



**Meeting Minutes  
Work Session  
North Hampton Planning Board  
Tuesday, February 21, 2012 at 6:30pm  
Mary Herbert Conference Room**

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

A Recording Secretary was not present; these minutes were transcribed by an audio recording.

**Members present:** Joseph Arena, Laurel Pohl, Tim Harned, and Phil Wilson, Select Board Representative.

**Members absent:** Barbara Kohl, Chair; Shep Kroner, Vice Chair, and Mike Hornsby

**Alternates present:** None

**Others present:** Robert B. Field, Jr., Zoning Board Chair, Brian Groth, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Ms. Pohl Chaired the Meeting in the absence of the Chair and the Vice Chair.

Ms. Pohl convened the Meeting at 6:30pm and noted for the record that there was a quorum.

**I. Old Business**

1. None

**II. New Business**

1. Review/Discussion of the proposed Zoning Ordinance Amendments

**"Enforcement" of Ordinance and Conditional Decisions.** Amend Article VII, Section 704.3 and add Article VII - Administration, a new Section 705 – "Enforcement".

Discussion ensued on proposed modifications made to plans authorized by the Building Inspector after final approvals of Variances and/or Special Exceptions. The Zoning Board would like to make it clear that any changes or modifications made to a plan rests solely with the Zoning Board of Adjustment.

Mr. Wilson suggested that the Zoning Board require an "as-built" plan reflecting all changes from the plan that was approved by the Zoning Board prior to the issuance of the Certificate of Occupancy from the Building Inspector.

Mr. Field said that the Building Inspector/Code Enforcement Officer should report any modification to the plan to the ZBA. The Boards discussed time limits for such reporting:

- “Any change or modification to a Variance or Special Exception authorized by the Building Inspector shall be reported to the ZBA within two (2) business days of the action taken. If in the opinion of the Chair of the ZBA any such change represents a material change in the approved plan the Chair may call a Special Meeting of the ZBA to consider the proposed change at the earliest possible opportunity not to exceed 14 days from the date of the report”.

Ms. Pohl allowed Mr. Dieter Ebert to comment from the audience, even though the Work Session was not a Public Hearing. Mr. Ebert remarked that a change to the plan may be authorized by the Building Inspector through the building permitting process if the change has no impact on the approved Variance. He gave the example that if someone receives a Variance to the wetlands setbacks and then decides to put in dormers on the side of the house that meets all setback requirements; that person should be able to go directly to the Building Inspector and apply for a Building Permit without Zoning Board approval.

Mr. Field said that when an applicant applies for relief from an Ordinance they have to meet strict standards, and one of the standards is diminution of value of abutting properties. Mr. Field said that in the past the Building Inspector has authorized adjustments to the approved plan that may or may not have been material changes and the ZBA wants to make sure that a change on a plan that was presented and sworn to under Oath is brought to the Board’s attention. He said that the plans submitted or approved by the ZBA are sometimes not the plans that have been constructed on site, and this has happened with septic systems being changed drastically as well.

Mr. Wilson commented that a “change”, such as adding dormers may mean an added room, and if the house was approved to be put in the wetlands buffer it’s important to notify the Board of the change because it may increase the occupancy of the house or increase the effluence of the septic system.

Ms. Pohl referred to the last sentence of Section 705.3, *Authority to make changes or modifications specific to any order of denial or relief rests solely with the Zoning Board of Adjustment.*

The Board agreed that it is important for the public to be informed of any modification or change requests to an approved Variance or Special Exception.

Mr. Wilson offered the following suggestion:

To add a sentence at the end of Section 705.2 as follows: *which shall hold a public hearing to consider a new request for relief from the prior order.*

**Mr. Wilson moved and Dr. Arena seconded the motion to take the Proposed Zoning Amendment – Enforcement, to a Public Hearing as amended.  
The vote was unanimous in favor of the motion (4-0).**

The proposed amendment will be presented at a Public Hearing on March 6, 2012 as follows:

**SUBJECT:**        “ENFORCEMENT” OF ORDINANCE AND CONDITIONAL DECISIONS

DATE: February 21, 2012

PROPOSAL: ZONING AMENDMENT

"Amend: Section 704.3 – In line 5, add the words "...special exception or..." between the words "...secured..." and "...variance."

