

1 **TOWN OF SUNAPEE**

2 **PLANNING BOARD**

3 **DECEMBER 7, 2017**

4 **PRESENT:** Peter White, Chair; Donna Davis Larrow, Vice Chair; Richard Osborne; Joseph Butler; Randy  
5 Clark; Shane Hastings, Ex-Officio Member; Michael Marquise, Planner

6 **ABSENT:** Joseph Furlong; Suzanne Gottling, Alternative Ex-Officio Member

7 **See attached sign in sheet**

8 Chairman White called the meeting to order at 7:00 pm.

9 **ZONING AMENDMENT PUBLIC HEARING – FULL TEXT ATTACHED**

10 Mr. Marquise gave the Board copies of written comments from LSPA regarding three of the  
11 Amendments.

12 Amendment #1

13 Amend Article II, Section 2.30 and Article III, Section 3.10 and Article IV, Section 4.10 to create a new  
14 low-density residential/moderate intensity commercial zoning district defined as Mixed Use III that will  
15 encompass an area 500' either side of Route 11 from Browns Hill Road to Trow Hill Road and 500' on the  
16 easterly side of Route 11 from Trow Hill Road to Jobs Creek Road in Georges Mills.

17 Chairman White read the full text of the proposed Amendment.

18 Mr. Osborne noted that the explanation of the Amendments says 500' while the text of the Amendment  
19 says 600'. Mr. Marquise said that there is a discrepancy but that there may be a reason to increase the  
20 width even more.

21 A member of the audience asked who determines the list of businesses that will be permitted in the  
22 district. Chairman White explained that the list was based on other Zoning Districts in Town as well as  
23 what the Board felt would be appropriate in the District.

24 A member of the audience said that this proposed Amendment is very similar to an Amendment that  
25 was defeated last year; although it is more restrictive it raises many of the same issues and there is a  
26 concern regarding storm water runoff into Lake Sunapee. The audience member continued to explain  
27 her concerns about the proposed Amendment.

28 Chairman White read the comments from the LSPA (see attached).

29 A member of the audience asked about access to Route 11 from the properties. Chairman White  
30 explained that the State has control of driveway cuts onto Route 11. The audience member asked that if  
31 the State does not allow a driveway cut onto Route 11 if the driveway access will need to be onto  
32 another road. Chairman White explained that the State looks at the sight distance, the speed of the  
33 traffic, etc. but he does not know if the State can deny access to a lot. There was further discussion

34 regarding this matter. A member of the audience said that Route 11 is the only choice for many of these  
35 lots as there is not another access road.

36 A member of the audience asked about the differences between the proposed Amendment from last  
37 year that was voted down and this proposed Amendment. The Board explained the differences  
38 including the minimum lot size, the density, and that many of the high traffic uses have been removed.  
39 There was further discussion regarding this matter.

40 A member of the audience asked about the existing contractor's yard and it was explained that it is on  
41 the other side of Brown's Hill as this proposed Amendment. The audience member asked about the lot  
42 with the gravel crushing and Chairman White explained that is considered resource extraction. Mr.  
43 Marquise said that would not be on the list but is grandfathered in with a prior approval and the two-  
44 year approval should be up next year.

45 A member of the audience said that the LSPA's biggest concern is the Georges Mills Hill area and asked  
46 how the Zone was determined and why it has to go all the way to Jobs Creek Rd. The LSPA gets  
47 complaints about sediment in the Lake along Jobs Creek Rd continuously. Mr. Marquise explained the  
48 reason that the Board determined the area for the proposed Zone. They initially had both sides of the  
49 road and then determined to cut the westerly side off at Trow Hill due to the Rural Lands and  
50 topography. The Board recognizes issues with runoff, which is why they decided to keep the current  
51 dimensional requirements that would affect the build out. The audience member said that beyond the  
52 rock crushing place he does not think that there is anything other than a house and small real estate  
53 business coming down the Jobs Creek side. There was further discussion regarding this matter and that  
54 one of the lots was previously subdivided, however, the owners did not do anything due to the  
55 economy.

56 A member of the audience asked if any of the lots in the proposed Zone are owned by the Town. Mr.  
57 Osborne said that the Town owns the lot where the Georges Mills Fire Station is located.

