

**The Board of Trustees of the Village of Westhampton Beach held their Regular Meeting on Thursday, November 5, 2009 at 7 p.m. in the Municipal Building, 165 Mill Road, Westhampton Beach**

**PRESENT: Mayor Conrad Teller  
Deputy Mayor Toni Jo Birk  
Trustee James Kametler  
Trustee Joan Levan  
Trustee Hank Tucker**

**Clerk Treasurer Kathleen McGinnis  
Village Attorney Hermon Bishop**

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Mayor Teller opened the meeting with the Pledge of Allegiance and then asked for a moment of silence for John Bachman. He said he was a dedicated volunteer fireman, dedicated ambulance worker and as far as he was concerned, he died too young.

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**Public Hearings:**

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**Cablevision Franchise Agreement (adjourned from 10/1/09 meeting)**

Mayor Teller said this was being held over until next month. He made a motion to adjourn this hearing until December 2, 2009. Seconded by Deputy Mayor Birk and unanimously approved. 4 Aye, 0 Nay

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**Hampton Synagogue Special Exception**

Mayor Teller opened the Hampton Synagogue Special Exception hearing and asked if anyone would like to address the Board.

Jim Hulme, of Kelly and Hulme law firm, advised he was the attorney for the Hampton Synagogue and said as you will hear tonight and as I am sure you are aware, this was certainly a long time in coming, but he was happy to be at this stage of the process. He said they were before the Board for a Special Exception permit as required by Article 8 of Chapter 197 of the Village code to change the status of a structure located on the synagogue property at 154 Sunset Avenue that had been in the past CO'd as a single family residence and to change that status from residence to synagogue offices, meeting room and hall, as well as facilities including a kitchen for the serving of kosher foods for functions run in association with the synagogue and its activities. He wanted to be very clear that they were not looking to change the structures as they exist today and as they have existed since almost 2000. They were not actually looking to change the use that they have been put to. He explained they were really just looking to have the CO catch up with what has actually been going on at the facility. He said he would show the Board a site plan tonight and what is on that site plan, except for some changes to the landscape and some of the outdoor areas as discussed and required by the Planning Board is all you will see that is different from what has been there for many, many, many years. He said the building which was originally CO'd as a residence is there now to support the various activities of the synagogue including offices and meetings and things like that. Typical of the events that have been run in the past at the facility include the Saturday Kiddush, Friday night dinners, Thursday night author series, Sunday morning breakfasts, community sings, Sukkoth dinners, holiday concerts, some of which have food service associated with them, some of which do not have food service associated with them. That is the nature and extent of the non-office activities that that facility has been put through over time. The synagogue itself is located in the R-4 district, but it is surrounded on two sides by the B-1 zoning district. The structures as originally built and as they were subsequently modified, he believed, comply with all of the zoning setbacks as required in the R-4. In addition, the code specifically provides religious and educational use as being permitted in this residential zone, subject to the special exception permit that

we are seeking from the Board at this time. He thought it might be useful and helpful in answering some of the questions that the Board needs to answer in evaluating our application for the special exception permit to look at the history of the site itself. Back in 1993 there was a site plan review of this site, which was formerly owned by the Suffolk County National Bank and was acquired by the synagogue at or around that time to construct what was described then as a synagogue and a rabbi's residence. That ultimately matured into, in 1993, an approval of the site plan and the special exception permit as required at that time under the Village code and the structures were built. Now, those approvals at that time carried with them, the approvals indicated certain findings, certain conditions and certain restrictions. He felt it would be useful to look at them, at least briefly because some of what we are asking for now is a modification of some of those original requirements. But in any event, the Planning Board at that time and the Board of Trustees found that the site required fifty-two parking spots and further required that twenty of those were to be built with seventeen of them to be land banked and another fifteen waived pursuant to the Trustees authority under the Village code. The arrangement for the parking was approved, he believed, because he was not really representing the synagogue back in those days, based on the orthodox nature of the synagogue and the availability of off-site parking, including the bank that still exists next door. In addition, the approvals required a forty foot buffer on the east side of the building, restricted lawn area berms, lighting requirements, drainage requirements and other similar and typical planning requirements. One specific requirement we will talk about in a little more detail relative to the current application required that the refuse and the garbage be contained only in cans and that a dumpster was specifically not permitted on the site and that those cans be screened from view and that they be at least sixty feet from the eastern property line. The approval went on to also indicate there would be no commercial catering and indicated in addition, that that approval would lapse when it ceased to be a temple or other uses not contemplated by the original approval came to pass. So, those were the general conditions under which the original synagogue and the other structures were built. As the use of the residence, which was never really used for very long as a residence, changed into the offices and a meeting hall for the synagogue, there was an application in 2000 to expand the footprint of that residence. In retrospect, what we are seeking now probably should have been dealt with then, but for whatever reason, it was not. The residence was removed, rebuilt and another CO for a residence continued even though that was not really the character or nature of the use of that structure going forward. So, in around 2003 we came back to the Planning Board to actually define what that building was being used for and have the entire site reviewed again in light of that process and to ultimately seek to have the CO changed in the manner that we described tonight and to receive the permits that we are requesting tonight. We spent quite a bit of time from 2003 until September 10, 2009 before the Planning Board, a lot of very good efforts, a lot of very good thoughts from the Planning Board over the years and particularly the last couple of years as we've come to completion. Some really good effort, some really good discussion was had about the use of the site and how it could be better used. But in any event, over that time there were a number of different areas that were discussed at length and he thought he had identified what he felt are probably the more important of those. There were many, many issues that were discussed and resolved as we went along, but from that respective, parking was an issue that was discussed at length, the buffer area that surrounds the premises, the potential use of a dumpster at the facility, handicapped access and handicapped bathrooms, food service use and the septic system at the subject property. The first thing we spent a fair amount of time talking about was parking. Remember that in the context of this application, the parking we were talking about is, the building we were talking about is not the synagogue itself, but was the other building, the office building if we can call it that.

