



**Meeting Minutes**  
**North Hampton Planning Board**  
**Tuesday, June 5, 2012 at 6:30pm**  
**North Hampton School Cafeteria**  
**201 Atlantic Avenue**

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

**Members present:** Shep Kroner, Chair; Laurel Pohl, Vice Chair, Joseph Arena, Barbara Kohl, Tim Harned, and Phil Wilson, Select Board Representative.

**Members absent:** Mike Hornsby

**Alternates present:** None

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

Mr. Kroner convened the meeting at 6:35pm and noted for the record that Member Mike Hornsby was not in attendance and there were no Alternates present, but that there was a quorum.

Mr. Kroner read the Preamble of the Code of Ethics, recently adopted by the Legislative Body at the May 8, 2012 Town Election, that prescribes that the Chair of each Board read the Preamble at the first meeting after its adoption. He asked each member to sign the certification acknowledging that they read and understood the Code of Ethics.

## **I. Old Business**

**Case #12:08 – Harbor Street Limited Partnership, Joseph Falzone, 7B Emery Lane, Stratham, NH 03885. Property location: 160-186 Post Road; M/L 018-038-000; Zoning District: R-1 & R-2. Property owner: Black Marble Realty Trust, John D. McGonagle, Trustee, PO Box 679, Rye, NH 03870.** The Applicant, Joseph Falzone, Harbor Street Limited Partnership, submits a pre-application Design Review pursuant to Subdivision Regulation VI.A.2 – Design Review Phase, for the purpose of familiarizing the Planning Board with the basic concept of a proposed 53-lot Workforce Housing Subdivision and Proposed Road totaling 3,200 feet (Plan “A”); the Applicant has also submitted a proposed 19-lot Conventional Subdivision Plan for Design Review (Plan “B”). This Pre-application Design Review is continued from the May 1, 2012 meeting.

**In attendance for this Application:**

Joseph Falzone, Applicant/Developer

Malcolm McNeill, Applicant’s Counsel

Jim Gove, Certified Wetlands Scientist, Gove Environmental Services

David McClain, Hydrologist, GEO Insight

Scott Cole, Engineer, Beals Associates

Lisa Henderson, Workforce Housing Coalition

Mr. McNeill commented that it was beneficial to both parties to proceed with the Design Review; it gives the Applicant a chance to respond to issues raised at the May 1, 2012 Meeting. Mr. McNeill stated that the Applicant will be proceeding with the proposed 53-lot Workforce Housing Subdivision plan and will not be proceeding with the proposed 19-lot subdivision.

Mr. McNeill reported on the following:

- Mr. Gove and Mike Cuomo conducted a site walk on the property.
- The Applicant is working on the environmental survey.
- The Study has been completed on the aquifer issues.
- A traffic study has commenced to the areas suggested by the Chair from last month's meeting.
- Mr. McNeill commented that Ms. Lisa Henderson from the Workforce Housing Coalition was not part of the Applicant's "team", but was a good resource because of her extensive experience with workforce housing.
- The parcel is 55.4 acres in the R-1 Zoning District that permits workforce housing.
- A significant portion of the proposed road is a straight line and meaningful to site distances for traffic purposes.
- Proposing a 53-lot subdivision where 25 of the lots will be workforce housing with acreage ranging from 1/3 acre to 6 acres. The average lot size will be .95 acre.
- The Length of the road is 3,200 feet, and total impact to the wetland regarding the roadway will be zero.
- Waivers regarding wetlands issues requested by the Applicant will be zero.
- The development will be constructed in phases and will be a mix of both "market" value homes and workforce housing homes.
- The fair share percentage determined in the workforce housing in North Hampton is 46%; that's how they determined the 25 of the 53 units will be under the workforce housing affordability guidelines.
- Mr. McNeill commented that the guidelines under the context of the Town's Ordinance may not be consistent with the guidelines of the Rockingham County guidelines.
- The Applicant is proposing single family homes, not multi family dwelling units.
- The existing buildings on the property will remain and it will be a true mix of established houses, "market" value houses and workforce housing houses.
- Proposed shared driveways; the Ordinance does not address shared driveways.
- Proposing an affordability monitoring agent to insure continued compliance with the determined standards.

Mr. McNeill referred to the issues brought up by the Board at the May 1, 2012 meeting:

- There was a request for an Environmental Impact Study and there will be testimony on that, as well as various wetlands delineation, and issues related to wetland buffers.
- Issues with soil types and manmade agricultural swales.
- Questions raised about "rain gardens".
- Issues from the Conservation Commission; their preference is the 19-lot subdivision.
- The issue raised in regard to a recreation facility on the property. It is not directly addressed in the workforce housing ordinance.
- Issue regarding adequate Police and Fire services.
- Questions were raised about a perpetual affordability restriction.
- Questions raised about impacts on the schools.

