

**Board of Selectmen  
5 May 2008  
Minutes**

**6:00 p.m.** - Chairman Don Guarino called the meeting to order. Present were Chairman Guarino, Selectmen Rachel Hatch and Betty Ann Abbott, Town Administrator Tim Warren and Clerk Lois Dionne.

After attendance, everyone stood for the Pledge of Allegiance.

**Approval of Minutes** – While waiting for the arrival of members of the Highway Department, the Selectmen reviewed the minutes of last Monday's meeting.

**MOTION – Selectman Abbott moved to accept the minutes of April 28, 2008 as amended. Selectman Hatch seconded. Motion passed 3-0.**

**Thank you - Highway Dept.** - The Selectmen met with members of the highway department to commend them for a job well done keeping the roads cleared this past winter during record-breaking snow.

After introductions of the crew to members of the Board, the Selectmen presented the employees of the highway department with certificates of appreciation and letters signed by the Selectmen expressing their appreciation for their dedication and long hours they had to put in to keep up with the snowstorms during the past winter.

Tim Warren stated that, in spite of the numerous storms, this is the first winter that his office had received only one or two complaints about the condition of the roads. Selectman Hatch said she had received one complaint, but it was withdrawn two days later, and the caller had apologized for calling in the first place.

**Approval of Minutes** – The Selectmen reviewed the minutes of the joint meeting of the Board of Selectmen with members of the Planning and Zoning boards on Thursday, May 1<sup>st</sup>.

**MOTION – Selectman Abbott moved to accept the minutes of the joint Selectmen/Planning Board/Zoning Board meeting of May 1, 2008 as amended. Selectman Hatch seconded. Motion passed 3-0.**

## **05-05-08 BOS**

**Public Hearing – Request to Build on a Private Rd. – Terrell Way – Richard & Ann Hammond** - Present for the hearing were Richard & Ann Hammond and Fab of Bethel Builders.

The Hammonds had submitted a letter of request to build a garage on a private road, Terrell Way. The Selectmen reviewed a plan for the proposed garage presented by Fab, along with a map and plot plan of the Hammond's property, and a copy of an approved driveway permit. Selectman Abbott read a letter into the minutes from Steven & Patricia McDonald, an abutter to the Hammond's property, supporting the Hammond's request to build (Copy attached). After a brief discussion of the road's condition, which was felt to be very good for a private road, the Selectmen approved the request.

### **MOTION – Chairman Guarino read the motion as follows:**

I move that the Board of Selectmen approve the portion of Terrell Way from Glenn Echo Road up to and including the frontage of Map/Lot 110-71 for the issuance of a building permit.

The following conditions shall apply to this approval:

1. The Town of Gilmanton neither assumes responsibility for the maintenance of Terrell Way, nor assumes liability for any damages resulting from the use thereof.
2. All applicants for building permits on the designated portion of Terrell Way shall execute a notice of limits of municipal responsibility and liability, the form for which shall be provided by the Town of Gilmanton, and produce evidence that such notice has been recorded in the Belknap County Registry of Deeds prior to the issuance of any building permit.
3. The applicant shall fulfill all requirements of the ordinances of the Town of Gilmanton, including the completion and approval of any applications required thereby to the land use boards of the Town.
4. If not already posted, a sign shall be clearly posted indicating "Private Way – Pass at your own risk." The sign will be supplied by the Municipality. The applicant will reimburse the Town for the cost.

**Selectman Abbott seconded the motion. Motion passed 3-0.**

The Hammonds and Board of Selectmen signed the Notice of Limits of Municipal Responsibility and Liability, which the Hammonds will now have recorded with the Belknap County Registry of Deeds, after which, they will be able to obtain their building permit.

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**6:44 p.m. - Enter into Non-Public Session as per RSA 91-A:3, II(c)**

Selectman Hatch moved to Enter into Non-Public Session as per RSA 91-A:3, II(c) - Matters which, if discussed in public, would likely affect adversely the reputation of any person unless such person requests an open meeting; however, this cannot be used to protect a person who is a member of your Board, Committee or Subcommittee. Selectman Abbott seconded. Motion passed 3-0.

The Selectmen discussed an issue that dealt with an individual's reputation.

