



**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Tuesday, April 28, 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.

Alternates present: Chuck Gordon, Jennifer Lerner and Ted Turchan

Members Absent: None

Staff present: Richard Mabey, Code Enforcement Officer/Building Inspector, Wendy Chase, Recording Secretary, and Craig Salomon, Select Board Liason

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

Mr. Stanton convened the Meeting at 6:31 p.m.

Mr. Stanton called for a Pledge of Allegiance.

Mr. Stanton introduced the Board Members and Staff.

Ms. Chase reported that the April 28, 2009 ZBA Agenda was properly posted at the Library, Town Clerk's Office, Town Office and in the April 10, 2009 edition of the Hampton Union.

Mr. Stanton publicly thanked the prior Alternate Members of the Zoning Board; Mr. Jim Kierstead, Mr. Marc Lariviere and Mr. Paul Marston for their service to the Town.

2009:05 – J. Joseph McKittrick, 1701 Ocean Blvd, Rye, NH 03870. The Applicant requests a variance from Article V., Section 501.2, and from Article IV, Section 406 to demolish an existing building and rebuild, adding approximately 175 square feet, expanding a non-conforming use. Property owner: J. Joseph McKittrick. Property location: 4 Lafayette Terrace, M/L 021-008, zoning district I-B/R. This case is continued from the March 24, 2009 meeting.

In attendance for this application:

J. Joseph McKittrick, Owner/Applicant

Mr. Stanton recommended to the Board to rearrange the agenda to hear the McKittrick case #2009:05 first, due to fact that the Applicant, Mr. McKittrick had to wait the longest time at last month's meeting. The Board agreed.

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

Mr. Batchelder recused himself.

Mr. Stanton seated Mr. Gordon for Mr. Batchelder.

Mr. Field called for a point of order regarding the appointment of Alternates to serve in the position of a regular member who is unable to serve or is prevented from serving on a particular case. Mr. Field suggested that the Board develop a procedure to address this issue.

The Board agreed that the Zoning Administrator keep a list of the Alternates in alphabetical order, and will work from that list in descending order to appoint Alternates who are available.

Mr. Field started to make a motion on the agreed upon procedure. Mr. Stanton asked Mr. Gordon to step down and reseated Mr. Batchelder for the vote on the Motion.

Ms. Lerner spoke from the audience and said that Mr. Gordon was the appropriate Alternate to be seated for the McKittrick case because he was the first Alternate to be sworn in and the first Alternate in the alphabetical rotation.

Mr. Field Moved and Ms. Smith seconded the Motion until such time as the issue of Alternates is resolved by Counsel to the Town, and/or the Attorney General's Office, and/or in any other manner, that the Alternates be listed, with the Planning and Zoning Administrator, in descending order and that the selection of the Alternates be progressive in descending order going back to the top so that we have a standard rotation of Alternates sitting at the table, and to list the Alternates in alphabetical recycling order until there is a final determination in how Alternates are to be appointed, and who will be seated in serving. The vote was unanimous in favor of the Motion (5-0).

Mr. Field Moved and Ms. Peckham seconded the Motion to have Mr. Gordon, whose appointment was ratified by the Select Board, continues to sit on the McKittrick case #2009:05 even though his name may be out of the alphabetical order. The vote was unanimous in favor of the Motion (5-0).

Mr. Batchelder stepped down

Mr. Gordon was seated for Mr. Batchelder.

Mr. McKittrick began to continue his presentation from the March 24, 2009 Meeting.

Mr. Field questioned whether or not the requested variance of Section 406 was the correct provision.

Mr. Stanton said that Mr. McKittrick should be allowed to continue with his presentation, and then the Board may ask questions of him.

Mr. Field referred to a copy of the August 21, 1996 ZBA Minutes and referred to Mr. McKittrick's case #96-25. He said that in order to be fair to the Applicant the Board ought to know what the requested variances are for the current case 2009:05.

