



Meeting Minutes
North Hampton Planning Board
Tuesday, January 6, 2015 at 6:30pm
Town Hall, 231 Atlantic Avenue

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

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12 **Members present:** Shep Kroner, Chair; Tim Harned, Vice Chair, Dr. Joseph Arena, Dan Derby,
13 Phil Wilson, Nancy Monaghan and Jim Maggiore, Select Board Representative.

14
15 **Members absent:**

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17 **Alternates present:** None

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19 **Others present:** Cliff Sinnott, RPC Circuit Rider, and Wendy Chase, Recording Secretary

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21 Chair Kroner called the meeting to order at 6:35pm.

22
23 **I. Old Business**

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25 1. **Case #14:07 – Applicant, James Jones, 207 Atlantic Avenue, North Hampton, NH 03862.** Site
26 Plan Review Application for property located at 38-42 Lafayette Terrace, M/L's 021-14, 34, 35 and
27 36. A prior site plan has been approved; the issue is the continued use of similar items stored on
28 the property in lesser volume but stored further back of the same property. The following waivers
29 to the Site Plan Regulations were approved on December 2, 2014: VIII.B.19 - grade surfaces for
30 grass, pavement, etc., and percent of sealed surfaces; VIII.B.20- stormwater drainage control plan-
31 and related subparts; VIII.B.25 and X.E.– onsite snow storage; VII – Application fees of \$50.00 per
32 square foot required for Site Plan Review. Property Owner: Same as Applicant; Zoning District: I-
33 B/R – Industrial Business Residential. This Case is continued from the December 2, 2014 meeting.

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35 In attendance for this application:

36 James Jones, Owner/Applicant

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38 Mr. Jones explained that he just received the updated plans this past week. He would like time to review
39 them and submit them to the Board for review. He requested his case be continued to the February 3,
40 2015 Planning Board meeting.

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42 Chair Kroner asked that Mr. Jones put his request to continue his Case, #14:07 to the February 3, 2015
43 meeting in writing for the record. Mr. Jones wrote out the request and submitted it to the Recording
44 Secretary.

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47 **Mr. Wilson moved and Ms. Monaghan seconded the motion to grant the continuance of Case 14:07 -**
48 **James Jones to the February 3, 2015 meeting.**

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

50

51 **Case #08:15 – Richard Skowronski and Leila Hanna request a one year extension on their Conditionally**
52 **approved Conservation Subdivision, pursuant to Subdivision Regulation VI, E.2.** Property location: Mill
53 Road – Rocky Ledge; M/L 12-47,48-2,63,64,65,67,68,69,70,71,73,74,76,77&78; zoning district R-2
54 Residential Medium Density.

55

56 Mr. Skowronski explained that his conditionally approved conservation subdivision plan on Mill Road –
57 Rocky Ledge was approved March 5, 2009 and he has been before the Planning Board each year since
58 then to request a continuance in hopes of a better “market”. He is hopeful that this will be the year to
59 complete the subdivision. He said that he is at a point where he would have to invest a lot of money to
60 complete the subdivision and unless the “market” is ready for it that investment could turn into a
61 substantial loss.

62

63 Parthenia Lagassa, 26 Mill Road - asked the location of the proposed subdivision.

64

65 Mr. Skowronski said that it is located at 142 Mill Road, North Hampton.

66

67 **Dr. Arena moved and Mr. Wilson seconded the motion to approve the request for the one-year**
68 **extension to March 5, 2016 of the Conditional Approval for Case 08:15 – Rocky Ledge Conservation**
69 **Subdivision.**

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

71

72 **2. Case #14:14 – Applicant Two Juniper Road, LLC, 2 Juniper Road, North Hampton, NH 03862.**
73 Site Plan Review Application. The Applicant proposes to add an addition of approximately 710
74 square-feet to the existing dental office with an expanded parking lot which meets current
75 dimensional standards. The Applicant requests the following waiver from the Site Plan Regulations:
76 X.D.4 – required 10-foot wide Landscape Buffer. Property owners: Two Juniper Road, LLC, 1
77 Woodridge Lane, North Hampton, NH; Property location: 2 Juniper Lane, North Hampton, NH; M/L
78 017-001; Zoning District: I-B/R Industrial Business Residential. This Case is continued from the
79 December 2, 2014 meeting.

