



Town of Halifax Commonwealth of Massachusetts

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

HALIFAX ZONING BOARD OF APPEALS MONDAY, DECEMBER 4, 2006

The Halifax Zoning Board of Appeals held its regular monthly meeting on Monday, December 4, 2006 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Debra Tinkham, Jean Reilly, Richard Gilcoine and Michael Schleiff

Garrett Walsh arrived approximately 7:10pm. Robert Gaynor and Kozhaya Nessralla were not in attendance.

Chairman Tinkham called the meeting to order at 7:06 p.m.

APPROVAL OF MINUTES:

It was duly moved (M.Schleiff) and seconded (J.Reilly) to approve the minutes of Monday, November 13, 2006.

Chairman Tinkham: All those in favor of approving the minutes of November 13, 2006, please signify by saying aye. So VOTED 5-0-0

BILLS:

- A. Expense: Gas Mileage for Chapter 40B: Trends & Inn for S.Nolan on 11/17 – 53.94
- B. Expense: Gas Mileage for Fall 2006 Workshops for D.Tinkham on 11/14 - \$10.31

The Board reviewed the mail and discussed other matter issues:

Mail:

- A. Old Colony Planning Council Agenda – C.C. of Agenda for Meeting No.437 on November 29, 2006
- B. Department of Housing & Community Development – Notice of Public Hearing on Fiscal Year 2007 Action Plan

Upcoming Seminars and Conferences:

Other Matters:

- A. ZBA to All Departments - Change of December filing deadline date for the January 3, 2007 ZBA Meeting
- B. M.Wong-Ryan to Charlie Seelig – “Updated Guide” Memo, dated October 24, 2006
- C. Debra Tinkham to Charlie Seelig – Response to “Allowing members who were absent to vote” memo, originally dated May 24, 2006
- D. ZBA – Zoning Board of Appeals 2007 Meeting Schedule for Review and Approval to Distribute

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- E. Sandra Nolan to ZBA – “Chapter 40B: Trends & Innovations” & “Local 40B Review and Decision Guideline” Seminar Packet From Recently Attended Meeting on November 17, 2006
- F. Finance Committee – Committee requests the presence of a board member at their next Finance Committee on December 11, 2006 @ 7:15pm to discuss request for “Reserve Fund Transfer”

Informal Discussion with Mr. Walter Greaney on Brookside Farm Subdivision on Hayward Street, Halifax, MA (continued....)

In attendance for this informal discussion was Mr. Bill Armberger, Attorney for Mr. Greaney.

Tinkham: Okay guys, what do you got?

Mr. Armberger and Mr. Greaney proceeded to present a plan marked “Sketch 2A”, which met all the criteria under the current bylaws with a total of twenty one units.

B.Armberger: Thanks for seeing us. We’ll try not to take as much time. What Walter did last time, just to recap; this is why we want to demonstrate what you can do with following all the provisions of the particular bylaw. Mainly, a hundred feet separation, seventy five feet back from the street. If you do that, under this sketch which we call conventional layout under that, you have a four unit building, a two - two unit buildings and a thirteen unit building which adds to a twenty-one unit. That’s not what...what Walter thinks is a better scenario.

Tinkham: This is to the bylaw right now?

B.Armberger: Yes. Correct. Alright. Under your bylaw. Under your special permit bylaw and again, this is a fifty five and older. That is not what, you know from a fire chief, development or anything. This is what the order, which I think is preferable, which isn’t twenty one; it’s nineteen units so it’s actually less than that. Up which, as we said before, met with the housing authority and either...I think their preference is that two affordable housing units, Walter’s going to do that. But, they would like to do them at another location or off-site to get money to do that, but certainly, we’re willing to do them here. And the only difference with this is it allows the separation of the buildings, which from a fire standpoint is good, for privacy, for people, it’s good and all that. So, this has the separation between the buildings, does not meet the hundred feet and under the normal houses in a subdivision, you have to be back fifty feet, these are all back at least fifty feet so it complies with the fifty feet that you would have with the houses as opposes the seventy five. But, by doing that, it allows you to break this up. It has a cul-de-sac at the end for the fire chief to turn around his thing, whatever; and this turns out to be nineteen, so it’s two units less than that?

