

**HAMPTON PLANNING BOARD**

**DRAFT MINUTES**

**December 18, 2013 – 7:00 p.m.**

**PRESENT:** Mark Olson, Chair  
Brendan McNamara, Vice Chair  
Tracy Emerick  
Fran McMahan, Clerk  
Mary-Louise Woolsey, Selectman Member  
Ann Carnaby, Alternate  
Mark Looopley  
Jamie Steffen, Town Planner

**ABSENT:** Keith Lessard

**I. CALL TO ORDER**

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

A moment of silence was given in memory of Vic Lessard.

**II. ATTENDING TO BE HEARD**

**III. CONTINUED PUBLIC HEARINGS**

**IV. NEW PUBLIC HEARINGS**

**PUBLIC HEARING FOR ZONING ORDINANCE AMENDMENTS**

1. Amend Article II – Districts in the following manner:
    - Change a portion of the Business-Seasonal (BS) zoning district to the Business-Seasonal Sub-district (BSS);
    - Revise the Zoning Map to incorporate the Business-Seasonal Sub-district.
- Amend Article III - Use Regulations to add a new use regulation (Section 3.44.1) for properties within the proposed Business-Seasonal Sub-district that limits the use of the first twenty-five (25) feet of depth of the ground floor of any building measured from the front of a structure to non-residential principal uses permitted in the Business Seasonal (BS) District.
- Amend Article IV – Dimensional Requirements Table to add the proposed Business-Seasonal Sub-district requirements which includes a building height allowance of seventy (70) feet with the exception of unoccupied architectural appurtenances which may extend to a point no greater than eighty (80) feet in height. Structures would be prohibited from casting shadows on the sand on the easterly side of Ocean Boulevard prior to 6 pm from May 15<sup>th</sup> through September 1<sup>st</sup>.

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Town Attorney Mark Gearreald appeared. He introduced two speakers he asked to attend the meeting. The first was Carl McMorrان, Operations Manager for Aquarion Water Company the supplier of water in Hampton. He read his credentials aloud. He has worked for Aquarion since 2008.

Mr. McMorrان appeared. He discussed how the water system works. He discussed the water system hydraulics. He stated that 1.5 million gallons of water flows down at the Beach. He also noted that the Fire Department used 2 million gallons of water during one of the larger beach fires. The pressure is dictated by the height of water and he explained as the buildings go higher there is less gravity to force the water out. He stated that for any building less than 60 feet the water flow would be fine but buildings 80 feet+ high would not provide enough flow. He discussed that there are engineering solutions which can aid the flow in taller buildings. He suggested that applicants of new construction projects speak with Aquarion before coming before to the land use boards with projects involving the greater heights, in order to have satisfactory water flow. He discussed how the water tank currently at the Ashworth Hotel currently gets low for the upper floors. He also discussed that if the pipes are not large enough, the flow would be restricted. Atty. Gearreald discussed elevated water storage and the tanks on the tops of buildings in many areas. He stated that this adds to height of the buildings and should be kept in mind with future new construction.

Ms. Woolsey asked about fire protection and the use of ladder trucks. Mr. McMorrان replied that an engineered system needs to be in place. Fire Chief Silver stated that there has to be a water supply design worked out and he would like applicants to know about the potential water supply problems in advance. He discussed how Smuttynose Brewery had to make changes; i.e. a fire pump has to be located at their facility after their project was approved. He discussed the increased costs associated with resolving low water pressure issues and noted that lower building heights are not an issue.

Mr. McNamara noted that developer / Builders understand that there may be these issues. Chief Silver replied that he could not speak on applicants' behalf but he felt that they need to be made aware of these issues.

Mr. Loopley discussed duplicate back up fire pumps. He noted that they could be electric driven or diesel. Mr. McMorrان responded that there are other ideas out there as well and it should be left up to the engineers to make it work.

Ms. Woolsey discussed 10 foot allowance for building appurtenances and asked how high the tanks are. Chief Silver responded that when an acceptable height is chosen, it would up to developers to make it work. He noted that these issues should be discussed at the PRC meetings.

