



**Meeting Minutes
Work Session
North Hampton Planning Board
Tuesday, November 19, 2012 at 6:30pm
Town Hall, 233 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; Joseph Arena, Tim Harned, Dan Derby and Phil Wilson, Select Board Representative. Mike Hornsby arrived at 7:15 p.m.

Members absent: Laurel Pohl

Alternates present: None

Others present: Jennifer Rowden, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Mr. Kroner convened the meeting at 6:33 p.m., and noted for the record that there was a quorum.

I. Old Business

1. Suggested changes or additions to the final draft of proposed Demolition Delay Ordinance – Consideration on scheduling the first Public Hearing.

Mr. Kroner ruled to rearrange the agenda so that the Building Inspector, Kevin Kelley could be addressed by the Board first.

1. Kevin Kelley Building Inspector/Code Enforcement Officer to discuss Sections 704 and 706.

Mr. Kelley explained to the Board the difficulty he is having adhering to the notice requirements of issued Certificates of Occupancy.

The current Zoning Ordinance as follows:

Section 706 Notice of Action

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

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

52 ***5/8/2012**

53
54 Mr. Kelley said that the current Ordinance handcuffs the office with over-regulation that no other Town
55 in the State does. He said that it is the “duty” of the applicant to post and maintain the permit by
56 keeping it visible to anyone from the street. He added that he understands the reasoning behind it, but
57 the reality is a pure waste of the Building Inspector’s time, not to mention gasoline and additional wear
58 and tear on a town vehicle.

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60 Mr. Kelley said that he has spoken to the Town Administrator, Paul Apple, and he is getting prices on an
61 outdoor bulletin board where all weekly permits can be viewed 24/7 for those who can’t make it to the
62 office during regular business hours and who also don’t have internet access.

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64 Mr. Kelley said that Administrative Assistant, Janet Facella, posts the permits on the town’s website on a
65 weekly basis, and there are currently 40 individuals who have subscribed to building permit postings
66 emailed to them automatically.

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68 Mr. Kelley said that with the permits posted on line, the option to subscribe to receive postings via email
69 automatically, being available during office hours and future bulletin board postings being available
70 24/7, the Town will have made more than a reasonable attempt to keep residents informed about
71 permits being issued in Town.

72
73 Mr. Wilson said that like so many instances with new ordinances, it’s impossible to predict all of the
74 consequences. The intent of Section 706 was to allow abutters to have reasonable time of being notified
75 that something was going on so that they could act before their rights of appeal ran out. He said that
76 issues brought forth by Mr. Kelley are an unintended consequence that needs to be remedied. One
77 suggestion was to make it the applicant’s responsibility to post the building permit and the certificate of
78 occupancy on the premises.

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80 Mr. Kroner said that, in his recollection when considering the Zoning Ordinance, it was not every permit
81 or occupancy permit issued, but the permits that required Planning Board or Zoning Board approval.

82
83 Dr. Arena said that the Certificate of Occupancy is issued when everything required has been completed
84 and approved; it is the final step in the process, he questioned how it could be appealed. Mr. Kelley
85 agreed and said he has never heard of an appeal process for a Certificate of Occupancy. A Certificate of
86 Occupancy is issued when all conditions have been met, as well as, all building and fire codes.

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88 Mr. Wilson said that the Ordinance was a reaction to a sensitive issue and may be creating an expensive
89 quality control process that should be modified, but continue to give people a reasonable notice that a
90 Building Permit has been issued to give them an opportunity to appeal it if they want to appeal it.

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92 Mr. Kelley referred to Section 704.4:

704.4 *Every certificate of occupancy shall state that the building or proposed use of a building complies with all provisions of law, and of this ordinance, of all other applicable codes or ordinances of the Town and, if applicable, with all provisions of any variance or requirements set forth for the special exception uses authorized by the Board of Adjustment.*

Mr. Kelley said that every letter of decision from the Planning Board and/or Zoning Board is in the file and suggested rather than adding them to the actual Certificate of Occupancy, he could attach a copy of the conditions of approval to it.