Tinkham: Can you just put them so that they’re kind of side by side? Thank you.

Mr. Greaney proceeded to place the first plan, marked “Sketch 2A” side by side, as requested, next to a second plan, marked “Sketch 6”, which is the conceptual plan Mr. Greaney is proposing with a total of nineteen units.

J.Reilly: Where are the two that are missing? Where were they located on that?

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B.Armberger: Well, I think when they broke them up here, they just, in another words, particularly where that cul-de-sac is, pulled a couple out of there. So, in another words, that other space up in here, this is two, it allows you to push these guys apart, these two are the same but it allows you to space out these ones around here.

Tinkham: I see that. Thanks.

M.Schleiff: Yeah, that circle thing was not there last time.

W.Greaney: No, as oppose to a hammer head type of a set up right here, this is a circle over here. We broke it up in a circle; fill it a little bit so it wasn't so massive.

B.Armberger: One of the issues out here and as I said, the four lots have already been approved; the roadway and all that by Planning Board and Conservation and all the septic systems have been approved. The thing that's a little unusual about this site is, although there's a good amount of wetlands, most of it is created by guys building drainage ditches. So, this traditionally wasn't wetlands and that's what makes it so tight kind of pockets to keep outside of fifty feet.

G.Walsh: I've walked the lot of that.

B.Armberger: Have you gone over here? Have you seen the ditches and stuff over here?

G.Walsh: All of Halifax is ditches but, I mean, to say it was not always wetlands. I mean, are we going to blame the colonists?

B.Armberger: No, just petitions when mosquitoes didn't have a good name.

W.Greaney: This over here...this area right here is about sixty years old when it was dug out by the type of vegetation. Our wetland scientist, Steve Ivis (sp?), said it was dug out about sixty years ago just to be used for drainage for whatever they were growing. It doesn't go back that far.

B.Armberger: I didn't mean to say anything contrary.

G.Walsh: No, I mean I'm sympathetic to what you're trying to do here, but I mean.

B.Armberger: But, with Conservation Commission, we'll talk with them. They already approved the other project. We just think it's a good utility and think a fifty five and older housing is a good thing in town. We think it's going to be, apart from the two affordable units, is in line with what housing is, you know, in the town. In another words, these aren't awkward looking buildings, huge things. You know, they're pretty normal size duplexes and I know, having looking at some other towns, the demographics and such that literally, fifty five and older of property owners in southeastern, Mass, it's like sixty percent. So, there's a lot of people who are needing this kind of situation. So, we just think, if it's within the board's, you know, if the board thinks this is plan is a good plan, we think it's better for a lot of the reasons which we said. We want to make sure the Board, conceptually, because we're willing to uh...

G.Walsh: Has the fire chief or the highway department seen that new turnaround cul-de-sac?

W.Greaney: The fire chief has seen something very similar to this. Not the exactly this one here, but something very similar. The highway, no; this road to the center of this cul-de-sac here is eight hundred twenty five feet off...

G.Walsh: Hayward.

W.Greaney: Hayward Street...eight twenty five; this is the center of the cul-de-sac, just to give you some bearings on it. Speak with the fire chief...

G.Walsh: One of my concerns is just snow removal on that cul-de-sac. I know a lot of highway superintendents don't like, although, I mean we all do because aesthetically it's a lot nicer; but if that's for turning around, exclusively for big trucks.

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W.Greaney: This one right here? This whole thing can just push it out here.

G.Walsh: Yeah. That's right too. There's no houses back, so you can just push it right off the back.

B.Armberger: Actually, the power lines are back here.

W.Greaney: We've also, in speaking with the fire chief, we've got four hydrants in this area here which is more than is required, that sits next to and that's proof of that. I've spoken to the chief about perhaps using sprinklers in this building here. It was a concern and involved but it's not a problem to us. That was his concerns.

Tinkham: Now, you have to bring this back before Planning?

