



6

**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, February 24, 2015 at 6:30pm
Town Hall, 231 Atlantic Avenue
North Hampton, NH 03862**

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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:** David Buber, Chair; Phelps Fullerton, Vice Chair, George Lagassa,
15 Charles Gordon and Lisa Wilson. (5)
16

17 **Members absent:** None
18

19 **Alternates present:** Jonathan Pinette and Robin Reid.
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 Buber Called the Meeting to Order at 6:35 p.m.
27

28 Pledge of Allegiance -Chair Buber invited the Board Members and those in attendance to rise for a
29 Pledge of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do
30 so and failure, neglect or inability to do so will have no bearing on the decision making of the Board or
31 the rights of an individual to appear before, and request relief from, the Board.
32

33 Introduction of Members and Alternates - Chair Buber introduced Members of the Board and the
34 Alternates who were present (as identified above).
35

36 Recording Secretary Report - Ms. Chase reported that the, February 24, 2015 Meeting Agenda was
37 properly published in the February 10, 2015 edition of the Portsmouth Herald, and, posted at the
38 Library, Town Clerk's Office, Town Office and on the Town's website.
39

40 Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Chair Buber swore in all those who were
41 present and who intended to act as witnesses and/or offer evidence to the Board in connection with any
42 Case or matter to be heard at the Meeting.
43

Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH
RSA 91A:2, II. They will not be finalized until approved by majority vote of the Zoning Board of Adjustment.

44 Chair Buber then briefly explained the Board's operating Rules and Procedures to those present.

45

46 **I. Minutes of previous Meeting – November 25, 2014 -**

47

48 **Mr. Gordon moved and Mr. Pinette seconded the motion to approve the November 25, 2014 meeting**
49 **minutes as written.**

50 **The vote was unanimous in favor of the motion (5-0-0).**

51

52 **II. Unfinished Business:**

53

54 **1. There is no Unfinished Business.**

55

56 **III. New Business:**

57

58 Chair Buber explained that Mr. Lagassa recused himself from both cases this evening and seated
59 Mr. Pinette in his stead. He further explained that he will allow Mr. Lagassa to speak because he has
60 *Standing* as a direct abutter.

61

62 Chair Buber asked Attorney Ells, Counsel to the Applicants, whether or not they could begin with
63 Case #2015:02 first, before Case #2015:01.

64

65 Mr. Ells said that because the cases are interrelated he had no objection to proceed in the fashion
66 requested by the Chair.

67

68 Mr. Fullerton read the case description into the record.

69

70 **2. Case #2015:02 – Applicant, Maple Road 14, LLC, Luke Powell, 28 Winnicut Road, North Hampton,**
71 **NH, 03862. Owner(s): same as above; property location: 14 Maple Road, North Hampton, NH;**
72 **Map/Lot 006-065-000; Zoning District: R-2.** The Applicant submits an Appeal of an Administrative
73 Officer – Jurisdiction of Planning Board. The Applicant seeks ruling that there is no Planning Board
74 process which requires Planning Board approval of wetland mapping changes after the subdivision
75 process has been completed (Subdivision Regulations, IV, Sections A & B).

76

77 In attendance for this application:

78 Paul Powell, Owner/ Applicant

79 Luke Powell, Owner/Applicant

80 Attorney Steven Ells, Applicant's Counsel

81

82 Attorney Ells asked Member Lisa Wilson if she felt she could hear the Maple Road cases impartially
83 because her husband, Phil Wilson, is a member of the Planning Board, and the mover of a motion that
84 the Applicant is objecting to. He said like most couples they may have had discussions about the cases.

85

86 Mrs. Wilson said that she has given it thought and thinks she can be impartial. She has read the minutes
87 of the Planning Board regarding the case and said she will do her best to be objective and open minded.

88

89 Mr. Ells said that he could accept Mrs. Wilson's response.

90

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91 Chair Buber said that in the spirit of full disclosure that he lives on Maple Road; he is not an abutter to
92 the subject lot. He said he has adjudicated cases in the Maple Road area in the past.

93

94 Mr. Ells thanked Chair Buber for his full disclosure and said he had no problem with that.

95

96 Mr. Ells said that they are appealing decisions made by the Planning Board that they believe were based
97 on the Planning Board's interpretation of the Zoning Ordinance. He said the Zoning Board has
98 jurisdiction to hear the appeal pursuant to RSA 676:5.III.

99

100 Mr. Ells presented case 2015:02:

101

102 1. The North Hampton Planning Board approved the subdivision of a parcel of land located on
103 Maple Road and then owned by Cadillac Automobile Company of Boston, c/o Estate of Peter Fuller.

104

105 2. Said subdivision was approved on May 7, 2014 and created two parcels of land known as Map
106 06, Lot 65, containing 5.02 acres and Map 06, Lot 65-2, containing 5.12 acres.

