



SPECIAL SESSION MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
August 13, 2003

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, August 13, 2003 for a work session meeting at the North Hampton Town Office Conference. Notice of the meeting had been properly posted at the Library and Old Town Offices on August 6, 2003.

Attendance

Present: (1) John Anthony Simmons, Chairman; (2) Mark Johnson, Vice-Chairman; (3) Ted Turchan; (4) Richard Luff; (5) Robert B. Fields, Jr., (6) Jennifer Lerner, Alternate and (7) Ken Worrell, Alternate.

Alternates Absent: (1) Dick Wollmar, Sam Checovich and John Woodworth, Alternate.

Staff Present: Richard Mabey, Building Inspector; Krystina Deren Arrain, Planning and Zoning Administrator/Recording Secretary.

Mr. Simmons called the meeting to order at 7:03 PM declaring a quorum for the meeting and asked Ms. Arrain for a report on the posting. She reported that the notice was posted in two public places, the Library and Old Town Office/Town Clerk on August 6, 2003. Mr. Field challenged the legality of the posting and requested that Ms. Arrain sign a note claiming it was properly posted. Mr. Simmons responded to Mr. Fields statement that according to the NHMA a legal posting for this meeting includes a 24-hour notice and posting in two public locations.

The meeting recessed at 7:10 PM for the Board to read the NHMA response to Mr. Simmons meeting posting requirements from NHMA.

The meeting reconvened at 7:15 PM.

Mr. Field moved and Mr. Turchan seconded the motion establish a 7-day notice rule on special meetings with the exception of a declared emergency as defined in RSA 91-A:2 II. The vote was 4-0. Mr. Simmons abstained.

Mr. Simmons declared a properly noticed meeting.

Rules of Procedure

Mr. Simmons opened discussion referring to the proposed and updated version of the Rules of Procedure that had been distributed to Board members. Mr. Field stated that perhaps too many rules could be restrictive and more open to challenge. He noted that current rules are efficient. Mr. Simmons commented that the Board does not currently follow the rules in detail. He noted that in preparation for updating the rules, he reviewed rules of procedure for North Hampton Planning Board, Stratham Planning Board, Bow ZBA, Hampton ZBA and notations from Barbara Laughman, NHMA. He added that he incorporated many rules from the Bow and Hampton ZBA in the version

currently before the Board for discussion. Mr. Simmons stated that he felt it was important to review the document and seriously consider the issues. He expects that there may be other drafts as the Board works through the document. There was a lengthy discussion about the need for setting rules for a joint meeting. No rules were defined and discussion continued on the rules of procedure.

Discussion on Updating (1) Rules of Procedure and (2) ZBA Forms

Discussion on the updating of the rules of procedure proceeded. Mr. Field, addressed Item II.D. and stated that he strongly believed the Chairman should edit the Recording Secretary draft minutes before the draft minutes are distributed to remaining Board members. Mr. Simmons strongly opposed Mr. Field's recommendation. He believed that the draft minutes as prepared by the Recording Secretary are very adequate and legally sufficient and that the Board has the option to amend as needed. Mr. Simmons added that a diskette containing the draft minutes' file could be made available to any Board member for suggested amendments.

The section of Item IV. A. that referred to the process/meeting schedule for hearing a large number of petitions, was discussed intently. In a month when the Board received a very large number of applications, Mr. Simmons felt it would be fairer to applicants if they knew in advance they would be heard at a subsequent meeting. The majority of the Board members preferred to maintain flexibility and decide on each individual situation, how to manage an overflow of petitions in a particular month.

Board members were amenable to relocating the ZBA monthly meeting to the Mary Herbert Room at 233 Atlantic Avenue from the Town Hall.

Item V. A. #7 prompted Mr. Field's comment that he never heard of ordering minutes to the end of the procedure and questioned the appropriateness of such a change. Mr. Simmons noted that the ordering is not illegal. Mr. Field further added that the minutes reflect activity that is being heard currently.

A long discussion of the Planning & Zoning Administrator making copies of audio tapes for applicants/general public ensued. Both Messrs. Simmons and Field expressed grave concerns that the Town could be in potential jeopardy with this policy. Mr. Field added that Town Attorney Ryan had informed him that the Town providing audio tape copies is unadvisable. Ms. Arrain commented that she makes copies of audio tapes on request because the current recording equipment is not adequate for requestors to make their own copies. Allowing a requestor access to the audio recording device and audio record poses a security problem – an audio tape could be altered mistakenly. As a result of these restrictions and conditions, Ms. Arrain believes she has no other choice and maintained that should the audio quality of an audio copy ever be in question, the requestor could make a copy in her presence. Ms. Arrain noted that Town Attorney Ryan indicated to her that making copies for a requestor is not illegal and that, at most, the Town could be cited for being helpful and cooperative.

Mr. Field raised a question about the judgment/policy for using e-mail for official business. He stated that recent events and legal opinions re-affirm his concerns that the Board should use e-mail communications in a very limited application. He stated e-mail communications are discoverable and able to be used against the Town in potential litigation. Board members took this information under advisement and consideration for future discussion.