Mr. McKittrick addressed Mr. Field's point regarding the minutes of 1996 and explained that the purpose of the variance was to expand the office at 188 Lafayette Road. The lots were combined at that time and the lots share a common septic system for the residence and the business.

Mr. McKittrick explained that his intention is to "square off" the building without enlarging the existing footprint. He went over the pictures of the proposal that he had previously submitted that showed the front and back of the building. He explained that the office was on a separate lot from the duplex and as a condition of approval to grant the variance in 1996 to expand the office, the lots had to be combined into one lot, which they were. He also stated that he still wanted the option to tear the structure down and rebuild on the same footprint as two units.

Mr. Stanton asked if Mr. McKittrick did tear the building down and rebuild, would the footprint of the house be 55' 8" east to west and 32' 7" north to south with a proposed height of 32-feet. Mr. McKittrick said that that was correct.

Mr. Field asked that Mr. McKittrick verify that there were two families living in the duplex in 1996 and this proposal is a continuation of the same use even though it is non-conforming. Mr. McKittrick verified the same.

Mr. Gordon commented that it is a "grandfathered" non-conforming use.

Mr. Stanton opened the meeting for public comment for anyone wishing to speak for or against the application at 6:58 p.m.

Mr. Stanton closed the Public Hearing at 6:58 p.m. without public comment.

Mr. Field said that when the Board has a case like this it would be helpful if the Building Inspector would write up a paragraph outlining what the historical issues are so that the Board may be advised as to what impact the information may have on the application.

Mr. Stanton said that it is the job of the ZBA members to "flush" out the facts and history of each individual case; it is not the responsibility of the Building Inspector.

Mr. Field said that the copy of the 1996 ZBA minutes containing pertinent information on the McKittrick case was new information that he just received in his mailbox, even though the document was stamped with a distribution date of March 23, 2009, one day before the March 24, 2009 ZBA meeting. Ms. Peckham said that she didn't receive the information until this month also.

Mr. Stanton said that the information was in his box and every other member's mailbox that he knew of prior to last month's meeting.

Ms. Chase stated that the distribution date on the information provided to the members is the date that it was distributed to their mailboxes, and that she is not responsible for how often each member checks their mailbox for added information.

The Board discussed the five criteria of the variance standard test.

1. Would granting the variance not be contrary to the public interest?

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Mr. Stanton said that the lot is a “grandfathered” and non-conforming lot in the I-B/R zone.

Mr. Field said that on the petition for variance on a zoning ordinance signed by the Applicant on February 25, 2009, the Applicant checked off “no” to the question “Are there any existing Variances or Special Exceptions on the property?” Mr. Field said that the Board should develop a process in which the Board members receive the record because this case could come out differently if the Board relied on the application. Mr. Stanton said that when he received the application with the plan he did his “homework” and found that it made reference to the plot plan, and that is when Ms. Chase called Mr. McKittrick and found that the box was checked in error. Mr. McKittrick explained, at the March 24, 2009 ZBA Meeting, that he mistakenly checked off the “no” box.

Ms. Peckham read from Supreme Court Case, Bruce Dow & a. v. Town of North Hampton, dealing with the public interest criterion. ““To be contrary to public interest, the variance must unduly, and in a marked degree, conflict with the ordinance such that it violates the ordinance’s basic zoning objective”. “In determining whether a variance violates an ordinance’s basic zoning objectives, we look to, among other things, whether it would alter the essential character of the locality or threaten public health, safety or welfare.””

Mr. Stanton said that he doesn’t see anything contrary to public interest.

Mr. Gordon said that it is a “grandfathered” use.

2a. Would not granting this variance create an unnecessary hardship because an area variance is needed to enable the applicant’s proposed use of the property given the special conditions of the property?

Mr. Stanton said that there are special conditions because the property lies in the I-B/R zoning district, and is a “grandfathered” use. The office and residence share a septic system, which is unique to the area.

Mr. Gordon said that because of the small dimensions of the lot, in order to improve the structure for its allowed residential use, it would be necessary to intrude into the setbacks. It is the size of the lot that compels intrusion into the setbacks.

