Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Wednesday, April 23, 2014 at 2:30pm
Town Hall, 231 Atlantic Avenue
North Hampton, NH 03862

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

Attendance:

Members present: David Buber, Chair; Phelps Fullerton, Vice Chair, George Lagassa, Robert Landman and Charles Gordon. (5)

Members absent: None.

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

Administrative Staff present: Wendy Chase, Recording Secretary.

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

Chair Buber Called the Special Meeting of the ZBA to Order at 2:30 p.m.

Introduction of Members and Alternates - Chair Buber introduced Members of the Board and the Alternates who were present (as identified above).

Recording Secretary Report - Ms. Chase reported that the April 23, 2014 Special Meeting Agenda was properly posted at the Library, Town Clerk's Office, Town Office and on the Town's website.

Chair Buber read the case description from the April 23, 2014 Special Meeting Agenda into the record: ***Pursuant to the Zoning Board's Rules of Procedure, Section 5.A., the Zoning Board of Adjustment will hold a Special Meeting on April 23, 2014, at 2:30pm, at the Town Hall, to discuss the Final Decision Letter for Case #2014:01 – Jerome Day and Jane Currivan, 151 Atlantic Avenue, North Hampton, NH (006-144-000), and The Millpond Dreamhome, LLC, 153 Atlantic Avenue, North Hampton, NH (006-144-001)***.

Chair Buber explained that the Special Meeting is not a rehearing, or a reopening of the Case, it is solely to discuss the Decision letter.

Mr. Landman recused himself.

Chair Buber seated Mrs. Wilson for Mr. Landman.

Chair Buber explained the facts of the matter:

- The Board received an email and letter from Attorney Fitzgerald-Boyd, counsel for The Millpond Dreamhome, LLC, dated April 8, 2014, requesting that the Zoning Board correct the written decision to accurately reflect the actual decision made by the Board by removing the language that it is "between the parties" regarding the design and installation of the driveway. Chair Buber read from her letter where she states, "This is not an appeal of the decision but an appeal of the language used in the written decision." Chair Buber noted for the record that neither Counsel for Mr. Day and Ms. Currivan nor Counsel for The Millpond Dreamhome, LLC have filed an appeal of the Decision Letter, and Attorney Fitzgerald-Boyd does not intend to file an appeal. She further wrote in the letter, "Although it may not have been the intention of the Board, the line "The design and installation shall be in the hands of the Parties" has left the Days with the opinion that this means that the two-lots have to agree upon the design and installation. "That was not the decision of the board and the video of this meeting confirms it". "Please correct the written decision to accurately reflect the actual decision of the board and remove the language that it is "between the parties" as it is likely to cause further confusion that the Day's feel that the board is ordering the Millpond Dreamhome, LLC to comply with terms that it did not agree upon nor were ordered by this board".
- The Board received a four (4) page letter, with fourteen (14) attachments, from Attorney Griffin, Counsel for Mr. Day and Ms. Currivan, dated April 14, 2014. He references RSA 677:2 that states "within 30 days after any order or decision of the Zoning Board of Adjustment…any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order". Chair Buber said the "gist" of the letter is regarding an appeal, and Attorney Griffin contends that Attorney Fitzgerald-Boyd's letter is an appeal, and the appeal time had expired and went beyond the 30-days.
- The Board received a response letter from Attorney Fitzgerald-Boyd, dated April 15, 2014, which states "the motion brought, seconded and voted upon verbally the evening of the Zoning Board of Adjustment does not conform with the written decision of March 14, 2014".
- The Board received a response letter from Attorney Griffin, dated April 17, 2014, reiterating that any type of appeal falls outside the 30-day appeal period.
- Chair Buber read the actual motion made at the March 7, 2014 meeting from lines 368 through 374 of the minutes, "**Mr. Field moved and Mr. Buber seconded the motion to direct the Building Inspector/Code Enforcement Officer to (1) invalidate the current Certificate of Occupancy, (2) issue a temporary Certificate of Occupancy with an expiry date of July 31, 2014, and (3) the driveway be constructed in accordance with the subdivision plan subject to the design and construction approval of a certified engineer selected by the Town's Building Inspector/Code Enforcement Officer and paid for by the Owner". The vote was unanimous in favor of the motion (5-0).**
- Chair Buber said he reviewed the DVD of the March 7, 2014 Meeting, and Ms. Chase reviewed it as well. He said that the language in the ultimate decision never included the phrase "the design and installation shall be in the hands of the parties". The closest phrases to that were used twice during the meeting and he noted the times on the DVD, 3:05:04 and 3:36.

Chair Buber explained that the confusion was the summary made by the prior Chair of the March 7, 2014 meeting, which was added to the March 7, 2014 meeting minutes (lines 348 through 359). It was a

summary not to be used in the Minutes or Decision letter; it was a recollection of the meeting from the prior Chair.