The Board agreed that it is important to reference the Planning Board and/or Zoning Board approvals on the actual Certificate of Occupancy. Mr. Kelley agreed that that would be the best way to handle it.

Mr. Harned volunteered to work with Mr. Kelley on possible amendments to Sections 704 and 706 and submit anything they come up with to the Board at the next work session meeting.

Mr. Wilson moved and Mr. Derby seconded the motion that the Board authorizes Mr. Harned to work with Mr. Kelley on Sections 704 and 706 of the Zoning Ordinance and to bring any proposals to the December 17, 2013 Work Session.

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

Mr. Kroner asked for Mr. Kelley's opinion on the current definition of "Duplex" under the Zoning Ordinance 302. Mr. Kelley offered a definition of "duplex" under the Building Codes and suggested the current definition be changed to the definition he provided so that there is no ambiguity.

Mr. Hornsby arrived at 7:15 p.m.

II. New Business

Suggested Changes or additions to final draft of proposed Demolition Delay Ordinance - Consideration on scheduling first Public Hearing.

Donna Etela, Heritage Commission Chair and Mr. Derby made changes to the draft for the Board to consider.

The following changes were made to the draft copy dated 11/5/2013:

The purpose paragraph was changed to: *To support identification, preservation, and documentation of North Hampton's historically significant structures, as well as, to clarify and formalize landowners' demolition rights.*

Ms. Etela and the Building Inspector, Kevin Kelley were in agreement to remove "in the judgment of the Code Administrator" from Section C.2. They both felt that that position doesn't require the expertise to determine if a building is eligible for listing in the National Register of Historic Places.

It was a general consensus of the Board to replace "Code Administrator" with "Code Enforcement Officer" throughout the document.

The Board discussed removing the definition of Building from the Ordinance because if it conflicted with other things in the Ordinance it could create problems. Ms. Rowden opined that she did not see any major problems with it.

The Board decided not to remove the definition of "Building."

A suggestion to add the word "building" to B.5 – Appurtenances was suggested. Ms. Etela disagreed with adding the word "building" because they could be considering an old well house that is not attached to the house. She commented that the Town of Exeter has the same definition of Appurtenances in their Ordinance and it was reviewed and approved by their Town Counsel.

The Board agreed to leave B.5., as written *Appurtenances: any element or feature of local historical or cultural significance*.

Ms. Rowden suggested keeping D.4. b, c and d consistent with D.4.a by adding *part of a building* after "the building or."

The Board agreed to remove "a" in front of calendar in D.1., and capitalize "Committee" under D.4.

Discussion ensued regarding public hearings, and whether or not the applicant would be responsible for abutter and newspaper notification fees.

The Board was in total disagreement that the Applicant should be responsible for notification fees regarding public hearings. The Board agreed to change "public hearing" to "public meeting" which would require the Heritage Commission to post an Agenda in two prominent places in town at least 24-hours prior to the public meeting; "public hearing" was replaced with "public meeting" throughout the document.

Mr. Wilson moved and Mr. Harned seconded the motion to take the proposed Demolition Delay Zoning Ordinance to the first Public Hearing, in the form as amended, to be held on December 17, 2013.

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

Mr. Derby prepared a Demolition Review Process Flow Chart. It was determined by the Board that it would not be a part of the Ordinance, but will be used as a resource document to guide the property owner through the process.

Ms. Swank questioned what section of the Zoning Ordinance it would be added if passed by the voters. The Board was not sure, but thought it may be under 701.6. Mr. Kroner said that he would seek the Building Inspector's opinion on that.

Discussion on proposed amendments to Article IV, Sections 409.8 and 410 drafted by the Conservation Commission 2011.

Mr. Kroner said that when the proposed ordinance was presented to the Board there was not enough time to have it ready for the Town Warrant. The Board agreed to work on it over the year.