Add:

"Section 705 - "Enforcement"

**705.1** The enforcement of this Ordinance by the Building Inspector/Code Enforcement Officer in a consistent, fair, and nondiscriminatory manner, is a critical element of zoning and public trust. Failure to do so will often result in a disservice to the public and frustration of the purposes of the Ordinance. Frequently, the Building Inspector/Code Enforcement Officer is the only administrative officer of the Town to whom is reserved the lawful capacity to enter upon, inspect and observe the actions of a private landowner, and the effect that certain actions may have on the private rights of abutters, other landowners, and the citizens of the Town.

**705.2** -Variances, Special Exceptions and other orders or relief issued, made or granted, by the Zoning Board of Adjustment must be strictly construed, for reason that such are often based upon the representations made by an applicant and the case-specific intent of the language of the order of denial or relief granted. Authority to make changes or modifications specific to any order of denial or relief rests solely with the Zoning Board of Adjustment, which shall hold a Public Hearing to consider a new request from the prior order.

**705.3** –The issuance of Building Permits and Certificates of Occupancy are tools used to secure compliance with zoning ordinances. The Building Permit application is intended to solicit information so that the Code Enforcement Officer can determine whether the proposed building and/or building site meets or complies with all municipal requirements and conditions of relief. Occupancy Certificates are used to enable the Town to ensure compliance with all regulations and conditions of relief post-construction, but prior to a building and/or building site's intended use.

**705.4** – If, in the perspective of an Applicant, the Code Enforcement Officer/Building Inspector inappropriately acts with respect to the issuance of a permit or certificate, an administrative appeal may be filed with the Zoning Board of Adjustment; and/or a private right of action may be brought by an aggrieved party pursuant to RSA 676:15."

**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.

Mr. Field said that Mr. Wilson suggested, at the last meeting, that when a Building Permit or Certificate of Occupancy is granted there should be a sign or some kind of device to make the public aware that the property has received a permit. He said that he agrees to add signage to bring to the attention of the

Deleted: -

Deleted: .

Deleted: i

Deleted: -

public an action made by the Building Inspector or Code Enforcement Officer because of the thirty (30) day appeal period.

Mr. Wilson suggested adding the following language to the proposed Zoning Amendment.  
*And, (iii) the Building Inspector/Code Enforcement Officer shall place a sign on the property's frontage for which a Building Permit or Certificate of Occupancy has been issued indicating that such action has been taken and notifying members of the public of their opportunity to appeal said sign shall remain exhibited on the property until the appeal period expires.*

**Mr. Wilson moved and Dr. Arena seconded the motion to take the proposed zoning amendment – Notice of Issuance Building Permits and Certificates of Occupancy, to a Public Hearing as amended. The vote was unanimous in favor of the motion (4-0).**

The proposed amendment will be presented at a Public Hearing on March 6, 2012 as follows:

“Amend: Article VII Addition

Add:

Section 706–Notice of Action–

Notice of the issuance of Building Permit(s) and Certificate(s) of Occupancy by the Building Inspector/Code Enforcement Officer, shall, (i) be placed on record by the Building Inspector/Code Enforcement Officer with the Town Administrative Assistant, (ii) shall be entered into, and published on, the Town Website by the Building Inspector/Code Enforcement Officer at the time of issuance, AND (iii) the Building Inspector/Code Enforcement Officer shall place a sign on the property's frontage, for which a Building Permit or Certificate of Occupancy has been issued, indicating that such action has been taken, and notifying members of the public of their opportunity to appeal. Said sign shall remain exhibited on the property until the appeal period expires.