107

108 3. The subdivision plan is recorded in Rockingham County Registry of Deeds as plan No. D-38229.

109

110 4. Subsequent to the recording of said subdivision plan, Map 06, Lot 65 was sold by the subdivider
111 to Maple Road 14, LLC, the applicant herein, by deed dated June 25, 2014 and recorded in
112 Rockingham County Registry of Deeds at Book 5539, Page 2860. A copy of which is attached hereto
113 as Exhibit B.

114

115 5. The subdivision plan recites that Map 06, Lot 65 contains "1.16 contiguous acres of upland in
116 building area".

117

118 6. Zoning Ordinance Article IV, Section 406.6 requires a minimum of 100,000 sq. ft. of area and
119 60,000 sq. ft. of non-wetland area for the building of a duplex on a given lot.

120

121 7. After purchasing Map 06, Lot 65 the applicant retained the services of Gove Environmental
122 Services, Inc. to review the wetlands for the lot and as a result of said review, Gove Environmental
123 determined that the lot in fact contained over 60,000 sq. ft. of non-wetland.

124

125 8. The applicant then approached the Building Inspector and made application for a building permit
126 for a duplex to be constructed on Map 06, Lot 65.

127

128 9. The Building Inspector, seeking impartial confirmation of the work of Gove Environmental
129 retained the services of Michael Cuomo of Rockingham County Conservation District (RCCD), at the
130 expense of the applicant, to review the Gove work.

131

132 10. On October 8, 2014, on site with the following parties present: Paul Powell, Jim Gove, Kevin
133 Kelley, Shep Kroner and Mike Cuomo, Mr. Cuomo reviewed the wetland designations of Gove
134 Environmental and essentially agreed with Gove's work.

135

136 11. Steven Oles of MSC Civil Engineers then plotted the said Mike Cuomo work on a site plan which
137 shows that the lot in question contains in excess of 66,000 sq. ft. of upland area and a building
138 envelope of 7,500 sq. ft.

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12. The Building Inspector next referred the applicant to the Planning Board, apparently because he was unsure of what process to follow given this situation.

13. The applicant appeared before the Planning Board on November 4, 2014 for discussion.

14. Although the applicant did not agree that the Planning Board has continued jurisdiction over the subdivision of this land, as the Planning Board had created a legal lot and its work was done, the applicant agreed to formally apply to the Planning Board for its review and confirmation of the new wetland mapping and to give the abutters an opportunity to be heard.

15. Application was made to the Planning Board on a form created by the applicant, as no form or procedure exists for what the applicant had been requested to do. The applicant also requested a waiver of the filing fees as no other land owner had ever been requested to follow this procedure.

16. An initial public hearing was held before the Planning Board on December 2, 2014 resulting in the scheduling of a site walk.

17. At the second public hearing before the Planning Board on January 6, 2015, after the chairman and one member of the Board briefed the Board on their meeting with Michael Cuomo, earlier in the day, the Planning Board voted to: require the applicant to submit an amended Subdivision Plan before proceeding any further with development of that project. Upon request of the applicant that the Board address the application before it, the Planning Board voted to deny the amended wetland mapping plan for 14 Maple Road.

18. On January 21, 2015, the applicant, through its attorney, made a request of the Building Inspector for a formal decision on the pending application for a building permit to construct a duplex on the lot and by decision dated January 22, 2015 the Building Inspector denied the application.

19. Said decisions of the Planning Board appear to have been made based upon its construction or interpretation of the Zoning Ordinance and the Planning Board's Subdivision Regulations.

Mr. Ells proceed to the following argument:

A. As to the decision to deny the amended wetland mapping; there was no reason provided by the Board for said denial. The amended wetland plan had been reviewed and approved by both the applicant's wetland scientist and the Town's wetlands scientist and no evidence contradicting the amended wetlands mapping was submitted to the Planning Board in any of the public meetings.

B. As to the decision of the Planning Board to require the applicant to submit an amended subdivision plan before proceeding further with development of the project; there was no reason provided by the Board in its decision as to why such a process should be followed by the applicant when no other landowner with post subdivision changes to wetland mapping has been required to do so.

C. In the first Planning Board meeting, members raised issues as to the "suitability of land" per Section V. E of the Subdivision Regulations and to that end required a site walk before it would take

186 jurisdiction of the matter. Issues such as traffic safety, density and character of the neighborhood
187 were also discussed.

188

189 D. The applicant owns a lot of land created by the Planning Board and said lot contains sufficient
190 uplands to qualify for a building permit to construct a duplex thereon.