B.Armberger: Oh sure. It has to go back as a site plan approval there but you folks are the ones that, under the by-laws that allow us to...allow the underline zoning to let us build the townhouses.

W.Greaney: So, what we're looking for is...do you want an elephant or do you want a zebra? It's just that type of an input. What do you see as a better one? We like this one better, to be honest with you. Just want to make sure this is the right one.

Mr.Greaney proceeded to select plan, marked "Sketch 6", which is the conceptual plan Mr. Greaney is proposing with a total of nineteen units.

M.Schleiff: So, which boards have approved this or are they...

B.Armberger: There's a four lot subdivision that's already been approved by the Conservation Commission, it's been approved by the Planning Board under subdivision control; and also, all the septic systems have already approved under the Board of Health and Conservation. And, what the proposal is...well, whatever. I think I've said it a few times and I don't want to be redundant, I think there's a need for this. I think its nice privacy. It's a good community situation because it is possible that you could have something where you have like one house here, one house here, one house here and then, one big building with thirteen units connected but it's not aesthetically as nice. You know, this one kind of has a little bit of their own privacy and deck and what not.

Tinkham: I know we probably asked you this last month...septic on this plan. Does every unit have its own septic?

B.Armberger: Common. It's going to have a common leeching field.

W.Greaney: Not every...

B.Armberger: No, like some of these guys will get their own.

Tinkham: Per units. You know, the little guys will be...their own. Okay.

W.Greaney: Their own...this one broken up here. Each unit will have their own distribution box. That's really what you need to have.

B.Armberger: What will happen, the condominium association will be in charge of maintaining and pumping all the septic systems, maintaining the drainage basins and you know, plowing all the roads and all that kind of stuff, besides lock some.

M.Schleiff: Have you heard any input from any of the neighbors? Concerns? Have they kind of haven't seen much of this yet?

B.Armberger: They haven't seen much of it because down here, Mr. Webbey lives down here. Mr. Webbey's aware with his sons, Jones and Steve, they're aware of what's going on over there; and they feel pretty comfortable. There isn't anyone over here. There isn't one over there. I believe Mr. Nessralla lives down here, right Walt?

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- W.Greaney: They live down here. I've tried speaking with him but there were awkward limitation issue is that, I guess his daughter lives there. I understand that they have a problem, an existing problem of water in their basement, which we could certainly take care of when we are delineating any of the reconstruction so that no problems can occur.
- B.Armberger: There's some grading and water issues. As a matter of fact...and again, I'm not steering because Walter is my client so I don't think eh...Walter and Mr. Webbey is, you know, just other things. You know, he rebuilding Mr. Webbey's driveway, fixing his drainage for him and doing some other things that any good neighbor would do anyone else; and similarly, Mr. Webbey told him that Mr. Nessralla has some water problems. Walter will commit to go in and find out what he needs to do to straighten it out, grading or French drains or whatever it is.
- Tinkham: Do you need anything done in your house?
- G.Walsh: You know, obviously, it's pretty vivid I like this plan last meeting. But, I have...do we have...and I'll have to take your word for it because you're probably more familiar with it than I am at this point. Under subdivision control, do we define what makes continuous units? I mean you can't nail two gutters together and call it the same building.
- B.Armberger: Subdivision rules and regulations do not define that. What it's really up to is the Building Commissioner but I've seen this from various towns and, you know, what a continuous units. Continuous units often times, you can have uh...I can't remember the word. Pergolas connecting small garages or porches or all that stuff under the building code, state building code. That usually does it but these ones are for real. They are connecting.
- G.Walsh: No, no...I see that but I'm looking over here and I'm seeing that, you know, there's two connections that...
- B.Armberger: They look like they're just touching, you mean?
- G.Walsh: Yeah and from a layman's perspective, I would anticipate, you know a shared wall or something like that.
- W.Greaney: From a developer's standpoint, if that was your concern, I would make this unit a little bigger, so they shared a wall, you know so...
- G.Walsh: Understood. Right, so you'd make up for it one way or another.
- W.Greaney: If you want shared wall, that's...
- G.Walsh: Right but with an odd shaped closet.
- W.Greaney: Exactly. What we tried to do with Hayward is that with the twenty one acres that we have available. Actually, it's little more than twenty one; we can site twenty one units on the site. That's what we...that's what I thought you wanted to see.
- G.Walsh: Yep.
- Tinkham: That's what it if you...to meet the spec right now, that's how it would look like.
- W.Greaney: That why we can do something like this. We're not looking for twenty one units. We're looking for nineteen but in order to, we're looking for...we want to get a couple of variances here just to separate them a little; and, so we're not seventy five feet, but we're fifty feet which basically effects these ones over there. Bill has seen them.
- G.Walsh: So these are the only?
- W.Greaney: Yeah.
- G.Walsh: Right because the other ones are off a shared drive and not the...
- W.Greaney: Right.
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W.Greaney: It just looks a little better. It also gives the occupants more privacy.