- He referred to the section in Brian Groth's letter of April 17, 2012 relating to aquifer issues, affordability issues, planning design and neighborhood compatibility. The Applicant agrees with the terms of Mr. Groth's letter.

Mr. McNeill said that it is the Applicant's intent to file a formal application for the 53-lot workforce housing development in July for a Board acceptance Hearing in August.

Mr. Gove reported that he walked the site with Mike Cuomo of Rockingham County Conservation District on May 24, 2012 and reviewed the lot delineation and addressed the issue of vegetated swales in terms of the Ordinance. He said it was fairly extensive and they covered just about everything. He said that the swales were manmade and met the vegetated swales criteria under Section 409.9. He referred to another portion of the plan and said that there were manmade non-natural wetlands but weren't exactly part of the drainage swale so he and Mr. Cuomo came up with a different term to identify these parts: "agriculturally modified wetlands". He said that ordinance is clear in that the vegetated swales and the "agriculturally modified wetlands" are not defined in the ordinance and essentially would not have a buffer. Mr. Gove said that the information has been supplied to Mr. Cuomo but he has not had time to supply the Board with written documentation.

Mr. Gove said that there is no direct wetlands impact so they looked at the indirect "stuff" that will drain into it from any kind of development. The functions of the vegetated swales and isolated "agriculturally modified wetlands" is stormwater storage and stormwater transport. He said there are no endangered wildlife species within a half mile of the site. He said that they are working with Geo Insight on issues in the Conservation Commission's report – impermeable surfaces; control of the water runoff and innovative septic designs and also address what might be there in terms of an aquifer. The delineation is taken care of and they are working on the impact assessment

Mr. Kroner said that he was unaware that RCCD had moved forward with their site walk. He said he contacted them and set the stage that when the site walk and survey took place a member of the Planning Board would also be included. Mr. Gove said that he didn't know that that had been a request from the Planning Board and he didn't think Mr. Cuomo thought that either because when he set it up he said that the site walk would only include the two wetland scientists.

Mr. Harned asked if Mr. Cuomo was at the site walk acting on behalf of the Planning Board. Mr. Kroner said, "Yes". Mr. Harned commented that Mr. Cuomo was out there without discussion from the Board about its interests and concerns.

Mr. Kroner said that the last conversation he had with Dr. Lord was that they couldn't move forward with an Environmental Impact Analysis at this time, but that they could go out and check the wetland delineations. The Applicant did sign an "Authorization and Agreement to Pay Fees" form with the town, and in doing so that may have been the reason this took place.

Mr. Harned said that he didn't see how, without the Board's knowledge, concerns, interests of what was to be looked at, that this can be considered as satisfying the Board's needs.

Mr. McNeill said that if they knew that the Board wanted a Planning Board Member to be there, they would have made sure that happened.

Mr. Wilson said that this proposal is still in the Design Review Phase, and engineering studies don't usually occur until a formal application is before the Board. He said he is concerned that the Applicant's

expert is representing to the Board what the Board's independent expert is supposed to represent to the Board, independently. He said the Board cannot take anything being presented tonight as fulfilling the Board's requirements for independent analysis.

Mr. Wilson commented on the new term "agriculturally modified wetlands" and said that it has the word "wetlands" and would still be subject to all the restrictions placed on wetlands. He said that he has never seen the term in any RSA or wetland regulation and would definitely want an opinion from Dr. Lord or Mr. Cuomo on an interpretation of that term "agriculturally modified wetland". Mr. Wilson asked Mr. Gove for clarification on the areas Mr. Gove said were less than 3,000 square feet, whether he meant in total, or in each individual area.

Mr. Gove referred to Section 409.10 that states that impacts of less than 3,000 square feet does not require a conditional use permit from the Planning Board. He said that he and Mr. Cuomo came up with the term "agriculturally modified wetland". He said they both agreed that they were not natural wetlands; they were manmade; they were not swales and not really a detention basin, even though the one by the barn acts as a detention basin. He said it was both of their intention to call them something other than "natural wetland".

Mr. Wilson said that if an area is a "wetland" it doesn't matter if the area is less than 3,000 square feet; it has a 100-foot setback from it. He said that Dr. Lord claims that "vernal pools" are subject to the 100-foot setback requirement.

Mr. Gove said that there aren't any naturally occurring wetlands on the site that are less than 3,000 square feet. There are eight (8) "agriculturally modified wetland" areas and all but the one next to the barn, are less than 3,000 square feet.

Mr. McNeill said that they would like access to the Town's Planner and the Town's Attorney regarding legal issues while going through the process. He said that there is no other reason for this request other than to reach a conclusion the Board feels comfortable with that the Applicant can rely on.

