



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, November 29, 2011 at 6:30pm
Mary Herbert Conference Room**

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

Attendance:

Members present: Robert B. Field, Jr., Chair; Michele Peckham, Vice Chair; David Buber, George Lagassa, and Phelps Fullerton. (5)

Members absent: None.

Alternates present: Robert Landman and Lisa Wilson (who arrived at 6:50pm). (2)

Administrative Staff present: Wendy Chase, Recording Secretary.

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

Chair Field called the Meeting to Order at 6:30pm.

Pledge of Allegiance -Mr. Field invited the Board Members and those in attendance to rise for a Pledge of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do so and failure, neglect or inability to do so will have no bearing on the decision making of the Board or the rights of an individual to appear before, and request relief from, the Board.

Introduction of Members and Alternates -Mr. Field introduced Members of the Board and acknowledged the Alternate Members present (stated above).

Recording Secretary Report - Ms. Chase reported that the November 29, 2011 Agenda was properly posted on November 22, 2011 at the Library, Town Clerk's Office, Town Office and the Town's website.

Swearing In Of Witnesses - There were no Witnesses present to take the Oath.

Minutes – October 25, 2011 – Mr. Buber submitted written changes (verbatim) to the "draft" Minutes he thought were important and germane to the historical record in connection with the, so styled, Beach Plum Case, #2011:08.

Mr. Buber Moved and Mr. Fullerton seconded the Motion to approve and incorporate the submitted changes received from Mr. Buber.

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

Chair Field had removed a "period" on line 227 from the original "draft" during his initial review and suggested it be put back in because it was important to the meaning of the paragraph.

**Mr. Buber Moved and Mr. Fullerton seconded the Motion to reinsert the period on line 227.
The Vote was unanimous in favor of the Motion (5-0).**

Grammatical and typographical changes were made.

**Mr. Buber Moved and Ms. Peckham seconded the Motion to approve the grammatical and typographical corrections.
The Vote was unanimous in favor of the Motion (5-0).**

**Mr. Lagassa Moved and Mr. Buber seconded the Motion to approve Mr. Landman's grammatical corrections.
The Vote was unanimous in favor of the Motion (5-0).**

**Mr. Lagassa Moved and Ms. Peckham seconded the Motion to insert the word "as" on line 214.
The Vote was unanimous in favor of the Motion (5-0).**

The October 25, 2011, "draft" Meeting Minutes were then adopted, as amended, without objection.

I. Unfinished Business

There was no Unfinished Business.

II. New Business

1. Barr-Moran, Inc., by and through its attorney Craig Salomon, Esquire, requests a Motion for Rehearing Pursuant to RSA 677:3 for Case #2011:08 ("Beach Plum", so styled).

The Board was in receipt of a Request for Rehearing submitted by Barr-Moran Inc., by and through its attorney, Craig Salomon relating to its Appeal of an Administrative Officer, Case 2033:08 – Beach Plum, pursuant to which the Zoning Board had denied such Appeal at a duly Noticed Public Hearing/Meeting held on October 25, 2011.

Chair Field explained that a Request for Rehearing is addressed by the Board at a Public Meeting; not a Public Hearing. Mr. Field reminded the Board that their review was focused upon whether the two "lobster carvings" were "signs" as had been determined by the Code Enforcement Officer.

The Request for Rehearing states that "the decision of the Board of Adjustment was illegal and unreasonable because":

"5.A. In determining that the carvings of lobsters holding ice cream cones were signs the Board considered testimony from Mr. Fullerton that the carvings were "trade signs" and that they conveyed a "message"."

Chair Field commented that at the Public Hearing on October 25, 2011, Mr. Salomon was provided with the opportunity to object to the Board receiving professional opinion from Mr. Fullerton. However, when provided with the opportunity Mr. Salomon specifically waived such privilege, and said he wouldn't raise it as an objection. Chair Field said that it was his inclination that the Board should rely upon the statement made on the record by Attorney Salomon and reject the first ground cited as a basis for review.

"5.B. The Board's discussion failed to take into consideration the common meaning [sic] of the word "message" as extrapolated from the dictionary by Petitioner's counsel. By ignoring common usage of a term not otherwise defined in the ordinance the Board acted by [sic] illegally and unreasonably".

Chair Field commented on "5.B" and suggested that he is not certain it is conclusive because often one "dictionary shops" and can find a definition that says what one wants it to say, but that doesn't necessarily mean alternative definitions or other meanings are excluded.

