



Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, August 28, 2012, at 6:30pm
Town Hall, 201 Atlantic Avenue

6 **North Hampton, New Hampshire (“Meeting”)**

7
8 These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a
9 transcription. All exhibits mentioned in these Minutes are a part of the Town Record.
10

11 **Attendance:**

12
13 **Members present:** Robert B. Field, Jr., Chair; David Buber, Vice Chair; George Lagassa,
14 Phelps Fullerton, and Robert Landman. (5)
15

16 **Members absent: None.**

17
18 **Alternates present:** Dennis Williams, Jonathan Pinette and Lisa Wilson. (3)
19

20 **Administrative Staff present:** Wendy Chase, Recording Secretary, and Kevin Kelley, Building
21 Inspector/Code Enforcement Officer, who retired from the Meeting at 8:30 pm.
22

23 **Preliminary Matters; Procedure; Swearing in of Witnesses (RSA 673:14 and 15);**
24 **Recording Secretary Report**

25
26 Chair Field welcomed Kevin Kelley, the newly hired Building Inspector/Code Enforcement Office, who
27 was present for part of the Meeting.
28

29 Mr. Kelley introduced himself to the Members and Audience and said that he was looking forward to
30 working with the different Boards in Town and invited the Board to contact him anytime, and that he
31 was good about getting back to people. He said that he is already dealing with Code Enforcement issues
32 in the short time that he’s been here.
33

34 Chair Field commented on the importance of Code Enforcement and mentioned the new Section of the
35 Zoning Ordinance that recently passed at the May Town Meeting regarding Enforcement.
36

37 Chair Field Called the Meeting to Order at 6:32 p.m.
38

39 Pledge of Allegiance -Chair Field invited the Board Members and those in attendance to rise for a Pledge
40 of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do so and
41 failure, neglect or inability to do so will have no bearing on the decision making of the Board or the
42 rights of an individual to appear before, and request relief from, the Board.
43

ZBA Meeting Minutes

44 Introduction of Members and Alternates - Chair Field introduced Members of the Board and the
45 Alternates who were present (as identified above).

46
47 Recording Secretary Report - Ms. Chase reported that the August 28, 2012, Meeting Agenda was
48 properly published in the August 10, 2012 edition of the Portsmouth Herald, and, posted at the Library,
49 Town Clerk's Office, Town Office and on the Town's website.

50
51 Chair Field then briefly explained the Board's operating Rules and Procedures to those present.

52
53 Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Chair Field swore in all those who were
54 present and who intended to act as witnesses and/or offer evidence to the Board in connection with any
55 Case or matter to be heard at the Meeting.

56
57 Chair Field explained that the July 26, 2012, Meeting was cancelled due to the absence of material for
58 pending Cases and that there were no "new" cases before the Board for consideration.

59
60 Mr. Fullerton stated that he was absent for the June 26, 2012 Meeting and Alternate Member Dennis
61 Williams had been seated in his stead. He deferred to the Chair and Mr. Williams regarding Mr.
62 William's sitting for him on the Martin Case (#2012:03) because Mr. Williams was present at both the
63 May 22, 2012 and June 26, 2012 Meetings when Mr. Martin's case was heard by the Board, unless there
64 was an objection from Mr. Martin.

65
66 Chair Field then inquired of Mr. Martin as to his reaction, and Mr. Martin responded that he had no
67 objections to Alternate Williams being seated for Member Fullerton regarding his Case.

68
69 Chair Field seated Alternate Williams for Mr. Fullerton for Case #2012:03, and the approval of Minutes.

70
71 **Approval of Minutes:**

72
73 **1. June 26, 2012, Regular Meeting Minutes** – Minor typographical errors were corrected. Mr. Lagassa
74 made the following change to Line 333, "Mr. Lagassa concurred with Mr. Landman and said that
75 additional drainage that flows from impervious surfaces on neighboring properties is the responsibility
76 of the people who own the neighboring property and what flows onto the property from surrounding
77 properties is out of the control of the Applicant."

78
79 **Mr. Landman Moved, and Mr. Lagassa Seconded, the Motion to accept the amendment made by Mr.
80 Lagassa.**

81 **The Vote was unanimous in Favor of the Motion (5-0).**

82
83 Chair Field proposed the following change between Lines 619 and 623, "The Board analyzed the
84 Supreme Court of Henry and Murphy v. Town of Allenstown. The Board accepted the point of view that
85 there were some issues that were "grandfathered" as reflected in its earlier decision, but, as to the
86 entire proposal being "grandfathered", the Board rejected such interpretation."

87
88 **Mr. Landman Moved, and Mr. Lagassa Seconded, the Motion to accept the amendment proposal
89 made by Chair Field.**

90 **The Vote was unanimous in Favor of the Motion (5-0).**

91
92 Mr. Landman referred to Line 295 and said that Mr. Farrell’s comments came after the Chair requested
93 comment from those in “favor” of the proposal, and he did not believe Mr. Farrell was in “favor” of the
94 proposal.

95
96 Chair Field suggested correcting the potential problem by adding to the beginning of the sentence,
97 “Although not technically in favor of the proposal...”.The Board agreed with the Chair’s suggested
98 amendment.

99
100 **Mr. Landman then Moved, and Mr. Buber Seconded, the Motion, to approve the June 26, 2012**
101 **Meeting Minutes as amended.**

102 **The Vote was unanimous in favor of the Motion (5-0).**

103
104 **2. August 3, 2012, “Special” Meeting Minutes (Public Session) - Mr. Landman Moved, and Mr. Buber**
105 **Seconded, the Motion to approve the August 3, 2012 “Special” Meeting Minutes (Public Session) as**
106 **written and presented.**

107 **The Vote was unanimous in Favor of the Motion (3 in favor, 0 opposed and 2 abstentions). Mr.**
108 **Lagassa and Mr. Williams abstained for reasons of non-attendance at the “Special” Meeting.**

109
110 **3. August 3, 2012, “Special” Meeting Minutes (Non-Public Session) – Mr. Landman Moved, and Mr.**
111 **Buber Seconded, the Motion to approve the August 3, 2012 “Special” Meeting Minutes (Non-Public**
112 **Session) as written and presented.**

113 **The Vote was unanimous in Favor of the Motion (3 in favor, 0 opposed and 2 abstentions). Mr.**
114 **Lagassa and Mr. Williams abstained for reasons of non-attendance at the “Non-Public” “Special”**
115 **Meeting.**

