

**HAMPTON PLANNING BOARD**

**MINUTES**

**March 7, 2012 – 7:00 p.m.**

**PRESENT:** Fran McMahan, Chair  
Mark Loopley, Vice Chair  
Tracy Emerick  
Rick Griffin, Selectman Member  
Keith Lessard  
Mark Olson  
Brendan McNamara, Clerk  
Jamie Steffen, Town Planner

**ABSENT:**

**I. CALL TO ORDER**

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

**II. ATTENDING TO BE HEARD**

- **Change of Use: 868R Lafayette Road**  
Hair Salon to Preschool

Mr. Emerick recused himself because he is the realtor in the matter. Sherry Hamel and Kristine Demotses appeared. They wish to change the current use to a preschool facility use. Their business is currently located at 830 Lafayette Road.

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

**SECOND** by Mr. Olson.

**VOTE:** 6 – 0 – 1 (Mr. Griffin was absent)

**MOTION PASSED.**

- **Change of Use: 19 Ocean Boulevard**  
Rental unit to ice cream shop

Ron Plourde appeared. He wishes to change the empty unit (formerly a real estate office) of that location to an ice cream shop. There will be no change to parking or to the size of the building. The applicant explained the plans. A walk-up window will be provided. Upon question from the Board, Mr. Plourde indicated that the building is setback 15 feet from the edge of the sidewalk. The stairs will be removed from the plan. They are not encroaching on the current building. Mr. Lessard asked if people standing in line will be on the property. Frontage was discussed. It was estimated that 4 feet in front of the building is the extent of the property. The applicants have spoken with the State about its area. Parking was discussed.

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Mr. McMahon discussed the State reconstruction of Ocean Boulevard. The Board needs to know where the State's right of way is or it could impact their business. The applicants cannot encroach on State property. Mr. McNamara asked if both decks are going to be removed and it was answered "yes". There will be a service area as well. Mr. Lessard asked how they are going to serve the customers.

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

**SECOND** by Mr. Loopley.

**VOTE: 6 – 0 – 1 (Mr. Griffin was absent)**

**MOTION PASSED.**

Mr. Lessard asked the applicants to provide the Town Planner and the Building Dept. with a floor plan.

**III. NEW PUBLIC HEARINGS**

**12-007 155 Exeter Road**

Map: 88 Lots: 20 & 21

Applicant: Margaret Seavey

Owner of Record: Same

Lot Line Adjustment: Relocation of Existing Lot Lines

Mr. John Seavey appeared with his mother. Mr. Seavey explained that his mother owns both the lot that her house sits on and the lot next door. The MacKinnon's, an abutter to the rear have expressed interest in purchasing the lot next door. Both lots have never been surveyed. They are adjusting the side property line more separation between the two lots and so that the driveway belongs to the house. Mr. Steffen stated no metes and bounds have been provided for the MacKinnon lot so they can't do the lot line elimination that is shown on the plan at this time. He also noted that there is no zoning information shown on the plan. He recommends that information be provided on the final plan.

**MOTION** by Mr. Lessard to approve the minor lot line adjustment with the condition that final plan be revised to remove the wording "lot line to be eliminated" and the applicable zoning requirements, i.e. lot size, lot frontage, and setbacks be added to it.

**SECOND** by Mr. McNamara.

**VOTE: 6 – 0 – 1 (Mr. Griffin absent)**

**MOTION PASSED.**

**12-008 18 Bragg Avenue**

Map: 292 Lot: 43

Applicant: Thomas Roughan

Owner of Record: Same

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Special Permit: Demolish and rebuild new home on existing foundation. Parking area to be replaced with pervious pavers

Mr. Henry Boyd from Millennium Engineering appeared. The salt marsh boundary was discussed. The applicant is repairing the foundation. This is within the buffer zone. Deck post repair and replacing the existing fence post were discussed. He met with the Conservation Commission. Nothing is being done to the existing foundation. Pavement will be removed and replaced with pervious pavement. He discussed the nine points of the Conservation Commission letter, specifically points #4 and #5. In point #4, the fenced gate was discussed. Snow removal was discussed. Mr. Diener discussed this with the applicant before the meeting. They wish to put in a gate with no impact to the wetlands.