G.Walsh: And that's going to a private road from that point on and the residents should be responsible for snow removal and all that other stuff, I would assume.

W.Greaney: Only temporary.

B.Armberger: Yeah, you could condition it as such. That's not a problem because normally, you have a condominium association and they have a plowing budget. They have whatever the case is.

W.Greaney: You know, cutting the lawns, trash removal. All the in sundry kinds of things.

B.Armberger: But one of the things consciously that Walter is doing is to keep the, you know, you see around in a lot of places and I assume Halifax. In another words, where people are building bigger and bigger and bigger houses, these are pretty good size houses, modest size that make sense because they're affordable. Once you start, the bigger the houses are the more expensive they are. This is something that will nicely fit in the three hundred thousand dollar price range, give or take eighty three twenty five, which makes it so...

J.Reilly: How many baths?

W.Greaney: You have a full bath on the second floor. A full bath on the first floor, plus a half bath.

B.Armberger: Two bedrooms, right?

W.Greaney: One upstairs, one down. Because when you get into putting a master bedroom suite and everything on the first floor, it makes the first floor expand. It just does.

R.Gilcoine: There's no affordable housing on this?

B.Armberger: Well, what's happen is the housing authority...Walter's going to commit to units here and the input that they've given, which again, we're subject to flexibility, is Walter said that he'd either...in another words, add another site as the housing authority wants to buy two units so they can make them affordable so they can go through the lottery and people can get them. He's going to do some refurbishment. That seemed to be their preference over having them in there. One of the reasons why for that this is a fifty five and older project that it's a smaller pool of people that would qualify. Where as, if you can designate other housing that they want, then it's open to a lot more people.

Tinkham: No age.

B.Armberger: So, whatever the housing authority wants, Walter will do. It makes a certain amount of sense to us.

Tinkham: I like this one better.

W.Greaney: Okay, show of hands. Who likes this one?

Tinkham: You know this is an informal discussion. Don't hold us to that?

B.Armberger: Oh absolutely.

W.Greaney: No...no. I am just looking for some direction.

G.Walsh: If I see these two plans again, having made it through Planning, Conservation and everybody else, I'd much more in favor of this one with the variances. Knowing that they both require the special permit, but I would be more willing to okay the special permit with the variances than just the special permit.

W.Greaney: Well, that's what I'm looking for because I don't want to go through all this of going for a variance and then, all of a sudden be shot down, have to come back for a re-engineering for something like this.

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B.Armberger: Right. Cause...so the engineers are already done and approved all the engineering for the roadway and stuff. So, now they have to do what's necessary to actually, for real, site these with all the specificity and all that. And then, what we'll do is we'll file, you know, sometime in the beginning of the year for a hearing for a special permit from you folks. Then, if we work things out with you, then, in turn, we go to Planning Board and Conservation for their approvals.

M.Schleiff: You're looking for us to go ahead of the other?

B.Armberger: Yes because you folks are the ones that establish the, you know, that yes, conceptually under your special permit bylaw. Can I just ask a question again, I don't mean to be presumptuous but I'm not from Halifax? Do you feel that a community that fifty five and older housing is something...that there's a need for?