58 A member of the audience asked about another lot that looked to have access on Jobs Creek Rd. Mr.  
59 Marquise said that he believes that the lot is Phase II of Eagle Rock.

60 There was a discussion regarding the wetlands and streams in the area and that development might be  
61 difficult in some areas.

62 There was a discussion regarding the issue that there are about three lots that will be cut in half with  
63 this Zone and Mr. Marquise recommended going to 700'. The self-storage lot is 1215' long and at the  
64 50% rule going to 700' would put this lot into this Zone. Chairman White asked, and Mr. Marquise  
65 confirmed that he is proposing 700' on both sides of the Zone to keep it consistent and it clears up  
66 issues with some other lots. There was a discussion regarding having the Zone only go 600' going down  
67 Georges Mills Hill. Chairman White explained that for Zoning, whatever Zone covers more than 50% of a  
68 lot is what Zoning requirements the lot has to follow. There was further discussion regarding this  
69 matter.

70 Chairman White said that he has concerns regarding mixing commercial uses right next door to  
71 residential uses. There is a reason for Zoning and separating the two uses and some commercial uses  
72 are not appropriate next to residential lots. There is nothing in this proposed District that relates to

73 having a commercial use next to a residential use. Chairman White continued that he thinks that there  
74 should be something that requires greater setbacks for commercial uses versus residential uses. The  
75 side setback on a non-conforming lot is 15' so there could only be 30' between a residence and a  
76 commercial enterprise, which is too close. Mr. Marquise said that he thought that the Board discussed  
77 creating something that would be more town wide that would address this issue and there are several  
78 ways to do it. It may be difficult to just do it in one Zone. Chairman White said that he does not think  
79 that this Zone should be created without addressing the issue as it could be a year or more before it is  
80 handled. There was further discussion regarding this matter and that the parking lot and such will need  
81 to meet the setbacks, not just the structure.

82 A member of the audience asked if there is a Town wide buffer zone between commercial properties  
83 and residential properties. Chairman White said that there is not; the Planning Board can make  
84 suggestions during Site Plan Review, but they are not something that the applicants need to necessarily  
85 follow.

86 A member of the audience asked if the lots next to Browns Hill Rd are already residential. The Board  
87 answered that there are already two to three houses there and they would be next to a lot that would  
88 potentially be commercial. The audience member asked why the Zone would go up that far. Mr.  
89 Marquise explained that they try to not divide Zones around lots and Brown's Hill Rd is an easy divider.

90 Mr. Marquise said that High Tech Research and Development Firms are not on the list, however, he  
91 thinks that is an oversight on his part and he thinks it should be added under the Special Exception list.  
92 Mr. Osborne asked, and Mr. Marquise confirmed that he thinks that boat repair covers the marina  
93 aspect that is not on the list because a marina is supposed to be on the water.

#### 94 Amendment #2

95 Amend Article VI, Section 6.12 – Reconstruction, Article XI - Definitions and add Article VI, Section 6.13 –  
96 Expansion - by changing Section 6.12 to discuss structure reconstruction only (first paragraph of current  
97 section plus portion of second paragraph), adding Section 6.13 to define alteration/expansion of non-  
98 conforming structures with new definitions for Reconstruction, Envelope and Expansion.

99 Chairman White read the full text of the proposed Amendment.

100 Chairman White read the LSPA's comments to the Board (see attached). Chairman White also gave a  
101 synopsis of a letter from Michael Jesanis to the Board (see attached).

102 Chairman White explained that the Zoning Board was struggling with Section 6.12 regarding adding on  
103 to existing non-conforming structures; because it didn't specially say that you could not do that, people  
104 were assuming that it could be done which led to a lot of confusion. This proposed Amendment is to try  
105 and make the Ordinance clearer for people with pre-existing conditions. Mr. Schneider gave further  
106 explanation regarding the proposed Ordinance.

107 A member of the audience said that he thinks that Section 6.13 has a loophole as it does not mention  
108 height or envelope, it only mentions setback. This would mean that he could build a 100' addition to his  
109 house as long as it is out of the setbacks. Mr. Osborne asked if there should be wording added  
110 regarding the height. There was further discussion regarding this matter and making sure that all the

111 dimensional controls under Section 3.10 are covered. It was determined that there will be wording  
112 added to ensure that the proposed Ordinance includes that the expansion must fully comply with the  
113 Dimension Control requirements under Section 3.10.