191

192 E. The Planning Board created the lot in question by establishing property lines under the enabling
193 clause of RSA 674:35, II: "The Planning Board of a municipality shall have the authority to regulate
194 subdivision of land . . ." Thus, the legislature has granted the Planning Board the power to regulate
195 the act of subdividing land and not the land that has been subdivided. The Planning Board's power
196 to regulate subdivisions derives solely from this legislation, the "authority to regulate the subdivision
197 of land" can have only one meaning; that is, the act of subdividing land. Therefore, the Planning
198 Board cannot use its subdivision regulations to control improvements to the land that has been
199 subdivided. Lemm Development Corp. v. Town of Bartlett (1990) 133 NH 621,622 and Annotation
200 No. 1 to RSA 674:35 "Construction".

201

202 F. The alteration of the wetlands mapping for the lot in question does not create new or different
203 property lines which would require the applicant to apply for an amended subdivision plan.

204

205 G. The North Hampton Zoning Ordinance and Planning Board Regulations contain no process or
206 procedure for the applicant to return to the Planning Board each time a change to the wetlands
207 mapping for a legal lot occurs. Further, other than the applicant, no other land owner has ever been
208 required to follow such a process.

209

210 H. Once the subdivision of this land was approved and the plan recorded, the work and jurisdiction
211 of the Planning Board ended. How the lot may be lawfully used is now under the jurisdiction of the
212 Building Inspector.

213

214 I.RSA 674:33, II confers upon the Zoning Board of Adjustment all the powers of the administrative
215 official from whom the appeal is taken. Therefore, the Zoning Board of Adjustment is authorized,
216 when hearing and deciding an appeal, to step into the shoes of the administrative official. Land Use
217 Planning and Zoning, Loughlin, 4th Edition, Chapter 22; Powers of Zoning Board of Adjustment, Page
218 349.

219

220 Mr. Ells said that he Applicant prays:

221

222 I. That after a hearing on this matter, the Zoning Board of Adjustment find and rule that the Planning
223 Board has misconstrued and misinterpreted its jurisdiction to control how the parcel in question is to
224 be used after the subdivision of that parcel has been completed, II. Find and rule that no zoning or
225 planning process exists which requires the applicant to seek and obtain approval of wetlands
226 mapping for this parcel after the subdivision process has been completed, III. The phrase "and
227 subsequent revisions thereto" in the first sentence of Section II, Purpose and Intent of the
228 Subdivision Regulations for North Hampton applies to subsequent changes to property line but not
229 to subsequent changes to wetland mapping of a previously approved subdivision, and IV. And for
230 such other and further relief as may be just and reasonable.

231

232 Mr. Fullerton asked Mr. Ells to read Note #1 and note #7 on the recorded subdivision plan, which he did
233 as follows: Note #1 - "The purpose of the plan: A) to subdivide Tax Map 06 Lot 65 into two single family

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234 residential lots”.; Note #7 – “Proposed Use: 2 single family building lots”. At the request of Mr. Fullerton
235 Attorney Ells read, for the benefit of those in attendance, a portion of the Warranty Deed for Tax Map 6,
236 Lot 65, which stated, “subject to notes, easements and restrictions as shown on said plan of record”.

237
238 Mr. Ells said that he understands Mr. Fullerton’s point, but the notes on the plan and actual conditions
239 of approval set by the Planning Board are two different things. He said the minutes of the subdivision
240 hearing there was discussion that there would be two single family homes but it was never incorporated
241 in the conditions of approval.

242
243 Chair Buber said after reviewing DVD recordings of the Planning Board meeting he was under the
244 impression that the intent of the subdivider to construct single family houses and wondered how they
245 are now able to construct a condominium duplex. Mr. Ells said that the town does not have a
246 condominium conversion ordinance.

247
248 Chair Buber referred to #6 of the Conditions of Approval set by the Planning Board for the original
249 subdivision, “There shall be no changes to the Mylar except to meet these Conditions of Approval”.

250
251 Mr. Ells said that he thinks that is a standard condition pertaining to no changes should be made
252 between the final paper copy and drawing of the Mylar to be recorded.

253
254 Chair Buber commented that according to the plan, Mr. Gove went on the site to delineate the wetlands
255 on April 7, 2014 and the final approval of the subdivision didn’t occur until May 7, 2014. Mr. Ells said the
256 property was on the market at the time and Mr. Powell was doing his due diligence before making an
257 offer to purchase it.

258
259 There was no report from Gove Environmental submitted. The wetland areas were depicted on the plan.

260
261 Paul Powell was sworn in by the Chair, he explained that Mr. Gove did a reflagging of the wetlands and
262 Mr. Oles did a new plan that showed the flagged areas. He said that Mike Cuomo, RCCD by the direction
263 of the Building Inspector, inspected approximately 17 flags that Mr. Gove put out to make sure it was
264 accurate and he stated that it was accurate. He said that three flags changed, varying between 5 and 7
265 feet in an area where the “bridge” of uplands was opened up causing the additional uplands.