Mr. Kroner said that the Board has encountered similar scenarios where the wetlands scientists have had very different opinions on "agriculturally modified wetlands" that they functioned as wetlands and should be considered as wetlands. He said if the areas Mr. Gove pointed out are considered functioning wetlands it will have a big impact on the project. Mr. McNeill said they agree that it does.

Ms. Pohl said she is concerned with the function of the wetlands areas, whether they're manmade or not. She wanted clarification of where those areas drained to. Mr. Gove explained how the water travels down to a wetlands and heads through a forested area to a culvert under I-95 and intersects the Winnicut River.

Dr. Arena said that the manmade ditches are not going to be used for agriculture but they are still functioning; they still hold water. Mr. Gove said that when the ditches were dug the material that was dug up was piled up on the sides and it is very difficult to tell what was there originally because the topsoil is mixed in with the "gray" soil.

Mr. Wilson said the ditches were dug to make the land dryer to use for agricultural purposes. Mr. Gove agreed.

Mr. McClain reported on the Aquifer analysis. He said the transmissivity should be 1,000 square feet per day as per the number used by the US Geological Survey. He said he needs to know how thick the deposit

is and how transmissive the deposit is to determine a good water supply. He reported on the results from the monitoring wells:

- Geo #2 Well was clearly outside the zone; 7 square feet of transmissivity per day (later in the meeting he said it was 9 square feet).
- Geo #3 Well was installed closer to Post Road; they dug down 80-feet and did not get to the bottom and came up with 900 square feet of transmissivity per day; Mr. McClain determined the Well to be in the Aquifer even though they did not reach the bottom.
- Geo #1 Well is close to the barn; they did not get to the bottom but it was relatively slow; they came up with 27 square feet of transmissivity per day and determined it to be out of the Aquifer Protection District.
- Geo #4 Well – the water table was shallow and not that fast; out of five (5) tests performed 269 square feet of transmissivity per day was the highest, determined to be out of the Aquifer Protection District.
- Geo #5 Well is estimated to be 27 square feet of transmissivity per day.

Mr. McClain said that four (4) of the five (5) Wells are outside the Aquifer Protection District. He said proposed lot #41 is in the Aquifer Protection District and proposed lots #2, 3, 42, and 43 are partially within the Aquifer Protection District. He said that septic systems are allowed in the District and Mr. Falzone has stated that he intends to install innovative and alternative systems on those aforementioned lots.

Mr. Kroner said that the Ordinance addresses recharge areas and asked Mr. McClain how the rest of the site relates to the Aquifer. He said that it is quoted in real estate material that there is a spring on the property that produces some of the cleanest water in the State. He asked Mr. McClain to address the recharge area.

Mr. McClain said that there is water that runs off the surface and then there is water that actually infiltrates into the Aquifer. He speculated that the water flowing down is flowing down into the Aquifer.

Ms. Pohl asked what kind of effects private wells would have on the Aquifer. He said fairly little affect, because of the way the subdivision is plotted. He said he didn't think the development was planned to have private wells.

Scott Cole said that most of the engineering comments will be addressed during the full application. He said they came up with a plan with information data provided by Jim Gove and the Applicant.

Mr. Kroner mentioned that a letter was sent from Joseph Walsh, an abutter to the proposal. Ms. Chase provided the Applicant and Mr. Cole with a copy of the letter. He said the letter addressed design elements. Mr. Walsh is an Architect and has experience with these types of developments.

Mr. McNeill said that the applicant would like to respond to any documents the Board receives and would like to receive copies of future documents that are part of the public record. Mr. McNeill asked the Board if there was a specific section of the Ordinance that they should be looking at that would provide guidance in regard to shared driveways. He said that public safety concerns were the primary concerns at the last meeting regarding shared driveways. He said that there are shared driveways existing in the community and they will continue to work with the Fire Chief and other officials. He said that they are attempting to limit curb cuts.

Mr. Kroner said that he has not found anything in the Ordinances or Regulations that specifically deals with shared driveways.

Mr. Wilson said public safety is one concern but also shared driveways are not envisioned as something they want to promote in Town. He said that there are shared driveways in Town, but they are on two (2) acre lots and they have been allowed for conservation purposes and to minimize wetlands impacts. The purpose is to maximize the yield on this property and that was not envisioned as a sound reason for allowing shared driveways. The Ordinance was designed to reduce the lot size so that it was affordable so a Developer could bring Workforce housing into Town.

Discussion ensued on "shared driveways". Mr. McNeill wanted to know if there was a specific standard in regards to shared driveways. He said that "shared driveways" is one element that will have bearing on the affordability of this proposed project.

Mr. Wilson said that because the Ordinance does not specifically address "shared driveways" it doesn't mean that it is an oversight; they have been allowed as an exception based on specific circumstances.