What we did at that time is we analyzed the changed use of that building and the uses of that building to identify what parking load would be generated by the site because of that change in use for that building. What we found was that the number of parking spots required for the potential uses of the office building were less than the number of parking spots that the Village first determined back in 1993 were necessary for the project. Taking that fact into consideration and also looking at the fact that the number of spots that we were required for the office use itself were less than the number of spots, I believe were less, than the number of spots that were actually constructed. Also, taking into fact the same people who would use the synagogue would then use the building, so it wouldn't be two groups of people simultaneously using the synagogue building and the meeting hall. I believe we have convinced the Planning Board at least, that the parking that we provided was adequate; the parking that was provided on the site was adequate for the changing

use that we are proposing for the office building. Although not directly related to the relief that we were seeking, since this was a full site plan review of this site, there was considerable discussion over time about the parking in general that was created in that part of the Village over time. As I indicated to begin with, this temple when originally contemplated and to this day, is an Orthodox temple. As we discussed many evenings at the Planning Board, that would require the people who are, as I understand it, who are truly Orthodox Jews would not be driving to the temple and more importantly, the Rabbi could not be seen to encourage people to drive to an Orthodox temple and that is why that parking lot is often closed during services. Having said that, obviously people are driving to the service but unlike, well like any other church, I don't think the Rabbi can stand at the door and say well, you drove, you can't come here. That is just not the way; I would think that is the way religion works in this country for any of the denominations, so there is certainly a difficulty created in the neighborhood because of that, more so in the summertime than in the wintertime I believe, but certainly an issue. So, we engaged in some very productive discussions with the Planning Board about strategies that could be employed and other things that could be employed to at least try and lessen the impact of this circumstance. We developed a couple of different things. One of them was this concept of training the security guards to inform people where legal parking is available, municipal parking is available at other nearby locations. Another thing that we contemplated was the posting of a small, discreet sign on the site itself identifying where some of this alternative parking is. In addition, I believe we discussed the possibility of entering into the monthly letter of the synagogue more information about parking and where other parking was available and where parking should be avoided. The other thing that we did during the discussion of that parking issue was we verified with the bank that their parking lot would still be available to the synagogue for some of the overflow parking that exists there. Although the original agreement with the bank indicated specifically that if the time came when the bank were open on Saturday mornings that they could no longer park there, the bank did in fact, reaffirm their commitment to allow parking at their facility subject to their own need for parking as well, since the bank was open. One other important fact was noted during the Planning Board process and that was at the time the original consideration was made as to the parking, the municipal lot down on Mill Road did not exist, I don't believe and now obviously it does exist, so it was a whole other opportunity for parking in the neighborhood that could offset the loss of some of the parking at the bank based on the fact that the bank was open. So, that was the nature and extent of our discussions concerning parking at the site. The other matter that we had some discussion about was the buffer and as you may recall or if you have reviewed the file, there is a buffer around a portion of this property, particularly the eastern side of the property which was there for a couple of purposes. One was to allow the landscape buffer that was planted on top of it to extend a little higher in the air to provide a little more buffering and also to assist in keeping the runoff from the property on the property itself. Some of those areas were in need of attention and that was discussed and remedied through the review process with the Planning Board. In addition, the area along Brook Road was identified as a problem area as far as water runoff and I don't think it's the case so much anymore because I think the Village has taken some steps, but there was a lot of water accumulating on the road on that side of the site and to the extent that the source of any of that or some of that was the synagogue site, you'll see when we actually look at the site plan in a few minutes that what was requested and what is being proposed and offered is some additional berming on the site on that part of the property to help contain that issue. The other thing that we talked about was this idea of the use of a dumpster as you may be aware, the idea of using the trash cans never worked at all as far as refuse removal so what ended up happening was that a dumpster was employed and the dumpster sat in the middle of the parking lot to the south of the office building and was, depending on where it was located, was in either full view of the people using the facility or in full view of the people passing by on the street, so it was a very unworkable solution, so we spent a fair amount of time with the Planning Board discussing how, not so much as to whether there should be a dumpster because it seems fairly obvious that there should be, but how to properly introduce that to the site so that it serves the purposes without having a negative impact on either the users of the facility or the neighbors as well. So, one of the things that we are going to need help with as far as the modification is, from this Board in this permit, is to allow us to use the dumpster and to allow us also to place the dumpster within the sixty foot restricted area that was established in the original decision and again we will see that when we take a look at the site plan itself. Another important issue since this building was going from apparent residential to office space and meeting

space was the handicapped accessibility of the building and the availability of handicapped bathrooms within the building and you will see in the packet we provided with this special exception permit application that we have provided a ramp to go into the building, we have provided a handicapped bathroom inside the building and I believe met the requirements for that purpose. The other feature of this application that we discussed was the food service use and the presence of a kitchen on the site plan. I reviewed earlier some of the typical activities where food is being employed. We are not asking and have never asked to be relieved of the restriction that no commercial catering be allowed on these premises. We are not looking to create a catering hall. We are just looking to have a facility where kosher food can either be prepared or reheated, often food is prepared offsite and brought here and is used in association with the services and the activities that are typically run at a synagogue, so that is why that is present. The other big issue that is actually not a Village issue, but it is one of the issues that took a long time actually, was the septic system. When we first started this project, Mr. Houlihan very correctly pointed out that the septic system that we had and was approved was a septic system that was approved for a residence and so he asked us and we were more than happy to oblige, to go over to the Health Department and meet with them and work with them to design an appropriate septic system for the uses to which we had planned to put this project to. We thought at the time that that wouldn't have been terribly time consuming, although somewhat involved, but I believe we started that process back in 2005 and we got our Health Department approval in 2008, so that was certainly a big part of the chunk of time that it took us to actually get through this process, but you'll see in a few minutes what that looks like as well. In general, those are the main issues that we talked about and I think that we resolved very nicely, with our discussions with the Planning Board and the reason why I believe them to be resolved is that in the not too distant past the Planning Board actually issued, back in September of this year, issued a resolution approving the site plan as modified over time. Mr. Hulme then went over the outdoor site plan with the Board. He said this is the copy of the site plan that was developed over time and was recently approved by the Planning Board. It exists of the very same synagogue that has been there since 1993 and the very same additional building that has been there since approximately 2000. He said it showed the introduction of the landscape and of a ramp that provides handicapped accessibility to the premises. It also shows proposed additional berming which, he believed meets the construction and design requirements of the Village as far as height and width to help prevent runoff from running off into Brook Road. He said that in the end after the many, many visits to the Health Department, they agreed that we needed to make no changes to the existing septic system that was installed when the building was expanded in 2000, but that we were required to install a smaller septic system to serve the kitchen in the back of the building. He said that after much discussion and moving it into several different locations and various photographic presentations, it was decided by all involved that the dumpster location should probably be down at the end of the parking lot and there is a paved area leading up to it, a fenced area around it and planting of arborvitae around that to mask and screen it from all directions. This particular location was selected based on the views of the truck being able to get in and pull the dumpster out and then put the new dumpster in without using any of the existing parking spots. He then went over the floor plan of all the various floors defining various spaces and their uses. He explained there was one internal change on the plan, which was the installation of a handicapped accessible bathroom and a demonstration that once you got into the building, you could actually get to the handicapped bathroom if you were in a wheelchair. He said that, in a nutshell, is the project that we are seeking the special exception permit for.