80

81 The Board was in receipt of a request from Eric Buck, Terrain Planning and Design, on behalf of the
82 Applicant, to continue Case #14:14 to February 3, 2015.

83

84 **Dr. Arena moved and Ms. Monaghan seconded the motion to grant the request to continue Case**
85 **#14:14 to the February 3, 2015 meeting.**

86

87 Mr. Wilson said that the applicant needs to review the adequacy of their septic system. The location of
88 the septic system was one of the driving factors in the design of the entire site and it appears that they
89 are trying to preserve the existing septic system. He suggested the Applicant be asked that the issue be
90 resolved before the Board proceeds. He said that unless the septic question is answered the Board may
91 not have enough information to take jurisdiction of the plan.

92

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

94 **II. New Business**

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96 Mr. Powell's case was next on the agenda; he respectfully requested that the Board consider the next
97 case because his attorney was not present, but was on his way. The Chair granted his request.

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100 **2. Areta Snow on behalf of the Hendry Family - Preliminary Consultation, pursuant to Subdivision**
101 **Regulation Section VI.A.1. Discussion involves a proposed 5-lot subdivision at 146 Post Road, M/L 14-130;**
102 **Property Owner: Estate of Robert W. Hendry, 22 West Mill Pond Road, Lee, NH 03861.**

102

103 In attendance for this application:

104 Joe Coronati, Jones and Beach Engineers

105 Areta Snow, representing the Applicants

106 Kathy and John Hubbard, Executrix of the Hendry Estate

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108 Mr. Coronati referred to tax map and lot 14-132 and explained that the lot is owned by the Hendry
109 Estate and is a lot of record; map and lot 14-130 is the subject lot and contains of which 35 acres of the
110 back portion is made up of wetlands. The family would like to retain 5 building lots and maybe put in a
111 private road or a private driveway to service those lots. They are aware the town doesn't allow cul de
112 sacs even though it appears on the preliminary drawing.

113

114 Chair Kroner said he wasn't clear if the proposal was for a conservation subdivision. He said there is
115 some design flexibility if they were to go in that direction. He said that there is also Inclusionary Housing
116 potential as well, which brings some different flexibility. He referred to Subdivision Regulation X.3 – "no
117 dead-end or cul-de-sac streets shall be allowed" and said if they decided to include a cul-de-sac in the
118 design they would have to apply for a waiver, and believes that in the past 35 years a waiver for this
119 regulation has not been granted.

120

121 Mr. Coronati said there are approximately 525-feet of frontage, so it's possible to do a driveway for
122 three lots and the other two lots would front Post Road, or do a 50-foot right of way (private driveway)
123 and have a reduced or relaxed construction within that right-of-way.

124

125 Mr. Kroner said that you don't really know what wetlands are until a wetland delineation is done. He
126 said he knows it is expensive but it may be more helpful to the Planning Board to know the full potential
127 of the site after a full wetland delineation is done.

128

129 Mr. Coronati asked that if it turns out that the back 2/3 of the property is very wet he wondered if the
130 Board would entertain waivers to all the field work for that portion of the land because it is not
131 buildable, instead of including it in a complete survey of the property. He said that they could "topo"
132 everything up from the end of the wetland closest to Post Road to prove out the five lots and request a
133 waiver to the property beyond the wetland.

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135 Mr. Harned said he would like to know if the wetland is contiguous from one property line to the other.

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137 Mr. Wilson said he would be reluctant to grant such waivers to the cul-de-sac regulation. He said it
138 poses an interesting challenge from a design point. He said that it appears that approximately 23 out of
139 the 35 acres are undevelopable because they are wet. It would be an interesting conservation
140 subdivision because it gives flexibility to the lot size, setbacks and frontage.

