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VIA: In Hand Delivery and E-Mail "c.ganotis@comcast.net"

February 17, 2010

Chris G. Ganotis, Chair
North Hampton Conservation Commission
c/o 233 Atlantic Avenue
North Hampton, New Hampshire 03862

RE: North Hampton Conservation Commission ("Commission")
Request for Statement of "Discussion Points"
Made on February 8, 2010 ("Discussion Points")
ZBA Case # 2010:02 ("Case")

Dear Chairman Ganotis:

I am in receipt of your correspondence dated February 11, 2010, in which you request that I provide you and the Commission with a summary of the "...high points of your [my] presentations and rebuttals..." made at the Conservation Meeting, of February 8, 2010, regarding Case. ("Meeting")

Let me please note for the record, that although I am an elected member of the Zoning Board of Adjustment, I have recused myself from participation in the Case as a Board member, and, accordingly, as I made clear at the Meeting, I appeared solely as one of the two (2) Joint Owners of the residence at 123 Mill Road, an abutter to the property which is the subject matter of the Case.

My comments herein are taken from my written notes made at the Meeting in Rebuttal to the direct testimony of Mr. Steven Oles who was representing the Horne Trust ("Applicant"), along with Mr. James Lough (?) of New Hampshire Soils, a consultant for such Trust.

Points Made in Rebuttal:

1. Four (4) Year Evolution of Project: I characterized the evolution of the Horne Trust Project ("Project") as being akin to "sorcery and/or alchemy", and metaphorically even akin to the H1N1 virus, which reportedly mutates, reforms and reconstructs itself whenever it meets resistance. I indicated further that, in my opinion, the Plan(s) submitted by Applicant during the four (4) year evolution of the Project, to the ZBA, Planning Board and N.H. Department of Environmental Services often appeared to be inaccurate, misrepresentative of fact, and, subtly manipulative. I recalled for the Commission's collective recollection the materials introduced at my 2009 appearance before the Commission.

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2. Little River/Mill Pond: I analogized the Little River watershed, and drainage basin, including tributaries, flow routes, discharge points etc. to the “human circulatory system”, and, suggested that the Mill Pond acted much like the human heart. It refreshed, cleansed, and sustained a large part of the watershed North Hampton, including, its recharge of wells and general water systems; support of wild life habitats, and flora. I pointed out that only last year, in 2009, the Planning Board had approved the first (1st) Conservation Subdivision in Town, (Skowronski Subdivision, so called) largely because of its critical contribution to the preservation of the Little River basin and Mill Pond.

3. Applicant’s Dam Rebuild: In rebuttal to Mr. Oles, I indicated that the “dam repair” and reconstruction project by the Applicant was not necessarily a voluntary and altruistic act, but, rather, that it had been directed and mandated by DES.

4. Riparian/Littoral Rights – Common Law: I pointed out that upstream and downstream abutters to the Little River and Mill Pond have common law rights to flowage and to shore usage protection, UNLESS, such were conveyed to another by deed. These are called “riparian” and “littoral” rights. No evidence was presented by Mr. Oles before the Commission as to “rights” conveyed to Applicant by third parties including myself, to restrict flow, diminish shoreline rights, except, as may be directed by DES to control flood threat, and spring “run off” conditions, as a matter of public safety and policy.

5. Requested Subdivided Lot and Dam Management: I pointed out that Applicant had stated on multiple occasions, in multiple forums, that he intended to build a residence on the lot proposed to be subdivided to be rented as part of a “business compound” of three (3), perhaps four (4), other residential properties. The management of the “dam” would be left to the responsibility of an, as yet, and unknown Owner of the subdivided lot. I questioned whether such an uncertainty made good public policy. Further, the possible future conversion of the “garage/office”, so called, into a rental residence was discussed.

6. Town of North Hampton-Adoption of 1979 Zoning Ordinance §411: I noted that in 1979, when Section §411 of the Zoning Ordinance was adopted, that Mill Pond, if not the only “body of water” in Town, to which the section might refer, was one of the very few, and that the phrase, “Wetlands excluding bodies of water may be...” had to be read as it was understood and intended by the Planning Board and Town’s people in 1979, and not as it might be defined or used 30 years later in the “Cowerdin” classification, so called. “Bodies of water” must be given an “everyday, ordinary meaning” when not expressly otherwise defined in the Zoning Ordinance. I noted further, that the “Cowerdin” classification expressly recognized that “Wetlands”, as defined, include characteristics of both dry and wet habitats along a continuum. To my knowledge, the Town of North Hampton has not adopted the “Cowerdin” shoreline standards. Section §411 was adopted by a vote of 348 “yes” to 104 “no”, (77% vote) in favor of protection of “Wetlands”. I further pointed out that subsequent “conservation” votes taken in North Hampton had prevailed at approximately the same percentage rate. Town “Public Policy” is being spoken and expressed by such results!