2b. Would not granting this variance create an unnecessary hardship, including a financial hardship, because the benefit sought by the applicant cannot be achieved by some other reasonable feasible method?

Ms. Peckham said that there is not another feasible place to put the addition.

Mr. Field said that the Applicant doesn’t need the addition in order to use the property in a productive manner.

Ms. Smith asked the Applicant if there were problems with the building as it exists. Mr. McKittrick said that there is work on the building that needs to be done that is beyond repair. He said that he has not rented it because of safety issues.

Ms. Peckham addressed Mr. Field's comment and quoted from Court case, Malachy Glen Assocs. V. Town of Chichester, "In the contents of an area variance the question whether or not the property can be used differently from what the Applicant has proposed is not material."

3. Would the use contemplated by petitioner as a result of obtaining this variance be consistent with the spirit of the ordinance?

4. By granting this variance, would substantial justice be done?

5. Would granting this variance result in a diminution in value of surrounding properties?

Ms. Smith and Mr. Stanton agreed that it would be the opposite.

Mr. Gordon said that there was no evidence presented that would determine a diminution in value.

Mr. Gordon Moved and Ms. Peckham seconded the Motion that the Board finds that all of the five variance criteria for case #2009:05 – J. John McKittrick, have been met, therefore; the requested variance be granted.

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

Mr. Stanton explained the 30-day appeal period to the Applicant.

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. This case is continued from the March 24, 2009 meeting.

In attendance for this application:

Vincent Peter Corbett, Owner/Applicant

Mr. Stanton, Mr. Batchelder, Ms. Peckham and Mr. Field recused themselves.

Ms. Smith was seated as Chair.

Ms. Smith seated Ms. Lermer, Mr. Gordon, and Mr. Turchan for Mr. Batchelder, Ms. Peckham and Mr. Field.

Ms. Smith explained to Mr. Corbett that there would be a four member Board to deliberate his case and gave him the option to continue his case for a full Board of five members. Mr. Corbett requested a continuance.

Mr. Turchan Moved and Ms. Lermer seconded the Motion to grant the request to continue case #2009:03 – Vincent Peter Corbett, Jr. to the May 26, 2009 Meeting.

Mr. Philip Wilson, a member of the audience, said to Ms. Smith that in the past she had recused herself from cases that involved Mr. Simmons, and since Mr. Simmons is a member of North Hampton Forever, and Ms. Peckham and Mr. Field have recused themselves because of their relationship with North Hampton Forever, shouldn't she also recuse herself from the Corbett case.

Ms. Smith answered “no” she said that her opinions, thoughts and voting record are her own. She said that she is not privy to North Hampton Forever business, therefore; she can remain impartial on the Corbett case.

The vote was unanimous in favor of the Motion to continue (4-0).

Mr. Wilson commented for the record that it was his opinion that Ms. Smith would not meet the juror standard regarding the Corbett case. Ms. Smith said that she can absolutely be impartial regarding the Corbett case because what is going on with North Hampton Forever has no bearing on what this Board has to decide.

Mr. Wilson said that in addition to the North Hampton Forever issue Mr. Simmons is also an Alternate Member of the Conservation Commission, which takes a position on the question whether or not the variance affects the wetlands.

Ms. Smith said that she would not debate the issue with Mr. Wilson, and reiterated that she would remain impartial regarding the Corbett case, and would not recuse herself.

Mr. Stanton resumed the Chair.

Mr. Stanton reseated Mr. Field, Ms. Peckham, and Mr. Batchelder.

2009:06 – James Jones, 207 Atlantic Ave., North Hampton. The Applicant requests an appeal of a Decision of an Administrative Officer pursuant to RSA 674:33, 676:5. Applicant proposes to sell rock salt from his business location at 187 Lafayette Road. Property owner: James Jones, Property location: 187 Lafayette Road, M/L 017-094, zoning district I-B/R.

