



**Meeting Minutes  
Town of North Hampton  
Zoning Board of Adjustment  
Tuesday, February 22, 2011 at 6:30pm  
Mary Herbert Conference room**

6

7  
8 **These minutes were prepared as a reasonable summary of the essential content of the meeting, not as a**  
9 **transcription. All exhibits mentioned in these minutes are a part of the Town Record.**  
10

11 **Attendance**

12  
13 **Members present:** Robert B. Field, Jr., Chair; and David Buber

14  
15 **Members absent:** Michele Peckham, Rick Stanton and George Lagassa

16  
17 **Alternates present:** Ted Turchan, Phelps Fullerton and Jonathan Pinette

18  
19 **Staff present:** Wendy Chase, Recording Secretary

20  
21 **Preliminary Matters; Procedure; Swearing in of Witnesses; Recording Secretary Report**

22  
23 Mr. Field convened the Meeting at 6:31pm.

24  
25 Mr. Field seated Mr. Fullerton and Mr. Pinette for Ms. Peckham and Mr. Stanton.

26  
27 Mr. Field invited those in attendance to join in reciting the Pledge of Allegiance.

28  
29 Mr. Turchan arrived; Mr. Field seated Mr. Turchan for Mr. Lagassa.

30  
31 Mr. Field called a roll of those present.

32  
33 Ms. Chase reported that the February 22, 2011 Agenda was properly posted on February 9, 2011.

34  
35 **Unfinished Business**

36  
37 There were no unfinished business for the Board to act upon.

38  
39 **New Business**

- 40  
41 1. David Buber – request to address the Zoning Board, as a private citizen and abutter, on  
42 issues/questions regarding a property on Maple Road; Tax map 6, Lot 40.  
43

44 Mr. Buber withdrew his request by e-mail sent to the Members on February 15, 2011, and reserved the  
45 right to address the Board at a future Meeting regarding this request.  
46

## 47 **Other Business**

48

### 49 **1. "Code of Ethics" - Committee Report**

50

51 Mr. Field reported that the Select Board met on February 14, 2011 and held a Public Hearing on the  
52 Code of Ethics drafted by the Code of Ethics Committee. He said that he attended the Hearing and  
53 introduced evidence from the Local Government Center (LGC). The (LGC) had written an article on  
54 towns adopting Code of Ethics, and in it, they question whether towns have the legal capacity to adopt a  
55 Code of Ethics, and if adopted whether or not the "code" or the contents of the "code" has any legal  
56 affect on any person to whom it is supposed to be subject. He said that according to the Local  
57 Government Center, and his own case research, the only State Statute is that of determining and  
58 establishing policy on "conflicts of interest". He said that the Code of Ethics Committee intends to meet  
59 to consider the issues brought up at the Public Hearing and come up with other recommendations. Mr.  
60 Field spoke on behalf of the Board and thanked Mr. Lagassa and the other Code of Ethics Committee  
61 Members on the work they did on the matter.  
62

### 63 **2. Communications/Correspondence and Miscellaneous**

64

65 Mr. Field mentioned that Attorney Pelech sent a request for rehearing on behalf of his Client, Mr. Peter  
66 Horne on Case #2010:02. He suggested the topic be discussed when the full Board is present, and that  
67 he would not be participating on the matter.  
68

69 The January 25, 2011 Meeting Minutes were discussed. Mr. Field said that the portion of the Minutes  
70 regarding the Horne case should be deferred and acted upon at the March Meeting when the Members  
71 that participated in the case would be present.  
72

73 Mr. Field said that around line 555 through line 577 of the Minutes he recalled Mr. Buber disagreeing  
74 with Mr. Stanton regarding the extent of Mr. Field's "charge" by the Board back in May, and that those  
75 comments were not in the Minutes. Mr. Buber said that he did not remember. Mr. Field asked Ms.  
76 Chase to review the video to see if Mr. Buber spoke anytime during that sequence and if so to add it to  
77 the Minutes. Ms. Chase did not feel comfortable doing that and suggested Mr. Field come to the Town  
78 Office and review the video, and she would add what he wanted to the Minutes. Mr. Field suggested  
79 Mr. Buber coordinate with Ms. Chase to review the video, and also suggested that if there are any  
80 changes to the minutes that they be added to the draft prior to the March Meeting to be acted upon.  
81 Mr. Buber agreed to coordinate with Ms. Chase to review the video.  
82

### 83 **3. "Work Session" – re: "Draft" "Administrative Services Agreement" –** 84 **Continuing Discussion and Receipt of Comments of Members and Alternates**

85

86 The Board was in receipt of a legal opinion from Attorney Kimberly Hallquist, Staff Attorney of the Local  
87 Government Center (LGC). Mr. Field explained that it was a response from an inquiry made by Town  
88 Administrator Steve Fournier regarding an Administrative Services Agreement. He explained that he

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89 thought Mr. Fournier, most likely unintentionally, misrepresented what the “services agreement” is  
90 supposed to be or what it’s supposed to accomplish.