**6:59 p.m. - Out of Non-Public Session**

Selectman Hatch moved to come Out of Non-Public Session. Selectman Abbott seconded. Motion passed 3-0.

**7:00 Public Input** – No one was present for public input at this time.

**Flood Insurance Program** – Tim informed the Selectmen that FEMA had approved Gilmanton's application to join the National Flood Insurance Program. We were enrolled into the Emergency Phase of the program on April 16, 2008. All Gilmanton residents are now eligible to purchase a flood insurance policy. In the Emergency Phase, the amount of coverage is limited, and residents who want more information about the insurance should talk to their insurance agent or go to [www.floodsmart.gov](http://www.floodsmart.gov).

Because FEMA only issued a Flood Hazard Boundary Map for Gilmanton, Gilmanton could not be enrolled into the Regular Phase of the NFIP, which is the phase most communities participate in. FEMA stated that Gilmanton's Flood Hazard Boundary Map is a good candidate to convert to a Flood Insurance Rate Map. Jennifer Gilbert, Assistant State Coordinator, is working on completing the required conversion form and will submit it to FEMA this week. The conversion usually takes 30 to 60 days. After the conversion, Gilmanton would be moved from the Emergency Phase to the Regular Phase. We will be apprised of the process.

**Public Input**

**Change to ZBA Ordinance** - Brenda Currier stated something had been brought to her attention the last couple of days regarding the article that was voted on in March about non-conforming lots. She said it is her understanding that the Town is trying to have a special town meeting to undo the vote, and she wanted to know why.

Chairman Guarino said that sections C II and III of the non-conforming lot ordinance had technical problems; it doesn't list that you need any frontage at all. It basically says that all a pre-existing lot of record needs is a pre-approved septic system.

Tim Warren stated that the ZBA found that when they are trying to approve special exceptions, it refers them back to table II that gives you setbacks and frontage

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requirements, and you can't refer to that chart with the new ordinance because it eliminates frontage. He said under the new section, it says to go for a special exception, and if you go down through the criteria it says you have to meet the criteria in Table II; the criteria in Table II is frontage and setbacks. The ordinance says just setbacks, so it just sends you around in circles.

Cindy Houghton asked who wrote the article. Don replied that the Planning Board had written that section. Tim said the Zoning Board had asked the Planning Board to look at a specific section of the ordinance regarding the height of buildings, particularly around the lakefronts. He added that the Planning Board looked at that, and then decided to go further, on their own, and look at the next section, which were non-conforming lots. Tim said a particular case that had stuck in their mind was a gentleman who had to go before the ZBA for a variance although he had 160 acres of land, he only had 50 feet of frontage. It was questioned why he had to go before the zoning board just because he didn't meet the road frontage. He said this was the type of thing they had tried to eliminate, but by doing that, they had eliminated road frontage altogether, which allows all the small lots around the lakes to be built on without having to go before the Zoning Board.

Brenda stated that there are two attorneys on the Planning Board, and asked if the article had gone to Town Counsel before it was on the ballot. Tim replied that it did. Brenda stated that three attorneys had looked at it, one we pay, and now we have to pay to have a special town meeting to undo something Town Counsel recommended. Tim said when the ZBA tried to apply the new change at a meeting was when the error was found. Brenda asked if she understood correctly that people who have non-conforming lots and go before the ZBA to ask for a deck, etc. don't actually have to go before the Zoning Board as the ordinance now stands. She was told that was correct. Brenda said the problem might be that the ZBA is finding that they no longer have control over what those people are doing.

Tim said that what the ordinance opened up was that people who want to build a deck, as long as they could meet the setbacks, didn't need to go before the ZBA, but it also opened up that people who could meet the setbacks and get a state-approved septic system on a non-conforming lot could also build a new house, and none of the abutters or anyone would be notified, as they are when the applicant has to go before the ZBA. Brenda said she has no problem with that, but we are racing to have a special town meeting for something that should have been caught by the people who are planning for our community to begin with. She asked if the Selectmen were the ones to decide if the town meeting gets approved, and what the justification was for the approval.