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Dr. Arena said that the Planning Board has a responsibility to preserve the rural character of the Town. If there are enough zoning changes year after year, you no longer have a rural atmosphere. This proposal is an attempt to go beyond the point of the original ideas and plans of the people of the town, and it is the people who make up the town, not the buildings, it is the buildings that can destroy the town.

Chair Kroner commented that the Hendry property and Hendry family name is one of the oldest in North Hampton. He said that they own a 35-acre parcel and they are coming to this Board to see what may be possible, development-wise, on this piece of land.

Mr. Wilson called for a point of order and said that they have 35-acres that can be developed within the ordinances and regulations the town has adopted over the years and they are before the Board for advice on developing the lot one way or the other before proceeding.

Mr. Sinnott said that he agreed with comments made by several members that a conservation subdivision is a good option; it provides a specific process for design consultation with the board. He mentioned that currently it is not well viewed by the Board to develop lots by using "fingers" of uplands to meet the upland requirement. The Board is currently working on an amendment that will require ¼ acre for a building envelop per lot. Mr. Sinnott said that concerning traffic safety, it is better to have one single road versus 3 potential access ways off of Post Road, and safer to have the access in alignment with New Road.

Mr. Coronati referred to lot 14-132 and said it has .65 acres of land. He asked that if they add land from another lot to increase the .65 acres to 1 acre would that prevent them from having to get variances; it would not make the lot conforming, but would make it more conforming.

Chair Kroner said that the Planning Board is barred from creating any lot that doesn't meet the current standards, even when improving the lot.

Mr. Sinnott said that the Applicant would have to do enough of a survey of the parcel to generate a yield plan, but would speculate that the flexibility they would get in exchange would be worth that.

The land has been in the family for so many years that it has not been surveyed. Mr. Coronati said that lands surrounding it have been surveyed; there are boundary markers out there.

Mr. Wilson said that a Certificate of Monumentation will be required.

Chair Kroner said that he would not grant a waiver to the current cul-de-sac design, and a proper yield plan should incorporate and satisfy the requirement.

Mr. Wilson said that lot #3 is questionable because after determining the 100-foot setbacks on the lot it will probably take up a big chunk of buildable area from that lot to locate a house and septic system.

Chair Kroner said that the applicant can continue with the Preliminary Consultation and then go through to the Design Review before a formal application.

187 **1. Case #14:15 – Applicant Paul Powell, Manager of Maple Road 14, LLC, 28 Winnicut Road, North**
188 **Hampton, NH 03862.** Request for confirmation of amended wetland delineation on the approved
189 two lot subdivision plan, approved by the Planning Board on January 7, 2014 (Case #13:14). The
190 Applicant requests a waiver to Section VII of the Subdivision Plan Regulations – Application Fees.
191 Property owner: same as above; Property location: 14 Maple Road, North Hampton; M/L 006-065;
192 zoning district: R-2 Residential Medium Density. This Case is continued from the December 2, 2014
193 meeting.

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195 In attendance for this application:

196 Paul Powell, Applicant/Owner
197 Luke Powell, Applicant/Owner
198 Steve Oles, MSC Engineering
199 Attorney Steve Ells, Counsel to the Applicants/Owners
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201 Chair Kroner explained that the Applicant agreed to allow the Board to conduct a Site Walk of the
202 property, which they did on December 5, 2014. He also disclosed that he and Mr. Harned met with
203 Michael Cuomo, RCCD this morning, to ask questions regarding his report of the site. Mr. Cuomo
204 reconfirmed, that in his opinion, the delineation presented to the Board is accurate.
205

206 Attorney Steven Ells, appearing on behalf of 14 Maple Road, LLC, explained that the original lot was
207 owned and subdivided by Peter Fuller’s Corporation Cadillac of Boston. The subdivision was approved by
208 the Board on May 7, 2014 and since purchasing the lots Mr. Powell had the wetlands re-delineated on
209 “lot A” by Gove Environmental Services that now show the lot to have sufficient uplands to meet the
210 requirements to build a duplex. Mr. Cuomo reviewed the work done by Mr. Gove on behalf of the Town,
211 and paid for by Mr. Powell. The applicant does not believe the Planning Board has further jurisdiction
212 over this. Mr. Powell has done everything the Board has asked of him. They are presently before the
213 Board so that the Board can confirm and approve the wetland mapping done by Gove Environmental
214 Inc.
215