Attorney Gearreald asked about building heights and fighting fires from within the buildings. Chief Silver responded that fires are always fought inside of the building and the safety of firefighters is number one priority. It was asked if his department needed an aerial ladder and Chief Silver replied “no” – that it affects rescue. He discussed that buildings need the right features and systems so that occupants can egress the building. He noted that if the building footprint is 20' x 20', the square footage of the building is not that large but if a building is larger – with only 2 or 3 or 4 firefighters arriving initially there is a great concern for safety. He noted that all buildings have to be sprinkler systems

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Chief Silver then explained that systems work well new as they get older they are not as predictable. There was discussion about code and whether there was a requirement for follow-up inspections to make sure the systems are operating properly. Chief Silver noted that at times owners turn off their systems.

Atty. Gearreald noted that there is stormwater maintenance manuals incorporated into condominium documents and stated that the Planning Board could require a maintenance manual for fire protection systems and require the form be filed with the Fire Department. Chief Silver responded that often the maintenance history is not discussed.

Mr. Loopley asked if the codes are automatically updated every year. Chief Silver replied that it becomes complicated as they follow State fire code and most builders don't understand the fire codes because they are so complex.

Attorney Gearreald discussed the proposed change to create the sub-district. He noted he had spoken with Attorney Peter Loughlin about the proposal. He discussed how utilizing a sub-district is not commonly done and the concern about spot zoning. He stated that he felt that there was enough area being changed that it would be considered spot zoning. He discussed that the tax maps have not been updated to reflect the lot line adjustment for the new beach fire sub-station. He noted that Mr. Steffen had asked him about the detail required for the description of the proposed sub-district. He explained that a zoning map that can be easily ascertained would be fine.

Attorney Gearreald further discussed the proposed sub-district. He noted that the sub-district has its own column in the table of Article IV and that sub-district is probably not needed on the chart. He stated that initials could encompass the district and it could be called "Business-Seasonal 1 (BS1)". He discussed further his conversation with Atty. Loughlin about the proposal. He discussed confining height and that the Planning Board should articulate in the record why the areas to the north and south were not incorporated.

Attorney Gearreald discussed proposed footnote #27(A) and suggested that the word permanent be changed to public.

He also suggested that in proposed footnote 32 it should read "The shadow effects of unoccupied architectural appurtenances..." and in the last line it should read "included in the determination of the shadow effects of the structure." Attorney Gearreald noted that he would email the changes to the Planning Board members.

Mr. Steffen discussed the changes suggested by the Building Inspector. He suggested that the wording be revised to state that the new district should begin at the northeasterly corner of the Ashworth Avenue and Ocean Boulevard intersection. He also noted that Mr. Schultz suggested that the wording be changed in Article III to say professional – commercial – retail instead of non-residential principle uses.

Mr. Steffen further noted that the Board we would need change footnote 30 in Article IV because it becomes # 32 because of the footnotes proposed in the impervious surface warrant articles. Atty. Gearreald responded that it depends on which goes first on the ballot.

There was discussion about whether the new district would be called BS1. Attorney Gearreald responded that they could take out the word sub-district and that could be a universal change throughout the document.

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Mr. Loopley commented that it would be too much at one time if we try to make the change for the whole beach area.

Ms. Woolsey asked how much of the proposal is printed on the warrant and what will the question asked of the public. Attorney Gearreald responded that what appears on the ballot is a small topical description and the public is referred to a separate listing with the wording of the proposed amendments. Ms. Woolsey responded that some people don't have time to read the detail and she would like it to be as specific as possible. Mr. McMahon stated he would like the wording on the proposed height and the shadowing on the beach included in the warrant article.

Mr. Steffen discussed that the Board would have to do another public hearing on this proposal and he would have the ballot wording at that hearing.

### **PUBLIC**

Mr. John Nyhan appeared representing the Hampton Beach Area Commission (HBAC). He stated that the HBAC has been supportive of new development, specifically the Green & Company projects. He discussed coming up with a reasonable height limit. He indicated that the HBAC supports the proposed 70, 80 and 25 foot changes. He discussed that if in the future if it becomes necessary for the Planning Board could look at extending the zone further up Ashworth Avenue the HBAC would be in agreement. Ms. Woolsey asked Mr. Nyhan about the Byway study and if the Commission is in favor of encouraging a 'New England flavor' for the Route 1A. Mr. Nyhan responded that he looks at the economic component and how it relates to the Hampton Beach Master Plan.