Chairman Guarino stated that the ordinance is one that is unusable. We can't operate with the ordinance as it is. Brenda disagreed, and stated that they could operate with it. Selectman Abbott explained that this ordinance would allow all the 200+ tiny non-conforming lots in the lakes areas, lots that had been considered not developable, to be

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built upon without having to go before the ZBA for a building permit. Brenda said she understands what the ordinance has done, but 377 people voted for the ordinance, and she didn't feel it was fair they would have to vote again, and asked what if the people don't know they have to vote again. Chairman Guarino said the Town considered doing a mailing to all registered voters. Brenda said more people would show up to vote by ballot, and asked why we couldn't wait until March. She was informed that this would be a ballot vote, and that the Selectmen had two boards tell them that they couldn't work with the ordinance the way it is.

Brenda said the excuse for things always seems to be that we have to have the Town attorney look at something, but we have attorneys on the board that decided this. She added that the citizens felt that this was in their best interest, and voted for it, but because it isn't working the way it was hoped it would work, we should vote again. Brenda said it isn't that the ordinance isn't working, but isn't working the way they (ZBA) had wanted it to work.

Chairman Guarino said the ordinance isn't working at all, so it would not be good to sit around and wait until March. Brenda asked what part of the ordinance isn't working. Is it just that the ZBA can't prevent people from using their property? Don said no one is trying to prevent people from using their property. There was more discussion on setbacks, State-approved septic systems and what the intent of the ordinance was. Selectman Hatch explained that when she had been on the ZBA, they were frustrated because applicants came in who met all the setbacks and criteria, but had less than two acres of land, so they had to go before the ZBA. She said the ZBA wanted to give relief to owners who met the setbacks and had sufficient frontage, but not the acreage, so they wouldn't have to go before the Zoning Board for a special exception. Brenda asked if that is what the ZBA still wants to happen. Rachel replied that it is. She said her hope is that the ZBA & Planning Board will meet on a regular basis, and the ZBA needs to explain exactly what it is that they want to the Planning Board, so they can come up with a new ordinance for next March. Brenda asked when the special town meeting is to be held. Tim said we are looking at July 22, 2008. Brenda asked if there is to be a moratorium on the building permits. Tim replied that as soon as the wording for an article is posted, there would be a moratorium for building permits on non-conforming lots.

Cindy Houghton was concerned about the expense of a special election. She said she had heard it was very costly. Tim replied that a special town meeting usually is very expensive because we have to have special ballots printed, and need a special brain for the computers to count the votes. He said this one would be much less expensive. Because it is not a money article, we can print our own ballots and would not need a special brain for the computer; the ballots could be hand counted, so the estimated cost would be between \$1,000 and \$1,500.

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Brenda asked if there would be hearings. She was told there would be hearings. Cindy said she hoped that the Zoning and Planning Boards would put out pre-election information to explain, in clear language that anybody could understand, what the benefits and drawbacks are to the voter.

**Kurt Rague – Crystal Lake Farms** – Kurt said that he is under time constraints on his project. He explained that he is doing a four-lot open-space subdivision. 2 lots are residential lots off Crystal Lake Road, another parcel is conservation, (a Christmas tree farm), and the other ten acres are to be an over-fifty-five development, which will be a phase 2. Kurt said they have to put a road in, and they need to have oversight of construction of the road. He said the Town had told him they would have to have an independent third party to oversee the construction of the road, at Kurt's expense; the person who engineered the road couldn't oversee the road, as that would be a conflict of interest. Kurt said he had asked that the Town get three proposals for that, and to use the one that would be the most cost effective. He added that the Town only got one quote, from Hoyle Tanner, who is a fairly large organization dealing in high end highways and commercial projects, and their rate is above and beyond what the normal developing oversight rates are. Kurt said when he originally got the estimate to put a 1300' road in, the oversight for construction was \$26,000; the road is only going to cost about \$75,000. He said he had raised the issue to the Town that the cost was way "out of whack". Kurt said he had talked with his partner, and other people who have built roads, and had engineering firms oversee the construction, and their cost was considerably less. Kurt said he would like to have the opportunity to ask the Town to get a few more proposals, something that is in line, and more cost effective. He is trying to keep the cost down, because he is trying to do affordable over 55 housing when that phase kicks in. He felt that \$26,000 to oversee a \$75,000 road was not balanced. Kurt said when he had met with the previous Select Board, he had been told to go out and get some proposals submitted to the Town by credible individuals. He said he narrowed it down to Fluet Engineering out of Gilford, who has done a lot of work in the Lakes Region, and is very credible. Kurt said Lepine Engineering said that Fluet was very competent, and was well able to do a great job managing the oversight and reporting to the Town. Kurt said he had submitted a proposal from Fluet to the Town in February, and that is where they left it. He said the Town has now requested to have plans for alteration of terrain submitted to the Town and to Hoyle Tanner, but he didn't want to continue with Hoyle Tanner if he could help it. Kurt said he had been charged \$2,300 just to look at the plans for the road, and Fluet was only going to charge \$8,600 for the whole project. Kurt was asking approval for Fluet to be overseer for the road, and to have any future plans submitted to him.