216 Mr. Harned said that when they met with Mr. Cuomo he said that there clearly is upland and it could
217 have been filled a long time ago, and if there was fill brought in it was a long time ago and probably
218 occurred prior to the wetland ordinances, a time when it was not illegal to do it.
219

220 Chair Kroner opened the Public Hearing to those with new information to offer. He commented that the
221 Public Hearing was closed at the last meeting, but would open it to those with new information.
222

223 George Lagassa, 26 Maple Road – commented that Mr. Powell was in full knowledge that there was 1.6
224 acres of uplands when he purchased the property. He questioned whether or not the Planning Board
225 had jurisdiction to decide on this case and that maybe it should be before the Zoning Board of
226 Adjustment. He read the conditions of approval set forth by the Planning Board: condition #6 “there
227 shall be no changes to the Mylar except to meet these Conditions of Approval”. He said that he was at
228 the site walk on December 5th and there was standing water on the lot. The two foundations on the site
229 look to be 60 to 70 feet apart surrounded by very poorly drained soils. He said there will be two
230 driveways at the top of the hill to service those lots and it is very dangerous. The blasting at the site
231 caused a cliff on the property and right now it is not safe. He said it is an over intensive use of the
232 property. Mr. Lagassa said that in his opinion the best venue for this is the Zoning Board of Appeals and
233 reminded the Planning Board that the subdivision regulations are interpreted as minimum requirements

234 and the Board can impose more rigid standards that are listed in the Regulations per se, and implores
235 the Planning Board to stand by their original approval.

236

237 Meredith Lloyd-Marshall, 71 Woodland Road – said that they have listened to the ledge blasting and
238 wondered if “perc” tests were done, and if not how it would affect the watershed. She said that she is
239 not opposed to building on that land, but thought it is an overly aggressive use of the property.

240

241 Mr. Kroner said that “perc” tests have been done on the lots and both lots can support a duplex. Both
242 lots received NH DES subsurface approval.

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244 Chair Kroner closed the Public Hearing at 7:43pm.

245

246 Dr. Arena said that he has traveled this road for fifteen years and it is a dangerous spot because you
247 can't see anything coming up the incline. He said that at the site walk he observed the granite on the
248 property that goes out to the Atlantic Ocean as a groin that helps stabilize the coastal area. He opined
249 that it is a bad place for one home to be built on, never mind a duplex; it is a dangerous locale.

250

251 Chair Kroner said that Mr. Cuomo had stated at the morning discussion that this particular site has had
252 five times the scrutiny NH DES would require on a piece of property concerning wetland delineations
253 and he firmly agrees with the delineation submitted to the Board. Chair Kroner said that this is the first
254 time as a Planning Board member, engaging in this type of process. He said the questions are: is it the
255 Planning Board reviewing a change to the wetland delineation, or is it an amendment to an approved
256 Subdivision Plan? He further stated that there is an important distinction between those two things.

257

258 Mr. Wilson said it is both. He said that the Planning Board has jurisdiction over this plan because if there
259 is going to be a change to an existing approved subdivision plan there is no other authority in town that
260 can do that. The ZBA has no role in changing a subdivision plan, if someone is aggrieved regarding a
261 subdivision plan; they can go to Superior Court; not the ZBA. There is a recorded subdivision plan of the
262 property and any owner of the property that wants to make a change to it needs approval from the
263 Planning Board, in his opinion. He said that the decision of the suitability of land vests with the Planning
264 Board. The proposed amendment to the subdivision plan is to increase the contiguous acreage of upland
265 to meet the requirement of building a duplex, and in his opinion, does not meet the spirit and intent of
266 the Zoning Ordinance. He said it may meet the minimum requirement in concept, but it doesn't achieve
267 the minimal requirement for a duplex because it doesn't allow for any more usable space to
268 accommodate two residences rather than one; the land is useless to meet the requirements of a duplex
269 as it pertains to the minimum uplands requirement for a duplex. He said that approving the change to
270 the amount of uplands is not the only relevant issue. He said that if the applicant submits an amended
271 subdivision plan for approval he would propose a condition of approval that there shall be a single
272 family residence on that property; not a duplex.

