

APPROVED

# Town of Lansing

Monday, October 25, 2010 7:15 PM

PLANNING BOARD

## PLANNING BOARD MEMBERS

(\*Denotes present)

* Nancy Loncto	* Tom Ellis
* Larry Sharpsteen	* Lin Davidson, Chairman
Viola Miller	* David Hatfield
Richard Prybyl	
* Jeffrey Overstrom, EIT	
* Lorraine Moynihan Schmitt, Esq.	
* Robert Cree, TB Liaison	

### Public Present

Kurt Kabelac	Katherine Sannerud
Jason Moore	Kay Moore
Andy Sciarabba	Paul Southard
Dan Veaner	Jack Jensen
Mica French	Ruth Hopkins
Maureen Cowen	Edward La Vigne
Kathy Miller	George Breuhaus

### General Business

Lin Davidson called the Planning Board Meeting to order at 7:15 PM. Mr. Davidson inquired if there was anyone from the Public that would like to speak to the Board with issues other than the Agenda items. There were none.

The Chairman identified the Town Board Liaison, Legal Counsel, The Planning & Zoning Coordinator, the Clerk and Board Members. Mr. Chairman further advised the Public that the Town Board Liaison and Legal Counsel do not vote. The Town Board Liaison only part takes in the discussion when asked, and Legal Counsel advises accordingly.

### Public Hearing on SEQR Review – Lansing Associates

### Independent Grocery Store, North Triphammer Road, Tax

### Parcel # P/O 30.-1-16.22

Larry Sharpsteen made a motion to open the SEQR Public Hearing at 7:20 PM. Thomas Ellis seconded.

**VOTE AS FOLLOWS:**

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**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

## MOTION CARRIED.

There were no Public comments or concerns.

### Comments/Concerns;

Jeffrey Overstrom explained that a SWPPP has been submitted and reviewed by TG Miller's with comments sent back and addressed. Mr. Overstrom states he spoke with the preparer, Scott Gibson and David Herrick today and is confident that all questions and concerns were addressed.

\*Nancy Loncto arrived at 7:22 PM.

Larry Sharpsteen made a motion to close the Public Hearing at 7:23 PM. David Hatfield seconded.

### VOTE AS FOLLOWS:

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

## MOTION CARRIED.

Larry Sharpsteen requested that Mr. Overstrom obtain an email from David Herrick indicating that all his comments have or can be remedied per his conversation with Scott Gibson.

Legal Counsel recommended that Larry's concern be listed as a condition on the final approval.

The Planning Board reviewed Part I of the Short Environmental Assessment Form completed by the Applicant, and completed Part II by the Planning Board Members. No significant adverse environmental impacts or effects were identified in Part II by the Planning Board Members.

David Hatfield made a motion to declare a negative declaration. Larry Sharpsteen seconded.

### VOTE AS FOLLOWS:

**Thomas Ellis - Aye**  
**David Hatfield - Aye**

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**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

## **MOTION CARRIED.**

Larry Sharpsteen made a motion to adopt the following Resolution;

### **RESOLUTION No. 10-74**

#### **RESOLUTION OF THE TOWN OF LANSING PLANNING BOARD ISSUING NEGATIVE DECLARATION OF ENVIRONMENTAL SIGNIFICANCE RESPECTING SEQR ENVIRONMENTAL REVIEW OF THE LANSING MARKET SITE PLAN**

**WHEREAS**, Lansing Associates, (“Applicant”), has submitted for consideration and approval from the Lansing Planning Board of a Site Plan for the proposed Lansing Market, a 14,000 sq. ft. independent grocery store to be located on a 3.5 +/- acre parcel located on the Northwest Corner of North Triphammer Road and Town Barn Road, Lansing, New York and otherwise known as P/O Tax Map # 30.-1-16.22 within the B2 Zoning District; and

**WHEREAS**, this is an Unlisted Action under the State Environmental Quality Review Act which requires environmental review; and

**WHEREAS**, the Town of Lansing Planning Board has responsibility for approving or carrying out the action pursuant to State Law governing local environmental review; and