Mr. McNeill said the "standard" under which the Applicant's proposal should be judged relates to RSA 674:58, *the question is whether the collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.*

Mr. McNeill said that if the Board turned down two "shared driveways" he wouldn't conclude that to be unreasonable. He said the Board will go through the process and either approve it, or approve it with conditions, and then there is the process of determining whether the ultimate product is one where the conditions are compatible with being able to do a workforce housing project. He said he is trying to determine what components are required and whether they can comply with them and then in the end reach a judgment to the cumulative effect of those regulations both in the ordinances and in the conditions imposed. Mr. McNeill commented that the Town's Ordinance is workable.

Mr. Wilson said in order to come to a reasonable judgment the Board would have to see a plan and a financial analysis that demonstrates unequivocally that it is not reasonable and realistic to develop this as workforce housing with internal road structures that allow lots to have individual driveways.

Ms. Kohl asked how the "shared driveways" were going to be laid out. Mr. Falzone said that both the "market value" homes and "workforce housing" homes will share driveways and be mixed upon the different sized lots.

Ms. Pohl said that just because the Ordinance doesn't prohibit all sorts of various designs that might create a potential hazard doesn't mean this Board is unable to discern that they may pose some sort of public hazard or other issue. She said this Board has had issues with "shared driveways" such as neighbors disputes over plowing responsibilities and maintenance issues; that is another reason the Board doesn't like "shared driveways".

Mr. McNeill said that the traffic study is underway; the focus areas are on Exeter Road and Post Road; North Road and Lafayette Road; Hobbs Road and Lafayette Road; North Road and the new subdivision entrance. He asked who he should consult with on the scope of the study. Mr. Kroner said that the Town's Engineers will be doing peer review would also be the one to raise questions. He said it would be appropriate to interact with the Town's Road Agent. Mr. McNeill asked if they could contact the Road

Agent without a Planning Board Member involved. Mr. Kroner said that he personally did not have an issue with that.

Mr. McNeill said there is conflict in the Ordinance and referred to page two of Mr. Groth's report. He states that two passages from the Inclusionary Housing Ordinance address potential conflict, with the Zoning Ordinance, Section 418-10.E – Relationships to other Ordinances and Regulations and 418.11 – Conflict. Mr. Groth recommends that the Board seek consult from the Town Attorney.

Mr. Kroner said that Mr. Greenwood would be representing the Town on this application. He asked the other Members to chime in on whether the Town's Attorney should be consulted.

Mr. Wilson said that the Ordinance is clear and there isn't a need to consult the Town's Attorney. He said the meaning of it is that unless there is an environmental or water issue, then the provisions of 418 applies with respect to density and it was always intended that the minimum lot size would be 1/3 of an acre.

Mr. McNeill said that in regards to the lot that is in the aquifer; if they can accommodate environmental concerns and use innovative septic system then it can be 1/3 acre lot. If that is the collective view by the Board then there is no need to consult the Town's Attorney.

Dr. Arena said the 1/3 acre lots should be as far away from the Aquifer as possible.

Mr. McNeill questioned 418.6 .B – Affordable - they are not clear on what the "affordability" standard is. He said the income level would be \$84,200, and asked if it was an independent calculation. Mr. Wilson said it was the advice the Board was given at the time to meet the standard set by the State of Housing and Urban Development and if the RPC has calculated that it is \$84,200 today then that's what it is. Mr. McNeill asked if he could contact Glenn Greenwood on his own regarding this and Mr. Kroner said that it was okay. Mr. Harned asked if the information from Mr. Greenwood would be forwarded to the Board in "real time" and they agreed that it would.

Mr. McNeill referred to the "first in", "first out" rule in the circumstance where a workforce housing unit would be released from the town's lien. He spoke of a 30-year term and 2 times the CPI. He referred to the two criteria that need to be satisfied for the lien to be released (1) the town has fully met requirements for work force housing, (which they don't think it will ever happen), and (2) "first-in first-out" - the unit in question is the first among units of its type that were approved as workforce housing ... he asked what happens to house number five or ten? Mr. McNeill quoted a newspaper article that stated that the Coalition has had legal issues in trying to keep workforce housing affordable forever.

Mr. Kroner said it was the Board's intent to address the long term need for workforce housing. If it was allowed to revert back to "market value" in 30 years why allow it.

Mr. Wilson said that the Board took seriously the moral and ethical responsibility to allow affordable housing and wanted to do it so that it would be there forever. Once the Board grants relief from the Zoning ordinance of 1/3 acre and 100 feet of frontage, the town will never get that back; granting such relief and expecting affordability in perpetuity is not an unreasonable exchange.

Ms. Pohl asked what would happen in the 29<sup>th</sup> year when all the affordable houses in a development get "flipped". Mr. McNeill said that the intent of the legislature would have been served providing affordable housing for people.

Mr. McNeill said that there has to be “Lenders” that will lend and “Developers” that will build “workforce housing” units.

