



Meeting Minutes
Joint Meeting
Tuesday, February 14, 2012 at 6:30pm
Town Hall, 231 Atlantic Ave, North Hampton, NH

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

Joint Board Meeting: North Hampton Planning Board, North Hampton Zoning Board of Adjustment and Members of the North Hampton Conservation Commission. It was agreed upon that the Planning Board Chair or Vice Chair would Chair the Joint Meeting.

Planning Board Members present: Shep Kroner, Vice Chair, Joseph Arena, Laurel Pohl, Mike Hornsby, Tim Harned, and Phil Wilson, Select Board's Representative.

PB Members absent: Barbara Kohl, Chair

PB Alternates present: None

Zoning Board of Adjustment Members present: Robert B. Field, Jr, Chair; David Buber, George Lagassa, and Phelps Fullerton.

ZBA Members absent: Michele Peckham, Vice Chair

ZBA Alternates present: Jonathan Pinette and Lisa Wilson who is also a Member of the Conservation Commission.

Conservation Commission Members present: Chris Ganotis, Chair, Lee Brooks and Lisa Wilson.

Others present: Wendy Chase, Recording Secretary

Mr. Kroner convened the Joint Meeting at 6:30pm and noted for the record that the Planning Board had a quorum. He introduced the members of the Planning Board identified above.

Mr. Field noted for the record that Zoning Board of Adjustment had a quorum. He introduced the members of the Zoning Board identified above.

Mr. Kroner explained that the purpose of the "joint" Work Session Meeting was to give the Planning Board the opportunity to hear from the Zoning Board and Conservation Commission on their proposed amendments or additions to the existing Zoning Ordinances. Mr. Kroner allowed the Chair of the Conservation Commission, Chris Ganotis the first opportunity to speak because the Commission was holding their regularly scheduled monthly meeting at 7:00pm in the Mary Herbert Conference room.

The proposed amendments/additions to the Zoning Ordinance drafted by the Zoning Board Ad hoc Committee include:

1. **Proposal #1 – “Compounds”/Commercial/Business Use in Residential District.** Add to Article III, Section 302 – Definitions, the word “Compound” and the word “Person”. Add to Article IV, a new Section 406.10 – “Compound” –No more than two (2) single family dwelling units in, on, or about a “Compound” shall be leased without a “Special Exception” approved by the Zoning Board of Adjustment (4-1).
2. **Proposal #2 – “Enforcement” of Ordinance and Conditional Decisions.** Amend Article VII, Section 704.3 and add Article VII - Administration, a new Section 705 – “Enforcement”. Approved by the Zoning Board (5-0).
3. **Proposal #3 – Notice of Issuance Building Permits and Certificates of Occupancy.** – add to Article VII, a new Section 706 – Notice of Action – Notice of the issuance of Building Permit(s) and Certificate(s) of Occupancy, shall be placed on record by the Building Inspector and published on the Town’s Website at the time of issuance. Approved by the Zoning Board (5-0).
4. **Proposal #4 – Body/Bodies of Water – Wetlands – Minimum Lot Area.** Add to Article III, Section 302 – Definitions, the phrase “Body/Bodies of Water”. Add to Article IV, Section 411, commas in the first sentence before and after “excluding bodies of water”. Approved by the Zoning Board (5-0).
5. **Proposal #5 – “Signs and Billboards”.** Replace Article V, Section 506.6.G – Signs and Billboards with a new Section 506.6.G – “Size, Number and Dimensional Criteria of Signs in the R-1 and R-2 Zoning Districts”. Approved by the Zoning Board (5-0).
6. **Proposal #6 – “Rain Gardens”.** Add to Article IV a new Section 414.3.D.4 “Rain Gardens” – requirements for the installation of a “Rain Garden” when allowed by the Planning Board, as a condition of approval, for an approved “Subdivision” or “Site Plan” or when allowed by the Zoning Board, as a condition of approval, for an approved “Variance” or “Special Exception”. Approved by the Zoning Board (5-0).

