

1 **TOWN OF SUNAPEE**

2 **PLANNING BOARD**

3 **DECEMBER 20, 2012**

4 **PRESENT:** Peter White, Vice-Chair; Donna Davis Larrow; Robert Stanley; Shane Hastings, ex-officio
5 member; Michael Marquise, Planner

6 **ABSENT:** Erin Andersen, Kurt Markarian, Bruce Jennings, Chair

7 **ALSO PRESENT:** See attached Sign-in Sheet.

8 Peter White, Vice-Chair, called the meeting to order at 7:00 PM.

9 The changes to the minutes from the November 15, 2012 and December 6, 2012 meetings were
10 postponed until the next Planning Board meeting.

11 Mr. White asked Roger Landry, Zoning Administrator, how many building permits were issued this year.
12 Mr. Landry said that he does not have the total number but he believes the number is a little less than
13 last year but the value of the building permits has gone up.

14 There was a brief discussion regarding the Shoreline Protection Act.

15 Mr. White explained to those in attendance that this meeting is to discuss the proposed Amendments to
16 the Zoning Ordinance to go on the Ballot to get voted on in March. Mr. White said that discussion will
17 happen on each Amendment and they are allowed to change them based upon public input but they
18 cannot change the intent. Mr. Marquise clarified that changes can be made but there would need to be
19 a second public hearing if they want to change the intent. The problem is the timing of noticing and
20 being able to hold the meeting and he is not sure that it is possible. Mr. White said that most, if not all,
21 of the proposals came from the ZBA as recommendations to the Planning Board and then the Planning
22 Board has discussed them and made modifications as well.

23 **Amendment #1**

24 **Amend Article II, Section 2.30 - District Purpose and Description – Village Commercial/Village**
25 **Residential District** by moving a portion of the district boundary line to include a portion of properties
26 northerly of Maple Court, easterly of Maple Street/River Road, and westerly of Burkehaven Hill Road.

27 Mr. Marquise gave drawings to the Board regarding the Amendment. Mr. Marquise explained the
28 proposed Amendment reflects the intent of the Board with the line coming from the end of Maple Ct to
29 the intersection of River Rd and Maple St and then down. In describing the courses in the text one
30 course was left out which will need to be discussed. It is the one that goes from the intersection back to
31 where it turns 200' down River Rd and without it the line bends further to bring more of the properties
32 on Maple St into Village Commercial which was not the intent of the Board. Mr. Marquise recommends
33 revising the text to reflect the intent. Mr. Stanley asked if what the Board discussed was in the drawing

34 and Mr. Marquise confirmed that he believes it shows the Board's intent but said they should discuss
35 the Amendment first before writing the text.

36 Rob Werge, who owns 9 Maple St., explained that he purchased the property at the end of 2011 and
37 looked into the Zoning on the property and the surrounding properties at the time. He is concerned
38 with the change and explained his point of view as he feels like the proposed change moves the Village
39 Commercial District too far and extends commercial activity too far into residential areas.

40 Mr. Werge said that he put together a proposal to slightly modify the district and presented drawings to
41 the Board showing his proposal. Mr. Werge explained that his proposal starts at the corner of River Rd
42 and Maple St and cuts across, West to East, to a point about 200' southerly on Burkehaven and then
43 drop back down to the original line. He believes this will keep commercial activity in the area where it is
44 happening and allows the Village area to grow and prosper and not intrude upon the Residential area.

45 Mr. Stanley asked and Mr. Landry clarified that this change was recommended by the Zoning Board and
46 is making the Village Commercial area the same that it was prior to 2011. The cottage rentals business
47 on Burkehaven go back to Village Commercial as it is now in Village Residential, and the Quacks
48 restaurant goes back to Village Commercial, and the Woodbine lots. Right now there is no developable
49 commercial property in the Harbor as it is all Village Residential. Mr. Landry explained that with Zoning
50 Ordinance 2.42, if there is a property in two Zoning District, the District that has the controlling portion
51 of the property is what Zoning District the property is in.

52 There was a discussion regarding the ownership of lots and how Zoning must be considered for abutting
53 parcels under the same ownership.

