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**HUDSON PLANNING BOARD
MEETING MINUTES
January 6, 2010**

I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:07 p.m. on Wednesday, January 6, 2010, in the Community Development meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Mr. Malley to lead the assembly in pledging allegiance to the Flag of the United States of America.

III. ROLL CALL

Chairman Russo asked Secretary Stewart to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: James Barnes, George Hall, Tierney Chadwick, Suellen Quinlan, Vincent Russo, Terry Stewart, and Richard Maddox (Selectmen's Representative).

Members

Absent: None. (All present.)

Alternates

Present: Tim Malley, Stuart Schneiderman, and Ken Massey (Selectmen's Representative Alternate).

Alternates

Absent: Dennis White.

Staff

Present: Town Planner John Cashell.

Recorder: J. Bradford Seabury.

IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Russo noted that all members were present, so no alternates would be seated at this time. He then stated that he would skip the scheduled review of the minutes, possibly taking them up later in the evening.

XIII. PUBLIC HEARINGS

Presentation on Prime Wetlands by Conservation Commission.

Mr. James Battis, 6 Potter Road, accompanied by Mr. Timothy Quinn, 1 Fuller Drive, both from the Hudson Conservation Commission, went through a PowerPoint presentation, commenting on the slides as they were shown. Mr. Battis noted that this was essentially the same presentation that had been given to the Planning Board this past fall. He noted that the intent was to designate certain wetlands as Prime Wetlands and also to change the Zoning Ordinance such that there would be a 100-foot buffer around Prime Wetlands, with no change with respect to buffers around other wetlands in the town. He described the benefits of increasing buffers around Prime Wetlands, together with the benefits of wetlands in general. He discussed the procedure that had been used to select the wetlands being proposed as Prime Wetlands, originally proposed for 41 different wetland bodies, with this number having been winnowed down to 29 following review by wetland scientists employed by Vanasse Hangen Brustlin, Inc., which the Conservation Commission had contracted for that purpose. He described the 14 criteria on which the wetlands had been evaluated, commenting on each one, and he then showed a series of maps identifying the location of each of the wetlands being proposed for designation as Prime Wetlands, followed by a listing of the proposed wetlands, with descriptive comments for each.

Addressing the implications of the proposed changes, Mr. Battis said the selected wetlands would be designated as Prime Wetlands and the buffer around them would be extended to 100 feet, with the approval process for anything in the vicinity of those particular wetlands being enhanced by State review. He emphasized that the buffers for all other wetland bodies would remain unchanged at 50 feet, with the same current procedures still applying, adding that current uses would be grandfathered and that only new applications would be affected. He then outlined the rationale for selecting the given buffer widths, noting that 100 feet was preferred but was only being proposed for the wetlands that would be designated as Prime Wetlands, saying scientific studies had looked into the question, with most recommending 100 feet or greater.

Mr. Quinn commented on the need to designate Prime Wetlands as a way of ensuring water quality in the town.

A. Amend Article IX, § 334-34, Definitions, to Include a Definition for “Prime Wetlands” and Amend the Buffer Zone Requirements Within the Existing Definition of “Wetland Buffer”.

Chairman Russo opened the public hearing at 7:37 p.m. for public input and comment, in favor or opposition, beginning by reading through the prepared text for the proposed warrant article.

Ms. Sandra Rumbaugh, 39 Beechwood Road, also a member of the Conservation Commission, noted that Ms. Sandy Crystal from the State Wetland Bureau was present to answer any questions, as was Mr. Curt Laffin, along with and other members of the Conservation Commission.

No one coming forward to speak in favor, Chairman Russo asked if there were anyone who wished to speak in opposition or with questions.

Mr. Roger Coutu, 10 Rena Avenue, asked the Board to consider exempting two of the wetlands proposed for designation as Prime Wetlands, because of the possible impact on future roadway plans. Expressing appreciation of the efforts of members of the Conservation Commission, he clarified that the two wetlands in consideration would affect the future construction of a roadway between Soldiers Bridge (Lowell Road) and Route 111. He recommended that the Planning Board approve the wetland study with the exception of Wetlands 17B (Miles Swamp) and 18A (Limit Brook Swamp). Ms. Quinlan noted that Miles Swamp; was listed by VHB as being the second most important wetland in the town. Mr. Hall commented that she was speaking out of order.

Ms. Michelle Champion, 7 Chiswick Road, also a member of the Conservation Commission, addressed the issue of those two wetlands, stating that the Limit Brook Wetland had been what had stopped the Circumferential Highway plan. She said those two wetlands should not be dropped out, as these were among the most important wetlands, which meant they would get close scrutiny as a major project. She argued that a road through those wetlands would still be a major project and would still get close scrutiny, regardless of the designation, but she expressed a belief that it would not necessarily kill the roadway project.

Mr. Timothy Quinn said he had never seen any data that said expanding the buffer would prevent a road from being placed in that area.

Mr. James Battis spoke in support of what Ms. Champion had said, saying the project would still go through the State's dredge and fill process and he felt the State would consider it. He said he had gone back over the past few years' worth of decisions by DES, and his general view was that what a town's Conservation Commission recommended seemed to be what came out as the final result, and DES seemed to respond to those recommendations.

Mr. Curt Laffin, 9 Nathaniel Drive, said the Miles Swamp area was part of a rather large complex that drained Second Brook. He said the "Prime" designation certainly was important but there was much more going on, noting that the area around Soucy's and T-Bones had almost flooded over in a storm last year—adding that the watershed was pretty much imbalanced right now and could easily be tipped over the edge.

Chairman Russo closed the public hearing at 7:50 p.m., saying he would recognize Ms. Sandy Crystal at this time to answer Board members' questions.

Selectman Maddox asked what the impact would be to a citizen adjacent to a "Prime" wetland. Ms. Crystal said she thought it would be a good idea for the Town to expand its buffers to the State's 100-foot width. She said an applicant

would need a permit for construction and tree-cutting and buffer filling, meaning they would have to have the wetland boundary delineated on a map by a certified wetland scientist and then measure off 100 feet. She said the 1979 requirements called for accuracy within 100 feet, but the maps that came in were much more accurate than that. She said delineation was not required at the time of designation, because it was too costly. She said the fee for an application was \$200, noting that a public hearing was no longer required for small projects.