In attendance for this application:

James Jones, Owner/Applicant

Mr. Field called for a point of order. Mr. Field referred to a letter from Mr. Fitzgerald, an abutter to Mr. Jones’ property, questioning whether this case was timely filed.

- The decision from the Code Enforcement Officer was made on January 23, 2009.
- 45 days from January 23, 2009 would be March 7, 2009.
- The case was filed on March 13, 2009.

Ms. Smith called for a point of order and said in order to be fair to the Applicant her point supersedes Mr. Field’s because she believed that Mr. Field was going to be asked to recuse himself from this case because there have been legal ramifications between Mr. Jones and Mr. Field in the past. Ms. Smith said that any other member can make the point Mr. Field is making but does not feel Mr. Field has the right to speak because he should not be sitting on this case.

Mr. Stanton said that the point of orders needed to be addressed.

Mr. Field said that he is trying to determine whether or not this case should continue, and after that determination he would recuse himself if the Applicant wished him to do so. He also stated that to have a business disagreement is not grounds for jury dismissal

Mr. Field continued with his point of order:

- The Police served the notice on January 26, 2009 (Per State Statute the date that the notice is served is not the date used to determine the 45 day appeal period). Mr. Jones was given a liberal interpretation because the date of decision preceded the date of notice.
- 45 days from January 26, 2009 is March 12, 2009 (45 days is the appeal period the Board voted on as part of their rules of procedure).
- Mr. Jones filed his appeal from an Administrative Officer on March 13, 2009.

The Board reviewed the calendar and counted the days and determined that the date in which the Applicant was served notice by the Police Department on January 26, 2009 to when the Applicant filed the Appeal of Decision of an Administrative Officer on March 13, 2009 exceeded the 45-day appeal period. Mr. Field also pointed out that the day of the notice is not counted. Pursuant to State Statute the date of the cease and desist notice is the date to start the count for the appeal process, not the actual delivery date. As a preliminary matter the Board determined that Mr. Jones' appeal was not timely filed.

Mr. Jones said that he was told by the Building Inspector that he only needed to write a letter of intent to him within 20-days of the cease and desist. Mr. Stanton reminded Mr. Jones that he was given a copy of the Board's Rules and Procedures and a copy of the application instructions that explain the proper procedure when filing an Appeal of an Administrative Officer.

The Board discussed the option of waiving the appeal time limit requirement in the rules of procedure. Mr. Field said that the Board may be inclined to do so if it weren't for the fact that an abutter raised the objection limiting the discretion of the Board to act on the discretionary clause.

The Board was made aware by Ms. Peckham of a recent NH Supreme Court case that dealt with a timeliness issue.

Ms. Smith asked if March 12, 2009 was on a "business" day. It was determined that March 12, 2009 fell on a Thursday.

Mr. Stanton Moved not to accept the Application submitted by Mr. Jones, case #2009:06 due to untimely filing.

There was no second to the Motion. The Motion failed.

Ms. Smith said that the Applicant submitted his appeal within a 24-hour period of the deadline and this is a business that affects his livelihood and suggested the Board go forward. Mr. Field said that he would generally agree but the rights of an interested party (Giant Lift) have been affected, and selling salt is not permitted as stated in the Building Inspector's cease and desist order.

Ms. Peckham said that she understands Ms. Smith's point but the way the law reads it's actually the date of the cease and desist not the date of service, so in fact the application was submitted four-days late.

Mr. Jones said that he is currently allowed to sell all earth and landscape materials and salt comes from the earth. Mr. Mabey determined that the salt is not a landscape material. Mr. Jones is before the ZBA to appeal Mr. Mabey's determination that salt is not a landscape material.

Mr. Field commented that uranium and oil come from the earth so the argument that salt is mined from the earth may not stand the test of logic.

Ms. Smith pointed out that Home Depot and like businesses that are in the same area as Mr. Jones' property sells salt.

Ms. Peckham said that it sounded more like an issue for the Planning Board because it is a change to the site plan that they approved.

