



**REGULAR MEETING MINUTES**  
**TOWN OF NORTH HAMPTON**  
**ZONING BOARD OF ADJUSTMENT**  
**October 16, 2003**

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Thursday, October 16, 2003 at the Roberta T. Craig Room, North Hampton Public Library. Notice of the meeting had been properly posted at the Library, Post Office and Old Town Offices/Town Clerk on October 3, 2003 and published in the Herald Sunday/Hampton Union on Sunday, October 5, 2003.

### **Attendance**

**Present:** (1) John Anthony Simmons, Chairman; (2) Mark Johnson, Vice-Chairman; (3) Richard Luff; and (4) Robert B. Field, Jr.

**Members Absent:** Ted Turchan

**Alternate(s) Present:** Ken Worrell

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

Mr. Simmons called the meeting to order at 7:05 PM

Mr. Simmons seated Ken Worrell for Ted Turchan. Mr. Simmons declared a quorum and introduced Board members. Mr. Simmons proceeded to the business of the meeting. He noted that each applicant coming before the Board is entitled to have the application/appeal considered by a Board consisting of five (5) members; although Board action may be taken by a unanimous vote of a quorum of three (3) members.

### **Procedure — Swearing in of Witnesses**

Mr. Simmons explained the standard Rules of Procedure that would be applicable to this meeting to members of the audience. He swore in all persons present who would be giving testimony or presenting comment on matters to be considered by the Board. Mr. Simmons announced that the Recording Secretary would maintain an audio recording of the meeting. Arrangements should be made with the Recording Secretary if an individual is interested in listening to the recording of the meeting procedures. Minutes of the meeting shall be deemed to be "preliminary" in form and unofficial until the Board votes to approve it. The Application For Relief form has several requirements as part of the application filing process. Applicants who are in "non-compliance" with prior orders, findings or decisions of the Board, will, in most instances, have any requests for further relief deferred until full compliance is attained or waived by the Board on a showing of good cause by the applicant.

Mr. Simmons noted that minutes are reviewed after the hearing of case/s, but because Case #2003:26 refers to actions included in the September 3, 2003 meeting, the minutes of that meeting

will be reviewed at the beginning of the meeting.

Mr. Simmons explained that Henry Fuller has withdrawn his application, Case #2003:30. He added that the Conservation Commission decided that the area in question on the Fuller lot is not a wetland but an irrigation pond and ditch and Mr. Fuller did not need a variance. Case 2003:30 was withdrawn as an administrative matter.

Mr. Simmons asked for a report on posting the meeting notice. Ms. Arrain explained that notice had been posted at the Library, Post Office and Old Town Offices/Town Clerk on October 3, 2003. Publication in the October 3, 2003 Hampton Union was mistakenly omitted by Seacoast Newspapers and was published in the Herald Sunday on Sunday, October 5, 2003 for the purpose of meeting the legal requirement of 10-day notice. Ms. Simmons noted that the Herald Sunday is the Sunday version of the Hampton Union and as such the posting was appropriate.

**Mr. Simmons moved and Mr. Luff seconded the motion to publish meeting notices in the Hampton Union and the Herald Sunday.**

*The vote was 4-1 with Mr. Field opposed because he felt publishing in the Hampton Union does not provide enough options for printing. He prefers publishing in the Portsmouth Herald.*

Mr. Field noted that posting in Herald Sunday was not Hampton Union and hence the posting is not legal. Mr. Luff expressed his opinion that Herald Sunday is the Sunday version of the Hampton Union. Ken Worrell agreed noting that Hampton Union subscription includes the Herald Sunday. Mr. Johnson agreed and said the Board had covered legally met its posting obligation. Mr. Field commented that the notation "1tP 10/5" at the bottom of the notice indicated it is the Portsmouth Herald.

### **Review of September 3<sup>rd</sup> Minutes**

Mr. Field indicated that he would vote against these minutes and for every subsequent month's minutes with the comment that the minutes are inadequate and that audio recording is the only adequate, correct record. He was especially dissatisfied with the minutes of September 3, 2003.

**Mr. Simmons moved and Mr. Johnson seconded the motion to adopt the minutes and include a tag line at the end of the minutes stating that reference to the minutes should also refer to the recording to get a correct version of the meeting.**

*The vote was 4-1 with Mr. Field opposed who explained that, in his opinion, RSA 91:A prohibits the reference to the tape as a condition of the accuracy of the minutes.*

## **New Business**

**2003:26 — Request for Rehearing by Craig N. Salomon, 8 Richard Street, Hampton, NH 03842** – Regarding a motion for rehearing for denial of a Special Exception to Article V, Section 507 to permit a law office as a home occupation. Property location: 100 Woodland Road, R-2 zone district, Tax Map #006-099-000.

Mr. Simmons recused himself because he had not been seated at the original hearing. Mr. Johnson assumed the Chair.

