



Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, August 27, 2013 at 6:30pm
Town Hall, 231 Atlantic Avenue
North Hampton, New Hampshire

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8 These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a
9 transcription. All exhibits mentioned, or incorporated by reference, in these Minutes are a part of the official
10 Case Record and available for inspection at the Town Offices.
11

12 **Attendance:**

13
14 **Members present:** Robert B. Field, Jr., Chair; David Buber, Vice Chair; George Lagassa, and
15 Robert Landman. (4)
16

17 **Members absent:** Phelps Fullerton. (1)
18

19 **Alternates present:** Dennis Williams, Jonathan Pinette and Lisa Wilson. (3)
20

21 **Administrative Staff present:** Wendy Chase, Recording Secretary.
22

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

25
26 Chair Field Called the Meeting to Order at 6:31 p.m., and seated Mr. Williams in the absence of Mr.
27 Fullerton.
28

29 Chair Field announced to those present in the audience and/or watching by video streaming that there
30 was no “adjudicative business” to be addressed; only “administrative actions”. If anyone present was
31 anticipating such, they might wish to consider withdrawing.
32

33 Pledge of Allegiance -Chair Field invited the Board Members, Alternates, and those in attendance to rise
34 for a Pledge of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose
35 to do so and failure, neglect or inability to do so will have no bearing on the decision making of the
36 Board or the rights of an individual to appear before, and request relief from, the Board.
37

38 Introduction of Members and Alternates - Chair Field introduced Members of the Board and the
39 Alternates who were present (as identified above).
40

41 Recording Secretary Report - Ms. Chase reported that the original August 27, 2013 Meeting Agenda was
42 properly posted on August 19, 2013, revised to include the pending approval May 28, 2013 Meeting
43 Minutes, and posted again on August 26, 2013, at the Library, Town Clerk’s Office, Town Office and on

44 the Town's website. Because there were no "adjudicative matters" it had not been necessary to publish
45 notice in the newspaper.

46

47 **I. Call to Order; Pledge of Allegiance; Roll Call/Introduction of Members/Alternates;**
48 **Recording Secretary Report; Swearing in of Witnesses (RSA 673:15); Preliminary**
49 **Matters; Minutes of previous Meetings – *May 28, 2013 (Regular Meeting), June 6,**
50 **2013, Special Meeting , and July 2, 2013, Special Meeting.**

51

52 The Meeting Minutes were reviewed and a typographical error was corrected in the May 28, 2013 and
53 June 6, 2013 Meeting Minutes.

54

55 **Mr. Landman Moved, and Mr. Buber Seconded the Motion, to approve the May 28, 2013 Meeting**
56 **Minutes as amended.**

57

58 **The Vote passed in Favor of the Motion (4 in Favor, 0 Opposed and 1 Abstention). Mr. Lagassa**
59 **abstained for the reason that he was not present at the May 28, 2013 Meeting.**

60

61 **Mr. Lagassa Moved, and Mr. Buber Seconded, the Motion to approve the June 6, 2013, Special**
62 **Meeting Minutes, as amended.**

63

64 **The Vote passed in Favor of the Motion (4 in Favor, 0 Opposed and 1 Abstention). Mr. Landman**
65 **abstained for reason he was not present at the June 6, 2013 Meeting.**

66

67 **Mr. Lagassa Moved, and Mr. Landman Seconded, the Motion to approve the July 2, 2013, Special**
68 **Meeting Minutes as written.**

69

70 **The Vote passed in Favor of the Motion (3 in Favor, 0 Opposed and 2 Abstentions). Messrs. Field and**
71 **Williams abstained for reason they were not present at the July 2, 2013 Meeting.**

72

73 **II. Unfinished Business:**

74

75 1. There is no Unfinished Business.

76

77 **III. New Business:**

78

79 1. There is no New Business.

80

81 **IV. Other Business:**

82

83 **1. Communications/Correspondence and Miscellaneous –**

84

85 **a. Discussion on possible Zoning Ordinance Amendments for the 2014 March**
86 **Town Election.**

87

88 Chair Field explained that he was contacted by the Chairman of the Planning Board, Shep Kroner, and
89 asked if the Zoning Board wanted to participate in the Zoning Ordinance amendment process for the
90 upcoming municipal season. . He asked if any Member saw a deficiency or something that ought to be
91 added to the Zoning Ordinance Amendment Proposals that the Planning Board might consider for the
92 Town Election in March, 2014.

93
94 Mr. Landman thought the Planning Board was requesting input from the Zoning Board on the 2-acre
95 requirement; after review of the Planning Board's August 20, 2013 Work Session Meeting Minutes, it
96 was determined not to be the case.