Tinkham: Yeah.

R.Gilcoine: No. We have one?

Tinkham: Did you say yes? We have one? Tin city? I don't know. There isn't much.

R.Gilcoine: I just don't like the idea of these things popping up all over the place.

G.Walsh: I mean...I think a lot of the houses that you see going up in Halifax are out of reach for most of your thirty something's. So, they're your second home type houses. At least, in my...when I look out my front door, what I see going up is sort of...I'm seeing people in their fifty's buying these things. Now, that doesn't speak at all to whether I think we need more fifty...I haven't given it any thought. But, I see fifty fives and older buying these places.

M.Schleiff: I mean I can see these. Some older people in Halifax say I can't take care of this yard and they plug in down here and get them for first preference.

G.Walsh: Absolutely.

M.Schleiff: Which would free up, you know the bigger houses for the families.

B.Armberger: The main thing is. That's why I really would to, as members of the community, what you think. The main reason fifty five and older is, at least demographically as shown the south shore needs it, but one of the other things which we're very cognizant of is that everyone is always cognizant of the fact that when you create units, there's more school children, so there's a burden. Everyone's got a strap budgets and all that; and with a fifty five and older housing, there may be some children, but it would be certainly a good percentage less children than you normally would have and I know some towns are, you know, very concerned about that, you know. By all means, if the town thought, say gee, I think it was better if it wasn't fifty five and older, than absolutely Walter would consider doing that too. But we just think that people fifty five and older think people say well, that's something we have a need for in the community and good and less burden on the school system and that kind of stuff. Any thoughts on that?

Tinkham: Well, the school system is already at max and that's not even counting on the homes that are going up now. It was not really planned very well. There was no room to grow. So, that's already an issue before this even comes into play; and there's two possible 40B's floating around now that's just going to kill us. It's just going to croak us totally and I don't know where we're going to go with it, to be quite honest with you.

B.Armberger: Right. It's a tough situation.

