



**TOWN OF NORTH HAMPTON, NEW HAMPSHIRE
SELECT BOARD
MINUTES**

PUBLIC SESSION I – JULY 29, 2013 – 3 P.M.
GARNETT RESIDENCE, 31 ATLANTIC AVENUE

The Chair called the meeting to order at 3:00 p.m. for the purpose of meeting with the Little Boar's Head Commissioners. Mr. Garnett, Chair of the Commission, presented an agenda of issues to be discussed. He indicated that Commission wanted to establish a regular practice of joint meetings to discuss issues of common interest.

1. Beach Clean Up

Mr. Garnett indicated the Commission was looking for any help in cleaning up the beach. There are two problem areas: grooming on the Hampton side results in seaweed and trash being deposited on the North Hampton side; and trash from the Beach Plum. They would like the Town to join the District in encouraging the State to clean up the mess.

2. Safety at the Beach Plum

The discussion turned to the Beach Plum. Ms. Dunfee indicated that customers continued to park illegally and to cross Ocean Boulevard to eat the food they buy at the Beach Plum on the beach. The result is a serious public safety and trash issue. She said enforcement is the only way to address the issue. Mr. Wilson suggested that enforcement of parking regulations would effectively control the problem because the Beach Plum doesn't really have parking. Ms. Dunfee said that it was not really a problem while the Beach Plum was just an ice cream stand many years ago. Having become a restaurant, however, the area isn't designed to handle that kind of traffic. The consensus is a real concern that someone could be injured or killed. Mr. Garnett asked why traffic control measures couldn't be taken, and the Town Administrator responded that new cross walks, signs, etc. were the province of the NH DOT because Ocean Boulevard is a state road. Enforcement could be undertaken by the Police.

3. Police Presence in Little Boar's Head/Motorcycle Noise Ordinance

Ms. Dunfee said that there are speed issues and pointed the Board's attention to traffic passing 31 Atlantic Avenue at what appeared to be excessive speed. She asked why more enforcement couldn't be a priority. She also said that motorcycle noise was a problem and that nothing had been done about that despite the Town having purchased the monitoring equipment to do so. There was general discussion about how officers might identify non-compliant motorcycles. Both the Commission and the Board asked the Town Administrator why the Chief couldn't operate a check point to ensure compliance. The Town Administrator explained that a generalized check point was not consistent with the N.H. Constitution absent an order of a Superior Court Judge; and, in any event, a check point could not single out a particular type of motor vehicle in any event without probable cause that a crime had been committed. Mr. Miller said that the Chief's position is that the noise statute is unenforceable. The Board directed the Town Administrator to seek an opinion from the Attorney General as to whether the statute is enforceable.

4. Bass Beach Berm reconstruction

Mr. Asadoorian brought the Board up to date on the replacement of the berm to date. He asked the Board to assist the District with the State as there is FEMA money to get the project done. Mr. Wilson said that the berm reconstruction has to be coupled with the culvert underneath the old electric railway line because the water cannot properly drain during big storm events. The consensus of the joint meeting is that the Town should work with HSEM to ensure that both issues are addressed.

5. Concurrent Jurisdiction and the Rye/Rye Beach Solution

Mr. Wilson expressed his view that the Rye Beach Solution would not address the problem. The ZBA has determined that it is without jurisdiction to hear district cases. He said there were two options: (1) the District must be independent if it wanted to continue its exclusive zoning authority; or (2) it should come under the authority of the Town's ordinance as a zone. Mr. Garnett asked why the District would give up its authority. Mr. Wilson responded that the District's ordinances are not sufficient to withstand a challenge on multiple issues like adult bookstores, cell towers and high density development. He said that the District could not seek exclusive authority on the one hand and then the shelter of the Town's ordinance on the other and that capable counsel for Verizon, for example, would seek the illegality of concurrent jurisdiction very quickly. He said that the problem he seeks to address is liability for the Town. In that event, it is likely that the Town would be sued as well. The Town is being asked to assume liability for matters over which it has no control.

Mr. Miller asked what the Commission wanted. Mr. Garnett responded that the District wanted to maintain control over its zoning. Mr. Miller asked what the Commission could live with given the risks outlined by Mr. Wilson. He said that it would be too late once an application for a cell tower was filed.

Mr. Wilson proposed that the District become a zone under the Town's ordinance. The Town Administrator suggested that the District could delegate its zoning authority subject to revocation as a safety valve. The enabling legislation would allow for a technical advisory group to advise the planning board and the ZBA on matters arising in the District. The current District zoning ordinance would be adopted as the regulations governing the LBH zone. Any change to those regulations would first have to be approved by the LBH legislative body.

Mr. Garnett asked that the proposal be reduced to writing. The Board directed the Town Administrator to prepare a written summary and provide it to the Commissioners.

6. Action Items

The consensus of the joint meeting is to accomplish the following items:

- A. Ask the Police Chief to examine the safety of the crossing at the Beach Plum;
- B. Seek an opinion as to the enforceability of the noise statute;
- C. Place the speed radar device in the district;
- D. Work with HSEM to resolve the berm and culvert at Bass Beach;
- E. Invite the DRED beach representative to a joint meeting;
- F. Do a summary of the concurrent jurisdiction proposal.

Mr. Maggiore thanked the Commissioners for their hospitality. The meeting was recessed at approximately 4:35 p.m., to be reconvened beginning at 5:15 pm at the Town Administrative Offices for non-public sessions at then at 7:00 p.m. at the Town Hall for the Board's regular meeting.

Respectfully submitted,

Paul L. Apple, Town Administrator

Date Prepared: July 30, 2013

Date Approved: August 12, 2013