116

117 **Unfinished Business:**

118

119 **I. (Continued) #2012:03 – Property Owner: Glenn Martin, 11 Evergreen Drive, North Hampton, NH**
120 **03862. Applicant: Same as Owner; Property location: 9 Hampshire Drive, North Hampton, NH 03862;**
121 **M/L 007-136-000; Zoning District: R-1. The Applicant requests the following Variances: (1) Article IV,**
122 **Section 409.8.a relief for a septic system setback of 70.5-feet where 75-feet is required, and (2) Article**
123 **IV, Section 409.9.A.2 relief for a structure 21.4-feet from poorly drained soils where 50-feet is required.**
124 **This Case is continued from the June 26, 2012 ZBA Meeting, additional independent technical review**
125 **by third (3rd) party was requested by the Board.**

126

127 In attendance for this Application:

128 Glenn Martin, Owner/Applicant

129

130 Chair Field gave a brief chronological history on what has transpired with Mr. Martin’s Case #2012:03:

- 131 • The Chair, as directed and authorized by the Board, wrote to Dr. Leonard Lord of the
- 132 Rockingham County Conservation District (“RCCD”) requesting that the RCCD to review the
- 133 sense of the Board regarding the granting of the two (2) additional Variances requested, subject
- 134 to the technical review and endorsement by an independent third (3rd) party expert reviewer.
- 135 • RCCD responded that they would and could perform the technical review and gave an estimate
- 136 of the requested analysis in the amount of \$2,985.00. RSA 676: V (a) provides that the Board
- 137 has the opportunity to conduct technical reviews at the expense of the Applicant unless a

ZBA Meeting Minutes

- 138 planning board has requested and received a report on substantially the same subject matter.
139 The Conservation Commission did address related elements of this Case back in April or May,
140 and a communication received by the Board from the Conservation Commission, dated May 29,
141 2012, indicated that the RCCD had advised that it had “insufficient information” to make an
142 informed judgment and they did not come up with an analysis.
- 143 • Communication between the Administrative Assistant and Applicant’s counsel occurred during
144 the summer, but Chair Field responded that the Board had **not** received a written response from
145 the Applicant stating that they would bear the RSA 676: V (a) cost.
 - 146 • A communication from Applicant was received on August 14, 2012 advising the Board that the
147 Applicant was willing to pay up to 50% of the total cost and have the Conservation Commission
148 pay the other 50%. The Chair opined that the Board does not have jurisdiction over the internal
149 affairs of the Conservation Commission.
 - 150 • Absent third (3rd) party review, the Board does not yet have all of the information requested on
151 the “septic system” and “drainage analysis” in order to make an informed “final” decision.
 - 152 • Chair Field recently communicated with the Conservation Commission, to confirm the
153 Conservation Commission Chair’s recollection of events, and the Conservation Commission Chair
154 ratified the sequence of events as recalled by the Chair.
 - 155 • The information/plans received by the Board had changed from May to June, and the
156 Conservation Commission and Zoning Board were, therefore, not dealing with the same
157 information or issues.

158
159 Chair Field asked Mr. Martin where he stood with the Application and the payment of “technical review”
160 fees. He stated that the Board has adopted an informal policy of checking with applicants as a courtesy
161 BEFORE unilaterally engaging review professionals at an applicant’s expense.

162
163 Mr. Martin explained that he received a copy of a response from the RCCD to the Conservation
164 Commission, dated May 17, 2012, and that several of his proposals made to the Board reflected such
165 comments.

166
167 Chair Field read into the record the last paragraph of the RCCD “response” to which Mr. Martin referred,
168 “Based on the information provided for this review, this application is substantially incomplete. I
169 recommend the application be continued to allow the applicant to provide adequate information on
170 which to judge the proposal. If the applicant is unwilling to provide the additional information
171 requested in a timely manner, the application should be denied.” The letter was signed by Michael
172 Cuomo, NH Certified Soil Scientist.

173
174 Chair Field explained that what was submitted to RCCD, on behalf of the Conservation Commission, has
175 no bearing to this Board and to Mr. Martin’s Application; the two (2) issues the ZBA asked for technical
176 advice on from the RCCD were (1) the septic system design to be signed off by the RCCD as the review
177 Board, and (2) concern about the drainage pattern over the subject lot, and whether or not there was a
178 threat to the Little River system as a result of the drainage pattern.

179
180 Mr. Martin read item number six (6) from the RCCD report into the record, “The wastewater disposal
181 system is shown 70.5 feet from the wetland edge on the preliminary plan, where normally 75 feet is
182 required (Zoning 409.8). The impact of the wastewater disposal system on the wetland should be
183 negligible as an advanced pretreatment unit is specified on the preliminary plan. The pretreatment unit
184 cleans the wastewater very well before the effluent is released into the soil for final disposal. A high
185 percentage of the nitrogen and phosphorus is removed from the wastewater; these are nutrients that

ZBA Meeting Minutes

186 negatively alter wetland ecology when present in excess. Bacteria and pathogens are also removed by
187 pretreatment.” Mr. Martin explained that the septic plan they intend to submit is the same plan Mr.
188 Cuomo referred to in his review (number 6).

189
190 Mr. Martin referred to the estimate from RCCD, dated July 16, 2012, estimate #9200, in the amount of
191 \$2,985.00, and said that he will pay the bill that RCCD submits to the Town for their review, but reserves
192 the right for “application of hardship”; he said that he was told the Town offers that option.

193
194 Chair Field interjected and said that he has no knowledge of an “application of hardship” procedure, and
195 the ZBA has no jurisdiction to get involved in a Town fiscal matter; but, if Mr. Martin wishes to seek such
196 relief from the Town it was entirely up to him to do so, and suggested he speak to whomever is taking
197 over the responsibilities of the departing Town Administrator, Steve Fournier.

198
199 Upon inquiry of the Board by the Chair, it continued to be the consensus that they would like to obtain
200 the advice and counsel from RCCD on Mr. Martin’s Application, Case #2012:03. The following was
201 discussed at the June 26, 2012 Meeting: *Chair Field declared that a Sense of the Meeting is that the*
202 *Applicant has materially addressed the concerns that were raised at the last Meeting. There are still the*
203 *septic and drainage issues and the Decision Letter, but it is the sense of the Board that it is inclined to*
204 *grant the final two (2) Variances, meaning all four (4) will have been granted because of the*
205 *“grandfathering” principle, and because the Applicant has met the standards under the five (5)*
206 *standards, and hopefully the Board will have an answer for the Applicant at the next Meeting. Chair Field*
207 *said the Decision Letter must be written precisely. He said the Board could assign the matter to one of*
208 *the Members to craft the Decision Letter and bring back to the Board next month for approval. He said*
209 *the three (3) issues are drainage, septic, and the content of the Decision Letter.*

210
211 Chair Field said that he, as well as the other Board Members, received a communication signed by
212 several members of the community, and from Alternate Lisa Wilson, expressing concerns relating to the
213 ZBA proposed actions. Ms. Chase did not receive a copy of Mrs. Wilson’s communication for the
214 permanent record. *Secretary’s note: Chair Field forwarded Mrs. Wilson’s communication, dated July 7,*
215 *2012 to Ms. Chase on August 29, 2012, and she forwarded a copy to Mr. Martin per his request.*

216
217 Chair Field explained to Mr. Martin that the Board has adopted, over the past few months, an informal
218 position, where the Board, as a matter of courtesy, gives the Applicant the opportunity to decide
219 whether or not to go forward after receiving the estimate; the Board needs the information and does
220 not have the independent funds to pay for reviews; and, therefore, the Applicant becomes directly
221 responsible for it.