54 Ms. Stone, owner of 7 Maple St, asked as the line would intersect her property, would it mean that half
55 her property is in Village Commercial and the other half would be in Village Residential. Mr. Landry
56 explained that the square footage would have to be calculated to determine which Zone the property
57 would be in. Ms. Stone also asked what the change in Zoning would do to her taxes. Mr. Landry said
58 that the Town does not assess on the Zoning District, the Assessors look at values. Ms. Stone said that
59 she recently had her property appraised and was told by the appraiser that if the property was in the
60 Commercial District it would appraise at a higher amount. Mr. White explained that a real estate
61 appraisal is different than a tax assessment. Ms. Stone asked what the advantage would be to have half
62 of her property zoned commercial. Mr. Landry explained that if the majority of her property is in the
63 Village Commercial District, and she wanted to sell the property, there are more advantages to
64 developing the property than if it remains in Village Residential. Mrs. Larrow explained that if it turns
65 out the property is more in the Village Residential Zone then the change doesn't affect her property at
66 all.

67 Mr. Werge explained that, while he wants to keep his Residential property as is, he is more concerned
68 with what goes on around his property.

69 Tim Putchler, who owns 13 Maple St, said that his concern is how far the business properties will extend
70 and interfere with their neighborhood.

71 Mr. White asked as the change puts some properties back to the previous Zoning District, if the line is
72 exactly the same. Mr. Marquise explained that the line is not the same but it changes some of the
73 properties that were in Village Commercial back. Mr. Marquise said that before 2011 there was no
74 difference between Village Commercial or Village Residential, every property that is in Village
75 Residential was once in Village Commercial which was just called the Village District. Everything that
76 was allowed in that District then is now allowed in the Village Commercial District. The reason for the
77 change was because they felt there were some properties that did not fit into the Commercial property
78 category. The new Village Residential District has more restrictions on what businesses can go in.
79 Residentially, it can still be developed the same as Village Commercial. In making the change, they took
80 out some properties by mistake that should have remained Commercial.

81 Mr. White said the Mr. Werge's proposal seems to do the same thing to make the properties that were
82 mistakenly taken out of the Commercial District back. Mr. Landry said that there would be an issue with
83 Zoning Ordinance 2.42 with the lots that are owned by one person. Mr. White said that ownership
84 doesn't matter to him and they have to be careful about that for Zoning issues.

85 Mr. Marquise said that if this change doesn't go forward as proposed by the Boards, he questions why
86 the change should be made at all. The Board proposes to have four or five properties affected and Mr.
87 Werge's proposal only includes two properties that will be affected, both of which are built out.

88 Robert Stanley said that he spoke with Daniel Schneider, a member of the Zoning Board, and this change
89 was not discussed at the Zoning Board meeting as far as he knows. Mr. Marquise said that the proposals
90 came from the Zoning Administrator. Mr. Stanley reiterated that he does not think that it was discussed
91 by the Zoning Board.

92 Mr. Putchler said he does not understand why the Town would want any building in the area with what
93 has been created in the Harbor. Mr. Putchler recommended making a trade with Mr. Neuwirt, the
94 owner of one of the properties in question, in order for the property to remain undeveloped. Mr.
95 Neuwirt said that the problem is that everyone is scared about what he is doing with the property he
96 owns. Mr. Neuwirt said that he does not understand why, if the back property is a supporting lot for the
97 front property, it would not be Commercial as well. Mr. White said that it is a concern for the residential
98 neighborhood and the issue is that no one knows what could happen on the property, especially if it is
99 sold. Mr. White feels as though the Board should not look at ownership when dealing with Land Use
100 issues because the piece of property can be sold and the Land Use allowances go with the land. There
101 was further discussion regarding this issue.

102 Mr. Neuwirt asked why the property was rezoned from Village Commercial to Village Residential. Mr.
103 Landry said that Mr. Marquise had explained that when the area was rezoned, they made an error in
104 changing this section. Mr. Landry further explained that there is nothing stopping someone from go to
105 the Zoning Board and asking for a Variance to use the property for a Commercial use and the Board
106 would be hard-pressed to not grant the Variance because the hardship was created by the Town
107 rezoning the property. Mr. White said that he disagrees with Mr. Landry regarding the hardship issue.

