

TOWN OF KENT
PLANNING AND ZONING COMMISSION
41 Kent Green Boulevard
P.O. Box 678
Kent, CT 06757
Phone (860) 927-4625 Fax (860) 927-4541

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KENT TOWN CLERK

2015 JAN 12 P 12:17

BY *Donna M. Hayes*
TOWN CLERK

JANUARY 8, 2015 REGULAR MEETING MINUTES

The Town of Kent Planning and Zoning Commission held a regular meeting on Thursday, January 8, 2015 at 7:00 p.m. in the Kent Town Hall.

1. CALL TO ORDER

Mr. Johnson called the meeting to order at 7:00 p.m.

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

Commissioners Present: John Johnson, Chairman; Karen Casey, Richard Chavka, Darrell Cherniske, Alice Hicks, Adam Manes, Marc Weingarten, Matt Winter

Staff Present: Donna M. Hayes, Land Use Administrator

Mr. Johnson elevated Mr. Chavka and Mr. Weingarten to voting status.

3. READING AND APPROVAL OF MINUTES:

3.A. Regular Meeting Minutes of October 9, 2014

See comments in section 3.B.

3.B. Regular Meeting Minutes of November 13, 2014.

Mr. Johnson stated that he had received the electronic version of the rewrite of the October 9, 2014 and November 13, 2014 minutes, gone through them and would like to send them back for further editing if Ms. Hayes was prepared to tackle them. Mr. Johnson said that some changes were incorporated but some things were still missing; some additions were incorporated; but the comments that were out of order were still out of order.

Mr. Weingarten moved to have Ms. Hayes complete the rewrite of the Regular Meeting Minutes of October 9, 2014 and the Regular Meeting Minutes of November 13, 2014. Mr. Cherniske seconded and the motion carried unanimously.

3.C. Regular Meeting Minutes of December 11, 2014.

Mr. Johnson noted that he did not state that "he will be reviewing recorded minutes" as written on the third line of agenda item 3.A. but that he had reviewed them as was stated on the second line of the same paragraph. Ms. Hayes advised the Commission that she had not seen or reviewed the minutes before they were filed by Ms.

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Dudgeon-Eisenlohr and asked if they wanted her to rewrite them in addition to the minutes of October and November.

Mr. Weingarten moved to have Ms. Hayes rewrite the Regular Meeting Minutes of December 11, 2014. Mr. Cherniske seconded and the motion carried unanimously.

Mr. Manes arrived at the meeting at this point of the meeting.

Mr. Weingarten moved to add item 5.B.4. to the agenda. Mr. Cherniske seconded and the motion carried unanimously.

4. PUBLIC COMMUNICATIONS (ORAL):

No action taken.

5. OLD BUSINESS:

5.A. PUBLIC HEARINGS (Possibility of closure, discussion and decision on the following):

No action taken.

5.B. DISCUSSION AND POSSIBLE DECISION

5.B.1. Rewrite of Zoning Regulations – Discussion with Janet Hill, Land Use Administrator, Town of Washington

Ms. Janet Hill, Land Use Administrator for the Town of Washington, introduced herself and explained that she was present to talk to the Commission about Washington's experiences switching from soil based to density based zoning. Mr. Glenn Chalder, Planimetrics, was also present and gave a brief background on his work with Ms. Hill during the switchover.

Ms. Hill presented the Commission with some copies of the zoning regulations in effect from 1976 – 1997, the proposed changes and what they are now so that the Commission can see how this change evolved. Ms. Hill said that the reason for the change was to offer better flexibility in the lot size and subdivision configuration, but a concern was the fact that the size lots from 1976 were 1.5, 3 and 5 acre lots. Some Zoning Commissioners and Conservation Commissioners felt that this would allow development on inappropriate land. In the proposal, Mr. Chalder revised the soil charts into 6 categories and the lot sizes were changed to 2, 3, 4 and 6.66 acres. This also provided a real method allowing the reduction of construction on inappropriate land. Ms. Hill continued saying that before the buildable land could be calculated, certain variables were deducted, i.e., slope over 25%, wetlands, floodplain, etc. Once those deductions were taken, the soil type was determined which would in turn determine the density of that lot. One drawback with the new process is that the property owner is required to hire soil scientists to determine what types of soils are present. This not only costs more, but makes the process longer.