**WHEREAS**, the requisite General Municipal Law 239 Referrals of Article 12-8 and any interested and/or involved agency referrals have been duly effected by the by the Town of Lansing Planning Department, and those agencies have been given the opportunity to comment and any responses have been duly reviewed and considered by the Lansing Planning Board; and

**WHEREAS**, the Town of Lansing Planning Board duly noticed and opened a public hearing concerning the environmental review, pursuant to the State Environmental Quality Review Act (“SEQR”), of the proposed Lansing Market site plan application at Lansing Town Hall at 29 Auburn Road, Lansing, New York 14882 on October 25, 2010 and all citizens were given an opportunity to voice any concerns respecting the environmental review and to be heard thereon; and

**WHEREAS**, the Town of Lansing Planning Board, in performing its function in conducting an environmental review in accordance with Article 8 of the New York State Environmental Conservation Law – the State Environmental Quality Review Act (“SEQR”), (i) pursued its thorough review of the applicant’s completed Short

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Environmental Assessment Form (“EAF”) Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, and (ii) thoroughly analyzed the potential relevant areas of environmental concern of the project to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR Section 617.7(c), and (iii) reviewed and completed the EAF, Part II on the record and, if necessary, Part III;

## **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

The Town of Lansing Planning Board, based upon (i) its thorough review of the EAF, Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) its thorough review of the potential relevant areas of environmental concern of the proposed project to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR Section 617.7(c), and (iii) its completion of the EAF, Part II (and, if applicable, Part III), including the findings noted thereon (which findings are incorporated herein as if set forth at length), hereby makes a negative determination of environmental significance (“**NEGATIVE DECLARATION**”) in accordance with SEQR for the above referenced proposed action, and determines that an Environmental Impact Statement will not be required, and it is

**FURTHER RESOLVED** that the Planning Board Clerk deliver and/or file a copy of this Resolution with the following persons and agencies:

1. The Town Clerk of the Town of Lansing;
2. The Town Supervisor of the Town of Lansing;
3. All Involved and Interested Agencies;
4. Any person requesting a copy;

and further, that this Resolution be posted and published in accord with law, including delivery of a copy of this Resolution to the Environmental Notice Bulletin, 625 Broadway, Room 538, Albany, New York 12233-1750 in accord with 6 NYCRR 617.12.

Dated: October 25, 2010

Thomas Ellis seconded.

## **VOTE AS FOLLOWS:**

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

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MOTION CARRIED.

**Public Hearing on Application– Lansing Associates**  
**Independent Grocery Store, North Triphammer Road, Tax**  
**Parcel # P/O 30.-1-16.22**

Thomas Ellis made a motion to open the Public Hearing at 7:42 PM. Larry Sharpsteen seconded.

VOTE AS FOLLOWS:

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

MOTION CARRIED.

**Public Comments/Concerns**

Paul Southard: Requested that the Planning Board be aware of the lighting pollution and attempt to minimize. In addition, the noise produced by large trucks left idling.

Larry Sharpsteen advised Mr. Southard that the Truck Regulation is under the jurisdiction of the DEC.

Lin Davidson advised Mr. Southard that a Lighting Plan for this project has been submitted and the light impact is minimal. There will be full cut off lights which produce one or less luminaries.

Ruth Hopkins: Thanked Mr. Sciarabba for working with the Lansing Recreational Pathway Committee. Ms. Hopkins further stated Mr. Sciarabba is as concerned as the Lansing Recreational Pathway Committee with respect to safe pedestrian access at this intersection. People from the Community have already showed an interest in getting across the highway to this proposed business.

David Hatfield made a motion to close the Public Hearing at 7:43 PM. Thomas Ellis seconded.

VOTE AS FOLLOWS:

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

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## MOTION CARRIED.

Once again, a brief discussion occurred with respect to the Developer showing an allowance on the plans for an access route to the north onto Town Board Road. Mr. Sciarabba indicated there is plenty of room there for him to do that.

