



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

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; Michele Peckham, Susan Smith, and Robert Field, Jr.

Members Absent: None

Staff present: Richard Mabey, Code Enforcement Officer/Building Inspector, and Wendy Chase, Recording Secretary

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

Mr. Stanton convened the meeting at 6:35pm.

Mr. Field commented that Mr. Stanton had no “standing”; hence he had no authority to convene the meeting. Mr. Stanton disagreed.

Mr. Stanton called for a Pledge of Allegiance.

Mr. Stanton explained that there were three newly elected members and stated that he had taken the Oath of Office to serve as a member of the ZBA. He asked Mr. Field if he had taken the Oath of Office, and Mr. Field said that he would report such information at the appropriate time.

Ms. Smith questioned how Mr. Field would be able to vote if he would not disclose such information.

Ms. Smith Moved that the Board elect a Chairman and asked for any suggestions. Mr. Field nominated Ms. Peckham as temporary Chairman. There was no second to the Motion. The Motion failed.

Mr. Batchelder Moved and Ms. Smith seconded the Motion to nominate Mr. Stanton as Chairman to the Zoning Board.

Mr. Field observed that Mr. Stanton is disqualified from voting on the Motion made by Mr. Batchelder and seconded by Ms. Smith because of the Town’s Code of Ethics. Mr. Stanton disagreed with Mr. Field’s interpretation of the Code of Ethics.

50 Ms. Peckham said that she has no problem with Mr. Stanton being the Chairman, but pointed out
51 that she felt that Mr. Stanton may have exceeded his Chairmanship duties as described in the ZBA's
52 Rules of Procedure on at least one occasion in the past. She suggested that Mr. Stanton be mindful
53 that he is given the authority that the Board as a whole gives him.

54
55 Mr. Field reasoned that pursuant to the Town's Code of Ethics Mr. Stanton does not have the
56 capacity to vote for himself for the Chairmanship.

57
58 Ms. Peckham said that in the past the previous ZBA Chair did not vote for himself when nominated
59 by the Board, therefore setting a precedent.

60
61 Ms. Smith asked where it specifically stated that nominees could not vote for themselves.

62
63 Mr. Field read a section from the Code of Ethics into the record: "Interest – any privilege, profit,
64 gain or advantage one stands to receive if certain actions or events occur or fail to occur." He also
65 read from section 2.2 as follows: "No Town Representative shall: 1. In any hearing, debate,
66 discussion or vote, or in any manner otherwise attempt to influence the outcome of matter in which
67 he or she has an interest." Mr. Field opined that Mr. Stanton has an interest by virtue of section 1.3.

68
69 Ms. Smith said that she interpreted what Mr. Field read into the record differently than how he
70 interpreted it. Ms. Smith opined that Mr. Stanton could vote for himself.

71
72 Mr. Stanton suggested Mr. Field take his issues up with the Select Board, and take the appropriate
73 measures that are put in place by the Board for violations of the Code of Ethics that were recently
74 accepted by the Town at the March 10, 2009, Town Election.

75
76 Mr. Field suggested suspending the meeting so that the Board would have time to seek an answer
77 from the Select Board.

78
79 Mr. Stanton, Ms. Peckham and Mr. Field stated they had taken the Oath of Office.

80
81 Mr. Field asked that it be noted for the record that he objects to Mr. Stanton voting for himself as
82 Chair because it is his opinion that it is a violation of the Code of Ethics, and he will be seeking an
83 opinion from the Select Board with regard to it. He also noted that it is his belief that Mr. Stanton is
84 seeking a privilege or advantage on this Board, and he is electing to vote for himself, which is
85 contrary to Section 3.3. Mr. Stanton stated that he would "step down" as Chair if his interpretation
86 was found to be in violation of the Code of Ethics.

87
88 Mr. Field also noted for the record that Mr. Stanton may have placed all of the rulings of the Chair
89 in jeopardy for the evening.

90
91 **The vote passed (4 in favor, 0 opposed and 1 abstention). Mr. Field abstained. Mr. Stanton**
92 **was elected as Chair of the Board.**

93
94 **Mr. Stanton Moved and Ms. Smith seconded the Motion to nominate Mr. Batchelder as Vice**
95 **Chair to the Board.**

96

97 Mr. Field inquired if Mr. Batchelder was going to vote for himself. Mr. Batchelder answered “no”,
98 and, he noted that his action is in no way to be interpreted as a reflection against Mr. Stanton’s
99 previous decision.

100
101 **The vote passed (3 in favor, 0 opposed, and 2 abstentions). Mr. Field and Mr. Batchelder**
102 **abstained. Mr. Batchelder was elected as Vice Chair of the Board.**

103
104 **Minutes**

105
106 **January 27, 2009 Meeting Minutes (tabled from the February 24, 2009 meeting) – Ms.**
107 **Peckham Moved and Mr. Batchelder seconded the Motion to approve the Meeting Minutes of**
108 **January 27, 2009 as amended. The vote passed (4 in favor, 0 opposed and 1 abstention), with**
109 **Mr. Field abstaining from approving portions of the minutes on the Horne cases #2008:12 and**
110 **case #2009:01. Ms. Smith abstained.**

111
112 **February 24, 2009 Meeting Minutes – Mr. Stanton Moved and Mr. Batchelder seconded the**
113 **Motion to approve the Meeting Minutes of February 24, 2009 as amended. The vote passed (4**
114 **in favor, 0 opposed and 1 abstention); with Mr. Field abstaining from approving portions of**
115 **the minutes on the Horne case #2009:01. Ms. Smith abstained.**

116
117 **Alternates**

118
119 Discussion ensued regarding the appointments of alternates. Mr. Field called for a point of order.
120 Mr. Field reasoned that only elected members of the Board were able to vote for the appointment of
121 alternates and quoted from Attorney Peter Loughlin’s New Hampshire Municipal Practice Series,
122 “in any municipality with an elected Zoning Board of Adjustment, elected members of the Board
123 may appoint five alternate members for terms of three years each, those terms must be staggered in
124 the same manner as those of elected members present.” Mr. Field reasoned that only three members
125 had the capacity to appoint alternates. Mr. Stanton said that the Statute reads that an “elected
126 board” of adjustment may appoint five alternates to serve. Mr. Stanton opined that they were an
127 “elected board”. Ms. Smith stated that if what Mr. Field said was true than the votes of the
128 appointed ZBA members would not count on any case before the board for the rest of the appointed
129 member’s terms.

