



**Meeting Minutes**  
**North Hampton Planning Board**  
**Tuesday, October 2, 2012 at 6:30pm**  
**Town Hall, 231 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, Mike Hornsby, and Tim Harned.

**Members absent:** Phil Wilson, Select Board Representative

**Alternates present:** Larry Miller, Alternate Select Board Representative and Nancy Monaghan (Ms. Monaghan was in the Audience).

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

Mr. Kroner convened the meeting at 6:30 p.m.

Mr. Kroner seated Mr. Miller for Mr. Wilson.

## **I. Old Business**

**Case #12:10 – Golden Ks LLC, 63 Atlantic Avenue, North Hampton, NH.** The Applicant proposes a 2-lot subdivision by subdividing one (1) residential house lot off from the parent parcel (005-038), which will front onto Chapel Road, leaving the commercial property with a single residence on Atlantic Avenue. The Applicant also proposes a minor lot line adjustment to merge adjacent lot, identified as Tax Map 5, Lot 39, with the newly created residential house lot. Property owner: Golden Ks LLC, Guy Marshall, 63 Atlantic Avenue, North Hampton, NH: Property location: 63 Atlantic Avenue and Chapel Road; Tax Map & Lots 005-038 and 005-039; Zoning district: R-2. This Case has been continued from the September 2, 2012 meeting, and the plan has been modified to comply with conditions set forth by the Zoning Board of Adjustment on August 28, 2012 on their approved Variance to Article V, Section 501.2.

In attendance for this application:

Guy Marshall, Owner/Applicant

Attorney Timothy Phoenix, Applicant's Counsel

Eric Weinberg, Altus Engineering, Applicant's Engineer

Mr. Kroner explained that this Case was continued from the June 5, 2012 Meeting so that the Applicant could apply to the Zoning Board for a Variance to Article V, Section 501.2 – expansion, extension or change to a non-conforming use, as advised by the Planning Board.

The Applicant applied for a variance to Article V, Section 501.2 and was granted relief from the Zoning Board on August 28, 2012, with the following Conditions of Approval:

**Special Conditions.** (1). To allow a subdivision of a seven (7) acre commercial parcel, more or less, into a two (2) lot subdivision, comprising of one (1) commercial lot and one (1) residential lot, description as follows: A commercial three (3) acre tract, more or less, on the northerly side of Atlantic Ave., identified as 63 Atlantic Ave., with existing structures currently occupied by Lamprey Energy. A residential four (4) acre tract, more or less, on the southerly side of Chapel Road, adjacent to and northerly of the first tract. Together with assessors' parcel 5-39, westerly of, and adjacent to, the four acre tract, and also known as the coal and wood shed parcel, (2) to allow the construction of just one (1) residential dwelling on the residential lot; and, (3) the commercial/business/industrial operation on Lot 5-39, will be completely discontinued, and permanently cease when and as a subdivision approval is granted, if at all, by the North Hampton Planning Board.

Mr. Weinrieb said that the proposed application was noticed as a Subdivision and Lot line Adjustment, when in actuality it is just a lot line adjustment. He said it should not be considered a subdivision because the proposal begins with two lots, and ends up with two lots.

Both Mr. Kroner and Mr. Groth disagreed that it was not a subdivision. Mr. Groth referred to the definitions in the Subdivision Regulations – ***Lot Line Adjustment:** means the change of boundary lines between abutting parcels that does not result in the creation of any new building lots.* He said that this proposal, if approved, will create a new building lot; therefore it is a subdivision.

The Board agreed that it was a subdivision, as well as, a lot line adjustment.

Mr. Weinrieb said that lot 5-38 consists of seven (7) acres and lot 5-39 (where the coal/wood sheds are located) consists of .361 acres. He said they propose a lot line adjustment by eliminating the lot line between lots 38 and 39 and moving it so that it would create two lots; lot 5-38 will have 3.02 acres and lot 5-39 will have 4.36 acres and both lots will have over 175-feet of frontage and meet all zoning requirements. Both lots have adequate area to site the septic systems and replacement septic system for the Lamprey Energy lot. The main lot is already serviced by Aquarion Water Company and they have secured approval from Aquarion to service the new lot from Chapel Road. The wetlands were delineated by Mark West and Mike Cuomo from RCCD witnessed the test pits and validated Mr. Weinrieb's work. The HISS Map was completed by Joe Noel.

The Board determined that the Application was complete.

**Dr. Arena moved and Ms. Pohl seconded the motion to take jurisdiction of the Application**  
**Case #12:10 – Golden K's LLC.**  
**The vote was unanimous in favor of the motion (7-0).**

Mr. Kroner opened the Public Hearing at 6:35 p.m.