Trustee Levan asked if the capacity was 55 people.

Mr. Hulme responded he believed that was the capacity of that room, that was the number to which the design was leaning towards.

Mayor Teller asked if they would be willing to eliminate outdoor speakers.

Mr. Hulme replied that he believed the short answer to that is yes. The longer answer is he believes outdoor amplified music was something that was not permitted in the original approval and we are not seeking to change that, so, the answer is yes.

Village Attorney Hermon Bishop asked if he was talking about the 1993 approval or the 2000.

Mr. Hulme said he was talking about the 1993 approval, the special exception permit that was awarded in 1993. He said that based on his belief that it was there; he has no objection that it goes there.

Trustee Tucker said then there would be no amplified outdoor music.

Mr. Hulme answered that was correct.

Trustee Tucker asked if there was going to be more screening as well now, or as Mr. Hulme was just talking about screening in the back of the berm, was that done already.

Mr. Hulme said he thought that was done already. It was identified during the site plan process itself that there was a small area where some of the vegetation had been removed and he believed that had been restored, but they have to get in there to put the new septic system in and then restore that whole area anyway, so it will be restored to the requirements of the 1993 - there was recited in both the Planning Board and Trustees' decisions in 1993, there was reference to a landscape plan and that is certainly what we have tried to maintain and for the most part we have maintained and it will be restored, that area will be restored to that standard.

Deputy Mayor Birk said Mr. Hulme was saying you are not going to have any outdoor amplified music, does that mean there will not be any outdoor speakers.

Mr. Hulme said he thought it would follow from that, yes.

Mayor Teller asked if anyone else would like to address the Board.

Michael McBride, 21 Woodland Avenue, said his property is residential and the western boundary, which is the back line of his backyard, is a common boundary with the Westhampton Synagogue property. Specifically, his backyard abuts the synagogue parking lot. He said he has owned this property free and clear since 1985. He said he arises to speak as a party of interest with respect to the proposed expansion of the special exception use of the synagogue property to include its use as a catering facility and to speak in opposition to such an expansion. He said he was speaking from prepared remarks, which he may stray from, from time to time. He had made copies of his prepared remarks and asked that he be able to, in light of the conversations that go on here this evening, to be able to amend these remarks for the record in the next several days. I oppose the proposed expansion because such an expansion will damage the value of my property without consideration to me and because such expansion will irreparably harm my quality of life and the enjoyment of my home. I approach my retirement at the end of next summer and it presents a grievous contemplation to me. In order to make my remarks cogent, I shall find it necessary to frame these remarks within my knowledge and experience with the history of the Westhampton Synagogue. Although I am certain that the Village Board has made itself familiar with that history, I remain concerned that there may be important lapses in continuity as the constitution of the Board has changed over the years since the original special exception permit was granted to the synagogue some fifteen years ago. Firstly, and with regard to the nature of a special exception use, my understanding which I would like to share with everyone else in the room is that unlike an ordinary variance to establish zoning, by definition a special exception use is presumed at law to have an adverse impact on the neighboring properties. In other words, it is presumed that I shall be harmed from the get go without necessity to demonstrate such harm. Furthermore, the reason for allowing such harm to be visited upon neighboring properties is that there is some overwhelming greater good to the community that makes such harm worthwhile. It is my understanding that the concept of special exception use was borne out of the dire need of the expansion of facilities for the hospitalization and convalescence of wounded soldiers being returned from the battlefields of World War I. I am unaware that the Westhampton Synagogue has yet to demonstrate any such overwhelming reason to operate what I fear to be a semi-commercial restaurant facility and I acknowledge Mr. Hulme's remarks to the contrary. With all of the attendant problems of deliveries by vendors, purveyors, the accumulation and disposal of garbage, the comings and goings of large numbers of persons, all of this perhaps on a daily basis seven days a week as opposed to a more limited use of the property as it now stands. I would hasten to add, although this has also been addressed by Mr. Hulme that the synagogue still has