Mr. Salomon explained that the Applicant may want to go before the Planning Board to apply for a change to the site plan and if is not satisfied with the outcome he may appeal their decision to the ZBA.

The Board discussed waiving the application fees if the Applicant were to apply to the Planning Board.

Mr. Mabey said that the fees have already been spent regardless of the outcome of an application with noticing in the paper, abutter notification and staff time.

Ms. Peckham Moved and Mr. Field seconded the Motion to send the Applicant to the Planning Board for them to review the application under the site plan review process.

Mr. Salomon said that if Mr. Jones were to withdraw his application and apply to the Planning Board then the record would be "clearer". He said if the ZBA refers the application before them then the Board is referring the original denial by Mr. Mabey and would preclude the ZBA on the timeliness issue.

Mr. Field quoted from Mr. Mabey's cease and desist order, "Road salt is not a landscape material and is not allowed at this site without an approval from the Planning Board".

Ms. Peckham withdrew her Motion and Mr. Field withdrew his second to her Motion.

Ms. Peckham asked if the Applicant should be given the opportunity to withdraw his application.

Mr. Jones withdrew his Application.

Mr. Stanton withdrew his Motion.

Other Business

The Board discussed appointing Alternates to the ZBA. Mr. Stanton explained that the Select Board held a meeting on Monday, April 27th to discuss the appointment of Alternates and determined that they should seek a legal opinion on whether or not appointed ZBA members had

the same rights as elected ZBA members to make recommendations to the Select Board for ZBA Alternate Appointees.

Mr. Stanton recommended the Board wait until all the legal advice was in before taking up the issue.

Mr. Field said that the Select Board voted to ask that the elected members of the ZBA review the open applications that are on file and recommend to them who the Alternates should be.

Ms. Smith said that she didn't think the ZBA could continue without receipt of the legal opinion. She said if it turns out that she and Richard Batchelder have the same rights as the elected members than that would bring Deborah Wood back as an Alternate because the original vote to appoint Ms. Wood was not unanimous, therefore; the Select Board did not appoint her at their meeting.

Mr. Batchelder agreed with Ms. Smith.

Mr. Field said that the original opinion from the Local Government Center (LGC) to Mr. Fournier over the phone contradicts the written opinion that Mr. Stanton had Ms. Chase obtained from them. He also stated that Mr. Stanton acted on his own to have Ms. Chase obtain the opinion from LGC and that it was not a Board decision. He said that the Select Board is seeking a legal opinion on the appointment of ZBA alternates and there are three possible answers:

1. The Select Board is the appointing authority, and remains so until next year's election.
2. That all five members of the ZBA are under the authority to appoint the ZBA Alternates.
3. That only the elected members of the ZBA would have the authority to appoint the Alternates.

Mr. Field said that according to the Attorney General the rights of the appointed members of the ZBA are those that exist at the time of their appointment. He said that the Select Board made three votes at their meeting last night:

1. They confirmed the staggered ZBA terms.
2. They confirmed that they are taking jurisdiction over the appointments as recommended by the Local Government Center.
3. That the three elected ZBA members vote to recommend the appointment of the last two alternates.

Mr. Field suggested that the ZBA comply with the Select Board's decision and act on the recommendations tonight.

Ms. Smith said that there are two contradictory opinions from the LGC on the issue and they are now waiting for a decision as to the ability of the ZBA to vote as five members or three members because of elected vs. appointed members. She said that she didn't think the Board should go forward because she is still unclear as to what weight her vote carries as an appointed member. Ms. Smith also commented that Mr. Field chastised Mr. Stanton for seeking an opinion from LGC without Board approval when Mr. Field, took it upon himself, without Board approval to seek an opinion from the Attorney General. Ms. Smith said that she did not think it was fair to take up the issue of appointing Alternates.

Mr. Field said he had filed his letter to the Select Board as a private citizen pursuant to the Code of Ethics.

Ms. Peckham said that the ZBA should follow the instructions of the Select Board and vote to recommend the other two Alternates.