222
223 Mr. Martin voiced his concerns over the review from the RCCD and questioned whether or not he will be
224 billed for certain review items that the RCCD already performed for, and billed to, the Conservation
225 Commission. He gave an example of item #4 –“Field Review” - \$380.00. He said that Mr. Cuomo already
226 did a “Field Review” requested by the Conservation Commission.

227
228 Chair Field said that the Board received an estimate that they are relying on its accuracy and, if Mr.
229 Martin has a question or issue with it, he may take up the matter with the Town.

230
231 Mr. Lagassa asked if the Applicant could participate in negotiations with the RCCD regarding Mr.
232 Martins’ concerns with the review.

233

ZBA Meeting Minutes

234 Chair Field said that the ZBA is requesting an independent analysis from RCCD, and Applicant
235 participation may compromise such independence.

236
237 Mr. Buber said that Mr. Martin has a valid point and agrees that his concerns about being double billed
238 on a particular line item should be resolved before he signs off on a “carte blanche cheque”.

239
240 Chair Field, indicated that this is a case of first impression, but that he thought Mr. Martin would most
241 likely have to speak with the person in Town fulfilling the Town Administrator’s responsibilities. Chair
242 Field said that the Board is asking an independent group of professionals to advise the Board on
243 technical matters; the Board does not know how many people will be assigned to the review or what
244 their process will be. The Board is looking for a letter from RCCD that the Applicant’s proposed solutions
245 are sound from an engineering perspective, and then the Board will review it and come to a “final”
246 decision.

247
248 Chair Field said that the Board, by State statute, has jurisdiction to request technical review, paid for by
249 the Applicant; how the review is done and how the professionals act or how the Town deals with a
250 payment on it from Mr. Martin is not, in his opinion, within the ZBA’s jurisdiction.

251
252 Mr. Martin asked the Board what he needed to supply to the Board to get approval.

253
254 Chair Field said that when the Board gets material back from the RCCD, it is the Chair’s intention that
255 there will be, if the Board concurs, a “final public hearing” to deal with the review and to deal with the
256 “technical review”, and, the objections made by the Abutters and by Ms. Wilson, and at that time Mr.
257 Martin, and/or his counsel, will have the opportunity to rebut such information.

258
259 At the conclusion of the dialog, the Board took a formal Vote to continue Mr. Martin’s Case #2012:03 to
260 the September 25, 2012, Meeting.

261
262 **Mr. Buber Moved, and Mr. Landman Seconded, the Motion to continue Case #2012:03 – Glenn Martin**
263 **to the September 25, 2012 Meeting.**
264 **The Vote was unanimous in Favor of the Motion (5-0).**

265
266 **New Business:**

267
268 **1. #2012:06 – Property Owner: Golden K’s LLC, 63 Atlantic Avenue, North Hampton, NH 03862.**
269 **Applicant: Same as Owner; Property location 63 Atlantic Avenue; M/L 005-038-000; Zoning District:**
270 **R-2. The Applicant submits an Appeal of an Administrative Officer. An Appeal from the June 5, 2012**
271 **Planning Board Decision that ZBA relief is needed to subdivide a 7+/- acre parcel, of which 3 +/- acres**
272 **is used commercially into one (1) commercial 3 +/- acre lot and two (2) 2+/- acre residential lots.**

273
274 In attendance for this application:
275 Attorney Timothy Phoenix, Applicant’s Counsel
276 Guy Marshall, Owner/Applicant
277 Eric Weinrieb, Altus Engineering
278 James Verra, LS, Verra & Associates

279

ZBA Meeting Minutes

280 Chair Field asked the Applicant whether or not he was aware that there have been a number of
281 administrative matters relating to the subject premises, and related premises, before the Board and
282 Planning Board in the past. He referred to a previous ZBA ruling limiting the number of employees and
283 asked the Applicant if he was in conformance with all conditions of the relief that has been granted by
284 the Board in the past. He referred to the July 7, 1997, Planning Board Minutes and quoted from them,
285 "Got a variance from the ZBA for non-conforming lot. Parking across street for 16 and out back for 8.
286 Plan for 9 full time office people (now 6). BI said the septic system is in question as to location and size."
287 Chair Field asked the Applicant where the employees once located across the street and in Portsmouth
288 are now located?
289

290 Chair Field was then alerted to the fact that Member Fullerton should be reseated.
291 Chair Field, thanked and dismissed Alternate Williams, and reseated Mr. Fullerton.
292

293 Chair Field referred to Section 6.B.3 of the Board's Rules of Procedure and quoted, "All prior actions by
294 the Board shall be cited and copies of decisions or orders attached. Relief cannot be granted by the
295 Board unless specifically requested. Except for good cause shown, the Board will not normally grant
296 relief unless the Applicant is in substantial compliance with all prior grants of relief, and/or conditions
297 attached thereto, affecting the subject parcel; and, further, demonstrates to the satisfaction of the
298 Board that all taxes assessments or fees due or owing to the Town have been timely paid."
299

300 Attorney Phoenix said that to the best of his knowledge, the Applicant is in compliance with all prior
301 relief granted by the Boards. He said he doesn't know how to prove the negative.
302

303 Discussion ensued on whether or not the Applicant was in "substantial" compliance with prior Board
304 relief. Chair Field said that Lamprey Brothers has run an excellent business for years. The Business is
305 located in a Residential zone, but the business once had a lot of space around it and it is now condensed
306 into a smaller lot and the Applicant is proposing to create two (2) house lots which appears, on the
307 surface, to make the non-conforming use more conforming. Chair Field asked if the Board should be
308 considering the Case if there is a question of whether or not the business is in conformance, or should
309 the Board consider granting the Applicant a waiver to the Rule and allow them to present the Case.
310