Mr. Winter asked if it was absolutely necessary to hire a soil scientist and Ms. Hill said that if the proposed lot is over 5 acres in size, you can use USGS maps. If you are proposing smaller lots or more than 40% density, then you would have to hire the soil scientist.

Mr. Manes asked Ms. Hill how she thinks the new system has worked for the Town of Washington. Ms. Hill replied that she thought it was better for the land but couldn't comment on the results because there have not been any large subdivisions since this change was implemented. Mr. Manes asked Ms. Hill how she thought it works

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on smaller lots. Ms. Hill said that years ago a 5 acre lot containing mostly wetlands could have been sold to an unsuspecting purchaser only for them to find out that the lot is not buildable; that cannot happen now. Ms. Hill said that there could be one potential problem that Mr. Chalder might be able to address. She continued saying that the belief is that the best land should be reserved for both septic and agriculture and asked how they could be meshed together. Mr. Chalder said that using the land to its best capabilities now could be determined by siting the structure in a place that would allow both. He continued stating that there was a conversation suggesting the use of the GIS data to create a data base using the parcel lines in order to tell the property owner how many lots he could create on his property should he want to subdivide. After research, they determined that the parcel lines were not as accurate as they should be in order to guarantee the correct determination. Ms. Hill said that it could work now but not back in 1999.

Ms. Hill said that another reason why she could not answer Mr. Manes' question, was that the demographics for the Town are changing. People are now wanting to keep the property in one large chunk so that they have their land around them. Mr. Cherniske stated that if you allow this flexibility to promote land conservation, it does not seem it's going to work unless the real estate market drives what will sell. He asked if the regulation would prohibit that and Ms. Hill said that it would not, they would just have to work with the regulation. Mr. Chalder said that Kent does not have a soil based lot system for over 60% of the Town. He said that the Town talked about the agricultural overlay which puts you in a "what comes first situation – the chicken or the egg". Right now Kent has three options: 1) keep what is in place and recalibrate the soils; 2) go to minimum lot size in the R1 zone; 3) go to density based. Mr. Johnson stated that the Commission has been talking about conservation subdivisions by right and cluster as a special permit. He continued by stating that he likes the idea of an agricultural overlay or something similar. Mr. Johnson agreed that there is a contradiction but it would have to be spelled out.

Mr. Johnson asked if the 40% rule allows the family to split off one or two parcels without too much hassle. Ms. Hill said that it would as long as they are not too small. Mr. Johnson asked how the density factors were determined. Mr. Chalder said that the very, very best soils had a density factor of .5 which would mean you would need 2 acres for one lot; the next soil type would have a density factor of .33 which would mean you would need 3 acres; the next soil type would have a density factor of .25 which would mean you would need 4 acres; and the last category would have a density factor of .15 which would mean you would need 6.66 acres. He continued stating that they called in the Natural Resource Conservation Service and State Soil Scientist to help them re-categorize the soils. Mr. Chalder said that Kent could go with a soil based lot size. Ms. Hill presented the Commission a form that she uses any time there is a proposal to split a lot. She continued by stating that this applies to anyone cutting off a large chunk or two neighbors who want to swap out a small piece to even out their lot lines.

Mr. Chalder said that Kent will have to decide if they want to keep soil based zoning or try a different approach. If Kent wants to go with soil based, he would recommend changing the current soil classifications and then change density factors. Mr. Cherniske asked if the maximum lot coverage changed. Ms. Hill said that it did back in 1998 when they changed it from 10% across all lots to coverage based on lot size.

Mr. Johnson asked Mr. Oskandy, a member of the audience, if, as an employee of Arthur H. Howland, he had experience with this type of zoning. He replied that the soil based calculations are very similar to the drainage calculations that he uses when preparing his plans. Mr. Oskandy said that he has noticed that if you put a parking lot on really good soils, it will have a greater impact than if you were to place that same size parking lot on lesser soils due to the infiltration rates. He continued stating that it seems to be a very reasonable way to manage the land.