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7. DES Regulations: The Commission must have in hand a clear statement of the regulatory and restrictions applicable to “dam” operational standards in order to understand and/or appreciate their effect on the maintenance and operation of the dam and/or the Mill Pond or Little River. Applicant failed to introduce any evidence to Commission on the subject.

8. Dr. Leonard Lord: In his Analytical Report made to, and at the request of, the Planning Board in 2009, as to the Project and its potential impact on Mill Pond and Little River, Dr. Lord referred to the Mill Pond as being a “water body”, and identified the existence of Section 411 as a potential problem for the Applicant which required a Zoning Variance if the Project was to be permitted and the subdivision approved. Dr. Lord, an environmental expert seemed to have no problem with deeming Mill Pond a “body of water”, and not, as a “Wetlands”. I suggested that the “stretch” by Mr. Oles to deny the existence of Mill Pond as a “body of water” was counterintuitive to even Dr. Lord.

9. Septic/Pool Area Contaminants: It was stated by Mr. Oles that there existed a “catch basin” on the Trust premises for pool and other toxic contaminants and chemicals which would catch the pollutants and then gradually let them seep into the ground water. I pointed out that my home was down gradient from the catch basin, and that, since our water supply was from a well, it was little consolation that contaminants would be “released slowly”. I believe that I also stated that I had taken photographs of industrial bags of pool chemicals being stored at the Project site.

10. Public Interest: I pointed out that the Town of North Hampton through its:

1. Conservation Audit - March 2007-Christopher Kane, New Hampshire Estuarine Project;
2. Master Plan(s) adopted in 1999, with updates, and citizen surveys in 2005, and 2006, had consistently prioritized the protection and preservation of Wetlands and certain “bodies of water” located in Town;
3. Coastal Wetlands – Mapping of June 2006; and,
4. The Land Conservation Plan for New Hampshire’s Coastal Wetlands - 2006, identified three (3) areas along the Little River as “critical” areas, including Middle Little River and the head waters of Mill Pond.

There are many more treatises and studies exhaustively and emphatically supporting the proposition that “wetlands” and inland “bodies of water” need to be protected from incremental environmental fragmentation, degradation, and creep, as a high priority public policy.

Note: Although not known by me as being “public information” at the time of my Rebuttal, it has since been publicly disclosed

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that the present owner of the, Lerner Farm, so called, a direct feeder of surface water to Mill Pond and Little River, is working with “North Hampton Forever” to possibly place several additional acres of “developable” land located along Atlantic Avenue, in conservation, in an effort to further protect the Mill Pond and Little River from degradation and despoilment.

11. Public vs. Private Benefit: The Case is one in which Applicant requests that a single “conforming” lot be subdivided into two (2) “non conforming” lots. I pointed out that it is a basic principle of land use law, that “non conforming” uses are to be discouraged, and should be brought into compliance with Zoning as soon as possible. Hence, the Applicant’s apparent wish to “squeeze out” every possible lot, including “non conforming” lots for development, and personal profit and gain, to the detriment of sound and critical public need and benefit, should be discouraged and rejected by the Commission as a matter of public policy.

12. My Status as a “Soils Professional”: In response to Mr. Oles, I stated that I was a practicing lawyer, capable of reading and interpreting the law, and other source materials, but, that I was neither a certified nor licensed as soils professional. I also suggested that the Commission inquire of Mr. Oles as to whether he was legally trained.

13. Prayer/Request: I requested that the Commission submit a report to the ZBA, which concludes that the Applicant’s request for a “variance” to create two (2) “non conforming” lots by using the surface area of a “body of water” to meet minimal dimensional lot area requirements, be **DENIED**.

There may have been other points, that were raised spontaneously by me during the period in which I was offering Rebuttal testimony, but my notes are somewhat sketchy during that period of time. For now, the above is what I recall, and what my notes support.

Thank you for the opportunity to assist you.

Very truly yours,



Robert B. Field, Jr.

Cc: Elizabeth H. Field, Co-Owner