Selectman Maddox asked about citizens who might have undesignated watersheds in their back yards. Ms. Crystal said the State did not look at things that way, saying the need for a permit kicked in only when things were being changed. Selectman Maddox noted they would need to have a certified wetland scientist delineate the area, asking where the results would go. Ms. Crystal said it would go to the State; she then questioned why people would want to put a pool in their back yard if they wanted to protect the water quality, adding that the intent was to protect a resource of great value to the community.

Selectman Massey noted that anyone in the 50-foot setback today had to go the Conservation Commission and then to the Planning Board and then to the Zoning Board of Adjustment, and had to provide a certified soil-stamped plot plan document to each of those boards. He said this would not be adding to the burden, saying the only addition would be for those people wanting to do something in the area between 50 feet and 100 feet from the selected wetlands.

Ms. Chadwick asked how the Town could ensure that properties sat within the area, asking what the Town or State would do to be aware of the change. Ms. Crystal said there were always continuing educational efforts, noting that some communities required the placement of buffer markers at certain distances.

Selectman Massey asked what additional application fee would have to be paid, if not doing a dredge & fill. Ms. Crystal said basically anything within 100 feet of the Prime Wetlands would require a standard dredge-&-fill permit, since disturbing of the soil would be involved. She confirmed that people would not have to come to the State for such things under current circumstances.

Mr. Hall referenced Wetlands 18A and 17B, noting that he had asked Town Planner Cashell to find out from NRPC what the impact would be if those bodies were designated as Prime Wetlands. He noted the response document was in the meeting packet, saying it seemed to be pretty significant, in his experience. He then read aloud from the text of that document, saying most of the voters were not likely to understand the implications of what this would cost—adding that he did not know how long the people of Hudson would be willing to put up with the traffic on Wason Road, Spear road, etc., and saying Sagamore Bridge was where that traffic started. He said there was a potential for going around Miles Swamp, but it would involve land-taking. He said the voters had to make an informed decision, adding that designating these two areas as Prime Wetlands made no sense to him, if they did not have to be so designated. He said the DES officials would be apt to say they were bound to protect those two wetlands, if they were designated as Prime Wetlands, adding that this would raise the standards beyond

what he felt was appropriate from the Planning Board's perspective, adding that he could not vote to send this to the Town Warrant for that reason.

Mr. Schneiderman noted that he had been sitting on the Planning Board for a year and had seen the "incredible" amount of work done by the Conservation Commission. He then read aloud from the next paragraph following the one that Mr. Hall had cited, noting that it said impact to the prime wetlands could be mitigated. He then asked Ms. Crystal what the effect of including those two wetlands would be with respect to the future parkway. Ms. Crystal said the theme for all projects was to avoid, minimize, and mitigate impact, in that order. She noted that no one had mentioned the scope of the impact, saying it might be too big even if they were not designated as prime wetlands. She then noted that DES had permitted some projects, such as the extension of the runway at Laconia Airport. She noted that Salem had had prime wetlands for a long time and had undesignated a couple of those in order to put in a large project. She said she could not say that designation as Prime Wetlands would stop the parkway project, saying fills had been permitted for projects for which there was a great need.

Ms. Chadwick asked about other towns in the surrounding area. Ms. Crystal said there were roughly 29 towns that had designated prime wetlands, with some having come back and designated more at a later time. She then listed some of those, noting that a full list was available on the DES Website, with several others currently under review. Ms. Chadwick asked how long the process was by which the State agreed with the designation. Ms. Crystal said DES basically needed to get the report and confirm that it complied, usually taking a month or so.

Selectman Massey asked if the northern segment of the proposed circumferential, from Route 111 to the Turnpike, had any prime wetlands, noting these were in Merrimack. Ms. Crystal said there were no prime wetlands in Merrimack. Selectman Massey said the State would take a look at any project, saying a bridge across Miles Swamp would have to have a long span.

Mr. Hall said Salem was the case he was familiar with; he reviewed the process by which the Town of Salem had made the crossing, noting that the State had declined to approve the crossing until Salem undesignated the wetland. He then questioned why Hudson should go through that, rather than just not include those areas at this time. He questioned why Hudson should raise the bar when it might not have to do so, adding that there was no alternative to having a crossing across Wetland 18A.

Ms. Quinlan said she did not find Hudson to be very loose with the purse strings, saying the reason why Miles Swamp stopped the Circumferential Highway was a 50-foot designation. She said the Circumferential Highway had been proposed as a massive four-lane project, and it was stopped by the State because of Limit Brook. What was being proposed now, she said was a two-lane highway with much less impact. If the wetlands had to be undesignated at some point in the future, she said, the Town could deal with it at that time—but at this point, the Town had an opportunity to provide protection for those delicate waterways, rather than not do it for some indefinite project that might occur in the future.

Town Planner Cashell said the best the Town could do would be to have to mitigate on a square-foot by square-foot basis, somewhere else, to replicate what would be impacted by the roadway. He said that would be the way to go, to lower the cost of the roadway, saying purchase of a couple properties would be the less costly way to go, in order to avoid the wetlands. He said the Federal government would not look too kindly on an impact of three to eight acres. He agreed that Hudson needed to look for a way to overcome the traffic situation for commuter traffic, saying something would have to be done, at some point.

Selectman Maddox asked if the shaded designations on the maps were the actual wetlands or the wetlands plus the buffers. Ms. Crystal said the DES standards would be just to show the wetlands. Mr. Battis expressed a belief that the maps showed both the wetlands and the buffer. Town Planner Cashell displayed one of the views, saying it clearly showed just the wetlands. Mr. Battis then stated he had just been corrected by other members of the Conservation Commission, saying the black and white maps just showed the wetlands, but the colored maps on the Website showed both. Chairman Russo noted that he had tried repeatedly to get on the Website but had not been able to do so. Mr. Battis said he would check on that.