91  
92 Mr. Field said that he contacted Ms. Hallquist to discuss her response and she said that she would get in  
93 touch with Mr. Fournier to explain some of the issues they discussed that had not been considered by  
94 her in her written response. Mr. Field noted for the record that the “agreement” does not interfere  
95 with the employer/employee relationship between the Town and any of its employees. He explained  
96 that the “services agreement” will define how the services will be provided and what services will be  
97 provided to an Administrative Land Use Board, such as the Zoning Board, and to try to define it for the  
98 future so if there is a change in personnel in the administrative offices of the Town or of the Board there  
99 will be consistency of what can be expected. He said that Mr. Fournier agreed that an “Administrative  
100 Services Agreement” would be very helpful for the Boards to have. The “agreement” is to define what  
101 the relationship is; what each of us can request of the Board, and what the Town should be expected to  
102 provide in the way of services to the ZBA.

103  
104 Mr. Field said that the ZBA has a much more complex operation now by putting conditions on variances  
105 and special exceptions that require the Building Inspector to review and report back to the Board.

106  
107 Mr. Field said that Mr. Buber approached him and suggested that when the Board has a complex case  
108 that the Board wait to draft the decision letter to make sure all the issues are covered by reviewing the  
109 entire record, rather than relying on the last Meeting.

110  
111 Mr. Turchan questioned how that would be accomplished when there is a 30-day appeal period.

112  
113 Mr. Field said that the 30-day appeal period begins once the decision letter is signed and sent out to the  
114 Applicant.

115  
116 Mr. Buber said that this would only happen when the Board is faced with a complex case that goes on  
117 for months. He said that the Building Inspector uses the decision letter as a “check list” when he  
118 inspects the project.

119  
120 Mr. Field said that the Board should have it clear in their relationship with the Town to whom Wendy’s  
121 loyalty runs, when Wendy is working as a Member of this Board run to the Zoning Board, or does her  
122 loyalty run to the Select Board and the Zoning Board or does it run to the Select Board. He said that it  
123 was pointed out in regards to Mr. Fournier’s letter to the Local Government Center, at least believed by  
124 Ms. Hallquist, that there was an Attorney/Client privilege that took place. He suggested adding to the  
125 “Administrative Services Agreement”, to make it clear on matters of confidentiality, and the litigation  
126 the Board might get involved in, and asking for opinions from legal counsel, the Zoning Board,  
127 conceivably might have a difference of opinion with the Select Board on things and Ms. Chase has to  
128 know whether or not she can discuss such matters with Mr. Fournier. He also said that the rights of the  
129 Zoning Board to hire legal counsel ought to be set forth in the “agreement”.

130  
131 Mr. Field said that he disagrees with the notion that the only difference between an Elected Board and  
132 an Appointed Board is that an Elected Board can appoint their own Alternate Members. He said that he  
133 understood it from Larry Miller that the Town wanted the ZBA to have its independent powers and not  
134 be subject to the pressures of the Select Board Office and Selectmen with regard to Staff in the Town  
135 when it was dealing with Zoning Board elements of consideration in their business. He said control of  
136 the Staff controls, in effect, what we can or cannot do at the Board level, and that has occurred over the

137 last eight (8) years since the 2002 Election of the Planning Board. He said the Board needs to know what  
138 it can expect from Ms. Chase and Mr. Mabey when they are working for the Zoning Board in the way of  
139 confidentiality and security and Attorney/Client privilege when talking to Legal Counsel.

140

141 Mr. Field asked the Members to comment on the "Administrative Services Agreement".

142

143 Mr. Pinette said that getting a better understanding of Mr. Mabey's and Ms. Chase's job responsibilities  
144 is a good thing.