"6. That the decision of the Board of Adjustment was also unreasonable in that the Board considered testimony from the Code Enforcement Officer that the existing "hanging sign" exceeded 18 square-feet. By way of new evidence the applicant has found an invoice for the sign which indicates that it is slightly over 12 square feet".

Chair Field commented that the reference to "new evidence" under number 6, (the issue of the 12 square-feet verses the aggregate 18 square-foot signage, was not the matter the Board was originally asked to decide. The Board was asked only to render an opinion on whether or not the Building Inspector had made a correct determination as to the character of the "lobster" sculptures as "signage".

Mr. Buber referred to "Point A" and said that it wasn't Mr. Fullerton's testimony that drove him to conclude that the "lobster carvings" were signs; it was the following definitions under Article V: (1) Section 506.1.A.1 – *The primary purpose of a sign is to convey information*, and (2) Section 506.2.U. *Sign. An object, including a structure, movable object, wall or image displaying any message visible to the public*. Mr. Buber also stated that there was a long dissertation between Chair Field and Attorney Salomon regarding whether or not to allow Mr. Fullerton's testimony and quoted Mr. Salomon as saying, "whether he says it from the audience or from the table, I don't think it's going to be any different, and we do have Alternates here [pregnant pause] so why don't we just let him say what he wants to say and I won't raise that as a procedural issue; it's going to come out in one way or another." Mr. Buber said that based on that statement, he didn't see how Mr. Salomon could use Mr. Fullerton's testimony against the Board when Mr. Salomon testified under Oath that he would not.

Mr. Lagassa agreed with Mr. Buber's statement.

Mr. Fullerton had nothing to add.

Ms. Peckham has nothing to add.

The Board discussed procedural matters regarding a Request for a Rehearing. Chair Field explained that "newly discovered evidence" not available at the time of the initial Hearing and germane to the issue, is generally grounds for granting a Rehearing. If the applicant comes forth with "new evidence" not germane to the issue, the Applicant has the right to go forward with another application and, if then denied by the Code Enforcement Officer, may seek relief from the ZBA.

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Chair Field mentioned that based on Ms. Boise's testimony that the "Beach Plum" once provided a small service to local people on the North Hampton Beach, and, "today" it is now advertised on many signs in the area (and in Boston) that all use the image of the "lobster holding ice cream cones" as one of the persuasive features. The once little beach stand has now grown to a "destination restaurant" of sorts. He said he gave considerable weight to that information during the initial decision making process.

Mr. Buber mentioned the fact that the Restaurant is in the Residential District (R-2).

Chair Field said that it was mentioned to the Applicant that there are Variance rights that he has and may even be able to apply to the Planning Board for a Conditional Use Permit. He said that the Applicant has other "remedies" if he chooses to go in that direction.

Mr. Buber then referred to Paragraph 5. B. of the Request for Rehearing and corrected the "typo" therein by changing the word "meeting" to "meaning" in the first sentence. He said that there are different definitions of the word "message". He referred to the October 25, 2011, ZBA Minutes where it stated that the Appellant testified that the sculptures of the "lobster's holding ice cream cones" exists because nobody knew what they were selling. Mr. Lee had said at the Meeting that the "sculptures" give people some indication of the products they sell generically.

Mr. Buber Moved and Mr. Lagassa seconded the Motion to Deny the Request For Rehearing of Case, #2011: 08.

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

III. Other Business

A. Code of Ethics Report – Chair Field said that he made some proposed changes to the "draft" Code of Ethics ", and sent them via E-mail to each of the Members on November 23, 2011. Chair Field thanked and congratulated everyone involved with the process, who worked on the Code of Ethics, for their time and effort. The current "draft" represents a vast improvement from the initial effort of a year ago.

Chair Field said that earlier in the year he had submitted considerable material and comment on the proposal and that he had appeared before the Select Board to discuss the Code of Ethics when they held a Public Hearing on it. He said that he believes the Code of Ethics is not specifically authorized by our Statutes (RSA's) and may not be enforceable, but a "Conflict of Interest" ordinance is authorized. He said he came up with ten (10) or eleven (11) small points that he offered as changes to the "draft", should the project not be abandoned

Mr. Lagassa commented that he hasn't been getting all of his E-Mails because some members were using an old E-mail address. Mr. Lagassa explained that they're at the stage right now where the various Boards who will be participating in the procedures established by the Code of Ethics have a preliminary opportunity to comment on the Code of Ethics; the comments will be integrated in the course of an additional meeting of the Committee, and then it will go to the Board of Selectmen for their determination as to whether or not they are going to recommend it to the Legislative Body; the Town Meeting. He reported that the Planning Board has already reviewed the "draft" and has suggested changes, such as changing the word "professionally" and also to incorporate a "Statute of Limitations" somewhere within the document. Mr. Lagassa pointed out a couple of typos; Page 5 under D, and changed C1 and C2 to B1 and B2 and add B3.