On point #5, regarding the north and east side of the property fencing, there is not much room underneath for water to flow through. They wish to install the fence at about 12" above ground rather than 18 inches. The applicants would like privacy, but also wish to allow the water to flow through, so they do not wish to erect a solid fence.

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### PUBLIC

Mr. Jay Diener of the Conservation Commission appeared. He noted that on fence gate the Conservation Commission requested that location because it is within the wetlands buffer. There is no swale there. They do not want parking within the buffer. The applicants can clear snow out front for parking. He also stated that as far as fence height, the Conservation Commission did not know what kind of fence will be installed, and they want to make sure there is adequate room for the flow of water. The abutter has a lot of stone fill and DES is dealing with that.

Mr. Emerick asked about point #8, as far as the reporting requirement. Mr. Diener stated he knows it will be talked about later in the meeting, but if pervious pavement is installed as mitigation and not maintained there is no benefit. The filing fee for reports was discussed. Mr. Diener just wants a letter from the property owner stating how the area will be maintained – cleaning, sweeping, etc. at the end of the year; those who don't respond will be followed up on. Mr. Loopley discussed enforcement on reporting. Mr. Loopley stated if the Conservation Commission wants to take on the enforcement, he's all for it. Mr. Diener stated they are going to ask for pictures. Mr. Emerick thinks this is an imposition on citizens - the Conservation Commission is not an enforcement board.

Mr. Boyd stated this is a 10' x 30' area. The whole road is in the buffer; the neighbor is in the buffer. The gas meter location was discussed.

Mr. Diener said the fact that the road is in the buffer is irrelevant. It does not mean further encroachment is allowed. Mr. McMahon asked where the house is going to be reconstructed - can the gas meter be moved. The location of the steps and placing them in the marsh was discussed. Mr. Roughan who owned the house in 1970 took the microphone. He showed the marsh and wetland areas when he owned it. He showed the Board that there

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is a filled-in walkway to a parking area from the property on the next street over. Mr. Roughan (son) discussed parking. In the winter, he needs to get vehicles off of the road. It was explained that bringing the fence forward will make it necessary to have two posts in the buffer.

Mr. Emerick stated that none of these regulations existed back then. Now they are getting more severe. It was there before and now we are making rules so that it can't be there. We can't stop people from living. He agrees they have to get the cars off the street. He thinks point #8 is over reaching. He stated that a volunteer commission does not have the authority to enforce. Mr. McNamara asked Mr. Diener about the permeable pavement issue.

**MR. GRIFFIN APPEARED**

If it's not going to continue to be pervious, then there will be no mitigation. This matter is not mitigation. This is something the applicant volunteered. The 12-inch fence separation is fine, depending on what type of fence is constructed. Mr. Lessard asked what the gate is for. The gate is to restrict large things from being in that area.

Mr. Olson stated since they are doing pervious pavement in front, they should be allowed to park there. The applicants are putting their best foot forward under the circumstances. The fence will be a split rail.

**MOTION** by Mr. McNamara to approve the special permit in accordance with the Conservation Commission's letter dated February 29, 2012, with the exception of point #5, which shall be revised to show the fencing on the north and east sides to be a minimum of "12" inches above ground rather than 18 inches to facilitate the flow of tidal waters. Point #4 should be taken out completely. Point #8 shall be omitted as well.

**SECOND** by Mr. Emerick.

The style of the privacy fence was discussed. Some type of staggered fence will be used. It will be split rail along the marsh.

**VOTE: 6 – 0 – 1 (Mr. Griffin abstained)**

**MOTION PASSED.**

**12-010 144 Ashworth Avenue**

Map: 293 Lot: 66

Applicant: Zoo Property Management

Owner of Record: Same

Site Plan Review: 18' x 56' addition for stage and bathroom renovations and to include a storage room. Waiver Request: Section V.E. of the Site Plan Regulations - Detailed Plan.

Mr. Al Fleury and Attorney Ted Morris appeared. Mr. Lessard stepped down. They discussed the addition. It will comply with all setbacks. This is to improve the bathrooms and soundproofing. There will be no changes to the parking configuration.

