

**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, December 11, 2012 at 6:30 pm
Town Hall, 231 Atlantic Avenue**

6

7 These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a
8 transcription. All exhibits mentioned, or incorporated by reference, in these Minutes are a part of the official
9 Case Record and available for inspection at the Town Offices.

10
11 **Attendance:**

12
13 **Members present:** Robert B. Field, Jr., Chair; David Buber, Vice Chair; George Lagassa,
14 Phelps Fullerton, and Robert Landman. (5)

15
16 **Members absent:** None.

17
18 **Alternates present:** Jonathan Pinette. (1)

19
20 **Administrative Staff present:** Wendy Chase, Recording Secretary.

21
22 **Preliminary Matters; Procedure; Swearing in of Witnesses (RSA 673:14 and 15);**
23 **Recording Secretary Report**

24
25 Chair Field Called the Meeting to Order at 6:30 p.m.

26
27 Pledge of Allegiance -Chair Field invited the Board Members and those in attendance to rise for a Pledge
28 of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do so and
29 failure, neglect or inability to do so will have no bearing on the decision making of the Board or the
30 rights of an individual to appear before, and request relief from, the Board.

31
32 Introduction of Members and Alternates - Chair Field introduced Members of the Board and the
33 Alternate(s) who were present (as identified above).

34
35 Recording Secretary Report - Ms. Chase reported that the December 11, 2012, Meeting Agenda was
36 properly published on December 6, 2012 at the Library, Town Clerk's Office, Town Office and on the
37 Town's website.

38
39 Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Chair Field swore in all those who were
40 present and who intended to act as witnesses and/or offer evidence to the Board in connection with any
41 Case or matter to be heard at the Meeting.

42
43 Rules and Procedures-Chair Field stated that he would forego his customary presentation on Rules and
44 Procedures as there were no actionable Applications on the Agenda for the Meeting.

45 **I. Minutes:**

46 **Several Board Members offered editorial suggestions for minor typo-like corrections to the Minutes.**
47 **All were accepted as being immaterial in nature.**

48
49 **November 27, 2012 Meeting Minutes.** – Mr. Landman then Moved, and Mr. Buber Seconded, the
50 **Motion to accept the November 27, 2012 Meeting Minutes, as corrected.**

51
52 **The Vote was unanimous in Favor of the Motion (5-0).**

53
54 **II. Unfinished Business:**

55 **Case Docket:**

56 **1. (Continued) #2012:10 – Property Owner: Thomas C. Huff, as Trustee of the Thomas C. Huff**
57 **Revocable Trust DTD 10/25/1994, 6899 Heritage Club Drive, Mason, Ohio 45040. Applicant: Same**
58 **as Owner; Property location: 34A Ocean Blvd, North Hampton, NH 03862; M/L 001-075-000;**
59 **Zoning District: R-2. The Applicant requests the following Variances: (1) Article IV, Section 406 –**
60 **relief from the 30-foot side-yard setback by razing the existing deck already within the side-yard**
61 **setback, and replacing it with a new deck and remodel to the existing house, and (2) Article V,**
62 **Section 501.2 to allow an extension, expansion or change to a non-conforming use increasing the**
63 **size of the building footprint. This Case is continued from the October 23, 2012, Meeting pending**
64 **receipt of a Legal Opinion from Town Counsel relating to Case jurisdiction.**

65
66 **In attendance for this Application:**
67 **There was no one in attendance to present this Case.**

68
69 **The Board was in receipt of a letter from Attorney Saari, Applicant’s Counsel, requesting a continuance**
70 **because of the lack of finality on the question of whether North Hampton does or does not have any**
71 **jurisdiction over Little Boar’s Head Zoning matters. It was observed that Attorney Saari’s request should**
72 **be considered as a “deferral” from action as the Case jurisdiction has not yet been formally accepted by**
73 **the Board.**

74
75 **Chair Field explained that at the October 23, 2012, ZBA Meeting, the Board authorized him to seek**
76 **advice from Board Counsel on whether or not the North Hampton ZBA has jurisdiction over zoning**
77 **matters occurring within the Little Boar’s Head District, when in fact they have their own Zoning Board**
78 **of Adjustment and Zoning Ordinances with the power to enact and enforce their own Zoning**
79 **Regulations. Attorney Matt Serge assessed information provided to him by both the Chair and**
80 **developed by his own research, and responded to the Board with a Legal Opinion that was made public**
81 **at the November 27, 2012 Meeting. Chair Field commented that the Board has not taken any official**
82 **action based on the letter as yet.**