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- Tinkham: It is. I mean I know what 40B's are in place. I understand it but we do have a lot of affordable housing in Halifax but, because there's no deed restrictions, it's not countable. If you go anywhere near the lakes, a lot of the lake areas is still affordable housing. I mean that's where a lot of the redevelopment is going on down there and they're refurbishing these homes now. I don't know where it's going end. I really don't. You see these behemoths coming into town. It's like, who can afford these? Like I couldn't. I wouldn't. I just wouldn't bury myself in real estate like that but I don't know what the answer is. But I do like this one. I like this conceptually better. I like it spread out a little better. Am I crazy about it totally? – no. Would I prefer the four? – probably. But, if I have a choice, that would be mine. That would be the way I'd go.
- R.Gilcoine: I wasn't here last month so I have a question.
- Tinkham: So you can't say anything.
- R.Gilcoine: This unit here doesn't require any variances?
- B.Armberger: No.
- R.Gilcoine: And this does?
- B.Armberger: Yes.
- W.Greaney: This is twenty one units. This is nineteen.
- G.Walsh: Both require a special permit for multi-family dwelling.
- R.Gilcoine: To give a variance, you need a hardship, which is what?
- M.Schleiff: A hundred to seventy five.
- R.Gilcoine: They're creating their own hardship.
- W.Greaney: Seventy five going to fifty.
- M.Schleiff: In order to get some separation for the lawn.
- R.Gilcoine: Right.
- B.Armberger: Just to answer your question is couple of things. Single family homes require fifty foot setbacks and we're still maintaining that. I really think that your multi-family bylaw was drafted as a first generation draft. What I mean by that is it's contemplating large apartment buildings. That's why they have the hundred foot separation. It didn't contemplate having townhouses or things like this. And so, it would be possible for us to build a big building here that has, you know.
- W.Greaney: Twenty one units.
- B.Armberger: Yeah. To do that but I think this is a lot better for people living a lifestyle and every other thing.
- J.Reilly: What you think is there's so much crime?
- W.Greaney: There's no concern. You know, living on one floor. Its garages.
- G.Walsh: Also, the retail being that you can have pride in your home when it's your own little thing and people keep them up when it's one big mess like that. You don't have when you're sharing a flower bed with, you know, the guy beside you don't like, your values to the home aren't maintained.
- J.Reilly: I definitely prefer that and I think the older fifty five, yeah, I think they still can handle it. I do. It may be wrong but I don't think so.
- W.Greaney: Just on a side thing. The reason why the housing is so expensive is the land cost. It drives things up. Generally speaking, from a bank's perspective, they want to see the house sell for three times what you paid for the lot.
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- Tinkham: Crazy. Just crazy. Any other comments? Questions?
- M.Schleiff: I just, you know, they want to go through us first and then...
- G.Walsh: They need a special permit.
- M.Schleiff: No. No. They want to come back, go before us before they go to Conservation and Planning.
- W.Greaney: Well, I'm going to meet with them informally also, following this just to get input before we get.
- Tinkham: But it would all be subject to their approval anyway.
- B.Armberger: Yeah. Subject to that.
- G.Walsh: We have the benefit approving an idea, the conceptual plans. If we approve the setbacks and the units and they can't make those adhere to the Planning Boards regs, it's dead in the water.
- M.Schleiff: Why can't we just do an initial letter, saying conceptually we kind of lean towards this way, what's your input?
- Tinkham: Well, we can. We can.
- M.Schleiff: Before we go ahead in a full blown meeting.
- Tinkham: But they also got to...
- M.Schleiff: To get input from the other approval authorities.
- B.Armberger: Do you know what we were going to do anyhow? We're going to see them informally, so if you ask them what they think, they would have seen all this before it's even applied to with you folks. We just wanted to, in protocol, you're the board that makes the decision on the conceptual thing. We wanted to make this and show you how it is so you'd considerate first.
- G.Walsh: We do, also, in anything we approve, we can, much like we do with any of the structures, you know, any....not conditions. The final plan has to be what we approved. If there is any significant change, it has to come back before us and, I mean...
- Tinkham: It still has a ways to go.
- B.Armberger: Well, thanks very much for your time. I appreciate you taking two meetings and everyone have a good holiday season. Hopefully, we'll be seeing you after the first of the year.

Chairman Tinkham's Discussion with Board Members on a Memo, Originally Dated May 24, 2006 and Distributed by Charlie Seelig; Subject Title, "Allowing members who were absent to vote"

In response to a memo distributed by Mr. Seelig back in May 24, 2006, the discussion at hand was whether or not the Zoning Board of Appeals would like to make a formal request to address this issue at the next Town Meeting, scheduled for May 14, 2007, regarding Chapter 79 of the Acts of 2006 (An Act Further Regulating Meetings of the Municipal Boards), Chapter 39 of the General Laws amendment by inserting after section 23C, the following section 23D, which states the following:

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- (a) “Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.

- (b) By ordinance or by-law, a city or town may adopt minimum additional requirements for attendance at scheduled board, committee, and commission hearings under this section.

The main purpose of this particular discussion was to prepare for upcoming hearings where both attendance and absence of attendance will become important factors when casting a vote. Unfortunately, the conversation between the board member did not exactly focus on the request to address this Chapter itself, but the legal manner in recording “minutes of meetings”. Discussion between board members stemmed from how the ZBA records their minutes compared to other municipal boards, committees and/or commissions within the Town Hall. Also, the question as to whether there can be a uniformity for all municipal boards, committees and/or commissions to agree to records their minutes was discussed. Bottom line, nothing was resolved in regards to both addressing this Chapter at the next Town Meeting and the manner of “minutes of meetings” recording.

The Board will continue the discussion on Monday, January 8, 2007.

The hearing was continued until Monday, January 8, 2007 at 7:00pm.

It was duly moved, seconded and VOTED to adjourn the meeting.

Respectfully submitted,

Marion Wong-Ryan,
Zoning Board of Appeals Secretary

It was duly moved, seconded and VOTED to approve the minutes of Monday, November 13, 2006 as presented/corrected.

Debra Tinkham, Chairman