Tim Warren stated that after Rachel had come on the Board, the Selectmen had looked at the request, and decided they wanted to stay with Hoyle Tanner. Rachel stated that since there is now a new board, it could be revisited. Kurt asked what the reasoning was behind having Hoyle Tanner.

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Tim stated that one of the questions asked was “When do you get to pick your own engineering firms to oversee your project?” He added that the Town needs to have someone oversee the project that they know is working for the Town, and cannot be influenced, not that Mr. Fluet could, by any outside pressure. Don stated that we have had good working relations with Hoyle Tanner, and the Board felt this was the firm they wanted to handle the project. Don said he knew that Kurt had stated that he planned to do a lot of the work on the road himself to save costs, but it had never been the Selectmen’s position to go get numbers for engineering costs. Tim stated that we have worked with other engineering firms before, but have had problems with some of them; we felt comfortable with Hoyle Tanner, so decided to go with them.

Kurt was concerned because he said the bills he receives from Hoyle Tanner never show a breakdown of the actual costs. Kurt said he had asked Mr. Fluet if he could work with a road that had been designed by someone else, and when he was told that Tom Varney had drawn up the plans, Mr. Fluet had no problem working with that plan, and that is when they had submitted the proposal to the Town. Kurt said DES is going to the work site on the 20<sup>th</sup> of this month to do a final walk through, and will then either accept or deny the permit, so they need a decision so they will know what direction to move forward with, whom to send the plans to. Don asked when he expected to have the approval from the State. Kurt hoped it would be by the end of May. Don said the Selectmen would work on getting answers to Kurt’s questions.

**Camera – Selectmen’s Office** – Cindy Houghton asked what the Town plans to do with the camera that was bought for the Town now that the Selectmen’s meetings are no longer being filmed. She asked why they didn’t donate it to the school. She was told that it was felt the camera could be used to document other things, such as meetings of the Historical Society. Tim said that previously, the Code Enforcement officer used to take videos of violations, etc. Brenda Currier felt they just wanted to be sure the camera got used.

**Crystal Lake Farms - Engineering Firm to Oversee Road Const.** - Chairman Guarino said that the reason the Selectmen had denied the request was that they (Selectmen) had a detailed paper that the engineering firm had questions on the project. Tim said there were questions on culverts, but Kurt had continued work on the road without approval of the plan. He said Kurt had continued work, but when you got out there, the road didn’t match the plan, so it entailed further review by the engineering firm. Chairman Guarino stated that after they had a meeting with Kurt in the fall, a member of the engineering firm came in to speak with Tim, and one of the things they wanted to do was do a site visit. When they did the site visit, what was there didn’t agree with the plan, so they needed a new plan. Once they got the corrected plan, they had to review it to make sure it matched. Tim stated that Mr. Rague has been working on this project for several years, and keeps changing his plans, thereby incurring more engineering expense to review the plans.

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Don stated that one of the considerations was that the Town already had someone on board reviewing what existed on the project, so they didn't feel they wanted to change in the middle of the project.