83
84 **Attorney Serge’s opinion was that there is no apparent basis which legally supports the past practice of**
85 **asserting “concurrent jurisdiction” as between the Town of North Hampton’s ZBA and Little Boar’s Head**
86 **Village District ZBA.**

87
88 **Chair Field said that he had been informally informed that the Little Boar’s Head Village District has**
89 **engaged separate and independent counsel to look into the situation, and, further, that a Select Board**
90 **member informally advised him that the Select Board wants to further investigate the situation because**
91 **of the potential impact it has on the major element of responsibility for Town public services.**

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92 Mr. Landman referred to the Motion he made at the November 27, 2012 meeting regarding the “Beach
93 Plum” located in the Little Boar’s Head District, to accept a “Voluntary Non-Suit”, and commented that it
94 is the same idea as the Huff Case.

95
96 Chair Field explained that it was suggested by Town Counsel to not contest a petition of Plaintiff for a
97 “Voluntary Non-Suit” for the “Beach Plum” Court Case, for three (3) reasons:

- 98 1. There was intervening action by the Little Boar’s Head District on their Zoning Board Case.
- 99 2. There was intervening action by the North Hampton Planning Board, and,
- 100 3. Legal Opinion, dated November 21, 2012, from Attorney Serge that there is no “concurrent
101 jurisdiction” with the Town’s Zoning Board and Little Boar’s Head Zoning Board.

102
103 The Board concluded that it would accept the advice of Counsel to not try and push the issue of whether
104 or not the Zoning Board made the correct Decision in the Beach Plum case, for reason that it was not a
105 judicious thing to do because it was time and money consuming and, in his opinion, likely to not be
106 successful.

107
108 Chair Field explained that New Hampshire is not a “Home Rule” state and that Little Boar’s Head District
109 enjoys only those powers listed under RSA 52:1 A-N, plus the powers specifically granted to it by the
110 Legislature in 1937 to create, administer and enforce a zoning ordinance; that being understood as the
111 circumstances, Town Counsel opined that a separate District was created and there is not concurrent
112 jurisdiction. He said it may have been past practice over the years, but there is no apparent State
113 authority to have “concurrent jurisdiction”.

114
115 Chair Field suggested that the Board “table” the matter of coming to a final decision on whether or not
116 to adopt counsel’s opinion, and allow other information to be introduced by Little Boar’s Head counsel.
117 He said it was brought to his attention that there has been some research done and there may be some
118 information that was not available to the Board or to Attorney Serge. He said that if Mr. Huff decided to
119 present his case the Chair was going to ask that he “voluntarily” agree to defer action on his case to
120 allow the process to move forward and mature.

121
122 **Mr. Landman Moved, and Mr. Lagassa Seconded, the Motion to grant the request made by the**
123 **Applicant’s Counsel, Peter Saari, to defer action (continue) Case #2012:10 – Thomas C. Huff to the**
124 **January 22, 2013 Meeting.**

125
126 Mr. Landman asked how it will be decided on whether or not the Town’s Zoning Board and Little Boar’s
127 Head Zoning Board has “concurrent jurisdiction”.

128
129 Chair Field said it’s going to be decided whenever the Board is faced with deciding whether or not it will
130 accept jurisdiction over a case arising out of the Little Boar’s Head District. It will make such decision
131 based upon the best evidence and legal analysis available.

132
133 Mr. Landman said it is strange to have this “District” concept when there is no funding to do things such
134 as collect their own taxes and have their own Police and Fire Services.

135
136 Mr. Lagassa said that he would be hesitant to advocate that the Board relinquish or otherwise abdicate
137 from its potential responsibilities which it has historically made use of until something else is in its place
138 in Little Boar’s Head. He said that “deferring” (continuing) the Case may imply that the Town’s ZBA has
139 jurisdiction of the Huff Case.

