



Meeting Minutes
Work Session
North Hampton Planning Board
Tuesday, August 20, 2013 at 6:30pm
Town Hall, 233 Atlantic Avenue

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

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

15

16 **Members absent:** Mike Hornsby and Dan Derby

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18 **Alternates present:** Nancy Monaghan

19

20 **Others present:** Wendy Chase, Recording Secretary

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22 Ms. Pohl convened the meeting at 6:30 pm and seated Ms. Monaghan for Mr. Hornsby.

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24 **I. Old Business**

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26 There is no Old Business.

27

28 **II. New Business**

29 1. Wayne Morrill and David Collier, Jones and Beach Engineering to discuss the Shane Smith Mylar issue.

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- 31
- 32 • The original subdivision plan for Shane Smith was approved by the Board on December 6, 2011.
 - 33 • The approval was appealed by Adrianna Salomon, an abutter to the property.
 - 34 • Through the course of the law suit, an encroachment from lot 11-6-40 onto lot 6-142 was discovered.
 - 35 • Attorney Craig Salomon wrote a letter to the Board requesting the subdivision approval be rescinded.
 - 36 • The Town's Attorney agreed that it was a civil issue between the property owners and because
 - 37 of the pending Appeal, there was nothing to gain by rescinding the approval at that point.
 - 38 • Jones and Beach Engineering changed the original approved plan by adding the encroachment
 - 39 and submitted the Mylar to the Board for signatures and recording without informing the Board
 - 40 of the substantial change.
 - 41 • The conundrum resulted in the two "parties" (Kelleher and DiMona) agreeing to a lot line
 - 42 relocation plan and submitting it to the Board for approval (July 2, 2013).
 - 43

- 44 • The Board felt like their hands were tied and approved the plan with the following condition of
45 approval: a note shall be added to the final plan “that in approving this application the Planning
46 Board has noted that under ordinary circumstances this geometry would not be attractive to the
47 Board for approval, however the circumstances dictate that fro this particular application it is
48 unavoidable”.

49

50 Mr. Morrill and Mr. Collier from Jones and Beach Engineering were before the Board to discuss what
51 transpired, and try and resolve “bad feelings” the Board may have towards them.

52

53 Mr. Morrill explained that the surveying crew went out and “shot” the boundaries, developed a plan,
54 and submitted it to the Board under the assumption they submitted everything correctly. They received
55 conditional approval from the Board; one of the conditions was to set the monuments. The surveying
56 crew went out and staked the boundary corners and noticed the DiMona’s house on the line. They went
57 to the Town and reviewed a copy of their septic plan and it showed the DiMona lot going into the strip
58 of land, lot 6-142. He said that it was not their intention to “pull the wool” over the Board’s eyes. He said
59 they made the mistake by not submitting a letter with the Mylar describing how they met the conditions
60 of approval and the substantial changes to the Mylar from the originally approved plan. Mr. Morrill said
61 that he was involved in the original part of the subdivision and Michael Bouffard, LLS did the Mylar, but
62 is no longer with Jones and Beach and he cannot find out why he did not provide notice of the changes
63 to the Board. Mr. Morrill apologized to the Board for the miscommunication and reiterated that it was
64 not their intention to mislead anybody.

65

66 Ms. Pohl questioned whether or not Jones and Beach Engineering had a management process in place
67 regarding changes made to plans. She said that she deals with situations where certain configurations
68 have to be managed.

69

70 Mr. Morrill said that they received a “Decision” letter from the Board listing the conditions of approval
71 and the Survey Department makes changes to the plan according to the list of conditions. He said that
72 the Mylar in question wasn’t submitted to the Board for many months after the original approval
73 because of the ongoing lawsuit. He said a “site plan” will typically go back to the project manager for
74 final review because there are design issues, but a boundary line adjustment is handled with the Survey
75 Department. Mr. Morrill said that typically any changes to any plan go back to the Board with a response
76 letter stating the changes made. He said that he believes this particular plan did not go back for final
77 approval from an Engineer.

78

79 Mr. Harned agreed that mistakes are made, but the Board was never notified of the significant change
80 to the plan, and that concerns him greatly.