311 Mr. Marshall said that Lamprey Brothers business was once twice the size as it is today. Chair Field
312 made the comment that, if such was the case, the business must have been in violation at that time.
313

314 Mr. Marshall said that nothing has changed since the last relief was granted in 2002 allowing the
315 construction of a very large truck garage across the street. Mr. Marshall said that he has 21 employees
316 and only 11 of the 21 report to the Office (inside employees).
317

318 Mr. Buber quoted a section from the ZBA meeting minutes dated June 11, 1997 regarding Case #97:18 –
319 Lamprey Brothers, "There are 7 employees now and could expand to 10." The Chair, Mike Iafolla, wrote
320 the Decision letter, "a permit be issued for interior work and that the employees be capped at 13".
321 There was no mention of "inside" or "outside" employees. Mr. Buber, who advised that he resided in
322 the general neighborhood, said that he has personally witnessed a tremendous expansion over the
323 years.
324

325 Mr. Marshall explained that Lamprey Brothers had two operations and in 1997 they closed the
326 Portsmouth Office and moved everything to the North Hampton Office. He stated that there have never
327 been more than 13 employees that report to that office and he currently has 11 employees. The

ZBA Meeting Minutes

328 technicians and drivers do not report to the office; they have 7 trucks and 5 drivers; many “parts” are
329 delivered right to the job site.

330

331 Mr. Fullerton referred to the July 7, 1997 Planning Board Minutes and said there was a contradiction in
332 the number of employees between the Planning Board and the Zoning Board. The ZBA’s decision letter
333 states the employees capped at 13 and doesn’t provide whether or not it’s “inside” employees, but the
334 Planning Board minutes state that “Plan for 9 full time office people (now 6)”.

335

336 Mr. Lagassa said something to the effect that he did not understand why the Board was treating the
337 Applicant in such a manner and further suggested that somehow the Board is holding a hearing to
338 enforce past zoning decisions. The Applicant is before the Board requesting a zoning variance. He
339 suggested that the Board let the Applicant present the Case he has applied for.

340

341 Mr. Lagassa made a Motion to move forward with the Hearing and stop all the “bickering” about
342 whether or not they’re in violation of their current permits and zoning variances, and allow them to
343 make their presentation.

344

345 Chair Field commented regarding Mr. Lagassa’s Motion, that he assumed Mr. Lagassa was willing to
346 overlook, and/or accept, as a procedural matter what might present an obstacle under the Board’s Rules
347 of Procedure. He stated that, pursuant to the Rule, the Board is not supposed to hear the case unless an
348 Applicant is in compliance. He asked if Mr. Lagassa wanted to waive that particular Rule.

349

350 Mr. Lagassa asked the Chair not to make any assumptions, and did not want to waive the Rule. Mr.
351 Lagassa said that the Chair is making the assumption that the Applicant is out of compliance, and asked
352 if the Board has received any evidence or complaints suggesting that the Applicant is not in compliance.

353

354 It was determined that the Board had not receive any outside evidence or a complaint suggesting the
355 Applicant was not in compliance with prior Board Actions; however, Members of the Board as a
356 consequence of personal observation and knowledge of prior administrative decisions/relief, believed
357 that the possibility existed.

358

359 Chair Field said that the issue is whether or not the Applicant has conformed with the terms and
360 conditions of the Zoning relief which has been previously granted.

361

362 Mr. Fullerton, again referred to the July 7, 1997 Planning Board minutes and said that they were
363 approved for virtually what they currently have; number of employees working inside.

364

365 There was no Second to the Motion. The Motion failed.

366

367 Chair Field said that, included with the Application, was a history of Zoning and Planning approvals; it
368 has been observed that there are inconsistent numbers between the two (2) Boards. Chair Field asked
369 the Applicant if he was in conformance with the number of employees that meet the past variance
370 approvals.

371

372 Mr. Marshall said that he believed that they are in conformance.

373

374 Chair Field said his concern is that at least four (4) sites have been consolidated onto the site the
375 business is operating on now. He said there has been no evidence presented, other than that gleaned

376 through the Application process, that the Applicant is not in conformance, but, until a moment before,
377 there has not been an affirmative representation made that the Applicant is in conformance.

378
379 Mr. Buber addressed Mr. Lagassa's concerns. He said that there is a "hurdle" the Board has to get over
380 and that there may be the potential that the current Lamprey Energy operation was noncompliant with
381 the prior variance, and pursuant to the Board's Rules of Procedure, the Board has to "clear" that
382 "hurdle". He said that he did not receive any complaint, it's just observations based on the volume of
383 traffic coming in and out, and the question on the amount of employees there are. He said that a single
384 word could have been omitted in the past Variance approval, such as "office" in front of the word
385 employees capped at 13.

386
387 Mr. Don Lamprey said that he applied for the variance the Board is referring to back in 1997 and said
388 that the "13 employees" were "office" employees; the number was determined because of the concerns
389 of the size of the septic system. He said there was never anyone working across the street; the
390 consolidation of the Portsmouth operation and the North Hampton operation did not increase the
391 amount of "office" employees.

392
393 Mr. Marshall said that there are eleven (11) employees that include one part-time employee and a
394 salesman that is not there very often.

395
396 Chair Field, granting as favorable an interpretation to the evidence and testimony as possible, then
397 declared that the Applicant minimally satisfied the predicate of the Board's Rule. However, in general
398 and in the future, applicants must be informed that predicate Rules will apply on cases that have
399 received prior Board approvals and/or relief

400
401 Attorney Phoenix explained that the Applicant applied to the Planning Board for a subdivision of his
402 property to convert the seven (7) acres located on 63 Atlantic Avenue into three (3) lots; three (3) acres
403 will house the Marshall homestead and Lamprey Energy Business and the back four (4) acres, fronting
404 Chapel Road will be subdivided into two (2) acre residential lots. The Applicant is before the ZBA as a
405 result of the Planning Board's decision that subdividing the two (2) residential lots from the overall
406 seven (7) acres constitutes a change of "use" requiring relief from Section 501.2 of the Zoning
407 Ordinances.

408
409 **Article V, Section 501.2 (effective 3/1968). A nonconforming use may be continued but may not be**
410 **extended, expanded or changed unless to a conforming use, except as permitted by the Board of**
411 **Adjustment in accordance with the provisions of this Ordinance.**

412
413 Attorney Phoenix explained that his Client feels that relief from the ZBA is not required because the
414 business "use" is not extended, expanded or changed and will remain upon three (3) acres that is 150%
415 of the required two (2) acres and the remaining four (4) acres are not "used" for the business and will
416 become conforming, single-family residential lots.