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140
141 Mr. Buber said that if the Board grants the deferral request (continuance) and the Applicant comes
142 before the Board in January it will be at that point when the Board decides whether or not it takes
143 jurisdiction of the Case.
144
145 Chair Field commented that by “deferring (continuing) the Case, the Board is merely allowing the
146 Applicant to receive another extension of time waiver before the Case has to be addressed by the
147 Board. No “jurisdiction” has yet been taken.
148
149 Chairman Field then recognized a member of the audience who wished to speak.
150
151 John Knapp, 8 Atlantic Avenue – Mr. Knapp stated that he obtained a copy of Attorney Matt Serge’s
152 letter to the Board, dated November 21, 2012, and asked to read it into the record because he wasn’t
153 sure how many people were aware of it.
154
155 Chair Field explained that the original North Hampton Zoning Ordinances adopted in 1946 makes
156 reference to the Little Boar’s Head Zoning Ordinance. He further said that he was informed by Charles
157 Gordon, past Chair of the LBH ZBA that, William Fowler, at a LBH District meeting, declared that there
158 would be “concurrent jurisdiction” between the Town and Little Boar’s Head, and the more restrictive
159 provisions or interpretations would control any inconsistencies. That was the way business was
160 conducted for many decades; the process has been that an Application would be made to LBH ZBA, they
161 would then act first, and then it would be followed by an Application made to the Town. He said that
162 the Huff Case was brought before the Town’s ZBA first instead of LBH and that raised the jurisdictional
163 question. The North Hampton ZBA sought an opinion from Town Counsel and received it. There are
164 other people seeking opinions from other counsel. Chair Field explained that the Board is suggesting
165 that they get all the information before them and see if there can be a merger of opinion and come up
166 with a workable and wise solution. He said that it will also enable LBH to have some time to react to the
167 absence of the Town participating in the zoning process if it deemed necessary by them.
168
169 Chair Field suggested that it would be most appropriate for Mr. Knapp to read Attorney Serge’s
170 November 21, 2012, letter into the record.¹
171
172 Mr. Knapp said that there is no Application before the LBH Zoning Board concerning Mr. Huff. He said
173 that it was his opinion that Attorney Saari applied to North Hampton’s ZBA first in order to try and
174 bypass the LBH Zoning Board.
175
176 Chair Field said that Attorney Saari did comment at the October Meeting that the process was
177 differentiated from what has customarily been used, coming to North Hampton ZBA first. But, he wished
178 to ascribe no ill motive to the choice. Nothing appears to bar selecting such sequence.
179
180 Chair Field said that he forwarded a copy of Attorney Serge’s opinion letter to Janet Gorman, a member
181 and former Chair of the LBH ZBA, and by E-Mail she affirmed her intention to forward it to the new
182 Chair, Margaret Schoenberger. He said that he is under the impression that Attorney Saari either has
183 taken or is in the process of taking the Huff Case to Little Boar’s Head ZBA.

¹ The letter from Attorney Matt Serge, dated 11/21/2012, read into the record by John Knapp, is attached to these minutes.

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184 Chair Field then recognized Jane Rockwell, and invited her to speak.
185

186 Jane Rockwell, 8 Atlantic Avenue- said that she was at the Town Office today and received information
187 that the Applicant had withdrawn his Case before the Town.
188

189 Chair Field explained that the Applicant did withdraw the Case but then reversed the withdrawal and
190 requested a continuance to the January 22, 2013 Meeting. He said that it is the Board's hope to decide if
191 it can legitimately take jurisdiction and begin working on the Application at the January 22, 2013, Board
192 meeting.
193

194 Ms. Rockwell said that her property surrounds the Huff property on three (3) sides, and what they
195 propose to do will be detrimental to her view. She said that Vision Appraisal increased the assessed
196 value of her property by \$500,000, due to the view. The issue is, therefore, very important to her.
197

198 Chair Field said that the Little Boar's Head ZBA is checking with their legal counsel and the Select Board
199 may check with their legal counsel so that the Boards can hopefully exercise comity. He further
200 commented that there is no prescribed order to who receives an application first; Attorney Saari came
201 to the North Hampton ZBA first; but that is not the normal protocol.
202

203 Mr. Knapp said that Mr. Gordon has been involved with Little Boar's Head ZBA for many years and he
204 said this is the first time ever that an application has come before the North Hampton ZBA before the
205 Little Boar's Head ZBA.
206

207 Chair Field stated that he could not independently verify Mr. Gordon's facts as alleged by Mr. Knapp.
208

209 Mr. Landman suggested to Mr. Knapp that he request in writing to the LBH Zoning Board, information
210 on whether or not the Huff's have submitted an Application to that Board.
211