insufficient onsite parking, a matter that necessitated the Village having to amend many of its codes to accommodate the original building of the synagogue. In this regard the parking of persons attending the synagogue invariably spills onto, currently spills onto residential streets despite the availability of ample public parking and sidewalks and I was pleased to hear that the synagogue and hopefully the Village will be proactive in ameliorating and abating this situation. Again, I perceive these disturbances of the residential community expanding to a week wide situation. I would also remind the Board and others in this room, who may not have been around fifteen years ago, that the original special exception use permit for the synagogue was for an orthodox Jewish temple and rabbi's residence. If you go back and read, and I have had a chance to review that today myself, but re-read the statement that I made to the Village Board at that time, you will see that I and others foresaw and cautioned the Board with regard to this presently proposed expansion of use as a catering facility. In consequence thereof at the time, I then petitioned the Board in writing to include a series of covenants to the original special exception permission that would prevent catering at the property, which covenants were accepted by the synagogue then and there on the floor of that meeting as proposed and as written. Among those covenants were restrictions having to do with dumpsters and more than ordinary household amounts of garbage, so on and so forth, all of which were directed directly to precluding the use of the property for catering and with particular attention and cause and concern with regard to deliveries and traffic in the parking lot and so on and so forth, during what otherwise would be peaceful hours of the day and the week and the night. The synagogue thereby agreed that it could satisfy the requirements of its orthodox Jewish ministry without catering facilities. I am not aware in the intervening years that the synagogue has been anything but overwhelmingly successful in providing its orthodox ministry to the community. I would argue that the proposed expansion of the use speaks to social and cultural, if not economic desires and not to the strict use of the property as an orthodox Jewish synagogue and I did not hear all of the synagogue's presentation, so I don't know that that matter was addressed or not. I, of course, don't have any hope of convincing the Village that it should take this matter to law, a matter of religious practice versus ethnic culture, but this proposed use of the property, in my view, is not warranted based on the original covenant that it was essentially made with the Village and with the adjacent property owners to put this special exception use in this very narrow sliver of land. I believe it cannot be justified, particularly when held up against the original covenants made by the synagogue with the Village to gain the use of this piece of land for, from the original restrictions that were placed on the property, "strict religious purposes". From my point of view, I cannot help but feel that the desire for this expanded use breaches promises that were made to me and other neighbors, several of whom have subsequently moved away because of the disturbances. I would also ask that if there is any economic motivation that accompanies the presumed religious, cultural and social motivation for this expansion use, that it be stated and I say this because it is not indeed uncommon for religious facilities to have all manner of activities, bazaars, barbecues, picnics, what have you, the Knights of Columbus, all of these things. But the synagogue originally agreed it could carry out its religious ministry, its religious purposes on this property with the restrictions that were imposed because of where the property is situated and I don't want that to be forgotten simply because there is some desire to expand that use that may be reasonable but, however, was previously agreed would not happen. I think that in this regard the burden of proof that the synagogue must have this use is on the synagogue and not on the neighbors like myself to prove that they should not have the use, since the presumption is that I am already adversely impacted by the fact that the synagogue is there. I could go into a litany of complaints that I have had to make over the years, some of them starting immediately after the synagogue opened with regard to the placement of the dumpster on the property which was precluded at the time, restricted, the dumpster was placed right back here in the corner of my property. It had occasioned some real problems with hordes of flies because the thing was open and overloaded and other than having captured a mouse in my kitchen several winters ago, this is the only time I have ever seen rats in the Village. So, there has been a lackadaisical attitude, in my experience, with regard to the neighbors in many of the synagogue's practices over the years. In the absence of the defeat of this proposal, I would propose in the interest of fairness and equity to myself and other neighbors, the abatement of the adverse impact of the proposed catering as follows, (some of these have already been addressed by the synagogue). That the onsite preparation and/or food service be restricted to occasions where the consumption of food and drink is traditional or ritual accompaniment to orthodox Jewish worship and practice. That any onsite preparation and/or food service not be available for third party catering, but only for functions of the

Westhampton Synagogue (which you have addressed). That all deliveries and pickups by vendors and/or purveyors, as well as the servicing of dumpsters and/or other garbage trash needs be conducted on a Monday through Friday, during the hours of 9 AM and 5 PM. That all activities that require the accommodation of large groups of persons be scheduled so the synagogue property is quiet by 10 PM, Sunday through Thursday. That effective measures be taken by the Village and the synagogue to prevent parking on residential streets by persons attending the synagogue, (which again you have spoken to, I'm not sure satisfactorily, but we are aware of the problem). That the forty foot setback between the synagogue structures and its western property line be maintained and the proposed new dumpster location is within the forty foot setback, which was an issue of mine that was widely publicized at the time because the original design of the synagogue had it ten feet from these neighbor's property line and because of, I think of my actions and complaints, it was moved forty feet away and now there is going to be an incursion here – it might be acceptable, but I think it is a matter of concern to me and to others. That when and where on the common property line, an abutting residential neighbor of the synagogue shall so desire, that the synagogue shall erect a green vinyl clad chain link fence with in-fill slatting, so as to completely obscure from..... I would point out that the berm that was part of the original site plan is at its highest here in the middle, it tapers off at either end, it is non-existent right here behind the property line, it simply does not exist. In that regard, that the synagogue shall renew the landscape buffer zone on the boundary zone on the boundary here, particularly right here where nothing has been touched of late or for many years on its western boundary to the buffer zone's full depth of twenty feet with mature trees and shrubs, so that the synagogue parking lot, terraces and open spaces are completely obscure from the view of the residential neighborhoods, hopefully up to the height of the residence's second story windows. Similar to this and this is in addition to my request, the last plans of the synagogue that I saw before it was built provided that the parking lot would be lit with bollards, which are lights low at ground level on stubs. It was completed with lights on tall standards and there is spillover into my yard. I would ask that going forward that that lighting be replaced with bollards, like it was my original understanding would be the case, or if standards must be used, that they are placed so that the lights shine away from the residential properties. Finally, that the Village going forward entertain and draft, and this is not a part of any grant of this special exception use, but something that I would ask the Village to consider, that the Village entertain and draft for consideration, an ordinance that would with respect to special exception uses, a schedule of increasing fines be created whereby when the holder of a special exception use permission breaches the limits and/or restrictions of that use, the holder would incur a substantial fine which would be substantially increased for each successive breach of any kind until there have been no violations for one calendar year, at which time a subsequent fine would revert to the lowest amount of the schedule. My experience has been that various transgressions of the original covenant placed on the original special exception use as an orthodox Jewish temple and rabbi's residence have been violated many times through the years and that there seems to be no compunction and perhaps it's just a matter of continuity from one group of employees or one group of people servicing the synagogue to another, but there's no continuity, but the same kinds of issues seem to occur again and again from time to time, particularly with regard to garbage, particularly with regard to refrigerated trucks parked in the synagogue parking lot with the generators running all night long, with regard to other kinds of traffic, not the least of which is the servicing of the dumpster at 6 to 7 o'clock on Monday morning. These are the kinds of issues that the desire of the synagogue to be able to perform its religious, ministerial, cultural and social offers to this community and to our community seem to overlook and I think that this proposal at this point in time has overlooked, too, for the most part. Mr. McBride said there was one other thing, on the amplification issue, he had raised his hand because originally when amplification was discussed, it was said that was, of course it was, because this was an Orthodox establishment and was only going to be active on the Jewish Sabbath that mechanical amplification was not an issue. Since then, of course, they came up with some devise that allows them to use mechanical amplification. So, that was the origin and why he believed there may be no consideration of amplification in the original special exception permission.