114 A member of the audience said that the desire to have things become compliant gets lost with this  
115 proposed Amendment. This does not ensure that people pull their houses away from the water or that  
116 there are better buffers. The audience member continued to explain her thoughts regarding the  
117 proposed Amendment and how it affects houses that have been built more recently and are still non-  
118 conforming. In other Towns, anything that is done to a non-conforming structure requires a Variance.  
119 Mr. Marquise explained that in Sunapee as long as something is existing there is a right to keep that  
120 existing area and it is already acceptable to build in the areas that are conforming. There was further  
121 discussion regarding this matter and properties that may not have been built according to the guidelines  
122 / requirements.

123 A member of the audience asked about Amendment #7 as it addresses non-conforming structures and  
124 houses that have received approval as they then become conforming. Mr. Marquise explained that  
125 something may be permitted, but it is not necessarily conforming. Chairman White explained that the  
126 structure would still be non-conforming to the current Zoning. There was further discussion regarding  
127 properties that have already received Variances as they are non-conforming, but structures can be  
128 added to them if the expansion meets the dimensional controls. There was further discussion regarding  
129 that the Amendment addresses going out of a building envelope but in a conforming direction. There  
130 was a discussion regarding the date of the Ordinance.

131 Mr. Schneider said that a Variance or a Special Exception are permanent, therefore, they are permanent  
132 permitted uses and as long as that permitted non-conforming area is not increased it can be  
133 reconstructed.

134 The date for the Ordinance will be added to the wording of the proposed Amendment.

135 Amendment #3

136 Amend Article X, Section 10.42 – Variance - by making reference to the statutory definition per the New  
137 Hampshire RSA's as may be amended from time to time.

138 Chairman White read the full text of the proposed Amendment.

139 There was no input from the Board or the audience regarding this Amendment.

140 Amendment #4

141 Amend Article X, Section 10.43 - Equitable Waivers – by making reference to the statutory definition per  
142 the New Hampshire RSAs as may be amended from time to time.

143 Chairman White read the full text of the proposed Amendment.

144 There was no input from the Board or the audience regarding this Amendment.

145 Amendment #5

146 Amend Article XI, Definitions – Structures by adding to the definition such items as houses, garages,  
147 decks and sheds and including exemptions for landscaping features such as driveways, walkways, patios  
148 and retaining walls less than 42”.

149 Chairman White read the full text of the proposed Amendment.

150 A member of the audience asked about outdoor kitchens.

151 Vice Chair Larrow said that the words “in height” should be added after “retaining walls less than 42  
152 inches” for clarification.

153 Chairman White read the portion of the letter from Mr. Jesanis regarding this Amendment (see  
154 attached). Chairman White also read the portion of the letter from the LSPA regarding this Amendment  
155 (see attached).

156 The Board explained that they have discussed this proposed Amendment extensively.

157 A member of the audience said that there are problems with driveways and patios and other  
158 landscaping features. They can be intrusive to neighboring properties, especially outdoor kitchens, and  
159 if they do not have to deal with setback requirements then there can be living spaces right next to  
160 neighboring properties. There is also a serious concern with runoff and landscaping features. The  
161 member of the audience continued explaining her thoughts regarding the proposed Amendment as  
162 people who make alterations do not have to account for water volume on their properties.

163 Chairman White acknowledged that this is a challenging subject and they researched the Ordinances  
164 from other towns and those do not include driveways or patios as structures.

165 A member of the audience asked, and Chairman White said that anything that has a roof would be  
166 considered a structure. A member of the audience asked, and Chairman White said that driveways,  
167 patios, and landscaping features have never needed to meet setbacks. Impervious patios are not  
168 allowed along the Shoreland per the State and walkways and such down to the water are also regulated  
169 by the State. There was further discussion regarding this matter and runoff in the watershed.

#### 170 Amendment #6

171 Amend Article XI - Definitions – by adding a new definition of Impervious Surface

172 Chairman White read the full text of the proposed Amendment.

173 Mr. Marquise explained that this definition comes directly from the State Shoreland Protection Act.

174 A member of the audience asked if wording that the definition comes from the State would help it get  
175 passed. The Board agreed to add the wording.