Larry Sharpsteen recommended that we add the following condition;

1. Something in writing from T.G. Millers acknowledging that their comments to Mr. Gibson have been addressed satisfactorily.

Nancy Loncto requested another condition being;

2. John Lampman from the Tompkins County Highway Division expand on his email of October 22, 2010 stating he has reviewed the SWPPP and has no problems with it.

Andrew Sciarabba indicated he previously advised Roger Hopkins of the Lansing Recreational Pathway Committee that he would gladly set aside a 10' of land for a pathway. Since that conversation, Mr. Sciarabba has pushed the location of his project back. Due to the unknowns at this point, this is a good faith situation at this time.

The Board agreed to insert the following;

3. The Developer has agreed to set aside a 10' of land for pedestrian access. It is the Developer's intention to continue to work with the Lansing Recreational Pathway Committee to establish an appropriate pathway for the site.

Nancy Loncto made a motion to accept the following Resolution;

### **RESOLUTION No. 10-77**

#### **RESOLUTION OF THE LANSING PLANNING BOARD APPROVING LANSING MARKET SITE PLAN**

**WHEREAS**, Lansing Associates, ("Applicant"), has submitted, for consideration and approval from the Lansing Planning Board, a Site Plan for the proposed Lansing Market, a 14,000 sq. ft. independent grocery store to be located on a 3.5 +/- acre parcel located on the Northwest Corner of North Triphammer Road and Town Barn Road, Lansing, New York and otherwise known as P/O Tax Map # 30.-1-16.22 within the B2 Zoning District; and

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**WHEREAS**, this action is classified as an Unlisted Action, pursuant to 6 NYCRR Part 617 *et seq.* of the State Environmental Quality Review Act, which requires environmental review of the impacts of the project; and

**WHEREAS**, the Interested and Involved Agencies were duly notified of the project, and invited to comment thereon; and the requisite General Municipal Law 239 Referral(s) of GML Article 12-B were duly effected by Town of Lansing Planning Department and any comments received from the Tompkins County Planning Department and any Involved/Interested Agencies were duly reviewed and considered by the Planning Board; and

**WHEREAS**, at the Lansing Planning Board Meetings, held on September 27, 2010 and October, 25, 2010 at the Lansing Town Hall, the Planning Board reviewed the overall Lansing Market Site Plan; and

**WHEREAS**, at the September 27, 2010 Planning Board Meeting, the Planning Board requested the following prior to final site plan approval:

1. Lighting Plan;
2. Fire Department Review;
3. Comment from Tompkins Highway Division;
4. Stormwater Pollution Prevention Plan (SWPPP); and

**WHEREAS**, the Applicant has provided, and the Planning Board has reviewed, comments from the Fire Department; Tompkins Highway Department; the Applicant's Stormwater Pollution Prevention Plan (SWPPP) and comments from the Town Engineer,

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T.G. Miller, P.C. respecting the Applicant's proposed SWPPP, and the responding comments of the Applicant's Engineer, Scott D. Gibson, regarding the SWPPP; and a proposed Lighting Plan was submitted to the Planning Board on October 25, 2010, and reviewed by the Planning Board on that date; and

**WHEREAS**, on October 25, 2010, the Planning Board, acting on a uncoordinated environmental review, reviewed and accepted, as adequate, a short form Environmental Assessment Form ("EAF") Part I, submitted by the Applicant; and the Lansing Planning Board completed Part II on the record (and, if applicable, Part III of the LEAF); and

**WHEREAS**, by motion adopted October 25, 2010, the Town of Lansing Planning Board determined that, pursuant to the provisions of the State Environmental Quality Review Act, the proposed site plan will result in no significant impact on the environment and issued a Negative Declaration of environmental significance for purposes of Article 8 of the Environmental Conservation Law; and

