



**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Tuesday, February 24, 2009 at 6:30pm
Mary Herbert Conference Room**

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These minutes were prepared as a reasonable summary of the essential content of the meeting, not as a transcription. All exhibits mentioned in these minutes are a part of the Town Record.

Attendance

Members present: Richard Stanton, Chairman; Richard Batchelder, Vice Chairman; and Robert Field, Jr.

Alternates present: None

Members Absent: Michele Peckham and Susan Smith

Staff present: Wendy Chase, Recording Secretary

Preliminary Matters; Procedure; Swearing in of Witnesses; Recording Secretary Report

Mr. Stanton called the meeting to order at 6:35 ~~ap.m.~~ and noted for the record that there was a quorum.

Mr. Stanton called for the voluntary recitation of the ~~p~~Pledge of ~~a~~Allegiance by Members of the Board and others present.

Ms. Chase reported that the agenda was properly posted in a timely manner in the February 9, 2009 edition of the Hampton Union, and posted at the Town Clerk's Office, Town Office and Library.

Minutes

Mr. Stanton Moved and Mr. Batchelder ~~s~~Seconded the Motion to table the ~~m~~M~~in~~utes of the January 27, 2009 ~~m~~M~~ee~~ting to the March 24, 2009 ~~m~~M~~ee~~ting.

The vote was 2 in favor 0 opposed and 1 abstention. Mr. Field abstained for the reason that he had recused himself from participation in Case #2008:12 and case #2009:01.

Unfinished Business

2009:01 – Peter Horne Trustee, H.T.L.A.E.H. Nominee Trust F.S. 123 Nominee Trust, PO Box 1435, North Hampton. The Applicant requests a variance from Article V, Section 501.4 to allow an in-ground pool, pool deck and concrete pump pad within 100-feet of a wetland. Property owner:

Peter Horne, Trustee, F.S. 123 Nominee Trust. Property location: 112 Mill Road, M/L 006-147-002, zoning district R-2. This case is continued from the January 27, 2009 meeting.

The Board was in receipt of letter from Attorney Pelech, representative to the Applicant, requesting a continuance of Peter Horne's ~~C~~ease #2009:01 to the March 24, 2009 meeting.

Mr. Field noted once again for the record ~~of~~ his abstention from all matters pertaining to the Horne ~~Trust Cases(s)-ease~~.

Mr. Stanton Moved and Mr. Batchelder ~~s~~Seconded the Motion to grant the ~~r~~Request for a ~~e~~Continuance on ~~e~~Case #2009:01 to the March 24, 2009 meeting.

The vote was 2 in favor, 0 opposed and 1 abstention. Mr. Field abstained.

New Business

2009:03 – Vincent Peter Corbett, Jr., 134 Walnut Ave., North Hampton. The Applicant requests a variance from Article IV, Section 409.9.A.1 to establish a building lot that has less than the required 100-foot wetland buffer setback. Property owner: Vincent Peter Corbett, Jr., Property location: 134 Walnut Ave., M/L 019-003, 004, 005 & M/L 015-017, zoning district R-3. The Corbett's have requested a continuance of their case to the March 24, 2009 Meeting.

The Board was in receipt of a letter from the Applicant requesting a continuance of his case #2009:03.

Mr. Field ~~inquiredasked~~ how it came to be that the ~~a~~Applicant knew that there would not be enough ~~M~~members present at this ~~m~~Meeting; therefore deciding to request a continuance.

Ms. Chase said that she informed the Applicant that at least two members of the Board were abutters to the property, and further advised him of the lack of available aAlternates.

Mr. Batchelder and Mr. Stanton said that they would be recusing themselves from the Corbett ~~e~~Case #2009:03.

Mr. Stanton said that by postponing the ~~a~~Application ~~it~~the Board would not be making any decisions on the request.

Mr. Field said that, having Recused themselves from participating, he didn't believe that Mr. Stanton and Mr. Batchelder could act on it even in a procedural context. He suggested that the Case continues to the next month due to the inability of the Board to take action. he didn't think that Mr. Stanton and Mr. Batchelder could act on it. He opined that the case continues to the next month due to the inability to take action.

Mr. Field said that he advised Ms. Chase by ~~e~~E-mail that if Mr. Corbett wanted Mr. Field to recuse himself because he is a member of "North Hampton Forever" that he would do so and, that as a precaution she might wish to have an Alternate standing in reserve. he would do so.

Mr. Stanton said that he responded to Mr. Field's eE-mail and said that it was his opinion that there was a potential conflict of interest because Mr. Corbett stated in his aApplication that if the variance is granted that "North Hampton Forever" gets a portion of his land.

Mr. Field ~~repeated that if either an Abutter or Mr. Corbett himself raised the question then he would recuse himself. He asked Mr. Stanton to be more specific as to the "received" conflict of interest as to the Applicant. He suggested, that, if anything, the issue was to a "conflict" of interest but, rather, a "similarity" of interest, to which a party in opposition might take issue. Mr. Stanton offered no further explanation, said that if an abutter or Mr. Corbett himself raised the question then he would recuse himself.~~

The Board discussed the "sign" ~~posting requirement that is now included in the Rules of Procedure, to become effective on March 1, 2009 regarding placement on the property, visible from the street, informing the public that there is a pending case on such property before the North Hampton Zoning Board of Adjustment, that would be placed on the property, visible from the street, informing the public that there is a pending case on such property before the North Hampton Zoning Board of Adjustment.~~

Ms. Chase presented a draft sign, yellow in color with black lettering that reads:

~~"Notice~~
This property is the subject
Of a hearing before the
Zoning Board of Adjustment
For more information – contact the
Zoning Administrator at
964-8650"

Mr. Field commented that ~~the color yellow is historically a color that is identified with medical and/or immigration quarantine, and some members of the public might be uncomfortable in posting same on their property or in their homes, generally a color that is identified with medical quarantine or immigration quarantine.~~ Mr. Field suggested using the color "Kelly" green; he further suggested capitalizing the "h" in hearing and to add the 603 exchange to the phone number. There were no objections to Mr. Field's recommendations, and ~~such became the "sense of the Meeting", and there was no official vote taken, to approve them.~~

Mr. Stanton referred to the memo from Town Administrator Steve Fournier regarding the appointments of alternates. In his ~~M~~memo he explained that ~~that an elected the~~ Zoning Board had the statutory authority to appoint its own members. Mr. Stanton met with Mr. Fournier for further explanation and was advised by him that he contacted the Local Government Center (LGC) and they confirmed that Mr. Fournier was correct. There was nothing in writing from the LGC. The issue before the Board was the fact that NO Member has been elected as yet. Such election will first occur on March 10, 2009.

Mr. Stanton presented a "draft" ~~P~~policy Statement which he had prepared on how an interested member of the public should make application to the Board to become an alternate, on how to apply to the Board to become an alternate. He explained that, in his opinion, it would be a good idea to have something in place that the Zoning Administrator could go by. Also included in the draft policy is a requirement that "resignations" must be made in writing.

Page 3 of 5

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Mr. Batchelder said it was a good idea.

Mr. Stanton suggested having something in place since the vacancies are now being advertised. The vacancies of all Boards are being advertised on Channel 22.

Mr. Field ~~argued~~ questioned whether the authority to advertise vacancies if the appointment power was reserved to the Board. He suggested that an inconsistency was present, and that, if it is the case that he board in fact does enjoy the exclusive power to appoint alternates, then the board would have to act formally to authorize and engage Mr. Fournier to do so. He stated that he was unaware that he Board had taken any action to do so. If such power is reserved to the Select board, then Mr. Fournier would be responding to the Select Board instructions, that Mr. Fournier did not have the authority to advertise the vacancies. Mr. Field said that if the ZBA is an elected Board then there is a statutory procedure that does not include the Town Administrator or Select Board in the process.

Mr. Field said that if the ZBA is an elected Board then there is a statutory procedure to guide it with respect to the appointment of Alternates, and, that process does not appear to involve the Town Administrator or Select Board for the reason that a separation of powers is intended by design.

Mr. Stanton asked Mr. Field to provide the RSA for the statutory procedure he referred to. Mr. Field opined that it was governed by RSA 674:6.II-a that states *an elected zoning board of adjustment may appoint 5 alternate members for a term of 3 years each, which shall be staggered in the same manner as elected members pursuant to RSA 673:5, II.*

Mr. Field suggested further that, in any event, it was inappropriate to establish a policy at this Meeting because it is unclear, from the conversation what the applicable law is, opined that it was inappropriate to establish a policy because it is unclear what the applicable law is.

~~Member term~~ Member “Term Expiration” dates was discussed. It is stated in the “Rules of Procedure” that the Chair and Vice-Chair shall be elected “...at the first regular meeting, which occurs following action taken by the Board of Selectmen to appoint “Full-Time Board Member(s)” and/or “Alternates(s)”...”(Section II.A.). The new Rules of Procedure, prescribe “...The Chair and Vice-Chair shall be ~~annually~~ elected annually by a majority vote of the Board at its scheduled meeting for the month following the North Hampton Town Elections...”... It was noted that an inconsistency could be created if an officer was not elected at the Town Meeting thus leaving the position vacant. This point may require future modification to the new Rules of Procedure.

It was determined after reviewing RSA 669:10 - Term of Office, that the March ~~m~~Meeting following the March 10th election is the time to reorganize the Board to elect a Chair and Vice Chair.

Mr. Field asked whether or not the Chair intended on discussing the Sancioff letter, dated February 1, 2009 and, and the response from the Town Administrator. Both of which had been distributed to the Board by the Chairman.

Mr. Stanton said that he did not intend to discuss Mr. Sancioff’s letter because the matter is actively before the Planning Board and Zoning Board; therefore it would be inappropriate to discuss it.

Mr. Field agreed, and noted for the record that he would abstain from any action regarding the Sancioff letter.

Mr. Lariviere's term was discussed. Mr. Field said that the Board was notified by an eEmail from the Chair, dated December 19, 2008, that Mr. Lariviere resigned. Mr. Stanton explained that it was Mr. Lariviere's intention to resign but that he had ~~did~~ not put it in writing. He said he asked Mr. Lariviere to attend the January meeting due to the lack of members of Members available. Mr. Field said that the issue will be examined, and that he would not further comment... Mr. Batchelder said that he was under the assumption that Mr. Lariviere felt that he had not officially resigned because he never stated his resignation in writing. Mr. Stanton explained that the appointment policy by the Select Board infers a letter be written if resigning but doesn't specify one be written. Mr. Field noted for the record that he does not share in the view that ate there is an inference of a "resignation letter" be written as explained suggested by Mr. Stanton.

Mr. Stanton Moved and Mr. Batchelder Sseconded the Motion to adjourn the ~~m~~MMeeting at 7:10pm.

The vote was unanimous in favor of the Motion (3-0).

Respectfully submitted,

Wendy Chase
Recording Secretary