#### 176 Amendment #7

177 Amend Article XI - Definitions – by adding a new definition of Non-Conforming Structure that defines  
178 such as any structure existing at the time of passage of this ordinance that does not conform to the  
179 dimensional controls set forth in Article III or IV or the Zoning Ordinance.

180 Chairman White read the full text of the proposed Amendment.

181 Mr. Marquise recommended adding the word “pre-existing” to the definition so it will be a “pre-existing  
182 non-conforming structure”. They will also add “pre-existing” to Section 6.12 to clarify that pre-1987  
183 houses are the only ones that are allowed to tear down and rebuild “as is”.

184 A member of the audience asked what happens to a house that has required Variances. Mr. Marquise  
185 said that house would be a non-conforming structure and cannot be torn down and rebuilt. It is non-  
186 conforming because it does not comply with the Ordinance. There was further discussion regarding this  
187 matter.

188 Mr. Schneider said that if two different terms are used then there should be a definition for each term.  
189 Mr. Marquise suggested the wording for a “non-conforming structure” to be: any structure that does  
190 not conform to the dimensional controls set forth in Article III or IV of this ordinance. The Board agreed  
191 with this suggestion.

192 Mr. Osborne asked, and it was confirmed that a house that was built after 1987 that has required  
193 Variance will need review by the Zoning Board. Mr. Osborne asked if it should be stated that  
194 reconstruction of a non-conforming structure requires review of any approvals by the Zoning Board so  
195 people do not assume that prior approvals are OK to rebuild.

196 Mr. Schneider asked if someone tears down a house and wants to rebuild it without expanding the  
197 footprint if they will need to return to the Zoning Board to get a new Variance or Special Exception as he  
198 believes that this is new. He wonders what would happen to a house that was built before 1987 and has  
199 received subsequent updates. Mr. Butler asked, and Mr. Marquise confirmed that if a house is torn  
200 down then it could then be built to conform. Mr. Schneider said that is not been the way that the  
201 Ordinance has been applied.

202 Mr. Schneider suggested, and Mr. Marquise said that all the proposed Amendments go to the Town’s  
203 attorney for their review. Mr. Schneider said that it is his understanding that if someone has an  
204 approved footprint / envelope and that property has received a Variance or Special Exception they could  
205 rebuild the structure using that approval. There was further discussion regarding this matter as Mr.  
206 Marquise questioned what the Zoning Board is trying to accomplish with the Zoning Amendments and  
207 Mr. Schneider said that it could be difficult to determine when the structure became non-conforming.

#### 208 Amendment #8

209 Article XI - Definitions – by changing the heading of Height to Maximum Structure Height

210 Chairman White read the full text of the proposed Amendment.

211 Mr. Clark asked why “etc.” is part of the definition. Mr. Marquise said that is currently part of the  
212 definition.

213 Chairman White explained that there needs to be another public hearing on the Amendments and it will  
214 be held on January 11, 2018. At that meeting the Planning Board will vote on each Amendment to pass  
215 it on to the ballot or not. The Town meeting is March 13, 2018.

216 **CONSULTATION: PARCEL ID: 0133-0027-0000: REBUILD EXISTING MULTI-FAMILY PROPERTY. 11**  
217 **GARNET ST, MATHEWSON PROPERTIES, LLC.**

218 Chairman White explained that consultations are completely non-binding and just gives the Board an  
219 idea of what an applicant is proposing. The Board might have some suggestions but there are no  
220 implied approvals.

221 Phil Mathewson, the owner of the property, explained to the Board his proposal for the property.

222 Mr. Mathewson explained that currently the structure is a six-unit apartment building. Except for some  
223 electrical and plumbing updates, it remains the same as he bought the property 11 years ago. He wants  
224 to do something with the building and repairing it does not make sense. The property is pre-existing  
225 and non-conforming, and he's been working with an architect to help make the property more  
226 conforming.

227 Mr. Mathewson showed the Board a plan of the property that shows the current layout. Mr. Butler  
228 asked, and Mr. Mathewson said that he thinks the best use of the property is condominiums. He will  
229 reduce the number of units from six to five or four and more permanent residences will fit better with  
230 the area. He currently occupies one of the units and plans on keeping on of the new units for himself.

