

**HAMPTON PLANNING BOARD**

**Draft Minutes**

**November 3, 2010 – 7:00 p.m.**

**PRESENT:** Mark Loopley, Chair  
Fran McMahon, Vice Chair  
Tracy Emerick  
Keith Lessard  
Mark Olson, Clerk  
Ann Carnaby, Alternate  
Richard Bateman, Selectman Member (alternate)  
James Steffen, Town Planner

**ABSENT:** Robert Viviano  
Rick Griffin (Selectman Member)

**CALL TO ORDER**

Chairman Loopley began the meeting at 7:00 p.m. by introducing the Board members and leading the Pledge of Allegiance to the flag.

Mr. Loopley stated that 124 Landing Road is requesting to be continued to December 1, 2010.

**MOVED** by Mr. Emerick to continue the matter to December 1, 2010.

**SECOND** by Mr. Lessard

**VOTED: 7-0-0 MOTION PASSED**

Mr. Olson read the letter from Mr. Chatigny of 17 Vanderpool Drive regarding the withdrawal of his special permit application. Mr. Lessard asked if the Conservation Commission has that letter to which Mr. Steffen stated “yes”. Mr. Lessard asked about restoration. Mr. Steffen stated the Conservation Commission is working with Mr. Chatigny on that. Mr. Lessard discussed sealed surface issues.

**I. ATTENDING TO BE HEARD**

- Change of Use – 445 Lafayette Road

Mr. Qiriazzi and Mr. Bourque appeared. Mr. Qiriazzi stated he wants to expand the pizza shop and have some seating for customers. He also wishes to obtain a full liquor license. It is 800 square feet of space right next door to the pizza place (Gregg's Pizza). Mr. Bourque explained that there is not enough seating currently at the pizza shop. The place next door is vacant and thought it would be a good opportunity to expand.

**BOARD**

Mr. McMahon asked about the location. Mr. Bourque stated that the pizza shop will stay the same and the footprint of the building will stay the same. A better doorway to the front will be installed. Mr. Lessard asked about handicap access. He asked if the rear door will be open at all

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times and about the alley way. He also brought the water line that runs through there. The bathroom area was discussed and it was explained that the two bathrooms on the upper level will have wheelchair access. Mr. Bourque stated that he discussed the plan with the Building Department. It was stated that most of the alley way belongs to Gregg's Pizza. Mr. Olson asked if there is a current bathroom in the building to which Mr. Bourque stated "yes".

Mr. Steffen discussed the tax map being provided as showing the property and the building location.

Mr. Emerick stated it was retail and that a bathroom is already there.

**MOTION** by Mr. Emerick to approve the change of use.

**SECOND** by Mr. McMahon.

**VOTE: 6 – 0 – 1 (Richard Bateman abstained)**

**MOTION PASSED.**

**II. NEW PUBLIC HEARINGS**

**Huckleberry Lane Salt Marsh**

Map: 98 Lot: 202

Applicant: NH Audubon

Owner of Record: Same

Special Permit to Impact Wetlands: Removal of 8 acres of phragmites

Dr. Greg Moore representing the New Hampshire Audubon Society appeared. The University of New Hampshire is working to manage phragmites in ways that do not use herbicides. They are using a mechanized approach to cut phragmites on a schedule depending on season and frequency. Two areas being reviewed are: (1) removing plants and (2) monitoring the results. They are looking at a two-year schedule starting when permits are obtained. Next summer they will cut twice and depending on results they will try to do one more cut in late season. The NRCS – Natural Resources Conservation Service and its role in the program was discussed. It is a division of USDA.

**BOARD**

Mr. McMahon asked about why we need to get rid of phragmites. Dr. Moore stated that it is an invasive plant that spreads and reproduces quickly and takes over the native grasses of the salt marshes. It displaces wildlife as well, like the salt marsh sparrow. Other animals are getting invaded by the plant as well. He said that one could track spread of the plant across the United States. It thrives on disturbance, tidal restrictions and the Seacoast has a lot of tidal wetlands impacted by construction, etc. The flammability of them was asked about by Mr. Bateman. Dr. Moore stated the organization has been asked to check on the threat of fire near homes. He explained that phragmites burn quicker than most hardwoods. There is a practical threat for homeowners near phragmites. Mr. Loopley asked where the harvested material will go. Dr. Moore stated UNH. Composting is also an option.