Bennett Brokaw, 31 Woodland Avenue, said his house is directly behind the synagogue property and a lot of the things have been covered by both sides here so far tonight. However, in the event that a special exception is granted, he would like some language to be included that would disallow the use of the speakers and amplification because living

there twelve years, on occasions we literally had to move our barbeque inside because the noise was so horrific. So, in consideration of the neighbors, it would really be a just thing to do to agree not to have the amplification, but memorialize it in this special exception if it is granted.

Dean Speir, 256 East Main Street, felt this was a major application in front of the Board tonight and before they act on it, he would ask that each member of the Board review the minutes of the, he believed, the only multi-board meeting in the history of the Village in which the Planning Board and the Village Board were assembled with representatives of the Zoning Board, which he chaired at the time, so the synagogue could come in and make a comprehensive application of what their intentions were, what they wanted to do and they had their engineers and all their professional people. He asked the Board to review that to see how the Rabbi, Marc Schneier, proposed what he proposed and what he averred would be happening at that location when the synagogue was completed, just to familiarize yourself of what was intended in the synagogue's own words and their own application and where we are now.

Carol Matthews, 61 Brittany Lane, asked if this is exempt property from taxes and do they file every year and don't they have to state on there the use of that property for them to be in an exempt status. She said the thing that really got her was if they were approved for a residence and from what Mr. Hulme says, no one ever occupied that house. So, what was that building used for all during those years and why didn't the Village know.

Mr. Hulme said regarding the amplification, as he had indicated a couple of times, that is fine, if that is going to be prohibited, it is prohibited. He said he had taken a quick look and has to agree with counsel that it is not in the original special exception and he thinks it must be something we had discussed before the Planning Board and he thought at that point in time we indicated that that was acceptable to us. He said that as he said in the beginning, people have talked about this as an expansion, but we are really just trying to identify what is going on there and what has actually been going on there for quite some time. So, he did not think they were looking to do anything differently than what we have been doing and by indicating to you earlier the list of activities at which food was served, what he is trying to suggest to you is that yes, food is served and the kitchen is used, but there is not an ad in the newspaper that says if you need a catering hall for your wedding or something like that, call the Westhampton Synagogue and we'll give you the space. That's not the intention of this use. The special exception permit as originally granted said no commercial catering. We understand that and we're not asking you to overturn that. We're just asking you to recognize the fact by us giving you the detail of what we are actually doing, we are actually narrowing what is possible, I would think, at that location that we have this use of food that is in association with an appropriate service or activity that is normally carried on at a house of worship, a synagogue being one such place. As to some of the other comments from Mr. McBride, they are really in the nature of planning issues, I think and I can't think of, except perhaps the original application for the synagogue, I can't think of another application that I have been involved in that has been reviewed at greater length by the Planning Board than this particular application. I would say however for the record that to the extent that this new special exception permit, if issued, changes some of the original grants to the extent that things remain the same – landscaping plan, lighting plan, those kinds of things – we're still subject to those, my clients are still subject to those requirements and if there is an area where the berm was supposed to be that it is not, Mr. Houlihan, I am sure, will be well able and capable to inspect this as we go forward with this, assuming we get the permit with the building permit and the actual changes to review the property to see where there are areas that need that kind of attention to return the site, the landscaping, the berms, the lighting, to what was originally required, except as modified by the current Planning Board approval.

Mr. McBride asked for the right of rebuttal to these last remarks. He thought Mr. Hulme's remarks with regard to making what is legal through the expansion of this special exception permission match with what has been going on points out my remarks to fact and implication that things have happened here that have been in breach of the original special exception use for many years. He thought this was a matter that leaves a neighbor like him to be concerned about what more will happen in the future, what increased sort of hegemonious expansion will occur. There are some other issues with regard to the synagogue, some of which are not yet resolved in which I won't bring up here now because

it is all speculative, but which could depending on how they fall out, further expand their ability to use these food service facilities to an extent that are not now being considered and in my view and my experience, the history of the synagogue has been expansive in terms of what has gone on there. So, I think that Mr. Hulme's remarks, particularly with regard to trying to making the special exception use match with what is actually being done there, is kind of a flip-flop, a reversal of the way these things are supposed to be done. They are supposed to stick with the agreement until they get permission for expanded use, not expand their use and then come back for permission.

Mayor Teller gave Village Clerk Kathy McGinnis a letter to be put into the record from Marie Mason of 29 Woodland Avenue with attached police reports. Mrs. McGinnis said it would be entered into the record.

Mayor Teller asked if anyone else would like to speak. There being no further response, he made a motion to close this public hearing. Seconded by Deputy Mayor Birk and unanimously approved. 4 Aye, 0 Nay

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### **Local Law 9/2009 - amend income eligibility for tax exemptions**

Mayor Teller opened the public hearing and asked if anyone would like to address the Board.

Mr. Bishop explained that this was a law that we pass every year and its substance is the same. It deals with increasing the income eligibility for senior citizens, individuals over 65 years of age and disabled persons. This year's increase was from \$28,000 to \$29,000 and that would entitle a senior or disabled person to have a reduction in assessed valuation of 50% and those same individuals can earn up to \$37,400 and receive a 5% reduction in assessed valuation or a reduction in taxes, which is the same thing.

Mayor Teller asked if anyone in the audience or on the Board would like to address this issue. There being no further response, he made a motion to close this hearing. Seconded by Deputy Mayor Birk and unanimously approved. 4 Aye, 0 Nay

Motion by Trustee Tucker:

WHEREAS, the Board of Trustees is considering amending Chapter 161 of the Code of the Village of Westhampton Beach in order to increase the maximum income exemption eligibility level for granting partial exemptions from real property taxes for persons sixty-five and over, and persons under disability; and

WHEREAS, a Resolution was duly adopted by the Board of Trustees for a public hearing to be held by the Board of Trustees at the Village Hall, 165 Mill Road, Westhampton Beach, New York at 7:00 PM on November 5, 2009 to hear all parties on a proposed Local Law entitled: "A Local Law amending Section 161 of the Village Code entitled 'Taxation';" and

WHEREAS, notice of said public hearing was duly advertised in the Southampton Press and posted at various public locations throughout the Village and

WHEREAS, said public hearing was duly held at the Village of Westhampton Beach on November 5, 2009, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof, and

WHEREAS, the Board of Trustees determines that this action is subject to Article VIII of the Environmental Conservation Law (State Environmental Quality Review Act), that it resolves itself lead agency, that it has reviewed the EAF Part I and lists this action as a Type 2 action requiring no further environmental review; and

WHEREAS, the Board of Trustees, after due deliberation, finds it is in the best interest of the Village of Westhampton Beach to adopt said Local Law,

NOW, THEREFORE, the Board of Trustees hereby adopts Local Law 9/2009 entitled: "A Local Law amending Section 161 of the Village Code entitled 'Taxation'," a copy of which is attached and made a part hereof, and the Village Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and to enter said Local Law in the Local Law Book of the Village, and to give due notice of the adoption of said Local Law to the Secretary of State.