Lisa Henderson, Workforce Housing Coalition, said “we don’t have that many examples yet in our region of the covenants and what the language is and so far what has come forward has been crafted at the request of some reference in a Zoning Ordinance.” She said, “Exeter ended up asking for was actually a thirty (30) years renewable on resale, so there was the intent of perpetuity, but this rule against perpetuity is a legal term that I’m not terribly familiar with, but that’s what I was referencing in the news article”. She said that she wanted to acknowledge that this Ordinance is lacking a definitive “end date”. She said when she worked for Fannie Mae in 2008, regarding foreclosures, they were becoming more comfortable with “perpetuity”, but a lot has changed since then; she said it is something that definitely should be looked into.

Ms. Pohl asked Ms. Henderson if it was the onus of this Board to ensure that Lenders are willing to loan.

Ms. Henderson said that if there is something that makes the Developer unable to utilize the Ordinance due to certain language then she thinks that would be a concern for the Board.

Ms. Pohl asked if Ms. Henderson was implying that without an “end date” for these liens, a bank would not lend.

Ms. Henderson replied (unintelligible on the DVD and tape)

Ms. Pohl asked again if the onus is on the Board, or is it on the Developer.

Ms. Henderson said that she thinks that it would make the Ordinance unusable if there is no way to finance Workforce Housing created under this Ordinance.

Ms. Kohl said that the Board wants to protect the people who need this kind of housing, and it should be in perpetuity.

Mr. Wilson said the ordinance is not designed for perpetuity; it does not eliminate the first time buyer from making money; if the value of an owner’s house goes up and the median income levels goes up then they can sell the house and make a profit.

Mr. McNeill thinks that there is an issue with Lenders lending money for workforce housing developments that have no “end date”. He was not able to answer the Board’s questions because the person able to do so was not available to come tonight, but he will get the information to the Board.

Mr. McNeill said that there has been a diminution of enrollment in NH schools that is continuing according to the NH Housing authority and 2010 census. He quoted Peter Franchise from a newspaper article regarding this development. He said there would be no affect on the School District where enrollment is dropping, as is the case in North Hampton. Mr. McNeill asked if it was truly necessary to a do a school impact study.

Ms. Pohl said that if there are 160 bedrooms there will probably be 50 kids that will be put in the school system. Ms. Pohl said that a school study is necessary.



Mr. Kroner said that the cohort will be the number of bedrooms and marketing, is marketing and this community is marketed on the quality of the school.

Mr. McNeill said that they will do the study.

Dr. Arena said that there will be increase costs in all town services, not just the schools.

Mr. Harned said that there may be a decrease in enrollment in students, but it wasn't long ago the school was asking the Town to vote for an addition. He said for the study he wants to see statistics of housing with a similar amount of bedrooms and a similar type of community; not a statewide study.

Mr. Wilson said if we ask for the fiscal impact study that will tell us what we already know, and then what do we do with it? If it won't further the process, why require it from the Applicant?

Ms. Pohl said a "study" will put a stake in the ground and help everyone agree.

Mr. McNeill said this project is not a typical project. He said they feel it is a desirable way to proceed and this gives the opportunity to have your teachers, firemen and policemen live in this community.

Mr. Falzone is looking to eliminate some of the "shared driveways" but would need to shave off some of the frontage. He said that he could get the "shared driveways" down to a couple.

The Board went over the information they would like from the Applicant.

- Ms. Pohl – prefer that the homes back onto Post Road and that the entire development be accessed by one or two entrances; not by curb cuts on Post Road. Would like the study to determine what kind of impact on the whole town such as how many school buses will be coming and going, if there is any impact on the school; the current facilities are not adequate; North Road is a straight shot to Route 1 and is the worse intersection on Route 1 and something needs to be done with that intersection; would like to see the applicants submit their "fair share" of those off-site improvements.
- Mr. Kroner would like to see a pocket playground on the development; would like to see sidewalks and a lighting plan and the Applicant should consider a de-acceleration lane heading south.
- Mr. Wilson said that the affordability standard was designed to meet the stated intent of the workforce housing legislation.
- Dr. Arena - there needs to be signalization on Route one as well as North Road intersection. Mr. McNeill said that the State has preempted authority on its Roads.
- Mr. Harned expressed that, in his opinion, it is becoming clear workforce housing will have a significant financial impact on the Town of North Hampton. The developer has said they are pursuing workforce housing because it is better for them financially. Purchasers of workforce housing will be gaining a significant advantage; that leaves the Town. It appears the workforce housing will have a greater negative financial impact on the Town than a conventional subdivision would. It is the existing Town residents who will be burdened with an increased financial impact of the workforce housing and not the developers. Mr. Harned requested the developers give consideration to these issues in the further development of their plans for this subdivision.
- Ms. Kohl would like to see sample forms which will be used by the monitoring agents to determine and maintain the applicant's initial and continuing qualifications to occupy workforce housing units.