130
131 **Mr. Field Moved and Ms. Peckham seconded the Motion that the people who are authorized**
132 **to vote to appoint alternates to this Board is the elected Board and cited RSA 673:6.**

133
134 Mr. Stanton said that according to the Local Government Center that the Board is an “elected
135 Board”, and every member has an equal vote. Mr. Stanton was present during Mr. Fournier’s phone
136 call to the LGC regarding this opinion.

137
138 Mr. Field suggested that the Board wait to appoint alternates so that the Board may seek a legal
139 opinion on the matter.

140
141 Mr. Stanton called the question. Mr. Field could not recite his motion from memory, and Ms.
142 Chase offered to rewind the tape recording.

143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188

Ms. Smith said that she did not see in Mr. Loughlin’s text that the appointed members were not allowed to vote. She opined that the majority of members sitting on the Board are elected so the Board in whole is elected. She said that as an appointed member she does not feel that she does not have the same quality of vote as an elected member.

Mr. Field indicated that, as an appointed member, Ms. Smith is, by statute, protected as to the powers “vested” n her as an “appointed” member. Accordingly, she is correct that she may continue to vote on cases and administrative matters coming before the Board. However, Mr. Field held to the position that the “appointment of alternates” is a statutory power reserved solely to “elected” members of a Board, and does not extend to “appointed” members even though their term(s) of office may continue during transition.

Mr. Stanton asked that Mr. Field recite his motion or withdraw, and restate it. Ms. Peckham withdrew her second to the Motion made by Mr. Field.

Mr. Field Moved and Ms. Peckham seconded the Motion that the Board defer from electing alternates tonight until the Board receives an opinion of Counsel as to who of the members of this Board are entitled to vote on the election of alternates now that three people on this Board have been elected, and they constitute a quorum of an elected Board.

Mr. Field said he has sat on the Board for almost 12 years, and the Board has referred to Mr. Loughlin’s land use books on many occasions. He reiterated his opinion that only the elected members have the capacity to appoint alternates to the Board.

Ms. Peckham said that because the Board is in a state of “flux” with three elected and two appointed members, and that Mr. Loughlin may be basing his opinion on the fact that all the members have been elected, it behooves the Board to do things right and get a legal opinion from Counsel.

Mr. Stanton opined that the Board became an “Elected Board” March of 2008. He offered no supporting Case or Statutory law to Mr. Field.

The Motion Failed (2 in favor, 3 opposed and 0 abstentions).

The Board agreed that the alternate terms should be staggered to mirror the terms of the current Board’s regular members. Two alternate’s terms to expire 2010, two alternate’s terms to expire 2011, and one alternate’s term to expire 2012.

The Board discussed the procedure on appointing alternates.

Mr. Stanton didn’t think it needed to be a “drawn out” process and said that the basic criteria should be that the Applicant is (a.) willing to serve and (b.) claims to be fair and impartial, and that asking anything more of the applicant would be improper.

Ms. Peckham did not agree that the alternates should be voted on in the order that they applied. She suggested that the Board speak to each individual and vote on their appointments accordingly.

189 Mr. Field called for a point of order. He asked about the “Alternate Appointment Policy” draft that
190 Mr. Stanton had distributed to the Members, and directed that it be in force during the “voting
191 period. Mr. Field pointed out that such Policy Statement included many more criteria than that
192 which Mr. Stanton now proposes, and, he asked Mr. Stanton what has caused him to change his
193 mind so dramatically. Mr. Stanton said that the topic was a moot point because he had attempted to
194 discuss it at the February meeting and Mr. Field declined to discuss it at such time, because of a
195 lack of a sufficient number of members present to permit three (3) votes in favor of the Chair’s
196 dictate. Mr. Field stated that the matter was “hardly” moot, and that it appeared as though an effort
197 was being made to “rush to judgment”.

198
199 Ms. Jennifer Lermer was called to the podium to introduce herself, and to give a brief statement as
200 to why she would like to be considered as an alternate to the ZBA.

201
202 Ms. Lermer, 5 Park Circle, introduced herself and stated that she has been a North Hampton
203 resident for 30-years. She said that she is very familiar with the geography and history of the Town.
204 Ms. Lermer stated that she was appointed to the Zoning Board as an alternate in 2003 for a two-year
205 term, and was later appointed by the Select Board to serve a three-year term; she chose not to run
206 for election in 2008. She said that she would be able to bring general knowledge of the Town as
207 well as practicality “to the table”.

208
209 Mr. Ted Turchan, 125 Lafayette Road, introduced himself and said that he has been a resident of
210 North Hampton for 24-years. He said that he was a member of the Planning Board from 1986-2000
211 and Vice Chair for 10 of those years. He was appointed to the ZBA in 2002 and served two terms
212 and was Vice Chair for most of those years. He said that he felt the decisions he has made on the
213 Board were fair.

214
215 Debbie Wood 238 Atlantic Ave, introduced herself and said that she has not served on any Board,
216 but has experience in reading plans. She said that she is a life-long resident of North Hampton and
217 would like to serve as an alternate to the ZBA.

218
219 Mr. Field asked Ms. Wood if she had spoken with any person about the duties of a Board member
220 either in connection with her campaign for office and/or in regards to serving as an alternate. Ms.
221 Wood said that she watches the meetings on Channel 22 and that she spoke to Mr. Stanton and
222 asked him basic questions on the duties of a ZBA alternate. She denied having other conversations
223 on the matter.