266
267 Mrs. Wilson questioned why the Applicant was appealing to the Zoning Board, if a party is aggrieved by
268 a decision from the Planning Board on a site plan review or subdivision plan has the right to appeal to
269 Superior Court. She didn’t think the Zoning Board had jurisdiction over this case.

270
271 Mr. Pinette agreed with Mrs. Wilson, and thought the Applicant should be appealing the Planning
272 Board’s decision to Superior Court.

273
274 Mr. Ells referred to RSA 676:5.III that states that if a decision made by the Planning Board on a site plan
275 review or subdivision is based upon the terms of the zoning ordinance then it would be appealable to
276 the ZBA. He said that all administrative appeals have to be exhausted before appealing to Superior
277 Court.

278
279 Mrs. Wilson referred to the case cited by Mr. Ells - Lemm Development Corp. v. Town of Bartlett
280 (1990) 133 NH 621,622 and Annotation No. 1 to RSA 674:35 "Construction". She said that in her
281 opinion this law doesn’t apply to this case. She said that there is a material change to the land and

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282 therefore the Applicant should appeal to Superior Court or go back to the Planning Board and apply
283 for an amended subdivision plan. She said that the facts given to the Planning Board have changed, so
284 the recorded Mylar needs to be changed.

285
286 Mr. Ells said that the Planning Board doesn't have any more jurisdiction than what the Statute allows;
287 the delineation of the wetlands does not change the subdivision lines.

288
289 Chair Buber opened the Public Hearing to those in favor of the application.
290 There was no public comment.

291
292 Chair Buber opened the Public Hearing to those neutral to the application.
293 There was no public comment.

294
295 Chair Buber opened the Public Hearing to those abutters or affected parties against the application.

296
297 Gregory Phelps, 15 Maple Road- (Mr. Phelps was Sworn in by the Chair). Mr. Phelps said he thought
298 having a paid opinion to change the wetland designation after a land transaction has occurred and
299 accepting that would set a bad precedent to the Town and its conservation efforts. The condo/condexes
300 being proposed are antithetical to the character of Maple Road. He also said that if there is a wetland
301 designation change subsequent to the transfer of the property the original owners would have
302 "Standing" to sue the town because the value of the property would have changed.

303
304 Sandra Woodworth, 19 Maple Road – said that she lived with Peter Fuller and it was his intention if the
305 lot was developed it would be for a single family home and she thinks his son, who originally subdivided
306 the lot into two, would have followed his father's intentions; she said she felt deceived. She also said
307 that it is a dangerous place to put four households.

308
309 Joan Jones, 5 Maple Road – (Ms. Jones was sworn in by the Chair), said that she looked at the property
310 to purchase with the intention of building 3 units on the two lots to live in one and rent out the other
311 two. She said her builder was told by the Town that only two single family homes could be built there, so
312 she decided not to purchase it.

313
314 It was pointed out that the driveway permits were approved for a single family dwelling.

315
316 Attorney Ells confirmed that the applicant has applied for building permits for duplexes. He said that the
317 driveway permits have not been updated.

318
319 Mr. Fullerton read a letter from Britt Ritzinger, 28 Maple Road, opposed to the application stating that a
320 duplex would not fit in with the rural character of the town, and that the original wetlands plan should
321 be adhered to. Mr. Fullerton also read an email communication from Heidi Wood, owner of 6 lots and
322 20 acres along Maple Road stating that she and her husband strongly vote against Mr. Powell's appeal
323 to alter the wetland mapping and sternly vote against his appeal to reverse the decision of the Building
324 Inspector with respect to issuing a duplex building permit to the applicant.

325
326 Discussion ensued over RSA 674:33.I and RSA 676:5.III – RSA 674:33.I states the Zoning Board of
327 Adjustment shall have the power to hear and decide appeals if it is alleged there is error in any order,
328 requirement, decision, or determination made by an administrative official in the enforcement of any
329 zoning ordinance. Pursuant to RSA 676:5.II (a) the "administrative officer" means any official or board

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330 who, in that municipality, has responsibility for issuing permits or certificates under the ordinance, or for
331 enforcing the ordinance, and may include a building inspector, board of selectmen or other official or
332 board with such responsibility.