Selectman Maddox said this would affect citizens throughout the town, arguing that some people might not be able to put a new mailbox in their front yard. Ms. Quinlan noted that people on Wason Road had come in because of arsenic in their wells, saying the impacts on water quality were not visible and the Town had to pay attention to that. Ms. Crystal said landowners would need to come to DES only if they were in the range between the existing 50-foot buffer and the proposed 100-foot buffer. Selectman Maddox said he was just trying to point out that this impacted more than just the roadway. Ms. Quinlan noted that she lived directly across the street from Miles Swamp, so she would need to go to the State to put up a garage if this passed, but she was okay with that, because it was important. She commented on the importance of preserving the water quality, saying it was a small price to pay.

Ms. Crystal said she was not sure which bodies of water were subject to Shoreline Protection, but she knew Robinson Pond already had a 250-foot buffer.

Mr. Malley asked what the State would be doing that was above and beyond what the Town had the ability to do, itself. Ms. Crystal said she did not know what this Town could do, but she lived in a small town and the State had been able to come in and say that there was too much impact for specific projects and that other options should be selected. She stated that a lot of towns had buffers but gave variances out like candy.

Mr. Battis, speaking as a member of Conservation Commission, said the earlier discussion of the floods was relevant, adding that members of the Conservation Commission had some knowledge of construction practices, through experience and education, but the advantage of bringing in the State was that the State had real professionals on staff, who could see the impact on the entire system, which the Conservation Commission members might not be able to do. He noted that it

was the interaction of the swamp complex, as Mr. Laffin had said, that was important.

Mr. Malley said he was a volunteer, and not a highway expert, but the Planning Board had the ability to hire engineers, rather than go to the State. Ms. Crystal said all wetland impacts within the expanded buffer had to come to the State, as there basically was not supposed to be any disturbance.

Chairman Russo asked if the Town had the State as a resource, regardless of whether or not these wetlands were designated as Prime Wetlands. Ms. Crystal, noting that she was on her town's planning board, said hired engineers sometimes picked up on things that the State people did not, but the State personnel often knew of other things going on. Chairman Russo said the Town hired experts, and that was available to the Conservation Commission if they chose, and what Ms. Crystal was saying was that that might be a better choice. Ms. Crystal said the State looked at things with different standards, saying the Town might have more stringent requirements in some places.

Ms. Quinlan said there was a stature that permitted the Planning Board to have an engineer hired at the applicant's expense, but it was less clear that this could be done by the Conservation Commission, as there was no definitive statute saying it could do so. She noted that the Conservation Commission was merely advisory, whereas the Planning Board and the Zoning Board of Adjustment were quasi-judicial bodies. She said she would question the bipartisanship of information from someone being paid by the applicant, saying the Planning Board should also question these things, but the State was neutral, in the sense that it was governed by rules that applied to everybody, equally.

Selectman Maddox said the State had its resources but they got stretched. He said the Planning Board could hire an engineer, if the Conservation Commission could not. Ms. Quinlan pointed out that the Conservation Commission totally lost control when it sent things to the Planning Board, as there was no way for changed plans to come back to the Conservation Commission, which was unsatisfactory.

Ms. Champion referenced the comment of trying to minimize the impact to the homeowners, saying she thought it would be far less of an impact to have to pay \$200 to the State for a dredge-and-fill permit than to have the Planning Board hire a wetland scientist and bill the homeowner. Chairman Russo noted that the wetland on a property would have to be delineated before it went to the State; Ms. Champion replied that the delineation required by the Conservation Commission was different from hiring a wetland scientist to determine the function and value of the wetland—adding that the homeowner would have to pay for the delineation, anyway. Ms. Champion then reported she had talked to a member of the Pelham Conservation Commission, which had had Prime Wetlands for many years and had added to it a couple times, and had received extensive support, with no issue with the voters.

Mr. Quinn noted that Mr. Malley had asked whether or not the criterion of the Town was whether there was a disturbance; he said that was exactly what the criterion was.

Mr. J. Bradford Seabury, 4 Meadow Drive, noted that the concerns being expressed by members of the Planning Board pertained to individual homeowners, but in point of fact the Planning Board did not address wetland special exception cases pertaining to single-family homes and duplexes, so there would be no opportunity for the Planning Board to hire an engineer for such cases. Selectman Massey said he recalled that the Town had hired an individual who oversaw a mediation plan that the Conservation Commission was requiring for a very serious intrusion, with the applicant paying for that contracted person. Ms. Quinlan noted that DES had been involved in that case.

Selectman Massey said he thought the Conservation Commission had the ability to hire experts—adding that the issue was whether there were bodies of water that could affect the quality of the Town's water sufficient to require this protection. He noted that the Conservation Commission members had spent over two years on this project, and it was not a trivial exercise. He said 41 originally proposed Prime Wetlands had been reduced to 29—adding that, since there were over 406 total wetlands, this was less than 5% of the total. He then pointed out that, by the criteria provided by the State, these areas were considered sufficiently important to warrant protection.

Mr. Barnes started to make the draft motion from Town Planner Cashell's staff report, but Mr. Hall called for a point of order, expressing a belief that the draft motion was worded incorrectly and that it should be reworded either to send the proposed article to the Town Clerk for inclusion on the Town Warrant or not to do so.

Mr. Barnes concurred, and he then moved to send the proposed zoning amendment article to the Town Clerk for inclusion on the March Town Warrant, noting that the purpose of the article was to amend **Article IX, § 334-34, Definitions**, to include the following definition of **Prime Wetlands**:

"Prime Wetlands - A special classification of wetlands delineated in accordance with the requirements of RSA 482-A: 15, and NH Code of Administrative Rules Env-Wt700. The boundaries of each Prime Wetland in Hudson are illustrated in maps included in the Prime Wetlands Assessment & Designation Hudson, NH, dated May 19, 2009, which also identifies and describes the important values and critical functions that are provided by these wetlands. The prime wetland report and maps are on file at the Hudson Town Offices.

And to amend the definition of **"Wetland Buffer"** in §334-34., **Definitions**, to read as follows (where the boldfaced text is being added and the struck-through text is being removed):

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“Wetland Buffer – A zone of noninterference extending ~~fifty (50)~~ **one hundred (100)** feet from ~~the edge of a wetland area~~ **Prime Wetlands and fifty (50) feet** from the edge of **all other** wetland areas, or areas of poorly drained or very poorly drained soils, or from the top of the bank of a surface water body toward the adjacent upland environment.”