81

82 Mr. Morrill said that the Board should have been notified of the change and he should have reviewed
83 the Mylar before it was submitted to the Board. He said he made the mistake.

84

85 Mr. Wilson said that he was happy Mr. Morrill came in to apologize and explain the situation. He said
86 that a Mylar submitted to the Board is supposed to be a representative of a plan, with changes due to
87 conditions of approval, approved by the Board. He commented that it seems as though there is a quality
88 control issue in the Company.

89

90 Mr. Morrill said that the Company had a problem with one job; the normal practice is that they receive
91 the "Decision" letter from the Town and change the plan according to the conditions of approval and
92 any and all changes made to the plan are addressed in a response letter to the Board; a response letter
93 was not sent to the Board for this particular project and he doesn't know why his surveyor did not
94 follow protocol, but he was the project manager and took full responsibility for the mistake.

95

96 Ms. Pohl said that there should be a process in place, and typically when you have change management
97 type situations occurring, using a date sequencing system is a good way to manage the changes. Ms.
98 Pohl commented that the Board needs assurance; it's difficult for them to have faith.

99

100 Mr. Harned said that a mistake was made that resulted in the need of a lot line adjustment. He said that
101 the original subdivision involved a lot that had a long skinny tail and one of the intentions of 2-acre
102 zoning is to have reasonably proportioned lots, and while the lot met the 2-acre requirement, it did not
103 meet the spirit and intent of the ordinance. He opined that it was not just a mistake that was made; it
104 was a significant error, with significant ramifications, and not notifying the Board about the change to
105 the Mylar has made him the most upset and noted that the Town, as well as the owners, had to expend
106 legal fees dealing with this process.

107

108 Mr. Morrill said that he takes pride in the work that Jones and Beach has done over the years and he
109 doesn't want the Board to think of this every time an application from Jones and Beach is before the
110 Board. He said a mistake was made and he is not proud of it, but can't take it back. He said it his goal to
111 make sure the Board has faith in Jones and Beach Engineering again. Mr. Morrill said that he is pointing
112 the finger at himself; he said he was in charge, and he screwed up. He said that Mr. Collier was directed
113 to do the lot line adjustment and was thrown into a project he knew nothing about until the mistake
114 was discovered, and that was not fair to him, and not fair to the Board to be put through this.

115

116 Mr. Kroner said that he is not privileged to know when the mistake was discovered but the process
117 should be that when an Applicant determines something like that the Board would reopen the Public
118 Hearing regarding the Application. If they did reopen the case it might have resulted in a reconfiguration
119 of property lines, or resulted in less lots being approved. It is important for Applicants and Engineers to
120 inform the Board when they isolate a technical error of this nature so that the Board may be given the
121 opportunity to reopen the case. Individuals invested in these properties, and one of the Board's top
122 priorities is to make sure a property that gets marketed is technically correct.

123

124 Mr. Wilson referred to the explanation made by Mr. Collier at the last meeting. He said that a member
125 of the survey crew looked through the traverse and didn't take the time to see that it didn't look correct
126 so he just adjusted the traverse.

127

128 Mr. Morrill said it should have been taken care of in the beginning; we should have gone back and
129 walked the property line after the shots were taken. He said that Mr. Collier was not part of this project
130 and it wasn't his survey crew; it was Michael Bouffard's. He said Mr. Collier is looked upon as a
131 gentleman, and well respected amongst his peers; it is not Mr. Collier's fault that this happened.

132

133 Dr. Arena said that as soon as the mistake was discovered, all parties involved should have been made
134 aware of it.

135

136 Ms. Pohl said that the Board puts a lot of faith in what is brought before it. The Board has to have
137 confidence in its decision making process, and that's been compromised. She said she would like them
138 to explain the process they will have in place to track changes to the plans and final Mylar, so that the
139 Board has full awareness of the changes made before signing the Mylar to be recorded.

140
141 Mr. Morrill said that they do have a procedure in place. He thought they may start scanning their "red
142 line" marked version of the plan, and have it available for the Town.

143
144 Mr. Collier said that as the Survey Manager he tries to make sure that every boundary that comes
145 before the Board is correct. He said that he was not a part of the Shane Smith subdivision in the
146 beginning and was only speculating what might have occurred when he addressed the Board with the
147 lot line adjustment that rectified the situation. He said that he serves as the Planning Board Chairman in
148 his Town and understands the Board's frustration. He said that as far as future plans submitted to the
149 Town, he will review before submittal, and any changes made will be outlined for the Board to review.