Seconded by Deputy Mayor Birk and unanimously approved. 4 Aye, 0 Nay

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**Resolutions:**

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**Accept minutes of Board of Trustees Meetings**

Motion by Trustee Tucker:

RESOLVED, that the minutes of the Board of Trustees meetings of September 3<sup>rd</sup> and October 1<sup>st</sup> are hereby accepted.

Seconded by Deputy Mayor Birk and unanimously approved. 4 Aye, 0 Nay

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**Accept Departmental monthly reports**

Motion by Deputy Mayor Birk:

RESOLVED, that the Treasurer's report for August and September 2009, and the Police Department, Justice Court, and Building Inspector's reports for October 2009, are hereby accepted.

Seconded by Trustee Tucker and unanimously approved. 4 Aye, 0 Nay

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**Appoint part time Police Officer & authorize to attend Police Academy**

Motion by Trustee Kametler:

RESOLVED, that Kevin Nolan is hereby appointed as a part time Police Officer effective October 20, 2009 and is placed on an immediate leave of absence to attend the Suffolk County Police Academy to obtain the New York State Municipal Police certification.

Seconded by Trustee Levan and unanimously approved. 4 Aye, 0 Nay

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**Schedule Public Hearing for 2010/2011 Community Development Funding**

Motion by Trustee Levan:

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Wednesday, December 2, 2009 at 7:00 p.m. at the Village Hall on the allocation of the 2010 Community Development Block Grant funding estimated at \$12,000.

Seconded by Trustee Tucker and unanimously approved. 4 Aye, 0 Nay

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**Authorize renewal of HVAC Annual Service Contract**

Motion by Trustee Tucker:

RESOLVED, that the annual service/maintenance contract with Dynaire Service Corp. for the Village Hall HVAC system at a cost of \$7,311.00, is hereby renewed.

Seconded by Deputy Mayor Birk and unanimously approved. 4 Aye, 0 Nay

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**Authorize payment of small claims real property tax reductions**

Motion by Deputy Mayor Birk:

RESOLVED, that the Board of Trustees hereby authorize the payment of 2008/09 real property tax reductions in the amount of \$16,264.73 as a settlement of small claims as ordered by the NYS Supreme Court to the property owners specified on the attached list.

Seconded by Trustee Tucker and unanimously approved. 4 Aye, 0 Nay

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**Accept bid for municipal building office cleaning services**

Motion by Trustee Kametler:

RESOLVED, that the bid submitted by Professional Cleaning People, Inc. for the cleaning of the offices and windows at Village Hall and the public restrooms at the Chamber of Commerce office, at an annual cost of \$24,440.00 pursuant to the bid specifications, is hereby accepted.

Seconded by Trustee Levan and unanimously approved. 4 Aye, 0 Nay

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**Schedule public hearing on the Musnicki Change of Zone Application**

Motion by Trustee Levan:

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Wednesday, December 2, 2009 at 7:00 p.m. at the Village Hall on the application of Joseph Musnicki to obtain a zone change for a parcel of property situated at 95 Old Riverhead Road to Business-3.

Seconded by Trustee Tucker and unanimously approved. 4 Aye, 0 Nay

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**Schedule public hearing on Local Law to amend Village Code Re: Building Fees**

Motion by Trustee Tucker:

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Wednesday, December 2, 2009 at 7:00 p.m. at the Village Hall on a Local Law to amend the Village Code to increase various building fees.

Seconded by Deputy Mayor Birk and unanimously approved. 4 Aye, 0 Nay

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**Approve warrant for November 2009**

Motion by Deputy Mayor Birk:

RESOLVED, that the warrant for the general fund for the month of November 2009 in the amount of \$222,423.02 is hereby approved.

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**Public Discussion**

Phillip DiGiacomo said he has a piece of property at 257 Mill Road, which has been in the process of being subdivided for some five years. He said he was on the last leg, of which is the park fee. He said he is here to address the Board regarding the park fee. He said he received through counsel a preliminary calculation on the park fee on his two lots. He asked if the Board was at all familiar with this. He asked if they had the documents in front of them.

Mayor Teller replied no, that it would be downstairs in the Village offices.

Mr. DiGiacomo said that without them having copies of it, it becomes a little more difficult, but the facts are that there are many discrepancies in the assessment, in the appraiser's report and even in the mathematics involved with the computations arriving at the final park fee. He asked if the Board wanted him to review them item by item.

Trustee Kametler remarked that he did not know what we were dealing with, since he did not have a copy.

Mrs. McGinnis explained that this was the memo that Mr. Bishop distributed to everyone at the Work Session and he had reviewed it. She offered to go downstairs and make copies.

Mayor Teller indicated that was not necessary since this was being recorded. He told Mr. DiGiacomo to go right ahead.

Mr. DiGiacomo said the first item he would like to review is the draft resolution. The draft resolution on pages 2 and 3, the Village only provides.....

Mr. Bishop asked him to identify what resolution he was referring to. He asked if this was a Planning Board resolution.

Mr. DiGiacomo responded it was a draft resolution from the Planning Board regarding Phillip DiGiacomo, 257 Mill Road.

Mr. Bishop said this was finalized and we have a final draft. He said when we have a document that says draft, he questioned why we were not reading from the original document instead of the.....

Gair Betts, Mr. DiGiacomo's attorney, said he could provide the original. He said what Mr. DiGiacomo is reading from is in the original.

Mr. Bishop asked if it was an identical document.

Mr. Betts responded it was.

Mr. Bishop asked if this was the Planning Board determination.

Mr. DiGiacomo and Mr. Betts both said yes.

Mr. Bishop said this is the Planning Board resolution which was granted on June 11, 2009 and there has been no appeal of that decision at all.

Mr. DiGiacomo and Mr. Betts both agreed that was correct.