Carla Meyers, 5 Maple Road – said that she was not present at the prior meetings that involved this case but has reviewed most of the meeting minutes. She referred to the coal/wood sheds on lot 5-39 and asked if they would be torn down.

Mr. Marshall explained that he has agreed to combine lot 5-39 with the proposed new subdivided lot and discontinue all commercial operations on that lot, identified as Tax Map 5, Lot 39, but it is up to the

new owner of the new subdivided lot on what they want to do with the coal/wood sheds. Mr. Marshall said that lot 5-39 has never been commercially "zoned"; it was "grandfathered" for commercial "use".

Ms. Kohl suggested that the discontinuation of the commercial use should be "spelled out" in the new deed.

Mr. Phoenix said that the lot is in a residential zone, so it would not have to be included in the deed; it's just like any other residentially zoned lot and if anyone wanted to do anything with the lot they would be required to apply for, and receive, the proper permits.

Mr. Harned said that he would like to see something in writing, if approved, that the new lot is no longer commercially "grandfathered". Mr. Phoenix said he had no objection to that; they would add a note to the plan.

Mr. Kroner said that the Zoning Board's decision, with the conditions of approval, is added under the "notes" on the final Plan, which is recorded at the Registry of Deeds.

Jake Parker, representing Alan Williams, who resides at 38 Chapel Road said that he once owned Parker Surveying and is a licensed Surveyor, Wetlands Scientist and licensed Septic Designer. He said that if the Planning Board were to approve the subdivision they would like the Board to make it a "condition of approval" that the coal/wood sheds on lot 5-39 be torn down. He said they are currently encroaching in the road causing a safety hazard. He said the corner of the shed is approximately three (3) feet from the road making it difficult to plow the road.

Mr. Kroner said that he is the Planning Board Representative to the Heritage Commission and would not be comfortable making such a condition. He said the buildings could possibly be considered as historic buildings.

Mr. Marshall said the sheds were built over 100 years ago; long before the road was built.

Mr. Parker pointed out what he believed to be discrepancies on the plan that was part of the original application. Mr. Kroner pointed out that a new plan has been submitted to the Board reflecting the "Conditions of Approval" in the Zoning Board's August 28, 2012 Decision.

Mr. Parker said that he has had conversations with the Town's Public Works Director John Hubbard on the drainage issues in the area of the Williams' property and the Lamprey Energy property. Mr. Marshall was also present during that conversation. Mr. Hubbard determined, after taking elevations, that there was a pitch in the drainage pipe under the road. Mr. Hubbard plans to replace the catch basin and locate it to a lower elevation and align it to the pipe so that it will operate better and absorb some of the ground water.

Mr. Parker said that the Board should make it a condition of approval that a NH DES Dredge and Fill Permit should be applied for and approved by the State to correct the "drainage pipe mess" and a drainage easement should be added to the plan, so that the culvert can be maintained.

Ms. Pohl voiced concern over the fact that the Town would be getting involved in trying to rectify the drainage issue for this project.

Discussion ensued on the flooding issues on Chapel Road. Mr. Parker said a pipe was put on the Williams' property before they owned it by the Lamprey's when they extended the culvert, it drains the water from the subject lot's field onto his property. Mr. Parker said that he believes it was a verbal agreement between Mrs. Lamprey and Mrs. Williams' cousin, but it was made without a drainage easement, and without proper State permit approvals.

Mr. Kroner referred to the High Intensity Soil Survey (HISS) Map and said that the back southeast corner shows that both areas are identified as moderately well drained areas so there should be no problem with absorption of the water runoff from a single-family house.

Mr. Harned said that Mr. Parker raised a lot of issues, but was uncertain on what it is that he and the Williams' want rectified. Mr. Harned understood Mr. Parker to mean that there may have been some things in the beginning that were done incorrectly, but if corrected, it will provide for more water runoff onto the Williams' property.

Mr. Parker said that the Williams' would rather have more water, but handled properly, because as it stands there is more "ponding" in the area. He said if the pipes are corrected to what they should be; it will help with the "ponding" issue.

Dr. Arena said that to mitigate the sheet flow across Chapel Road a culvert was installed underneath the road, and when the Lamprey's wanted more to utilize more land to get more hay they installed the pipe to drain that portion of the land. Mr. Marshall agreed, and said it was installed more than 25 years ago.

Mr. Parker said that the William's would like any approvals made by the Planning Board to be conditioned upon the work being done to replace the pipes with the correct size, and to retain the proper NH DES wetlands permits to do the work.