The right of a person aggrieved by any such action(s) taken by the Building Inspector/Code Enforcement Officer to appeal, shall extend for a period of thirty (30) days from the placing of both the notice on the Website, and the sign on the subject premises frontage. All Appeals shall be filed with the Zoning Board of Adjustment, and shall be administered and processed as provided in this Ordinance,

Deleted: And,

**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””.

Mr. Field said that the Zoning Board Ad hoc Committee Members listened carefully to all the suggestions made on defining “wetlands”, but determined that they are not trying to delineate “wetlands” in the manner that the Kerland Report does. They decided to add a sentence to the first paragraph after “marshes and water courses, natural or artificial” as follows; *as measured by the annual mean high water mark.*

Mr. Wilson suggested adding, *The extent of the “Body of Water” or “Bodies of Water” shall be as measured by the annual mean high water mark.*

Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91A:2,II. They will not be finalized until approved by majority vote of the Planning Board.

Mr. Field said the proposal is set up so that a "Body of Water" cannot be interpreted as "Wetlands".

Comments were made about unusual weather conditions and the possibility of depriving property owners of legitimate "uplands" during abnormal conditions.

The Board agreed to remove the word "annual" in "annual mean high water mark" because unusual weather conditions could possibly deprive property owners from using legitimate "upland" areas to satisfy the acreage requirement.

Mr. Wilson suggested that Mr. Groth have a Soil Scientist review the proposed amendment. Mr. Groth agreed and said that he would also like to check out, including perennial and seasonal streams, and marshes as "Bodies of Water".

Mr. Wilson said that if "marshes" is included in the definition of ""Bodies of Water"" then the entire Wetlands Conservation District Ordinance has to be revised.

Mr. Chuck Gordon spoke from the audience and said that since "marshes" is included in the definition of ""Bodies of Water"" then marsh area will no longer be allowed to satisfy the two (2) acre lot requirement. The Board agreed that Mr. Gordon's interpretation is correct, but it is not the Board's intention. Mr. Wilson said that the purpose of the proposal is to eliminate the possibility of people using a ""Body of Water"" to fulfill the two (2) acre requirement.

Mr. Wilson read the definition of "Wetlands" into the record: *Pursuant to RSA 482:-A:2 and RSA 674:55, "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence or vegetation typically adapted for life in saturated soil conditions.* Mr. Wilson said that if "marshes" are included in the definition then the current definition cannot be maintained.

Mr. Groth suggested eliminating "perennial and seasonal streams, tidal waters, and marshes" from the definition and adding, *not to include water features otherwise defined as wetlands*. He suggested the Board give him the opportunity to speak to a specialist and bring back any changes that may be suggested to the March 6, 2012 Public Hearing.

**Mr. Wilson moved and Dr. Arena seconded the motion to take the proposed Zoning Ordinance Amendment – "Body/Bodies of Water" to a Public Hearing on March 6, 2012 as amended. The vote was unanimous in favor of the motion (4-0).**

The proposed amendment will be presented at a Public Hearing on March 6, 2012 as follows:

Add:

Section 302 - "Definitions"

"Body/"Bodies of Water"": The phrases ""Body of Water"" or ""Bodies of Water"" as used in this Ordinance shall include, but are not limited to, rivers, brooks, lakes, ponds, and water courses, natural or artificial. The extent of the ""Body of Water" or ""Bodies of Water"" shall be as measured by the mean high water mark, not to include water

Deleted: perennial and seasonal streams,

Deleted: tidal waters, marshes

features otherwise defined as "Wetlands". This definition is separate and distinct from the definition of "Wetlands" found elsewhere in this Section and the two shall not be used interchangeably nor shall they be deemed synonymous."

Add:

Section 411 Wetlands – Minimum Lot Area:-

"Wetlands, excluding "Body of Water" or "Bodies of Water", may be used to satisfy minimum lot area and setback requirements provided that, that portion which is wetland does not exceed fifty (50) percent of the minimum required lot area and provided that the remaining lot area is sufficient in size and configuration to adequately accommodate all required utilities." \*3/13/79. (Balance of paragraph to remain unchanged.)