150
151 **2. Committee Updates**

152
153 **a. Long Range Planning** – Mr. Kroner said that the Committee met and went through a short list
154 of items.

- 155 • They reviewed the proposed Demolition Delay Zoning Ordinance drafted by the Heritage
156 Commission. Mr. Kroner asked that Ms. Chase distribute copies to the Board for their review
157 and add it to the next Agenda.
- 158 • He said he had asked the Building Inspector, Kevin Kelley for a "duplex" definition that comes
159 from some of the building standards. He said he wanted to make sure that the current definition
160 in the Ordinance did not lead to the approval of a duplex on Winnicut Road from the previous
161 Building Inspector. He will forward a copy to Ms. Chase to forward to the Members for review to
162 see if the proposed definition would be a better fit than what is currently written. Dr. Arena
163 commented that the definitions utilized must be standard definitions. The terms used should be
164 reasonably accepted by everyone so there is no room for misinterpretation.
- 165 • He mentioned that there are a lot of odd shaped lots in town and the Board may want to add to
166 the minimum lot size requirement and "spell out" a little bit more because the Board may be
167 seeing development with theses odd shapes used solely to meet the 2-acre requirement.
- 168 • He said that he reached out to the Chair of the ZBA, Bob Field, and asked if the ZBA had any
169 technical issues within the Zoning Ordinance that they've experienced, and if so, to relay them
170 to the Committee no later than October 1, 2013.
- 171 • He said that he sent a message to Ms. Rowden suggesting that they finish the last Chapter of the
172 Master Plan for review from the Board. Once the Master Plan is complete she will digitize it and
173 we will add it to the town's website, and in a format readable to all Public Officials in Town.

174
175 Mr. Wilson reported on the situation regarding concurrent jurisdiction between Little Boar's Head
176 Village District Boards and the Town Boards. Mr. Wilson explained that the Town ZBA informed the LBH
177 ZBA that they have no jurisdiction in anything in LBH. The law gave LBH independent jurisdiction with all
178 Planning and Zoning activities, so the Town ZBA refused to hear an issue related to the Beach Plum.
179 *Secretary's note: the Town ZBA did not take jurisdiction of a variance application for Thomas Huff at 34A*
180 *Ocean Blvd., not the Beach Plum.* Over the last 50+ years the process has been that an application that
181 needed a variance, site, or subdivision plan would first appear before the LBH Planning Board or Zoning

182 Board and then to the Town PB and ZBA; it was always assumed that whenever the Town PB or ZBA
183 decided to do with a given application trumped whatever LBH did. He said Mr. Field read the law
184 carefully and realized there was no “concurrent” jurisdiction possible. The LBH and Town’s Attorneys got
185 together to try and resolve the issue; they suggested doing what the Town of Rye and the Rye Beach
186 District does, which is, whenever the Rye Beach District zoning is silent, it would default to the Town of
187 Rye’s Zoning Ordinance. There is not a two-step process; the applicant goes to one board or the other.
188 Mr. Wilson pointed out that the municipalities only have the authority granted to them by the
189 Legislature and everything else is reserved to the State, so if the Legislature did not authorize concurrent
190 jurisdiction; there can’t be concurrent jurisdiction. The Select Board met with the LBH Commissioners a
191 few weeks ago and they wanted to adopt what the lawyers had negotiated until Mr. Wilson offered
192 them a couple of different scenarios, such as a cell tower or work force housing application coming
193 before LBH; they could not stop it because they have nothing in their ordinance regarding either. He
194 said the Town would not take on the burden of a costly lawsuit, and the Town can’t apply the Town’s
195 Ordinances, because there is no concurrent jurisdiction. Mr. Wilson suggested that LBH become a
196 District of the Town and delegate all of the Planning and Zoning responsibilities to the Town of North
197 Hampton, and establish a technical advisory committee for the LBH District that would be advisory to
198 the Town Planning and Zoning Boards. He said that he thought at least two of the three Commissioners
199 liked the idea. The Town would have to amend the Zoning Ordinance and establish a LBH District and
200 incorporate their Zoning Ordinance for that District. The Boards would have to establish technical
201 advisory committees in their Rules of Procedures. He said that LBH is having a meeting with the
202 Legislative Body in September and they are going to try and get it resolve before then.