417
418 Attorney Phoenix read the definition of "non-conforming use" into the record, *any use or arrangement*
419 *of structures or land legally existing at the time of the enactment of this ordinance or any of its*
420 *amendments, which does not conform to the provisions of this ordinance.* He said the actual "use" is
421 non-conforming, and that is not changing.

422

ZBA Meeting Minutes

423 Attorney Phoenix referred to Hampton v. Brust, 122 N.H. 463 (1982) at 429. The key for determining
424 whether there is an expansion of use, is whether additional space is required for the use and whether it
425 would have a substantial effect on the neighborhood. The owner was allowed to add more machines in
426 the same space but not move into the adjacent room.

427
428 Attorney Phoenix referred to Isabelle v. Town of Newbury, 114 N.H. 399 (1974). The Court ruled that
429 changing the business-use lot size is permitted as long as the change does “not render the premises
430 proportionally less adequate”.

431
432 Attorney Phoenix summarized by saying that the subdivision proposal makes the land and its future use
433 more conforming to the requirements of the North Hampton’s Zoning Ordinance. The continued
434 nonconformity is the business use of the front three (3) acres; the structures on the property and the
435 nature of the business use in that area will not change. He said that the fact that the lot, where the
436 business operates, is proposed to be smaller doesn’t constitute a change or expansion of the
437 nonconforming use, because the lot meets the dimensional requirements of the ordinance.

438
439 Attorney Phoenix submitted a letter into the record from Dr. Chaikin, whose residential property directly
440 abuts the subject property, stating that he has no objection to the proposal from Mr. Marshall.

441
442 Attorney Phoenix submitted a letter from the North Hampton Director of Public Works, John Hubbard,
443 regarding the driveway application. Mr. Hubbard made suggestions on how the driveways should be
444 designed. (He commented that the driveways were more of a Planning Board issue).

445
446 Attorney Phoenix went over the plans with Board and explained the different parcels surrounding 63
447 Atlantic Avenue.

448
449 Chair Field said that the Lamprey Brothers was once a big business that encompassed a large parcel of
450 land around, and included, the subject parcel. He said, based on the history submitted with the
451 Application, businesses were operating on both sides of Atlantic Avenue and asked how such “uses” got
452 converted to residential without approved variances. He said that, based on Section 501.2 he had a hard
453 time understanding how the existing business is in conformance with the Zoning Ordinances.

454
455 Attorney Phoenix referred to the plan and said that at one time Lamprey Brothers owned a lot of the
456 surrounding land and had a truck garage across the street and harvested wood. He said in 2000 the
457 Planning Board approved a lot line adjustment to remove five (5) of the seven (7) acres where the truck
458 garage was located. He said the business operated there to the extent that the oil trucks were parked
459 there. He said the lot line adjustment was granted without a variance to Section 501.2, and that set a
460 precedent.

461
462 Chair Field said that a lot of the “operations” have been absorbed by the lot in question, and the Board
463 has had “observation”, Member Buber being just one individual who has brought it to the Board’s
464 attention, that in his opinion there is more business at 63 Atlantic Ave. The Chair said that making it
465 smaller is a “change” to the business.

466
467 Attorney Phoenix said that he does not agree that it is a change to a non-conforming use as defined in
468 the Zoning Ordinances. He said that one of the large parcels of land that was once owned by Lamprey
469 Brothers was put into conservation land and “nobody” stopped that from happening. He said that it is

ZBA Meeting Minutes

470 inappropriate for this Board to go back 20 or 30 years and make sure that someone else in charge
471 dotted every "l" and crossed every "t".

472
473 Mr. Buber said his wife grew up in the house they now live in at 4 Maple Road and said that she never
474 remembers the land across the street from 63 Atlantic Avenue ever being used commercially by
475 Lamprey Brothers; it currently has a conservation easement on it. He went over the colored map with
476 Don Lamprey and what it boiled down to was that the Zoning Board had to determine if the Planning
477 Board was correct in their interpretation of Section 501.2 and if the Board agrees then with the Planning
478 Board then they go forward with the Applicant's Variance request.

479
480 Mr. Landman said that the significant part is in the June 5, 2012 Planning Board Minutes and read into
481 the record the following, *Mr. Wilson said that Mr. Phoenix made a good argument, but he disagrees; he*
482 *said that the property was originally a farm and the Lampreys have preserved the look and feel of it as a*
483 *farm partly because it sits on seven (7) acres making the business innocuous in a residential zone. He*
484 *said that subdividing it will make it obvious that it's not a farm and questions whether it will meet the*
485 *variance test for Spirit of the Ordinance or diminution of property value. He said that it is important to*
486 *get a ZBA ruling on the matter.* Mr. Landman said the question to the Board is whether or not they
487 agree with Mr. Wilson's statement.

488
489 Chair Field said that the proposal does change the nature of the area and he personally thinks the
490 Planning Board was correct in sending the Applicant to the Zoning Board. The back acreage serves as a
491 "buffer" to the current business operations.

492
493 Mr. Landman said that the new houses will be abutting the business and may affect the property values
494 of those properties, but they will be buying the lots knowing that they are abutting the business.

495
496 Attorney Phoenix said that that was Mr. Wilson's personal opinion; he has never read in any minutes
497 that relief was granted because the proposal will still look like a "farm". He said the Board needs to
498 determine whether or not the proposal is making it better by subdividing into two (2) additional
499 conforming two (2) acre lots.

500
501 Chair Field opened the meeting to those in "favor" of the proposition that the Planning Board erred in
502 sending this matter to the Zoning Board.

503 There was no public comment.

504
505 Chair Field opened the Meeting to those who wished to offer "neutral" position on the proposition.
506 There was no public comment.

507
508 Chair Field opened the meeting to those "opposed" to the proposition.

509
510 **Jake Parker, representing Alan Williams, who resides at 38 Chapel Road** said that he once owned
511 Parker Surveying and is a licensed Surveyor, Wetlands Scientist and licensed Septic Designer. Mr. Parker
512 referred to the plan and said that there will be a change of use because the trucks will be forced to come
513 in from Chapel road where commercial activity will be travelling down Chapel Road, because the
514 applicant intends to stop using the "shortcut" on 46 Chapel Road. He said there is no safe site distance
515 for the trucks, which will create a safety hazard. He said there is an expansion of use because Lamprey
516 Brothers never sold propane and the current business does. Mr. Parker submitted photographs taken
517 by Mrs. Williams of Chapel Road when flooded and of the adjacent lot (tax map 5, lot 39) showing the

ZBA Meeting Minutes

518 “shortcut” the trucks take. The Chair asked Mrs. Williams to sign and date the copies of the
519 photographs, which she did, and they were entered into the record.