Ms. Hicks asked how the citizens received this change. Ms. Hill said that no one made comment at the public hearing but that all their commissions were involved right from the very beginning. Mr. Chalder said that the goal

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was to provide flexibility to preserve the most treasured areas of the lot. As a result, the outcome was environmentally conscious, reflecting the natural capabilities of the land and allowing the houses to be sited in different areas on the lot. Unfortunately, the economy changed and there is no way to determine if there are any negative effects.

Ms. Hayes asked what the learning curve was and Ms. Hill said that she was involved from the very beginning so it seemed to her that it was like that all along. When asked what the local engineers thought, Ms. Hill said that they adjusted very quickly and use similar calculations every day. Ms. Hayes asked if there was anything she would change now. Ms. Hill replied that she wished she could be more helpful to those coming in. Mr. Oskandy commented that since this change was implemented, GIS capabilities have improved and within the next 25 years it should be even better. Mr. Johnson asked Mr. Oskandy if they could give a perspective client a ballpark density number on the phone and he replied that he could. Mr. Chalder said that the density factor might be able to be adjusted now since there has been an improvement in the GIS capabilities.

Ms. Hayes commented that she has GIS on her computer and was wondering how she could get information/training. Mr. Oskandy said that there are different places and that the soil types could be obtained from the NRCS website. He cautioned that there are no property lines, but it would give you a general idea of the types of soils in a specific area. Mr. Chalder said that someone from HVA or NWCD might be able to help. He also said that he has a vender that might be able to help.

Mr. Cherniske asked if there was anything major that came through that would suggest that the regulation should be tweaked and Ms. Hill said no because nothing large has been proposed. It was asked who else used soil based zoning and Mr. Chalder replied that he thought it was only three: Kent, Washington and Sterling. Approximately 2/3 to 3/4 use minimum lot size with the rest using density based.

Ms. Hill commented that there might be an issue in the commercial district which the commission will be addressing. Mr. Johnson said that Kent is having the same issue in the village center. Ms. Hayes asked if this would apply in the village center since they are on the sewer system. Mr. Chalder said that the way the regulations are written now, the village center area has a minimum lot size requirement and the rural district is soil based.

Ms. Hicks said that it seems to her that this was really a non-event for a future, better system. It seems like the ramifications are limited by not making it more expensive, it doesn't change the tax base and it sounds like life goes on even though Washington is better policing the soils. Ms. Hill said that there might be some people that might argue that, but she does not feel it was because of the change.

Mr. Manes said that it does not seem to him that it would be a big change for Kent but that it would be the way to go if there should be a large subdivision. He does feel that it does help with the soil conservation. Ms. Casey said that it all depends on the users and the users today are wealthy people. Her only concern would be the little guy who would want to merge with his neighbor or give a small piece to his children. Ms. Casey continued by saying that there is so much Land Trust and State forest that she does not see where a large subdivision would occur. Currently there is a large subdivision that is still empty and has been for the past 15 years.

Having no more questions, the Commission thanked Ms. Hill for coming to speak to them.

Mr. Chalder told the Commission that he was about a week away from finishing the regulations and that right now he is working on the procedures section. He asked the Commission which way he should go with the soil based zoning. Mr. Chalder recommended that the Town not stay with the current system, but they would need to make a decision on which way to go. Mr. Manes said that he did not think that the Commission is considering a minimum lot size. He said that he thinks the Commission needs to have a discussion about this. Mr. Chalder said

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that he will lay out the three different choices so that the Commission can have a discussion. Mr. Winter said that he thinks that the Commission needs to decide. Mr. Johnson agreed and said that he would like to add to the agenda a discussion about overlay zones, etc. before Mr. Chalder comes up with the draft.