The proposed amendments/additions to the Conservation Commission include ways to reduce impacts from septic systems to wetlands and water bodies.

Mr. Ganotis offered the following facts:

- 1/3 of North Hampton’s surface areas is wetlands
- There are two impaired water lanes; the Winnicut River and the Little River
- 29% of the Town’s land area sits on drinking water aquifers
- The State’s guidelines for impermeable surfaces to prevent deterioration of wetlands is 10%; the Town is currently at 13%
- The Town is pretty well “built out”, so home owners and developers are seeking to construct structures close to wetlands or wetlands buffers.
- Due to septic failures, surface water runoff and animal waste the beach was closed down twice because the bacteria count exceeded the State’s level of 104 counts per 100ml.

Mr. Ganotis offered recommended changes to ZBA proposal #4; to add a statement to clarify that the border of the Body of Water is the shoreline where the water abuts dry land. In his opinion the borderline of the “Body of Water” should be clearly stated as the shore in the ordinance.

It was mentioned that it would be difficult to determine where the shoreline is especially in the spring or after a storm when the water table is higher.

Mr. Harned commented that the language may not be the best, but Mr. Ganotis is “dead on” and they all need to work on some kind of definition to address this issue.

Mr. Ganotis offered recommended changes to ZBA proposal #6, that it should clearly state that the Rain Garden shall not, under any circumstances, be placed in a wetland, a wetland buffer within the buffer or in areas designated as having poorly drained soils, notwithstanding any engineering design to the contrary.

Mr. Ganotis explained that there have been problems with Little River contamination. He said that the Code Enforcement Officer and the Health Officer discovered two (2) major septic system failures as contributors. He said that he sought the advice of Dr. Leonard Lord, a Soil Scientist, as well as, the Director of the Rockingham County Conservation District about what kind of change to the Zoning Ordinance would help with the contamination issues. Dr. Lord suggested requiring septic system installation further away from the wetlands.

The proposed Zoning Ordinance amendments/additions drafted by the Conservation Commission include:

1. **Reduce impacts from Septic systems to Wetlands and Bodies of Water.** Proposed amendments to Article IV, Section 409.8 and Article IV, Section 410 – Approval of Septic Systems.

The proposed Ordinance change to Section 409.8 increases the distance of prohibited uses within the Wetlands Conversation District from 75-feet to 100-feet.

The proposed changes to Section 410 include the requirement that septic systems constructed within 150-feet of wetlands shall include an aerobic pretreatment system or other NH DES Subsurface Bureau approved pretreatment system to treat effluent prior to discharging it into the leaching field. It’s also proposed that septic systems that have a design flow of greater than 2,500 gpd are required to report on the condition of the leach field at least every three years by a licensed septic tank pumper or a licensed septic system designer.

2. **Amendment to Septic System Ordinance.** New septic systems shall not be constructed within the 100-foot wetlands buffer zone or replacement system within 50-feet from the wetlands buffer zone and shall be required to include pre-treatment in its design.

Dr. Arena asked if the testing can discern between animal waste and septic failures. Mr. Ganotis said that they cannot tell that but that the Conservation Commission has just applied for a Grant for “testing” that is close to DNA testing that can discern between animal waste and human waste and will also be able to determine the species of the animal waste tested.

Mr. Ganotis, Mr. Brooks and Ms. Wilson left the Meeting at 7:00pm to attend their Conservation Commission meeting next door.

Mr. Kroner said that the Planning Board would like to give the Zoning Board the opportunity to present their proposed amendments for 15 minutes and then have a 10-minute Q & A Session after each.

Mr. Field thanked the Planning Board for conducting the joint meeting. He submitted copies of ZBA minutes regarding the proposed Zoning Amendments and E-Mail communications requesting a "Joint Meeting" between the Planning and Zoning Board and the Conservation Commission.