**WHEREAS**, on September 27, 2010 and October 25, 2010, the Planning Board duly considered and carefully reviewed the Applicant's site plan in compliance with the requirements of the Town's Laws relative to site plan review and respecting the proposed project in conjunction with the unique needs of the Town, due to topography, drainage, soil types and distributions and other natural and man made features upon and surrounding the area of the proposed Site Plan; and the Planning Board duly considered the design objectives of the Applicant and the quality and distinctiveness of the project proposal, in conjunction with the standards of review set forth at Section 701.4 *et seq.* of the Town of Lansing Land Use Ordinance, including, but not limited to, storm-water drainage plan, erosion controls, parking, water and sewer facilities, driveways, site lighting, on site and off-site impacts, landscaping and/or fencing, buffering and/or screening, roads and walkways, height limitations and compliance with other agency regulations and/or state, county and local laws and ordinances; and the Planning Board has also considered the requirements of the Town's Land Use Ordinance and

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Comprehensive Plan, and has determined compliance therewith in conjunction with said Site Plan Application and Review; and

**WHEREAS**, the Town of Lansing Planning Board duly noticed and opened a public hearing concerning the Site plan review of the proposed Lansing Market site plan application at Lansing Town Hall at 29 Auburn Road, Lansing, New York 14882 on October 25, 2010 and all citizens were given an opportunity to voice any concerns respecting the proposed site plan and to be heard thereon; and

**WHEREAS**, upon due consideration and deliberation by the Town of Lansing Planning Board, *now therefore be it*

**RESOLVED:** that the Town of Lansing Planning Board grant Final Site Plan Approval to the Applicant for the Lansing Market, a proposed 14,000 sq. ft. independent grocery store site to be located on a 3.5 +/- acre parcel located on the Northwest Corner of North Triphammer Road and Town Barn Road, Lansing, New York and otherwise known as P/O Tax Map # 30.-1-16.22 within the B2 Zoning District subject the following conditions:

1. The Town Engineer, Dave Herrick/ TG Miller P.C., shall review the SWPPP correspondence of the Applicant's Engineer, Scott D. Gibson, to Jeff Overstrom, Town Planning and Engineering Coordinator, dated October 22, 2010, and Mr. Herrick shall provide a responsive memorandum affirming that the original SWPPP concerns/deficiencies noted by Town Engineer, David Herrick, in his initial review of the SWPPP, have been addressed and/or remedied to the Town Engineer's satisfaction;
2. The County Highway Department shall provide a memo to the Planning Department file confirming that it has reviewed the Applicant's SWPPP and has no comment thereon;
3. The Applicant shall set aside a 10 foot strip of land for pedestrian access and shall continue to work with the Lansing Recreational Pathway Committee to provide appropriate pathways upon the site.

October 25, 2010

Larry Sharpsteen seconded.

**VOTE AS FOLLOWS:**

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

**MOTION CARRIED.**

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## Approval /Denial Minutes of: October 6, 2010 & October 12, 2010

### October 6, 2010

Thomas Ellis requested on page 5, under Ben Gustafson, second sentence should read;

- The Notice of Intent and the conditions of the PDA specifically mentions the shoulder.

Page 6, under Ben Gustafson should read;

- Ben Gustafson stated they contacted TCAT and were told they do not want a shoulder, easement, and a bus stop of any kind.

Page 12, under Thomas Ellis is should read;

- Thomas Ellis suggested the Chairman welcome, introduce and inform the Public of the capacity and roles played by various individuals at the Planning Board table.

Larry Sharpsteen made a motion to approve as amended. Nancy Loncto seconded.

**VOTE AS FOLLOWS:**

**Thomas Ellis - Aye  
David Hatfield - Aye  
Nancy Loncto - Aye  
Larry Sharpsteen - Aye  
Lin Davidson - Aye**

**MOTION CARRIED.**

### October 12, 2010

Thomas Ellis made a motion to accept the Minutes of October 12, 2010 as presented. Nancy Loncto seconded.