Ms. Pohl asked if the catch basin, Mr. Parker referred to, was in the Town's right-of-way. Mr. Weinrieb said that it was probably on the Applicant's property.

Ms. Pohl said that the Town is proposing to improve a culvert on private property, and is not sure why the Town would get involved, with the taxpayers funding it.

Mr. Kroner said that the Town built a road across the wetland and created a water problem on the other side that has to be alleviated with a drainage pipe.

Mr. Harned said that if the Town puts in a road and it becomes a dam, then the town is responsible for putting in a pipe underneath the road of sufficient capacity to carry the water that would have gone through there if the road wasn't there. He said he has a problem with the Town funding a project that would go above and beyond that, and in doing so the Town could potentially be facilitating the draining of the wetlands.

Mr. Weinrieb said that the water issues today are partly caused by Chapel Road creating a damming effect and the culvert initially put in was probably undersized. The upslope is the Cotton Farm Development that has no detention areas and the subject lot is below that watershed. He said that the proposal will not add to the drainage problems; whatever runoff that will come from the development

of the new lot will flush through before the peak of the larger watershed; “beating the peak”. He said that Mr. Hubbard recognizes that it is a problem of the Town, and is willing to fix it.

Mr. Harned said that the responsibility of the Town “starts” and “stops” with the culvert underneath the road and putting in the correct sized pipe to allow the increase in water to flow through.

Mr. Marshall said that Mr. Hubbard told him that Mr. Marshall would have to dig up the catch basin and repair it because the pipe going in and the pipe going out are not at the right elevations, and the attachment of the concrete pipe underneath the road has a short piece of pipe before it goes into the catch basin, and that is what was done improperly.

Dr. Arena said that the drainage problem still exists even after the Town put the culvert in, there is still sheet water running across Chapel Road; the pipe is either inadequate or it is plugged. He said that all the water on the north side that is supposed to be directed to that culvert is not working. It was in his opinion that putting in a bigger pipe will not change the sheet flow across that particular area.

Mr. Weinrieb said that there is still a small wetlands impact on the new configuration for the driveway resulting in a small roadside swale, but they feel it is the most appropriate location for the driveway because it has the best sight distance, but if the Board decides it wants the driveway outside the wetland area they will move its location. Mr. Weinrieb went over the wetland boundary.

Mr. Harned said that it is important to have all of the wetlands delineated on the plan. Mr. Weinrieb said that in order to do that they would have to seek permission from the Abutter because they would have to access their property to delineate the buffer.

Mr. Kroner said that typically the wetland delineation is shown on the subject property, not on the surrounding properties.

Mr. Groth said that typically the wetlands are shown all around the property. He agrees with Mr. Weinrieb that in practical reality the building activity will occur in the building envelope but also agrees with Mr. Harned to have all the wetlands delineated on the plan for consistency purposes.

Dr. Arena pointed out that the proposed driveway is located in the best location, and would be safer there than moving it closer to the curve of the road.

Alan Williams, 38 Chapel said that he has a pipe that goes 50-feet into his backyard that he knew nothing about when he bought the property eleven (11) years ago. There was no mention of it in the deed and there was no easement. Ms. Joanne Lamprey told him she was given permission from the previous owner (Mrs. Williams’ cousin) to extend the pipe onto their property to assist in draining the water from her field across the street. Mr. Williams said he is concerned that a new house and driveway will create more surface water where there is already a surplus of water in that area during any heavy rainstorm.

Mr. Kroner asked why Mr. Williams just doesn’t get rid of the pipe. He said that it would have been better left alone so that the water could just drain naturally.

Mr. Williams didn't think he should go to the expense of getting rid of the pipe, and if he did, the water would just bubble up on Chapel Road and wouldn't do anyone any good.

Mr. Parker said that any new development will increase the surface water and something needs to be done to correct the situation, whether it's the Town's responsibility or Mr. Marshall's; it needs to be fixed and done so with the proper State Permits.

Mr. Kroner closed the Public Hearing at 8:00pm.

Mr. Weinrieb said that this development will not add to the existing drainage problems. He said that the water runoff from the proposed new house and driveway will run off naturally; it will "beat the peak" of the water runoff from the large watershed above it (Cotton Farm), which takes hours to flow down onto Chapel Road.

Mr. Groth said that because the proposal is considered to be a lot line adjustment, and a subdivision, there are certain requirements that have to be met. He commented on the following requirements that need to be addressed:

VIII.B.20 – Stormwater drainage control plan. Mr. Weinrieb said that due to the simplicity of the plan they are requesting a waiver to that requirement.

