



**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Tuesday, June 23, 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.

A Recording Secretary was not present; these minutes were transcribed from a video recording of the meeting.

Attendance

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

Alternates present: Jennifer Lerner, Ted Turchan, Debbie Wood and David Buber

Members Absent: Michele Peckham

Staff present: Richard Mabey, Code Enforcement Officer/Building Inspector, and Craig Salomon
Select Board Liaison

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

Mr. Stanton invited the Board and the audience to rise for a Pledge of Allegiance.

Mr. Stanton introduced members of the Board and noted for the record that Ms. Peckham was absent.

Mr. Stanton seated Mr. Buber for Ms. Peckham.

Mr. Stanton recused himself.

Mr. Batchelder recused himself.

Mr. Field recused himself.

Ms. Smith assumed the Chair.

Mr. Turchan, Ms. Lerner and Ms. Wood were seated for Mr. Field, Mr. Stanton, and Mr. Batchelder.

Unfinished 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-2. This case is continued from the May 26, 2009 meeting.

50 The Board was in receipt of a letter from V. Peter Corbett requesting a continuance without
51 prejudice for his case #2009:03 to the November 2009 Zoning Board Meeting.

52
53 Ms. Smith gave a brief timeline on the case:

- 54 • The Corbett application, case #2009:03 was first presented at the January 27, 2009 ZBA
55 Meeting.
- 56 • Mr. Corbett was granted a continuance to the March 24, 2009 ZBA Meeting. The Board
57 decided to continue the case after a brief presentation to give the newly appointed alternates
58 time to digest the application.
- 59 • Mr. Corbett requested a continuance at the April 28, 2009 Meeting to the May 26, 2009
60 Meeting because he wanted a full five member Board to hear his case.
- 61 • Mr. Corbett presented his case at the May 26, 2009 Meeting. The Board asked for more
62 information and granted the Applicant a continuance to the June 23, 2009 Meeting to give
63 him a chance to gather the requested information.
- 64 • Mr. Corbett requested a continuance to November 2009 Meeting in a letter that the Board
65 was in receipt of at the June 23, 2009 Meeting due to the fact that he was out of Town for
66 the summer.

67
68 Discussion ensued on the continuance request. The Board's past practices has been to grant
69 continuances to the next month. It was determined that the request to continue to November 2009
70 was too long of a time span because they were close to deliberations on the Corbett case.

71
72 **Mr. Turchan Moved and Ms. Lermer seconded the Motion to continue case #2009:03 – V.**
73 **Peter Corbett to the August 25, 2009 Meeting.**
74 **The vote was unanimous in favor of the Motion (4-0). Mr. Buber did not vote.**

75
76 Ms. Smith requested that a letter be sent by certified returned receipt mail to Mr. Corbett at his
77 summer residence informing him of the Board's decision.

78
79 Mr. Stanton assumed the Chair.
80 Mr. Batchelder and Mr. Field were reseated.

81
82 Mr. Stanton suggested that the Board address portions of the minutes that involved the Corbett case
83 so that the Alternates that sat on the case could make any comments on them prior to continuing
84 with the new business.

85 86 **Minutes**

87
88 March 24, 2009 Meeting Minutes – No comments on the Corbett case.
89 April 28, 2009 Meeting Minutes – No comments on the Corbett case.
90 May 26, 2009 Meeting Minutes – Ms. Smith made changes to portions of the minutes relating to the
91 Corbett case. (The approved minutes will show the changes made in a “red lined” version).

92
93 Mr. Stanton began discussion on creating a schedule for alternate members. He suggested that a
94 schedule be prepared where the most senior alternate, assisted by the next most senior alternate,
95 would be responsible for scheduling alternates for each scheduled Meeting. He explained that there
96 would be a primary alternate that may be expected to attend and a standby alternate that could be

97 available to be seated if necessary. He explained that this type of scheduling would give the
98 alternates control over their destiny.

99
100 The Board decided that it would be best not to change the current practice in scheduling Alternates,
101 and to continue the past practice by leaving the scheduling of Alternates up to the Planning and
102 Zoning Administrator.

103
104 The Board resumed their discussion on the Meeting Minutes. Mr. Stanton suggested using the
105 original minutes and making any recommended changes line by line.

106
107 March 24, 2009 - amendments were made to the March 24, 2009 Meeting Minutes.