Mr. Derby asked if there was any scientific background to support the proposed change.

Ms. Rowden said that the farther away septic systems are from water sources, the less likelihood of contamination.

Mr. Wilson said that the Town is trying to find the sources of e-coli contamination to the Little River and it is an ongoing project. He commented that there are two changes in the proposed amendments to the ordinance that the people may object to because they could be perceived as a taking of property rights. There are a lot of wetlands in the Town of North Hampton and it is sometimes difficult to put a septic system 100 feet away from the wetlands, and to put in an aerobic pretreatment system 150-feet away from the wetlands.

Mr. Derby commented that what is being proposed is specifying the design and how to construct the system, rather than specifying the end result.

The Board agreed to “table” the discussion until the next work session and invite Mr. Ganotis to attend.

Discussion on proposed amendment to Article III, Section 302.10 – Duplex – Mr. Kroner said that the duplex definition is something he sought because there was a duplex built in Town that may have conformed to the written definition, “duplex”, that it share a wall, but this particular duplex shares a retaining wall and he did not think that was consistent with the spirit and intent of the ordinance.

Mr. Kelley provided a copy of the definition of “duplex” under the building codes, but it was incomplete. Mr. Wilson suggested the Board “table” the discussion to the December 17, 2013 work session and asks that Mr. Kelley provide the full text of the definition of “duplex” for the Board to review.

Committee Updates

a. Long Range Planning – Proposed ordinance discussion above.

b. CIP – Mr. Wilson said that he heard from Mr. Maggiore that the Committee is on target for getting the CIP ready on time.

c. Rules and Regulations/Procedures – discussion on proposed amendments/updates. – The Board discussed establishing a scheduled monthly ARC meeting. Mr. Hornsby stated that it would be easier to have a scheduled meeting so that members of the Committee are not scrambling at the last minute to try and meet. After further discussion it was decided that the ARC meetings will be set up, when requested by the Applicant, to meet seven (7) to fourteen (14) days prior to the regular meeting.

The Board agreed to make the following administrative changes to the Rules or Procedure:

1. Add V.2.2.3 - The Application Review Committee, when requested by the Applicant, shall meet between seven (7) and fourteen (14) days prior to the regularly scheduled meeting at which the application will be heard.

2. Amend VI. 1.1. - change date & time to “The Planning Board shall adopt a meeting schedule at their annual Board Organizational Meeting”.

3. Amend VI.9, IX.4 and X.3 – change specific amount of time to “consistent with the specifications of RSA 676:3 II.”

Mr. Harned moved and Dr. Arena seconded the motion to accept the changes to the Rules as verbalized by Mr. Wilson.

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

e. Economic Development Committee – There was no report.

f. Large Assembly Ordinance Committee- Mr. Kroner read from an e-mail from Nancy Monaghan. She stated that the LAO Committee will meet on November 22, 2013 to possibly finalize the ordinance. The two major changes to the ordinance are (1) Residents are not required to get a large assembly ordinance permit for private parties; however, they will be required to notify the Chief of Police, and if the Chief feels the party is large enough or otherwise requires public safety considerations, he will notify the resident that a permit is required, and (2) the Chief of Police will be the final authority on LAO permits, not the Select Board as in the existing ordinance.

III. Other Business

1. ¹ Items laid on the table

a. Master Plan update – Natural Resource Chapter, consideration to adopt the Chapter as part of the Master Plan.

The Natural Resource Chapter was drafted in 2011 and was not officially adopted. Ms. Rowden said that it needs to be updated and she would work on it and present an updated copy for the Board to review.

Mr. Wilson moved and Mr. Derby seconded the motion to table any action on the Natural Resource Chapter to the December 17, 2013 Work Session.