VIII.B.23 – Designs of culverts. Mr. Weinrieb said that the size of the culvert is depicted on the plan. Mr. Groth said that the new plan was not reviewed by the Town's Engineer and maybe that requirement has been satisfied.

VIII.D – Monumentation Requirements. Mr. Groth said that monumentation should comply with the regulations. Mr. Weinrieb said that they are not proposing any new front corners, and asked if the existing monumentation would have to be removed.

Mr. Groth said that that may not be the case, but the very least they should request a waiver to the monumentation requirement.

Mr. Kroner explained that the Board cannot grant a waiver to any requirement without it first being publicly noticed.

The Board discussed whether or not a stormwater drainage control study would be necessary.

Mr. Miller said that handling of the drainage issues in the area is critical, and based on the Abutters' concerns a study should be done.

Mr. Harned said that the Board would not be doing its due diligence if it did not ask for a study to be done.

Ms. Pohl concurred, and said that although this development is not the cause of the drainage problem, it's still a problem, and has to be dealt with.

It was a sense of the Board that a stormwater drainage study was necessary.

Mr. Kroner suggested continuing the Application to next month. He said that the Board has 60 days to make a decision on an application, so technically the Board can decide to continue an application.

Mr. Kroner suggested that Mr. Weinrieb forward a copy of the revised plan to the Town's Engineer, KNA and let them know of the changes made from the original plan so that no part of the review is duplicated.

**Ms. Pohl moved and Mr. Harned seconded the motion to continue Case #12:10 – Golden K's LLC to the November 2012 Meeting to give the Applicant a chance to apply for necessary waivers that will be publicly noticed.**

**The vote was unanimous in favor of the motion (7-0).**

***Secretary's note: The Board agreed to change the November 6, 2012 meeting date to Wednesday November 7, 2012 due to the Presidential Election. It was later determined that there was a scheduling conflict; the Planning Board meeting will be held on Monday, November 5, 2012 at the Town Hall at 6:30pm.***

## **I. New Business**

1. There was no "New Business" before the Board.

## **II. Other Business**

1. **Case #12:12 – Richard Chorebanian, Ipswich Bay Yacht Sales, 6 Lafayette Road.** Review of Conditions of Approval for a Change of Use set forth by the Planning Board on July 2, 2012, including the review of a new site plan.

### In attendance for this Application:

Richard Chorebanian, Applicant

Peter Saari, Applicant's Counsel

Mr. Kroner explained that Mr. Chorebanian received a conditional approval from the Planning Board to allow him to sell his boats at the site located at 6 Lafayette Road. The conditional approval was given by the Board on July 2, 2012 with a 60-day deadline to have each of the Board's conditions met. The Conditions are as follows:

1. The Owner of the property shall submit a Site Plan for the entire site, including all parcels of the site on or before the October 2, 2012 Planning Board Meeting for review and Board approval.
2. Between now and October 2, 2012 a landscaped buffer shall be installed on all parts of the property to the extent possible, except where structures prevent it. To the extent that the existing structures allow any landscaped buffer, that it shall be installed.
3. The Owner shall designate, by painted stripes, five (5) parking spaces immediately in front of the building designated as the "office".

Mr. Saari said that there has been ongoing communications between the Applicant and the Owner regarding whose responsibility it is to have a site plan done of the property. Mr. Saari said that the site plan has not been done and asked the Board if they could have more time. Mr. Chorebanian has obtained quotes to have the survey done. Mr. Saari said that the Board has asked that the entire site be surveyed; not just Mr. Chorebanian's site and it's much more expensive than anticipated. He said that Mr. Chorebanian has put a lot of money into cleaning up the property, paving and landscaping. He said restricting the extent of the site plan would be better for the applicant.

Mr. Groth said that the Board was once faced with a similar situation and allowed the change of use with the condition that any future changes would require a full site plan.

Mr. Harned said that the problems the Board dealt with on this application in July were such things like the buildings were not properly depicted on the plan; it appeared that buildings were improperly designated on lots. He said that there were significant discrepancies with what was shown on the site and what was shown on the tax assessment cards.

Mr. Kroner said that there was questions on the cape style house either on the property or associated with the property; there is a provision in the ordinance that allows either commercial use, or residential use, but not both on the same site. He said that he agrees that the site has been improved, but the Board needs a base plan.

Mr. Saari said that the Landlord is leaving it up to Mr. Chorebanian to take care of and it is a big site; beyond what Mr. Chorebanian is utilizing.

Mr. Kroner said that the Planning Board has the authority to require a site plan when considering a change of use application if they feel it is necessary. He explained that updated site plans are important; they are used by the Building Inspector and Fire Department to ensure that all safety and building codes are up to date, as well as determining if there are any zoning violations.