231 Mr. Clark asked about the current parking for the building. Mr. Mathewson said that currently all the  
232 parking is along the front and fully paved, and they are trying to address this for the Shoreland Permit.

233 Mr. Butler asked, and it was explained that it is not economical to rehab the property, so it will be torn  
234 down. They are hoping to address the impermeable surfaces and make the front better.

235 Mr. Butler asked, and Mr. Marquise said that one space for every 10,000 sq ft is required for both  
236 condominiums and apartment buildings. Mr. Butler asked, and Mr. Mathewson confirmed that there  
237 will be garages under each unit.

238 The proposed plan was explained to the Board as they will be about 5' 10" off from the front setback.  
239 They plan on creating more greenspace in the front by keeping just one of the driveways and creating  
240 another and then improving the streetscape. Chairman White asked, and it was confirmed that the  
241 proposed building will not be any closer to the road than it is located now.

242 Mr. Butler asked, and it was explained that the property is in the Village Residential Zone and in the  
243 Shoreland Overlay District.

244 Chairman White asked, and it was confirmed that the property is currently non-conforming and they are  
245 proposing to be less non-conforming. Chairman White said that currently the proposal will need to go  
246 to the Zoning Board as the project will go outside the existing envelope. Mr. Marquise said that the  
247 State will have some limitations regarding the lot coverage, however, he believes that they will be able  
248 to stay at the current level. It was explained that they are currently in the process of getting a Shoreland  
249 Permit and the soil scientist has said that their proposal is a vast improvement over what the State  
250 would probably require.

251 Mr. Marquise said that the proposal will need to go to the Zoning Board, but they wanted to make sure  
252 that the Planning Board did not see any issues.

253 There was a brief description regarding the parking, the number of units, and the size of the units. Two  
254 parking spaces per unit is required so if the plan changes to five units then 10 spots will be required.

255 Chairman White asked if there are any deed restrictions regarding the height of the building for the view  
256 of the Knowlton House. Mr. Mathewson said that there are no deed restrictions.

257 Chairman White asked, and Mr. Marquise said that a condominium association is not considered a  
258 commercial entity, it is residential. A Site Plan Review is required because there will be three or more  
259 units.

260 There was a brief discussion regarding the height as the measurement must come from the lowest point  
261 where the structure meets the ground level. There was further discussion regarding the height.

262 Mr. Butler recommended going over the plan with the Fire Department and the Highway Department.

263 Chairman White said that the Ordinance says that “the portion of the structure in the area of reduced  
264 setback shall have a maximum height of 25 ft”. There was further discussion regarding this matter as  
265 any increase in that height will require Zoning Board approval.

266 Chairman White asked, and it was confirmed that that driveway will be permeable.

#### 267 **OTHER BUSINESS - FERNWOOD TRUST MERGER**

268 Mr. Marquise explained that the last time that the Board had this lot merger before them the document  
269 had the wrong name; everything else was correct, however, the name needed to be corrected. The  
270 Board agreed that Chairman White will bring the document in to the Town Clerk / Tax Collector’s Office  
271 to sign it.

#### 272 **OTHER BUSINESS – 45 LOWER MAIN ST**

273 Mr. Marquise said that he received a Statement of Property Usage for this property. The building was  
274 most recently used as a machine shop and did not have a Site Plan. There has never been a Site Plan for  
275 the property.

276 Mr. Marquise said that the Statement of Property Usage states that there will be up to 16 employees  
277 and the possible hours are 6:00 am until midnight. Mr. Marquise continued that he feels as though the  
278 Board should discuss the types of uses that are proposed to determine if they would like to have a Site  
279 Plan Review.

280 Mr. Butler asked and the person in attendance to discuss the Statement of Property Usage who  
281 explained that he wants to purchase the property said that the building is currently not used. Mr.  
282 Hastings asked, and it was confirmed that most of the machinery has been removed.

283 Mr. Osborne asked, and it was confirmed that the proposed use will have up to 16 employees.

284 The person who wants to purchase the building explained that he wants to confirm that he can use the  
285 building the way that he wants before purchasing it. It has been used as a machine shop and it will be  
286 used as a machine shop for his use.



287 Mr. Clark said that he believes that the former occupant used the building for two shifts and he saw cars  
288 there past midnight.