Don felt that originally Kurt felt the engineering firm was going to assist him in the planning stage of the road. Tim said Kurt had originally asked for Tom Varney, who had designed the road, to be the oversight engineer, but that would be a conflict of interest. Tim stated that the Planning Board had told Kurt he would have to post a bond of \$92,000, and Kurt had come to the Selectmen and asked for a reduction in the bond. Tim said because the first phase of the road was not to be paved, the Selectmen agreed to reduce the bond to \$75,000, and when Phase 2 was begun, and that road was built, the road would have to be paved and the bond would be figured into it then. Tim added that when they got the \$26,000 figure from Hoyle Tanner, they had requested that Kurt pay \$10,000 up front, but they allowed Kurt to put up only \$5,000, so Kurt has been given compromises. There was more discussion on the road, and it was ultimately decided that the Selectmen's responsibility is to see that the road gets built correctly. It was also felt that as two of Hoyle Tanner's engineers live in Gilmanton, they would have the good of the Town in mind. The Selectmen felt they don't want to change engineering firms in the middle of the project. It was also stated that an engineering firm doesn't charge according to what the road is going to cost a contractor, but rather for the work that is done. Mr. Rague is going to save money on the cost of construction because he will be doing a lot of the work himself, but that doesn't change the amount of work the engineer's will have to do to oversee the construction.

**MOTION – Selectman Abbott moved to uphold the prior decision regarding the engineering firm to be used on this project. Selectman Hatch seconded. Motion passed 3-0.**

**8:05 p.m. – Recess**

**8:12 p.m. – Back in Session**

**Special Town Meeting** – Tim reported that he had sent an email to Laura Specter, and had told her that August was not a good time for Deb Cornett to have the special town meeting; we are looking for the 22<sup>nd</sup> or 29<sup>th</sup> or July, and had also asked if we needed Superior Court approval to proceed with the special town meeting. He said Laura had responded that we don't need Superior Court approval unless we would be appropriating funds, which we will not be doing. He added that Laura was fine with either date that had been proposed, so he had consulted with Deb, and they had come up with the date of July 22, 2008 for the meeting.

**MOTION – Selectman Hatch moved to hold the special election on Tuesday, July 22, 2008. Selectman Abbott seconded. Motion passed 3-0.**



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**Drop Box – Academy Building** – Tim informed the Board that he had written a purchase order to J.R. Stockwell to build a drop box at the front of the Academy Building. He said he had looked into purchasing a box, but it would cost \$1,500 for the box and an additional \$500 to have it delivered. Tim said he had given the dimensions of the box to J.R., as well as D & S Designs. D & S Designs will make the box for \$300. J.R. will build it, install it, cut the hole and, put a plate on the outside so that it will look like an old-fashion mail slot for \$892. Tim added that J.R. has done a lot of work on the building, and has always done a good job. He said the inside would blend into the corner, so it will not really be noticeable; it will be flat on the top so it will look like a shelf. The box will be locked on the inside, and will allow residents to drop off payments, site plans, etc. when the office is not open.

**Current Use & Conservation Restriction Assessment of Map 108, Lot 1 for Tax Year 2008.** – Tim distributed copies of a memo from our Assessor George Hildum regarding the Current Use and Conservation Restriction Assessment of Map 108, Lot 1 for Tax Year 2008. Most of the 9.74 acres is now in current use; some of the land qualifies for current use because it is in contiguous and affiliated ownership with Map 108, Lot 7. A conservation easement was deeded to Five Rivers Conservation Trust on Lots 1 and 7 on December 27, 2007 encumbering all but .948 acres of Lot 1.

The owners have now made application to enroll the 9.752 acres of Lot 1 subject to the conservation easement into conservation restriction assessment, and request the Board of Selectmen amend the cartilage area of 190' X 220' reserved from current use to coincide with the area excluded from conservation easement.

The memo stated that the Selectmen do not have the authority to rearrange the lines of the 190' X 200' in cartilage to coincide with the area excluded from conservation easement. Both the current use and conservation restriction assessment are legal instruments recorded at the registry of deeds and subject to very specific conditions as detailed in the statutes and administrative rules. These statutes and administrative rules prohibit such an undertaking by the Selectmen.

There was a brief discussion of the memo. Tim said George has sent a letter to the property owner explaining the issue.

**Fire Department Overtime** – Tim said he had called the LGC (Local Government Center) to try to get more information regarding fire department overtime. He said he had spoken with an attorney, and had been basically told to go to the website for information. There was a brief discussion of the way overtime is paid for the fire department and police department. Tim will continue to try to get more information on the regulations.