**VOTE AS FOLLOWS:**

**Thomas Ellis - Aye  
David Hatfield - Aye  
Nancy Loncto - Aye  
Larry Sharpsteen - Abstained  
Lin Davidson - Aye**

**MOTION CARRIED.**

**Request for Waiver to obtain Building Permit prior to Road  
Construction- Farm Pond Circle, Collins Road, Tax Parcel # 38.-1-4.122**

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Ms. Moynihan Schmitt, Legal Counsel for the Planning Board read the following excerpt from the Lansing Town Board Draft Minutes from the Meeting held on Wednesday, October 20, 2010;

- **Building Permits before New Roads are Built:**

**Mr. Pinney stated that Jack Jensen, owner and developer of the Farm Pond Circle Development has asked for a building permit for a house at least 1,000 feet off the public road. The road in the subdivision has not been built yet. Mr. French and Mr. Overstrom did not agree with allowing this as it would go against the Town's rules and regulations. They did not feel an exception should be made. Mr. French stated that this same problem came up a few years ago with a developer in Whispering Pines and it caused a lot of trouble. The Board at that time agreed it would never happen again.**

**After a long discussion it was the consensus of the Board to have Mr. Jensen go to the Planning Board as they could grant a waiver if they felt it was necessary. Mr. Overstrom will attend the Planning Board meeting on Monday, October 25<sup>th</sup> and he will keep the Board updated on the status of this matter.**

Ms. Moynihan Schmitt states she has researched the two alternate waiver provisions for the Planning Board to take into consideration and they are;

### **ARTICLE 9: VARIANCES AND MODIFICATIONS:**

**Sec. 900. Purpose & General Requirements:** The purpose of this Article is to set forth those conditions and circumstances under which the requirements of this Local Law may be modified or waived by the Planning Board (or, where applicable, the Town Board). Where the Planning Board finds that, due to the special circumstances of a particular case, a waiver of certain requirements or procedures is justified, a waiver may be granted. In all cases, no waiver shall be granted unless the Planning Board finds and records in its minutes that: (1) granting the waiver would be keeping with the intent and spirit of this Local Law, and is in the best interests of the community; (2) there is no adverse effect upon the character, appearance, or welfare of any neighborhood or the environment; (3) there are special circumstances involved in the particular case; (4) denying the waiver would result in undue hardship, provided that such hardship has not been self-imposed; and (5) the waiver is the minimum necessary degree of variation from the requirements of this Local Law.

Ms. Moynihan Schmitt further stated Mr. Overstrom indicated he has concerns regarding the SWPPP and the impact of the neighborhood with respect to mud and dirt recently on the road. The Planning Board may grant a waiver, however they must make findings and go through each of the prongs of Section 900 of The Subdivision Local Law.

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The other alternative route is Town Law 280-a. as follows;

**§280-a. Permits for buildings not on improved mapped streets**

1. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is (a) an existing state, county or town highway, or (b) a street shown upon a plat approved by the planning board as provided in sections two hundred seventy-six and two hundred seventy-seven of this article, as in effect at the time such plat was approved, or (c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats.

2. Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the town board or planning board, if empowered by the town board in accordance with standards and specifications approved by the town board, as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway. Alternatively,

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and in the discretion of such board, a performance bond sufficient to cover the full cost of such improvement as estimated by such board shall be furnished to the town by the owner. Such performance bond shall be issued by a bonding or surety company approved by the town board or by the owner with security acceptable to the town board, and shall also be approved by such town board as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the appropriate board in substantial conformity with section two hundred seventy-seven of this article.

3. The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board, in any town which has established a board having the power to make variances or exceptions in zoning regulations for: (a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or (b) an area variance pursuant to section two hundred sixty-seven-b of this chapter, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review by certiorari order issued out of a special term of the supreme court in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations. (Eff. 7/1/98, Ch. 458, L. 1997)

4. The town board may, by resolution, establish an open development area or areas within the town, wherein permits may be issued for the erection of structures to which access is given by right of way or easement, upon such conditions and subject to such limitations as may be prescribed by general or special rule of the planning board, if one exists, or of the town board if a planning board does not exist. If a planning board exists in such town, the town board, before establishing any such open development area or areas, shall refer the matter to such planning board for its advice and shall allow such planning board a reasonable time to report.