145

146 Mr. Fullerton said that the "agreement" is a great document to have. Mr. Fullerton asked what services  
147 the ZBA would be asking of Red and Wendy to provide that is not already in their current job  
148 descriptions. He said he is concerned that what gets added in the final "Services Agreement" draft  
149 exceeds the responsibilities in their original job descriptions. He asked if Wendy and Red are  
150 "grandfathered" and are their current contracts going to remain unchanged until their expiration? He  
151 said that Planning Board may wish to add responsibilities and that is something that would need to be  
152 negotiated with the Select Board.

153

154 Mr. Field said that the Board of Selectmen have to "live with " the contracts they currently have with  
155 any employee that has a contract until by mutual agreement the contract is changed. He said what is in  
156 the draft "agreement" is substantially what is in the current job descriptions. Mr. Field said that he  
157 discussed "costs" with Ms. Hallquist. He said the Town cannot be asked to provide more than what they  
158 have the capacity to provide. He said there may be things to add in the contracts that were not thought  
159 about six or seven years ago that might now fit into their contracts.

160

161 Mr. Field said that the "Administrative Services Agreement" is not a contract between the ZBA and the  
162 Planning and Zoning Administrator or the ZBA and the Building Inspector; it is a contract between the  
163 ZBA and the Town, as represented by the Select Board. The Select Board and the ZBA will agree on what  
164 the services will be, and if those services are not being provided then the Board would hopefully have  
165 other remedies, which the Board is enabled to get by charging an Applicant for any particular work that  
166 needs to be done that the Board feels is necessary.

167

168 Mr. Field said Ms. Hallquist and Mr. Stanton questioned whether there are any other Towns that have a  
169 "Services Agreement" and he did not know of any, but said that just because the "agreement" is unusual  
170 it shouldn't mean that the Board should not adopt it, especially if it finds it to be necessary and helpful.

171

172 Mr. Field said that under the "agreement" the Board can ask the Building Inspector or the Zoning  
173 Administrator to perform a certain task and if it is not performed to the Board's satisfaction, the Board's  
174 recourse is to go to the Town Administrator. The Board has a right to get "action" under the  
175 "agreement". He said that when the ZBA was an Appointed Board the Select Board controlled  
176 everything. The Board has to know, with regard to zoning matters, whether or not it has the undivided  
177 loyalty of the Staff upon such issues.

178

179 Mr. Turchan said that he has seen the Planning Board work against the Zoning Board over a couple of  
180 cases recently and it is important to have the agreements in place so the ZBA knows what it can and  
181 cannot do, and what other Boards can or cannot do. He said that the work between the Boards in the  
182 past has been harmonious and that has gone away.

183

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184 Mr. Field commented that he made a comment in an e-mail communication regarding the Code of Ethics  
185 that the Planning Board does not have the status of *quasi judicial*, and said that he was wrong because  
186 there is Case Law that says that the Planning Board, on occasion, performs *quasi judicial* functions.

187  
188 Mr. Field said that Mr. Buber has done a thorough analysis of the existing "draft agreement", and the  
189 information Mr. Fournier provided on the job descriptions of the Building Inspector and the Zoning  
190 Administrator.

191  
192 Mr. Field called for a five (5) minute recess.

193 Mr. Field reconvened the Meeting.

194  
195 Mr. Field said that the Case that he was making reference to concerning *quasi judicial* status is the 1984  
196 Case, Winslow v. Town of Holderness 125 NH 262.

197  
198 Mr. Buber compared the third draft "Services Agreement" with the job descriptions of the Building  
199 Inspector and the Zoning Administrator. Copies of the draft changes to the services agreement , dated  
200 February 22, 2011 were distributed to the Board Members.

201  
202 Mr. Buber drafted a new paragraph two for the "agreement" as follows:  
203 *The Town agrees to provide the ZBA with the services of an employee of the Town to act as Zoning Board*  
204 *Administrator. The Town further agrees to provide the ZBA the services of the Town Building*  
205 *Inspector/Code Enforcement Officer. In each case the services provided will be for general*  
206 *administration, inspection and enforcement assistance to the Board Chair and Zoning Board. Any and all*  
207 *costs associated with providing such services to the Board are the responsibility of the Town of North*  
208 *Hampton and will be incurred at the sole expense of the Town.* He copied paragraph eight of the draft  
209 "agreement" and incorporated it into this paragraph verbatim.