Attorney Gearreald discussed the A block and how it is able to tolerate an increased height allowance. He asked Mr. Nyhan why that area was considered that way. Mr. Nyhan stated that the HBAC looked at the front and back of those areas and noted that there was nothing in the back of those buildings that would be adversely affected.

Mr. Fred Rice appeared. He discussed protecting the residential areas from the business areas. He discussed the State Park area at the southern end of the beach area. He discussed the previous zoning proposal based upon floor area ratios. He discussed the infrastructure project. He discussed height limitations and slanted roofs. He discussed the need to have projects go before the HBAC before they are heard by the Zoning Board of Adjustment (ZBA) and the Planning Board. He discussed a flow chart he had prepared which he would share with the Planning Board.

He discussed the concern with water pressure on the upper levels and noted that the existing water slide at the beach does not have a problem with pressure. He discussed fire codes and permits riding on making sure water pressure issues are dealt with.

Mr. Rice discussed the shadowing issue. He stated that there is no problem with that in the A and B Street areas. He questioned why we were going as late as 6 p.m. with this and said people are not generally frequenting the beach at that time.

He discussed equipment on the top of buildings and noted that by saying "building and appurtenances" would be fine. Ms. Woolsey commented that she felt that the Board of Selectmen should give enough specificity with the exact heights for the public to understand.

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Attorney Gearreald discussed ZBA appeals and the presentation of shadow studies. He noted that the Planning Board could ask for the same. It was noted that the City of Portsmouth is looking at making buildings smaller – going from 60 feet to 45 feet.

Mr. Arthur Moody appeared. He reminded the Board of what zoning is and discussed statutes on height, stories, size of buildings, size of yards, etc. He discussed the purposes of zoning - to lessen congestion in streets, safety and others. He discussed increasing the height and setbacks on separate stories. He discussed the Business-Seasonal District and setbacks. He discussed the nuclear evacuation plan. He commented that traffic is going to increase. He noted that he was surprised that the HBAC is in favor of this proposal. It will increase property values and asked if would affect valuations. He commented that cities have the heights - not towns. He discussed building codes and the conflicts with fire codes.

He discussed shadows—there are figures on shading on the beach. He discussed the time frames and stated he believed the sun sets about 8:00 p.m. so he felt the time of 6:00 p.m. should change.

**BOARD**

Mr. Olson stated he felt a lot of good information had come forward this evening. He thought we should revisit creating a sub-district but beyond that he felt the other details were less of a concern. Mr. Emerick agrees with Mr. Rice on the items in parenthesis in the footnote on appurtenances and thinks the parentheticals could be taken out. Mr. Steffen said he could make that change.

**MOVED** by Mr. Emerick to continue the article to January 15, 2014 meeting for a second public hearing. The Board noted that changes to the article that will be incorporated. The Board decided to omit sub-district and call it Business-Seasonal 1 (BS1) and include revisions suggested by the Building Inspector and others. The grammatical corrections will be made. There was discussion about the actual ballot wording and how it could be shortened.

Mr. Olson stated he could go along with this motion but there was no second.

**VOTE: 6 – 0 – 0** Mr. McNamara was not present for the vote.

2. Amend Article VIII – Multi-Family Dwellings by adding wording that exempts proposed developments within the Business-Seasonal Zoning District and proposed Sub-district from conforming with the standards contained in Sections 8.2.1 (recreation area per dwelling unit), 8.2.2 (frontage), 8.2.3 (40 foot building setback) & 8.2.4 ( 25 foot driveways and parking areas setback).

Attorney Gearreald commented that in the opening paragraph where it states sub-district it should be changed to BS1.

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**MOVED** by Mr. Emerick to move the article to the ballot. Atty. Gearreald stated that he felt that the Board would need to hold a second public hearing on this amendment.

**MOVED** by Mr. Emerick to continue the article to January 15, 2014 meeting for a second public hearing.

**SECOND** by Mr. McMahon.

**VOTE: 6 – 0 – 1 (Mr. McNamara)**

**MOTION PASSED.**

3. Amend Article II Districts, Section 2.1 to change portions of the Business (B), Industrial (I), Professional Office/Residential (POR) and Residential A (RA) zoning districts to Town Center zoning districts (TC-H, TC-N & TC-S). The Town Center districts would be created as Section 2.8 under Article II as separate districts with distinct zoning regulations for permitted uses, conditional uses, and dimensional requirements, parking and building standards.