ZBA Meeting Minutes

Mr. Buber suggested that the Committee consider changing the Latin phrase *ad hominem*, under Article VII, Section 7.02.C from Latin to English, *between people*. He commented on "Chapter 31" and said that it seems to him to be confining the enabling authority to a "Conflict of Interest" ordinance and not a "Code of Ethics" ordinance, and he does not support a "Code of Ethics" ordinance.

Mr. Landman questioned what remedies there were enforcement-wise. Chair Field said that he believes that a Board Member can be suspended from Office by the Board of Selectmen for a very limited number of reasons set out in the statutes, but an actual removal from elected office has to be by a Superior Court Ruling.

Chair Field said that he could not support a "Code of Ethics" that in any way "chills" participation in government by Citizens of the Town for fear that they're going to be subject to prosecution and personal attack under the "Code of Ethics".

Chair Field requested Ms. Chase to forward a copy of his E-Mail suggesting certain changes to the "Code of Ethics" to Mr. Lagassa.

B. Zoning Ordinance Review "Ad-Hoc Sub Committee" Report - Members of the Ad-Hoc Sub Committee include Mr. Field, Mr. Buber and Mr. Fullerton. Chair Field commented generally that Zoning Ordinance deserves a comprehensive review by professionals and he suggested that the Select Board give consideration to embarking on such an endeavor. Chair Field asked that the Board authorize the Committee to continue its work by addressing the Board's Rules of Procedures.

Ms. Peckham commented that the Chair and Mr. Stanton had worked on the Rules of Procedure extensively a few years ago, and asked what it is that needs to be changed. Chair Field said that there may be nothing because they haven't reviewed them yet, but he said that there are some things in the "Rules" that don't seem to be working very well.

Mr. Buber Moved and Ms. Peckham seconded the Motion to authorize the continuation of the Ad-Hoc Committee for the purpose of a review of the Rules of Procedure.
The Vote was unanimous in favor of the Motion (5-0).

Chair Field explained that all six (6) of the Proposals submitted by the Committee have been issues the Board has had to deal with over the past five (5) years. He conceded that some of the proposals deal with issues that became personal to him, and, that other proposals may be personal to other members of the Committee. The proposed Amendments are attached to these Minutes.

Proposal #1 – "Compound." - Chair Field said that Proposal #1 evolves from the efforts by a landowner abutting Mill Pond to take a large parcel of land; construct up to five homes on it for the purpose of rental income to compensate him for costs purportedly incurred in renovating the dam. He said that the Building Inspector has opined that everyone who owns a single-family home is entitled to rent it, regardless of the nature of abutting properties. Chair Field said when you receive rental income you have to file a Business Enterprise/Profits tax return in New Hampshire, which recognizes implicitly that such property has a "commercial" status. He said when combining several abutting lots in common ownership together and renting them out it has the capacity to change the nature of an R-1 or R-2 Zoning District. He said that legal commentators have stated, in general, that rental property that has an absentee landlord usually rents to people who often take less of an interest in the Town and their neighborhood. He said that the Committee came up with a definition of "Compound", and if the

proposal constitutes a "compound" it would need ZBA approval through a Variance to rent or lease it. He also said that the Committee spoke about defining "Person". The word "Person" is defined under the Sign Ordinance under Section 506.2.L, but they may wish to add it under Section 302 – Definitions, as well.

Discussion ensued on this proposed Zoning Amendment. Chair Field said that the proposal is for those who take a large parcel of land and subdivide or parcel it into a "business" property by renting several adjacent residences.

Mr. Lagassa referred to the landowner across the street from the Fields and said that there are three lots with five potential properties. He said that just because the lots are owned by one property owner that happens to have three properties next to one another, it shouldn't prohibit people from renting their property. He said that due to the "market" some people that don't want to sell their house have the option of renting it out.

Ms. Peckham said that this is close to infringing upon the property rights of individuals to use their property in a manner that they have the constitutional right to use. Chair Field responded that, if the issue is one appropriate for a zoning solution, the constitutional issues may be subordinated to the common good. He states that all "zoning" necessarily limits or controls private rights.

Chair Field said the proposed Ordinance allows the landowner to rent out two houses, but when it gets to be three (3) or more then the owner needs ZBA approval with a Variance.