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

***2. Discussion on identifying provisions of the Zoning Ordinance that may need to be amended to reflect the legal status of the Little Boar's Head and Town of North Hampton Land Use Boards regarding jurisdiction.**

Mr. Kroner was contacted by the Town Administrator, Paul Apple, stating that the Select Board would like the Planning Board to take up the concurrency issue as so far as it pertains to isolating the Little Boar's Head District as being a district on its own and that the Planning Board state, and add, to the Zoning Ordinance, up front, that that is the case and any reflection from the maximum stand point of what is the R-2 Zoning District what will be "carved out" of the R-2 District and the Board would have to address anything that factors in the current dimensional language in workforce housing. As far as workforce housing goes, it improves the town portion because there will be loss of some land but workforce housing is not allowed in the R-2 District anyway; it means a greater percentage of the Town is currently subject to workforce housing. A change to simply state up front that the Town Ordinance only pertains to the Town's I-B/R, R-1 and R-2 Districts, and to change the zoning map by isolating the Little Boar's Head District.

Mr. Wilson suggested adding, under the purpose statement of the zoning ordinance, "it is hereby because Little Boar's Head has been granted exclusive jurisdiction over zoning in the Little Boar's Head District; nothing in this ordinance applies to Little Boar's Head." Also to change the zoning map by

identifying every lot in the Little Boar's Head District, and mark it as such, by color coding it and identifying it in the legend as the Little Boar's Head District, over which North Hampton Planning and Zoning has no jurisdiction.

Dr. Arena said that the State "carved out" an independent section of the Town and it can't be done; "the whole is equal to the sum of its parts". He said that Little Boar's Head is part of the Town; not independent of the Town. The State has no right to "carve" a piece of the Town (LBH) out. He further stated that LBH is like a subdivision and the zoning they have, amounts to covenants like any other subdivision would have, and if the board agrees with LBH then it is allowing them to secede from the Town.

Mr. Kroner questioned the point Dr. Arena was trying to make.

Dr. Arena moved to adjourn. Mr. Wilson called for a point of order and said that the business before the board is not completed, and the motion was made to cut off the debate; therefore the motion is out of order.

Mr. Kroner ruled that the motion to adjourn was out of order. He said that the Board needs to address the issue.

Mr. Wilson explained that there are currently no provisions and restrictions in the LBH District's Zoning Ordinances on telecommunication towers and workforce housing development, and if the LBH ZBA denies these types of proposals and is challenged in court they will come to the Town, and regardless of what the legislature did in 1937, granting LBH zoning authority, the Town will have to argue that it does have jurisdiction and the Town won't win; the law is the law.

Mr. Wilson said that the last communication the LBH Commissioners had with the Select Board is that they had a reason to believe that concurrent jurisdiction was given to Rye and Rye Beach, which can be operated lawfully in the Town of North Hampton. The Select Board authorized Mr. Apple to write to the Commissioners and state that, if this is the case, please share that information with the Town because the Select Board has no desire to do this for the sake of doing it, or for the sake of further separating LBH from the Town; the only reason they are doing this is because the problem with concurrent jurisdiction has been exposed and it's only a matter of time for someone to come and try to leverage that to his/her advantage.

Mr. Wilson explained that an Applicant came to the Town ZBA first because LBH ZBA would not be able to meet within the required time pursuant to the RSAs. The past practice was that property in the LBH District with a planning or zoning application went to the LBH Planning Board or ZBA first, and then to the Town. The current Town ZBA Chair, Robert Field, who is also an Attorney, did the research and discovered that there really is no authority for concurrent jurisdiction. The information provided by Dr. Arena has nothing lawful in it besides legislature authorizing LBH in 1937 to enact and enforce zoning regulations; the Town and LBH have only that authority which was granted to each by the legislature.

Mr. Wilson said that the LBH Commissioners want to preserve the current practice of concurrent jurisdiction, and what the Select Board presented to them was as close a model to replicate that as best they thought they could do.

Mr. Harned asked who rendered the opinion.

Mr. Wilson said it was Mr. Field first and then competing opinions by other Attorneys. Mr. Wilson could not give the Planning Board the Town Attorney's opinion because it is Attorney/Client privileged information.