Mr. Miller said that if the Landlord is not in compliance with the Zoning Ordinances, or if there is a safety issue; how can the Town allow activity there.

Mr. Kroner said that the Board took a leap of faith; the applicant came in and said he would invest money into a site that looked unappealing and make a portion of it look nicer; the Board agreed with the condition that in 60 days they wanted a Recordable Mylar for the entire site. He said the Board has three (3) options: 1. Find out if and how they could alter a condition already imposed; 2. Give the Applicant more time to produce a Recordable Mylar, or 3. Rescind the Change of Use approval.

Dr. Arena said that producing the Recordable Mylar was the responsibility of the Landlord; not the tenant. He said that Mr. Chorebanian has already done a magnificent job to improve the site.

Ms. Kohl asked how the Board would compel the Landlord to come in and meet that condition of approval.

Mr. Groth suggested that the Board take the time to review what plans are on file and reach out to the Landlord to work on a solution. He said that if the applicant doesn't comply with the condition and vacates the property, then there is an empty building on Route 1.



Mr. Chorebanian said that the Landlord has spent money improving the site and he has spent a lot of money improving the site and it is hard to spend money on someone else's property; he said he is stuck between a rock and a hard place.

Ms. Kohl said that the Board needs to find out more information on the existing businesses on the site and whether or not they are "grandfathered" uses.

Mr. Harned suggested that the Board grant an extension to the Applicant, and authorize Mr. Kroner to meet with the Building Inspector and discuss the issues the Planning Board has with this site and ask him to look into it and report his findings to the Board at the next Work Session, and then the Board can discuss how to move forward.

The Board agreed to extend the condition of approval for 60 more days. They also agreed that the Recordable Mylar for the entire site was the responsibility of the Landlord.

Ms. Kohl commented that the Board would be granting the owner of the property the 60 day extension and that the Applicant could continue to operate his business; the Board agreed.

**Mr. Harned moved and Ms. Kohl seconded the motion regarding PB Case #12:12, date of decision, July 2, 2012, tax map and lot 003-090-000, Condition #1 – Recordable Mylar be extended for another sixty (60) days and authorize Mr. Kroner to hold discussions with the Building Inspector, and make the Building Inspector aware of the Board's concerns that led to this decision, and request the Building Inspector to do some background work, information gathering regarding the lot and the Board's concerns, and be in a position to report to the Board at the next Work Session, October 16, 2012.**

**Dr. Arena made a friendly amendment that the discussions shall involve the Town's Building Inspector and the property owner; not the tenant Mr. Chorebanian.**

**Mr. Harned and Ms. Kohl accepted the friendly amendment.**

**The vote was unanimous in favor of the motion (7-0).**

### **III. Other Business**

Dr. Arena reported to the Board that there is a hazard situation coming out of Rite Aid heading southbound onto Atlantic Avenue. There is a blind spot in the line of sight from the westerly direction. Dr. Arena said that they exceeded the amount of juniper trees allowed after the plan was accepted, and would like the Building Inspector to check the plan and instruct the owner of Rite Aid to remove any trees that interfere with the sight line. He said that the trees closest to the road are probably on State property. Mr. Kroner said that he will inform the Building Inspector when he meets with him regarding the previous case.

Mr. Kroner reported on the Visioning Session held on Saturday, September 29<sup>th</sup>. He said that 23 people attended and it went smoothly. He said the Session scheduled on October 6<sup>th</sup> will inform the public and the Board what was captured at the first session.

Dr. Arena said that many people told him that the Visioning Sessions were not publicized enough. The Sessions were published in the paper; on patch.com, in the Library's newsletter, Channel 22 and the municipal sign out front. Mr. Kroner said he passed out flyers at all the local sporting events.

Mr. Groth said the format of the second Vision Session will be different; it will be a presentation of what people said at the first session, as well as receiving any new information people want to offer.

Mr. Kroner said that he received a letter from the owner of Sagamore Golf Club that stated that the Department of Transportation is unwilling to clear maple trees along the freeway to improve the sight line for their approved sign. They may be coming back before the Board if they need to change their plan.

Mr. Groth informed the Board that he resigned from Rockingham Planning Commission to take a consulting position for a Company in Newburyport, MA. He said that RPC is figuring out who will replace him. This is Mr. Groth's last meeting. The Members congratulated Mr. Groth on his new job opportunity and thanked him for his dedicated service to the Town of North Hampton.

The meeting adjourned at 8:45pm without objection.

Respectfully submitted,

Wendy V. Chase  
Recording Secretary

**Minutes Approved 10/16/2012**