224
225 Charles Gordon, Sea Road, introduced himself and said that he has been a resident of North
226 Hampton since 1995. He said that he had served on the Little Boar’s Head Zoning Board for nine
227 years and would like to serve as alternate to the North Hampton ZBA.

228
229 Ms. Smith said that it shouldn’t be a disqualification for not having previous Board experience. She
230 said the only prerequisites should be that the candidates live in Town and are willing to serve, and
231 be fair and impartial.

232
233 Ms. Peckham agreed with Ms. Smith but said that the Board needs to look at the candidates as a
234 whole.

235

236 Mr. Stanton said that Mr. David Buber has requested to become an alternate, but was not present.

237
238 Mr. Field said that Mr. Buber has been to numerous Zoning Board meetings, and that he would
239 make a good alternate.

240
241 Ms. Smith said that she would like to meet the candidates before voting on their appointment.

242
243 Mr. Stanton asked the alternate candidates which term they would prefer.

244
245 The response:

246 Ms. Lerner - 3-year term

247 Mr. Turchan - 2-year term

248 Ms. Wood – 1-year term

249 Mr. Gordon – 1-year term

250
251 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to appoint Ms. Lerner as an**
252 **alternate to the Zoning Board for a three-year term to expire in 2012.**

253 **The vote was unanimous in favor of the Motion (5-0).**

254 **Mr. Stanton Moved and Ms. Smith seconded the Motion to appoint Theodore Turchan as an**
255 **alternate to the Zoning Board for a two-year term to expire in 2011.**

256 **The vote was unanimous in favor of the Motion (5-0).**

257
258 **Mr. Stanton Moved and Ms. Smith seconded the Motion to appoint Debbie Wood as an**
259 **alternate to the Zoning Board for a one-year term to expire in 2010.**

260 **The vote passed (3 in favor, 1 opposed and 1 abstention). Mr. Field opposed and Ms.**
261 **Peckham abstained.**

262
263 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to appoint Mr. Charles Gordon**
264 **as an alternate to the Zoning Board for a one-year term to expire in 2010.**

265 **The vote was unanimous in favor of the Motion (5-0).**

266
267 **Mr. Field Moved and Ms. Peckham seconded the Motion to nominate Mr. David Buber as an**
268 **alternate to the Zoning Board for a two-year term to expire 2011.**

269
270 Mr. Field said that the copy of the “invitation” letter he received did not state that attendance to this
271 Meeting was mandatory in order for an indication of interest to be considered. He also inquired as
272 to whether or not the Board had authorized such invitation, as he could not recall any such action.
273 He said that Mr. Buber has demonstrated himself and his skills on multiple occasions in the past and
274 suggested he would be a good candidate.

275
276 Mr. Stanton agreed that Mr. Buber is a good candidate, but would abstain from voting because he
277 thinks he should come to the meeting to meet the Board, and be seen by the public. Mr. Stanton
278 said that he spoke to Mr. Buber over a month ago and asked if he would consider serving as an
279 alternate to the ZBA and he declined at that time.

280
281 **The Motion failed (2 in favor, 0 opposed and 3 abstentions).**

282
Page 6 of 18

283 **Unfinished Business**

284

285 **2009:01 – Peter Horne Trustee, H.T.L.A.E.H. Nominee Trust F.S. 123 Nominee Trust, PO Box**
286 **1435, North Hampton.** The Applicant requests a variance from Article V, Section 501.4 to allow
287 an in-ground pool, pool deck and concrete pump pad within 100-feet of a wetland. Property owner:
288 Peter Horne, Trustee, F.S. 123 Nominee Trust. Property location: 112 Mill Road, M/L 006-147-
289 002, zoning district R-2. This case is continued from the February 24, 2009 meeting.

290

291 In attendance for this application:

292 Corey Colwell, Ames MSC Engineering

293 Attorney Bernard Pelech, Wholey & Pelech Law Office

294 Daniel Fenno

295 Peter Horne, Owner/Applicant

296 Dr. Leonard Lord, Consultant for the Conservation Commission

297

298 Mr. Field recused himself.

299

300 Ms. Lermer was seated for Mr. Field.

301

302 Mr. Field called for a point of order. Mr. Field disclosed that he is a member of the Zoning Board
303 of Adjustment and a member of North Hampton Forever. Mr. Field requested that Mr. Stanton
304 recuse himself from the Horne case #2009:01 because he felt Mr. Stanton had an antipathy toward
305 him. Mr. Stanton explained that he did not have to recuse himself, but asked for opinions from the
306 Board members on whether or not they felt he should recuse himself. There was no response from
307 any member of the Board. Mr. Stanton stated that he could be unbiased and did not recuse himself.

308

309 Mr. Stanton swore in witnesses. Mr. Field also took the oath.

310

311 Mr. Stanton asked if anyone wished to question any member or alternate member of the Board
312 sitting tonight that should be disqualified. There was no response. Mr. Stanton asked if anyone had
313 a business relationship or personal interest that could affect the jurors standard meaning capable or
314 rendering a fair and equitable decision of this Board, and if so Mr. Stanton asked them to identify
315 themselves for the record, state who they represent and identify the Board member or Alternate and
316 state whether the Member or Alternate should recuse themselves. There was no response.

317

318 Mr. Stanton reminded the audience that the case was postponed so that the Conservation
319 Commission would have an opportunity to do a site visit. Mr. Stanton entered into the record
320 several pieces of correspondence. 1) a letter from the Zoning Board to Mr. Ganotis dated January
321 30, 2009 that stated that Mr. Horne had agreed to all the conditions that the Conservation
322 Commission requested, as far as a site survey, 2) a letter from Chairman Ganotis dated March 16,
323 2009 and attached to it a memo from Dr. Leonard Lord from Vanasse Hangen Brustlin, Inc. on their
324 survey.