333
334 George Lagassa, 26 Maple Road – said he is an abutter to the subject lot. He said he finds it strange that
335 conditions of approval of a subdivision can be reversed six months after the approval by some routine
336 process. He found out about the proposed duplexes and inquired about it at the town offices. He felt
337 the proposal was an attempt to be slipped through without public knowledge and input. The Applicant
338 did not appear before the Planning Board with an amended subdivision application. The wetlands were
339 originally delineated by a Certified Wetland Scientist indicating the subject lot had 1.186 acres of
340 uplands and then the Applicant found someone to give a counter opinion, and allowing that change
341 would make a travesty of the law. He referred to the Conditions of Approval imposed by the Planning
342 Board and added to the recorded Mylar; note #6 “There shall be no changes to the Mylar except to meet
343 these Conditions of Approval”.

344
345 Chair Buber closed the Public Hearing and called for a recess at 8:16pm.

346 Chair Buber reconvened the meeting at 8:24pm.

347

348 Board Deliberation:

349

350 Mr. Fullerton said that the relief requested by the Applicant is specific. He said it is an unusual case. The
351 purpose was to create two single family lots as noted on the recorded Mylar and reflected in the deed.
352 He said that in his mind the appeal falls under the North Hampton Subdivision Regulations and he is not
353 convinced that the ZBA has jurisdiction to tell the Planning Board what process they have regarding
354 subdivisions.

355

356 Mrs. Wilson said that she agrees with Mr. Fullerton; any person aggrieved for a site plan or subdivision
357 plan has the right to appeal the Planning Board’s decision to Superior Court. She said that there is a
358 difference between the Zoning Ordinance and a subdivision plan and this only has to do with a
359 subdivision plan.

360

361 Mr. Pinette said that wetlands change over time and Wetland Scientists come up with different
362 delineations because of that. He said that he feels this should be appealed to Superior Court and the
363 Zoning Board should not be overturning the Planning Board’s decision.

364

365 Chair Buber agreed with that position and wrestled with the case; he had no prepared decision. He
366 referred to the Planning Board’s decision at the January 6, 2015 meeting, “Mr. Wilson moved and Ms.
367 Monaghan seconded the motion that the Board require the Applicant submit an amended subdivision
368 plan before proceeding any further with development of that project and that amended plan should
369 reflect the registered plan that the developer would like to have would allow the development as he has
370 laid it out. The vote passed in favor of the motion 5 in favor, 1 opposed and 1 abstention. Mr. Kroner
371 opposed and Mr. Harned abstained.” The second motion made was, “Mr. Wilson moved and Dr. Arena
372 seconded the motion to deny the request for an amended delineation of the wetlands because of the
373 consequences that has on the approved subdivision plan, and therefore the Board has already voted to
374 require an amended subdivision plan. The vote passed in favor of the motion (5 in favor, 2 opposed and
375 0 abstentions). Mr. Kroner and Mr. Maggiore voted against.” The Planning Board Decision letter, “ On a
376 vote of 5 in favor, 2 opposed and no abstentions, the Planning Board, at their January 6, 2015 Meeting
377 denied the amended wetland mapping plan completed by Gove Environmental Services, Inc., on April 7,

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378 2014 and July 1, 2014, for 14 Maple Road, North Hampton, NH, (lot 006-045-000), and submitted by the
379 applicant. The Planning Board on a vote of 5 in favor, 1 opposed and 1 abstention, requires the
380 Applicant to submit an amended subdivision plan before proceeding any further with development of
381 that project, and that the amended plan should reflect the proposed changes to the registered plan".
382 The footnote on the Planning Board's decision letter states: "Any person aggrieved by a decision of the
383 North Hampton Planning Board ("Board") on a Site Plan or Sub-Division Application has a right to appeal that
384 decision to the Superior Court for Rockingham County. Where the Decision involves an interpretation of the
385 Town's Zoning Ordinance, an appeal to the North Hampton Zoning Board of Adjustment." He said that the
386 change of the wetland delineation is a material one and has a material effect on the use of the property
387 as well as to the abutters and other parties. The new delineation will cause a dramatic change to the
388 property. He thought that the applicant may want to go back to the Planning Board and let them review
389 and decide, and if the applicant doesn't agree then they can appeal it to Superior Court instead of
390 submitting a motion for rehearing to the ZBA and then to Superior Court.

391
392 Mr. Fullerton said that the ZBA can only suggest they go back to the Planning Board, Mrs. Wilson agreed.
393