Ms. Chase wrote verbatim the discussion that took place between Mr. Field and Mr. Bauer regarding the installation of the pervious driveway:

Bauer: "it depends on who's going to do it, the foreman too, and somebody needs to oversee the work and make sure it's done right, obviously the Contractor's going to do the work on the house…"

Field: "well that's not our responsibility, that's going to fall between the owner and the Days and Mr. Kelley will issue the temporary Certificate of Occupancy with these conditions, he knows how to do this, he's done it before."

Mr. Gordon was asked, and could not recall, ever modifying a decision letter when he was a member of the Little Boar's Head Zoning Board of Adjustment.

Chair Buber said that Ms. Chase took the initiative and contacted the legal staff of NHMA. Attorney Sanderson responded and said that the phrase "The design and installation shall be in the hands of the parties" contains no criteria at all for anyone to use and is inherently ambiguous and incapable of enforcement.

Chair Buber said the focus of the matter is essentially to either keep the phrase "The design and installation shall be in the hands of the parties" or eliminate it. He said the other points under Special Conditions in the Decision Letter are not verbatim, but are accurate.

Mr. Fullerton said that the *phrase* was a summary of the previous Chair, as Attorney Sanderson pointed out in his response email to Ms. Chase, and shouldn't have been added under the Special Conditions in the Decision Letter. He said he remembered mentioning how expensive permeable pavers were to install for the driveway and no one was locking Attorney Fitzgerald-Boyd's client into a particular pervious drive and the Board did not give Mr. Day architectural review privileges of what was going to go down as a pervious surface. He said the *phrase* should be taken out of the Special Conditions, and that when making the decision he had in his mind that he was looking for compliance with the Planning Board's original conditions of approval of the subdivision and simply to provide a pervious driveway.

Mrs. Wilson felt that the Board needed to remove the language "in the hands of the parties" from the Decision Letter because she doesn't believe it can be enforced and doesn't believe it was the Board's intent; it is very clear in the written motion what was intended.

Mr. Lagassa agreed and said that even though the phrase is not enforceable it could possibly become a "nightmare" if left in the Decision Letter, because it could be grounds for an appeal.

Mr. Gordon suggested that if the Board decided to remove the language, to do so solely on the fact that it was not included in the Board's decision; not because it could be grounds that could give rise to other problems.

Mr. Pinette, spoke from the audience, and agreed to remove the subject language, and also agreed with Mr. Gordon.

Mr. Williams, spoke from the audience, and agreed to remove the subject language, and agreed with Mr. Gordon's basis in doing so.

Mr. Landman agreed to remove the subject language and stated that he did not have the phrase in the notes he took as Secretary pro tem.

Mr. Gordon moved and Mrs. Wilson seconded the motion that the Decision Letter be corrected by eliminating the words "the design and installation shall be in the hands of the Parties", thereby accurately reflecting the decision made by the Board at its March 7, 2014 meeting.

Chair Buber noted that the motion made at the March 7, 2014 meeting was passed unanimously (5-0) and read the decision into the record: "**Mr. Field moved and Mr. Buber seconded the motion to direct the Building Inspector/Code Enforcement Officer to (1) invalidate the current Certificate of Occupancy, (2) issue a temporary Certificate of Occupancy with an expiry date of July 31, 2014, and (3) the driveway be constructed in accordance with the subdivision plan subject to the design and construction approval of a certified engineer selected by the Town's Building Inspector/Code Enforcement Officer and paid for by the Owner". The vote was unanimous in favor of the motion (5-0).**

Mr. Gordon modified his motion and Mrs. Wilson seconded it to read, "after review of the Minutes of the March 7, 2014 meeting, and of the DVD of that meeting, that the Decision Letter be corrected by eliminating the words: "The design and installation shall be in the hands of the parties".

Mr. Lagassa reviewed the original Decision Letter and wanted the Board to make sure that Mr. Gordon's motion does not create any new conflicts of what is written in the Decision.

Mr. Gordon asked to modify his motion by eliminating only the words, "in the hands of the Parties".

Mrs. Wilson withdrew her second to the motion. Mr. Gordon withdrew his original motion and replaced it with the modified motion and Mrs. Wilson seconded: "After review of the Minutes of the March 7, 2014 meeting, and of the DVD of that meeting, that the Decision Letter be corrected by eliminating the words: "in the hands of the Parties".
The vote was unanimous in favor of the motion (5-0).

Chair Buber thanked everyone for attending the Special Meeting.

Mr. Gordon moved and Mr. Fullerton seconded the motion to adjourn the meeting at 3:20 p.m.
The motion was unanimous in favor of the motion (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved May 27, 2014