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Mr. Emerick asked if the phragmites will grow back and then will we have to cut again. Dr. Moore explained that if the root system is there, it will come back. This plan does not work 100 percent. Dr. Moore wants to explore when to cut them to get the maximum impact to the plants. This is a tool with the least impact. Cutting in late summer and then at the beginning of the season and cut as many times as possible to experiment how it goes is the goal at this point.

Mr. Bateman asked if Dr. Moore could check out the phragmites area on High Street to which Mr. Moore stated he would. Mr. Bateman asked Dr. Moore to contact our Town Manager to coordinate further work on High Street. It was noted that homes in Salisbury were burnt down due to these plants. Mr. Bateman asked about processing the phragmites into wood pellets and Dr. Moore said he could discuss that with him at a later date.

Ms. Carnaby asked if cutting phragmites would make them flourish and grow quicker like some plants in her garden. Dr. Moore explained cutting and the various removal methods. Ms. Carnaby asked about pulling the plants out, but Mr. Moore stated that is not possible. The harvesting of them was explained.

### PUBLIC

Mrs. Stonie appeared. She and her husband own the property adjacent to this area. She asked the Board if this was north of Huckleberry Lane. She did not receive any pictures of the area. Dr. Moore stated that all materials were sent to Rev. Stonie. Dr. Moore showed Mrs. Stonie where the work is occurring. Mrs. Stonie asked if she could stay informed of the project. Mr. Loopley asked Mrs. Stonie what her concern was. Mrs. Stonie's land borders the marsh.

Mr. Diener Chair of the Conservation Commission appeared. He noted that the Commission likes the project, and noted that there is a lot to learn about the management of phragmites.

### BOARD

Mr. Bateman stated that the presentation had educated hundreds of people in Town and stated that Dr. Moore has done a tremendous service to the community.

**MOTION** by Mr. Bateman to grant the special permit in accordance with the stipulations contained in Conservation Commission letter dated October 29, 2010.

**SECOND** by Mr. Emerick.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

Dr. Moore added that all the resource materials are available and he will take any phone calls if people have questions and concerns Mr. Lessard asked about a website, but there is not one presently.

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#### 106 Mill Road

Map: 145 Lot: 18

Applicant: MetroPCS Massachusetts, LLC

Owner of Record: Aquarion Water Company of NH

Site Plan Review: Locate & operate wireless telecommunication facility

Waiver of Section V. E. (8) re: stormwater drainage control

Mr. McQuade of MetroPCS appeared. He stated that on September 17, 2010 they received a special exception from the ZBA to locate MetroPCS antennas on the water tower. The ZBA included some conditions. He explained that they are proposing to locate eight (8) antennas, and where it was previously six (6). The co-ax cable will be run underground and facility equipment will be placed on a 10 x 16 pad on the south side of the lot. All required utilities are on site. It will be visited once or twice a month for a facilities check and it will be alarmed. They are proposing to use the existing compound fencing and Aquarion will put additional landscaping in.

#### BOARD

Mr. Lessard asked about noise from the facility equipment. He asked about the shelter and if there would be loud humming noises coming from the equipment. Mr. Lessard stated he wants better cell coverage, but he wants the neighbors to be informed about noise concerns. Mr. McQuade stated no shelter is proposed. Mr. McQuade said there is a radio cabinet that has fans. The decibel level within 30-50 feet is in the 30 dB. Mr. McQuade stated it's the compares to the sound of a refrigerator running or a few air conditioners running – a room unit sound. MetroPCS has no battery generation. There are no generators proposed with this.

Mr. Olson discussed where the equipment is placed to which it was stated that there is no shed and no generator. The back-up is a battery. Mr. Steffen stated there is an existing generator, but not for this project. Mr. Olson asked if this is outside of the fence to which it was stated “no” he is referring to an older site plan. Mr. Lessard received a call from a zoning board member and they do not believe the additional coverage under the ZBA approval is shown toward the East – it's concentrated toward North Hampton. Mr. Lessard wants it to go back to ZBA to make sure the special exception is being followed – if the Board gets that far.