325

326 Mr. Chris Ganotis was present and introduced Dr. Leonard Lord.

327

328 Dr. Lord explained that he was commissioned from the Conservation Commission to review the
329 Horne parcel to look at impacts from the swimming pool as well as other possible development

330 impact to Mill Pond. He said that the biggest danger from the pool is if the pool were backwashed
331 or drained into the pond. He said Mr. Horne has contracted to have a dry well designed that would
332 take that water and that would take care of the most serious part of the impact from the pool. He
333 said that the pool does add incremental impact within the 100-foot conservation zone. Dr. Lord
334 offered the following recommendations:

- 335 • Limiting cutting in the forested buffer around the pond
- 336 • Limiting fertilizer use
- 337 • Keep pet waste cleaned up
- 338 • Collecting roof runoff and put into a cistern that can be used for irrigation or a drywell
339 similar to the one proposed for the pool
- 340 • Make sure the septic system meets current standards

341
342 Mr. Stanton referred back to Mr. Fenno's testimony in January where he stated that the amount of
343 grass between the pool and Mill Pond was of sufficient area to dissipate accidental release of
344 chlorine from the pool. Dr. Lord agreed with that statement.

345
346 Mr. Stanton asked for an updated plan of where the drywell would be located. Mr. Colwell showed
347 him a copy of a plan that was submitted to the Conservation Commission on February 24, 2009 that
348 depicted the drywell. Mr. Stanton asked that Mr. Colwell submit a copy for the permanent record.
349 Mr. Colwell will get the Board a copy of the drawing dated 1/28/09 by MSC that shows the drywell.

350
351 Mr. Stanton opened the Public Hearing at 8:10 p.m. for those for or against the application.
352 Mr. Stanton closed the Public Hearing at 8:10 p.m. without public comment.

353
354 Ms. Peckham asked the Chair if she could ask Mr. Pelech a question. Mr. Stanton allowed it.

355
356 Ms. Peckham had recently read a Supreme Court case on self created hardship. She asked Mr.
357 Pelech to explain how this case is not a self created hardship.

358
359 Mr. Pelech explained Mr. Horne relied on the pool contractor who said that he did not need to get a
360 permit because the pool once existed. The pool contractor constructed the pool inside the pool that
361 was already there, as shown in the pictures the structural steel is inside of the old pool and the
362 gunite was then poured inside of the old pool. He said that it was done without a permit, and
363 understands that ignorance of the law is not a total excuse. He explained that the hardship is that the
364 property that predates the wetlands ordinance and all of the structures on the property predate the
365 wetlands ordinance and they are within the 100-foot wetlands buffer. He said that there are special
366 conditions of the property such as the property is surrounded by the Mill Pond on two sides coupled
367 with the imposition of the wetlands ordinance upon the property that created the hardship because
368 all of the existing structures are within that 100-foot buffer. Mr. Pelech interpreted the Supreme
369 Court case as if there is a self created hardship it doesn't mean the Board can't grant a variance; it
370 means the Board can assess a higher burden of proof on the Applicant. Mr. Pelech said that Mr.
371 Horne asked the contractor of Custom Pools if he needed a permit and they said he did not.

372
373 Ms. Lerner asked how long Custom Pools has been in business and Mr. Pelech said that they have
374 been in business since 1965.

375

376 Mr. Field asked what record the Board planned on using to determine the outcome of the
377 application. Mr. Stanton said the evidence supplied by the Applicant in January and the material
378 submitted into evidence this evening.

379
380 Mr. Field asked how Ms. Lerner would be able to access the record in time to act on the case this
381 evening.

382
383 Ms. Lerner said that the record is a public record and that she has watched the previous meetings
384 on Channel 22 and has a copy in front of her that she has reviewed during the hearing.

385
386 Mr. Stanton asked Ms. Lerner if she had all of the information submitted on the case in front of her
387 and she answered that to the best of her knowledge that she did.

388
389 Mr. Field noted for the record that he has more information on the case than Ms. Lerner has.

390
391 Ms. Lerner said that she is familiar with the case and the Horne property.

392
393 The Board went over the variance standard test under the Boccia criteria:

- 394 1. Would granting the variance not be contrary to the public interest? Mr. Stanton said that it
395 is a permitted use in the R-2 zone. Ms. Peckham said that assuming the dry well is installed
396 and the garden buffer stays in place there would be no health and safety concerns. Ms.
397 Lerner said that it is hard to police after it is approved so there should be strict conditions.
- 398 2a. Would not granting this variance create an unnecessary hardship because an area variance is
399 needed to enable the applicant's proposed use of the property given the special conditions of
400 the property? Ms. Peckham said she had a hard time with "hardship" and noted that the
401 condition has to be unique to the property itself not the area. Mr. Batchelder asked Red
402 about the abandoned pool and Red explained that there was a pool it was abandoned for over
403 a year and that is the only reason the Applicant is before the board for a variance. If it had
404 not been abandoned for over a year it would have only required a building permit.
- 405 2b. Would not granting this variance create an unnecessary hardship, including a financial
406 hardship, because the benefit sought by the applicant cannot be achieved by some other
407 reasonably feasible method?
- 408 3. Would the use contemplated by petitioner as a result of obtaining this variance be consistent
409 with the spirit of the ordinance?
- 410 4. By granting this variance, would substantial justice be done? Ms. Smith said that the
411 Applicant was given misinformation by the pool company.
- 412 5. Would granting this variance result in a diminution in value of surrounding properties?

413
414 The Board went over possible conditions if approved.

415
416 Ms. Lerner suggested adding a condition that no future relief from the wetland buffer be granted on
417 the property. Ms. Peckham understood but said that it would be infringing on the property owner's
418 property rights to place such a condition.

419
420 Ms. Peckham said that it is good practice to vote on each of the criteria.

421

422 Mr. Stanton explained that he learned at one of the land use classes offered by the Local
423 Government Center that it is not a good idea to take an actual vote on the criteria but rather to go
424 over each of them, and discuss each of them.