108
109 Ms. Smith suggested that the Minutes should always reflect what was verbally stated at the
110 Meetings and not to include personal thoughts or embellishments on what was actually said.

111
112 Mr. Field asked that the word “opined” be changed throughout the minutes when referring to
113 anything he commented on.

114
115 **Mr. Field Moved that the March 24, 2009 Meeting Minutes on line 54 through line 58 be**
116 **changed as follows: *He serves as an “administrative” Chair and not as an “executive” Chair.***
117 ***As an “administrative” Chair he enjoys no greater standing as to the review of cases and or the***
118 ***administrative procedures used and employed by the Board. Further, he has no authority to***
119 ***“speak” for the Board and/or any member absent being granted specific authority.***

120
121 **There was no second to the Motion. The Motion failed.**

122
123 **Mr. Field Moved that line 95 be changed to *he added that his action is in no way to be***
124 ***interpreted as a reflection against Mr. Stanton’s previous decision.* Ms. Smith seconded the**
125 **Motion.**

126 **The vote passed (4 in favor, 0 opposed and 0 abstentions). Mr. Buber did not vote.**

127
128 **Mr. Field Moved to add a sentence to line to the paragraph beginning at line 125, *Mr. Field***
129 ***stated that such reasoning was flawed.***

130
131 **There was no second to Mr. Field’s Motion. The Motion failed.**

132
133 The following was inserted on line 144 *Mr. Field indicated that, as an appointed member, Ms.*
134 *Smith is, by statute, protected as to the powers “vested” in her as an “appointed” member.*
135 *Accordingly, she is correct that she may continue to vote on cases and administrative matters*
136 *coming before the Board. However, Mr. Filed held to the position that the “appointment of*
137 *alternates” is a statutory power reserved solely to “elected” members of a Board, and does not*
138 *extend to “appointed” members even though their term(s) of office may continue during transition.*
139

140 Line 161 – Field, add *He offered no supporting Case or Statutory law to Mr. Field.*

141 Line 171 – Field, grammatical change

142 Line 179 – Field, add *and directed that it be in force during the “voting” period. Mr. Field pointed*
143 *out that such Policy Statement included many more criteria than that which Mr. Stanton now*
144 *proposes, and, he asked Mr. Stanton what has caused him to change his mind so dramatically.*

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Mr. Field Moved to add to the above paragraph, because of a lack of sufficient number of members present to permit three (3) votes in favor of the Chair's dictate. Mr. Field stated that the matter was "hardly" moot, and that it appeared as though an effort was being made to "rush to judgment" on the appointments in order to gain a "strategic philosophical advantage".

Ms. Smith made a friendly amendment to the Motion to add a period after the word judgment and eliminate the sentence following. Mr. Field accepted the friendly amendment.

The vote passed (4-0). Mr. Buber did not vote.

Line 203 - Field, add after the word spoken, *with any person about the duties of a Board member either in connection with her campaign for office and*

Ms. Smith Moved and Mr. Batchelder seconded the Motion to add to the end of line 205, She denied having other conversations on the matter.

The vote passed (4-0). Mr. Buber did not vote.

Line 252 – Field, *Mr. Field said that the copy of the "invitation" letter he received did not state that attendance at this Meeting was mandatory in order for an indication of interest to be considered. He also inquired as to whether or not the Board had authorized such invitation, as he could not recall any such action. He said that Mr. Buber has demonstrated himself and his skills on multiple occasions in the past before the Board and suggested he would be a good candidate.*

Mr. Field asked to add a paragraph into the minutes regarding remarks made while he was a sitting member of the public on a case he recused himself from. The Board suggested he add his remarks as an addendum on his own letter head and attached to the minutes.

Line 387 – Stanton change to *reasonably feasible*

Line 449 – Field, insert *Mr. Field advised that he is a member of "North Hampton Forever", and that "North Hampton Forever" has an interest in the outcome of the Case. He stated that if either the Applicant, an Abutter, and/or any member of the public was uncomfortable with his sitting on the Case, that he would most willingly stand down and recuse himself for reason that he might be viewed as being supportive of, (not hostile to), a favorable outcome.*

Line 452 – change to *Mr. Stanton indicated that he would prefer that Mr. Field not sit on the Case.*

Discussion ensued on what the minutes of the meetings should reflect.