Mr. McQuade said it was an oversight and he showed the coverage that was proposed by ZBA to the Board. Mr. Lessard stated the public has not had a chance to review the handout. Mr. McQuade discussed coverage. Mr. Lessard discussed Tide Mill Road tower noise and the ZBA not having a chance to review the handout to make sure it is in compliance.

Mr. Bateman asked about the benefit to the Town. Mr. McQuade discussed the area not being served and his company was asked how to take care of this. He explained that the best way to get the coverage was to add a 4<sup>th</sup> sector. He apologized for not having proper plots at the onset. Mr. Bateman asked if his company puts the antenna up. MetroPCS provides the

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service, but this is a network of many sites. They are on Tide Mill Road, Salisbury, MA and other areas.

It was discussed that having extra antennas with other companies coming in could make the tower look ugly.

Ms. Carnaby asked if what they want to install is different than the Tide Mill Road tower. Mr. McQuade stated it's different. The ground equipment is the same, but the antennas are a different configuration. Ms. Carnaby stated that the noise on Tide Mill Road is louder than air conditioners. She lives ¼ mile away and it's loud. She also senses a change in the air quality. It even smells different. She wishes that the cell tower was not on Tide Mill Road.

Mr. Lessard discussed battery back-up. It was stated that there is nothing in the lease agreement stating they can use Aquarion's power. Mr. Lessard discussed storms. If power is lost, what is the back-up plan? Mr. McQuade stated that the tower will be out of service if there is no power.

Mr. Olson noted he lives near that location. The drawing suggests it's outside of the fenced in area and asked Mr. Steffen if it is acceptable where it located. Mr. Olson asked why it was moved over to the southerly side. Mr. McQuade does not recall. Mr. Lessard asked which revisions the ZBA reviewed and it was stated the 2/9/10 drawings.

Mr. McMahan asked about the height of the antenna and it's impacting the runway of the Hampton Airport. Mr. McQuade stated that the tank is not required to be marked or lit – the antennas are below the requirement.

Mr. McMahan asked about original proposal and page 2 being a revised proposal. That was stated as "correct" by Mr. McQuade. Mr. McMahan discussed some areas losing coverage.

Mr. Loopley asked if this overlaps Tide Mill Road tower. Mr. Loopley asked how much Tide Mill Road covers. Mr. McQuade does not have one for the Tide Mill Road location.

## BOARD

Mr. Olson asked again about what the recourse is for abutters if there is a noise problem. Mr. McQuade discussed a wood fence could be installed with sound material to keep it quieter. Mr. Lessard stated he wants the ZBA members to review the packet to make sure it's in compliance with what their approval. He feels it is not a complete package.

Mr. Steffen spoke with Mr. O'Brien. Mr. O'Brien thought the antennas weren't facing east and they discussed what areas were covered.

**MOTION** by Mr. Lessard to continue the matter to December 1, 2010 so that it can go before the ZBA again to see that it conforms to their approval.

Mr. McQuade stated this is not a decision for ZBA to review maps or anything else. He read what the ZBA wants.

**MOTION** to continue this matter to December 1, 2010 and forward MetroPCS's new information to the ZBA for their approval.

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**SECOND** by Mr. Olson.

**VOTE 6 – 0 - 1 (Richard Bateman abstained)**

**MOTION PASSED.**

**497 Winnacunnet Road**

Map: 222 Lot: 115

Applicant: Douglas E. Bennett

Owner of Record: Same

Special Permit: Construction of a 4-foot retaining wall to support two-story deck system

Mr. Bennett appeared. He stated that in 2004, he bought the property, and has been rehabbing it since. In 2006, he put a two-story deck on the house. No fill was used. In 2008, during the Mother's Day storm, when we received 10-12 inches of rain, the sonotubes started moving. He now wants to extend an existing wall that was there from 1970 and a patio which will secure the deck and make everything safe.