273

274 Mr. Maggiore said that there are many moving targets. He said he is frustrated because he doesn't know
275 what target to zero in on. Is it on facts, or spirit and intent of the ordinance? He said that Mr. Powell has
276 an approved plan based on facts and has an amendment to that plan based on facts. Mr. Powell has
277 fulfilled his requirements. He also said that he doesn't like the idea of a duplex there, and is not sure if it
278 is safe or unsafe due to the geography of the road, but the fact that he doesn't want a duplex there
279 doesn't matter, that is his opinion of art. The Board has an applicant that fulfilled his obligations and

280 then the Board has injected moving targets. He asked the Board how they will be able to treat like things
281 alike if Mr. Powell is not allowed to move forward.

282

283 Mr. Wilson said that the facts have changed since the original approval and if he had known that
284 duplexes would be proposed to be built on the lots he would never have voted to approve the original
285 two lot subdivision plan. If the new wetland delineation results in a material change to the originally
286 approved plan then there is the need for an amended subdivision plan.

287

288 Mr. Sinnott said that it comes down to whether amending the wetland delineation constitutes amending
289 the subdivision plan. He said the definition of wetlands is printed in the Zoning Ordinance that is defined
290 by the wetlands standards, and those standards have changed.

291

292 Mr. Harned said that doesn't come into play in this case. He said that Mr. Cuomo did not retrace every
293 wetland boundary on the property. There was an area in question that had come up that had a
294 difference from the first delineation and second delineation and Mr. Cuomo focused on that area and,
295 focused more intently than when the first delineation was done.

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297 Ms. Monaghan said that the applicant has an approved subdivision plan and the applicant needs to
298 amend the subdivision plan if he wants to build a duplex.

299

300 **Mr. Wilson moved and Ms. Monaghan seconded the motion that the Board require the Applicant**
301 **submit an amended subdivision plan before proceeding any further with development of that project**
302 **and that amended plan should reflect the registered plan that the developer would like to have**
303 **would allow the development as he has laid it out.**

304

305 Mr. Wilson said he did not know that Mr. Cuomo did not look at the entire lot when confirming the
306 reconfigured wetland delineation.

307

308 Mr. Kroner said that he looked at the nineteen holes.

309

310 Mr. Wilson commented that there should never be two Planning Board Members consulting an expert
311 about a Planning Board case outside a Planning Board Meeting. He considered it ex parte
312 communication.

313

314 Mr. Harned apologized and said that their intention in meeting with Mr. Cuomo was to streamline the
315 process and confirm with Mr. Cuomo some questions that they had on his report.

316

317 Mr. Wilson explained the motion that he made, that it is the Board's finding that this requires an
318 amended subdivision plan because the effect of the wetlands delineation change is to change the
319 suitability of the land for development and that is the Planning Board's jurisdiction and the Planning
320 Board wants to review it.

321

322 **The vote passed in favor of the motion 5 in favor, 1 opposed and 1 abstention. Mr. Kroner opposed**
323 **and Mr. Harned abstained.**

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325 Attorney Ells commented that his client did not apply for an amended subdivision plan, he submitted an
326 application for the Board to confirm the wetland designation; not a re-subdivision.

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Mr. Wilson moved and Dr. Arena seconded the motion to deny the request for an amended delineation of the wetlands because of the consequences that has on the approved subdivision plan, and therefore the Board has already voted to require an amended subdivision plan. The vote passed in favor of the motion (5 in favor, 2 opposed and 0 abstentions). Mr. Kroner and Mr. Maggiore voted against.

