

Minutes

NORTH HAMPTON PLANNING BOARD Public Hearing: January 16, 2003

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These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription. An audio recording of the meeting is available in the Town Office. In the event that a question arises about verbatim comments, it can be answered by listening to the recording.

## Attendance

**Present:** (1) Phil Wilson, Chair; (2) Judy Day, Vice Chair; (3) Jenifer Landman seated for Allen Hines, Selectman; (4) Joseph Arena; (5) Don Gould; (6) Shep Kroner, Alternate seated for Laura Simmons; (7) Ron Todd.

**In attendance:** John Krebs, Circuit Rider/RPC; Krystina Arrain, Recording Secretary, Ed Kelly, Senior Engineer, Keach Nordstrom Associates, Inc., Bedford, NH [Town's consulting engineering firm]

Mr. Wilson called the meeting to order at 7:05 PM.

Mr. Wilson explained the procedure for this public hearing adding that the purpose is to review and hold a second series of public discussion on the proposed zoning ordinance amendments to Section 409.9 [Buffer Zone Restrictions]. He added that we would hold the first public discussion on the citizens petition of John J. Cafarella; and the proposed amendments to the Site Plan Review Regulations which include (a) Greenspace, (b) Landscaping and Screening, (c) Noise Emissions, (d) Architecture/Appearance and (e) As-Built Drawings.

## **Items Considered**

## Section 409.9 [Buffer Zone Restrictions]

## Board Comments and Observations

Mr. Gould opened discussion by reiterating the concern he issued in the first public hearing on this subject. He was concerned about how the Board has moved on this issue, that it has not been as thorough as needed. Mr. Gould commented that this amendment will impact many citizens financially. He believes the available data is inadequate for supporting the amendment as cited in the memo he distributed to the Board at the December 30, 2002 meeting. Mr. Gould further commented that the scheduling of this and the December 30th meeting was not well thought out – during the December holidays and on the same evening as the Budget Meeting.

Dr. Arena stated his support of the amendment in that it benefits the town as a whole and referenced that a number of the surrounding communities have followed suit by implementing similar wetland buffer amendments. Mr. Kroner voiced his support of the amendment. Mr.

Todd followed by stating his interest in hearing the concerns of the public and keeping an open mind on this issue.

Ms. Landman said she would reserve her comments until the public speaks but is very concerned about wetland protection. She commented the investments in land are considerably more than investments in stocks. It is a variable choice. Ms. Landman added that the 100-foot wetland buffer should not be much of an impact and the benefit to the community would far outweigh the cost. Ms. Day added that with this amendment in place the investment in land would appreciate. She referred to the Wetland Buffers report and commented that Alan Amman, who contributed to the report, stated that the data compilation for the report was gathered from valid data sources. Ms. Day commented that this amendment also addresses wildlife and overall environmental protection.

Mr. Wilson commented that this issue has been around for two years and the Master Plan specifically recommends returning to the 100-foot wetland buffer. He emphasized that the Master Plan is the Board's guideline. Mr. Wilson added that the NH Municipal Association [NHMA] stated water quality cannot be grandfathered. Economic impact has no impact on any lot in the town unless a lot is subdivided. He added that this amendment may change a suggested subdivision of four(4) lots into possibly three (3) lots. Mr. Wilson referenced information from a State of Washington report that qualified a 100-foot wetland buffer is at worst a "neutral" act but in most situations is "beneficial." He further added that he disagrees with Mr. Gould's position that existing data does not support this amendment. Mr. Wilson commented that environmental experts contributed to the Wetland Buffer report. He quoted from the report that a 100-foot buffer is the "minimum" which balances the need of landowners and the benefit to the public.

## Public Hearing – Opposition Comments

## Charles Gordon, 10 Sea Road

Mr. Gordon, speaking strictly as a private citizen, stated his property will be directly impacted and although he is Chairman of the Little Boars' Head ZBA and a member of the Conservation Commission, he does not fully support the amendment because it has a diminishing rate of return. He suggested (a) limiting the 100-foot buffer to lots of two (2) acres or more and (b) excluding any structures that already exist and (c) excluding Section 411 of the one (1) acre contiguous upland requirement if after the application of a 100-foot buffer there is not enough buildable land remaining to construct an appropriate structure.