Mr. Salomon reported that the Select Board voted 2 -1 to consider recommendations on Alternates by the three elected ZBA members. He said that the Select Board is seeking a legal opinion whether or not the Select Board is within its rights to take that vote. Mr. Salomon said that it would make sense for the Select Board not to vote on recommendations made by the ZBA until they receive an answer to that question. Mr. Salomon said that he was in the minority on that vote and it was his thought that the Select Board should wait to get the legal opinion before voting on Alternates recommended by the ZBA. Mr. Salomon said that he did not see anything in the law that indicates that appointed ZBA Members in the transitioning of the Board are "second rate" citizens.

Ms. Peckham said that she understands if the ZBA votes to recommend Alternates the Select Board will not act on it until they have received the legal opinion they've sought, but questioned whether or not the ZBA should follow the directive made by the Select Board to vote to recommend Alternates regardless.

Mr. Stanton said that it is not certain as to how many available Alternate seats are available because if the legal opinion comes back that the recommendations can be voted on by the appointed and elected members than Ms. Wood may or may not be appointed by the Select Board, leaving one or two vacancies. He suggested that the ZBA wait for the Select Board to receive their legal opinion and direct the ZBA in writing on how to proceed.

Mr. Field said that the three elected ZBA Members have to make a recommendation pursuant to the request of the Select Board to do so.

Mr. Field Moved and Ms. Peckham seconded the Motion that the three elected ZBA Members meet pursuant to the instruction of the Select Board last night which requested the elected members to put forth recommendations to them regarding the pool of applicants the ZBA has as alternates and that we do that tonight so that that information can be in the hands of the Select Board as they receive the legal opinions requested, and work their way through it.

Mr. Field said that he thought only the elected members should vote on the Motion because it only applies to the elected members.

Mr. Stanton said that he thought they were going in a direction that was probably illegal. He said that this is a Board of five equal people and until there is a legal opinion saying otherwise to do what Mr. Field is asking would be illegal.

Ms. Smith commented that the vote would be a null and void vote that has no substance and is not legal and binding.

The Motion failed (2 in favor, 3 opposed with 0 abstentions). Mr. Field and Ms. Peckham voted in favor of the Motion. Mr. Stanton, Ms. Smith and Mr. Batchelder voted against the Motion.

477 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to defer consideration of any**
478 **alternates and their recommendations to the Select Board until we receive guidance from the**
479 **Select Board that they do indeed have (1) the authority to appoint, and (2) which of the**
480 **Members of the ZBA are permitted to vote on the recommendations of the Board.**

481
482 Mr. Field said the hazard of that is it may require that the matter go to the Supreme Court, which
483 could run out for at least a year before an answer is received and the ZBA would only have three
484 members, and this Board would be limited with the three alternates.

485
486 Ms. Smith commented on the fact that there have been three Alternate Members of the ZBA for a
487 number of years. She said that the ZBA should wait for the legal opinions sought because if the
488 ZBA chose to go forward it may do more harm than good.

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490 Mr. Field said that the only reason he voted for the three Alternates that he voted for was because
491 he was ruled out of order in obtaining a legal opinion on how the ZBA could vote, whether it could
492 be thee elected and two appointed or just the three elected members, so there was a need for
493 Alternates to do the public's business and he felt compelled to do so but it was done under protest.

494
495 Ms. Smith said that she felt that the vote on the three Alternates at the March Meeting was legal
496 and binding but now that they have two conflicting opinions from the LGC they should wait for the
497 legal opinion.

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499 Mr. Stanton said that the Corbett case is unique because there is a need for four Alternates so there
500 is pressure there to appoint another Alternate. He said that the Select Board's next meeting is May
501 11, 2009, and if they receive more information than the ZBA may be able to take up the issue at the
502 May 26, 2009 ZBA Meeting. They may even be able to vote on Ms. Wood at their May 11th
503 Meeting, and then the ZBA would have four Alternates for the Corbett case. The ZBA could also
504 recommend to the Select Board the fifth Alternate at the May 26th ZBA Meeting.