212 The Board voted on the Applicant's request to defer (continue) consideration of the Huff Case.
213

214 **On Motion made by Member Lagassa, and Seconded by Member Buber, to grant Applicant's Request**
215 **to Continue (defer) action on the Case.**
216

217 **The vote passed in Favor of the Motion (4 in Favor, 0 Opposed and 1 Abstention). Mr. Landman**
218 **abstained because he continues to have a "jurisdictional" question.**
219

220 **III. New Business:**
221

222 There was no New Business before the Board.
223

224 **IV. Other Business:**
225

226 **1. Communications/Correspondence and Miscellaneous.**

227 **2. Report of Chair re: Town Administrator selection process. Status.**
228

229 Chair Field reported on the Town Administrator selection process. He said that all the final candidates
230 presented strong Resumes and made good presentations, but there was one that stood out, and that

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231 person has been selected by the Select Board and is going through a confidential hiring protocol. The
232 Chairman of the Select Board has not released the information, that the matter has finally been
233 concluded.

234
235 The Board then discussed the Zoning Ordinance Amendments proposed by the Planning Board and
236 scheduled for a Public Hearing on Tuesday, December 18, 2012.

237
238 Chair Field commented the he first became aware of the Public Hearing on proposed Zoning Ordinances
239 from reading the newspaper. He stated that he had forwarded the information to the Members and
240 Alternates to make them aware such that if anyone had concerns and wanted to make either individual
241 observations, or to make collective observations and have one or two Members of the ZBA present
242 them to the Planning Board it could be done.

243
244 Mr. Landman and Mr. Lagassa believed that they had not received the E-mail. Mr. Landman later located
245 the mailing and enclosures on his cell phone. Mr. Lagassa was provided with a copy of the material to
246 review.

247
248 Chair Field commented that the E-mail was sent out on Saturday, December 8, 2012, via Ms. Chase to
249 the Members and Alternate Members.

250
251 Mr. Lagassa said that it is fully within the purview of the Planning Board to set policy without consulting
252 the Zoning Board, but, that out of a matter of comity and professional courtesy, he would have
253 preferred that they consulted the Zoning Board.

254
255 Mr. Fullerton said that he read through the proposals and it appears to him that the Planning Board is
256 making Zoning Ordinance changes that will "tighten up" the language of some of the Ordinances.

257
258 Mr. Buber said that the amendment to Article IV, Section 406.5 is based on closing a "loop hole" by
259 including a sentence that would prohibit a lot currently used for residential purposes, used for business
260 purposes as well in the I-B/R District. He commented on the proposed amendments to the Sign
261 Ordinance regarding "feather flag/banner. He said that it will confuse that particular Ordinance if
262 "banners" are tied in with "feather flags" and the Planning Board should take Attorney Serge's opinion
263 into consideration to incorporate the definition from Section 506.2 (G) Feather Flag/Banner, into Section
264 506.5 Prohibited Signs.

265
266 Mr. Buber pointed out that the Zoning Board doesn't meet again until January 22, 2013, and the last day
267 to hold a public hearing for Zoning Amendments is January 15, 2013, so if any Member has any concerns
268 with any of the amendments they should attend the December 18, 2012 Public Hearing.

269
270 Chair Field suggested that, unless specifically approved by the Board, if any of the Members or
271 Alternates do attend the Public Hearing they should make the point on the record that they speak only
272 as a resident (private citizen) of the Town and not for the Board as a Board member. Mr. Buber
273 concurred.

274
275 **Mr. Buber then Moved, and Mr. Lagassa Seconded, a Motion that the Board declines to take a**
276 **position or action on the Zoning Ordinance Amendment proposals originating from the Planning**
277 **Board.**

278

279 **The Vote was unanimously in Favor of the Motion (5-0).**

280

281 **There being no further business to come before the Meeting, and following an exchange of Holiday**
282 **wishes among Board Members and staff,**

283

284 **Mr. Buber Moved, and Mr. Landman Seconded, the Motion to Adjourn the Meeting at 7:40 p.m.**

285

286 **The Vote was unanimously in Favor of the Motion (5-0).**

287

288 **Respectfully submitted,**

289 

290 **Wendy V. Chase**

291 **Recording Secretary**

292

293 **Approved January 22, 2013**

294

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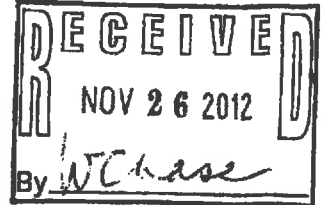
*Also admitted in MA