**BOARD**

Mr. Lessard noted that he attended the Conservation Commission meeting. He reviewed the conditions and the request by the Conservation Commission cutaway section of the wall. Mr. Bennett asked about the cutaway. Mr. Lessard stated what the Conservation Commission wants. Mr. Lessard asked the applicant if he met with Rayann Dionne the Conservation Coordinator. Mr. Bennett stated she's only in the office on Wednesdays and Fridays and it's hard to see her. Mr. Bennett discussed the permeable pavers. He stated that water does not go through that paver. He can use a cheaper paver to do this work. Mr. Lessard spoke more about the cutaway section and water storage and what the Conservation Commission wants. Mr. Bennett discussed checking into permeable pavers. Mr. Bennett stated he was grandfathered relative to the 50-foot buffer. He discussed the damage being done. He stated it is a four-family home and it is a safety issue. He said the liability will come down on Town. He needs to secure back of building. He lives there and maintains the building. Mr. Lessard asked about the new deck. He stated that the Conservation Commission did not ask him to rebuild the deck and it's larger than the original deck. Mr. Bennett stated the Commission was out there on site. The size of the doors was discussed and Mr. Bennett stated they are the same size.

The buffer area was discussed. Mr. Loopley stated that when working in the buffer, permits have to be obtained. Mr. Bennett stated that he is going through the necessary steps - he just wants to rehab the building and he's gotten permits for everything in the past. Mr. Bateman stated it sounds like he needs another permit. Mr. Bennett reiterated that he has permits for all work he has done in the past.

Mr. Emerick asked if this is a retaining wall to which it was stated "yes". Mr. McMahon asked why the sonotubes are moving. Mr. McMahon stated that maybe he should find out what the problem is first - this appears to be a symptom of a problem.

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Mr. McMahon asked if he has done soil borings. Mr. Olson stated that it appears the deck is not working and now he wants to do a wall that may not work out as well. Mr. Olson thinks he's going to have the same problem without finding the source of the problem.

Mr. Bennett replied that he has discussed this matter with two contractors. He first wanted to put all concrete, but was told to not do so. He was told by the contractor what he needs to do and that is what he is relying on. He is hiring someone who has done a lot of walls in Town.

Mr. Bateman asked who did the prior construction. Mr. Bennett stated they were local contractors. Mr. Lessard stated that area is not currently sealed which is why they want the permeable pavers.

Mr. Bennett discussed the 7-foot overhang at peak of roof that covers a good portion of the deck. The roof does not pitch toward the marsh.

### PUBLIC

Mr. Jay Diener appeared. He stated the Conservation Commission is not opposed to the project. The retaining wall can shore up the area. The Conservation Commission requested the permeable pavers because they do not want sealed surfaces in the buffer for proper drainage. The deck is not pertinent to the application. No sealed surface below the deck would be preferable.

### BOARD

Mr. Bennett discussed two neighboring properties that have paved driveways. He is willing to put a ½ joint in just like a permeable, but he doesn't want the greater expense. Mr. Emerick stated he should then use gravel. Mr. Olson thinks a 4-foot retaining wall needs an engineered design and review. The soils should be considered to determine what needs to be done and along with the loads which are substantial.

Mr. Bennett asked what an engineer would cost. Mr. Olson stated maybe \$1,200, but if he's spending \$12,000 he should pay the extra do it properly.

Mr. Bennett asked about the pavers for the patio. Mr. Lessard stated it is now undisturbed ground. Mr. Emerick stated that the Board could not approve more impervious surface. Mr. Bennett stated he needs a wall and he will get an engineer and leave the ground as dirt.

**MOTION** by Mr. Lessard to continue the matter for one month to December 1, 2010; that the applicant will not seal the driveway and that the applicant will get an engineer.

Mr. McMahon stated to be careful as this may have to go back to the Conservation Commission. Mr. Bennett reiterated the permeable paver situation; the subsoil situation and fill behind the wall. Mr. Olson discussed the sonotubes and bringing in 18-inches of fill.

Mr. Bennett discussed the backside of the building. Mr. Lessard stated to stick to his original plan and get an engineer and then go forward.

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Mr. Bennett discussed keeping the pavers under the 12' x 36' area thereby reducing the coverage. Mr. Lessard stated that that would have to go back to the Conservation Commission for an recommendation.