203

204 Mr. Harned said that if they can’t have concurrent jurisdiction then anything the Town ZBA or PB has
205 done over the years could come into question. Mr. Wilson said, “yes”, but he didn’t think the LBH and
206 Town ever disagreed on a case.

207

208 Dr. Arena said that LBH is 100% a part of the Town of North Hampton; it is not a subdivision of North
209 Hampton.

210

211 Mr. Wilson said that the proposal the Select Board has offered LBH is an effective step, and because Dr.
212 Arena is so passionate about the topic, he should consider contacting State Representative Michele
213 Peckham and ask that she introduce a Bill to dissolve the Little Boar’s Head Village District.

214

215 **b. CIP** – Ms. Pohl has not heard anything about the CIP Committee yet.

216

217 **c. Rules and Regulations/Procedures**- The Committee has not yet held a meeting.

218

219 **d. ARC** – Mr. Harned said that ARC did not receive any applications to review, and did not meet.

220

221 **e. Economic Development Committee** – Dr. Arena was not at the last meeting and Mr. Wilson
222 apologized, because he said he would remind him, and forgot to. Mr. Wilson said the Committee
223 met and Bob Schoenberger, CEO of Unitil, a member of the Committee, volunteered to have a
224 group from Unitil give a presentation to the Committee because they have done a lot of work on
225 what is going on, and what is required, for economic development in the seacoast area. They
226 discussed gas service and the kinds of businesses that it attracts. There is natural gas service up
227 to the intersection of Atlantic Avenue and Route 1, but it doesn’t go north, or east, or west.

228 They discussed extending natural gas down to the School, which would be a tremendous savings

229 on heating costs for the school and town complex as well as the residences along the way. They
230 discussed “revenue positive” businesses and he referred to the document provided to the Board
231 from Ms. Rowden on the cost of community services, and said that they need to go one step
232 further and find out what kind of businesses generate more revenue, than use town services.
233 He said the Committee is going to look into rezoning by the Stratham Industrial park on Route
234 111 to commercial/light industrial, where it is buffered by the Town Forest; it’s a good location
235 with easy access to Routes 101 and 95.

236
237 **f. Large Assembly Ordinance Committee** – Ms. Monaghan said that there have been no
238 meetings, but the Select Board approved all of the nominated members.

239
240 Dr. Arena commented that he had to be “sworn in, under Oath” to serve on the Economic Committee,
241 and did not think it was necessary because it is a subcommittee, and he was already “sworn in” as a
242 Planning Board member; to be “sworn in” again was just redundant.

243
244 **III. Other Business**

245
246 1. Information from Jenn Rowden, RPC regarding cost of community services for different land use
247 categories. – The topic was tabled to the next Work Session.

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249 2. ¹ Items laid on the table
250 a. **Master Plan update** – Discussion took place earlier.
251 b. **Junk Yard update** – Mr. Wilson said that the Code Enforcement Officer is aggressively pursuing
252 cases in an effective way.

253
254 3. Minutes
255 a. July 16, 2013 – Mr. Harned asked to change the “150-feet” to “330-feet” in line 106. **Mr.**
256 **Harned moved and Dr. Arena seconded the motion to approve the July 16, 2013 minutes as amended.**
257 **The vote passed in favor of the motion (4 in favor, 0 opposed and 2 abstentions). Mr. Wilson and Ms.**
258 **Monaghan abstained because they were not present at the July 16, 2013 meeting.**

259
260 b. August 6, 2013 – **Mr. Harned moved and Ms. Monaghan seconded the motion to approve**
261 **the August 6, 2013 minutes as written. The vote passed in favor of the motion (5 in favor, 0 opposed**
262 **and 1 abstention). Ms. Pohl abstained because she was not present at the August 6, 2013 meeting.**

263
264 Respectfully submitted,

265
266 Wendy V. Chase
267 Recording Secretary

268 **Approved October 1, 2013**