520

521 **Alan Williams, 38 Chapel Road** – said he hears trucks going back and forth all day long from the back
522 four (4) acres, the subject property, regularly.

523

524 Mr. Lagassa asked for clarification from Mr. Parker or Mr. Williams, he wanted to know if “use” of the
525 back four (4) acres is used by virtue of a road or a driveway that comes from the front building to the
526 back and joined with the “coal shed”, and if the four (4) acres are subdivided off, would the trucks be
527 precluded from using the road. He asked if the use of the back land is on that road as opposed to in the
528 “pasture” itself. Mr. Williams said they used the road.

529

530 Discussion ensued on the 1/3 acre lot (Tax Map 5 Lot 39, 46 Chapel Road). Attorney Phoenix said that it
531 is a commercial lot under a separate ownership and is not part of the seven (7) acres and should not be
532 considered by the Board.

533

534 Mr. Marshall said that he owns the majority of the shares of 46 Chapel Road and the 54’ x 24’
535 commercial building was used to store coal and wood, and the trucks currently use the “shortcut”. The
536 lot consists of 1/3 of an acre; a non-conforming lot. Mr. Marshall said that they intend to stop using the
537 “shortcut” as an access way and have noted that on the proposed plan. Mr. Marshall said that they
538 intend to continue using this lot as a commercial lot, but everything is subject to change.

539

540 Chair Field closed the Public Hearing, and began Board deliberations.

541

542 Mr. Landman said that the Planning Board did not make a mistake in their interpretation of the Zoning
543 Ordinance. He said that a change in a non-conforming use will occur because they will be using the
544 access road that connects the two properties; the subject property and the property at 46 Chapel Road.

545

546 Mr. Fullerton said that there were a lot of variables. He said that it was mentioned that because the
547 Lamprey Energy building sits on an ample chunk of land that it lends itself more to the vernacular of the
548 farm house, he said that if the Applicant wanted he could plant a hedge of arborvitae trees across the
549 back of the building so he doesn’t find that to be compelling. He said that he read over the package of
550 information submitted, Section 501.2 and the Planning Board minutes and has a hard time reconciling
551 that subdividing the two lots in the back is something that the Applicant needs to come to the ZBA to
552 get approval for. He agreed that there are significant questions regarding the “coal shed” building but
553 the Board is not asked to look at that; the only thing the ZBA was asked to look at was if the Board felt
554 the Planning Board’s decision to send the Applicant to the ZBA under Section 501.2 was in error.

555

556 Mr. Lagassa said it is currently a “non-conforming “use but will not be made more non-conforming by
557 virtue of making the conclusion that the Planning Board erred. He said he agreed with Mr. Fullerton and
558 felt the Planning Board went further than they needed to.

559

560 Mr. Buber said his issue with Section 501.2 is that he does not think it is clear. *A Non-conforming Use*
561 *may be continued but may not be extended, expanded, or changed unless to a conforming use...* He
562 questioned whether that meant that a non-conforming use could be subdivided in part where one
563 portion remains a non-conforming use and the other portion becomes a conforming use or does the
564 entire seven (7) acres need to be changed to conforming before the subdivision is allowed. It was in his

ZBA Meeting Minutes

565 opinion that the intent of Section 501.2 was that the entire parcel would need to be conforming. He said
566 the Planning Board acted correctly by directing the Applicant to go before the ZBA for a change.

567
568 Chair Field said the Planning Board is “spot on”. He said that he is of the opinion that the Planning Board
569 did not err, and it properly referred the Case to the ZBA.

570
571 Mr. Landman said that he agreed with Mr. Buber that the entire parcel would need to be conforming
572 and it is not being changed to conforming.

573
574 Mr. Lagassa said that the proposed change does not increase the non-conformity; he said that in his
575 opinion a change per se shouldn’t automatically trigger ZBA review.

576
577 Chair Field said that he thinks the proposal is a material change; he said he finds a concentration to the
578 detriment of other land owners in the area.

579
580 Mr. Lagassa said that that is not what the Board is being asked. The Board is not being asked whether
581 it’s detrimental to the area landowners or whether or not it violates the Zoning Ordinance.

582
583 **Mr. Buber Moved, and Mr. Landman Seconded, the Motion that the Planning Board’s Decision to send**
584 **the Applicant to the ZBA pursuant to Section 501.2 be supported.**
585 **The Vote passed in Favor of the Motion (3 in Favor, 2 Opposed and 0 Abstentions). Mr. Lagassa and**
586 **Mr. Fullerton were Opposed.**

587
588 Chair Field called for a five (5) minute recess at 8:51 p.m.
589 Chair Field reconvened the Meeting.

590
591 At the suggestion of Member Lagassa, Chair Field referred to the Board’s Rules of Procedure and stated
592 that the Board may not begin with a new Case after 9:30 p.m. It was 9:00 p.m. and Attorney Phoenix
593 said that it would take him approximately ten (10) minutes to present his second, but directly related,
594 case.

595
596 **2. 2012:07 – Property Owner: Golden K’s LLC, 63 Atlantic Avenue, North Hampton, NH 03862.**
597 **Applicant: Same as Owner; Property location 63 Atlantic Avenue; M/L 005-038-000; Zoning District:**
598 **R-2.** The Applicant requests a Variance from Article V., Section 501.2 – a non-conforming use may be
599 continued but may not be extended, expanded or changed, unless to a conforming use. The Applicant
600 seeks relief to convert a 7 +/- acre parcel, upon three (3) of which is operated by Lamprey Energy, as a
601 prior non-conforming use, to a three (3) acre lot holding Lamprey Energy and two (2) conforming 2 +/-
602 acre residential lots.

603
604 In attendance for this application:
605 Attorney Timothy Phoenix, Applicant’s Counsel
606 Guy Marshall, Owner/Applicant
607 Eric Weinrieb, Altus Engineering
608 James Verra, LS, Verra & Associates

609
610 Attorney Phoenix made the following preliminary comments. In regards to Mr. Buber’s concerns about
611 whether the entire parcel has to be conforming or not, he said that the Planning Board made that
612 decision by allowing past subdivisions of the Lamprey property. He posed the question: “what if it were

613 three (3) acres on four thousand (4,000) acres, would the entire 4,000 acres need to be changed?" He
614 said the Board has to "stop" at what the ordinance says; the Applicant has twice the acreage that is
615 required.

616

617 Chair Field told Attorney Phoenix that he would be receiving a Decision Letter on the previous case and
618 reminded him of his appeal rights.