## Henry Mixter, 68 Hobbs Road

Mr. Mixter commented that his purpose in attending the meeting was to provide additional information. At an earlier meeting he asked the Board how the amendment would impact landowners. To answer the above inquiry, Mr. Mixter worked with the Rockingham Planning Commission [RPC] to develop a wetlands overlay map. He posted such a map on the wall that displayed every lot in the town. Wetland areas were overlaid on this map. Thus by looking at the map it could be determined, which lots would be affected by increasing the wetland buffer. Mr. Mixter also provided a document that listed each lot's acreage along with a list specifying the Hydric A or Hydric B soil content per lot. He further stated that after proper mounting, these maps would be prominently displayed in the Town Offices. Mr. Mixter added that the

Conservation Commission is taking the position of providing valid and timely information to the Town. He added that with this information, townspeople would be able to make an educated decision on this issue.

## Paul McInnis, 21 Rockrimmon Road

Mr. McInnis questioned why the Board had not provided a wetland buffer map before this time. Mr. Wilson indicated that there is a smaller version of this map in the Building Inspector's office. Mr. Wilson commented that quantifying the cost of the increase of the wetland buffer to landowners is a difficult task. He added that wetlands comprise approximately 38% of North Hampton. Following up on this comment, Mr. Wilson asked if the RPC could provide a 100-foot wetlands overlay and possibly an overlay for the current 50-foot inland buffer to show the difference in impact. Mr. Krebs, RPC, cautioned that the wetlands map is only a representation and not infallible data.

## Glen Martin, Evergreen Drive [possibly 12 Kimberly Drive]

Mr. Martin asked that each sitting member of the Board state their land ownership in town and whether it would be affected by this amendment. The Board complied with his request. He questioned why the Board is taking land value away from landowners opposed to land investors. Mr. Martin believes that landowners who want to subdivide will be penalized by this amendment. Mr. Martin commented that although a number of you will be impacted, only one of you appears to be a land investor.

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## Ted Turchan, 125 Lafayette Road

Mr. Turchan suggested adding a loophole in the amendment for a "Special Exception" which does not have to meet the "Five (5) Findings of Fact" as does a variance. Mr. Gordon added to Mr. Turchan's statement that the Board would have to specify "Special Exception," in the amendment. Mr. Krebs, RPC, added that a "Special Exception" component was currently included in the amendment.

## Michael Iafolla, 114 Woodland Road

Mr. Iafolla asked for clarification about grandfathering – would a non-conforming lot exist as it were six (6) months ago with this amendment in force.

Mr. Wilson closed the public meeting at 8:12 PM

Dr. Arena commented that the Board's focus is to act upon what is best for the Town not what is best for any particular individual or group. Ms. Day re-emphasized her support for the amendment. She referenced a community in which she had previously lived where larger acreage raised the property value rather than diminishing them.

Mr. Gould added that lots are not grandfathered but rather as "Special Exceptions." He commented further that roads/driveways could not be built across a wetland except by a conditional use permit.

Mr. Wilson commented that the economic impact of this amendment is not the only consideration when making a decision. He emphasized that the Board weighs all factors when making decisions on community issues.

## Public Hearing – In Support Comments

### Joanne Lamprey, President, North Hampton Business Association, P.O. Box 63

Ms. Lamprey commented that according to national statistics, most people read and comprehend at an 8<sup>th</sup> –grade level and that it is important to carefully construct the verbiage of the amendment so that townspeople can readily understand its premise and purpose. Ms. Landman added that verbiage has to be constructed in such a way that it would hold up in court, if it were challenged. Ms. Lamprey emphasized that townspeople should understand what they are voting for is very important.

## Dr. Richard Richett, 20 Elm Road and 118 Lafayette Road

Dr. Richett questioned if this amendment is the best way to keep our wetlands healthy? He owns three (3) lots. Dr. Richett asked if we are missing other pollutants that we should address as well. Mr. Wilson commented that after the wetland buffer is increased to 100 feet, the Board would address the need for a vegetated buffer to assist in water absorption. He indicated the buffer amendment is a first step and that the Board is committed to investigating other ways to improve wetland protection.

Mr. Gould questioned again the validity of the Wetlands Buffer report. He is concerned about the cost to the townspeople. Ms. Day re-stated that Mr. Amman stated the 100-foot buffer is the best option. Mr. Wilson summarized that the issue has been discussed for over two (2) years with expert advice provided. He questioned the value and cost of hiring additional experts to advise the town.