108 Mr. Neuwirt said that he lost a considerable amount of value on the property when it was changed from
109 Village Commercial to Village Residential. Mr. White asked if he was the owner of the property when it
110 was rezoned and Mr. Neuwirt confirmed that he was but he did not go to the Board to discuss the
111 previous changes to the Zoning Districts. Mr. Putchler said that the abutters have similar concerns for
112 their properties because if something commercial goes onto the property Mr. Neuwirt owns, that
113 property's value goes up and theirs goes down. Mr. Putchler said that if they make the change to these
114 properties then they should change all the properties back to Village Commercial to give them all a fair
115 chance at having the same property values.

116 Mr. Werge said that knowing what the Town wants to do with the area might help drive the decision
117 and to deal with the emotions and issues with ownership. The current proposal gets the area back to a
118 Commercial Zone but it creates a problem for the residential homes. He recommends a smaller meeting
119 to discuss what the Town wants to see with this area and with the Master Plan. He feels that his plan
120 was trying to be flexible which works for both the Town and the Residential homes. Mr. White said that
121 the Board went through two years of looking for input from people for the Master Plan and they spent a
122 lot of time looking at the different districts. He feels as though, unless the Board decides tonight to
123 change the Amendment substantially, they are going to move forward. Mr. Landry asked if Mr.
124 Marquise knows what is recommended for this area on the Master Plan. Mr. Marquise said that he
125 would have to look at the map but he is pretty sure it is all listed as Commercial Use but he is not sure
126 how far the bubble went.

127 Mr. White asked for Mr. Marquise's recommendation. Mr. Marquise said he sees three possibilities
128 moving forward. The first is going ahead with the intent and way that the Amendment was proposed.
129 The second is that he believes that the Planning Board has the right to withdraw the Amendment as it
130 came from the Board and did not come from the public. The third is to look at another layout and to do
131 that this year there will need to be another hearing. Mr. Werge asked what about what Mr. Marquise
132 had said at the beginning of the meeting and Mr. Marquise explained that there is a course missing from
133 the description. Mr. Marquise said that he feels the best long term solution would be to somehow
134 address a combination of Zoning Ordinance 2.42 and the swath along Lake Ave and River Rd. To have an
135 effect on all the properties they may need to look at rewriting or eliminating 2.42 which would have to
136 be done in another year.

137 Mr. Hastings said that he feels as though the Board has to go back and revisit the Amendment. If the
138 Board has the ability to remove the proposed Amendment, they should do that this year and then
139 rework it and put it back on the Agenda for next year. There are enough people at the meeting with
140 concerns that he feels they need to find a reasonable solution but they are not going to be able to do it
141 to get on the ballot this year. Mr. Stanley agrees that it should be left as is this year and discussed
142 earlier in the season next year. Mr. Neuwirt said that it feels like the issue is very isolated and just deals
143 with his property. He doesn't understand why the Board can't come up with a solution tonight. There
144 was further discussion regarding this subject.

145 Mr. Werge asked why the Zoning change was proposed and Mr. Landry explained that it would bring the
146 properties back into the context of the Master Plan. It was explained that the grandfathering rights

147 regarding the restaurant are gone because the restaurant has been gone for more than two years. It
148 was questioned if Mr. Neuwirt could obtain a Variance for his lot and Mr. Landry explained that he could
149 but he would have to prove hardship.

150 Mr. White said that the Woodbine had low impact on the neighborhood and it is difficult moving
151 forward not knowing what impact developing the lot could have. Mr. Neuwirt said that he is unsure
152 what the plan for the Harbor and as he feels there is no plan in place to make it year round. Mr. White
153 said that the Town is not saying they don't want businesses in the Harbor; they try to support any
154 business that comes to them but make sure that they follow regulations. Mr. Neuwirt said that
155 businesses close up in the winter and Mr. White explained that it doesn't have anything to do with
156 Planning; it has to do with the fact that the businesses cannot support being opened year round. There
157 was further discussion regarding this issue.

158 Mr. Neuwirt restated that he feels like an amicable solution could be made tonight, and suggested the
159 possibility of turning the properties along Maple St into commercial as well. Mr. Stanley explained that
160 they can't just change the way the Amendment is currently proposed and put it on the ballot as they
161 would need another public meeting. Mr. Stanley said that he feels the best thing to do is to put it off
162 this year. Mr. White said that seems like there are issues with the different owners in the neighborhood
163 and he does not feel like it is something that can be solved tonight.