Mr. Steffen stated Jack Mettee, Planning Consultant, was unable to attend. He read aloud a memo from Mr. Mettee the Planning Board on the revisions to proposed ordinance.

Mr. Emerick agrees with it all except for the open space requirement. He feels it should not be in there because it differs from the Conservation Commission promoted articles it would give two separate standards. Mr. Steffen concurred.

Attorney Gearreald stated he and the Building Inspector received the proposal on December 9<sup>th</sup> and he was concerned that there are some issues to address. Atty. Gearreald further stated that he met with Attorney Peter Loughlin on this ordinance also. He stated he wasn't sure if the Board is proposing an overlay zone or a whole new zone. He stated it needed to be clear to people that this is a re-zoning - that a portion of Residence A would now be the Town Center South. He further stated that it should be made clear what is not permitted in the district is prohibited.

He stated that with regard to maximum stories/feet, the Building Inspector was approached recently about a development that is proposing a building 50 feet in height. He commented that the Building Inspector cannot approve anything that violates the 35 feet / 3 stories requirement now.

He asked about the intent of the proposed wording that reads designed for human scale on page 1 and what was meant by multiple "ways" as it reads further in the purpose statement. Mr. McMahon stated it could be worded as opportunities or options instead. There was discussion about "quality" landscaping and it was decided to just remove the word "quality".

Atty. Gearreald also question the wording "ownership units" in the Historic Center district. He further questioned the wording in the parking requirement where it reads to the "greatest extent possible". The Planning Board indicated that it wanted to delete those words.

Atty. Gearreald discussed further revisions to the ordinance: He asked about the standards under #2 and said it should be referenced. Under Parking relative to the expiration Mr.

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Gearreald felt that “subsequent action” should be underlined. Leased spaces and the agreements were discussed.

Under Building Standards – the wording “dignified” was discussed. Ms Carnaby suggested removing the last portion of that wording and all agreed.

Ms. Woolsey asked that the zoning map be corrected. Mr. Steffen indicated that the zoning map needs to be further edited. He explained the Town Center district being made up of three districts - Town Center North, Town Center South and the Historic Center. Attorney Gearreald noted that was helpful. Atty. Gearreald stated that if uses are permitted; then other uses should be noted to be prohibited. He asked if the Board wanted to stick with 35 feet proposed for the height limit. Mr. Steffen noted that it was decided by the Advisory Committee to recommend that all three districts be lowered to 35 feet from 50 feet.

Mr. Emerick asked about the wording for two-family units and why it didn't say 'multi-family'. Mr. Steffen responded that multi-family would be a conditional use.

Ms. Carnaby asked about Use #15 – Artist live/work space.

Daycare for no more than 3 children was discussed.

**PUBLIC**

Mr. Arthur Moody appeared. He discussed the five different zoning areas along Route 1. He discussed artist live/work space. He asked why it was not prohibited. Mr. Steffen said it's a mixed use situation. Owners of businesses live above the business.

Mr. Moody discussed ordinance changes on the ballot. He discussed the inclusion of cemeteries as a permitted use. He discussed requirements missing in the districts. He asked about signs. Mr. Steffen responded that he needed to put in wording for signs and explained how it would be added to Section 2.8.

Mr. Moody indicated that cemeteries should be taken out and discussed why auto dealers were being allowed again.

Mr. Fred Rice appeared. He stated that we should only look at trying to sell to the voters the need for these new zoning designations to protect the Town. He expressed the notion that the Planning Board didn't need to get bogged down with all of the other details.

Mr. Nyhan appeared. He stated that he was representing Experience Hampton. He further stated that Experience Hampton has been involved in this effort / study. He commented that the business community along Lafayette Road feels like it is being heard with this proposal. He indicated that there may be legal words and technicalities that need to be addressed, but he believes it is a step in the right direction.

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Mr. Steffen stated that they overlooked signage in drafting the ordinance. He has talked with Mr. Mettee about it and he can add it as Section K at the end. He stated that for now they could utilize the sign requirements allowed in the Business District. The Planning Board expressed agreement with that.