Ms. Peckham said in her view it would be a better case for a "Special Exception". She said that the Variance Test Criteria requires that there has to be "special conditions" of the property. She said with a "Special Exception" there could be criteria created such as, requiring that the landlord live "locally" or actually live in one of the houses.

Chair Field is concerned that it becomes a "Commercial Use" of real estate in an R-1 and R-2 Zoning District.

Ms. Peckham said that the house doesn't change in character to "Commercial"; it remains "Residential". Chair Field reasoned that it's not the "house" but the "aggregate of houses", the "compound" that creates the problem.

Ms. Peckham said that even though she would be more comfortable if it were handled by the Board with a "Special Exception" rather than a Variance, she is not 100% comfortable with the proposed Ordinance.

Chair Field suggested the Board table Proposal #1 for possible reconsideration and discussion at another Meeting.

Proposal #2- "Notice of Action" - Chair Field said that this proposed amendment would allow citizens the opportunity to be informed of the issuance of Building Permits and Certificates of Occupancy by the Building Inspector at the time of issuance, so if they have a further question or concern they may go to the Building Inspector and request he inspect the property to make sure everything is being done properly and within the law. He pointed out that the Building Inspector/Code Enforcement Officer is often the only Town Official who is granted the legal right to enter upon and observe the actions of a

private land owner; and, he/she has such authority in order to protect the interests of the general public. The Appeal period shall be thirty (30) days from the placing of the notice on the Website. Chair Field explained that any aggrieved person has the right to appeal a Building Permit and Certificate of Occupancy within thirty (30) days and the applicant is taking a risk if construction commences before that thirty (30) day appeal period ends.

Mr. Landman commented that people would have to know to check the Website unless there were something obvious going on, but if it were interior renovations, no one would ever know what was being constructed. He suggested that the issued Building Permits go out via E-Mail like the Town Board Agendas; people just need to sign up on the Website for this service.

The general notion of the amendment is to give ample "notice" to interested parties of the Building Permits and Certificates of Occupancy that are issued by the Building Inspector.

Mr. Wilson spoke from the audience and said that by the end of December, all of the Building Permits that are issued will appear on the Town's Website. He did not know how often the site would be updated. He commented that it would be worthwhile to add this proposed amendment to the Zoning Ordinance.

Chair Field and Mr. Buber agreed that they would like to see the Building Permits appear on the Website at the time they are issued.

(Ms. Peckham researched the RSAs later in the Meeting and said that the appeal period can go beyond 30-days; "reasonable standard" applies.

Proposal #3- "Enforcement" – Chair Field explained that the Select Board is generally aware of, and working on, "Enforcement" issues, and said that most of the legal treatises come down to "enforcement" as the key to successful zoning. They say that lack of "enforcement" will frustrate purposes of the Ordinance and create distrust and disservice within the general Public. The Committee agreed to add a section to the end of Section 705 on what they feel needs to be done and why, in regards to actions taken by the ZBA.

Mr. Buber had asked that an insertion be made to include "and/or building site" after the word "building" under proposed Section 705.3 and after the word "structures" because there are "letters of approval" that have specific conditions, such as, "rain gardens" and that isn't a structure; it's part of the building "site".

Chair Field said that this proposal is intended to make a firm policy statement in the Ordinance as to the need for, and importance of, "enforcement".

Proposal #4B - Wetlands – "Minimum Lot Area" – Mr. Buber explained that there is a minor change proposed to Section 411 to add commas as follows "*Wetlands, excluding bodies of water...*" (Proposal #4B is attached at the end of these Minutes).

Proposal #4A- "Body/Bodies of Water" – Mr. Buber drafted the proposed definition for "Body/Bodies of Water" under Section 302. He explained that the State is in the process of addressing issues or reconciling the definitions of "surface water" and "wetlands" under RSA 485-A and RSA 482-A so that there is a continuity of definitions so that one document can't challenge or confuse the other. He

referred to HB 1305 and said it was available on the State's Website. He said that he extrapolated part of what the State is using for definitions of "surface water" and then he added what he thought "bodies of water" are and incorporated it all together.
(Proposal #4A is attached at the end of these Minutes).