97
98 Chair Field explained the process; a Member of the Board could submit a proposal to the Planning Board
99 as an individual citizen, or could submit a letter outlining the proposal to the ZBA to be discussed at the
100 September 24, 2013 meeting and, if agreed upon by the Board, forwarded by the Board to the Planning
101 Board by October 1, 2013 for their consideration.

102
103 Mr. Buber mentioned that he may be coming up with a change to one of the Sections. He said that if he
104 decided to proceed, he would submit it to Ms. Chase and maybe the Zoning Board could hold a "Special
105 Meeting" to discuss it so they would have time to submit it to the Planning Board by the October 1, 2013
106 deadline.

107
108 Chair Field invited the Alternate Members to participate in the process. He also made a general
109 observation, which he said he has made to the Select Board and the Planning Board in the past, that, the
110 Zoning Ordinance has been compiled over years and years and not everything flows smoothly. He
111 suggests that the Town invest in the development of a new "comprehensive" Zoning Ordinance to be
112 completed over a period of time, because it is an expensive process and he recognized the financial
113 burden that would most likely be incurred.

114
115 Mr. Landman commented that the Town is a member of the Rockingham Planning Commission, and that
116 is something they would do, and it would probably be the least expensive way to go. Mr. Landman's
117 point was well taken.

118
119 **b. Discussion related to the Little Boars Head District/Town of North Hampton Zoning**
120 **Jurisdictional issue.**

121
122 Chair Field explained that the Zoning Board sits as an "adjudicative" Board; it is not a "legislative" Board.
123 The Zoning Board's responsibilities relate to the execution of the Zoning Ordinance as it is adopted by
124 the Town legislative body. The content of the Zoning Ordinance is left to the Planning Board, by state
125 statute and the Select Board. Chair Field offered the following information on the jurisdictional issue:

- 126
- 127 • Chair Field, on behalf of the ZBA, attended a Meeting with the Select Board and Commissioners
128 of Little Boars Heads District, and respective legal counsel in March or April and the outcome of
129 the Meeting was to acknowledge the jurisdictional conundrum, and assign the matter to
130 Counsel for LBH and the Town of North Hampton to resolve how the two (2) jurisdictions might
131 best correct the situation.
 - 132 • Attorney Matt Serge had earlier (November 2012) rendered a decision to the ZBA, and in
133 reliance upon such Opinion the ZBA had taken action on a Case (Huff Case) originating in the
District, to "deny" jurisdiction ONLY on that Case

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- 134 • The Town elected to hire Matt Serge on the Town's behalf, and he did not object, but made it
135 known that if Matt Serge had a conflict with the Town that the ZBA was his primary Client
136 because his initial opinion was the basis of an action the ZBA took, and relied upon (Huff Case).
- 137 • Typically a ZBA application regarding property in the Little Boar's Head Village District (LBH) goes
138 before the LBH ZBA before the Town ZBA; reportedly due to administrative "lag" time, counsel
139 for the Applicant determined to present the Huff Case to the Town ZBA first, and it was then the
140 Board formally identified the jurisdictional issues; it came to believe and understand that there
141 was NO such thing as "concurrent jurisdiction" in NH Law.
- 142 • The Board decided as a group to seek an opinion from Counsel and asked Ms. Chase to advise
143 the LBH ZBA Chair of the problem so they could start "thinking" about the difficulty that an
144 incomplete/incomprehensive Zoning Ordinance might have on the District.
- 145 • The Board received an Opinion from Matt Serge as to the non-recognition of "concurrent
146 jurisdiction" as a fundamental matter of New Hampshire law; the Board was inclined to accept
147 Attorney Serge's determination as the proper one.,
- 148 • Chair Field also sought informal counsel from the Local Government Center (LGC) and no one at
149 the LGC had any knowledge of there being any authorization under State Statute, or by practice,
150 of "concurrent jurisdiction", except for that which has evolved in Town; rightfully or wrongly.
- 151 • January 22, 2013 the Board took action, given the opinion of Counsel, and the research that had
152 been done, that the Board would not take jurisdiction over the Huff Case and advised the
153 Applicant to seek relief before the LBH ZBA.
- 154 • The LBH Commissioners, the Select Board, Chair Field, as representative of the ZBA and a
155 representative of the Planning Board met, and Chair Field felt that unless someone could
156 demonstrate otherwise, jurisdiction was limited to LBH because they had been granted by the
157 Legislature, independent status to adopt, interpret and enforce the Zoning Ordinances for LBH.
- 158 • There have been ongoing negotiations between the Town and the LBH, and according to the
159 Planning Board Minutes of a recent Meeting, Mr. Wilson presented the Town's position, and it
160 looks like there are differences between the Town and LBH that don't involve the Town's ZBA.