Ms. Quinlan seconded the motion.

Selectman Massey called for a point of order, saying his expectation was that a vote of YES would put it on the ballot as recommended but a NO vote would mean that the article would not appear on the warrant. Chairman Russo demurred, saying the article would go forward but would be designated either as recommended or not recommended. Selectman Maddox suggested it should state either APPROVED or DISAPPROVED. Town Planner Cashell said it would go on the warrant regardless of the vote. Mr. Hall demurred, saying this was the Planning Board’s warrant article, not a petitioned article. Selectman Massey said his expectation was that a YES vote would forward the article with a recommendation as being approved by the Planning Board, but it went nowhere if the vote was No. Other members of the Board expressed agreement.

VOTE: No further comment being brought forward, Chairman Russo called for a hand vote on the motion. Mr. Barnes, Ms. Quinlan, and Ms. Stewart voted in favor; Mr. Hall, Ms. Chadwick, and Mr. Russo voted in opposition, and Selectman Maddox abstained. Chairman Russo then declared the motion to have failed (3–3–1).

Selectman Maddox clarified that he had abstained from the vote because he had not been given clear direction as to how to vote by the Board of Selectmen, noting that the other Selectmen had not had an opportunity to hear the testimony given this evening.

Mr. Hall made a motion to have another Public Hearing regarding the Prime Wetlands on January 20, 2010; Ms. Chadwick seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Hall asked if there were time for another public hearing. Town Planner Cashell said the hearing could be continued to the next meeting.

Ms. Quinlan asked what the harm was in letting the voters vote on it.

Mr. Hall said his point was that he would be willing to vote for the article with those two wetlands (17B & 18A) removed. Town Planner Cashell said he was not sure, but he thought the Board could hold a public hearing on January 27th.

Ms. Stewart expressed a firm belief that the cross-town highway would not be coming in Mr. Hall's lifetime.

Selectman Maddox said he wanted to vote in favor, after hearing the testimony, but he had an obligation to the rest of the Board of Selectmen. He noted that putting it on the warrant as being not recommended, even with a 4-3 vote, would mean that the voters most likely would vote against it, as the citizens generally followed the recommendations of the Planning Board. He said he would stay abstained, but his personal opinion was that the members of the Planning Board had not done all of their homework.

Ms. Chadwick asked if there were a way that the Board could consider putting it on the warrant with the vote stated. Chairman Russo said the motion had failed, because of being a tie vote.

Mr. Hall said the vote had to be to put the article on the warrant by a binding majority. He then suggested deferring it and going on to another topic. Selectman Maddox noted that if the Board deferred this matter, he could bring it to the Board of Selectmen to determine which way that Board wanted it to go.

Ms. Stewart said she would like to hear from the others as to why they had voted in opposition.

Ms. Chadwick, responding, said she had similar concerns to Mr. Hall's with respect to the two wetlands, but would have no problem with the others, and she did not think those two wetlands (17B & 178A) should be designated as Prime Wetlands.

Mr. Russo, responding, said he felt this was a leap instead of a step, saying he thought Prime Wetlands needed to be designated in this town but he did not think the Town had to go to the State level and could do this locally, saying he felt there were resources available to the Town. He noted that he also had concerns about the two wetlands with respect to the proposed roadway, as well as the long-time process that would be required to get approval of that road, expressing a belief that it would get bogged down. He then concluded by saying he felt there would be enough support from the voters if a smaller step were taken.

Selectman Massey said, since this was public hearing, he would ask why another public hearing would be needed, just for a motion to amend. Mr. Hall said it would be a material change to remove the two contested wetlands. Selectman Massey said the next meeting date would be January 27th, which would be only four days before the Deliberative Session. Mr. Hall said another meeting could be scheduled for January 20th or any other day that was desired.

Mr. Schneiderman asked if it would be proper to divide the question, so that the two objectionable wetlands could be considered separately. Mr. Hall pointed out that the public hearing had been advertised to say what the proposal was, and the law said another public hearing was needed for any material changes, so as to give members of the public an opportunity to come in and express themselves concerning those changes. Mr. Schneiderman asked what the law actually was, expressing a belief that no one knew. Mr. Hall demurred, saying he had 17 years

of experience on the Planning Board and felt he knew what the law was. Mr. Schneiderman then asked if the answer was that dividing the question was not legal. Chairman Russo said he would yield to Town Counsel before answering that question.

Town Planner Cashell noted that a lot had been done to get this ready, but there still clearly were questions. He said these two particular wetlands had stopped the Circumferential Highway in 1996, by the EPA, saying there would not be any highway with or without approval of this article—noting that any disturbance of wetlands kicked things up to a higher level and everyone (including DES, the EPA, and U.S. Army Corps of Engineers) was already involved, and anyone wanting to do anything involving disturbance of wetlands had to go through the process. He expressed a belief that Board members voting against this proposal would come to understand. when they became fully engaged and learned what the Town was dealing with.

Ms. Chadwick referenced the question raised by Mr. Schneiderman, stating that NH RSA 635-7 set forth the requirements for a hearing, citing a case from 1988 in which the ruling was that the full scope had to be provided in the public notice, and noting that a second annotation in the Statutes handbook noted a statutory requirement for notice stating the location of affected properties. She said Mr. Hall's concern was that modifying the public notice meant that a new hearing was needed, with a new notice going out to all the citizens.

Chairman Russo said there were options, saying the Conservation Commission could come back with an alternative proposal.

Mr. Hall moved to schedule another public hearing with the elimination of those two wetlands (17A & 18B) for January 20th. Ms. Chadwick seconded the motion.

Ms. Quinlan pointed out that the two wetlands in question were the two most prime in the study, in terms of the work that had been done. She noted that the flooding cited by Mr. Laffin had also obliterated the access road going into the Birchcroft area, saying this was all important but intangible. She then commented on concern about the water passing into the river, saying she thought it behooved the Town to protect those resources.

Chairman Russo noted that one of the two wetlands was relatively small in size, saying Wetland 17B was less than eight acres, whereas Wetland 18A was over 100 acres. He said it was a relatively small item to remove in order to help facilitate the construction of the possible roadway. He then added that he had nothing before him showing how the roadway would be affected.