# Dr. Arena moved, and Ms. Day seconded the motion, to put the amendment on the ballot as written. [*text in italics listed below*]

## Dr. Arena called the question.

## Vote Call: The motion carried 6 to 1.

Ron Todd – Yes Jenifer Landman – Yes Judy Day – Yes Shep Kroner – Yes Joseph Arena – Yes Donald Gould – No Phillip Wilson – Yes

## 409.9 Buffer Zone Restrictions

The buffer zone setback requirement from tidal and inland wetlands is 100'. For the purposes of this section 409.9 "inland wetlands" shall not include a vegetated swale, roadside ditch, or other drainage way; a sedimentation/detention basin or an agricultural/irrigation pond.

## A. Undeveloped lots of record

- 1. Undeveloped lots of record existing as of March 2003 or any lot created subsequently: No structure or impermeable surface shall be permitted within 100' of tidal wetlands or within 100' of inland wetlands on any lot of record existing as of March 2003 or on any lot created subsequently.
- 2. Undeveloped lots of record existing prior to March 2003: If the imposition of 100' tidal and/or freshwater wetland buffer setbacks causes the buildable upland acreage (that is, land that is not in the wetlands buffer zone) to be less than 16,000 square feet, the prior wetlands buffer zone setback requirements of 50' for inland wetlands and 75' for tidal wetlands shall apply.

## B. Developed lots of record

No structure or impermeable surface shall be permitted within 100' of tidal wetlands or within 100' of inland wetlands on any developed lot of record existing as of March 2003.

- 1. **Developed residential lots of record existing prior to March 2003:** If the imposition of 100' tidal and/or inland wetland buffer setbacks causes the buildable upland acreage (that is, land that is not in the buffer zone) to be less than 16,000 square feet, the prior buffer zone setback requirements of 50' for inland wetlands and 75' for tidal wetlands shall apply.
- 2. Notwithstanding other provisions of this section 409.9 of the Zoning Ordinance, the construction of additions to and/or extensions of existing buildings or structures shall be permitted within the 100' wetlands buffer zone provided that:
  - a) The dwelling or structure to be expanded existed lawfully prior to the effective date of this section 409.9 of the Zoning Ordinance (March 2003) or was constructed subject to a validly issued building permit.
  - b) The proposed construction conforms to all other applicable ordinances and regulations of the Town of North Hampton.
  - c) The footprint of any proposed new construction within the buffer does not exceed the greater of 1200 square feet or 25% of the area of the footprint of the existing heated structure within the buffer which existed prior to the effective date of this Ordinance.
  - d) Any proposed new construction of an addition or extension shall not intrude further into the wetland buffer setback than the current principal heated structure of which it is a part.

The meeting recessed at 8:45 PM

The meeting reconvened at 8:50 PM

Mr. Wilson introduced Ed Kelly, Senior Engineer, Keach Nordstrom Associates, Inc, of Bedford, NH. He added that Mr. Kelly represents the engineering firm that provides engineering consulting services for the Town of North Hampton. Mr. Wilson commented that Mr. Kelly will work closely with the Planning Board reviewing applications and providing expert engineering advice to the Planning Board and the Town of North Hampton. He added that Mr. Kelly and his family will soon relocate to the seacoast area.

## **Citizen Petition of John Cafarella**

On petition of John J. Cafarella and 25 or more registered voters of the Town of North Hampton hereby submit a petition or article pursuant to RSA 675:4: "To see if the Town will vote to amend the Zoning Ordinance and Zoning Map to relocate the boundary between the Industrial Business [I-B/R] and Residential 3 [R-3] Districts so that the parcels of land known as

Tax Map #017-077-000, Tax Map #017-078-000, Tax Map #017-079-000, and Tax Map #017-029-000 are included in the Industrial Business [I-B/R] District."

Mr. Wilson commented that Mr. Cafarella's petition will be on the ballot but the purpose for tonight's hearing is to determine if the Board will recommend or object to his petition.