**MOTION** by Mr. Lessard to continue the application to the January 5, 2011 Planning Board meeting.

**SECOND** by Mr. McMahon.

**VOTE: 7 - 0 - 0**

**MOTION PASSED.**

**60 Park Avenue & 66 Park Avenue**

Maps: 190/190 Lots: 3/8

Applicant: David & Karen Lang & Karen Lang, Trustee of the June B. Eaton Revocable Trust

Lot Line Adjustment: To increase property at #66 Park Avenue

Attorney Nevins appeared representing the applicant. She stated that they wish to increase the size of the property at 66 Park Avenue. No additions would occur. She noted that there are no issues with setbacks or frontages.

**MOTION** by Mr. Emerick to approve the lot line adjustment with conditions outlined in the Planner's Memo dated November 2, 2010.

**SECOND** by Mr. Olson.

**VOTE: 7 - 0 - 0**

**MOTION PASSED.**

**1 Post Road, North Hampton**

Applicant: Brent & Maria Flemming

Owner of Record: BTG Property #2, LLC

Site Plan Review: Small portion of parcel to be used as outdoor fenced-in area for day school in No. Hampton

Mr. Joe Coronati of Jones & Beach Engineers appeared. He explained that the property is mostly in North Hampton except for a very section that goes over the line into Hampton. Mr. Flemming and his wife have a day school further north and they want to build a stand alone wooden structure where there is currently bus storage. He noted there is approximately 300 square feet in Hampton and they need to remove a portion of the driveway. Mr. Coronati stated that a property located in two municipalities needs site plan approval from both Towns.

Mr. McMahon asked how large the area is for children. It was stated around 128 children could attend and they are licensed. Mr. Steffen noted that the area Hampton is zoned Industrial.

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**MOTION** by Mr. Lessard to not oppose the project and approve the site plan for the portion that falls within Hampton.

**SECOND** by Mr. Emerick.

**VOTE: 6-0- 0**

**MOTION PASSED.**

Mr. Coronati stated he will provide the Planning Office with a Mylar.

**434 High Street**

Map: 166 Lot: 8

Applicant: Tuck Realty Corporation

Owner of Record: Same

Subdivision: Two-lot subdivision

Mr. Coronati of Jones & Beach Engineers appeared. He stated that the property is next to the Victoria Inn. He noted that the address is actually 434 High Street east & west. It is 3.3 acre parcel. The zoning districts of the property were discussed. The rear of property is all wetlands. He stated that each home would have its own driveway, water line, etc. Currently, they share a sewer line. They have separate electric service. The applicant would like to create two lots with each home being on its own lot. It has the required amount of frontage. There would be no change to the site or any of the areas around the houses. He stated that there is nothing they can do about the sewer moratorium. Mr. Lessard stated it will be okay since they are not increasing the sewage flow with this proposal. Mr. Coronati discussed doing an easement for the sewer, but also discussed having separate sewer services. The sewer is located at High Street.

Mr. Emerick stated should not be a hindrance to approval. Mr. Bateman discussed cutting into the road, and petitioning the Board of Selectmen for approval of this work, possibly completing it in the spring.

**BOARD**

Mr. Lessard wants the segregated sewer services noted as a condition of approval.

John Krebs, of Tuck Realty, discussed wanting to have flexibility to do it either way – maintain shared connection or have individual connections. He explained in case there is not a lateral and he has a buyer, he doesn't want to wait until the spring to do the work. Mr. Lessard wants to hear what DPW has to say.

Mr. McMahon asked where the sewer manhole was.

**MOTION** by Mr. Lessard to approve the subdivision subject to the Department of Public Works review and approval of the sewer connection. It was agreed that said review will not hold up the project pending sale of the either property provided proper easements are put in place for sewer service. All sewer moratorium conditions are included in this approval. The subdivision approval shall also include the conditions listed in the Planner's Memo dated November 1, 2010.

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**SECOND** by Mr. Emerick.

**VOTE 7 – 0 – 0**

**MOTION PASSED**

**III. CONTINUED PUBLIC HEARINGS**

**124 Landing Road (continued from 7/7/2010 & 08/04/2010 & 9/1/2010 & 9/15/2010)**

Map: 239 Lot: 2

Applicant: Tuck Realty Corp.

Owner of Record: Tuck Realty Corp.