619

620 Attorney Phoenix, advised the Board of his written arguments included with the Filing Materials, and
621 then proceeded to address the five (5) variance criteria:

622

623 He referred to the Court ruling in Superior Court Case Malachy Glen Associates, Inc. v. Town of
624 Chichester. 152 N.H. 102 (2007) that the requirement that the variance not be contrary to the public
625 interest is related to the requirement that the variance be consistent with the spirit of the ordinance.
626 He addressed those two (2) criteria together.

627

628 **1. Would granting this variance be contrary to the "Public Interest" or "Public Safety"?**

629

630 **2. Would granting this variance be consistent with the "Spirit of the Ordinance"?**

631

632 Mr. Buber pointed out that the Variance worksheet submitted with the Application states answers in the
633 affirmative, that the proposal will be contrary to the public interest and will diminish values of
634 surrounding properties.

635

636 Attorney Phoenix said that the questions are usually posed in a different manner and acknowledged his
637 mistakes. He informed the Board that he would fill out a corrected Variance Worksheet and submit it to
638 the Board and Ms. Chase for the record. Chair Field acknowledged the inadvertent procedural misstep,
639 and, suggested that Attorney Phoenix proceed as if the material had been "filed" correctly.

640

641 Attorney Phoenix said that it is in the public's interest and thus the spirit of the ordinance to permit a
642 property owner the reasonable use of its own property. There is a seven (7) acre parcel, residentially
643 zoned, that will be subdivided such that the business remains located on over three (3) acres while the
644 remaining four (4) acres will be removed from possible future commercial use and converted to
645 conforming residential lots. The business will operate on a remaining lot that is 150% of the required lot
646 size and was not operated on the remaining four (4) acres to be subdivided for residential lots; and
647 where the size and intensity of the business operations as well as the buildings in which the business is
648 operated will not change, there is simply no harm to the health, safety or general welfare to the
649 community. He said the Town has decided that a two (2) acre lot is sufficient for commercial use; they
650 have three (3) acres making it in compliance with the Spirit of the Ordinance and Public Interest. He
651 referred to Malachy Glen Associates, Inc. v. Town of Chichester, "the variance must unduly and in a
652 marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives."
653 The applicant intends to make the back acres residential; making them in compliance with the locality,
654 so converting the back acres into residential lots will not alter the essential character of the locality or
655 threaten the public health, safety or welfare.

656

657 **3. Would granting this variance result in "Diminution of Values" of surrounding properties?**

658

659 Attorney Phoenix said that the nearest neighbor is Dr. Chaikin and he wrote a letter to the Board stating
660 that he had no objections to the proposal. He said that he fails to see how two (2) houses built on
661 residentially zoned land would diminish surrounding property values.

662
663 **4. Would literal enforcement of the provisions of the ordinance result in an “Unnecessary Hardship”?**

664 **a. Special conditions exist which distinguish the property/project from others in the area.**

665
666 Attorney Phoenix said that it is a unique lot because it is a residentially zoned lot with a commercial
667 business on it. The lot is 350% larger than required for commercial or residential use in the whole of
668 North Hampton. Other similarly situated lots in the area do not share these conditions.

669
670 **b. No fair and substantial relationship exists between the general public purposes of the ordinance
671 and its specific application in this instance.**

672
673 Attorney Phoenix said that nothing will change with the operation of the business. There is no reason to
674 require that all seven (7) acres to be utilized for the business because they intend to make four (4) of
675 those acres a conforming use.

676
677 **c. The proposed use is reasonable.**

678
679 Attorney Phoenix said that they want to create two (2) residential lots and allow the commercial use to
680 remain on a lot 150% times greater than what is required.

681
682 **5. Would “Substantial justice” be done by granting this variance?**

683
684 Attorney Phoenix said that it is substantially just to allow a property owner the reasonable use of its
685 own property. He said converting land that could potentially be used for more business operations to
686 residential lots is substantially just, and to not allow the current commercial business to continue to
687 operate on a lot 150% larger than required is unjust.

688
689 Mr. Buber said that the whole area is like a “farm-like” setting. He referred to *Malachy Glen Associates,
690 Inc v. Town of Chichester*, “One way to ascertain whether granting the variance would violate basic
691 zoning objectives is to examine whether it would alter the essential character of the locality”. Mr. Buber
692 said, as a resident of that area, in his view, it would substantially alter the essential characteristics of the
693 locality. He said that he is not denying a property owner their rights but there are other options, such as,
694 leaving it as it exists now, or putting a conservation easement on it. Mr. Buber said that he has issues
695 with the property at 46 Chapel Road and said that there is an illegal scrap metal business being
696 conducted on that lot. There is a trailer parked there that has the words Berwick Iron and Metal on it.
697 He said trucks and bucket loaders are going down the “pathway” every day. He said he is concerned
698 with the corner lot and thinks it’s being used illegally. He said that isn’t what the Board is here to
699 discuss; it is the proposed subdivision. Mr. Buber was also concerned with the fact that not one bit of
700 expert testimony was presented that dealt with the variance criterion on diminished property values.
701 There is no expert testimony that states that the change will not diminish surrounding property values.

702
703 Mr. Landman said that by eliminating the use of the access road it will change the use of the lot with the
704 1/3 of an acre. He agreed with Mr. Buber that they need more information regarding the diminution of
705 value on surrounding properties.

706

ZBA Meeting Minutes

707 Mr. Lagassa said he lives on Maple Road and said that the pasture is a beautiful piece of property and
708 enhances the value of the neighborhood, but two (2) new houses may enhance the value of the
709 neighborhood too and there is no way to prejudge that. He said that he doesn't see where the proposal
710 violates the Spirit of the Ordinance.

711
712 Mr. Lagassa asked if Mr. Marshall would consider modifying the nature of the subdivision by eliminating
713 the 1/3 acre lot and incorporating it into the proposed subject lots.

714
715 Attorney Phoenix said that he just discussed that with his Client and Mr. Marshall said he would
716 consider adding the 1/3 acre corner lot to the proposed lots and eliminate its commercial use.

717
718 Attorney Phoenix said that he did not have an expert witness with him to address the diminution of
719 surrounding property values. He believed that it would not be necessary.

720
721 Chair Field opened the Meeting to those in "Favor" of the proposal. There was no public comment.

722
723 Chair Field opened the Meeting to those "Neutral" to the proposal. There was no public comment.

724
725 Chair Field opened the Meeting to those "Against" the proposal.