Ms. Smith Moved that the Minutes should reflect verbal exchange and dialogue; that the thought process of why someone said it, what they meant by it, or trying to enlighten the words with one's own personal opinion is inappropriate. For a verbatim discussion of the minutes there is a DVD that is available that can be purchased from the North Hampton Station Manager, but would like to see the Board refrain from personal interjections that are not relevant.

192 Mr. Field said that to protect the interest of the ZBA and Town, the Minutes need to be more
193 expansive than what Ms. Smith stated in her Motion.

194
195 Mr. Salomon spoke as Liaison to the Board. He said that Meeting Minutes are part of the certified
196 record and the DVD is not. Mr. Salomon said that it has been his experience that Board's debate
197 over whether minutes should be verbatim or a "gist" of the Meeting. He said that the Board this
198 evening was going in a third direction by adding a "gloss" to the Minutes. Mr. Salomon opined that
199 that would put the Town at a disadvantage because if someone was to read the Minutes as the
200 official record and there were statements in there that were not actually reflected in the DVD, which
201 is the verbatim record, it would cause a problem. He suggested that the Board should decide
202 whether they want the Minutes verbatim or just the "gist" of the Meeting.

203
204 Ms. Smith said that the Minutes should reflect what was said at the Meeting without being "fluffed
205 up" or "glossed over". She said the Minutes should match what was said at the Meeting and the
206 DVD is made available to those who wished to witness what was said verbatim.

207
208 **Ms. Smith withdrew her Motion.**

209
210 Line 505 – Stanton, add Mr. Richard Luff, President, Sagamore Golf Course and insert, *Mr. Stanton*
211 *asked for those presenting testimony to rise and be sworn. They were duly sworn.*

212
213 Line 547 – Stanton, remove fall line and add *it is a model ordinance*

214 Line 558 – Stanton, remove one reasonable feasible and change reasonable to reasonably

215 Line 657 – Stanton, change to 10:30 pm and add *and agreed to a time limit of 11:30pm.*

216 Line 673 – Field, change prosthesis to process. Mr. Field also requested to interject a paragraph.
217 The Board suggested he write the paragraph on letter head and submit it as an addendum to the
218 record.

219 Line 704 – Stanton, add *Mr. Stanton stated that he had prepared some remarks, and noted that*
220 *these were his thoughts to be used as a vehicle for discussion. Mr. Stanton then went over his view*
221 *of the facts of the case.*

222 Line 784 – Stanton, change sited to cited

223 Line 795 – Stanton, insert *Mr. Field rejoined the Board.*

224
225 **Mr. Stanton Moved and Ms. Smith seconded the Motion to approve the Meeting Minutes of**
226 **March 24, 2009 as amended.**

227 **The vote passed (3 in favor, 1 opposed and 1 abstention). Mr. Field opposed and Mr. Buber**
228 **abstained.**

229
230 Mr. Michael Donahue, 8 Old Locke Road, was present to voice his support for case # 2009:08 –
231 Rana J. Clarizio. The Applicant was not present. Mr. Donahue asked if he would be able to speak
232 on the case this evening. It was suggested that he write a letter to the Board.

233
234 Ms. Smith voiced concerns over opening the case because the "clock" starts "ticking" for a final
235 decision on the case once it is opened.

236
237 Mr. Stanton invited Mr. Donahue to give his testimony on case #2009:08 – Rana J. Clarizio,
238 Trustee, Rana J. Clarizio Revocable Trust 2000, 7 Old Locke Road, North Hampton. The Applicant

239 requests a variance to Article IV, Section 409.8A to construct a septic system within the 75-foot
240 wetland buffer setback. Property location: 7 Old Locke Road.

241

242 Mr. Donahue thanked the Board for the opportunity to speak because he may not be available on the
243 date that the case is rescheduled to. Mr. Donahue spoke on behalf of his wife Diane Donahue and
244 himself. He said that they support the granting of the requested relief in this case. He said that
245 granting relief so that the residents have a place to put a replacement septic tank is consistent with
246 the Spirit of the Ordinance. He said that a properly functioning septic system would be a benefit to
247 the health and safety of the public. He said that the house has been vacant for over a year and it
248 would be good to have the residence occupied. Mr. Donahue said he does not care where the
249 system is as long as it is a properly functioning septic system.