Mr. Ken Dickinson, a member of the Conservation Commission, said part of the problem with the roadway was that the Town's right of way went over the widest portion of the Limit Brook Swamp. Chairman Russo asked Town Planner Cashell to display the Circumferential Highway path on the projection system. Selectman Maddox objected that the Board was going to run out of time, with other things yet to be discussed. Chairman Russo expressed agreement but said he needed to see where the road would go, saying he could not see how the Miles Swamp area

would affect the proposed roadway. Mr. Hall provided a map showing the path that had been planned for the Circumferential Highway.

Ms. Stewart questioned why the Board should hold another hearing, saying she would vote against it if those two wetlands were taken out. Mr. Hall said he would argue the other way, saying all the testimony he had heard was that this road would not be built over that wetland, whether it were prime or not; he said this was an opportunity. Ms. Quinlan spoke in favor of the deferral, saying the Conservation Commission could come back and say whether it was acceptable to them.

Town Planner Cashell said the Board could legally post for January 20th.

VOTE: Chairman Russo called for a hand vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Chairman Russo declared a break at 9:25 p.m., calling the meeting back to order at 9:40 p.m.

B. Re-Zoning Petition to amend the Official Zoning Map of the Town of Hudson by re-zoning from Residential-Two (R-2) to Business (B) 268 and 270 Lowell Road. Said properties are shown on the Town Assessor's Map 228, as Lots 052 and 053.

Selectman Maddox asked if there were to be a presentation. Mr. Hall said that would be part of the public hearing, in order to give the petitioners an opportunity to state their case.

Chairman Russo declared the public hearing open at 9:42 p.m., asking if there anyone present to present the petition or to speak in favor.

No one came forward.

Chairman Russo asked if there were any public input and comment in opposition.

Mr. Roger Coutu, 10 Rita Avenue, said this petition, although presented this time in two articles, was exactly the same as last year, when it was resoundingly defeated by the voters. He noted the location of the properties in question, saying it was a one-way in and one-way out neighborhood, with these properties listed for the petition being on Lowell Road (Route 3-A). He referenced a conceptual for a mini-mall that had been presented previously for the property behind it, noting that it had been rejected because there was no exit, as the State was not allowing another curb cut on Route 3-A. He said the only alternative was that this proposal would give access to that property, providing an exit onto Rena Avenue. He noted that the school bus stopped on Rena Avenue approximately where this zoning change would occur, adding that the property at the corner had been cited

a few times for selling used vehicles—adding that the owner actually lived in Pelham, where he was in the used-car business. He expressed a belief that this activity had been curtailed this past year in hope of gaining acceptability of this change. Mr. Coutu said several residents of the neighborhood had been told by the applicant that the applicant had spoken to him, but they had not been told that he was vehemently opposed to the article. Stating that the petitioners had refused to disclose why they wanted to make this change, he then requested that the Board put this on the warrant as *not* being approved by the Planning Board.

Mr. Richard Michalski, 1 Rena, identifying himself as being an abutter to all three properties in question, said he had lived there for 30 years and felt this was a residential neighborhood, and they would like to keep it that way—saying that changing these properties to commercial would adversely affect the neighborhood and change their way of life.

Mr. Andrew Diantonio, 11 Rena Avenue, said he and his wife were here to oppose it. He confirmed what Mr. Coutu had said about the applicant having reported that he had talked to Mr. Coutu, saying his wife had signed the petition for that reason, but that she was opposed.

Ms. Paula Michalski, 1 Rena Avenue, said the access road to the back property, if that was the intent, would be on two sides of her property. She said this would be traffic on a continual basis, and she expressed concern about lighting, tree-cutting and resulting flooding—noting that her basement had been flooded for three months after the church was built. She expressed concern about the effect on the wells in that neighborhood, as well as impact on pets.

Ms. Madeleine Gagnon, 16 Rita Avenue, said she wanted to reemphasize that there was just one entry in and out, with approximately 80 homes in that area. She said the impact on the residents of that area would be outrageous. She said this would in essence be spot zoning to circumvent the fact that the property could not meet the criteria for a variance.

Mr. Roger Parent, 6 Ridgecrest Drive, said this had been voted down a year ago and he did not know why they had to come again to do the same thing. He commented on the kids in the areas, getting off the bus at that very location, and he expressed concern about their safety if this proposal were approved.

Mr. Robert Dicarlo, currently residing at 66 Kimball Hill, said he had recently purchased the property at 3 Rena and would be moving to that property soon; he said the rear of his new house looked at the church and this would go against his plans in building his new home, noting that he had three young kids, one of them mentally handicapped, and they had wanted a quiet spot.

Ms. Mary Jane Kelly, 9 Rita Avenue, said she was opposed, for all the reasons that had been spoken of.

No other members of the audience coming forward, despite repeated invitations from the chair, Chairman Russo closed the public hearing at 9:56 p.m.

Selectman Maddox said the reason the matter was back for discussion was that it was a petitioned warrant article, and the petitioners could come back every year. He noted that he had asked last year why they had waited to the last second, saying they were doing it again this year. He noted, as a Planning Board member, that there was no plan, with no way shown to get the property to be usable.

Mr. Barnes said last year there had been a number of questions, so it had ended up being not recommended, and he had not seen anything that would change the way it had gone last year.

Ms. Chadwick moved to *disapprove* for the 2010 Town Warrant the re-zoning petition to amend the Official Zoning Map of the Town of Hudson by re-zoning from Residential-Two (R-2) to Business (B) 268 and 270 Lowell Road (said properties are shown on the Town's Assessor's Map 228, as Lots 052 and 053).

Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the article to have been disapproved unanimously (7-0).

Selectman Massey noted that this year the vote would be shown on the ballot, as well as the recommendation.

C. Re-Zoning Petition to amend the Official Zoning Map of the Town of Hudson by re-zoning from Residential-Two (R-2) to Business (B) 272 Lowell Road. Said property is shown on the Town Assessor's Map 228, as Lot 054.

Chairman Russo read aloud the published notice, as repeated above.

Chairman Russo opened the public hearing at 9:59 p.m.