505
506 **The vote passed (3 in favor, 2 opposed and 0 abstentions). Mr. Stanton, Ms. Smith and Mr.**
507 **Batchelder in favor of the Motion. Mr. Field and Ms. Peckham opposed the Motion.**

508
509 Mr. Stanton asked the Board if they would authorize him to write a thank you letter to the previous
510 ZBA Alternates on the Board's behalf.

511
512 **Mr. Field Moved and Peckham seconded the Motion to grant authority to Chairman Stanton**
513 **to write the thank you letters to the three previous ZBA Alternates for their service, on the**
514 **Board's behalf.**

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

516
517 Mr. Stanton said that he would like to write a letter to the Select Board to have the Conservation
518 Commission Meetings televised on Channel 22, and to have the minutes and agendas posted on the
519 Town's website.

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521 Mr. Field suggested that Mr. Stanton attend the next Select Board's Meeting with his request
522 instead of a formal letter.

523
524 Ms. Smith said that she would rather Mr. Stanton write a letter so the issue would be acted upon.

The Board agreed to allow Mr. Stanton to write the letter to the Select Board.

Mr. Buber asked the Board if they would consider re-inviting him to a ZBA meeting so that he may present himself to the Board and the citizens of North Hampton regarding becoming an Alternate to the ZBA. Mr. Stanton said that Mr. Buber can be assured of that, and that he will be at the top of the list to attend.

Minutes

March 24, 2009 Meeting Minutes – Ms. Smith commented that there are two sets of the March 24, 2009 Minutes that are quite different, and she would like to review the DVD of the Meeting before voting on the approval. Mr. Batchelder agreed with Ms. Smith.

Mr. Field said that Ms. Chase uses the word “opined” and he said that the word has a legal significance to it, and that is why he rejects it because the statements are not legal opinions. Mr. Field suggested incorporating the DVD into the record and making it a part of the minutes.

Mr. Stanton said that if there is a Court case, the Courts would rely on the written Minutes of the Meeting.

Mr. Field suggested having the Recording Secretary write up the essence of the Meeting and the Members can make corrections to that but also include a statement at the end “Incorporated into these Minutes by reference is the video transcript (DVD).”

Ms. Peckham said that it would be a supplement to the Minutes. The Board agreed to include a copy of the DVD with all minutes.

Mr. Stanton Moved and Ms. Peckham seconded the Motion to table the minutes of March 24, 2009 to May 26, 2009 Meeting.

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

Mr. Stanton said that he would make copies of the DVD of the March 24, 2009 Meeting for the members to review.

Mr. Stanton shared with the Board information from Roberts Rules of Order regarding “frequently asked questions”

Can the Chair vote?

“Yes”, the Chair can vote.

Can the Chair make Motion?

The Chair, if a Member, has the same right to vote as any other Member.

Can the Chair enter in a debate?

“Yes.”

Can a Member nominate themselves for an Office?

“Yes”, if there is nothing in the rules to prevent it.

Can Nominees vote for themselves?

“Yes”, if there is nothing in the rules to prevent it.

Must the person if nominated step down from the election?

“No.”

When does a resignation take effect?

“ When the resignation has been accepted by the electing or appointing body, unless the bylaws say otherwise”.

Can a Member vote or second the Motion to approve the Minutes of a Meeting that he or she did not attend?

“Yes”, and a Motion doesn’t need to be made for the approval of the Minutes, and there is no limit as to how many times corrections can be made to the Minutes.

Mr. Field said that he agrees with what Mr. Stanton shared, but said that the Board does not use Roberts Rules of Order. He said that it is the Code of Ethics adopted by the Town that takes preference over Roberts Rules, and in that it says that it is a violation of the Code of Ethics to vote on a matter that involves self interest. Mr. Field has written to the Select Board for clarification on whether the Chair voting for himself was a violation of the Code of Ethics.

Ms. Smith Moved and Mr. Batchelder seconded the Motion to adjourn the Meeting at 8:58 p.m.

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

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved June 23, 2009