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Mr. Loopley asked if the space where the addition is going is used for a parking right now. It was answered “no”. He asked about access points. It will be a lower level door. Mr. Steffen noted that he has building plans he received that day. Mr. McNamara stated we don't want to deal with information just received.

Mr. McMahan discussed letters received from abutters about noise levels, parking and sewage concerns. Sandra Marsolini's concerns were addressed. Attorney Morris stated better soundproofing will occur with this addition. The current door will be removed. The applicant contracted with a sound engineer to deal with soundproofing. Sewer is connected to Ashworth Avenue line so there should not be any impact. There is no change to parking or traffic flow.

**PUBLIC**

Shawn Toland, 3 Johnson Avenue, appeared. He stated that right now it is loud but with the upgrade, it will be better. He wants them to do this. The building is old and needs upgrading. Parking is not a problem as there is a large parking lot. He further stated that the larger restrooms are much needed.

Mr. McNamara discussed the letter from Ms. Marsolini and he believes that it does not deal with the application at hand.

Carol Cheney, 18 Johnson Avenue, appeared. She has frequented Wally's as well. She has no problem with the project. Her concerns are the noise. She has access to Tom Hathaway's and Sandra Marsolini's driveways in the winter, so she does the snow removal. She has called the police previously about snow being deposited from Wally's onto the properties and had snow removed. She was told the parking issue is a civil matter. She also discussed people urinating at the edge of the property and asked if an announcement could be made about the urinating problem at Wally's. She discussed parking on Johnson Avenue. She noted that pick-up trucks park there; not just motorcycles. It is a dead end and there is a sign. People either reverse or bump into houses, etc. to turn around. For Mr. Fleury to make announcement to be courteous would be great. She ended by saying that Wally's should not be able to push snow to the end of street.

Mr. Loopley stated that the Board is solely looking at an addition to the building on the property and better soundproofing. He explained that the snow removal situation is not an issue for this meeting. Mr. Loopley then showed Ms. Cheney the proposed plan.

**MOTION** by Mr. Emerick to grant the Waiver Request: Section V.E. of the Site Plan Regulations - Detailed Plan.

**SECOND** by Mr. Griffin.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**MOTION** by Mr. Emerick to approve the site plan application.

**SECOND** by Mr. Griffin.

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**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**IV. CONTINUED PUBLIC HEARINGS**

12-004 18 Ocean Boulevard (continued from February 1, 2012)

Map: 296 Lots: 108 & 131

Applicant: Drift Resort, LLC

Owner of Record: Same

Condo Conversion: Convert existing manager's apartment unit to the 25<sup>th</sup> unit/no changes to exterior of building or to existing site plan.

Waiver Request: Section V.E Detailed Plan and Section V.D. Site Plan

Attorney Stephen Ells appeared on behalf of the Drift Resort, LLC. Mr. Steve Dumont, Manager of Drift Resort, LLC also appeared. Attorney Ells stated that this is regarding converting the manager's unit to the 25<sup>th</sup> condo unit. The property was converted to a contel on 8/16/2006. All improvements have been made and all 24 units have been sold. The declarant wants to exercise his rights on the convertible space – the manager's apartment, to turn it into the 25<sup>th</sup> condo unit. No changes to the exterior of the building or site plan will occur. Attorney Ells stated that he has eliminated parking spaces in the road as requested by the Planning Board - the surveyor has agreed to eliminate the numbering of the off-site spaces. Note #14 has added to the plan as well. He feels that this it was a good compromise.

The condominium owner's association had concerns about how the operation of the condominium would be impacted by the conversion. Mr. Dumont has agreed to separate Unit #25, and will eliminate the pass door between the office and the manager's unit. He will provide a key for emergency access to the basement where the mechanicals are located. It is confirmed to the directors that the condominium documents will provide easements for access for all units of the association to the utilities. He feels the issues raised by the association have been met. This will be done at Mr. Dumont's expense.