250

251 Mr. Buber read from the site notes under plan intent, paragraph two of the proposed septic plan:
252 *The existing septic system appears to be in working order as of the date of this design (4/15/09) and*
253 *is intended to be used until it fails. Property has been vacant for two years.*

254

255 Mr. Donahue said that NH Soils did the plan and he is perfectly comfortable with their judgment.

256

257 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to continue case #2009:08 –**
258 **Rana J. Clarizio, Trustee, Rana J. Clarizio Revocable Trust 2000 to the July 28, 2009**
259 **Meeting.**

260

261 Mr. Field said that a request for a postponement of a case is usually requested verbally or in writing.
262 He said that he was uncomfortable granting a continuance where the Applicant did not even show
263 up, but an abutter to the property did. He agreed that the case be continued, but does not think it is a
264 good policy to endorse.

265

266 Ms. Smith said that the Applicant is dealing with a family member in a medical emergency and
267 granting a continuance is in order.

268

269 Mr. Stanton said that since the Board did not hear from the Applicant they should at least give the
270 Applicant the benefit of the doubt and postpone the case to a date certain and wait for further
271 information and make any necessary decisions at the next meeting.

272

273 **The vote was unanimous in favor of the Motion to postpone case 2009:08 to July 28, 2009 (5-**
274 **0).**

275

276 **April 28, 2009 Meeting Minutes – Amendments were made to the April 28, 2009 Meeting**
277 **Minutes:**

278

- 279 • Line 115 – Field's amendment to add *Mr. McKittrick verified the same.*
- 280 • Line 124 – Field's amendment to add *historical* before issues
- 281 • Line 238 – Field's amendment to add to first sentence *Mr. Philip Wilson, a member of the*
282 *audience,*
- 283 • Line 247 – Field's amendment to add *to continue.*
- 284 • Line 273 – Field's amendment to add *was timely filed* and add new bullet that the case was
285 filed on March 13, 2009.

- 286 • Line 291 – Field’s amendment add *45 day* before appeal period Mr. Jones was given a
- 287 liberal interpretation because the date of decision preceded the date of notice.
- 288 • Line 299 – Field’s amendment add a period after counted and new sentence “Pursuant..”
- 289 • Line 301 – Field’s amendment add as a *preliminary matter*.
- 290 • Line 314 – Mr. Field suggested adding a line *that the Board was made by aware by Ms.*
- 291 *Peckham of a recent NH Supreme Court case that dealt with a timeliness issue.*
- 292 • Line 317 – Mr. Fields suggested adding there was no second to the Motion.
- 293 • Line 335 – change *home depot and like businesses that are in the same area as Mr. Jones’*
- 294 *property sell salt.*
- 295 • Line 404 – Field – insert *over the appointments* as recommended
- 296 • Line 419 – Field add *Mr. Field said he had filed his letter to the Select Board as a private*
- 297 *citizen pursuant to the Code of Ethics.*
- 298 • Line 451 Field change sentence *the legal opinions requested*
- 299 • Line 472 Field change *made to received*
- 300 • Line 478 Field when he suggested obtaining a legal opinion on how
- 301 • Line 480 Smith change *thee* to *three*
- 302 • Line 536 Field add *by reference* is the video transcript
- 303 • Line 538 Field add and *the Board agreed to include a copy of the DVD with all minutes.*
- 304 • Mr. Stanton suggested that lines 547 through 561 be modified in style by indenting the
- 305 questions.
- 306 • Line 563 Field add a comma after shared, change “preference” to “precedence”.
- 307

308 **Mr. Stanton Moved and Mr. Field seconded the Motion to accept the April 28, 2009 Meeting**
309 **Minutes as amended.**

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

311
312 **Mr. Stanton Moved and Ms. Smith seconded the Motion to table the Meeting Minutes of May**
313 **28, 2009 to the July 28, 2009 Meeting.**

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

315
316 Mr. Field asked that the Horne site walk minutes of June 8, 2009 be made available for discussion
317 at the July 28, 2009 Meeting.

318
319 **Ms. Smith Moved and Mr. Buber seconded the Motion to adjourn.**

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

321
322 Respectfully submitted,

323
324 Wendy V. Chase
325 Recording Secretary
326 Approved July 28, 2009