Deleted: b

Deleted: w

**"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".

It was discussed at the Joint Meeting that contractor signs may be considered as "billboards" which are prohibited.

Mr. Field said that the Ad hoc Committee believes that contractor signs can be placed on the property. They are informational signs that can be helpful in cases of an emergency.

Mr. Dieter spoke from the audience and said that a Contractor's sign is helpful when making deliveries during the building process and limiting delivery trucks turning around in neighboring driveways.

Dr. Arena said that the General Contractor's sign should be enough; there should not be signs for every profession involved in the building process.

Mr. Field said that it is the intent of the proposed Ordinance to allow just one sign per property, and that the sign be removed from the premises when the project is complete.

The Board discussed the size of a Contractor's sign. Mr. Harned suggested a size of 2' x 2' (4 square-feet).

The Board agreed that the size of the signs for both a Contractor and the signs allowed on business properties in the R-1 and R-2 Zoning Districts shall be four (4) square-feet per face, not to exceed two (2) faces, and a total surface area shall not exceed eight (8) square-feet.

**Mr. Wilson moved and Dr. Arena seconded the motion to take the proposed Zoning Ordinance Amendment – Signs and Billboards, to a Public Hearing on March 6, 2012 as amended. The vote was unanimous in favor of the motion (4-0).**

The proposed amendment will be presented at the March 6, 2012 Public Hearing as follows:

Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91A:2,II. They will not be finalized until approved by majority vote of the Planning Board.

291  
292 Replace: "Section 506.6 (G) "Signs and Billboards"

293  
294 "G. Size, Number and Dimensional Criteria of Signs in the R-1 and R-2 Zoning  
295 Districts.

296  
297 No more than one sign shall be allowed for any business located in the R-1 or R-2  
298 Zoning Districts.

299 The dimensional criteria for signs placed or erected on business properties in the  
300 R-1 or R-2 Zoning District, including but not limited to, ground signs, monument  
301 signs, pole signs, pylon signs, wall signs, sandwich-board signs, etc., shall be the  
302 same as those specified within Section 506 of this Ordinance with the exception  
303 that, under no circumstances, shall any sign exceed four (4) square feet per face,  
304 not to exceed two (2) faces (total surface area shall not exceed (8) square feet).  
305 Advertising shall be allowed on each side of such sign, if so desired by the  
306 business. Internally or externally lighted signs, whether illuminated directly or  
307 indirectly, are prohibited in the R-1 and R-2 Zoning Districts.

308 One (1) Contractor's sign per residence or approved lot shall be permitted,  
309 provided that such sign complies with dimensional limits stated in the preceding  
310 paragraph. No such sign shall remain on the approved lot or at a residence for a  
311 period longer than twelve (12) consecutive months, or completion of  
312 construction, whichever first occurs.  
313  
314

315 Reduce impacts from Septic systems to Wetlands and "Bodies of Water". Proposed amendments to  
316 Article IV, Section 409.8 and Article IV, Section 410 – Approval of Septic Systems.  
317

318 This proposed Zoning Amendment is suggested by the Conservation Commission.  
319

320 **Mr. Wilson moved and Dr. Arena seconded the motion that the Board finds that, due to a lack of**  
321 **preparatory time, the proposed amendment is inexpedient to legislate at this time.**  
322

323 Mr. Wilson said that the proposal is inexpedient to legislate, which is to say that the Planning Board will  
324 table it, and probably act on it next year when the Board has more time. He said that he does not want  
325 to diminish the expertise that went into the proposal because Dr. Leonard Lord, Executive Director of  
326 the Rockingham County Conservation District, who also holds a PhD in Wetlands Science helped prepare  
327 this proposal, but before the Planning Board puts a proposal before the Legislative Body the Board has  
328 to do their due diligence. Mr. Wilson said that the proposed Zoning Amendment should be a major  
329 project over the next year of the Planning Board, in conjunction with the Conservation Commission and  
330 the Zoning Board, if they want to participate.  
331

332 **The vote was unanimous in favor of the motion (4-0).**  
333

334 **Mr. Harned moved and Mr. Wilson seconded the motion to recommend that the Planning Board,**  
335 **Conservation Commission and Zoning Board of Adjustment jointly work together over the course of**

Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH  
RSA 91A:2,II. They will not be finalized until approved by majority vote of the Planning Board.