Mr. Cafarella and Mt. Turchan explained how the aforementioned lots should really be within the I-B/R because of the proximity to Rte 1 and the fact that historically businesses including Mr. Cafarella's have existed for a long time. An arbitrary decision by the Planning Board more than 25 years ago removed these lots from the I-B/R and placed them in the R-3. The current zoning designation of R-3 does not accurately reflect the appropriate districting and should be changed to the I-B/R. Mr. Turchan added that as a businessman, it is more favorable to be zoned in the I-B/R. Mr. Cafarella added that he has been denied business loans because of his lot's R-3 districting.

## Public Hearing – In Support Comments

Joseph Fitzgerald, 65 North Road

Mr. Fitzgerald re-iterated both Mr. Cafarella and Mr. Turchan's position that in 1976 the lots were re-districted incorrectly and he wants it returned to the 1976 zoning district of I-B/R.

Harley Seaton, 53 Lafayette Road

Mr. Seaton expressed his support in favor of the petition.

Mr. Todd inquired if the owners of the house lots listed on the petition supported this action. Mr. Cafarella stated that they signed the petition either on the current petition or the previous petition he submitted which was in default because he missed the filing deadline.

## Dr. Arena moved, and Ms. Day seconded the motion, to recommend to town voters to approve the citizen petition.

## The motion carried 6-0 with Ms. Landman abstaining.

#### Site Review Regulation Amendments

Mr. Wilson opened the discussion with the statement that these amendments do not appear on the town ballot, but rather the amendments are changed as specified by the NH RSA's. The Board proposes the amendments. Public hearings are held on these proposed amendments and ultimately the Board votes to approve and incorporate into the Site Review Regulations or to disapprove and not change the current Site Review Regulations.

Mr. Wilson further added that there appears to be a misunderstanding that these changes only affect the I-B/R when they affect the entire town. He added that Ms. Day has been working on these proposed amendments since May 2002 and they appeared consistently on the agenda for both the regular and working session agendas for the Planning Board. This information and activity has been made public the entire time.

Mr. Wilson commented that in November 2002, the Long-Range Planning Committee and others met with Joanne Lamprey, President, North Hampton Business Association for input into the amendment process. He added that the Board received a memo today from the North Hampton Business Association. The Board, he commented, has not had sufficient time to process the information presented in the memo. Mr. Wilson stated the Master Plan survey indicated that 80% of townspeople want improvement in the appearance of the I-B/R. The Board is not interested in hindering or obstructing business in the community, but rather wants to improve businesses while meeting the town's Master Plan goals and to protect existing investments in the community.

Ms. Day discussed the committee that she had been chairing. She wished to thank Diane Kohler, Jim Carolan and Beth Church for all the work that they did. She also stated that the committee had spent a lot of time reviewing sample regulations and ordinance sections from other towns. Members of the committee had also contacted the Rockingham Planning Office and Office of State Planning to gain information about consistency in the law and information about positions that other towns had taken on these topics. Through Judy they also gained information from the NHMA. The committee began disseminating information to the Board in July and posting work session agenda from that time on that referenced this work.

Mr. Gould suggested that the Board listen to the public's comments and inputs and re-draft a common document at another time. Ms. Day was concerned that the Board's makeup may change after the upcoming election. Mr. Gould added that with two (2) seats up for election, he doubted the Board's makeup would change very much.

Dr. Arena commented that the townspeople who are North Hampton businesspeople may have different attitudes/focus than those who are non-resident, North Hampton businesspeople.

#### John McGonagle, 180 Post Road

Mr. McGonagle commented that as a businessman he disagreed with Dr. Arena and Mr. Wilson. Dr. Arena added that he made the comment on the subject, but it was not meant to impune anyone.

#### Public Comments — As-Built Drawings

Mr. Wilson read aloud Atty. Michael Donahue's comments on As-Built Drawings that were attached to Ms. Lamprey's memo:

"Prior to the issuance of a Certificate of Occupancy an as-built plan showing the details of the site to the nearest foot must be filed with the Planning Board in triplicate. The asbuilts need to be suitable for recording at the Registry of Deeds, which in my experience will be impossible given the amount of detail that the Town requires on the as-builts, which the Registry is not going to accept. If there is a discrepancy as determined by the 'Town Engineer' between the as-built and any material aspect of the plan previously approved, the Planning Board can require a re-submission of portions or all of the project's plan to the Board. The Board can waive the as-built requirement prior to granting approval.