425
426 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to grant the variance from**
427 **Article V, Section 501.4 for case 2009:01 – Peter Horne to allow the construction of an in-**
428 **ground pool, pool deck and concrete pump pad within 100-feet of the wetland buffer with the**
429 **following conditions:**

- 430
- 431 **1. The drywell and associated discharge equipment shall be installed as designed by MSC**
432 **Civil Engineers and Land Surveyors, Inc., dated January 28, 2009, and all pool filter**
433 **backwash and seasonal pool drainage will be disposed of in the drywell.**
 - 434 **2. The existing 2-foot wide garden around the pool decking shall be maintained as a**
435 **garden so as to maximize absorption of runoff. Maintenance of the garden surface at**
436 **or above the level of the pool deck is encouraged through the use of periodic additions**
437 **of mulch. If for some reason a garden is no longer wanted around the pool decking, an**
438 **infiltration trench at least one-foot wide and one-foot deep filled with crushed stone**
439 **shall be put in its place.**
 - 440 **3. No additional cutting of forested vegetation should occur down slope of the pool**
441 **between the existing lawn and Mill Pond except to remove dead, dying or otherwise**
442 **hazardous trees for safety reasons or to remove invasive vegetation. If trees are cut**
443 **within this zone, the stumps should be left in place. This will help assure absorption**
444 **and treatment of any runoff coming from the pool.**
 - 445 **4. The existing trees and natural forested buffer within 25 feet of Mill Pond for all of Map**
446 **6 Lot 147-2 should be maintained as described in condition #3.**
 - 447 **5. Fertilizer and pesticides should not be used within 25 feet of the pond for all of Map 6**
448 **Lot 147-2. Fertilizers should be avoided or limited to light applications of low-**
449 **phosphate and slow release nitrogen types elsewhere within the buffer zone.**

450 **The vote passed (3 in favor, 1 opposed and 1 abstention). Ms. Peckham opposed and Ms.**
451 **Lermer abstained.**

452
453 Mr. Field was reseated.

454
455 **2009:03 – Vincent Peter Corbett, Jr., 134 Walnut Ave., North Hampton.** The Applicant
456 requests a variance from Article IV, Section 409.9.A.1 to establish a building lot that has less than
457 the required 100-foot wetland buffer setback. Property owner: Vincent Peter Corbett, Jr., Property
458 location: 134 Walnut Ave., M/L 019-003, 004, 005 & M/L 015-017, zoning district R-3. This case
459 is continued from the February 24, 2009 meeting.

460
461 In attendance for this application:
462 Vincent & Sue Corbett, Owners/Applicants

463
464 Mr. Stanton recused himself.
465 Mr. Batchelder recused himself.
466 Ms. Peckham recused herself
467 Ms. Smith was seated as chair.

468
Page 10 of 18

469 Mr. Field said he is a member of “North Hampton Forever”, and that “North Hampton Forever” has
470 an interest in the outcome of the Case. He stated that if either the Applicant, an Abutter, and/or any
471 member of the public was uncomfortable with his sitting on the Case, that he would most willingly
472 stand down and recuse himself for reason that he might be viewed as being supportive of (not
473 hostile to), a favorable outcome.

474
475 Mr. Stanton indicated that he would prefer that Mr. Field not sit on the Case.

476
477 Mr. Field willingly recused himself from the case.

478
479 Ms. Smith seated Mr. Gordon, Ms. Wood, Ms. Lerner and Mr. Turchan in place of Mr. Stanton,
480 Mr. Batchelder, Ms. Peckham and Mr. Field.

481
482 Ms. Lerner suggested to continue case #2009:03 to the April 28, 2009 meeting.

483
484 Mr. Corbett, 134 Walnut Ave., explained that he has lived in North Hampton for 40 years. He said
485 that his proposal is to carve out a house lot next to his present house and to sell 60+ acres to North
486 Hampton Forever to be placed in conservation in perpetuity. He further explained that if he had
487 done this proposal in 2001 when the wetlands setback was 50-feet he would not need to request a
488 variance.

489
490 Ms. Smith read the Conservation Commission review into the record:
491 *After reviewing and discussing the subject application, the Conservation Commission decided that*
492 *it will not take exception to your Board’s granting the wetlands setback variance of the subject*
493 *subdivision lot application. This Commission based its decision on the premise that, since granting*
494 *the variance would result in an opportunity to protect nearly 70 acres as conservation land behind*
495 *the subdivision lot, the resulting public benefit would far outweigh the environmental risk that the*
496 *subdivision lot would have within the wetlands setback.*

497
498 Mr. Corbett said that it meets the frontage and acreage requirements, and that it has had successful
499 perk tests done on it.

500
501 Mr. Carl Walker said he was an abutter to the property and had some questions.

502
503 Ms. Smith advised Mr. Walker to come back to the April meeting where his questions would be
504 answered.

505
506 It was decided by the Board that the case should be continued to the April meeting to give the newly
507 appointed alternates time to digest the information.

508
509 **Ms. Smith Moved and Mr. Gordon seconded the Motion to continue case #2009:003 – Vincent**
510 **Peter Corbett to the April 28, 2009 meeting.**
511 **The vote was unanimous in favor of the Motion (5-0).**

512
513 Mr. Stanton resumed the Chair.

514 Ms. Peckham, Mr. Batchelder and Mr. Field were reseated.
515

516 Mr. Stanton swore in witnesses.

517

518 **New Business**

519

520 **2009:04 – Sagamore Hampton Golf Club, 101 North Road, North Hampton.** The Applicant,
521 Jeffrey Goodman, Windguys USA, LLC, PO Box 553, Rye Beach NH 03871, on behalf of the
522 Owner, requests a variance to Article IV, Section 407.1 & 407.2 to install two wind power turbines
523 at 55-feet in height where the maximum height allowed is 35-feet. Property owner: Sagamore
524 Hampton Golf Club. Property location: 101 North Road, M/L 018-035, zoning district R-3.