Proposal #6- "Signs and Billboards" – Mr. Buber explained that the current Zoning Ordinance allows one (1) eighteen 18-square-foot sign in the R-1 and R-2 Zoning Districts and Little Boar's Head Village Districts Zoning Ordinance prohibits signs in one section, but then allows for one (1) twelve 12-square-foot sign in another section within their Sign Ordinance. He said that he tried to "tighten up" the size, dimensional criteria and the number of signs in the R-1 and R-2 Zoning Districts. He suggests changing the title of Section 506.6.G to "Size, Number and Dimensional Criteria", and changing the allowed size of eighteen (18) square-feet down to twelve (12) square-feet in the R-1 and R-2 Zoning District, except for a home occupation sign; that shall not exceed two (2) square-feet. Advertising shall be allowed on each side of the twelve (12) square-foot signs. Mr. Buber said that "contractor signs" are not addressed in the Zoning Ordinance; he suggests that "Contractor signs" shall not exceed nine (9) square-feet, and shall remain on the property no longer than twelve (12) months or completion construction.
(Proposal #6 is attached at the end of these Minutes).

Ms. Wilson asked whether or not internally lighted signs would be prohibited in the R-1 and R-2 Zoning Districts, and when would people be allowed to illuminate their signs. Mr. Buber said that the lighting is already addressed within the Ordinance. Mr. Buber suggested Ms. Wilson E-mail any ideas or suggestions she has regarding the proposed Sign Ordinance Amendment to him.

Mr. Buber also suggested that since home occupation signs were addressed in his amendment; the Board may wish to repeal Section 506.6.H – Size, Home Occupation.

Mr. Fullerton said that the word "contractor" may be too specific; they may want to use a word that would include other vendors, such as, banks and architects. Mr. Buber is open for suggestions from Mr. Fullerton.

Mr. Lagassa referred to the "Beach Plum" and the amount of signs they currently have and asked if they would be "grandfathered". Chair Field said that they are only allowed one sign. Mr. Buber said that Little Boar's Head doesn't allow any signs, but the "Beach Plum" was "grandfathered" for the white pole sign with the Beach plum on top.

Chair Field commented that the Proposal #1 will be marked as "not being recommended", but he would like to keep it in the mix in case the Conservation Commission or Planning Board wishes to use it as a source for consideration; Proposals 2, 3, 4a and 4b are "approved" by the Board.

Proposal #5- "Rain Gardens" – Chair Field explained that at a Zoning Board Public Meeting, the Code Enforcement Officer stated that he did not have the time, resources nor expertise to inspect and supervise the construction and/or maintenance "Rain Gardens", and he suggested that the Board be very reluctant in authorizing same as a wet-lands issue solution.

Mr. Fullerton drafted the amendment and explained that the language was taken liberally from NH Department of Environmental Services (NH DES) under their stormwater management information on their Website. He said that they have model ordinance language that can be adopted by Municipal Land Use Boards, depending upon what you're trying to regulate. He condensed what they had into two

pages. Mr. Fullerton said that he also visited the UNH Cooperative Extension and the DES at Pease Trade Port. He said whatever comes out of this should have the participation of the Conservation Commission and the Planning Board. He said the bulk of this is determining who will be in charge of inspecting it, keeping the records on it; who is going to enforce it?; will there be an engineering review or a performance bond? He said the amendment was 99% NH DES model language from their stormwater management section.
(Proposal #5 is attached to the end of these Minutes).

Mr. Landman asked how the "Rain Garden" would be recorded at the Registry of Deeds. Mr. Fullerton said that if a "Rain Garden" is made a condition of approval; it has to run with the land. It has to be recorded in the deed.

Ms. Wilson commented that it shouldn't be incumbent upon the Town to pay the Building Inspector to monitor the "Rain Garden" to see if it is performing correctly; the Builders should supply enough money to the Town to see that enforcement takes place in perpetuity.

Chair Field said that the Supreme Court had recently articulated a distinction to what many had believed to be a deferential standard in the Derry, NH Case. It had been believed that Derry held that if there is a Federal or a State Standard, the Town has to accede to the plan submitted, unless they have specific engineering that says that it is "site specific" and doesn't comply. He had distributed the Court Cases to each of the Members to read. Chair Field agreed that insuring that a "rain garden" solution is constructed properly and maintained will require some type of Performance Bond for the benefit of the Town.

Chair Field said that the Ad-Hoc Committee will hold another Meeting and get the "text" of the Proposed Amendments straightened out; and, if the Board agrees, then a joint Meeting with the Conservation Commission and the Planning Board will be proposed to go over the Proposals. The Ad-Hoc Committee will strive to get such work completed before the December 13, 2011, Board meeting.

Ms. Wilson thanked the Board for all their hard work on the Proposed Zoning Amendments. Mr. Landman will submit his comments by E-Mail should he choose to do so. Mr. Buber welcomed any suggestions by the Board also.