394 Mr. Gordon said that he appreciates the concerns of the abutters and neighbors concerning the two
395 duplexes opposed to single family homes, and is not comfortable to suggest those concerns are not
396 relevant especially since one of the Board's colleagues has those concerns. He said when the property
397 was originally subdivided the applicant didn't have to indicate what the purpose is. If the application is
398 for two fully conforming lots regarding dimensions, size and minimum contiguous upland, the Planning
399 Board cannot deny the application, and when Mr. Powell bought the property he had the right to
400 change the structure as long as it complies with the Zoning Ordinance. Mr. Powell received a building
401 permit to construct the duplex on lot 65-2 because it complied with the ordinance, and was denied a
402 building permit for lot 65 because it did not have sufficient uplands. The Building Inspector acted
403 correctly when he had Mr. Gove's flagging of the wetlands confirmed by Michael Cuomo, RCCD, an
404 associate of Dr. Lord whose expert testimony has been relied upon by the town boards, for example the
405 Corbett property acquisition where his professional expertise was relied upon. He said that there is no
406 validity of redelineation of the wetlands because wetlands change all the time; the question is whether
407 the change in the wetlands constitutes an amendment to the subdivision plan. Mr. Gordon believes it
408 doesn't because the lots remain the same and that the Planning Board overstepped its bounds to
409 require the applicant to go back to the board with an amended subdivision plan. Mr. Gordon said based
410 on the Planning Board's minutes there is a clear indication of a certain degree of hostility toward
411 duplexes which is evidenced by the proposed zoning ordinance amendment to ban duplexes in the R-2
412 zone. Mr. Gordon said he is compelled to conclude that the ZBA has the jurisdiction, (if [RSA 674:33](#) and
413 [RSA 676:15](#) is combined) to review, and if deemed appropriate, to vacate, or override the Planning
414 Board's decision and direct the Building Inspector to issue a building permit for a duplex on lot 65. He
415 said if it goes to Superior Court he is concerned that the Town of North Hampton might be subjected to
416 the kind of sharp judicial review that it received a few years ago when dealing with another subdivision
417 application, and he would hate to see that happen.

418
419 Mrs. Wilson said she is not against duplexes they can be built quite nicely under the right conditions;
420 when the land is suitable for them. She referred to the proposed zoning amendment proposed by the
421 Planning Board to ban duplexes in the R-2 zone and said it was her understanding, after attending the
422 Deliberative Session, that it is only for one year so the Board can study what is happening with duplexes;
423 they don't want to ban duplexes, they just want to study them. She believes that the Building Inspector
424 did make the right decision because the delineation to the wetlands did make a material change, where
425 originally there could not be a duplex, and now there can be a duplex. She said it is her understanding

426 that the increase in uplands is not in the area where the duplex is proposed to be built. Mrs. Wilson
427 referred to the Salomon subdivision case when the applicant wanted to subdivide a lot with less than
428 four acres; it was overruling a ZBA decision, then that case went to the Planning Board and they had to
429 make some subdivision questions and that was the part that was overturned in Court. She said in this
430 case the Planning Board is ruling on a subdivision application; it's not about duplexes. She said she
431 doesn't see how the Lemm Development Corp. v. Town of Bartlett case is pertinent to this case; this
432 case is about a subdivision and what was expected, and now there is a material change to that. It is only
433 fair to the abutters and the Town to follow the correct protocols and the ZBA will set a bad precedent if
434 it overrides the Planning Board's right to rule on subdivisions.

435
436 Mr. Gordon asked the Board if they thought the Planning Board could have denied the subdivision
437 application if the applicant proposed two duplexes and had the requisite upland to do it. Chair Buber
438 and Mr. Fullerton said they could have denied it. Mr. Fullerton said the Planning Board could have
439 denied it on the basis that it doesn't meet the spirit and intent of the ordinance.

440
441 Mrs. Wilson said the Planning Board takes into consideration the Subdivision Regulations when
442 reviewing and deciding subdivision applications.

443
444 Chair Buber said the new delineation is a significant change to the lot and if it were up to him he would
445 like to see the applicant go back to the Planning Board and come up with an amicable resolution. He said
446 he doesn't want the case to be kicked back and forth between boards and thinks it could be easily
447 addressed at the Planning Board. He said Mr. Ells stated that he does not want to go back to the
448 Planning Board.

449
450 Chair Buber said that technically they closed the public hearing and if they reopen it they would
451 technically have to re-notice the hearing. Chair Buber ruled that he would like to hear what Attorney Ells
452 has to say.

453
454 Mr. Ells said that the reason he said he does not want to go back to the Planning Board is because the
455 Board said that the applicant has to go back before the Planning Board, and when they do they are going
456 to place a condition of approval that they can only build a single family home; they have already
457 prejudged it so there is no point in them going back to the Planning Board.