Mr. Falzone would like to make contact with the Town's Attorney on some of the issues they have.

Mr. Kroner suggested he forward any material to Ms. Chase and she will forward it to the Town's Attorney.

Mr. Wilson said that the Board will need to do its own independent study regarding banks financing workforce housing projects. Mr. McNeill asked the Board to wait until the Applicant produces their information and then the Board can forward it to their experts for an independent review.

**Mr. Wilson moved and Ms. Kohl seconded the motion to close the Design Review stage of this application.**

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

Mr. Kroner called for a recess at 9:10pm.

Mr. Kroner reconvened the meeting 9:15pm.

## **II. New Business**

**Case #12:09 – Glenn A. Martin, 11 Evergreen Drive, North Hampton, NH and Arthur Nadeau, 34 Pine Road, North Hampton, NH represented by James Verra and Associates, 101 Shattuck Way, Suite 8, Newington, NH 03801,** submits a Lot Line Adjustment and Subdivision Application to create one (1) additional lot. The Applicants request a waiver to Subdivision Regulation VIII.D.3 – HISS Mapping. Property locations: [2 Elm Road - Property owner: Hobbs Farm LLC; M/L: 013-009, Zoning district: I-B/R], [4 Elm Road - Property owner: Arthur Nadeau, Trustee, Arthur Nadeau Revocable Trust; M/L: 013-010; Zoning district: I-B/R] and [Birch Road - Property owner: Thirteen Acres LLC; 013-015; Zoning district: R-1].

### In attendance for this application:

Glenn Martin, Owner/Applicant

Bernard Pelech, Law Offices of Wholey and Pelech

Ms. Pohl recused herself.

There were no Alternates in attendance to replace her, but there was still a quorum of the Board.

Mr. Wilson referred to Section 501.2, *a non-conforming use may not be continued or extended unless to a conforming use....* He said that he didn't think the Board would be able to take jurisdiction of the "lot line adjustment" portion of the application because the lot line would be 25.5 feet from the barn where 35 feet is required.

Mr. Pelech went over the proposed plan with the Board. He said they propose to subdivide an "L" shaped lot on the property and to create two lot-line adjustments, the first is to add 2.18 acres to Lot 13-9 from Lot 13-15, the second lot line adjustment is to add approximately 20,000 square-feet to lot 13-10 making the lot less non-conforming.

There had been an e-mail communication between the Town's Attorney, Matt Serge and Brian Groth.

Mr. Groth read the e-mail into the record, and also noted that Attorney Serge was not privy to the entire application.

Brian,

*I am writing in response to your comments pertaining to the pending lot line adjustment. Although I am not too familiar with the plans at this point, I agree with you that generally the ZBA needs to weigh in on a proposal that results in the creation of a new non-conformity. To be clear, when I say new non-conformity I am referring to a non-conformity that has not previously existed. Thus, for example, if the current side setback is non-conforming by 10 feet and is reduced to only 5 feet, no zoning relief is needed because that violation was not expanded or extended, but rather improved. See North Hampton Zoning Ordinance, Article V, Section 501.2.*

-matt

Mr. Groth explained that it is one thing to make non-conformity less non-conforming, but the proposed lot-line adjustment on Lot 13-10 would create a *new* non-conformity; therefore it would require relief from the ZBA. He said the he discussed it with Glenn Greenwood and he suggested that the Applicant seek relief from the ZBA.

The Board determined that the Applicant needed relief from Section 501.2, and suggested that the Applicant seek a Variance from the ZBA. Mr. Kroner suggested splitting the application and suspending the lot-line portion, but continuing with the subdivision and other lot-line adjustment.

Attorney Pelech said that Mr. Martin was willing to split the application and asked that the Board act on the Subdivision and they would seek a Variance from the Zoning Board regarding the expansion of a non-conforming use.

Mr. Kroner referred to the waiver request from Subdivision Regulation VIII.D.3 – High Intensity Soil Mapping (HISS).

Mr. Wilson commented that the Board usually doesn't require HISS mapping for a one-lot subdivision.

Mr. Kroner opened the Public Hearing for the Waiver request to Regulation VIII.D.3 at 9:30pm.  
Mr. Kroner closed the Public Hearing at 9:31pm without public comment.

**Mr. Wilson moved and Ms. Kohl seconded the motion to grant the waiver request for Subdivision Regulation VIII.D.3.**

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

Mr. Kroner referred to a letter submitted by Paul Fitzgibbons, an Abutter to the property. Mr. Fitzgibbons reviewed the plan and noticed the proposed driveway will be adjacent to his property. His primary concern is that raising or grading of the bed for a driveway, without proper culvert construction will negatively affect the natural drainage of the water runoff and cause a section of his property to be further unusable.