Mr. Field explained that the proposals drafted by the Zoning Board Ad hoc Committee deal with things the Zoning Board has wrestled with over the past couple of years. He commented that Proposal #6 – Rain Gardens needs work but will at the very least get the Planning Board started because it's an issue that needs to be addressed.

Mr. Field commented that the Town has a Zoning Ordinance that is somewhat difficult to work with and has suggested to the Budget Committee that a capital investment should be considered to re-write the Zoning Ordinances. He said it would be expensive and take a few years to complete but worthy of consideration.

Proposal #1 - Compound

Mr. Field said for the record that the first proposal is of personal interest to him because it affected him and his family for three (3) years, which is the Horne property that largely abuts Mill Pond and the Little River. Mr. Horne's property includes three (3) existing residential houses with one driveway; the lots were later subdivided. He explained that Mr. Horne wanted to further subdivide the lot so that the garage sits on its own lot and also to create a new lot to be later developed. The houses are leased and the rental income is used to defer the costs of fixing the Mill Pond dam. He explained that he drafted the "Compound" Ordinance, a discreet area having common ownership rented out in multiple units. He said that his initial proposal was to require a Variance, but after a very helpful discussion with the ZBA they decided to change it to a Special Exception and increase the number of homes before it is considered a "Compound". Mr. Field came up with four (4) standards that would need to be satisfied in order to receive Board approval for a Special Exception. The proposal is meant to prevent a diminution of value in Town or excessive business use in a residential area.

Mr. Kroner said that he is familiar with Compounds rented out to Corporations and how they have a negative impact on a community. He also commented that a Conservation Subdivision and a Manufactured Housing Park share similarities with the "Compound" proposal. He said that those are two potential conflicts he saw to be in conflict with other permitted uses.

Mr. Wilson voiced concerns over the proposed "Compound" Ordinance. He referred to the second proposed requirement that the landowner or person shall reside at premises located within the "Compound" for not less than six months in each calendar year. He said that he didn't believe the Town had the police power to restrict an owner that owns two, two-acre conforming lots that share a common driveway, approved by the Planning Board through the subdivision process, in such a way.

Mr. Field said that if the property is owned by one person and that person doesn't live at the property it becomes a business property in a residential zone, and if a business is going to be "run" in a residential zone it is not too much to ask that they conform to certain standards to operate that business in the residential zone.

Mr. Wilson said that there are already standards put into place through the Zoning Ordinances; requirements such as, two (2) acre minimum, proper setbacks, proper frontage, proper septic system and footprint. He said that he believed the proposed ordinance to be an encroachment on individual's property rights.

Mr. Harned said that he owns another house and rents it out and asked if that is considered a business. Mr. Field said that it's considered a business as far as the State is concerned because the renter has to file a business profit tax and a business enterprise tax.

Mr. Harned said that if he owned three houses in Town in separate locations it would not be considered a "Compound". Mr. Field agreed and said that the Commentators have said that if you own multiple properties in a discreet area, like in an R-1 or R-2 Zoning District, it changes the nature of the area with its commercial uses.

Mr. Kroner asked if Mr. Field discovered any other communities that approached this issue and addressed it in a Zoning Ordinance. Mr. Field said that he did not, but it would not take him long to do the research.

Mr. Lagassa asked how it would be different if you had three (3) separate residences that are rented but owned by three (3) different owners.

Mr. Field said that he created this proposal as a means to bring it to the attention of the Planning Board, and agreed that it is inherently faulty, and that is why the proposal is before the Planning Board.

The Board decided not to forward the "Compound" Zoning Amendment on to the Public Hearing.

Proposal #2 – Enforcement

Mr. Field explained that the proposal adds perspective as to how important enforcement is. He said some of the language comes from Attorney Peter Loughlin's Land Use Books and some from Public Treatises.

Mr. Field explained that few people know that there is a period of time where a Building Permit or Occupancy Permit can be appealed.

Mr. Wilson referred to proposed Section 705.2 – "Authority to make changes or modifications specific to any order of denial or relief rests solely with the Zoning Board of Adjustment". Mr. Wilson asked if the ZBA really wanted the Applicant to go back to the Board with every "little thing".