Mr. DiGiacomo said this resolution speaks in pages 2 and 3 about the Village only providing park land at a rate of three acres per 1,000 people. It says further that contrary, this three persons per 1,000 is contrary to the five or ten acres per 1,000 standard that is required to fulfill the needs of the Village. This application shall provide five acres per 1,000 people, which is fair and reasonable. He said his conclusion on that is because the Village.....

Mr. Bishop said it should have been five acres per 100, not.....

Mr. DiGiacomo said it says 1,000 people.

Mr. Bishop said that must be typographical, it should be five acres..... He said it should be five acres per 100 units is what the law calls for. He said five to ten acres per 1,000 standard, but the requirement under the code is five acres per 100 lots. He explained that these are findings of fact that were made by the Planning Board which this Board has nothing to do with; this Board cannot change the determination made by the Planning Board. The determination by the Planning Board is pursuant to a section of Village law that must be followed in order to require parks or in lieu thereof park fees. So, what you are reviewing with the Trustees right now is nothing they would have any knowledge of or anything that they could change.

Mr. DiGiacomo asked why it is in this document.

Mr. Bishop replied it is in the document because those are the findings of the Planning Board to make a determination as to whether or not a park.....

Mr. DiGiacomo asked if the Planning Board says five acres for 1,000.....

Mr. Bishop said no.....

Mr. DiGiacomo said someone says that here.

Mr. Bishop explained the law says five acres. What it is talking about is creating, it is talking about five to ten acre per 1,000 person standard of recreational park land and facility yield that is required to fulfill the park land and recreational needs of the Village of Westhampton Beach and that comes from studies of both the Village and the Town.

Mr. DiGiacomo said very good. How do we get from acres to people to acres to residences?

Mr. Bishop said because the Board made a finding that five acres per 100 lots is an appropriate amount of park land that should be given for subdivisions and even multi-family housing.

Mr. DiGiacomo felt it did not correlate one iota with five acres per 1,000, because if it did, that would mean you're at ten residences in every, ten people living in every unit.

Mr. Bishop told him he was misreading the determination. He said the determination is first making a statement as to the basis for establishing whether or not park area should be required at all. Then, it is making a finding as to whether or not, what the park area should be and then making a finding that the code does presently set forth the correct amount of park area that should be given by the developer. So, that is what that determination deals with and that has nothing to do with this Board. The only thing this Board is involved in is making a calculation, not on whether or not the park area should be given by the subdivider, but what the amount of park fee should be in lieu of granting a park. Your property, there is no place on your property for a park to exist, so the Board made the determination that in lieu of providing a park area that you are required to pay a park fee as in all subdivisions and in all multi-family developments in the Village.

Mr. DiGiacomo asked if Mr. Bishop was saying to him that every subdivision, every application is taxed at the rate of five acres per 100 dwelling units.

Mr. Bishop said that is correct.

Mr. DiGiacomo said it is no correlation whatsoever with any other code which refers to people.

Mr. Bishop said that is correct. He corrected himself, saying there was a recent change by the Trustees that on two lot subdivisions the amount was \$5,000, on two lot subdivisions, that would be the park fee set.

Mr. DiGiacomo asked if that were a cap.

Mr. Bishop responded yes, on two lot subdivisions.

Mr. DiGiacomo said this was a two lot subdivision.

Mr. Bishop said this was a three lot subdivision.

Mr. DiGiacomo said not by your calculations.

Mr. Bishop said yes, it is. He said Mr. DiGiacomo had two lots that are 40,000 square feet and one lot that is 32,000 square feet and when you look at the plans, it shows three lots, his own plan that he submitted to the Planning Board.

Mr. DiGiacomo said the appraisal is based on a two lot.

Mr. Bishop said the appraisal could have been based on three lots, which means.....

Mr. DiGiacomo said it wasn't.

Mr. Bishop said it was only on two lots, but it could have been, when you read the code it says an appraisal based on the entire parcel. To be fair to you, we only did the appraisal based on lots two and three, because we were going to give you the benefit of the doubt that you already had an existing lot.

Mr. DiGiacomo quoted page 2 of the appraiser's document wherein it says that "however, the market value of 257 Mill Road, lots 2 and 3, as if one parcel ready for development is required, this is the basis of the park fee as described in the Village of Westhampton Beach building code". He said so, they are incorrectly quoting the Village code. He asked if that was correct.

Mr. Bishop responded he didn't think they were incorrect, he thought that what they were doing and what the Village could do, is they could obtain an appraisal for all three lots. Instead, there was an appraisal for two. He told Mr. DiGiacomo if he would like the Village to go back and get the appraisal for all three lots.....

Mr. DiGiacomo replied no, he would like to know how the Village came to the conclusion that the Village code determines this.

Mr. Bishop explained because the Village took the position that you already had one lot. We're not going to tax you for that lot; we're not going to include it in..... What I'm trying to tell you is they are giving you the benefit of the doubt that you already had a lot, so they only appraised two lots as raw acreage. Now, if you could interpret the code and if you were to take a plain reading of the code, it could say, now wait, we should appraise the entire parcel which would include three lots. But, since you already had one lot, the way that the Village has operated with subdivisions is that we let the person, we give you credit for one lot and we will only appraise what is left. He said that is to your benefit.

Mr. DiGiacomo felt that on that basis this paper should have been based on 80,000 square feet, not on the total property of 112,000 square feet.

Mr. Bishop said it is based on the value of 80,000 square feet.

Mr. DiGiacomo said not here, according to this computation.

Mr. Bishop said it isn't. The computation that you see is five acres per 100 lots. Now, if

you look at it, one lot is 42,560 square feet, so that means that for every lot created, the factor is 2,178 square feet per lot for recreation area that has to be given or a..... and the formula is the appraisal amount of the parcel to be subdivided, which could be the entire parcel if the Village wanted to interpret it that way.

Mr. DiGiacomo said that is the way it is here.

Mr. Bishop responded it isn't. He said the value that your..... He said that is divided by the entire square footage. If you divide it by less than that, you are going to be paying more of a park fee. So, we are dividing it by the entire parcel, although we are only appraising for two parcels. What I am saying is your park fee is less than it arguably could be.

Mr. DiGiacomo said that is argumentative.