On the whole my attitude towards these changes are that they are overly negative as they relate to the location of franchises on Route 1 and they are in the large measure inconsistent with the existing development along Route 1. Basically they set the stage for a serious battle on an aesthetic basis with the Planning Board on every development proposal including redevelopments along Route 1."

Mr. Wilson read aloud comments from Ted Turchan, Michael Iafolla and Tina Montgomery on As-Built Drawings that were attached to Ms. Lamprey's memo:

"As Built Section: The as-built section shows what has become apparent to any observer which is a dedicated non-expansion bias. This condition does not foster thoughtful appropriate development of our existing 1B properties. Therefore, one must be mindful that with the proposed as built section, North Hampton is now 'stuck' with existing buildings."

The proposed As-Built Drawings amendment currently reads:

After the approval of a Site Plan and **prior** to the issuance of a Certificate of Occupancy, the applicant shall have prepared by a licensed surveyor and/or engineer an 'as-built plan' showing the accurate location, invert and top grade of all drainage structure, all sewer structures, water mains and appurtenances and ties thereto, utilities, and profiles, centerline street and ditch grades on 100-foot stations to the nearest one (1) foot. Three prints of this information shall be submitted to the Planning Board, or its agent, for approval, <u>prior</u> to the issuance of a Certificate of Occupancy.

The applicant shall submit as-built drawings suitable for recording by the Registry of Deeds, and after review and approval, the Town shall record those drawings. The applicant shall be responsible for all costs associated with this article.

In the event that the Town Engineer determines that the as-built plans differ in any material respect from the plans previously approved by the Planning Board, the Board shall decide whether such differences are sufficiently material as to require a resubmission of portions or all of the project plans to the Planning Board under these Regulations or any part thereof.

Should the Board determine that the scope of an approved Site Plan does not warrant an as-built drawing(s), the Board shall waive this requirement <u>prior</u> to granting approval."

Mr. Turchan asked if an As-Built Plan would override/replace a previously recorded plan. Mr. Iafolla commented that he did not support the need for an As-Built plan. Mr. Krebs, RPC, added that the need for an As-Built is predicated on the fact that many times there are deviations from approved plans. Site plans must be accurate and As-Built plans would guarantee that accuracy.

Mr. Wilson commented that complex projects usually have engineering deviations and the Building Inspector monitors those changes. He doesn't expect that As-Built plans will be required in all instances. Mr. Iafolla inquired if the Town's consulting engineer would be available for every instance of a change in plans.

Mr. Kelly, KNA, and Mr. Krebs, RPC, Mr. Wilson and Mr. Gould made editorial and verbiage suggestions on the proposed amendment which included the Board waiving the requirement for an "As-Built Plan" under two (2) circumstances: (a) scope of the site plan does not warrant it or (b) issuance of a Certification of Occupancy/COO pre-empts the need.

# Ms. Day moved, and Mr. Kroner seconded the motion, to continue discussion until the January 21, 2003 public hearing.

## The motion carried unanimously.

## Public Comments — Noise Emissions

Mr. Wilson read aloud Atty. Michael Donahue's comments on noise emissions that were attached to Ms. Lamprey's memo:

"Prohibits external loudspeaker systems, including bells, buzzers and public address systems. This could have a significant impact on many of the businesses that currently exist along Route 1 were they to have to come in for changes in their site. Given the noise that is generated by traffic on Route 1, it hardly seems appropriate when the zone itself is dedicated to commercial and industrial. Additionally, the building and all site improvements will be designed to contain operational and mechanical noise such that the noise level at the property line of abutting properties will not exceed 60 decibels. I am not a noise expert so I cannot tell you whether that is reasonable or not."

Mr. Wilson read aloud comments from Ted Turchan, Michael Iafolla and Tina Montgomery on noise emissions that were attached to Ms. Lamprey's memo:

"Noise: Should be rewritten to limit DBs at 60 at the rear property line where it abuts residential property line. Since traffic noise has already been pegged at 85 to 87 DB on roadside corners, it seems ludicrous to try and limit noise to that level on properties to either side of subject property. The property should be excluded from that regulation during normal business hours with the exception that all annoying repetitive noises will be prohibited."