Ms. Peckham Moved and Mr. Fullerton seconded the Motion that the Board received a report from the Ad-Hoc Committee on the six (6) Proposed Amendments and believes that, based on comments tonight, that it can be moved along to the Planning Board and the Conservation Commission following the clarification of the text.

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

Chair Field asked for permission to request a Joint Meeting with the Planning Board and Conservation Commission to suggest the proposed amendments. He said that the Ad-Hoc Committee will meet after Christmas to add the changes made tonight. Mr. Buber suggested the Board take one last look at the proposed amendments at the December 13th Meeting and address the prospective "Joint Meeting" request at that time. The Board agreed.

C. Budget Review – Ms. Chase asked if the Board had any recommendations for increase or decreases to their budget. Mr. Buber pointed out that the only thing the Board has any control over is the line for

Education/Training. The Board agreed and determined that no changes need to be made to the proposed Planning and Zoning Budget.

Ms. Chase inquired whether the Board would like all of the Decision Letters recorded at the Registry of Deeds including appeals of an Administrative Officer. The Board agreed to Record all Board Decision Letters.

Mr. Landman said that he had suggested improvement to the Zoning Ordinances regarding "water issues". Chair Field asked that he forward his proposal to Ms. Chase and she will make copies and distribute them to the Board Members.

Mr. Buber Moved and Mr. Fullerton seconded the Motion to Adjourn the Meeting.

The Meeting Adjourned at 8:25pm.

Approved as amended 12/13/2011

PROPOSAL #1

SUBJECT: "COMPOUNDS"/COMMERCIAL/BUSINESS USE
IN RESIDENTIAL DISTRICT

DATE: NOVEMBER 18, 2011

PROPOSAL: ZONING AMENDMENT

"Add:

Section 302. "Definitions"

"Compound": The word "Compound", as used in this Ordinance, shall mean three (3) or more contiguous single family residential lot(s), and/or dwelling(s) situated on such lots, located in an R-1 and/or R-2 District, either owned, or controlled directly or indirectly by a Person for the benefit of such Person and/or any member of the family unit of such Person."

Add:

Section 406.10-

No more than two (2) single family dwelling units located in, on, or about a "Compound" shall be leased, rented, sub-let, or otherwise placed in the possession or dominion of a third (3rd) party by a Person, unless a "Variance" as to such use within a Compound shall first have been sought from, and approved by, the North Hampton Zoning Board of Adjustment. The within provision is intended to limit "commercial and/or revenue generating" use of multiple single family residential properties located in proximity to one another and bring under the direct, or indirect, common or related ownership or control; and thereby protect and preserve the value of single family residential properties located within single family residential districts R-1 and R-2. "Commercial and/or revenue generating" use shall mean and include, but not be limited to, income realized by a Person from the rental or lease of residential single family real property, which revenue is subject to taxation by the State of New Hampshire Department of Revenue Administration."

Robert B. Field, Jr., Chair

PROPOSAL #2

SUBJECT: NOTICE OF ISSUANCE BUILDING PERMITS AND
CERTIFICATES OF OCCUPANCY

DATE: NOVEMBER 23, 2011

PROPOSAL: ZONING AMENDMENT

"Amend: Article VII Addition

Add: Section 706 – Notice of Action –

Notice of the issuance of Building Permit(s) and Certificate(s) of Occupancy by the Building Inspector/Code Enforcement Officer, shall, (i) be placed on record by the Building Inspector/Code Enforcement Officer with the Town Administrative Assistant, AND, (ii) shall be entered into, and published on, the Town Website by the Building Inspector/Code Enforcement Officer at the time of issuance. The right of a person aggrieved by any such action(s) taken by the Building Inspector/Code Enforcement Officer to appeal, shall extend for a period of thirty (30) days from the placing of the notice on the Website. All Appeals shall be filed with the Zoning Board of Adjustment, and shall be administered and processed as provided in this Ordinance.

Robert B. Field, Jr., Chair

PROPOSAL #3

SUBJECT: "ENFORCEMENT" OF ORDINANCE AND CONDITIONAL DECISIONS

DATE: NOVEMBER 22, 2011

PROPOSAL: ZONING AMENDMENT

"Amend: Section 704.3 – In line 5, add the words "...special exception or..." between the words "...secured..." and "...variance."

Add: Section 705 - "Enforcement"

705.1 The enforcement of this Ordinance by the Building Inspector/Code Enforcement Officer in a consistent, fair, and nondiscriminatory manner, is a critical element of zoning and public trust. Failure to do so will often result in a disservice to the public and frustration of the purposes of the Ordinance. Frequently, the Building Inspector/Code Enforcement Officer is the only administrative officer of the Town to whom is reserved the lawful capacity to enter upon, inspect and observe the actions of a private landowner, and the effect that certain actions may have on the private rights of abutters, other landowners, and the citizens of the Town.