Mr. Buber said that the Applicant should go back before the Board with any major change to the approved plan. Mr. Wilson said that the definition of "major" has to be precise.

Mr. Wilson said that one solution to put "teeth" into the proposal is to require as-built plans, and if there are any concerns with the plan then the Certificate of Occupancy can be "held up" until the ZBA has reviewed the as-built plans in lieu of the initial plans of the property.

Mr. Field said that the Public has the right to appeal a Building Permit and a Certificate of Occupancy within thirty (30) days.

Mr. Fullerton said that he is more sensitive to this issue because he is an Architect and has represented clients before different Boards. He said that he doesn't think the ZBA wants to be an architectural review board; it's difficult to tell someone what they can and cannot do with the cosmetics of their structures. He said that "taste" is very personal and it is difficult to dictate that.

Mr. Wilson agreed with Mr. Fullerton, but if someone goes before the ZBA for relief, it is legitimate for the Board to impose conditions acceptable to the Abutters and the Town.

Proposal #4 – Notice of Issuance Building Permits and Certificates of Occupancy

Mr. Field said that any member of the public has the right of appeal of a Building Permit or Certificate of Occupancy to the Zoning Board of Adjustment for relief. He said that the Public does not get "notice" of a Building Permit or Certificate of Occupancy; a person has to go to the Town Office and find out when a Building Permit or Certificate of Occupancy has been issued. The Administration needs to make available on the Town's website when Building Permits and Certificates of Occupancy are issued, and the thirty (30) day appeal period begins at the time it is put on the Website.

Mr. Wilson said that not a lot of people look at the Website and suggested that instead it should be required to put up a visible "notice" sign on the primary frontage to the property, and to include the Town Office's phone number to call if someone wanted more information on the Building Permit.

The Board agreed that more notification to the public is needed regarding the issuance of Building Permits and Certificates of Occupancies.

Proposal #4 – Body/Bodies of Water – Wetlands – Minimum Lot Area

Mr. Buber referred to a case that was before the ZBA where the Applicant requested to use an area of a body of water to satisfy the two (2) acre requirement, which was denied by the ZBA and appealed to Superior Court who upheld the ZBA's decision. Mr. Buber explained that during the testimony and deliberations on that case a document was submitted titled Classification of Wetlands and Deepwater Habitats of the United States that addresses the boundary between wetlands and deepwater habitat that states that 6.6 feet from the shoreline out is classified as a "wetlands" and beyond that is considered deep water. He said that their argument was that the Board should allow them to use the 6.6 feet of Mill Pond to satisfy the minimum acreage requirement of two (2) acres. He said that the definition in the Ordinance of "wetlands" is verbatim to RSA 482-A: 2 X, but there is nothing in the definitions that defines "bodies of water". Mr. Buber explained that the change to Section 411 is grammatical; adding a comma after the word "Wetlands" and after the word "water" in the first sentence.

Mr. Wilson suggested adding the following sentence at the end of the proposed definition of Body/Bodies of Water, "moreover areas of the Town for the purposes of this Ordinance shall not be deemed both Wetlands and Bodies of Water".

Mr. Harned said that the definition of the "line" between the "Wetland" and "Body of Water" must be precisely defined. He said "Wetlands" can be used to satisfy acreage requirements, but "Bodies of Water" cannot. The Board agreed that the challenge to define the "line" is very difficult.

Mr. Wilson voiced concern over "marshes" being included in the definition of Body/Bodies of Water. He suggested that maybe they should include "tidal marshes" under the definition of Body/Bodies of Water and include "inland marshes" under the definition of Wetlands.

Mr. Harned suggested defining the line between tidal marshes by mean high tide, but struggled with defining the line of fresh water.

Mr. Wilson said that the scientific basis for identifying a wetland is vegetation, soil type and hydrology and they might be able to define the line by stating that it shall be determined by the "Wetland".