Mr. Martin explained that the driveway was there so that the 175-foot frontage requirement could be met and that it is 400-feet from Route 1 which gave the best line of sight. He said that the surveyors noted the seasonal ponds on the plan and was looked at carefully by the soil scientist.

Mr. Pelech referred to NH DOT Driveway Permit; under the specifications: *the entrance shall be graded so that the surface of the drive drops 4 inches at a point 8 feet from Hobbs Road edge of pavement to create a drainage swale*. Mr. Pelech opined that the specification is designed to take care of drainage issues.

Mr. Groth said that he is not a stormwater expert and suggested the Town's engineer report on that part of the plan.

Mr. Harned referred to page three (3) of the plan and said that there is an 82-foot contour, and it appears that once the water gets to a depth of about 1-foot it will flow east. He said the Abutter is concerned with the location of the driveway and that it will act like a dam and the water will back up in all directions. He said that he thinks the Abutter is asking for a culvert to maintain the flow that exists today.

Mr. Wilson referred to the plan that showed the easement to the proposed lot and asked if it was going to be reserved for a future roadway.

Mr. Martin said that the easement area will access the new lot and is designed to meet other guidelines.

Mr. Wilson said that the new lot could possibly have a driveway that will access a future conforming roadway that would access lots in the back. Mr. Martin confirmed that to be correct.

**Mr. Wilson moved and Dr. Arena seconded the motion to take jurisdiction of the application for Case #12:09 with the exception of the Arthur Nadeau property, M/L 13-10.  
The vote was unanimous in favor of the motion (5-0).**

Mr. Kroner opened the Public Hearing on the Subdivision/Lot line revision portion of the application.

Arthur Nadeau, 34 Pine Road – said that he also owns the portion of the property the Board did not take jurisdiction on. He said that the area where Mr. Martin plans to subdivide is seasonably wet but the water isn't very deep. He dug the holes for the test pits and the soil scientist's figures are very conservative; he said the soil in that area won't hold a glass of water.

Mr. Kroner closed the Public hearing at 9:35pm.

Mr. Wilson suggested the Board request written documentation from the Town's Engineer that the plan as proposed will not make the runoff onto lot 14-87 any worse than it is today.

Mr. Groth commented that the application does not currently satisfy the requirement of Subdivision Regulation IX.D – Monumentation Requirements.

Mr. Wilson commented that if a roadway were to be proposed in the future it would need to meet Town specifications.

**Mr. Wilson moved and Mr. Harned seconded the motion to approve the subdivision and lot line adjustment for lots 13-9 and 13-15 with the following conditions:**

- 1. Recordable Mylar: Applicant shall submit a recordable Mylar of the approved plan with signatures and seals affixed of all licensed professionals whose names appear on the plan.**

584       **2. Written affirmation from the Town's Engineer that the plan as proposed will not**  
585       **make water runoff onto the adjacent lot Tax Map 014, Lot 087 any worse than it is**  
586       **today.**

587       **3. A note shall be added to the plan stating that monumentation shall be completed in**  
588       **accordance to Subdivision Regulation IX.D – Monumentation Requirements.**

589       **The vote passed in favor of the motion (4 in favor, 1 opposed, and 0 abstentions). Ms. Kohl**  
590       **opposed.**

591  
592       Ms. Pohl was reseated.

593  
594       **Ms. Pohl moved and Mr. Wilson seconded the motion to accept new business after 9:30pm; not to**  
595       **exceed 10:30pm.**

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

597  
598       **Case #12:10 – Golden Ks LLC, 63 Atlantic Avenue, North Hampton, NH.** The Applicant proposes a  
599       3-lot subdivision by subdividing two (2) residential house lots off from the parent parcel fronting on  
600       Chapel Road leaving the commercial property with a single residence on Atlantic Avenue. Property  
601       owner: Golden Ks LLC, Guy Marshall, 63 Atlantic Avenue, North Hampton, NH: Property location: 63  
602       Atlantic Avenue and Chapel Road; Tax Map & Lot 005-038; Zoning district: R-2.

603  
604       In attendance for this application:

605       Guy Marshall, Owner/Applicant

606       Attorney Timothy Phoenix

607       Eric Weinberg, Altus Engineering

608  
609       Mr. Wilson called for a Point of Order and said that this application involves a non-conforming use; it's a  
610       commercial use in a residential zone. The two lots being proposed are conforming but it is a change to a  
611       non-conforming use as a business use in a residential zone; therefore the Board doesn't have authority to  
612       approve this application.

613  
614       Both Mr. Kroner and Mr. Groth agreed that the Applicant needed relief from Section 501.2 from the  
615       Zoning Board.