705.2 -Variances, Special Exceptions and other orders or relief issued, made or granted, by the Zoning Board of Adjustment must be strictly construed, for reason that such are often based upon the representations made by an applicant and the case specific intent of the language of the order of denial of relief granted. Authority to make changes or modifications specific to any order of denial or relief rests solely with the Zoning Board of Adjustment.

705.3 – The issuance of Building Permits and Certificates of Occupancy are tools used to secure compliance with zoning ordinances. The Building Permit application is intended to solicit information so that the Code Enforcement Officer can determine whether the proposed building meets all municipal requirements and conditions of relief. Occupancy Certificates are used to enable the Town to insure compliance with all regulations and conditions of relief post construction, but prior to a structure's intended use.

705.4 – If, in the perspective of an Applicant, the Code Enforcement Officer/Building Inspector inappropriately acts with respect to the issuance of a permit or certificate, an administrative appeal may be filed with the Zoning Board of Adjustment; and/or a private right of action may be brought by an aggrieved party pursuant to RSA 676:15.

Robert B. Field, Jr., Chair

PROPOSAL 4A

PROPOSED CHANGE
TOWN OF NORTH HAMPTON
ZONING ORDINANCE
(Amended May 10, 2011)

"Section 302 Definitions"

Add: Body/Bodies of Water: The phrases "Body of Water" or "Bodies of Water" as used in this Ordinance shall include, but are not limited to, perennial and seasonal streams, rivers, brooks, lakes, ponds, tidal waters, marshes and water courses, natural or artificial.

This definition is separate and distinct from the definition of "Wetlands" found elsewhere in this Section and the two shall not be used interchangeably nor shall they be deemed synonymous."

Proposal 4B

PROPOSED CHANGE
TOWN OF NORTH HAMPTON
ZONING ORDINANCE
(Amended May 10, 2011)

"Section 411 Wetlands – Minimum Lot Area"

Add Commas in the First Sentence After the Words "Wetlands" and "water":

The first sentence to now read as follows:

"Wetlands, excluding bodies of water, may be used to satisfy minimum lot area and setback requirements provided that, that portion which is wetland does not exceed fifty (50) percent of the minimum required lot area and provided that the remaining lot area is sufficient in size and configuration to adequately accommodate all required utilities. *3/13/79."

Balance of paragraph to remain unchanged.

PROPOSAL # 5

SUBJECT: Amendment of Town of North Hampton Zoning Ordinance, Section 414
"Water Resources and Aquifer Protection".

DATE: November 22, 2011

PROPOSAL: ZONING AMENDMENT

(Bob – The paragraph below is your original verbage)

"Rain Gardens", so called, may be permitted as a "conditional use", provided that there shall be placed on deposit by the owner of any lot of record on which a "rain garden" is located with the Town Treasurer, an amount of money determined by the Planning Board to be sufficient in amount to ensure that perpetual care and maintenance of the "rain garden" will be performed and funded to a "best practices" environmental standard as may be applicable at any time and from time to time. Such fund may be used by the Town of North Hampton to cause the performance of necessary maintenance and repair when an owner neglects to do so. And, further, an owner shall replenish and/or supplement such fund as the Planning Board shall deem necessary and reasonable from time to time. An owner of any lot of record on which a "rain garden" is constructed, shall record notice of same in the Rockingham County Registry of Deeds and shall make reference to same in any future deed, transfer, subdivision or conveyance of such lot."

Add new Subsection 414.3.D.4

"Rain Gardens"

Bioretention areas, or "Rain Gardens", are landscaping features designed to provide on-site treatment of stormwater run-off. These stormwater management systems have the ability to intercept runoff, allowing it to infiltrate into the ground, and minimizing what the EPA cites as a major source of pollutants entering our watersheds.

A. As site conditions may warrant, the Planning Board may require stormwater management systems, including "Rain Gardens", as a condition for approval for a subdivision or site plan.

B. All required "Rain Garden" stormwater management systems shall have an operations and maintenance (O&M) plan to ensure that systems function as designed. This plan shall be reviewed and approved by the Planning Board as part of the review of the proposed permanent (post-construction) stormwater management system. Execution of the O&M plan shall be considered a condition of approval of a subdivision or site plan. If the stormwater management system is not dedicated to the Town pursuant to a perpetual offer of dedication, the Planning Board may require an applicant to establish a homeowner's association or similar entity to maintain the stormwater management system.