The proposed amendment currently reads:

- (a) All external loudspeaker (or enunciation) systems, including bells, buzzers, and public address systems are prohibited.
- (b) The building and all site improvements will be designed to contain operational and mechanical noise, such that the noise level at the property line of abutting properties will not exceed 60 decibels.

Mr. Wilson commented that most concerns voiced have been about loud, paging systems. Mr. Seaton asked how you could monitor noise emissions. Mr. Wilson responded that there is specific equipment to measure noise emissions. He added that a citizen's complaint would trigger a review by our engineer. Mr. Wilson commented that the Board is trying to protect the public interest through this amendment.

Mr. Iafolla stated that noise is amplified between businesses during operating hours to higher levels and he believes the 60-decibel-standard is not a good standard or measure. Mr. Wilson indicated that the Board should review different areas at different times against that standard to provide them with more information for consideration. He asked Mr. McInnis, who is an auction dealer and more familiar with paging systems, if he would review this section and rework it with a focus not to prohibit paging systems under such a broad stroke as it may seem currently in Item (a) listed above.

Mr. Wilson commented that he believes Item (b) should consider operation hours when it borders a residential zone as well as the mechanical/operational noise from the origination area. He suggested a 60-decibel noise emissions limit for residential zones. Ms. Day added that the Building Inspector is knowledgeable about noise emissions and has additional information that would be useful to review with him. Mr. Wilson referenced actual regulations that pertain to noise. Dr. Arena moved, and Ms. Day seconded the motion, to table discussion on noise emission until substantial changes are made.

#### The motion carried unanimously.

#### Public Comments — Greenspace

Mr. Wilson read aloud Atty. Michael Donahue's comments on Greenspace that were attached to Ms. Lamprey's memo:

This amendment defines green space as a <u>permeable</u> area of <u>vegetated</u> ground surface. It requires that green space shall comprise no less than 25% of the total lot area. In calculating the total lot area you do not include any areas that are designated as wetlands or steep slopes in excess of 25%. If a lot had two acres and one acre was wetlands, then 25% of one acre, that is approximately 11,000 square feet, would have to be a permeable area of vegetated ground surface. This is a substantial requirement. One quart of the potential buildable building area of each parcel is reserved for this green area. If an existing lot were to be redeveloped, think, for example, of Max Cycles BMW facility, it might be hard to meet this requirement and yet the redevelopment of the parcel was clearly a very positive thing for the Town.

Mr. Wilson read aloud comments from Ted Turchan, Michael Iafolla and Tina Montgomery on Greenspace that were attached to Ms. Lamprey's memo:

"C-6. This is an outrageous number of trees considering the uses for commercial property as it is specified in the 1B zone. These provisions create hardships for the property owner by diminishing the available land to be used for parking, lighting, signage septic, and performance of any commercial activity.

The number of trees specified and the placement thereof is totally unreasonable by any recognized and competent authority. The number of trees and their spacing will be detrimental if not totally obliterate the use of the land for snow storage, plowing, parking, septic, landscaping maintenance and building maintenance, to say nothing of the damage to building and roofs."

The proposed amendment currently reads:

DEFINITION: A permeable area of vegetated ground surface.

Greenspace shall comprise no less than 25% of the total lot area, exclusive of wetlands and slopes in excess of 25%.

Mr. Krebs, RPC, indicated that 25% is not a significant increase when you include in that 25%, the front, side and rear setback requirements.

Mr. Krebs left the meeting at 10:30 PM

Mr. Turchan inquired why wetlands are not included in the 25% greenspace area. Mr. Wilson answered that the 25% would include the setback requirement. Mr. Turchan followed by asking "do you want a business area or a park"? Mr. Wilson answered that if he were forced to make a choice, it would be a park.

# Ms. Day moved, and Dr. Arena seconded the motion, to approve the amendment on greenspace.

The motion carried unanimously.

## Public Comments — Architecture/Appearance and Landscaping and Screening

Mr. Wilson opened the discussion on these proposed amendments.

Because of the lateness of the hour, Mr. Todd moved and Dr. Arena seconded the motion to continue the public hearing to the regularly-scheduled Planning Board Meeting on Tuesday, January 21, 2003.

The vote was unanimous.

#### At 10:50 PM, Dr. Arena moved and Mr. Kroner seconded the motion to adjourn.

#### The motion passed unanimously.

Respectfully submitted,

Krystina Arrain Recording Secretary