Subdivision: Two-Lot Subdivision

Waiver of Section 3.C-Application Fees

This application was handled at the beginning of the meeting as a continuance request.

**IV. CONSIDERATION OF MINUTES**

**MOTION** by Mr. Lessard to approve the October 20, 2010 Minutes.

**SECOND** by Mr. Olson

**VOTE: 5 – 0 – 2** (Mr. Bateman and Ms. Carnaby abstaining)

It was noted by Mr. Loopley that the consideration of the Minutes of October 6, 2010 needs to be further postponed as there are not enough Board members present from that meeting to vote on them. These will have to be considered at the November 17, 2010 meeting.

**V. CORRESPONDENCE**

Mr. Steffen discussed the zoning opinion letter from the Precinct attorney regarding regulation of the sale of martial arts weapons. He stated it was provided to him for the Board by June White. Mr. Steffen explained that it contains option they are considering. Mr. Steffen also stated the he and the Town Attorney will be working on a proposal.

Mr. McMahon asked about the martial arts legislation and the Board discussed checking into the RSAs. It was asked what classifies martial arts weapons. Hunting paraphernalia and switchblades were discussed. Mr. Steffen noted that it is defined in the RSAs. Mr. Lessard stated that this is a problem for the State also because it is a civil rights protection versus danger issue. Mr. Bateman noted that even the NRA has been involved in the matter. Mr. Lessard asked if there is a review board. Mr. McMahon asked what the Second Amendment states. Mr. Steffen said it is to not prohibit the sales, but to regulate where the weapons are placed and sold from in shops.

Mr. Lessard asked about existing businesses and if they will be able to continue the business - when does a business not exist anymore? Mr. Steffen stated it is after two years of

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abandonment. It was asked if it is extinguished with the transfer of ownership. Mr. McMahon asked if there is a list of current businesses that sell these weapons. There is also no list at the stores of who buys the weapons. Mr. Bateman discussed the amount of hours put in addressing this issue. He feels it does not need to go into the zoning regulations. He stated the weapons need to be in a controlled area of an establishment. Mr. McMahon said it can expand anywhere within an allowable zone.

Mr. Bateman discussed the Town and State attorneys working on this issue. Mr. Steffen should work with the Town attorney. Mr. Emerick said he feels it is not the Planning Board's business. We cannot regulate products. He feels it is over-reaching.

Mr. Olson asked where we draw the line. He feels where our residents could be harmed the Board should look into it. Mr. Emerick stated bad behavior is not within zoning's purview.

Ms. Carnaby asked what the right vehicle would be to go forward. Mr. Bateman stated the Town has an adult business area. Mr. Lessard stated that the Town attorney needs to look at it. Mr. Emerick stated he will never vote for this as a Planning Board member - it should come under the Board of Selectmen and the Town. Mr. Bateman discussed the Board of Selectmen doing the regulation. Mr. Bateman believes this should stay as far away from zoning as possible. It was asked who enforces zoning?

**VI. OTHER BUSINESS**

Mr. Steffen noted that he had made revisions to the Special Permit application based upon the input from the Board at its last meeting. Mr. Emerick stated the longer the form gets, the more complicated it gets, and it's looking like an engineering form. Mr. Loopley noted that the applicants need help for the most part and this would better assist them. Mr. Lessard said we should give it a try and see how it goes.

**VOTE** by Mr. McMahon to adopt the modified special permit application form.

**SECOND** by Mr. Olson.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

Development of additional impact fees was brought up by Mr. Steffen. He noted that the analysis was done by Bruce Mayberry, the Board's consultant. Mr. Steffen suggested providing the study to the Board for a future meeting for consideration. Mr. McMahon noted to adopt additional fees would only involve a public hearing and action by the Planning Board. Mr. Lessard asked Mr. Steffen to put this on the Town's website as a PDF. The role of the master plan in the process was discussed by Mr. Steffen.

**VII. ADJOURNMENT**

**MOTION** by Mr. Emerick to adjourn.

**SECOND** by Mr. Olson.

**VOTE: 7 – 0 – 0**

**MOTION PASSED**

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MEETING ADJOURNED: 9:35 p.m.

Respectfully submitted,

Laurie Olivier, Administrative Assistant