164 Mr. Neuwirt suggested asking the abutters present if putting their properties into the Village
165 Commercial zone would satisfy them. Mr. Putchler said that if the Planning Board makes that change
166 that it could affect other people who are not currently concerned with the proposed change which
167 would require another meeting. Mrs. Neuwirt said that everyone is calling this proposal a change but,
168 with one exception, everyone else lived next to this lot as being commercial previously and this is just
169 putting it back to how it was before and there was always the potential for the property to be
170 developed.

171 Mr. White asked the owners on Maple St present if they want their properties to be commercially
172 zoned. Mr. Putchler and Mr. Werge and Ms. Stone all said that they do not want their properties to be
173 zoned Village Commercial.

174 Mr. Landry said that he feels as though the property owners need to justify to the Board the impact that
175 the change will have on them as none of them have said how it affects their property, they are only
176 concerned with the potential development of the property behind them. Mr. White said that it impacts
177 their properties based on what could happen as they are abutters to a potentially commercial property
178 and that is their concern. Mr. Landry explained that he was not sure the abutters understand that retail
179 can go into the Village Residential District. Mr. White said that what is allowed in each District is listed
180 in the Zoning Ordinance and, though some businesses are allowed in Village Residential, more are
181 allowed in Village Commercial.

182 Mr. White asked the Board for comments.

183 Mrs. Larrow said that she feels like the Board made an error when they changed the Zone and based on
184 that she feels that they should go ahead with the proposed Amendment as is and let the voters decide.
185 Mr. Stanley said that he feels what Mrs. Larrow said is reasonable. Mr. Marquise and Mr. White
186 discussed that if they continue with this Amendment, a motion will need to be made and it will have to
187 include amending the text as needed.

188 Donna Davis Larrow made a motion to proceed with the Amendment One which is to amend Article II,
189 Section 2.30 the Village Commercial/Village Residential District to the proposed drawing with the
190 verbiage corrected to indicate what the drawing shows. Robert Stanley seconded the motion. Mr.
191 Marquise asked if the Board wanted to put the verbiage in or take a vote before moving forward as he
192 feels the words should be corrected tonight. The motion passed with three in favor (Donna Davis
193 Larrow, Robert Stanley, and Peter White) and one opposed (Shane Hastings).

194 Mr. Marquise explained that the change for the Village Commercial District will read: “... *thence*
195 *southwesterly to the end of Maple Court, thence northwesterly to the intersection of River Rd and*
196 ***Maple St, thence westerly to a point on River Road which is 200’ westerly of the intersection of River***
197 ***Road and Maple Street...*” Not having this added course would move the line over.**

198 The change for the Village Residential District will read: “...*to a point 200’ westerly of the intersection of*
199 ***River Road and Maple Street, thence to the intersection of River Rd and Maple St, thence southeasterly***
200 ***to the...*”**

201 Donna Davis Larrow made a motion to change the text as discussed. Robert Stanley seconded the
202 motion. The motion passed unanimously.

203 Mr. Werge asked what the next step will be and Mr. White explains that it goes to a ballot vote which
204 will take place in March. Mr. Hastings explained that there will be a Deliberative Session on February 5th
205 at the High School and then a vote, but while the Deliberative Session cannot result in a change in the
206 text, a discussion is allowed as to whether or not someone is for or against the proposal. Mr. Marquise
207 also explained that he believes there is a law that, when there is a Zoning Amendment proposal that
208 affects property owners they have rights in terms of making a petition that can ask for a super majority
209 clause in the vote. Mr. Marquise advised asking the Town Manager for assistance regarding this issue as
210 it has not been done in Sunapee before.

211 **Amendment #2**

212 **Amend Article II, Section 2.30 – District Purpose and Description – Water Resources Overlay District -**
213 **Shorelines by reducing the size of this zone from 300’ to 250’ of any lake, pond, or fourth order stream**
214 **thereby making Sunapee’s definition consistent with the State of New Hampshire’s definition.**

215 Mr. Hastings asked why the size of the zone was 300’ in the first place. Mr. Marquise explained that
216 when Sunapee put in its Shoreland District there were no State regulations. This proposal just brings the
217 Town in line with the State.

218 The Board was asked if they know if the 250' was originally in the Shoreline Protection Act or if it was
219 the result of changes that were made by the State's legislature. Mr. Landry explained that the 250' is
220 part of the original Act.