Mr. Manes said that he would like to discuss farm worker housing so that direction can be given to the Marble Valley Farm now for the upcoming planting/growing season. Mr. Chalder said that one way would be temporary housing that would be installed 30 days before the planting season and removed 30 days after the growing season. That housing could be a tent or something similar, but Mr. Chalder said that he did not think it could be done in time for this season. Mr. Manes said that as the regulations are written now, trailers are not allowed. It was recommended that section 23.4 be changed to allow trailers only if they are being used in conjunction with a farming operation and that they be installed 30 days before the planting season and removed 30 days after the growing season. Mr. Cherniske said that he thought that would be ideal because it would allow the use of trailers for a specific reason only and still not be allowed throughout the Town. Mr. Chalder said that the timing is very tight. He suggested that Ms. Hayes and he work on something before the next meeting. Mr. Chalder asked if some sort of housing could be placed across the road and Ms. Hayes said that the Health Department requires that what is installed is hooked up to water and septic. Mr. Chalder said that he will craft the regulation and send it to the Commission for review prior to the meeting. Mr. Johnson asked if the Kent Land Trust would allow this and Ms. Hayes said that the Board has changed their mind and would allow some sort of farm worker housing.

Mr. Chalder asked if the Commission wants a full set of the new regulations for the January meeting. He said that he is currently trying to set them up using multiple colors reflecting when the changes were made. Mr. Johnson asked Mr. Chalder to send the three different samples of the next version so that he can decide which one would be best. Ms. Hayes said that she would send the Commissioners an email containing the samples.

No action taken.

Mr. Manes missed the conversation the Commission had about the minutes and asked if the minutes from the December meeting had been approved. He voiced his concern that the conversation the Commission had that night regarding the platform tennis court on Richards Road had been omitted from the minutes. Ms. Hayes and Mr. Johnson commented that the approval of all three sets of minutes had been continued to the next meeting so that Ms. Hayes could edit them according to the tape.

Mr. Manes moved to hear agenda items 6.A.1. and 6.A.2. at this point in the meeting. Ms. Casey seconded and the motion carried unanimously.

5.B.2. Discussion on the possible change to the fee structure effective December 8, 2003.

Mr. Manes moved to continue agenda 5.B.2. to the next regular meeting. Mr. Winter seconded and the motion carried unanimously.

5.B.3. Bulls Bridge Golf Club – 2014 Individual Memberships and Audubon International Silver Signature Program Certification.

Ms. Hayes advised the Commission that this information was submitted as informational and that Mr. Ramee had called in response to her letter. Mr. Johnson questioned the date on the Sustainability Policy and reminded the Commission that they could choose another certifying agency if the Commission felt Audubon International was not sufficient.

Mr. Winter said that he had reviewed the 2013 Annual Monitoring Report presented by Leggette, Brashears & Graham and found that it seems Bulls Bridge Golf Course is “managing their stuff”. He continued by saying that

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they test both groundwater and surface water for general water quality and then for pesticides, herbicides and fungicides. In all cases the Golf Course is either at or below predevelopment levels and well below the CT Department of Health, EPA and Audubon Natural Resource Management Plan Response thresholds. Mr. Winter continued by saying that pesticides and herbicides and fungicides were not used before the construction of the golf course and there are no traces of them appearing in the surface water but minimal traces are appearing in the ground water which are well below the minimum level of the Department of Health threshold.

No action taken.

5.B.4. Applicants for Alternate Position/Scheduling Meeting Times

After a brief discussion, it was decided that Ms. Hayes contact Mr. Hibbard and thank him for his interest in the Commission but let him know that the Commission had recently received another application from a local resident/past member that would better fit the Commission's current needs. It was also decided that the original applicant be invited to come and speak with the Commission on a date to be determined.

No action taken.

6. NEW BUSINESS:

6.A. PUBLIC HEARINGS (Possibility of closure, discussion and decision on the following):

6.A.1. Application #'s 105-14C and 106-14SP, Arthur H. Howland & Associates for Kerin & Jason Hempel, 63 Howland Drive, construction of pool and accessory dwelling unit/pool house, Map 11 Block 40 Lot 40.

Mr. Johnson opened the public hearing at 8:15 p.m. and read the public notice into the record.

Mr. Jeremy Oskandy, EIT and Project Manager from Arthur H. Howland & Associates was present representing the owners of the property. Ms. Hayes reminded the Commission that Mr. Oskandy was present at the last meeting where he gave a very brief synopsis of the project and asked the Commission to schedule tonight's public hearing.

Mr. Oskandy told the Commission that since he was last before them, research was conducted regarding the residence restriction area. He also told the Commission that the proposed pool house/accessory dwelling unit is located in the Horizonline.