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Mr. McMahon discussed the second public hearing on this amendment and the need to synthesize the ordinance and fix the technicalities. Mr. Olson discussed his support of the proposal and stated he would like to move forward on it. There was discussion about how to do and incorporate the revisions into the document that within the timeframe. Ms. Woolsey stated that if a draft was available at the Town Office we could look at it as individuals and see if it is acceptable and then re-notice it. There was a discussion about a work session of the Planning Board on the January 8<sup>th</sup>. It was determined there was not enough time between meetings. The Board then discussed meeting on the January 2<sup>nd</sup>. Ms. Woolsey asked for Attorney Gearreald to send them an email with his revisions. The Board decided to meet on January 2<sup>nd</sup> at 10 a.m. to continue work on the revisions to this proposal. It was requested that the revisions be completed by December 27<sup>th</sup> for the Board's review prior to the work session.

**MOTION** by Mr. McMahon to conduct a second public hearing on the proposed ordinance on January 15, 2014.

**SECOND** by Mr. Emerick.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**MOTION** by Mr. Emerick to conduct a work session on the proposed ordinance on January 2, 2014 at 10 a.m. in the Selectmen's Meeting Room.

**SECOND** by Mr. McMahon.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**V. CONSIDERATION OF MINUTES of December 4, 2013**

**MOVED** by Ms. Woolsey to accept the December 4, 2013 Minutes.

**SECOND** by Mr. Emerick.

**VOTE: 5 – 0 – 2 (Olson & Carnaby)**

**MOTION PASSED.**

**VI. CORRESPONDENCE**

**VII. OTHER BUSINESS**

- Changes to Impervious Surface Warrant Articles

Mr. Jay Diener of the Conservation Commission appeared. He discussed his meeting with the Building Inspector and Town Attorney on the proposed warrant articles. They have suggested changes to the warrant articles which he explained to the Board. The impervious surface definition has been changed to remove some of the wording but the definition is same as submitted previously - RSA 43-B: 4, Section 4.B. He noted that the Town of Rye is considering a similar warrant article for their ballot as well.

He next discussed the changes to the impervious surface reduction article. He explained the proposed change to 40% standard. The new wording better defines substantial improvement

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which he said would be based upon an increase (greater than 50%) in assessed value of the property. It was asked if “property” means building and land and Mr. Diener replied “yes”.

**MOVED** by Ms. Woolsey to hold a second public hearing on January 15, 2014 on the proposed changes to the warrant articles.

**SECOND** by Mr. McMahon.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

Mr. Diener noted that the footnote numbers may change.

- RPC Membership

Ms. Woolsey indicated that she wanted to remove the Town from paid membership in the Rockingham Planning Commission (RPC). Mr. Olson asked why. Ms. Woolsey explained that Rockingham is one of nine Planning Commissions in the State; and that there are 26 communities in the RPC. Paid membership entitles one to vote and pursue grants. It costs the Town about \$12,000/year for dues. Mr. Emerick commented that it is a benefit for the Town to be member. Mr. McNamara stated that he thought we should keep our membership. He discussed the benefit in obtaining grants for planning purposes. Ms. Woolsey stated that she would communicate this to the Board of Selectmen. Mr. Olson noted that the RPC is important because it is the conduit to the State, NHDOT, etc.

Mr. McMahon noted the funding that came in for intersection improvement at Winnacunnet Road and Route 1. He also indicated that the HBAC recently utilized them to conduct a parking study at the Beach. He further noted that the town has received money through their efforts for the bike lanes through Town. He also mentioned their work on coordinating on the Town’s behalf Route 101 / Route 1 interchange reconfiguration and Intermodal Center study.

Ms. Carnaby stated she has watched Hampton lose out on money for a bike path from Exeter and the reconstruction of Winnacunnet Road - at 20 percent of the full cost. She stated that if we withdraw, we would have no more say. Ms. Carnaby felt that Hampton needs this representation. Mr. Olson stated that Salem withdrew many years ago, but the remaining 25 communities are paying members.

**PUBLIC**

Mr. Fred Rice appeared. He stated that he does not want the Planning Board to do the Board of Selectmen’s job and vice versa. He further stated that he did not think it was in the realm of the Board of Selectmen’s interest. The RPC provides planning and zoning assistance amongst other things and they look at projects regionally.

