohl made a friendly amendment to include, that the Applicant has been approved to allow the housing of thirty (30) hens on a lot less than four (4) acres. Mr. Coutu and Ms. Pohl accepted Ms. Kohl's friendly amendment.

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

Other Business

Ms. Kohl referred to a copy of the RPC Regional Transportation survey that each of the Board Members received. She encouraged each member to take the survey on-line; it's a great opportunity to give their input. Mr. Groth said that the survey takes 10 minutes and so far they have received 84 responses with a goal set to receive 150.

Ms. Kohl informed the Board that she met with several members of the Zoning Board, as well as, with Steve Fournier and Phil Wilson as the Select Board's representative to discuss a possible "services agreement". They established an Ad hoc committee to create this type of agreement and Ms. Pohl is on the Committee to represent the Planning Board.

Mr. Groth informed the Board that he has been working on the Broadband Ordinance and has received help from David Maxson, and the Ordinance is looking great. He said Mr. Maxson's input has been invaluable and he hopes to have the first draft ready within a month or two for the Board to review.

Mr. Wilson informed the Board that the Select Board is still waiting for Attorney Serge's report on the "junk yards" in Town.

Dr. Arena voiced his frustration with the process on "junk yards". He said that the Town is losing out on the license fee year after year. He said that he receives phone calls at home asking what is being done about the "junk yards" in Town.

Ms. Kohl agreed that something has to be done and she said that she would like to contact Attorney Serge and get advice on how to proceed in collecting the "junk yard" fees. Ms. Kohl asked that the topic remain on the Agenda and maybe by the Work Session Meeting she will have something to report.

Mr. Coutu reported on the Performance Surety Agreement. He said that a revised draft of the agreement was circulated by Attorney Raymond on August 19, 2011 for what is expected to be a final review excluding exhibits which have not yet been prepared. He said that Attorney Raymond suggested and Mr. Coutu agreed that the policy governing permitted investments by the escrow agent should be a separate agreement between the Planning Board and the agent and not incorporated in the Performance Surety Agreement in order to give the Board the flexibility to amend the investment guidelines as may be appropriate.

Mr. Wilson thanked Mr. Coutu for having such a fast "turn-around time" with the agreement.

**Mr. Coutu moved and Ms. Pohl seconded the motion to adjourn at 8:20pm.
The vote was unanimous in favor of the motion (6-0).**

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved: September 15, 2011