Mr. Field noted that should a ZBA member stand for a Town elected position, he believes the ZBA member would be operating under a conflict of interest. Mr. Simmons noted that if such a scenario were to exist, he felt the ZBA member or members could recuse themselves from the Board for the two or three months preceding the election.

Mr. Field also expressed concern over the Town Attorney advising several town boards at the same time, citing a possible conflict of interest. He suggested that perhaps this issue should be raised with Mike Pardue, Town Administrator, for resolution or suggested options.

Mr. Field moved and Mr. Turchan seconded the motion to recess the meeting until Wednesday, September 10, 2003 at 7 PM.

The vote was 5-0.

Meeting recessed at 11:30 PM

Meeting reconvened on Wednesday, September 10, 2003 at 7:50 PM

Attendance

Present: (1) John Anthony Simmons, Chairman; (2) Mark Johnson, Vice-Chairman; (3) Richard Luff; (4) Robert B. Fields, Jr., (5) Jennifer Lerner, Alternate was seated for Ted Turchan.

Members and Alternates Absent: (1) Ted Turchan, (2) Dick Wollmar, Alternate (3) Sam Checovich, Alternate and (4) John Woodworth, Alternate.

Staff Present: Richard Mabey, Building Inspector; Krystina Deren Arrain, Planning and Zoning Administrator/Recording Secretary.

Preliminary Matters/General Correspondence

Mr. Luff suggested that the Board set a 10 PM adjournment for the current meeting. Mr. Simmons commented that he thought the meeting would end before that time, but noted a 10 PM adjournment is a good idea.

Resignation of Henry Mixter, North Hampton Conservation Commission

Mr. Simmons read aloud the resignation letter of Henry F. Mixter, Chairman, North Hampton Conservation Commission. Mr. Simmons expressed well wishes to Henry and his wife, Claire. Mr. Simmons noted that Henry will be greatly missed and thanked him for his contributions to the Town of North Hampton.

Mr. Simmons distributed the Town's Code of Ethics emphasizing the need to follow this code during Board meetings and when conducting any type of town business.

ZBA Comments on Zoning Ordinance Update/Comments

Mr. Simmons commented that members should peruse Mr. Krebs'/RPC report dated October 2002 on suggested updates to North Hampton's Zoning Ordinance. He suggested that Board members could provide valuable inputs to the Planning Board's review of the Town's current ordinance.

Mr. Simmons made reference to his draft letter of September 5, 2003 to Mr. Wilson, Planning Board Chairman which was addressed at the September 3, 2003 ZBA meeting. Mr. Field commented that it is inappropriate for the ZBA to communicate with either the Planning Board and/or Mr. Krebs/RPC regarding updates to the zoning ordinance. Mr. Simmons commented that he agreed with the separation of powers between the Planning and Zoning Board. Mr. Simmons thought sharing comments with the Planning Board on a particular ordinance/s was appropriate. Mr. Field noted that it would be appropriate that inputs or comments on ordinances should only be reflected in the ZBA minutes. Mr. Field suggested sending copies of the ZBA minutes to the Planning Board. Discussion ensued among members. At the end of the discussion, Mr. Field's suggestion to incorporate Mr. Simmons draft letter without the address/salutation and unsigned into the minutes was accepted.

Mr. Field moved and Mr. Johnson seconded the motion that Mr. Simmons draft letter was viewed as an important capsule of that which was discussed on September 3, 2003 and is incorporated as an attachment to the minutes of the continuation of the August 10, 2003 meeting.

The vote was unanimous (5-0).

Ms. Lerner left the meeting at 8:30 PM

Availability of August 13, 2003 Draft Minutes

Mr. Field commented that he did not have the opportunity to provide comments to the August 13, 2003 meeting because they were not available according to the law. Mr. Simmons noted that the minutes were prepared within the requisite 144 hours. Mr. Simmons told Ms. Arrain that the minutes should not be distributed because the meeting was a continuation and was not completed. He further explained that perhaps his decision was uninformed and perhaps not correct, in retrospect. Mr. Field commented that he had requested by fax a copy of the minutes on August 28, 2003 for the purpose of responding to Mr. Simmons request to rework some materials. On September 2, 2003 Mr. Field stated he received notification from Ms. Arrain stating the minutes were not available. Mr. Field added that if the minutes were prepared as required by RSA 91:A then he should have been supplied a copy as he requested. Mr. Simmons commented that Mr. Field's comments regarding Ms. Arrain either are or are dangerously close to personnel matters and as such are not the proper subject matter for this public hearing. Mr. Simmons ruled that if Mr. Field has any ongoing concerns with Ms. Arrain that need to be addressed in this regard. Mr. Simmons added that the proper forum in which to raise Mr. Field's concerns is the Board of Selectmen who employs the Recording Secretary or with the Town Administrator. Mr. Field noted his exception to Mr. Simmons' ruling.

Mr. Simmons stated that at the September 17, 2003 meeting, the minutes for July 16, August 13 and September 3, 2003 will be considered. He further added that electronic copies of the minutes are available for edits from Ms. Arrain upon request.