Mr. Manes asked Mr. Oskandy what he found out about the restrictions. He explained that this was only one map that shows the restriction and that the restriction was not shown on the original subdivision map that was signed by the Planning & Zoning Commission. Mr. Oskandy then presented the Commission with an opinion letter from Attorney James G. Kelly dated January 8, 2015, regarding the residence restriction area that is noted on the site plan presented by Arthur H. Howland & Associates: He explained that his surveyor included the restriction area on his map erring on the side of caution. Mr. Oskandy said that since there is also a conservation easement on the property, no house can be built making the restriction area moot. Mr. Manes said that he does not feel the letter from Attorney Kelly is definitive enough and would suggest that our attorney take a look at it. Mr. Oskandy also asked the Commission if they had received the letter from the President of the Highview Association, Mr. Jason H. Wright, dated December 23, 2014. Ms. Hayes had only received that letter earlier in the day and the Commission had only received it at the beginning of the meeting. The letter states that it is "an obligation of the Highview Association to enforce or waive" the restricted residence area.

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Mr. Cherniske asked if Attorney Kelly is not accepting the map showing the restriction because there was no mylar filed with the signature of the Planning & Zoning Commission. Mr. Oskandy said that was correct and said that it is not part of the approved subdivision. Mr. Cherniske said that it was good that the current owners are in agreement with the easement, but he did not think that they could override an easement written in the past. In addition, both pieces are owned by the Hempel's which would "extinguish by merger" the easement. Mr. Cherniske said that it made sense but questioned whether or not that should be written. Mr. Manes said that currently it is two separate lots but it could be sold in the future. Mr. Oskandy said that even if the lot were sold, nothing could be built on it because of the conservation easement.

Ms. Hayes said that she was not a title searcher and would like to do two things: 1) look at the property to see how many and what trees would be removed in order to construct the pool house/accessory dwelling unit; and 2) scan in both letters and send them to Attorney Zizka for his opinion. Mr. Johnson said that he feels Attorney Zizka will agree but has no objection sending the information to him.

Mr. Cherniske said that he has no problem putting in the structures because of the way the tree line is indicated on the Google map that Ms. Hayes had presented. Mr. Winter said that according to the regulation, the application should indicate which trees above the threshold will be removed. Ms. Hayes asked if Mr. Oskandy could mark the trees that will be removed so that she can make a site visit and take some pictures. Mr. Chavka asked why the pool house could not be moved to the other side of the pool. Mr. Winter said that if Ms. Hayes could look at it, he would be willing to go along with her determination. Mr. Oskandy asked if Ms. Hayes had elevations for the pool house/accessory dwelling unit and she replied that all the information she has is on the renovations to the main house.

Ms. Hayes asked the Commission how they would like to proceed. Mr. Manes said that he would like to see the elevations for the pool house/accessory dwelling unit. Ms. Hayes said that she would like to see any information on the lighting and would like to also see the floor plan for the building. Mr. Cherniske asked if the building can be moved and Mr. Oskandy said that he would check. Mr. Winter said that he would also like to see a list of waivers, if applicable.

Mr. Manes moved to continue the public hearing until the next regular meeting. Mr. Winter seconded and the motion carried unanimously.

- 6.A.2. Application #'s 109-14SP and 110-14C, RPTC, LLC, dba Reilly Green Mountain Platform Tennis, for Mitchell D. Cohn Trustee, 17 Richards Road, installation of platform tennis court located closer to the street than the principal dwelling, Map 16 Block 25 Lot 17.

Mr. Johnson opened the public hearing at 8:46 p.m. and read the public notice into the record.

Ms. Hayes told the Commission that the owner of the property was scheduled to be at the meeting, but had called earlier to explain that due to a family emergency, he would not be here. The property owner did advise that the structure itself will be shielded by a planted buffer in the spring time. She then explained that the structure is already in place and presented pictures she had taken showing its location on the property.

After looking at the information provided, Mr. Johnson said that he is very concerned about the amount of lighting on the structure and would recommend that it be removed. Mr. Manes agreed. Mr. Winter stated that he would like to see an official site plan showing the actual location of the platform tennis court and waivers to the information requested according to the regulations. Mr. Manes said that he would like to see the location of any buffers that will be installed shown on the official site plan.