525

526 In attendance for this application:

527 Jeffrey Goodman, Windguys, USA

528 Richard Luff, President, Sagamore Golf Course

529

530 Mr. Stanton asked for those presenting testimony to rise and be sworn in. They were duly sworn.

531

532 Ms. Peckham disclosed that she is the Attorney for North Hampton Forever, but felt that she did not
533 have a conflict. Ms. Peckham did not recuse herself.

534

535 Mr. Goodman explained the proposal to the Board. The owners of Sagamore Hampton Golf Club
536 propose to install two wind powered turbines on the golf course. The wind turbines that they intend
537 to construct are fully integrated small wind generators specifically designed for homeowners and
538 businesses looking to reduce or eliminate their monthly electric bill. The turbine they propose to
539 install is a Skystream 3.7 that uses a 12-foot rotor and produces approximately 400 kWh per month
540 in a 12 mph wind. He explained that the prototype has been in operation in Colorado for almost
541 four years and has undergone extensive performance, reliability and duration testing, and early
542 adopters are reporting 50% savings on their energy bills.

543

544 Ms. Smith asked if television reception would be distorted, and Goodman said, “No” and explained
545 that the radio waves go through the blades.

546

547 Mr. Field referred to RSA 674:58. New Hampshire passed a law that states that Towns either enact
548 their own ordinance for Small Wind Energy Systems or use the guidelines from the Statute.

549

550 Mr. Stanton emailed a copy of the “model” Small Wind Energy Systems ordinance to each of the
551 Board Members and requested a copy be entered into the record.

552

553 Ms. Smith asked what would occur during an ice storm. Mr. Goodman explained that the buildup on
554 the blades would stop it from running and once the ice melted the turbine would start up again.

555

556 Mr. Field asked for a range of heights according to the statute for a small energy system. The blades
557 can be up to 100-feet. Mr. Goodman said that he proposed turbines will be 55-feet and one will be
558 at least 100-feet away from the boundary and the second will be over 400-feet away from the
559 boundary.

560

561 Mr. Goodman explained that the deconstruction time is 15 minutes in case of stormy weather such
562 as hurricanes, tornados or similar events with extremely high winds.

Page 12 of 18

563
564 Mr. Field asked that Mr. Mabey put in writing that this case did not need regional noticing.
565

566 Ms. Pohl asked if there were any turbines in the area. Mr. Goodman said there is one in Hampton.
567

568 Mr. Stanton called for a 5 minute recess.
569

570 Mr. Stanton commented that the Planning Board would probably be working on a Small Wind
571 Energy System Ordinance over the next year. He read the State Guidelines.
572

573 The Board discussed using the model ordinance and the State guidelines for Small Wind Energy
574 Systems. Mr. Stanton remarked that it is a model ordinance and is very important. Mr. Field said
575 that the State guidelines should be used because an ordinance has not been adopted by the Town.
576 Mr. Stanton thought it would be wise to enter the two into the record.
577

578 Ms. Smith opined that they have complied with all the requirements.
579

580 The Board discussed the five criteria of the variance test based on the Boccia analysis:
581

- 582 1. Would granting the variance not be contrary to the public interest? The Board agreed that it
583 was a “green” project.
- 584 2a. Would not granting this variance create an unnecessary hardship because an area variance is
585 needed to enable the applicant’s proposed use of the property given the special conditions of
586 the property?
- 587 2b. Would not granting this variance create an unnecessary hardship, including a financial
588 hardship, because the benefit sought by the applicant cannot be achieved by some other
589 reasonably feasible method? Ms. Peckham commented on the fact that if the blades on the
590 turbines were smaller than they would not reap the same benefits with a larger bladed
591 turbine.
- 592 3. Would the use contemplated by petitioner as a result of obtaining this variance be consistent
593 with the spirit of the ordinance?
- 594 4. By granting this variance, would substantial justice be done?
- 595 5. Would granting this variance result in a diminution in value of surrounding properties? Mr.
596 Field commented that there weren’t any abutters who came forward to submit evidence that
597 there was a diminution of value of surrounding properties. Ms. Peckham asked about the
598 noise factor and Mr. Goodman said it is no louder than normal conversation.
599

600 **Ms. Smith Moved and Mr. Batchelder seconded the Motion to grant the variance request to**
601 **Article IV, Section 407.1 and 407.2 to install two wind power turbines to be constructed up to**
602 **55-feet, for case #2009:04 – Sagamore Hampton Golf Club, with the following conditions:**
603

- 604 1. **A Small Wind Energy System being defined as a generator, a tower and any associated**
605 **control or conversion devices and requisite wiring whose capacity, which is the sum of**
606 **all systems on the lot, shall be 100 kilowatts or less.**
- 607 2. **The height shall be defined as the vertical distance from the ground level to the top of**
608 **any blade or device at its highest point and shall not exceed 100 feet.**

- 609 **3. The Small Wind Energy System shall be located 1.5 times (150 percent) the height of**
610 **the system from the nearest property line or public road, and 1.1 times (110 percent)**
611 **its height from the nearest power line, building or structure with such distance being**
612 **called the minimum “fall line”.**
- 613 **4. The sound level from any Small Wind Energy System shall not exceed 60 decibels**
614 **(dbA) as measured at the site closest to the property line.**
- 615 **5. Each Small Wind Energy System shall not have any signs, except for manufacturer**
616 **identification and appropriate safety signs, nor any flags or decorative items.**
- 617 **6. The Small Wind Energy System shall comply with all applicable sections of the Federal**
618 **Aviation Administration regulations and New Hampshire Aviation regulations**
619 **including but not limited to RSA 422-b and RSA 424.**
- 620 **7. Each Small Wind Energy System shall comply with all applicable sections of the New**
621 **Hampshire Building Code.**
- 622 **8. Each installation of a Small Wind Energy System shall be subject to the Permit**
623 **requirements of Section 701 of the town Ordinance; specifically, each system shall**
624 **require its own permit. At the discretion of the Building Inspector one permit can be**
625 **used for both construction and electrical work.**
- 626 **9. The actual site of each system shall be at the two (2) proposed locations submitted with**
627 **the application.**

628 **The vote was unanimous in favor of the Motion (5-0).**

629
630 Mr. Stanton changed the order of the agenda to hear case #2009:05 prior to the motion for
631 rehearing.