458
459 **Mr. Gordon moved and Mr. Pinette seconded the motion that this Board overrule the Planning**
460 **Board's Decision requiring the Applicant to come back for an amended subdivision plan and its**
461 **declining to accept the certification of the redelineated wetlands, and that this Board overrides the**
462 **Building Inspector's denial of a duplex building permit for lot 65, which he based on the Planning**
463 **Board's Decision, and instructs the Building Inspector to grant a permit for the construction of a**
464 **duplex on lot 65 which now has the necessary minimum 60,000 square-feet of contiguous upland**
465 **provided that the Building Permit application otherwise conforms with all applicable provisions of our**
466 **ordinance. The motion failed (2 in favor, 3 opposed and 0 abstentions). Chair Buber, Mr. Fullerton and**
467 **Mrs. Wilson voted against.**

468
469 **Mr. Fullerton moved and Mrs. Wilson seconded, in Case #2015:02, to deny the Applicant's appeal**
470 **seeking a ruling that there is no Planning Board process which requires Planning Board approval of**
471 **wetland mapping changes after the subdivision process has been completed, Subdivision Regulation**
472 **Section IV, A and B based on not being convinced that the ZBA has any jurisdiction to tell the Planning**
473 **Board what process they do or don't have when it comes to reviewing subdivisions before them or**

474 **what actions they might feel necessary to take when changes are made to the original approved**
475 **subdivision plan. The vote passed in favor of the motion (3 in favor, 2 opposed and 0 abstentions).**
476 **Mr. Gordon and Mr. Pinette opposed.**

477
478 Chair Buber said that based on the prior motion made and passed, the appeal of the decision of the
479 Building Inspector not to issue a building permit, is moot.

480
481 Mr. Ells asked that he be able to present his petition regarding Case 2015:01 to the Board.

482
483 Chair Buber allowed it and called for a recess at 9:08pm.

484 Chair Buber reconvened the meeting at 9:11pm.

485
486 **1. Case #2015:01 – Applicant, Maple Road 14, LLC, Luke Powell, 28 Winnicut Road, North Hampton,**
487 **NH, 03862. Owner(s): same as above; property location: 14 Maple Road, North Hampton, NH;**
488 **Map/Lot 006-065-000; Zoning District: R-2.** The Applicant submits an Appeal of an Administrative
489 Officer to reverse the decision of the Building Inspector and either issue, or direct the Building
490 Inspector to issue, the requested duplex building permit to the applicant. (Article VII, Section 704).

491
492 In attendance for this application:

493 Attorney Steven Ells, Applicant's Counsel

494 Paul Powell, Applicant/Owner

495 Luke Powell, Applicant/Owner

496
497 Attorney Ells gave an expedited version based on the prior case.

498
499 It was determined that Attorney Ells was using an old Zoning Book and cited the wrong Article for Case#
500 2015:01; the correct Article is VII, Section 702.2. The Board agreed to accept the correction to the notice
501 and proceed.

- 502
- 503 • The lot was approved for subdivision into two lots on May 7, 2014.
 - 504 • The subdivision plan is recorded at the Registry of Deeds; plan #D-38229.
 - 505 • The parcel was sold to Maple Road 14, LLC on June 25, 2014; Book 5539, Page 2860.
 - 506 • The subdivision plan recites that Map 6; Lot 65 contains 1.16 contiguous acres of uplands.
 - 507 • Article IV, Section 406.6 requires a minimum of 100,000 sq. ft of area and 60,000 sq. ft. of non-
 - 508 wetland area for the building of a duplex on a given lot.
 - 509 • After purchasing the lot the applicant retained the services of Gove Environmental Services, Inc.
 - 510 to review the wetlands for the lot and as a result determined that the lot contained over 60,000
 - 511 sq. ft. of non-wetland.
 - 512 • The Applicant applied for a Building Permit for a duplex to be constructed on Map 6. Lot 65.
 - 513 • The Building Inspector retained the services of Michael Cuomo of RCCD, at the expense of the
 - 514 Applicant to review Gove's work.
 - 515 • A site walk of the property was conducted on October 8, 2014.
 - 516 • Steven Oles, MSC Engineering plotted the said Michael Cuomo work on a site plan that shows
 - 517 lot 65 contains in excess of 60,000 sq. ft. of upland area.
 - 518 • The Building Inspector referred the Applicant to the Planning Board because he was unsure
 - 519 what process to follow.
 - 520 • Mr. Cuomo commented that the subject lot received 5 times the scrutiny of any other lot.

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- 521 • The Applicant appeared before the Planning Board on November 4, 2014 for a discussion.
522 • Although the applicant did not agree that the Planning Board had continued jurisdiction over the
523 subdivision of the land, the applicant agreed to formally apply to the Planning Board for its
524 review and confirmation of the new wetland mapping and to give the abutters an opportunity to
525 be heard.
526 • There was no form or procedure to follow; the applicant requested a waiver of the filing fees.
527 • An initial Public Hearing was held before the Planning Board on December 2, 2014.
528 • At the second Public Hearing the Planning Board held on January 6, 2015 the Board voted to
529 require the applicant submit an amended subdivision plan before proceeding any further with
530 development of that project. Upon request of the applicant that the Board address the
531 application before it, the Planning Board voted to deny the amended wetland mapping plan for
532 14 Maple Road.
533 • On January 21, 2015 the applicant through its attorney made a request of the Building Inspector
534 for a formal decision on the pending application for a building permit to construct a duplex on
535 the lot and by decision dated January 22, 2015.
536