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Mr. Winter moved to continue the public hearing until the next regular meeting. Mr. Chavka seconded and the motion carried unanimously.

6.B. DISCUSSION AND POSSIBLE DECISION

6.B.1. Annual renewal of the By-Laws of the Planning and Zoning Commission.

Mr. Winter moved to re-adopt the By-Laws of the Planning and Zoning Commission. Mr. Manes seconded and the motion carried unanimously.

6.B.2. Election of Officers

Mr. Manes moved to continue the Election of Officers to the next regular meeting. Mr. Winter seconded and the motion carried unanimously.

7. STAFF REPORT:

7.A. Executive Session; Legal Litigation: 52 Kent Cornwall Road

Ms. Hayes told the Commission that there was no reason to enter into Executive Session and that a pre-trial conference and trial had been scheduled for May and June of this year. She also noted that the legal bill as of this meeting was over \$12,000.

8. REPORT OF OFFICERS AND COMMITTEES:

Mr. Johnson informed the Commission that the Board of Selectmen held a special Executive Session at 6:00 p.m. this evening to release Pamela Dudgeon-Eisenlohr of her duties as the Land Use Clerk. He continued by saying that this was done via the recommendation of Ms. Hayes and the Building Office and with at least the assent of Ms. Lynn Werner, Chairman of the Inland Wetlands Commission, and himself. Mr. Johnson said that things were not working out and that a good indication of that were the minutes and the fact that Ms. Dudgeon-Eisenlohr was not able to free up Ms. Hayes' time to work on other projects. Mr. Johnson said that he did not realize that all along the minutes that had been submitted had been edited and re-written by Ms. Hayes and that both he and Ms. Werner had been involved in conversations with Ms. Hayes about this issue for the past 5 or 6 months.

Mr. Manes stated that it would be incumbent on the Commission to make sure that the next hire knows how to write minutes and to provide training if needed. Ms. Hayes said that she did not think that it was possible to train someone on how to write the minutes and suggested that the top candidates be required to sit in on a meeting and take the minutes with a decision being made based on their submission. When asked if there was a legal decision on how minutes should be written, Ms. Hayes said that Robert's Rules of Order state that if the minutes are from a small group of trustees or informal board, then the only thing that needed to be included would be the motions of actions. If it is a board where their minutes are to be published, then more detailed information needs to be included. Mr. Manes said that this Board makes decisions that could effects residents financially and be held culpable for their decisions; therefore, the minutes must be accurate. Mr. Johnson added that the intent must also be noted.

No action taken.

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9. OTHER COMMUNICATIONS AND CORRESPONDENCE:

9.A. FY 14 – '15 Actual vs Budget, July – November, 2014

Mr. Manes suggested that money be allocated for GIS training for Ms. Hayes. Mr. Johnson agreed and said that it should wait until a new clerk is found. He also suggested that Ms. Hayes talk with Mr. Chalder for his recommendation and Ms. Hayes said that she will talk with Ms. Werner to see if she has a recommendation from HVA.

No action taken.

9.B. Murtha Cullina, Statement for Services Rendered through November 30, 2014, Invoice #502217, \$315.00.

Mr. Winter moved to pay Invoice #502217 in the amount of \$315.00. Mr. Manes seconded and the motion carried unanimously.

9.C. Administrative Permits and Certificates of Compliance

No action taken.

9.D. Special Act Concerning *THE KENT FIRE ASSOCIATION*

No action taken.

Ms. Hayes informed the Commission that she is working with the Kent Historical Society to develop a new Demolition Delay Ordinance by combining the current ordinance with a sample ordinance from the Town of Redding. Ms. Hayes said that she is hopeful that it will be done in time to have a special Town meeting in February.

Ms. Hayes also told the Commission that she had a conversation with a representative of the Conservation Commission regarding the Right to Farm Ordinance.

10. ADJOURNMENT

Mr. Manes moved to adjourn at 9:34 p.m. Mr. Winter seconded and the motion carried unanimously.

Respectfully submitted,



Donna M. Hayes, CZEO
Land Use Administrator

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