Mr. Johnson referred to the Motion for Rehearing as presented by the applicant. Mr. Johnson asked if any new information had been presented that was not presented at the initial meeting. Mr. Field commented that "errors of law" and "new information" would be a legitimate basis for a rehearing. Mr. Field stated that he and the Board may have been unduly influenced by the emotion of the presentations from the audience and upon introspection and further research he felt Mr. Salomon's brief provides strong information for a rehearing. Mr. Field believed the rehearing should be granted. Mr. Luff also supported the case for rehearing. Ken Worrell agreed with Mr. Field's opinion and with the appraisal information as submitted. Mr. Johnson agreed that there is ample reason to rehear the case.

**Mr. Field moved and Mr. Luff seconded the motion to grant the rehearing for Craig Salomon. Vote 4-0. Motion to rehear was granted.**

Mr. Johnson retired from the Chair.  
Mr. Simmons resumed the Chair.

## **Other Business**

### **Final Adoption of Rules of Procedures**

Mr. Simmons noted that Mr. Field had not been able to provide his comments to the latest draft of the Rules of Procedure.

**Mr. Simmons moved and Mr. Johnson seconded the motion to postpone action on the Rules of Procedure until the November 19, 2003 meeting.**

Mr. Field commented that he would distribute his comments to the Board members directly.  
**Vote was unanimous (5-0).**

Mr. Simmons confirmed that joint meeting information from NHOSP Technical Bulletin #5 is still current and Mr. Simmons read Christopher Northrup/NHOSP comments into the record:

*'That technical bulletin is still current as is the section on "Relationship to Other Local Boards." There have been no major cases that would necessitate a change. In just re-reading this section, however, I think we may change the wording of the sentence "There is some confusion regarding whether or not a decision made by the governing body can be appealed to the ZBA." I think it is clear that a decision of the governing body may be appealed to the ZBA only if the decision relates to the governing body's interpretation of the zoning ordinance.'*

### **Ordinance Revision**

Mr. Simmons commented that he had reviewed Mr. Krebs/RPC Circuit Rider' comments dated October 2002. He added that he would submit ordinance comments as a private citizen, not as a representative of the ZBA. Mr. Simmons encouraged board members to submit their own comments to the Planning Board. He added that he would provide board members copies of his

ordinance suggestions and comments.

**Legal Decision Discussion**

Mr. Simmons distributed the slip decision on the Hooksett Conservation Commission v. Hooksett Board of Adjustment Case. Mr. Field commented that this case had been discussed previously. Mr. Simmons indicated that this was good information for the members since it was a timely issue regarding the Planning Board situation of recent times. Mr. Field commented that a difference in the case might exist because an elected board may be viewed differently than an appointed board and the reference might not be appropriate to the Hooksett case. Mr. Johnson asked, based on Mr. Field's premise, whether the Board of Selectmen could overrule a ZBA decision, since the Board of Selectmen appoints ZBA members. Mr. Field said the Board of Selectmen could not.

**Minutes from Prior Meetings**

Mr. Simmons requested that future agendas list the dates of the minutes to be reviewed. All board members were in agreement.

Mr. Field noted that since the August 13, 2003 minutes recognized that the meeting was continued until September 10, 2003, the continued portion of the September meeting should be combined into the August 13, 2003 minutes with the appropriate notation of continuance. He added that the September 10, 2003 minutes should consist of only Case #2003:28 regarding Joseph Kutt/Joe's Meat Shoppe.

**Mr. Simmons moved and Mr. Field seconded the motion to reconstruct the August 13, 2003 minutes as suggested.**

*Vote was unanimous (5-0).*

**Mr. Simmons moved and Mr. Johnson seconded the motion to approve the reconstructed August 13, 2003 minutes.**

*Vote was 4-1 with Mr. Field opposed, stating that the minutes are not accurate and someone relying on an accurate record should listen to the audiotape of the meeting.*

**Mr. Simmons moved and Mr. Field seconded the motion to approve the September 10, 2003 minutes by deleting lines 179 to 236.**

*Vote was 4-1 with Mr. Field opposed, stating that the minutes are not accurate and someone relying on an accurate record should listen to the audiotape of the meeting.*

**Mr. Simmons moved and Mr. Johnson seconded the motion to approve the September 17, 2003 minutes.**

Mr. Field stated that he made comments regarding items discussed beginning at Line 115 that he felt should have been included in the minutes. Since Mr. Field could not fully recall his exact statements, Mr. Simmons requested that Ms. Arrain provide to Mr. Field a copy of the referenced portion of the audiotape for Mr. Field of the September 17, 2003 meeting.

**Mr. Simmons moved and Mr. Luff seconded the motion to postpone the review of the**

**September 17, 2003 minutes until the next meeting.**

*Vote was unanimous (5-0).*

Mr. Field noted that the September 17, 2003 minutes were vastly improved over other minutes.

**Adjournment**

**Mr. Simmons moved and Mr. Luff seconded the motion to adjourn.**

*Vote was unanimous (5-0).*

Meeting adjourned at 8:21 PM.

Respectfully submitted,

Krystina Deren Arrain, Recording Secretary