616  
617       Mr. Phoenix explained that Mr. Marshall lives at 63 Atlantic Avenue and operates his business on the lot.  
618       The lot consists of 7 acres that runs from Atlantic Ave. to Chapel Rd. The business has been in operation  
619       since the 1930s. The building and business have been there prior to Zoning. Mr. Phoenix said the entire  
620       property is zoned residential and the "front" three (3) acres of the lot is where the business is located.  
621       They plan to subdivide the remaining "back" four (4) acres into two residential house lots. The "back"  
622       acreage has never been used commercially; it has always been pastures and/or gardens for many years. He  
623       said this proposal makes four (4) of the seven (7) acres more conforming; not less conforming. He  
624       referred to Section 501.2 and said it has to be read in conjunction with the definition of non-conforming  
625       use. He said the "use" is the business; the business use does not conform; the business is not being  
626       extended, expanded or changed; therefore it does not violate the Ordinance. He said the structures are not  
627       going to change so they are not violating that section of the definition of non-conforming use. The  
628       existing land is conforming, and when the subdivision is done there will be three (3) conforming lots.

629  
630       Mr. Kroner said it is difficult to define how the back portion of the lot was used over the years. He said  
631       that Mr. Phoenix's agreement is a lot to digest.

Ms. Pohl referred to a sentence in Mr. Phoenix's proposal "non-conforming use "any use or arrangement of structures or land legally existing at the time of the enactment of this ordinance or any of its amendments". She said that what it comes down to is the definition of the term "lot". She said there is no delineated lot so she thinks it's a change and requires relief from the ZBA.

Mr. Phoenix said that Mr. Marshall's property is what is left from a much larger farm and since the Zoning Ordinance was passed in 1968 some of the land has been "cut off" and changed so there is precedence for this.

Mr. Wilson said that Mr. Phoenix made a good argument, but he disagrees; he said that the property was originally a farm and the Lampreys have preserved the look and feel of it as a farm partly because it sits on seven (7) acres making the business innocuous in a residential zone. He said that subdividing it will make it obvious that it's not a farm and questions whether it will meet the variance test for Spirit of the Ordinance or diminution of property value. He said that it is important to get a ZBA ruling on the matter.

Mr. Wilson referred to Section V.D – review standards – the Board, in reviewing subdivision land shall take into consideration the public health safety and general welfare of the general public.

Mr. Groth said that there are a couple of wetlands on the lot that don't have buffers around them, and if they did have the buffers around them they wouldn't be approved lots.

Eric Weinberg said that it is shown on the HISS plan and they will correct the plan to better clarify it.

Dick Parker, said he was a Licensed Surveyor, Certified Soil Scientist and Licensed Septic Designer and was speaking on behalf of Mr. Williams, an abutter to the property. He said that he met with Mr. Groth earlier and won't get into the wetlands issues regarding whether they have a legally usable area, but addressed concerns of the "use" of the lot. He said that it is his position that business trucks are travelling across that lot that currently acts a buffer to access the garages. The plan doesn't show the right of way but they are using business vehicles to go to the garages.

Alan Williams, 38 Chapel Road – asked if the Board received the letter and pictures of Chapel Road that he sent to the Board. The Board did receive them. He said that the Town has shut down Chapel Road due to flooding in the past. He asked the Board to consider that.

Mike Donahue, representing Abutter Robert Chaikin asked whether or not the Applicant intends to continue the business use on the separate lot that the Company stores tanks.

Mr. Phoenix said that the Applicant's intention, if they are successful in obtaining subdivision approval, will be to abandon the use of that driveway to the storage sheds because it will be part of the private residential lot.

Mr. Wilson referred to the plan and said that the 75-foot setback from the wetlands is incorrect; the wetlands setback is 100-feet. Mr. Groth added that if the setbacks are labeled "septic" and should be labeled "structures".

Mr. Phoenix said that Mr. Weinberg will make a note of that.

Mr. Kroner explained that the applicant could request a continuance, giving the applicant the opportunity to apply to the ZBA for relief and not have to re-apply to the Planning Board.

682  
683 Mr. Phoenix requested a continuance to the August 7, 2012 Planning Board Meeting.  
684  
685 **Mr. Wilson moved and Ms. Pohl seconded the motion to direct the Applicant to go to the Zoning**  
686 **Board of Adjustment for a variance to Section 501.2 with respect to this application before the**  
687 **Planning Board can act on it.**  
688 **The vote was unanimous in favor of the motion (6-0).**  
689  
690 **Mr. Wilson moved and Ms. Pohl seconded the motion to continue the Application, Case #12:10, at**  
691 **the Applicant's request, to August 7, 2012.**  
692 **The vote was unanimous in favor of the motion (6-0).**  
693  
694 Mr. Phoenix submitted a hand written request for the continuance to Ms. Chase for the record.  
695  
696 The Board adjourned at 10:30pm without objection.  
697  
698 Respectfully submitted,  
699  
700 Wendy V. Chase  
701 Recording Secretary  
702  
703 **Approved September 18, 2012**