Mr. Loopley stated he does not want to see parking spaces for the hotel on Town property. This plan still shows parking on Ocean Boulevard. Attorney Ells stated the surveyor didn't want to do anything about the existing spaces that are shown on the ground. Mr. McMahon asked who striped the spaces. It also states on note #13 that valet parking will occur - the Manager will be the valet if and when needed. Attorney Ells explained that he went to the NH Surveyors Association about showing the parking spaces in the road. Attorney Scott Lapointe is whom Mr. Ells contacted. He said, yes, show what is there but you need to remove the numbering system for the spaces out into the road which they will do. Mr. McMahon stated it can be done another way – doing a plan that shows existing conditions and then one that shows the proposed condition. Attorney Ells stated we have an existing plan that was approved 7 or 8 years ago and that this can be an existing condition and then can provide another plan to show the parking spots removed. Mr. McNamara stated they should paint the spots over or grind them down to get rid of the white lines. Mr. Loopley stated they are not Mr. Dumont's spots to own or use. Attorney Ells will have the

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applicant remove the lines and the surveyor will re-do the plan with no lines that are to the west of the right of way of Ocean Boulevard and Note #14 will be eliminated. Mr. McMahan asked if the parking spaces are legal. Mr. McNamara asked if there will be a bathroom in the basement and it was answered “no”.

#### **PUBLIC**

Denise Wirtz, owner of Unit #1 appeared. She stated that in the Dover Avenue parking lot, spaces 15 through 19 are not correct. They are diagonal. In space #26, a car cannot be parked there so the plan is incorrect. She further stated that when units were bought, they were told ample parking was available, and now they are just barely making it.

She asked if it is approved as a year round unit would they be able to have more than one space. Most year-round units need two parking spaces. Mr. McNamara stated it is one space per unit for motels. There is no assigned parking. She invited the Planning Board to check out the parking spaces - the plan does not show what is on the ground.

Mr. Vogel appeared and stated that Mr. Dumont is not the manager for the Drift Resort. He asked about the door being removed. He said they cannot secure an office with keys, office equipment, etc., because the owner or whomever they rent it to will have access to the office. He explained that the switch panel and water heaters are downstairs as well as alarm systems, air compressor, and water meter. Access would be by emergency only. He stated he can't afford to have renters having access to the basement. Right now, there is a management company that can access the room to make adjustments. He further explained that the basement is the key to their whole existence there. Attorney Ells said there will be a separate door and key. Mr. Dumont would like the apartment and basement to be sold together. Attorney Ells stated he has the right to convert the office space as well. If he doesn't take the door out, there will not be an office, and if they don't have an office, they are out of the motel business. Mr. Dumont is going to sell the office and common area with the unit. Mr. Ells stated he is the manager of Drift Resort, LLC, not the property manager of the Drift. Mr. Dumont plans to clean up the basement and install some sort of barrier to protect the mechanicals.

Mr. Vogel discussed taking the door out between office and apartment. Mr. Lessard asked about the common area. Eliminating the pass door was discussed. Mr. Loopley noted that Mr. Dumont was to meet with the Association to deal with the issues. It's been almost a month. Is there a reason the building inspector hasn't been contacted? Attorney Ells stated they did not do that. He met with condominium owners in good faith. He thought they worked through the issues. Mr. Vogel stated he wants to sell the office and common area with the unit. Mr. Dumont wants the apartment and the basement to be sold together. Mr. Ells stated Mr. Dumont has the right to take office space as well, but Mr. Dumont has agreed to keep it as common area. Mr. Ells stated the unit owners will have an easement for access. Mr. Vogel stated access to the basement will be for emergency only. The door between the office and Unit #25 will be removed unless the town requires a second egress. That eliminates office space per Mr. Vogel.

Mr. Wassman, owner of Unit #15 appeared. When Mr. Dumont was the property manager, the management team only had access to the basement. He's no longer property

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manager. He now wants to take the basement for Unit #25, which he has the right to do. He doesn't want the new owner to have an access key for everything in the basement. The whole basement will be for the new owner.

Jay Rodrigues, owner of Unit #7 discussed parking. He indicated that all of the parking spots were clearly marked and painted for the Drift Condominium Association. There were signs posted there saying violators will be towed. He asked how Attorney Ells and Mr. Dumont forget that this as it was part of the sale when they bought the units.