C. The stormwater management system owner is considered to be the landowner of the property, unless other legally binding agreements are established.

D. The O&M plan shall, at a minimum, identify the following:

1. Stormwater management system owner(s). (For subdivisions, the owner listed on the O&M plan shall be the owner or record.)
2. The party or parties responsible for operation and maintenance.
3. A schedule for inspection and maintenance.
4. A checklist to be used during each inspection.
5. The description of routine and non-routine maintenance tasks to be undertaken.
6. A plan showing the location of all stormwater management facilities covered by the O&M plan.
7. A certification signed by the owner(s) attesting to their commitment to comply with the O&M plan.

E. Recording

1. The owner shall provide covenants for filing with the Rockingham County Registry of Deeds in a form satisfactory to the Planning Board, which provide that the obligations of the maintenance plan run with the land.
2. The owner shall file with the Rockingham County Registry of Deeds such legal instruments as are necessary to allow the Town or its designee to inspect or maintain the stormwater management systems for compliance with the O&M plan.

F. Modifications

1. The owner shall keep the O&M plan current, including making modifications to the O&M plan as necessary to ensure that BMP's continue to operate as designed and approved.
2. Proposed modifications of O&M plans including, but not limited to, changes in inspection frequency, maintenance schedule, or maintenance activity along with appropriate documentation, shall be submitted to the Planning Board for review and approval within thirty days of change.
3. The owner must notify the Planning Board within 30 days of a change in owner or party responsible for implementing the plan.
4. The Planning Board may, in its discretion, require increased or approve decreased frequency of inspection or maintenance or a change in maintenance activity. For a reduced frequency of inspection or maintenance, the owner shall demonstrate that such changes will not compromise the long-term function of the stormwater management system.
5. The Planning Board shall notify the owner of acceptance of the modified plan or request additional information within 60 days of receipt of proposed modifications. No notification from the Planning Board at the end of 60 days shall constitute acceptance of the plan modification. The currently approved plan shall remain in effect until notification of approval has been issued, or the 60 day period has lapsed.

G. Record Keeping

1. Parties responsible for the operation and maintenance of a stormwater management

system shall keep records of the installation, maintenance and repairs to the system, and shall retain records for at least five years.

2. Parties responsible for the operation and maintenance of a stormwater management system shall provide records of all maintenance and repairs to the Code Enforcement Officer during inspections.

H. Enforcement

1. When the responsible party fails to implement the O&M plan, as determined by the Code Enforcement Officer or Board of Selectmen, the Town is authorized to assume responsibility for their implementation and to secure reimbursement for associated expenses from the responsible party, including, if necessary, placing a lien on the subject property.

I. Engineering Review

1. The applicant shall submit a fee, as determined by the Planning Board, with their application for subdivision or site plan review to cover the cost of outside engineering review of their proposed permanent post-construction stormwater management system(s), and plan.

J. Performance Bond

1. To ensure that proposed stormwater management controls are installed as approved, a performance bond shall be provided as a condition of approval in an amount determined by the Planning Board.
2. To ensure that stormwater management controls function properly, a performance bond shall be required, as a condition of approval, which may be held after final Certificate of Occupancy (C.O.) is issued.

Proposed 6

PROPOSED CHANGE
TOWN OF NORTH HAMPTON
ZONING ORDINANCE
(Amended May 10, 2011)

"Section 506 Signs and Billboards"

Reference Paragraph 506. 6 (G)

Change title of paragraph to read:

G. "Size, Number and Dimensional Criteria of Signs in the R-1 and R-2 Zoning Districts".

Eliminate current paragraph and replace with the following:

"No more than one sign shall be allowed for any business located in the R-1 or R-2 Zoning Districts.

The dimensional criteria for signs placed or erected on business properties in the R-1 or R-2 Zoning Districts, including but not limited to, ground signs, monument signs, pole signs, pylon signs, wall signs, sandwich-board signs, etc., shall be the same as those specified within Section 506 of this Ordinance with the exception that, under no circumstances, shall any sign exceed twelve (12) square feet. Advertising shall be allowed on each side of such sign, if so desired by the business. In the case of a home occupation, no sign shall exceed two (2) square feet.

Contractor signs shall not exceed nine (9) square feet and shall be limited to one (1) per residence, allowed only where the contractor is performing work on the residence, and no such sign shall remain on the property longer than twelve (12) months or completion of construction, whichever occurs first."

Reference Paragraph 506.6 (H)

Repeal entire paragraph as it has previously been addressed in the "new" Paragraph 506.6(G) referenced above.