Mr. Bishop said no, it is factual. He said he could explain it to him five different ways, but he told counsel when he spoke to him about this issue as well, that what you are really saying is, I want you to charge me more for a park fee and I am saying that the Village is giving you the benefit of the doubt by crediting you with one lot and only doing an appraisal on two 40,000 square foot lots and not the other 32,000 square foot lot. And, based on the appraisal and the formula that is applied, the park fee is \$44,330.34 and that is using the code.

Mr. DiGiacomo said he understood that, but he wanted to go on to the appraisal analysis. On page 2 in the first paragraph it says that the report "may contain certain limiting conditions and/or assumptions which may affect the value report". Further in the second paragraph, "established value of the property as of 11/14/05". He said he was going to defer rationale on this date as to present time.

Mr. Bishop said the ordinance calls for the appraisal of the amount of the parcel to be subdivided at the time of the application, so the practice of the Village has always been that when the application is filed, that's the date that the appraisal is of.

Mr. DiGiacomo said he understood that. He said it further says in paragraph 3, "hypothetical conditions were used in the valuation of the subject property". In paragraph 4 it says, "the market value under the hypothetical conditions described in prior paragraphs". Now then, the appraiser goes on to evaluation methodology wherein on page 22 in the last paragraph it says, "the typical purchaser of such a property would be an investor. The typical investor would buy the property, subdivide it and therein sell the lots at a profit". He felt this subdivision analysis is not appropriate for this type of valuation. He thought this hypothetical valuation does not apply in this case. Number one, there is no sale or resale at a profit. Number two, lots number one with the house on it will be deeded to my daughter. Lot number three, the rear lot, will be deeded to another daughter, plan ready to build. Point number three is the history of the land is that it has been held by us for thirty-five years, it's been kept for family use. My conclusion is that the hyper theories used for appraisal does not coincide with family holdings, property for future family use. This was a very common practice in a community such as Westhampton Beach. He said the next item he would like to speak about is.....

Mayor Teller asked if he had brought this up to any of the Boards or the Building Inspector or.....

Mr. DiGiacomo said no and asked if he should have.

Mayor Teller said he thought it should be taken downstairs to the Building Department. He felt we were blindsiding the Village Attorney this evening here after he's worked all day and since Mr. DiGiacomo has a couple of technical questions there that need to be answered, he felt they should be answered by the Building Inspector.

Mr. DiGiacomo remarked he did not have deep enough pockets to come up with 44 grand.

Mayor Teller said we were hoping for a little bit, but he should make an appointment with the Building Inspector, come on in and we will be glad to answer your questions.

Deputy Mayor Birk asked regarding this subdivision, you said it's going to your daughters, so everything you're doing, it will be staying in the family?

Mr. DiGiacomo responded with the exception of the center lot, which he didn't know what he was going to do with.

Mayor Teller joked maybe that will be our new baseball field.

Mr. DiGiacomo said yeah, we'll make it a park. He said according to the appraisal, it's worth 800 grand. The park fee is 44. He asked if the Village was going to give him 760.

Mayor Teller said they were sorry to have put him in this position, but he could speak with our Building Inspector.

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Dean Speir, 256 East Main Street, said that all he knows is what he reads in the newspaper and he read in the paper today that the report which somebody here in this room thoughtfully provided to the newspaper has been received by the Village Board and presumably, Mr. Tucker's admonishment to it withstanding, have read the thing. He asked if Trustee Tucker had read the police report yet or not.

Trustee Tucker replied he had not.

Mr. Speir asked if there was any particular reason why not.

Trustee Tucker explained they had been advised by counsel that.....

Mr. Speir asked if this was Mr. Bishop or special counsel.

Trustee Tucker said multiple counsel, as well as Mr. Bishop. We have been advised that we should not have read the report pending the outcome of how, whether we'll be hearing officers or not hearing officers.

Mr. Speir asked if there was more than one special counsel.

Trustee Tucker said no.

Deputy Mayor Birk said it's not really special, it's our labor attorney.

Trustee Tucker said it was our labor attorney.

Mr. Speir said okay, I thought you said special counsel.

Trustee Tucker said no, you said special counsel.

Mr. Bishop said they had been given advice with respect to reading or not reading the report. As far as any other conversation as to what was said to them, it is privileged and I would advise them not to say any more about it.

Mr. Speir said okay, now what, what are you going to do with the report.

Mr. Bishop thought that was a matter for labor counsel to look into and for the Board to be advised by labor counsel before they take any steps.

Mr. Speir said okay, has the labor counsel communicated anything to you on this in regard to what steps may be taken.

Mr. Bishop said you are asking me again to discuss legal matters that are a matter of attorney/client privilege and I can't do that.

Mr. Speir said okay, not the specifics, but you decline to say whether you have heard back from them.

Mr. Bishop said he speaks to labor counsel all the time.

Mr. Speir asked but, on this matter?

Mr. Bishop said he can't talk about what I speak to labor counsel about.

Mr. Speir said fine. Now that it is front page news everybody is sort of wondering about it. You've got two officers on suspension, that means, I see you've just reported another one, a part time police officer, but he is immediately going on some sort of leave, presumably to, you've authorized him to attend the police academy. Is that with a mind for putting him on as a full time?

Mayor Teller said no, he's a part timer. He's going to school to be a part timer. They have to go to the same school.

Mr. Speir said okay, so you're still two down, two men down in the department. I realize this isn't the height of the season, but I'm just wondering what you plan on doing from here.

Mr. Bishop said he thought the Board was going to consult with labor counsel and decide what procedures and what to do at that point.

Mr. Speir asked if there was a time frame on this.

Mr. Bishop said he did not know that there is any time point set for this or established but, I assume that the Board is going to be taking action in the near future.

Mr. Speir said so, the Board has not decided or hasn't made any determination about whether there will be a hearing and if itself will be acting as hearing officers or whether they will be doing as I believe was done in the last decade, handing it off to an independent hearing officer.

Mr. Bishop explained that all of those issues would have to be addressed with counsel and members discussing this with counsel.

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Mayor Teller asked if anyone else would like to address the Board. There being no further response he made a motion at 8:32 p.m. to adjourn the meeting. Seconded by Trustee Tucker and unanimously approved. 4 Aye, 0 Nay

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Respectfully submitted,

Christine Owen  
Deputy Clerk