Mr. Wilson commented that the Select Board is elected to look at these kinds of issues and do the best judgment it can.

Mr. Harned commented that the Select Board is not a Court to make this decision.

Discussion ensued on different scenarios of cases before the LBH and Town Zoning Boards and legal challenges.

Mr. Harned commented that the Town would be better off if LBH had to conform to the Town's workforce housing ordinance instead of North Hampton having no control over a workforce housing development going in to LBH; there is a better chance that it would conform to the Town's ordinance if the Planning Board does not take the action requested by the Select Board; if the Planning Board takes the suggested action, the developer will not conform.

Mr. Harned questioned whether or not it was reasonable for the Select Board to come to the Planning Board and ask to make a change in the ordinance without the Board understanding the validity of the legal opinions it is based on.

Mr. Wilson said that he is sure the Select Board can bring in whatever legal authority and opinions to the discussion under the cloak of privilege; he said he would have to check to be sure. He added that the Select Board cannot dictate what the Planning Board does.

Mr. Wilson moved and Dr. Arena seconded the motion that the Planning Board send a letter to the Select Board that it is the finding of this Planning Board that the proper action for the Select Board to take is to write to the State Legislator, Michele Peckham and ask her to introduce a bill in the legislature that will reverse the act of the legislature in 1937 that gave LBH independence with respect to the Planning and Zoning.

Mr. Wilson said that the Board could also ask Ms. Peckham to introduce legislation that ratifies the concept of concurrent jurisdiction under which the two political subdivisions have been operating for 67 years.

Mr. Wilson said that he did not think it would remedy the problem, but would agree to do it if the Planning Board wanted.

Mr. Harned said he is not opposed to what the Select Board is asking, but has a problem with the Planning Board being asked something as significant as this without firsthand information; the Board needs more information.

Mr. Wilson asked to modify his motion.

Dr. Arena withdrew his second, Mr. Wilson modified his motion that the Planning Board write to the Select Board that the Planning Board would prefer it if the Select Board find a legislative solution to this problem by addressing for example our State Legislature, State Legislator or State Senator about possibly ratifying, through legislative means, the concurrent jurisdiction arrangement that has been effective in North Hampton for 67 years. Dr. Arena seconded the motion.

Mr. Derby did not agree with the motion because it may not be the only option; the Board discussed it as one step, but not the only step.

The question was called.

The vote was unanimous in opposition of the motion (6-0). The motion failed.

Mr. Wilson moved and Mr. Hornsby seconded the motion to table the discussion to the next Work Session, December 17, 2013.

Mr. Harned questioned what the Board would discuss if they had no new information.

Mr. Wilson said he would forward copies of the legislation written in 1937.

Mr. Harned said that it is a legal issue and he is not qualified to read the legislation to render an opinion

Mr. Wilson said that there is no way amendments made would be ready for the March Town Meeting. He suggested getting an opinion from a judge to resolve the issue.

Mr. Harned thought that was a good idea; he does not want to put the Town at risk, so he doesn't want to wait too long for a solution.

Mr. Wilson said that an amendment could be put on the Ballot, it doesn't mean it will pass by the Voters.

Mr. Harned would like Mr. Wilson to respond to Mr. Apple to get more information.

The vote to table the discussion passed in favor of the motion (3 in favor, 2 opposed, and 1 abstention). Dr. Arena and Mr. Derby opposed; Mr. Wilson abstained.

3. Minutes

a. October 16, 2013

b. November 5, 2013

Mr. Wilson moved and Dr. Arena seconded the motion to accept the meeting minutes of October 16, 2013 and November 5, 2013 as written.

The vote passed in favor of the motion (4 in favor, 0 opposed and 2 abstentions). Mr. Harned and Mr. Derby abstained.

The meeting adjourned at 10:15 p.m. without objection.

416 Respectfully submitted,
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418 Wendy V. Chase
419 Recording Secretary
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421 Approved January 21, 2014