632
633 **2009:05 – J. Joseph McKittrick, 1701 Ocean Blvd, Rye, NH 03870.** The Applicant requests a
634 variance from Article V., Section 501.2, and from Article IV, Section 406 to demolish an existing
635 building and rebuild, adding approximately 175 square feet, expanding a non-conforming use.
636 Property owner: J. Joseph McKittrick. Property location: 4 Lafayette Terrace, M/L 021-008,
637 zoning district I-B/R.

638
639 In attendance for this application:

640 Attorney J. Joseph McKittrick, Owner/Applicant

641
642 Mr. Batchelder disclosed that he was represented by Attorney McKittrick 15 years ago, but felt that
643 he did not have a conflict, and did not feel he needed to recuse himself from the case.

644
645 Mr. Field opined that there may be a conflict with Mr. Batchelder sitting on the case since he was
646 once represented by Mr. McKittrick.

647
648 Mr. Batchelder willingly recused himself.

649
650 Mr. Gordon was seated for Mr. Batchelder.

651
652 Mr. McKittrick explained his proposal. He said that he proposes to add approximately 100 square
653 feet to the structure.

655 Mr. McKittrick explained that a variance was granted to him on the property in 1996 but he had
656 answered “no” on his application to the question of whether there are any existing variances on the
657 property. He explained that the variance was granted when the lots were separated.
658

659 He explained that he proposes to “square off” the building to add more living space to the second
660 apartment making it more conforming. It would also make it more aesthetically pleasing increasing
661 the values of the surrounding properties.
662

663 Mr. Mabey explained that the duplex is currently non-conforming and to raze the building and
664 reconstruct would require relief from the setback requirements.
665

666 Mr. McKittrick was uncertain on whether he would be able to raze just one half of the duplex or if
667 the whole building would need to go. He was also unsure if whether he would build an up and
668 down apartment or a garage with an apartment above it.
669

670 The Board voiced concerns of approving a request without more substantial facts. They suggested
671 that Mr. McKittrick come back to the Board with a more descriptive plan with dimensions.
672

673 **Mr. Stanton Moved and Ms. Smith seconded the Motion to continue case #2009:05 – J. Joseph**
674 **McKittrick to the April 28, 2009 Meeting.**

675 **The vote was unanimous in favor of the Motion (5-0).**
676

677 Mr. Batchelder was reseated.
678

679 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to suspend the rule that the**
680 **Board will not commence consideration of an Application, or other matter filed by an**
681 **Applicant or other member of the public, after 10:30 p.m., and agreed to a time limit of 11:30**
682 **p.m. The vote was unanimous in favor of the Motion (5-0).**
683

684 Mr. Field recused himself.
685

686 **Motion for rehearing – Case #2008:12 – Peter Horne, Trustee, H.T.L.A.E.H. Nominee Trust**
687 **F.S. 123 Nominee Trust.** The Applicant was granted a variance from Article V, Section 501.2 by
688 the ZBA on January 27, 2009. The request for rehearing is made by Robert B. Field, Jr. and
689 Elizabeth H. Field, 123 Mill Road, abutters to the subject property.
690

691 In attendance for this Request:

692 Peter Horne, Trustee, Applicant

693 Attorney Pelech, Law Offices of Wholey & Pelech

694 Robert Field, Jr., Petitioner
695

696 Mr. Field called for two points of order. (1) Mr. Field said that Mr. Stanton has displayed public
697 antipathy toward him and his thought process, and requested that Mr. Stanton step down, and (2) he
698 requested that Mr. Pelech’s testimony be stricken from the record because the request for rehearing
699 is a matter to the Board and be granted to the aggrieved party only.
700

701 Mr. Stanton addressed Mr. Field's first point of order and said that he could render a fair judgment
702 on the rehearing and did not feel he needed to step down.

703
704 Mr. Stanton itemized the contents of the request for rehearing submittals that included Mr. Fields
705 request for rehearing with attachments as well as a letter with attachments dated March 3, 2009, and
706 Mr. Pelech's letter, and opined that it should be submitted for the record, and asked the Board
707 members for their opinions.

708
709 Mr. Pelech asked to respond to Mr. Field's second point of order. Mr. Stanton allowed it. Mr.
710 Pelech said that he has been practicing law for over thirty years and land use law exclusively for the
711 past 15 years. He has never witnessed a Board not accepting a memorandum in opposition to a
712 request for a rehearing. He said that it is standard procedure.

713
714 Ms. Smith said that she has chaired a request for rehearing in the past and there were point and
715 counter point submitted and taken into consideration.

716
717 Mr. Field called for a point of order and asked if Mr. Pelech's prior statement was under oath. Mr.
718 Stanton said that he believed that it was.

719
720 **Mr. Stanton Moved and Ms. Smith seconded the Motion to accept the Applicant's response to**
721 **the request for a rehearing be entered into the record for the rehearing request.**

722 **The vote was unanimous in favor of the Motion (4-0).**

723
724 Mr. Stanton said that if something illegal was done during the deliberations of the case, or that there
725 was new evidence that would require the Board to rethink the decision, or if a correction needed to
726 be made to the record then a rehearing would be granted.

727
728 Mr. Stanton stated that he had prepared some remarks, and noted that these were his thoughts to be
729 used as a vehicle for discussion. Mr. Stanton then went over his view of the facts of the case.

730 1. Mr. & Mrs. Field of 123 Mill Road are abutters to the property at 120 Mill Rd, the subject
731 of case 2008:12, and therefore have standing to file a request for rehearing per RSA 677:2.

732 2. The request for rehearing is timely per RSA 677:2 and the Rules of Procedure in effect on
733 the date filed.