**Upton
& Hatfield** ^{LLP}
ATTORNEYS AT LAW

Please respond to the Concord office

November 21, 2012

Robert Field, Chairman
North Hampton Zoning Board
233 Atlantic Avenue
North Hampton, NH 03862



DISTRIBUTED

NOV 26 2012

BY: W Chase

Re: Zoning Ordinance Conflict

Dear Bob:

I am writing in response to your inquiry whether the Town of North Hampton has the authority to impose its zoning ordinance on land within the Little Boar's Head Village District ("Little Boar's Head"), which has its own zoning ordinance. Having considered the facts that you presented to me and the applicable law, I conclude that the Little Boar's Head Village District has exclusive zoning authority over the land within its borders, and is not subject to the North Hampton Zoning Ordinance.

Once legally established, a village district is a "body corporate and politic, and shall have all the powers in relation to the objects for which it was established that towns have or may have in relation to like objects, and all that are necessary for the accomplishment for its purposes." RSA 52:3, III. As a result, a village district is an independent and separate legal entity from the town in which it is located with respect to those purposes for which the district was established. Village districts, like towns, are also legislatively authorized to have their own planning boards, RSA 673:2, IV, and may also establish and amend a zoning ordinance, provided the district is specifically authorized by law to enact the ordinance. RSA 675:3, I and VI.

Little Boar's Head was established in 1905 by the New Hampshire legislature and in 1937 was specifically authorized by state law to "enact and enforce zoning regulations." Little Boar's Head enacted its own zoning ordinance in 1937. The Town of North Hampton did not adopt its own zoning ordinance until 1946. The current version of the Little Boar's Head zoning ordinance is a very detailed and comprehensive set of regulations designed to govern exclusively those lands within the district area. I found no reference in the Little Boar's Head

November 21, 2012

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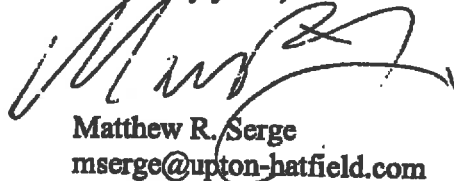
zoning ordinance to sharing zoning authority with the Town of North Hampton. That said, it is my understanding that in the past the Town and Little Boar's Head have exercised concurrent jurisdiction over land use applications relating to properties within the district, thereby requiring landowners to apply to both bodies. If a conflict in the two zoning ordinances arises, the more restrictive standard would typically be applied.

The plain language of RSA 675 reveals that a village district such as Little Boar's Head has the exclusive authority to promulgate and enforce zoning regulations within its borders, to the exclusion of the Town of North Hampton. This opinion is also supported by Attorney Peter Loughlin, as he states in his treatise on Local Government Law that a village district's regulations would "supercede the regulation of the town in which the district is located." 13 P. Loughlin, New Hampshire Practice, Local Government Law §321, at 252 (1995). To construe the statute otherwise, and conclude that the Town has concurrent zoning jurisdiction over the use of land in Little Boar's Head would add words to the statute that the legislature did not see fit to include. See Balke v. City of Manchester, 150 N.H. 69, 72 (2003) (Court will not add words that the legislature has chosen not to include). Moreover, to allow the Town's zoning ordinance to control over Little Boar's Head's zoning ordinance would render a village district's zoning authority meaningless since the Town could simply adopt its own regulations to trump the village district. See Barrington East Cluster I Unit Owners' Association v. Town of Barrington, 121 N.H. 627, 632 (1981) (The court will not adopt an interpretation of a statute that would lead to absurd or illogical results). It follows, therefore, that the Town of North Hampton does not have the authority to impose its zoning ordinance on Little Boar's Head.

Finally, in response to your question concerning the Rye Beach Precinct, I do not find that the absence of the word "exclusive" in the legislation changes the conclusion here. As you note in your message to me, it is likely that the legislature used the word "exclusive" when referring to the Rye Beach Precinct because the Town of Rye had already adopted its own zoning ordinance, which actually strengthens the position that the legislature intended to vest Little Boar's Head with exclusive zoning power.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Matthew R. Serge
mserge@upton-hatfield.com

MRS