Ms. Paula Michalski, 1 Rena Avenue, said she was opposed, for the same reasons as said before for the prior petition. She noted that the church had been allowed in and had been requested as part of that approval to put a 30-foot green barrier between the church and all of the adjoining residences but had not done so; she then commented that this was why the security light at the church bothered her. She noted that the area between Mr. Dicarolo's house and the church was completely open, whereas she could see the whole front of the church, now that her rhododendrons had died. She requested that any such stipulations made in the future should be followed up.

Chairman Russo said she could follow that up by mentioning it to Town Planner Cashell, if it were a stipulation on the site plan. She said she had spoken about it to the pastor, who had said that stipulation pertained to the original owners.

Mr. Richard Michalski, 1 Rena, expressed opposition, saying it was for the same reasons as said before.

Chairman Russo asked for a showing of hands in opposition. Eight people in the audience raised their hands. Selectman Massey noted that neither petitioner had appeared before the Board to explain their petition.

No one else coming forward, Chairman Russo closed the public hearing at 10:03 p.m.

Ms. Chadwick moved to disapprove for the 2010 Town Warrant the re-zoning petition to amend the Official Zoning Map of the Town of Hudson by re-zoning from Residential-Two (R-2) to Business (B) 272 Lowell Road (said property is shown on the Town's Assessor's Map 228, as Lot 054).

Mr. Barnes seconded the motion.

Selectman Maddox stated that this was being denied because there were planning concerns, and multiple issues had been brought forward, with no plan being presented as to how this would work—noting that this would be a challenging property even with a plan. Chairman Russo stated that no reasons had been presented to change last year's vote.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

D. Zoning Petition to amend the Town's Zoning Ordinance, § 334-12, *Fences and similar enclosures, i.e., to change the maximum "by right" 6 ft. in-height fences to 8 ft. in-height and to amend certain construction standards for the installation of 8 ft. (or greater) in-height fences.*

Chairman Russo read aloud the published notice, as repeated above.

Chairman Russo opened the public hearing at 10:05 p.m.

Mr. Peter Radziewicz, 49 Burns Hill Road, said he had been involved with this change request with the help and input of a lot of Town voters, saying he had gone into Town Hall over a year ago to apply for a permit for a fence in excess of six feet in height, and it had been very apparent at that time that the current ordinance was not as clear or concise or as encompassing as it should be, saying it took many months to get an answer and it was still not clear what was needed for a fence in excess of six feet. He said this ordinance had evolved over the years from fences and shrubs that could be four feet in height to the current ordinance, which only allowed a 6-foot fence but allowed shrubs and trees that could be 40 feet high. He stated that the intent of the current ordinance was to cut down on the administrative duties of community development and code

enforcement, so no permit was needed, as one could put up a 6-foot fence without getting a permit. He said they were trying to make that a little clearer and concise with this proposed change, and also to increase the height and flexibility.

Right now, he said, there were many properties, both Town-owned and private, that had fences in excess of six, ten, and twelve feet in height, such as tennis courts, which were not legal and never approved—adding that none of these fences were grandfathered unless they were constructed in 1939 or 1940. He said this proposed ordinance would let those property owners keep their fences, helping to prevent the Town from having to issue variances or code enforcement violations against tax-paying citizens, and would let residents comfortably use their property, whether to have sports enclosures or buffer fences—adding that a 6-foot height probably would not be high enough to keep that light out of Mrs. Michalski's window. He said they had not written this article just to help his family's own situation, saying it would have been worded a lot differently if that were the case, but it would help the Planning Board and also the Community Development Director to understand what was required and to make sure that the fences were installed properly. He said he had discussed these changes with hundreds of Hudson voters over the past several months, and had not had any negative feedback, noting that the petition had almost 100 signatures.

He then discussed his family situation, saying they had installed a fence after going to the Town to find out what was needed for a fence going above six feet, and did not get an answer for eight weeks, so they had installed the fence with the understanding that there was nothing needed. He stated that the comment had been that "they" did not know what was needed but would get back to him if anything were needed, so they had installed the fence in December, which was the latest that it could be installed prior to the winter season, a year ago

He discussed details of the change, from six feet to eight feet, saying any fence seller had eight-foot fences, and this would be useful for sports enclosures. He said the existing properties would come into compliance, adding that the Town probably could get fee income, as a permit would be required for any fence or sports enclosure exceeding eight feet in height in any residential district. He discussed the stipulations, saying that road sight-distance would not be hindered, as the eight-foot height would only be allowed from the home to the rear of the property, with the fence being built more strongly than now required. He said the intent of this petitioned article was to help modernize the existing ordinance and to enhance the rights of individual property owners and allow them to protect their property, adding that it would bring Hudson in line with other surrounding communities. He noted that fence companies now offered many more styles, with safety for taller fences, leading to enhanced privacy. He asked the Board to vote in favor of the ordinance.

Ms. Margaret Larocque, 6 Chapin Street, said she had heard a lot of people from the Rena Avenue neighborhood, wanting to have a right to pursue happiness in their homes and to avoid conflict, saying she was standing here after three long years and had not seen any compromise. She said her concern was that the Town really needed to look at the idea that one size did not fit everybody, and

there should be a latitude and freedom so that her daughter's family could use their property, noting that her daughter's family had not been able to use their pool for the last two years. If anyone of us were violated, she said, the first thing we'd say would be we've got to pull together with our security. She said her daughter had tried to do the right thing, and had been told the speaker would get in touch with her but never had. She said the fence did not change the aesthetics of the town and did not cause a danger. She then concluded by saying this was a move that the Town needed to make, saying people deserved to know what to do when they came for help.

Ms. Becky Radziewicz, 49 Burns Hill Road, said she was speaking in favor of herself and her siblings, noting that they had gone on Facebook, with over 400 members now in the group, with numerous messages in support of them and telling them that the current fence ordinance was outdated and should be updated. She said the current ordinance was from 1994 and it was outdated. She said she had been away at school for the past few years, but she had felt better for the safety of her family after the fence went up.