Mr. Field suggested that the Planning Board designate one of their members to meet with the ZBA Zoning Ordinance Review Ad hoc Committee some afternoon to hash it out.

Proposal #5 – Signs and Billboards

The approval of signs is a function of the Planning Board. The Zoning Board had a case before them last year for an Appeal of a Decision of an Administrative Officer. The Code Enforcement Officer determined that the wood carvings of a "lobster holding ice cream cones" were signs. The Zoning Board upheld the Building Inspector's interpretation that the carvings are signs. The case has been appealed to Superior Court.

Mr. Buber said that the current Ordinance, Section 506.6.G, does not limit the amount of signs allowed in the R-1 and R-2 Zoning Districts. Mr. Buber commented that the current section can be "cleaned up" by adding "total signage" in the paragraph. Mr. Buber said that Little Boars Head had a grievance on the same property; their Ordinances are different; they don't allow signs. He said that Little Boars Head deals with "contractor signs" in their Ordinance and thinks it is a good idea to incorporate that into the Town's Ordinance; hence the suggested language for "contractor signs" in the proposed Ordinance.

Mr. Wilson referred to Section 506.5.B – Billboards – *A billboard is defined as that type of sign that advertises goods, products, merchandise, business, or any other sort of enterprise or adventure not actually available at the premises where the billboard is located.* It was in his opinion that "contractor signs" are "billboards" which are prohibited.

Mr. Buber said that if "contractor signs" are considered "billboards" then it is a moot point and it's an issue of enforcement, but if they are not considered "billboards" then something needs to be included in the Ordinance to deal with them.

Mr. Wilson said that the Planning Board has delegated authority to the Building Inspector to approve signs that conform with the Sign Ordinance and if there is a grievance with that approval it is to be appealed to Superior Court; not to the Zoning Board.

Mr. Field agreed; there is a difference between an “administrative issue” and a “permitting issue”. An interpretation of the Zoning Ordinance is appealed to the Zoning Board. Mr. Field read an E-mail communication that he sent to Mr. Kroner into the record:

Dear Shep-

Writing only for **myself**, I confirm that the ZBA is aware of Section 506 of the Zoning Ordinance and acknowledges the PB’s reserved role pursuant to Section 506.3. However, my understanding is that the ZBA is generally the **exclusive** reviewing authority when it comes to “appeals” taken by aggrieved citizens with respect to an Administrative Officer’s interpretation of the Zoning Ordinance, and not just Section 506 thereof. Further, Section 301, “Definitions” defines several word/terms relating to “signage” which stand alone and not as a part of Section 506. You may also recall that the ZBA is generally the appropriate authority for a person aggrieved with an interpretation of the Zoning Ordinance made by the PB. However as you note, Section 506.3 A (A) (sic) seems to provide an exception with regard to a “decision” made by the PB on a “Conditional Use Permit”.

Notwithstanding such Section, I believe that there are actions take from time to time regarding “signs” by “administrative officers” that may not constitute “decisions” on a “conditional use permit application”.

Query, in reviewing RSA 674:21; 675:I, II; and, 674:16, are we on the ZBA to presume that Section 506 is deemed to be an “innovative land use control” which is not limited to the “...methods contained in RSA 674:21...”, i.e. a creative and novel application and use of the enabling RSA by the PB and the electorate? If so, of what future “utility” is the “Zoning Ordinance” and the “Zoning Board of Adjustment”? It would seem as though that the function of the ZBA becomes “whatever the PB says it is”. It becomes a little bit like Lewis Carroll’s, “Through The Looking Glass” discussion of “rules”. Such certainly presents a more complex long term philosophical question of the local “land use” regulatory process, and not one which we alone can decide.