537 Mr. Ells said that the jurisdiction has now ended up with the Building Inspector. The Planning Board
538 doesn't have authority to engage in post-development of site plan review and the ZBA should reverse
539 the decision of the Building Inspector and direct the Building Inspector to issue the Building Permit or
540 issue the Building permit on its own.
541

542 Chair Buber opened the Public Hearing at 9:25pm.
543

544 George Lagassa, 26 Maple Road – read Subdivision Regulation Section IV.C – Approval Required, *Prior to*
545 *land clearing, excavation, site preparation, construction or any other such activity may begin on a site,*
546 *and before any permit for such activities may be issued, final approval of the subdivision is required as*
547 *evidenced by the recording of the approved plan(s) at the Rockingham County of Registry of Deeds. All*
548 *activity on the site shall be performed in accordance with the approval.* He said based on the decision
549 the Board made on the prior case, it would be foolish to grant permits since the Board sustained the
550 decision of the Planning Board. He said that there may possibly be a procedure to follow under Zoning
551 Article IV, Section 409.3 which allows modifications to the wetlands map. It was never applied for and it
552 is in the ordinance and it was violated. He said there are no grounds for the Board to grant a building
553 permit or overturn the Building Inspector's decision to issue a building permit.
554

555 Chair Buber closed the Public Hearing at 9:29pm.
556

557 **Board Deliberation –**

558 Mr. Gordon referred to Article IV, Section 409.3, "any aggrieved party may request a field inspection by
559 the Building Inspector and the chairperson of the Conservation Commission". He said it is not the
560 Applicant's responsibility; it is any aggrieved party. He said that there is a proposed change to the Zoning
561 Ordinance to "clean up this provision".
562

563 **Mr. Gordon moved and Mr. Pinette seconded the motion that the Building Inspector's denial of the**
564 **permit be vacated and that he be instructed to issue the building permit for the proposed duplex**
565 **provided that the structure complies with the applicable provisions of the Ordinance.**

566 **The motion failed (2 in favor, 3 opposed and 0 abstentions). Chair Buber, Mr. Fullerton and**
567 **Mrs. Wilson voted against.**

568 Mr. Pinette questioned how the Board can move forward with Case 2015:01 when they denied Case
569 2015:02.

570
571 It was a general consensus of the Board that they had to follow through with the relief requested of
572 them.

573
574 **Regarding Case #2015:01, Chair Buber moved and Mrs. Wilson seconded the motion to deny relief**
575 **requested to reverse the Decision of the Building Inspector in either issue, or direct the Building**
576 **Inspector to issue the requested duplex building permit to the Applicant in regards to Section 702.2 of**
577 **the Zoning Ordinance. The basis for this denial is directly linked to the motion to deny the relief**
578 **requested in Case #2015:02, and at this point becomes moot.**

579 **The vote passed in favor of the motion (3 in favor, 2 opposed and 0 abstentions). Mr. Gordon and**
580 **Mr. Pinette voted against.**

581
582 Chair Buber reminded the Applicant of the 30-day appeal process.
583

584 **IV. Other Business:**

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

586
587 Chair Buber was asked to write a yearend report for the Town's annual report, which he did and said if
588 any Board member wanted a copy they can ask Ms. Chase to send them one.

589
590 Chair Buber said that the Historic Runnymede Farm appeal is being taken to Superior Court. There is a
591 Merits Hearing on March 23, 2015 at 9:00am. Virginia Weldon's Attorney requested a Stay so nothing
592 could take place, and he didn't think it made any difference to allow the Stay or not.

593
594 Discussion ensued on SB 146 regarding Accessory apartments.
595

596 Mrs. Wilson said that they are accessory dwellings; not just apartments and there is no limit to how
597 many could be allowed with the proposed law.

598
599 Mr. Gordon advised the Board to be careful of what they discussed about this proposed legislation in
600 their statuses as members of the Zoning Board.

601
602 Mrs. Wilson said the Board has the right to discuss it and make a motion if they want to meet with the
603 public to take action on it like the Conservation Commission and Planning Board have already done.
604

605 Chair Buber said that they are not public employees and have the right as a Board to discuss it. They fall
606 under elected boards and commissions.

607
608 Mr. Gordon moved and Mrs. Wilson seconded the motion to adjourn at 9:44pm.
609 The vote was unanimous in favor of the motion (5-0).

610
611 Respectfully submitted,
612 Wendy V. Chase

613 Recording Secretary

614 **Approved March 24, 2015**