5. For the purposes of this section the word "access" shall mean that the plot on which such structure is proposed to be erected directly abuts on such street or highway and has sufficient frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and, a frontage of fifteen feet shall presumptively be sufficient for that purpose.

Ms. Moynihan Schmitt states there are two prongs to this Statue. The first prong has been met by the Applicant because the street is shown on a Subdivision Plat, and approved by the Planning Board. There is also another way to meet that prong and that by being placed on an Official Town Map, which that does not apply here. The second prong #2 above can be applied by the Planning Board as well as the provision in #2 alternatively, requesting a performance bond.

Ms. Moynihan Schmitt states there was some substantial discussion at the Town Board Meeting with respect to the sub base on the road being sufficient to allow for emergency access. The Planning Board can add that as a condition along with the Bond if they grant a waiver.

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Jeff Overstrom states he was advised by Jack French that the initial construction of the sub base was not inspected. In addition, bank run gravel was put in. Mr. French is not satisfied with the current construction that has taken place and is recommending that the gravel be removed, the sub base be inspected and the roadway reconstructed in accordance with the Town Highway specifications. As for the environmental issues, the Stormwater practices have been without weekly inspections by a professional Engineer. As Stormwater Management Officer for the Town, this project could be considered out of compliance and in violation.

Larry Sharpsteen inquired from Mr. Overstrom if there is any come back on the Town as being Lead Agency if a private complaint is lodged against the project resulting in the State shutting down the job and fines implied.

Mr. Overstrom indicated yes, and they can also hold him responsible as well.

Lorraine Moynihan Schmitt indicated there was some concern at the Town Board level as to adding personal injury liability.

Larry Sharpsteen stated given the information the Board received tonight, in his opinion he would not go against the advice of personal staff.

Jack Jensen states with respect to the inspections, he is confused. Mr. Jensen stated a month ago he sat in Mr. Overstrom's office with Jack French present and told them both he was starting the road. Mr. Jensen thought that was notification to Mr. French. At that same time, Mr. Jensen told them that David Herrick was recommending an Engineer for a SWPPP. Mr. Jensen will take responsibility for not calling on a daily basis for inspections, however, Mr. French & Mr. Overstrom were fully aware that the road construction had begun. Mr. Jensen further states he applied for a Building Permit and was denied until the road is completed and dedicated to the Town. Mr. Jensen was not asking for a Certificate of Occupancy, only a Building Permit. As for additional insurance, any construction worker that is on the property is covered under Mr. Jensen's Builder's Risk Policy.

Ms. Moynihan Schmitt indicated a lot of the case Law Notes under Section 280-a Provisions, are concerns with Fire & Rescue access. Children are known to occasionally play in Spec Homes and that is one of the concerns the Town Board has. Ms. Moynihan further stated the Planning Board can grant a 280-a waiver conditioned upon the issuance of a Performance Bond, along with the additional insurance protection for the Town, and a provision that the sub base is brought up to the Town's Specifications.

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Thomas Ellis stated it would not be in the best interest to issue a Building Permit if the road will have to be dug up. Mr. Ellis read aloud several steps in the Schedule I of the Specifications for Town Highways. Under numerous sections it indicates that the Highway Superintendent must verify before moving forward. Mr. Ellis feels by permitting Mr. Jensen to move forward with the road that does not meet the Town Specifications and give a Building Permit would set a bad precedence.

Nancy Loncto inquired as to how long it would take to improve the road. Mr. Jensen states it is physically impossible for his to dedicate the road to the Town this fall due to the plant shutting down. Their intent was to put in the base, the Stormwater practices and have the house ready to go in the spring.

Lin Davidson clarified for the record that not only does Mr. Jensen have construction workers out on the project now, he is adding an additional large number of volunteers on a road that is not up to Specifications.

Larry Sharpsteen reiterated to the Members that Legal Counsel has given two alternative methods that the Developer can take to apply for a waiver.

Mr. Jensen clearly indicated he could not come up with the Performance Bond.

Ms. Moynihan Schmitt reviewed the remaining options.