Deleted: twelve (12)

Deleted: .

Deleted: s

Deleted: , including, but not limited to, signs  
placed by builders, developers, architects, banks,  
lenders, etc., shall not exceed nine (9) square feet  
and shall be limited to one (1) per residence or  
property where the work is being performed.

Deleted: property

the year to consider the matter of reducing impacts from septic systems to Wetlands, Water Bodies and Rain Gardens.

The vote was unanimous in favor of the motion (4-0).

**Amendment to Septic System Ordinance.** New septic systems shall not be constructed within the 100-ft 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.

The Board discussed whether or not this proposed amendment was intended to be in conjunction with the prior amendment proposed by the Conservation Commission.

**Mr. Harned moved and Mr. Wilson seconded the motion that the amendment to the Septic System Ordinance be handled together with the decision on moving forward to reduce the impacts from septic systems to "Wetlands" and "Bodies of Water".**

The vote was unanimous in favor of the motion (4-0).

Mr. Wilson commented that both proposals from the Conservation Commission came in late and the Boards need to work on them to assess the scientific and conceptual aspects of these proposals against the practical consequences for the people in Town.

Mr. Harned said that it will be good to have a "Joint Board" effort to get it right next year.

### III. Other Business

#### 1. Committee updates:

CIP Update – Mr. Wilson said that the next CIP meeting is scheduled for Friday, February 24, 2012 at 8:15am. The Committee hopes to have the full "spread sheets" consolidating all of the proposals that have been considered. They expect to have a proposal from Professor Victor Azzi to assist the Town in assessing the proposals for the Municipal Complex, which will probably not appear on the Warrant this year, but they want to engage him to get better data for next year. The Committee expects to have the first draft of the CIP completed by mid-March and the final draft at the end of March. Mr. Wilson said that Dr. Azzi will help the Town make a prudent and well informed decision about what to do with regards to the Municipal Complex.

Dr. Arena said that based on studies the townspeople are not in favor of a new Municipal Complex; so why is the Committee pursuing it?

Mr. Wilson said that the Library was built in 1972 with a life expectancy of twenty (20) years and the Town needs to find out if it is prudent to invest a lot of money into it to bring it up to a standard that will make it useable for the next twenty (20) years.

Master Plan Update – The Board decided to "table" the Master Plan Update to the next meeting since Mr. Kroner was not present to update the Board.

Blasting Protocol – The Board had the latest "draft" and Mr. Harned explained that the Ad hoc Committee tried to pull information together from as many different sources as they could. There was

Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91A:2,II. They will not be finalized until approved by majority vote of the Planning Board.



information concerning the protection of structures, the protection of aquifers and the protection of homeowner's Wells. Mr. Harned incorporated all of Dr. Arena's suggested changes from the previous draft. Mr. Wilson and Mr. Groth have reviewed the most current draft.

Mr. Harned asked for a consensus from the Board on the following issues:

1. Determine a radius for the pre-blast condition survey. Mr. Harned explained that the current figures, 2,640 feet of structures 100 years or older and 1,320 feet for structures less than 100 feet are both very high. He said that the Town of Windham, which he thought these original figures came from, is at 500 feet.
2. Issue of Public Hearings regarding blasting permits, does the Board want to make them an automatic course; or should there be some sort of "trigger" set to require one.
3. Should the Town not allow blasting in an aquifer because of potential pollution issues or does the Town allow it and make it the Blasting Administrator's responsibility to enforce the requirements of the permit that are specifically tailored due to particular applications in the aquifer sensitive areas. Mr. Wilson said that a third option is to not allow blasting in what is defined in the Ordinance as the Aquifer Protection District.