210  
211 Mr. Buber said he was trying to state as clearly as he could that the Board needs some services, we  
212 expect the Town to provide those services in the form of a Zoning Board Administrator and a Building  
213 Inspector/Code Enforcement Officer; we don't expect to pay for that, and we agree the Town  
214 Employees involved are not employees, nor shall be employees of the ZBA.

215  
216 Mr. Field said that the Board is not going to fall under the sanctions of the law relating to  
217 employer/employee policy. He said that the Board Members are volunteers and do not have the power  
218 to hire and fire and employee. He said as long as the Board asks for something to the Board's business,  
219 and does it in good faith the Board is protected from a lot of things that may happen behind the scenes  
220 upstairs here. With this agreement we are asking for what we are entitled to.

221  
222 Mr. Field suggested adding verbiage, regarding the Zoning Administrator's job description, *as such may*  
223 *be amended or revised from time to time.*

224  
225 Mr. Buber said that the current job description of the Zoning Administrator has a lot of the same things  
226 included in the draft "Administrative Services Agreement".

227  
228 Mr. Field asked Ms. Chase if she thought the responsibilities were inconsistent with her perception of  
229 what her responsibilities are.

230  
231 Ms. Chase declined to comment on the matter.

232

233 Mr. Buber said that paragraph seven (7) should be revised. He said that there are 10 members of the  
234 Board, and it would be chaos for Ms. Chase to support each member.

235

236 Mr. Buber referenced the Building Inspector's job description and suggested the verbiage be added *as*  
237 *such may be amended or revised from time to time.*

238

239 Mr. Field said that any case that comes before the Board, is required as part of the application, to  
240 include all prior Board actions. The Building Inspector should have a file for each decision of each case.

241

242 Mr. Field referred to paragraph (c) under Tasks to be performed by Building Inspector/Code  
243 Enforcement Officer: *Inspect and report regularly to the Zoning Board the conditions of special*  
244 *circumstances, such as "rain gardens" and/or other "surface water" runoff, or containment features, and*  
245 *notify the Zoning Board of any perceived violations.* He said that no one has the right to access a  
246 property when a project is going on, other than the Building Inspector, who inspects to make sure the  
247 project is done according to the Variance and/or Special Exception.

248

249 Mr. Turchan said that the Board should have a discussion with the Building Inspector; the Board may  
250 end up with the need to hire a "rain garden" Inspector to monitor them, if there becomes too many of  
251 them.

252

253 Mr. Field referred to paragraph (d) under the Building Inspector's tasks concerning "escrow accounts  
254 and bonds. He said that there are "escrow accounts" and to his knowledge no one is required to report  
255 on them or account for them. If there is an account made to the Board once or twice a year it will  
256 remind the Board to make sure the project meets the specifications the Board imposed.

257

258 Mr. Buber said that the Maple Road "rain garden" document is recorded at the Registry of Deeds as part  
259 of the "decision letter". He said that the Building Inspector uses the "decision letter" as a check list and  
260 he would be best qualified to inspect the "rain garden".

261

262 Mr. Field suggested having the "Administrative Services Agreement" either approved or not by the May  
263 2011 Elections.

264

265 Mr. Field appointed David Buber as a co-member of the negotiating team to create an additional draft  
266 four (4), and to participate in discussions with the Town Administrator.

267

268 **Mr. Turchan Moved and Mr. Pinette seconded the Motion that the ZBA authorize and direct the**  
269 **Chairman of the ZBA and Elected Member David Buber to serve as a negotiating team with regard to**  
270 **the Administrative Services Agreement and all aspects related thereto upon the condition that any**  
271 **final agreements must come back to the Board for final approval with the goal to have a draft that is**  
272 **acceptable to the Town Administrator and to the negotiating team to be presented to the ZBA for**  
273 **final approval and the Select Board for final approval in time for consideration at the Board's March**  
274 **22, 2011 Meeting.**

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

276

277 Mr. Field noted that he had hoped to get the Alternate Members together in an informal social  
278 environment, he said that he did not think such a gathering falls under RSA 91A, because the Alternates  
279 would have to be appointed for a special purpose.

280

281 **Mr. Buber Moved and Mr. Fullerton seconded the Motion to adjourn the Meeting at 8:20pm.**

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

283

284 Respectfully submitted,

285

286 Wendy V. Chase

287 Recording Secretary

288

289 Approved 3/22/2011