161
162 Mr. Landman said there was a newspaper article that said it was the Town's ZBA that caused the
163 expenditure of legal fees regarding this matter. He said that Attorney Saari brought the Huff Case before
164 the Town's ZBA first because he was unable to get in touch with the LBH ZBA, and LBH cases are usually
165 heard by the LBH ZBA first, which caused the Chair to question the concurrent jurisdiction.

166
167 Mr. Buber read his e-mail response to Chair Field's e-mail on this interpretive matter into the record:

168
169 *All -*

170
171 *I couldn't agree with Chairman Field more. As he so eloquently expressed, our job as a Zoning Board of*
172 *Adjustment is to function in a quasi-judicial capacity, relying on case law and ordinances, as individual*
173 *cases are presented to us for resolution. Nothing more - nothing less.*

174
175 *In my opinion, we as a Board acted prudently and in good faith in our attempts to bring the issue of*
176 *concurrent jurisdiction to light, and hopefully a speedy resolution between the Town of North Hampton*
177 *and the LBHD.*

178
179 *I too believe that tonight's Board meeting should not be dedicated to discussions about the ongoing*
180 *issues between the Town and LBHD. The very fact that they are proceeding with, and are trying to*

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181 *resolve the issue of jurisdictional powers, shows that what we brought forth for a legal and/or legislative*
182 *decision has merit. We now must let that process play-out and go on with other issues as they are*
183 *presented to the Board.*

184
185 *A periodic report on the status of the above would be of interest; however our further direct involvement,*
186 *in my opinion, should be finished.*

187
188 *David*

189
190 Chair Field commented that Mr. Wilson pointed out that if a cell tower application was submitted to the
191 LBH Building Inspector, there is nothing in the LBH Zoning Ordinance to address it, and they can't rely on
192 the Town's Zoning Ordinance.

193
194 **Chuck Gordon, 10 Sea Road** – said that the LBH Zoning Ordinances are quite “tight” in the permitted
195 uses, and cell towers are not permitted. He said that they do not have an extensive Ordinance provision
196 dealing with cell towers, but they are not permitted and would require a variance request to the LBH
197 ZBA, and if granted, it would be subject to whatever conditions the LBH ZBA would impose.

198
199 Chair Field mentioned the Federal Telecommunication Act, and the Federal Government has a lot of
200 power concerning cell towers. Mr. Gordon said he is aware of the 1996 Legislation and it would not be
201 permitted under Federal Law to simply refuse it. The Applicant would have to go through the Variance
202 process. Chair Field chose not to speculate on how such a matter might be resolved.

203
204 The Members were in receipt of a copy of an article from the LGC on “recusal and abstaining”. Chair
205 Field said that the “recusal” relies entirely on the individual, and they don't have to recuse themselves,
206 but if asked to, and they don't, they can jeopardize and defeat all the work done by the Board.

207
208 Mr. Landman asked why the Board was not receiving monthly reports from the Building Inspector. Chair
209 Field explained that the Board will only receive reports from the Building Inspector on matters regarding
210 the Zoning Board.

211
212 Ms. Wilson referred to the Section under the Board's Rules of Procedure that authorizes the Chair to
213 cancel a meeting when there is no business before the Board.

214
215 Chair Field acknowledged the “Rule” but said that it was collectively determined that, to be in technical
216 compliance, the Board has to meet in public in Special Session to cancel a meeting that has previously
217 been scheduled and ion the “public domain”.

218
219 The Chair and Vice Chair thought it was brought to the Board's attention by Ms. Chase that the Board
220 had to meet to cancel a meeting pursuant to NH RSA 91-A, the Right to Know Law. Ms. Chase explained
221 that the Chair has the authority to cancel the meeting when there is no business to act on; if the Board
222 has new business or “continued” business they must attend the meeting to publicly cancel it.

223
224 Mr. Buber said that the topic was brought up at one of the Seminar's he attended in the fall. He said that
225 the Board publicly publishes the schedule of monthly meetings early in the year, so the Board would
226 need to publicly meet to cancel a Meeting.

227

228 Chair Field asked Ms. Chase to provide the Section under RSA 91:A – The Right to Know Law that
229 authorizes the Chair to cancel a Meeting and to add the topic on the September 24, 2013 Agenda.
230 Ms. Chase agreed to attempt to locate such authority.

231
232 Here being no further business to come before the Meeting, the Chair invited action on adjournment.
233

234 **Mr. Buber Moved, and Mr. Landman Seconded, the Motion to Adjourn at 7:35 p.m.**

235
236 **The Vote was unanimous in Favor of the Motion (5-0).**

237
238 Respectfully submitted,

239
240 Wendy V. Chase
241 Recording Secretary

242
243 Draft Minutes edited by the Chair, Robert B Field, Jr., for Board approval.

244
245 Approved September 24, 2013

246
247