289 Mr. Butler asked if the machines make a lot of noise. The prospective owner said that the machines  
290 could be considered noisy. Mr. Hastings said that he lives two properties away and never hears the  
291 machines. Mr. Clark asked, and it was explained that there is a day care and apartment building across  
292 the street from this building. Mr. Hastings said that the two prior occupants were machine shops and he  
293 never heard anything, even in the summer with the windows open.

294 Mr. Clark asked, and Mr. Marquise explained that a Site Plan Review would allow for input from the  
295 abutters of the property. It is not a permitted use in the Zone, however, as long as the use is not  
296 dormant for two years then the use can continue. Under Site Plan Review the Planning Board can look  
297 at parking, landscaping, lighting, noise, etc. Mr. Marquise continued that he does not see the problem  
298 with the use continuing as it has only been six or seven months, however, the Board can determine if  
299 they want a Site Plan Review.

300 There was a brief discussion regarding the road that goes by the property and that the property goes  
301 across the river.

302 Mr. Butler said that he does not see a problem with the property continuing to be used as it has been.  
303 Mr. Hastings asked, and it was confirmed that eventually they would like to have two shifts but currently  
304 they will run from 6:00 am – 6:00 pm. Chairman White said that he looks at the number of employees,  
305 hours of operation, etc. and does not think that there have been any complaints before. The traffic will  
306 be before and after school lets out.

307 Chairman White asked if there will be an increase in truck traffic. The prospective owner said that he  
308 thinks that Ushers Machine Shop, the former occupant, had 16-20 employees. Mr. Hastings said that  
309 they could have had 25 employees. The prospective owner said that he currently has himself and two  
310 other people in his current location. He is hoping to build up the business, but 20 people would be the  
311 maximum.

312 Chairman White asked if there are any hazardous materials. The prospective buyer explained that there  
313 are machine oils, hydraulic oils, and water-soluble coolant. Chairman White asked about the plans to  
314 contain potential spills and it was explained that there are standard practices and is not aware of any  
315 specific laws, but they have someone who is licensed change the oils and coolants.

316 The potential buyer explained that he would like to know if he will need to do anything further so he can  
317 tell the owner when they could possibly close on the building.

318 There was further discussion regarding the size of the business and how it compares to Usher's. The  
319 Board agreed that they do not see the need for a Site Plan Review as it is a continuing use as long as the  
320 hours are 6:00 am – 6:00 pm and then if the expanded hours are needed a Site Plan Review can be  
321 requested.

322 Mr. Osborne made a motion to allow the continued usage of a machine shop for the property at 45  
323 Lower Main St, for the hours to be 6:00 – 6:00 and to be reviewed if a second shift is added. Mr. Butler  
324 seconded the motion. The motion passed unanimously.

325 **MISCELLANEOUS**

326 Mr. Marquise said that there is a Certificate of Appointment for Michael Jewczyn to become an  
327 alternate member of the Planning Board.

328 **MINUTES**

329 Changes to the Planning Board minutes from November 2, 2017: There were no corrections to the  
330 minutes.

331 Vice Chair Larrow made a motion to approve the minutes as submitted. Mr. Osborne seconded the  
332 motion. The motion passed with five in favor and one abstention.

333 **MISCELLANEOUS**

334 Mr. Marquise reminded the Board that starting in 2018 the Planning meetings will be held the second  
335 Thursday of the month.

336 Chairman White said that he had some things in his box that the Board can review if they would like.

337 There was a discussion regarding integrating various maps into the online GIS system.

338 Mr. Clark said that he is on the Regional Planning Commission and asked if the Board has anything he  
339 would like to bring up to them. He is going to bring up the Zoning Amendment along Route 11 and the  
340 new Zoning Administrator. The Board did not have anything else to add.

341 Mr. Clark made a motion to adjourn the meeting at 9:44 pm. Mr. Butler seconded the motion. The  
342 motion passed unanimously.

343 Respectfully submitted,

344 Melissa Pollari

345

346 Planning Board

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348 Peter White, Chairman

349 \_\_\_\_\_

350 Richard Osborne

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352 Joseph Furlong

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354 Shane Hastings, ex-officio member

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Donna Davis Larrow, Vice Chair

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Joseph Butler

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Randy Clark

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Suzanne Gottling, ex-officio alternate member