726
727 Mr. Jake Parker, who had been properly introduced in the preceding Case, spoke on behalf of Alan
728 Williams, an abutter to the subject property and said that the current commercial use acts as a buffer
729 and to develop the back lot with residential houses will negatively affect Mr. Williams' property values;
730 at one time the Lamprey's installed a drainage ditch onto Mr. Williams' property before Mr. Williams
731 owned it and never got an easement. He said that it was in his opinion that if the back lots are
732 developed it will negatively affect the drainage on Mr. Williams' property. He said the runoff is bad
733 enough and adding two houses will add a lot of impervious surface that will increase the water runoff
734 onto the Williams' property. He submitted copies of pictures of Chapel Road, flooded, and pictures of
735 the Lamprey site into the record, Mrs. Williams had taken the pictures and the Chair asked that she date
736 and sign them, which she did. Ms. Chase will make copies for the Board Members that wanted a copy.

737
738 Mr. Weinrieb said that Mr. Parker was not a licensed hydrologist and that, therefore, his testimony was
739 suspect and should be granted limited credence.

740
741 Chair Field, challenged Mr. Weinrieb's characterization of Mr. Parker's knowledge, and pointed out that
742 Mr. Parker is a licensed surveyor, licensed septic designer and a wetlands scientist, with many years
743 experience, and that the merits of his testimony would be weighed by the Board.

744
745 Mr. Weinrieb said that Mr. Parker is not a licensed hydrologist. He said that he did a high intensity soil
746 survey map (HISS Map) of the property and determined that the runoff water on Chapel Road and Mr.
747 Williams' property is from Cotton Farm Lane where there are no detention ponds. He certified that as
748 far as stormwater runoff is concerned adding the two proposed houses will have no impact on the
749 surrounding properties. He said that the flooding on Chapel Road is an existing condition, and until the
750 Town does something about it, it will remain the same. He said that it is a Planning Board issue and that
751 they have been issued a wetlands permit on July 10, 2012. He said that the Applicant meets all the
752 Planning Board and Zoning Board requirements and referred the Board to Sheet C2 of the Plan set.

753

ZBA Meeting Minutes

754 Attorney Phoenix said that the Board should consider that it's not what the Board thinks the proposal
755 "looks like" it's whether issuing the variance would alter the essential character of the area. He said that
756 it's not fair to say that two houses can't be built in a permitted area because they don't like the look of
757 them. He said that the non-conforming use on the property is not changing at all and the back section
758 of the lot will become conforming. He submitted that the Board use its own understanding of the site,
759 as far a diminished value is concerned, and consider leaving the business on a site that is 150% greater
760 than what is allowed. There being no further testimony in "opposition", Chair Field closed the Public
761 Hearing.

762
763 Discussion ensued within the Board regarding the fact that the Applicant would be willing to incorporate
764 the 1/3 acre corner lot, Tax Map 5, Lot 39, into the subject lot, Tax Map 5, lot 38 and eliminate the
765 commercial use on the 1/3 acre lot. The Board considered continuing the Meeting to the next month so
766 that the Applicant could come back to the Board with more information on valuation and to allow RCCD
767 to review the drainage plans submitted by Mr. Weinrieb, and report back to the Board.

768
769 Mr. Buber said that he did not want it to be perceived that the ZBA was trampling on the "turf", so
770 called, of the Planning Board, but did add that the ZBA is obligated to protect the Public's health, safety,
771 and welfare.

772
773 Attorney Phoenix said that the ZBA is deciding whether or not the Applicant has permission to apply to
774 the Planning Board for a subdivision. He informed the Board that his client just agreed to reduce his
775 proposal from a three (3) lot subdivision to a two (2)-lot subdivision and to incorporate the 1/3 acre
776 corner lot into the four (4) acres and permanently cease commercial operations on the 1/3 acre lot (Tax
777 Map 5, Lot 39).

778
779 Mr. Marshall explained that there is no scrap metal business operation at the 1/3 acre lot. What Mr.
780 Buber is hearing is that when they dispose the oil tanks they cut them in half and clean out the residuals,
781 and once cleaned they get put in the metal bucket. He said he would move that operation to the current
782 business at (Tax Map 5, Lot 38).

783
784 Mr. Buber said that it is still an illegal transfer station. He said that he Town recently passed a Junk Yard
785 Ordinance and suggested Mr. Marshall read it.

786
787 Mr. Marshall said that the ceasing the commercial operation on the 1/3 acre lot and adding it to the
788 proposed back lot of four (4) acres will only enhance the property. He said he would not commit to
789 tearing down the garage that currently exists on the 1/3 acre.

790
791 **Mr. Landman Moved, and Mr. Fullerton Seconded, the Motion to approve the Variance for (1.) a two
792 (2) lot subdivision with the primary commercial lot being as it is shown on the Plan as Lot #1, 3.017
793 acres, and the second lot being a combination/merger of the proposed two (2) lots along Chapel Road
794 with the 1/3 acre lot, Tax Map 5, Lot 39; (2.) the construction of just one (1) residential dwelling; and,
795 (3.) to cease industrial/commercial/and/or the business use of, and cause the permanent termination
796 of business/commercial/and/or industrial use on, such lot forever.**

797 **The Vote was Unanimous in Favor of the Motion (5-0).**

798
799 ***Secretary's Note: Following the Meeting, Applicant's counsel provided the Administrative Assistant
800 with updated descriptions of the revised two (2) lot "sub-division" configuration, for use with the
801 preparation of the Decision Letter.***

802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834

Mr. Buber asked the Applicant to confirm that the commercial operation will cease to exist on the 1/3 acre lot as proposed. The Applicant confirmed that to be true.

Chair Field reminded all present of the Thirty (30) days appeal period. Chair Field inquired of Mr. Buber as to his availability to assist in crafting the "Decision Letter, given his familiarity with the parcel in issue. Mr. Buber stated that he would be out of Town for a few days, and wondered if such a delay would be acceptable to the Applicant. Attorney Phoenix stated that he had no objection to a "delayed" Decision Letter.

Other Business:

Chair Field reported on the Barr-Moran (Beach Plum) Superior Court Case which he had attended. He said the Case was continued by the Judge and will be heard September 26, 2012, to allow for Planning Board action; however, the Applicant doesn't yet have the owner's signature, which is necessary to go forward with the Planning Board Case.

Chair Field informed the Board that the Planning Board is conducting Visioning Sessions to get input for work they are doing on the Town's Master Plan. They will be held on September 29, 2012 and October 6, 2012 at the Town Hall from 12:00 p.m. to 3:00 p.m. Members and Alternates were invited to attend as they wished.

**Mr. Buber Moved, and Mr. Landman Seconded, the Motion to adjourn the Meeting at 10:40 p.m.
The Vote was Unanimous in Favor of the Motion (5-0).**

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved September 25, 2012