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**Fire Chief Resignation** – Tim informed the Selectmen that Fire Chief Tim Robbins had submitted a letter of resignation effective as of 5:00 p.m. this evening. There was a very brief discussion of the issue.

**MOTION – Selectman Hatch moved to accept the letter of resignation from Timothy Robbins as Fire Chief of Gilmanton. Selectman Abbott seconded. Motion passed 3-0.**

**Recycling Center Issues** – Tim stated that he had met with Jim Hurst, Chris Clairmont and Doug Kapplain at the Recycling Center this morning. He said they would be prepping the site for paving on Monday, and finish the site work on Tuesday. The Recycling Center will be closed on Wednesday, May 21<sup>st</sup> for paving of the facility. The center will be opened again on Saturday, May 24<sup>th</sup>.

Tim said there was also a discussion on how to change some things around to prevent the pavement from being torn up by activity in there; swapping the boxes out back in the gravel, dropping glass into small hoppers, so they can get under it with the fork of the bobcat, etc.

**Uniforms** - Tim also reported that Fred had come into the office saying he had heard the employees were going to be required to wear uniforms. Tim said he had told Fred that there had been discussion of buying colored tee shirts for the men to wear. Fred stated that he never wears tee shirts, and if they were required to wear uniforms, all town employees should be required to wear uniforms. Tim said Fred stated that he doesn't mind wearing a vest, and he wears his all the time. Tim said he had told Fred that there had also been discussion of getting a small air conditioner for the office, but Fred didn't think that was a good idea, because after being in where it is air conditioned, it is even worse when they go back outside. It was stated that the highway department wears tee shirts with Highway Dept. printed on them, and they also wear vests. During discussion, it was stated that the employees at the recycling center should be required to wear either colored tee shirts or safety vests. Tim was asked if he had made arrangements for the employees to get their tetanus and hepatitis shots. Tim replied that he hasn't got it done yet; he is checking with the Police and Fire Departments to see how many of their employees need to get their shots before getting appointments.

**8:53 - Enter into Non-Public Session as per RSA 91-A:3, II(a)**

Selectman Hatch moved to Enter into Non-Public Session as per RSA 91-A:3, II(a) - Dismissal, promotion or setting compensation for public employees or the investigation of any charges against him, unless the employee affected has a right to a meeting or requests that the meeting be open, in which case the request shall be granted. Selectman Abbott seconded. Motion passed 3-0.

The Selectmen discussed a fire department personnel issue.

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**9:07 p.m. – Out of Non-Public Session**

Selectman Hatch moved to come Out of Non-Public Session. Selectman Abbott seconded. Motion passed 3-0.

**9:08 p.m. - Enter into Non-Public Session as per RSA 91-A:3, II(c)**

Selectman Hatch moved to Enter into Non-Public Session as per RSA 91-A:3, II(c) - Matters which, if discussed in public, would likely affect adversely the reputation of any person unless such person requests an open meeting; however, this cannot be used to protect a person who is a member of your Board, Committee or Subcommittee. Selectman Abbott seconded. Motion passed 3-0.

The Selectmen discussed an issue that could affect an individual's reputation.

**9:14 p.m. – Out of Non-Public Session**

Selectman Hatch moved to come Out of Non-Public Session. Selectman Abbott seconded. Motion passed 3-0.

**9:15 p.m. - Enter into Non-Public Session as per RSA 91-A:3, II(c)**

Selectman Hatch moved to Enter into Non-Public Session as per RSA 91-A:3, II(c) - Matters which, if discussed in public, would likely affect adversely the reputation of any person unless such person requests an open meeting; however, this cannot be used to protect a person who is a member of your Board, Committee or Subcommittee. Selectman Abbott seconded. Motion passed 3-0.

The Selectman discussed an issue that could affect an individual's reputation.

**9:24 p.m. – Out of Non-Public Session**

Selectman Hatch moved to come Out of Non-Public Session. Selectman Abbott seconded. Motion passed 3-0.

**9:25 P.M. – MOTION – Selectman Hatch moved to adjourn the meeting. Selectman Abbott seconded. Motion passed 3-0.**

Respectfully Submitted,

Lois Dionne  
Recording Clerk