Ms. Joanne Radziewicz, 49 Burns Hill Road, said she was very negatively affected by the current ordinance and was in favor of the proposed ordinance, saying she saw houses getting bigger and hillside properties being developed, with houses closer together. Saying that a 6-foot-high fence was not enough for every person, she said one might say that one could appeal to the ZBA for a higher fence, but she would wish anyone who tried to do that good luck. She said she had gone to Town Hall to ask what they needed to do, saying she had asked for guidance and made it clear that it was urgent, and was told they did not know if they needed anything but they would get back to her. Nobody got back to her, she said, even though she had made probably eleven phone calls and nine visits to Town Hall in the following nine weeks, so she had taken responsibility, and they put the fence in. If the fence had to come down, she continued, they would fight that battle, but in the mean time they were trying everything they could to alleviate this problem, not only for themselves but also for anybody who came along after them, and for the multiple people who were already in violation. Now that she had that fence, she said, it was the best thing she ever owned, and she would be sad to see it go. She said they had the support of the town's voters, and there needed to be flexibility, citing buffering as an example. She said this ordinance would let people with sports fences come in and file for a permit, and she expressed hope for the Board's approval.

Ms. Paula Machalski, 1 Rena Avenue, said she had been told that a wall could be built under the fence to any height, but she was not sure that was true. She said she had come across an incident in which a 6-foot fence was put on not-flat land, making it much higher, saying she wondered how that went.

Ms. Chadwick said it had been brought to her attention that this situation was not addressed by the Zoning Ordinance, saying it probably was something that had to be dealt with, but the ordinance did not say. Mr. Barnes said HTC §334-12 started out by saying "all fences and walls," so he would interpret that to include walls. Ms. Quinlan and Chairman Russo noted that berms were not included, with

Chairman Russo adding that there were certain ways to get around the regulations if one had the room to do it.

Margaret Larocque, 6 Chapin Street, said she also had a concern in that it was costing her family \$250 a day, saying this was sad, as they did not have that money, and she did not know how the court would ever decide. She said they did not have a permit for a good reason, and she asked if the judge were really going to say they owned the Town \$50,000. Ms. Chadwick and Chairman Russo said the Planning Board did not have an answer for that. Mrs. Larocque said there should have been some form or something with two homes so close together, so that the situation would never come to this.

Mrs. Joanne Radziewicz, 49 Burns Hill Road, said she wanted to clarify that they had checked with other communities in the area, finding that many of them did not have fence ordinances at all. She said it was a very expensive path to put up fences over six feet tall, so not everyone would do it, but the capability should be there for people who needed it.

No one else coming forward to provide input, Chairman Russo closed the public hearing at 10:32 p.m.

Mr. Barnes said he had looked at the zoning ordinances for the adjoining communities of Pelham, Litchfield, and Londonderry, finding they all seemed to have limits of six feet in height as the standard. In his opinion, he continued, allowing an 8-foot fence without any permit would be too high. He then said he would not vote in favor of the article as written, as it appeared to take away all of the Planning Board's ability to regulate fences on nonresidential properties, meaning that the Planning Board would lose a lot of its site regulation purview. He referenced Subsection D in the existing ordinance, noting that it covered all, while the new Subsection E limited the Planning Board's ability to regulate fences less than 10 feet in height on business properties.

Ms. Chadwick thanked the petitioners for coming before the Planning Board, saying they had done a lot of hard work and she could appreciate what they were trying to do, but it might have been a better idea to have come to the Planning Board so that they could work together, as had been the case with the electronic moving signs ordinance, which had started as another petitioned article the previous year—citing, as an example the wordage that had been used in the proposed article and problems with residential vs. business districts, as referenced by Mr. Barnes, saying it was unclear which areas would be affected. She said it would not be clear from the proposed text whether she, as a resident of the G zone, would be able to put up a fence. She said she was also worried about people circumventing the existing ordinance by putting a fence on a stone wall or backfilling the property to get additional height, expressing a belief that this ought to be in the Zoning Ordinance. As much as she wanted to agree that some fences should be more than six feet high, she said, and that there was a need for higher fences for individual situations, she felt they had to come back and work with the Planning Board and the ZBA to get an ordinance that everyone would be

comfortable with, but they were now up against the deadline and there was no time to rewrite the article.

Town Planner Cashell said it was not just this community, saying it was nationally recognized that residential fences should be restricted to six feet because of the safety issue, with reinforcements needed. He said homeowners liked to put these up at will—adding that most fences at Home Depot and Loews were six feet in height, because anything higher would be knocked down by the wind.

Mr. Radziewicz asked for permission to speak. Chairman Russo noted that the matter was now before the Board, saying he would recognize Mr. Radziewicz if some member of the Board requested that. No request was brought forward.

Selectman Maddox said the Radziewiczes kept saying that no one had got back to them, but they had been told at the very least that they had to go to the ZBA. He said everyone knew that no judge was going to impose a \$50,000 fine. He said he agreed with some of the other speakers, saying the discussion had brought up things that should be looked at, but the existing text blew away the commercial properties. He said things needed to be done, but he could not support it as it was written tonight.

Mr. Hall asked if Mr. Radziewicz had gotten any advice as to how to go about this process. Mr. Radziewicz said they did not, saying he did not know he could go to the Planning Board. Mr. Hall said it was unfortunate, but the Planning Board could not change the language of the article at this date, saying rewriting or ordinances was a serious matter and could not be taken lightly, but the Planning Board had no latitude with respect to a petitioned ordinance change, which took time. He said the way to do that was to come before the Planning Board in June or so and see what had to be done. He said he was in the same position as the other members, feeling that this was not a way to create a good ordinance, as there would likely be more problems in the future. He said the discussion had to be open, with everyone having the ability to talk and to discuss the issues.

Chairman Russo said he hoped this would not be the last time the Board saw Mr. Radziewicz here, saying this represented a lot of work that had been done for the Board.

Ms. Chadwick noted that the article for electronic signs had started last year, had been turned down, and those people had then come back going through a number of workshop meetings, with the result that there was now an article being proposed that would be good for the town. She urged the Radziewiczes to come in and talk to the Board, adding that the E-mail addresses for all members were on the Town's Website.

Ms. Stewart said it was the applicant's responsibility to contact Town Planner Cashell and get on the agenda, as the sign people had done.

Mr. Schneiderman asked what the Planning Board could do here now to help the Radziewicz family. Chairman Russo said he had heard other members saying a YES vote would jeopardize other parts of the Zoning Ordinance.