Mr. Harned spoke to someone in the "blasting business" and he said that rock structures in North Hampton become more prevalent as you go closer to the Seacoast and blasting is fundamentally the only option because there is some stone so hard that nothing else would work. He said that it appears that the Town will have to allow it, but it should be written in such a way that blasting is the last resort.

Mr. Wilson said that if blasting were the "last resort" then the applicant would need to seek relief from the Zoning Board of Adjustment.

Mr. Field encouraged the Board to require mandated "notice" to the people affected by the blast within a certain area and give them the opportunity to respond.

Mr. Wilson said that "notice" is addressed in the proposed ordinance. He said they don't require a Public Hearing because it is redundant.

Mr. Field said that there should be certain circumstances when there should be a Public Hearing because it does affect the water supply and older houses and their foundations. He also suggested there be flexibility in the amount of money set for bonding.

Mr. Wilson suggested changing it to read, *the bond should be no less than the aggregate value of all structures within the radius defined above.*

Mr. Harned said that a "good blaster" can well control the impacts of a blasting operation. He said there are some "blasters" that are less scrupulous.

The Board agreed that the proposed Blasting Ordinance is not ready to be placed on this year's Warrant.

Mr. Wilson said that if the Board decides to legislate this as a Regulation rather than a Zoning Ordinance, the Board can adopt it and add it to the Site Plan, Subdivision and Excavation Regulations, and make

sure it is defined that any operation that involves blasting is by definition excavation in the Town of North Hampton.

The Board discussed designing the Blasting Permit so that it would require a Special Exception, reviewed by the Zoning Board of Adjustment. The Board was agreeable to that concept.

Mr. Wilson said that there would be no time to put the Blasting Ordinance on this year's Warrant, but the Board can put it under the Site Plan, Subdivision and Excavation Regulations in a way that would require anybody who wants to do any blasting to come before the Planning Board and if the Board decides to change it to a Special Exception process they can change it for next year.

**Code of Ethics Update** – Mr. Wilson said that the Committee is going to meet to decide whether or not to incorporate proposed changes into it. He said that one question that's difficult to figure out an answer to is if someone makes an allegation of a violation of the Code of Ethics, it won't matter if it is determined frivolous by the Code of Ethics Committee, because the damage to that person's reputation has already been made. He said that the potential damage to an individual is far greater than the benefit to the public.

Ms. Pohl said that the purpose of the Code of Ethics is not to deal with the repercussions that are caused by the damage of the allegation; it's really to administer how the Town responds to that allegation.

**Junk Yard Update** – Mr. Wilson said that he spoke to the Town's Attorney regarding the potential "junk yards" and he is still working on the individual cases. The Select Board has given the Attorney the charge to come back to them as quickly as possible with the correct documents so that the Town can start issuing and charging for permits.

Dr. Arena said that it has to be made clear that there's a difference between the land of the "junk yard" and the person that operates it, because the "junk yard" itself is not licensed; it's the person who operates it that has to be licensed. He said that the Select Board should have been going after the fees that they rightfully have to go after all along. He said there doesn't need to be an Ordinance to collect the fees.

#### Minutes

January 17, 2012 and February 7, 2012 -

**Mr. Wilson moved and Dr. Arena seconded the motion to approve the January 17, 2012 and the February 7, 2012 as written.**

**The vote was unanimous in favor of the motion (4-0).**

The Board was in receipt of a letter from Craig Salomon regarding "for sale" signs on Woodland Road that may be in violation.

Mr. Wilson recommended forwarding the letter to Chair Kohl to see if she would like to craft a response to the letter, or if she thinks the Board should seek a legal opinion.

The Meeting was adjourned at 9:55pm without objection.

485 Respectfully submitted,  
486  
487 Wendy V. Chase  
488 Recording Secretary  
489  
490 **Approved March 20, 2012**