For your information, the “signage” conundrum recently came to the attention of the ZBA when a decision of the “Building Inspector”, regarding the character and usage of a wooden sculpture at a business site located in a Residential District was challenged as being a “work of art” protected by the First Amendment, and NOT a “sign” regulated by the Zoning Ordinance. The ZBA concurred with the Building Inspector that the objects WERE indeed “signs” as defined under the Ordinance, even though they might also constitute “works of art” in some circles of opinion, i.e. the proverbial, “cigar store indian”. Such case, which is being appealed to the Superior Court, put the ZBA on notice that there were construction/interpretation difficulties with the present signage Ordinance that we wished to bring to the attention of the PB.

We look forward to making our case for Zoning Ordinance Amendments before you just as soon as possible, and in time for 2012 consideration in May.

Many thanks for your perspectives and insights.

Respectfully, Bob

Proposal #6 Rain Gardens –

The “Rain Garden” proposal was brought to the Planning Board’s attention because it is an issue the Zoning Board has had to deal with, but it was agreed upon that the proposal was not ready to go to the voters in May.

The main issue with “Rain Gardens” is that they need to be monitored in perpetuity and setting up an escrow account won’t work. Mr. Wilson suggested setting up the monitoring of the “Rain Garden” the same way the Town has set up the monitoring for conservation easements in Town; by engaging a qualified agency to monitor it in perpetuity, at the owner’s expense in perpetuity.

Mr. Fullerton said that he did go to NH DES and to the UNH Cooperative and spoke to people there. The “Rain Garden” is basically a bio-retention area and the technology is simple; the flow of the stormwater runoff has more time to absorb into the ground. Mr. Fullerton said that the proposal is a condensed version of what the State requires for “Rain Gardens”.

Mr. Fullerton said that the Ordinance can be as simple or as complicated as the Town wants it to be. He said that he took passages from the NH DES Operations and Maintenance Plan and put them together to identify what the trigger is, and who the responsible party is if it comes before the Zoning Board or before the Planning Board. He said this is a rough frame work to either add to, or subtract from. It’s going to involve more commitment from Town Staff.

Mr. Field said that to his knowledge there is only one approved “Rain Garden” in Town (approved by the Zoning Board) and there are a few similar functioning detention ponds that have been in Town for a number of years. Mr. Field said that there is Case Law that has concluded that if something is adequately engineered then a Local Land Use Board is compelled to accept the decision of the State if the Applicant proves it meets all State qualifications. Mr. Field said that the Board asked the Building Inspector at one of their meetings for his opinion on “Rain Gardens” and he said that he thought the Boards should be discouraged from getting involved with them because his office is incapable of measuring them. A “Rain Garden” only works if it is maintained properly.

Mr. Wilson said that “Rain Gardens” need to be inspected after every major storm event.

Dr. Arena said that the “Rain Garden” is the responsibility of the landowner. He suggested that “Rain Gardens” not be allowed in Town; and if it’s challenged, it’s challenged. He said that eventually a “Rain Garden” breaks down and is never a benefit to the Town.

Both Boards agreed that the proposal for “Rain Gardens” was not ready to go before the Voters this May.

The Planning Board decided to schedule a Public Hearing for 1) **Proposal #2 – Enforcement**; 2) **Proposal #3 – Notice of Issuance Building Permits and Certificates of Occupancy**; 3) **Proposal #4 – Body/Bodies of Water and 4) Proposal #5 – Signs and Billboards**. The last day to hold the First Public Hearing is March 6, 2012.

Mr. Field and Mr. Buber will attend next week's Planning Board Work Session to discuss any changes to the proposals before noticing the Public Hearing. If there are any substantive changes at the March 6, 2012 Public Hearing they would have to hold a Second Public Hearing. The Board decided to hold off on Proposal #1 – Compound and Proposal #6 – "Rain Garden".

Mr. Wilson said that the Town's Attorney will need to review the proposed amendments.

Mr. Kroner said that he would not be in attendance at the Work Session and Chair Kohl will not be available. It was decided that Ms. Pohl would Chair the February 21, 2012 Work Session.

The Meeting was adjourned at 10:20pm without objection.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved March 20, 2012