Other Business

Mr. Wilson referred to the correspondence the Board received from Donahue, Tucker and Ciandella (DTC) with respect to proposed changes to the wireless telecommunication ordinance. He said in 2006 the Board was working with an attorney from DTC on revisions to the wireless ordinance and at the same time another attorney from the same firm was working with the Select Board on putting in a cell tower on town owned conservation land. When Mr. Wilson found out about the conflict of interest in that the Board was working on the revisions of the ordinance with one attorney from DTC and simultaneously the Select Board was working with another attorney from DTC on putting a cell tower on conservation land he “washed his hands” of the process and continues to do so. He further pointed out that town’s policy in 2006 was that the Select Board had to approve the Planning Board receiving legal advice and chose the firm to provide it.

Mr. Wilson moved and Dr. Arena seconded the motion that the Planning Board reject the recommendation from Donahue, Tucker and Ciandella with respect to this and appeal to a different attorney to give the Board the opinion.

Mr. Maggiore said that the Select Board stated a clear point that it is the responsibility of the Planning Board to review and reconsider their ordinances; it should not be doled out to attorneys; it is expensive. He can understand why it went to the attorney for review, because it deals with state and federal laws. There is no time to review what the attorney has come up with for suggestions and have it ready to put on the 2015 ballot. Mr. Maggiore suggested it be postponed.

Mr. Maggiore made a friendly amendment to strike the section of the motion “and appeal to a different attorney to give the Board the opinion”.

Mr. Wilson said that the Planning Board wanted the wireless ordinance reviewed by legal counsel to make sure that citations of state and federal laws are up to date; whether the laws that are cited are current laws, or do they need to add or omit citations. They did not request a full review of the wireless ordinance. The Board concurred.

Mr. Maggiore said that he did not see the request, but was almost sure that it was for the attorney to review the ordinance and see where amendments would need to be made per the new federal and state laws.

Dr. Arena accepted the friendly amendment and Mr. Wilson accepted the friendly amendment.

Mr. Wilson moved and Dr. Arena seconded the motion that the Planning Board reject the recommendation from Donahue, Tucker and Ciandella with respect to this. The vote was unanimous in favor of the motion (7-0).

374 **Mr. Maggiore moved and Mr. Derby seconded the motion to table the consideration of any revisions**
375 **to the telecommunication ordinance, Section 415 of our ordinances.**

376 **The vote was unanimous in favor of the motion (7-0).**
377

378 Mr. Kroner announced that he will be out of town for the next two meetings, January 12, 2015 Public
379 Hearing and January 20, 2015 Work Session. He said he would forward a formal memo/letter to the
380 Board noting his support on the proposed zoning amendments and ask that it be read into the record.

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382 Mr. Wilson said that Mr. Kroner could participate via telephone if the Board voted to authorize that.

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384 Mr. Kroner said that he will be at the Deliberative Session explaining each of the amendments.

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386 Dr. Arena asked if the Planning Board could go into executive session (non-public meeting) to discuss a
387 matter.

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389 Mr. Wilson explained that pursuant to RSA 91:A there are specific conditions that allow any Board to go
390 into a non-public meeting.

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392 Dr. Arena said he was going to talk basically wearing two hats; as a member of the board and as a
393 recused member of the board. He said that the Planning Board sent an applicant to another Board and
394 that Board didn't agree with this Board's decision. He said that there is a case that has dragged on and is
395 very costly and thought the Planning Board failed to recognize certain RSAs pertaining to this case. He
396 said he tried to explain to the Board at four different public meetings, but didn't feel he got his point
397 across to them. He felt the members did not listen to him.

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399 Mr. Wilson said that Planning Board did listen to Dr. Arena, they just didn't agree with him.

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401 Dr. Arena said he did research and it speaks for itself.

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403 Dr. Arena moved to Adjourn at 8:45pm.

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405 The meeting adjourned at 8:45pm without objection.

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407 Respectfully submitted,

408
409 Wendy V. Chase
410 Recording Secretary

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412 Approved January 20, 2015