734 3. Mr. Marc Lariviere was a duly appointed Alternate whose term was to expire in 2010
735 verbally indicated to Ms. Chase the Zoning Administrator, on or about mid-December that
736 he wanted to resign. The Chair's email to the Board was sent under the impression and
737 belief that the Select Board would be accepting the resignation and appointing a
738 replacement. Since that time the Select Board, through the Town Administrator, has
739 indicated that the ZBA is responsible for filling Alternate vacancies. The chair asked Mr.
740 Lariviere to delay his resignation so as to sit on the January 27, 2009 meeting. The Chair
741 informed Ms. Chase but was remiss in not advising the entire Board that Mr. Lariviere had
742 agreed to attend the January meeting. Mr. Lariviere's own testimony as described in the
743 minutes was that he was informed that he should put his resignation in writing; and he had
744 not done that. At the January meeting Mr. Field asked Mr. Lariviere, if possible, to stay on
745 until the continued cases were finalized. Mr. Lariviere said he would consider the request.

- 746 4. The time period to file an appeal for the decision of case 2007:16 has long since expired.
747 Furthermore, the Fields freely admit that they had reviewed Mr. Horne's building plans for
748 the garage.
- 749 5. The appeal of a decision of an administrative officer, specifically the building inspector, is
750 improperly filed in that the Rules of Procedure and Application instructions (both old and
751 revised) clearly state that the appropriate form is required. Combining an Application For
752 Relief from an Administrative Decision with a request for rehearing subverts the due process
753 and noticing procedures established by the ZBA. Furthermore, the time period to file an
754 appeal of a decision by an administrative officer in the form of building permits currently
755 issued to Mr. Horne, pursuant to the variance granted in case 2007:16, has also expired
756 (specifically ASR 08-07 and DES permit dated November 20, 2008).
- 757 6. The provisions of the Scenic Road statute, RSA 231: 157-158 were never invoked with any
758 tree cutting or stone walls being moved, or removed. Moreover, the statute specifically
759 states that a scenic road designation: "shall not affect the rights of any landowner with
760 respect to work on his own property..."
- 761 7. The affidavit of Mr. Sancoff, while it may represent what he believes is true based on his
762 recollection of unsubstantiated hearsay conversations, primarily focuses on the rebuilt
763 garage, the scenic road, and erroneously asserts that approval has already been given to
764 subdivide Mr. Horne's property with the statement "with the Board's action to permit the
765 dam to be allocated to a small subdivided lot...". Also, there is no mention of reporting any
766 wetland or zoning violations as he asserts in his affidavit. This hearsay evidence does not
767 appear to be sufficiently compelling to justify a rehearing.
- 768 8. The opinion of value submitted by Mr. Rice related to "Diminution of Property Values" is
769 based on an erroneous assumption of commercial property use. Property rental, even several
770 property rentals, each on its own lot but the same owner, is a permitted use in the R-2
771 district. To infer one or more rental properties is a commercial business by Mr. Horne is
772 patently false and must be rejected. Furthermore, the comparison of the Scenic Road to
773 Portsmouth's Historical District is misleading and at the same time, irrelevant to the
774 variance granted.
- 775 9. In the book, New Hampshire Planning and Land Use for 2007-2008 issued by the NH Office
776 of Energy and Planning the case of Griauzde v. City of Nashua in 1961, 103 NH 468, 174
777 (1961), was cited as decided by the New Hampshire Supreme Court as follows: "In the
778 interest of finality of decisions by zoning boards, rehearing's were not to be lightly granted."

779 Mr. Stanton said that the aforementioned was his analysis from reading both Mr. Field's petition
780 and said he was prepared prior to reading Mr. Pelech's arguments. He explained that there needed
781 to be two separate Motions because there were two separate requests. He asked for Board
782 discussion.

783
784 Ms. Peckham said that she agreed that the appeal period for the 2007 case is over regardless of
785 Judge Nadeau's opinion that a case is open until the certificate of occupancy is given. She said that
786 with regards to the present case decided in January, she would like to see a rehearing because there
787 is an opportunity to be more specific regarding the criteria. She said after reviewing the minutes
788 there was little or no discussion on the criteria. She opined that it was a mistake and should be
789 corrected and thinks a rehearing should be granted to do that.

790
791 Ms. Smith read the prior month's minutes and said that Mr. Sancioff made allegations in a letter to
792 the Board of what was happening on the Horne property and his letter should not have been
793 accepted because there were some parts of the letter that were not fact but "hear say". She said that
794 she did not find any mistakes made or omissions in the deliberations of the case.
795
796 Ms. Peckham said that she went on a site walk and asked Mr. Horne what he was doing with his
797 properties and he said that he intends on renting them.
798
799 Ms. Smith said that according to the testimony from Mr. Mabey that he is well within his rights to
800 rent out his property. Mr. Mabey confirmed that fact.
801
802 Mr. Batchelder said that he has not heard anything that would change his original decision in the
803 case.
804
805 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion that the appeal from a decision**
806 **of an Administrative Officer be returned to the Fields for proper filing and noticing if they**
807 **chose to pursue that avenue.**
808
809 Mr. Stanton said that the permit cited in the request for rehearing is beyond the 45 day appeal
810 period. Mr. Stanton said that there are two parts to Mr. Field's submittal. (1) a request for
811 rehearing and (2) an appeal from a decision of an Administrative Officer, and they needed to be
812 addressed by the Board separately.
813
814 **The vote was unanimous in favor of the Motion (4-0).**
815
816 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion that the request for rehearing**
817 **submitted by Robert Field Jr., and Elizabeth Field for 2008:12 pursuant to RSA 677:2 be**
818 **denied.**
819 **The vote passed (3 in favor, 1 opposed and 0 abstention). Ms. Peckham opposed.**
820
821 **Mr. Field rejoined the Board.**
822
823 A motion was made and seconded adjourn to at 11:15 p.m. with all in favor.
824
825 Respectfully submitted,
826
827 Wendy V. Chase
828 Recording Secretary
829
830 Approved June 23, 2009