1. Under Town Law 280-a, the Board could issue a waiver **if**, the Board finds the street or highway has been suitably improved in accordance with standards and specifications.

Sections 900 of the Subdivision Law, The purpose of this Article is to set forth those conditions and circumstances under which the requirements of this Local Law may be modified or waived by the Planning Board (or, where applicable, the Town Board). Where the Planning Board finds that, due to the special circumstances of a particular case, a waiver of certain requirements or procedures is justified, a waiver may be granted. In all cases, no waiver shall be granted unless the Planning Board finds and records in its minutes that: (1) granting the waiver would be keeping with the intent and spirit of this Local Law, and is in the best interests of the community; (2) there is no adverse effect upon the character, appearance, or welfare of any neighborhood or the environment; (3) there are special circumstances involved in the particular case; (4) denying the waiver would result in undue hardship, provided that such hardship has not been self-imposed; and (5) the waiver is the minimum necessary degree of variation from the requirements of this Local Law.

Nancy Loncto states she could not respond to the request unless the Developer could build a case.

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Larry Sharpsteen suggested the Highway Superintendent and the Developer agree in writing on some method of temporarily certifying the first section of the road. Mr. Sharpsteen further indicated if the Town's professional staff is satisfied that the road is good enough for temporary use and with the understanding that no Certificate of Occupancy will be issued, the project may be able to move forward.

Mr. Jensen requested that the Planning Board give him at least two weeks to work out the road issue and then consider permitting him to obtain a Building Permit. The worse case scenario would be that he ends up with an extremely wide and long driveway.

Lin Davidson stated it sounded like a self created hardship. Other Members agreed.

Ms. Moynihan Schmitt summarized what the Board is requesting from the Developer if he wishes to pursue the waiver request under Section 900 of the Subdivision Rules and Regulations ;

1. The Board is requesting the Developer put his request for a waiver in writing and that each prong is addressed in Section 900.
2. Professional Staff's approval
3. The Town Listed as an additional insured

Nancy Loncto requested that the Planning Department provide Counsel with any material related to this issue at least three full business days prior to the Planning Board Meeting to allow for Counsel to review. It will **NOT** be considered if this does not happen.

Thomas Ellis made a motion to adjourn and go into Executive Session at 8:45 PM to discuss a particular staff position and budget issue. Nancy Loncto seconded.  
**VOTE AS FOLLOWS:**

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

**MOTION CARRIED.**

Larry Sharpsteen made a motion to terminate the Executive Session at 9:08 PM. Nancy Loncto seconded.

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## VOTE AS FOLLOWS:

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

## MOTION CARRIED.

Larry Sharpsteen offered the following Resolution;

### **RESOLUTION NO. 10-81**

Motion to resolve to create a memo from the Planning Board to the Town Board stating that it is the considered opinion of the Planning Board that cutting the position of Rachel Jacobsen, Code/Planning/ZBA Clerk to half time, currently under consideration by the Town Board in conjunction with the Town Board budgeting discussions, would have the following negative impacts:

- Negatively impact the efficiency of the Planning Department and the Planning Board;
- Negatively impact the Town's positive intercourse with developers, current client/applicants, and future client/applicants;
- Negatively impact the record keeping functions of both the Planning Department and the Planning Board, including current exemplary minute-taking by the Clerk;
- Negatively impact the administrative functions of the Planning Department.

The Board would welcome a meeting with the Town Supervisor, Planning Board Chair, Town Board Liaison to the Planning Board, and/or the Budget Committee to discuss these issues.

Nancy Loncto seconded.

## VOTE AS FOLLOWS:

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Lin Davidson - Aye**

## MOTION CARRIED.

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David Hatfield made a motion to adjourn the Meeting. Larry Sharpsteen seconded.

**VOTE AS FOLLOWS:**

**Thomas Ellis - Aye**  
**David Hatfield - Aye**  
**Nancy Loncto - Aye**  
**Larry Sharpsteen - Aye**  
**Lin Davidson - Aye**

**MOTION CARRIED.**