Selectman Maddox asked if the Zoning Administrator had looked at this text. Town Planner Cashell answered in the negative, saying he had gone over it with Town Counsel.

Ms. Chadwick moved to disapprove for the 2010 Town Warrant the petitioned zoning amendment to amend the Town's Zoning Ordinance, §334-12. *Fences and similar enclosures--i.e.*, to change the maximum "by right" 6 ft. in-height fences to 8 ft. in height, and to amend certain construction standards for the installation of 8- ft. (or greater) in-height fences—noting that this petition also included proposed new Subsections A through I in said § 334-12, thereby replacing and/or amending the language and/or order of existing Subsections A through F.

Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Barnes clarified that the article would be on the warrant, but would be listed as being not recommended by the Planning Board.

XIV. OTHER BUSINESS.

A. Tokyo Joe's 1 Winn Avenue

Chairman Russo noted that someone had been waiting all evening, saying the review of the minutes of past meetings would be deferred to the next meeting.

Town Planner Cashell identified the gentleman in the audience as being the new owner of the former Gelato Ice Cream Cafe on Winn Avenue, saying he had wanted to come in and explain to the Board what his proposed business would be and to explain that it would not require any more parking.

Mr. Matt Davine, of 24 Copeland Drive, said he was the owner of Tokyo Joe's martial arts studio and that he felt there would be no change, saying most of his students were kids being dropped off and the parents then went to Valentinos or elsewhere while the students were in class. He said occasional events would be at the high school or some other rented facility. He said he had two other employees, noting they would be staggered.

Chairman Russo asked how many studios would be in the building. Mr. Davine said there would be just one, with just one class at a time.

Mr. Barnes asked how many students would be attending. Mr. Davine said 20 was his largest class, with a lot of those being siblings, involving drop-offs or carpools. He said his classes ran for 45 minutes.

Ms. Stewart said she had been told there was an apartment in the building, which was not part of the original plan. Mrs. Erica Davine, 24 Copeland Drive, said there was not an apartment, saying there was a bathroom but no kitchen; she expressed a belief that it had been listed that way because it had potential, but it was not an apartment.

Selectman Maddox said there were 11 parking spaces. Mr. Davine demurred, saying there were 20. Selectman Maddox asked if he were saying that they could operate with no additional parking. Mr. Davine responded "Absolutely." Selectman Maddox said this met his criteria.

Chairman Russo asked what the parking regulations were with respect to dancing studios. Ms. Quinlan said there were none listed.

Town Planner Cashell said there was always a matter of one parent picking up multiple kids.

Mr. Davine said he had been doing this for four years, and he had really scheduled his classes so that the transition interval would not be a problem.

Mrs. Davine said they had previously been operating next to Soucy's with much less parking, and had not had any problem.

Ms. Chadwick, having examined the regulations book, said there was no such specific use in the parking regulations.

Ms. Stewart suggested that a flyer with a road map be provided for Open House events, so that people would know how to move through the area and get out. Mrs. Davine said they could put it in the manual that was given to all students. Selectman Massey expressed concern about queuing for left-hand turns, saying it would be a lot easier if vehicles turned right, as had been described by Ms. Stewart.

Town Planner Cashell noted that no complaints had been received after the Davines moved in.

Chairman Russo confirmed that the Board was okay with the plan. Selectman Massey said it was a change in use, asking if this did not mean that a site plan was required. Town Planner Cashell said it was brought up at the last meeting that there would be no structural changes, saying it really was not a true category change, adding that this was probably less of an impact than the Gelato Ice Cream Café had been. He said the Zoning Administrator would be okay with this if the Planning Board was.

Ms. Chadwick moved, based on the representations made tonight by the applicant, that a formal site plan review by the Planning Board would not be necessary for the proposed change of use from an ice cream restaurant to a martial arts studio. Mr. Hall seconded the motion.

Chairman Russo asked Selectman Massey to vote in place of Selectman Maddox, who had stepped out of the meeting room to handle a cellphone call.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

VI. CORRESPONDENCE.

Ms. Chadwick asked about the letter canceling the hearing for the Cormiers. Town Planner Cashell said he had received the letter, saying the Planning Board was scheduled to have Atty. Buckley come in for a meeting with the Board at the February 10th meeting. Ms. Chadwick said why the Board should meet with Atty. Buckley in February if it was putting this off until April, saying not everyone would remember what was said. Town Planner Cashell said the reason for deferral was that the co-owner was going to have surgery and the attorney would not be around. The consensus of the Board was to postpone the meeting with Atty. Buckley until the April 7th workshop meeting.

Selectman Massey noted that Town Planner Cashell was free to go, as it was after 11:00 p.m.

Chairman Russo noted that he had received a handout about a Hands-On Web Soil Survey Workshop scheduled for January 7th, saying that members could request a copy a copy if desired.

VII. PERFORMANCE SURETIES

No **Performance Sureties** items were addressed this evening.

VIII. ZBA INPUT ONLY

No **ZBA Input Only** items were addressed this evening.

IX. DESIGN REVIEW PHASE

No **Design Review Phase** items were addressed this evening.

X. OLD BUSINESS

No **Old Business** items were addressed this evening.

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XI. NEW BUSINESS/PUBLIC HEARINGS

No **New Business** items were addressed this evening.

XII. OLD BUSINESS

No **Old Business** items were addressed this evening.

XIV. ADJOURNMENT

All scheduled items having been addressed, Ms. Stewart moved to adjourn; Ms. Chadwick seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor.

Chairman Russo then declared the meeting to be adjourned at 11:10 p.m.

Date: February 19, 2010

Vincent Russo, Chairman

J. Bradford Seabury, Recorder

Terry Stewart, Secretary

These minutes were accepted as amended following review at the 03-03-10 Planning Board meeting.

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**HUDSON PLANNING BOARD Meeting Minutes
January 6, 2010**

Page 24

The following changes were made in accordance with the Board's review of these minutes at its March 3, 2010, meeting:

Page 11, last line of 2nd full paragraph — “wit” was changed to “with,” so that the phrase now reads “with a new notice”

Page 18, 4th paragraph, 4th line — “vole” was changed to “vote,” so that the sentence now reads “He then said he would not vote in favor of the article as written”