Mr. Olson asked where utilities are in the basement - why can't 680 square feet be left for the above units. He does not see this as a Planning Board issue. Mr. McMahan stated this could be a public safety issue. He would like a better idea of the egress for the unit. It was suggested that the application should be continued to have the plan redone. Attorney Ells can speak with Building Inspector in the meantime. Mr. Ells stated he only needs two weeks.

**MOTION** by Mr. Lessard to continue the matter to the March 21, 2012 meeting. Attorney Ells in the meantime will contact the building inspector to find out what kind of barrier could be installed so that the mechanicals are segregated in the basement and to provide for proper egress.

**SECOND** by Mr. Emerick.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**V. CONSIDERATION OF MINUTES of February 1, 2012.**

**MOTION** by Mr. Lessard to accept the Minutes with the corrections noted on the spelling of Ms. Wirtz, on Page 5.

**SECOND** by Mr. Emerick.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**VI. CONSIDERATION OF MINUTES of February 15, 2012.**

**MOTION** by Mr. Lessard to accept the February 15, 2012 Minutes.

**SECOND** by Mr. McNamara. .

**VOTE: 6 – 0 – 1 (Mr. McNamara abstained). MOTION PASSED.**

**VI. CORRESPONDENCE**

Mr. Griffin read aloud a letter received by Mr. Peter Ross regarding 434 High Street – Grist Mill Home Condominiums. He stated our Town Attorneys spent 28 hours doing the legal review of the documents. Mr. Ross is very upset about the legal bills. These documents were drafted by his attorney. He asked why the Planning Board does not oversee what our attorney is doing in these reviews. He feels that the billing practice is getting out of control. He further stated that he believes that the Town is trying to recoup money to pay for an expert attorney -

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Peter Loughlin, of Portsmouth to back up what they did. He stated that there was nothing found wrong with his documents that he knows of. He was billed for 4 hours from his lawyer to prepare the documents. It took 28 hours for it to be reviewed by our legal department. It was asked why so much legal review time is written off from our Legal Department on other reviews. Mr. Ross feels like he was treated unfairly in this project. It was asked why we charge \$500 for the document review? Mr. Loopley stated it will be taken care of by the Planning Board. Money being written off was discussed. The Planning Board will check into this. It was asked why the Town Attorney is doing deed research. Mr. Griffin mentioned at the last HBAC meeting the group heard from a women in DRED's economic development office talk about ways to bring business to Hampton. Mr. Griffin feels review process further reinforces the perception that Hampton is a lousy town to do business in. Mr. Emerick stated that the town attorney contacting the lender's attorney is just plain wrong. That is outside of Town attorney business.

It was discussed that his issue should be put on our next agenda. We should ask Attorney Mark Gearreald to attend to discussion what the expectations are for these reviews. Mr. Griffin stated that Mr. Ross just wants to the Board to be informed. It was stated that we will do our due diligence. Mr. Lessard prefers that we ask Legal Department what they do and then we can see if that is what we want. There was more discussion about writing off time for some and not for others - it was noted that many applications had professional courtesy discounts. Mr. Emerick stated attorneys in Town won't bring these issues up because they come before the Planning Board. This will be put on the agenda for the 1<sup>st</sup> Wednesday in April.

#### **VII. OTHER BUSINESS**

- Paving requirement for parking areas
  - Stormwater Management Operations & Maintenance Plans (O&M Plan)
- (Discussion on these items was combined)**

Mr. Steffen discussed proposed wording for the paving requirement for parking lots in site plan regulations. The language would allow for the waiving of pavement requirement if three things are satisfied. Mr. Steffen read those aloud. Mr. Loopley discussed gravel parking lots. Mr. Emerick said it's up to the applicant to prove it can be done. Mr. Lessard stated he does not want gravel parking lots. Smaller lots can have gravel. Operations and maintenance plans, run-off and reports were discussed. The paperwork is for permanent parking lots. Mr. Olson discussed restricting gravel lots as well. It first came up during the review of the McKeon's parking lot. Mr. Olson stated that if stormwater can't be managed, maybe parking lot can't be as large as proposed. It was explained that engineers are going to have to provide the information to meet the criteria. Run-off problems were discussed. Government being more involved into people's businesses was discussed.

EPA requirements were discussed. It was noted that where more than an acre is being disturbed certain stormwater requirements must be met.