September 3, 2003 Draft Minutes

Mr. Field requested a re-write of the September 3, 2003 minutes. Mr. Simmons noted that he would not allow minutes to be re-written either by himself, Ms. Arrain or any substitutes. Mr. Luff commented that the draft minutes currently contain errors in many instances. Mr. Field cautioned the Board that the minutes might never be adopted if they aren't amended properly. Mr. Simmons

noted that Board members are open to suggest appropriate changes as part of the amendment process.

Mr. Field inquired if electronic communication is now being encouraged and if the recording secretary's drafts are being e-mailed. Mr. Simmons commented that the recording secretary's draft minutes are competent and adequate and Board members are encouraged to suggest amendments, if needed. Mr. Simmons expressed uncertainty regarding Mr. Field's comment about electronic communication. He stated that draft minutes are not e-mailed, but rather that a diskette of draft minutes is available to Board members for the ease of adding his/her amendment suggestions to the draft minutes. These edited copies could then be distributed to the members for consideration during the review of the draft minutes.

Mr. Luff suggested that the review of minutes be moved to the end of the September 17, 2003 meeting. Mr. Field had previously questioned the propriety of this ordering of the minutes review. Mr. Simmons commented that it was appropriate and saw the possibility of partially approving a portion of draft minutes if an upcoming case referenced the minutes. Mr. Field asked Mr. Simmons to check the legality of the action to partially adopt minutes. Mr. Simmons commented that the aforementioned scenario would be addressed when and if such an occasion arose.

Continuation of Rules of Procedure Review

Mr. Simmons distributed his updated version of the Rules of Procedure that reflected the changes made during the August 13, 2003 special session. Mr. Field also provided his inputs to the Rules of Procedure.

The meeting recessed at 8:45 PM.

Mr. Field inquired if the video and audio recorder were recording during the recess. Ms. Arrain commented that the audio recorder is always on record mode because she does not know how to correctly operate it. In the past, when she stopped the recording it would begin to overwrite other recorded portions of the tape. Hence, she has kept the audio recorder running to avoid the overwrite problem. It is her hope that the audio recorder will be replaced sometime in the future. Mr. Field suggested that the members recess to another location.

The meeting reconvened at 8:55 PM.

The members proceeded in their review and edit of the updated Rules of Procedure.

Mr. Field recommended that communication received by the Board be distributed within two (2) business days. He also suggested that applicants should provide the original and ten sets of the application package and/or any communication to the Board. Mr. Field suggested that the Chairman maintain the original communication, stating that it was directed to an individual rather than the Board or the Town. Mr. Simmons did not support the 2-day communication distribution rule stating that the Town staff [Ms. Arrain] satisfactorily distributes ZBA communications. Mr. Field stated that Board is entitled to have information sent to them in a timely fashion and he further stated that in the past that has not always been the case. Mr. Simmons interrupted Mr. Field and ruled him out of order.

Ms. Arrain explained that a week prior to the regular meeting, she mails to Board members the contents of their town mailbox. At the night of the meeting, she hand delivers the contents of each member's town mailbox, if any mail has accumulated within the past week. Correspondence and information is distributed to all Board member's mailbox as soon as possible and is available for pickup during the 8 AM to 4 PM daily Town Office hours. Mr. Simmons requested that Ms. Arrain author a memo to the Board members explaining the distribution process.

Mr. Field commented that e-mail communication shall not be deemed official communication to the Board and its use is discouraged between the applicants and the Board as we as among Board members. Mr. Simmons commented that in a discussion with Pam Schwotzer, Librarian, the Library Conference Room would be available for ZBA meetings.

Mr. Simmons emphasized his strong opinion about the need for a procedure for rescheduling a special meeting when the Board receives a large number of applications. Mr. Johnson stated that this should be the decision of the Chairman. Mr. Simmons suggested a 10 PM meeting deadline. Mr. Field suggested reviewing the history of past meetings' adjournment hour. Mr. Johnson commented that one late night meeting is preferable to multiple ZBA meetings. Mr. Field suggested that no new agenda item be considered after 10:30 PM with a midnight cutoff. Mr. Simmons suggested a 10 PM cutoff with the possibility of the Board's ability to waive that condition.

Mr. Field commented on the Smagula vs. Hooksett case regarding abutters' notices for abutters located in different towns. Mr. Simmons suggested continuing discussions onto the backend of a regular meeting rather than scheduling another special session. Mr. Simmons commented that he would like to review and update ZBA forms at our next opportunity, possibly on the October agenda.

Mr. Simmons commented that Mr. Field's comments are appreciated and cited his knowledge of notice requirements. Mr. Simmons invited Mr. Field to participate in the review of the ZBA agenda and posting to insure that it is managed properly. Mr. Field commented and declined Mr. Simmons offer.

Mr. Johnson moved and Mr. Field seconded the motion to adjourn the meeting.
The vote was unanimous (4-0).

Meeting adjourned at 10:10 PM

Respectfully submitted,

Krystina Deren Arrain
Recording Secretary