Mr. Nyhan appeared. He discussed his concern with Board of Selectmen members making comments without knowing the background about what the RPC does for its communities and the benefits it provides to the Town. He commented that we as a Town ask the RPC for assistance it is not them trying to tell us what to do. He indicated that there are 27+

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projects that the RPC has provided assistance on for the Town. He further indicated that the Planning Board sees firsthand how planning and the RPC work together. He stated that the Board of Selectmen should not make comments about an organization without any knowledge of it. He was unhappy that it was in the paper and broadcast on Channel 22 without background information.

He discussed the RPC work for the Town (at no cost to the Town). It has assisted the Safe Routes to School project - mapping and parent surveys and held community meetings.

He discussed the TASC program and the writing of grants for transportation advocacy for senior citizens. He noted there was \$116,000 provided in federal money to support the program at no cost to the Town. He stated that this was not a duplication of services that the Planning Department provides - it was an enhancement.

Mr. Olson stated that unfounded comments should not be brought to the attention to the Town and he did not care for what was into newspaper print. He stated that the money for the RPC is in the Planning Board budget.

Mr. Loopley discussed the work force housing survey that the RPC prepared for the Town that could be done by the Planning Office - which information was critical so that we knew we were complying with the law.

Mr. Olson requested that Ms. Woolsey take the comment from the Planning Board on this matter back to the Selectmen.

- Public Vote on RPC seat – Barbara Kravitz

It was noted that the vote was taken incorrectly at the last meeting and that it needed to be done in public.

Mr. McNamara and Mr. Steffen both apologized letting the private vote for this occur. Mr. Steffen read the candidates' names: Barbara Kravitz, Shir Haberman and Fred Rice.

**MOTION** by Ms. Woolsey to nominate Barbara Kravitz for this appointment.

**SECOND** by Mr. Emerick.

**VOTE: 6 – 0 – 1 (McNamara).**

**MOTION PASSED.**

- Public Vote on Ann Carnaby for Representative to the NH Coastal Scenic Byway Advisory Committee

**MOTION** by Ms. Woolsey to nominate Ann Carnaby for this appointment.

**SECOND** by Mr. Emerick.

Mr. Steffen read the names other candidates names: Mary-Louise Woolsey, Candice Stellmach and Eileen Latimer.

**VOTE: 6 – 0 – 1 (McNamara)**

- Bond Reduction Request – JASAND Subdivision, Juniper Lane and Huckleberry Lane

Mr. Steffen stated that the Board received a letter requesting the reduction. He noted that the amount of the bond was wrong that it was actually \$92,006.00. They are asking for a 50

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percent reduction. He noted that almost all the roadwork and utilities have been completed. He further noted that he had received a sign-off on the work completed by Jodie Strickland CMA Engineers which he read aloud. She stated that there would be enough left with the reduction to cover the remaining work even with the lesser amount.

Mr. Steffen indicated that DPW said to leave it up to CMA on the approval of the reduction.

**MOTION** by Mr. Emerick

**SECOND** by Mr. McMahan.

**VOTE: 6 – 1 – 0** Mr. McNamara is opposed.

Mr. Steffen then stated that he is seeking another approval for this development from the Board. He explained that the Board of Selectmen needs a recommendation from the Board on acceptance of the drainage easements under the RSA 41-14-A process. It was noted that Conservation Commission would also need to make a recommendation. Mr. McNamara stated he would like to have the Conservation Commission's recommendation first.

**MOTION** by Mr. McNamara to postpone this item until the January 15, 2014 meeting.

**SECOND** by Mr. Emerick.

**VOTE: 7 – 0 – 0.**

**VIII. ADJOURNMENT**

**MOTION TO ADJOURN** by Mr. Emerick.

**SECOND** by Ms. Woolsey.

MEETING ADJOURNED: 10:14 p.m.

Respectfully submitted,

Laurie Olivier, Administrative Assistant

**\*\*PLEASE NOTE\*\***

**ITEMS NOT CALLED OR IN PROGRESS BY 10:00 P.M.**

**MAY BE CONTINUED TO THE NEXT SCHEDULED MEETING**