Chris Jacobs, Deputy Public Works Director appeared. The Board asked him how it should handle the drainage for temporary parking lots. It was noted that most are impervious. He was asked about impact on our facilities. Mr. Jacobs said the definition of permanent and

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temporary must be decided upon. He discussed doing a drainage analysis on gravel. On a gravel lot, 15 percent is pervious and 85 percent impervious. If there's a substantial change of use, like turning permanent – if it involves paving or putting up a building, that's the turning point where the Planning Board has to look at how stormwater runoff will be mitigated. He noted that pervious pavement will work well for the new parking lot at 1 Liberty Lane, but for Mill Road/Cogger/Tuck – he's hitting water 4 feet down – pervious pavement would have a limited effect. He stated for situations like that maybe the Board could consider a closed drainage system where pipes are bedded in stone. He also mentioned the King's Highway, Brown Ave, Ocean Boulevard areas where there is a lot of ponding, which is more of a nuisance situation. He feels that in high density neighborhoods – applicants and Board need to work together to come up with a solution. For instance, two parking spots should be the limit for not requiring a maintenance plan but on the other hand they have a cumulative effect.

He noted that storm water management is the big issue now in the engineering community; the Town is facing it already. He explained that within 10 years we will have standardized rules to not let excessive chloride/salt out in marsh. He is against gravel parking lots, but is not always the best solution; it could be pavers. We are migrating to that point. He discussed the MS4 permit, and how other communities are dealing with them. He noted that areas of concern, such as cleaning out catch basins, checking swales for sand or garbage, etc. He has to meet certain standards and report on them to the EPA.

Mr. Jacobs discussed costs to the community. He described what the Town of Hampton is doing in that regard. He stated that vacuum trucks are now used to clean out catch basins. He noted that the EPA would like to see at least fifty percent (50%) cleaned out. Hampton is at about 80 percent. If Town government is going to do it and we as taxpayers pick up the cost, the major developers should do the same about paying for improvements - it's a level playing field. After question from the Board about the proposed changes to the paving requirement, he stated he feels 40 percent is a good target number. The major stipulations have to be can they contain it on-site, can they clean it and maintain it. He indicated that for any site which disturbs greater than 1 acre, they'll have to file their own EPA permit and design it their requirements.

Filing reports for small residential projects was discussed. He stated that he property owner can fill it out. He further stated there's no time to police properties.

Mr. Diener appeared. He stated that the Conservation Commission is struggling with asking for mitigation and striking a balance without causing problems for the homeowner. He suggested a checklist could be developed for small units and larger units could be done on an annual basis by a professional engineer. He stated that it should be up each homeowner's association to handle.

Mr. Jacobs discussed his experience in Somersworth in handling the operations & maintenance plans. Mr. Lessard asked what happens when there is a transfer of ownership. Mr. Jacobs sends out stormwater permit information reminder on an annual basis. He indicated that he about a 60% hit rate. He indicated that he didn't chase the other 40 percent. There was discussion about how we track these reports now and how the enforcement is done. Mr. Jacobs indicated that he has communicated with Mr. Steffen about the status of the development that are required to complete these reports. There was discussion about getting a list from the Planning Office for future follow-up. There was discussion about getting access to drainage systems to

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access them if they aren't being properly maintained. Mr. Jacobs has to make sure culverts don't fail. Mr. Jacobs noted for instance he has concerns about the proposed drainage system for the Huckleberry/Juniper subdivision because it's in an area behind one of the house sites. He thinks a homeowners association should be formed for this development. If the Town has to step in to correct a drainage problem than one percentage part could be added to the homeowners association's maintenance charge to pay that bill.

Chris Jacobs will come up with wording for this. Mr. Emerick would like clarity on the EPA requirements.

Mr. McMahon announced that next Tuesday is Election Day from 7 a.m. To 7 p.m. and urged everyone to vote. There are three candidates for two positions for the Planning Board and several zoning amendments to vote on.

**VIII. ADJOURNMENT**

**MOTION** by Mr. Loopley to adjourn.

**SECOND** by Mr. Emerick.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

MEETING ADJOURNED: 10:02 p.m.

Respectfully submitted,  
Laurie Olivier  
Administrative Assistant