221 Robert Stanley made a motion to approve Amendment Two as written. Shane Hastings seconded the
222 motion. The motion passed unanimously.

223 **Amendment #3**

224 **Amend Article III, Section 3.20 – Table of Dimensional Controls – Maximum Lot Coverage - Shorelines**
225 **by adding a row to the table which will reflect the maximum coverage when pervious materials are used**
226 **(per the definition – “Coverage, Shoreline Overlay District”)**

227 Mr. Marquise explained that this Amendment is not a change in the rules. Last year the definition of
228 Coverage in the Shoreline Overlay District was added to the Ordinance and this is just taking the text and
229 adding it to the table.

230 A member of the audience commented that she was unaware that this was not changing anything, just
231 adding to the table, but wanted the Board to know that anything over about 15% starts to degrade
232 water quality. She explained that Newbury has 30% maximum impervious coverage and if there is
233 anything over 20% a storm water management system is needed. She believes that 30% is pushing it
234 and 50% is really extraordinary even if it is pervious materials and asked what insurance the Town has
235 that the maintenance schedules will be maintained. Mr. Marquise said that the Ordinance was in
236 response to the Town's concern that the State was allowing the pervious materials to possibly go up to
237 100% of the lot if they were not counting them in their lot coverage. The audience member said that
238 she is on the Shoreland Advisory Committee in Concord and you can't go over 30% without a storm
239 water management plan and at least 20% must be left natural. Mr. Marquise said that the State can
240 change with the legislation and that is why the Boards have created this Regulation and they are also
241 concerned with green space. The audience member said that she appreciates the intent but she
242 believes the numbers are still high. She also feels that the maintenance of the pervious material is an
243 issue. Mr. Stanley asked how that can be addressed and Mr. Landry said that if someone were to come
244 before the Board for a Site Plan Review for development within 250' of the Lake and they had pervious
245 and impervious lot coverage they could put a condition in on the approval for maintenance. Mr. White
246 said that most plans do not come to the Planning Board as they are residential buildings, which means
247 that Mr. Landry and / or the Zoning Board would see them. There was further discussion regarding this
248 subject.

249 The audience member asked if the Board ever works with other towns Boards and it was explained that
250 there have been talks regarding this issue, especially with the Shorefront, but it has never come about.

251 Donna Davis Larrow made a motion to approve Amendment Three which is Article III, Section 3.20 as
252 printed in the handout. Shane Hastings seconded the motion. The motion passed unanimously.

253 **Amendment #4**

254 **Amend Article III, Section 3.50(j) – Special Exceptions – to require that any handicap access approved**
255 **by this exception only be temporary in nature and that the footprint of this handicap access structure**
256 **may not be used for any other purpose**

257 Mr. Landry explained that people come to the Zoning Board when they are encroaching upon a side or
258 road setback to put in a handicap ramp which then becomes part of the existing footprint and this is to
259 stop this from happening. Mr. Stanley said that he has a concern with the word “temporary” as it is
260 hard to define especially if someone lives at the residence for a long time. He suggests just changing it
261 to say that the structure is not considered to be part of the footprint. The Board agreed to this change
262 and discussed verbiage.

263 Robert Stanley made a motion to approve Amendment Four with the following correction: Part 3 will
264 say: the structure will not be considered a permanent footprint. Shane Hastings seconded the motion.
265 The motion passed unanimously.

266 **Amendment #5**

267 **Amend Article VI – Non-Conforming Structure, Lots – by adding Section 6.32 entitled “Grandfather**
268 **Right Policy” which will indicate that all non-conforming uses must comply with the Grandfather Rights**
269 **Policy from the Board of Selectmen.**

270 There was a discussion whether it is “grandfather” or “grandfathered.” Mr. Landry looked it up and it is
271 “Grandfathered Rights Policy” which was adopted by the Board of Selectmen on March 12, 1987.

272 There was a question from the audience regarding the Ordinance as it says that a non-conforming use
273 can expand up to 50% and wonders if it means that if there is a non-conforming building it can be
274 expanded. Mr. Landry explained that the Policy pertains to the Use of the building.

275 Mr. Schneider asked for clarification regarding the Grandfathered Rights Policy. Mr. Landry said that the
276 reason they are looking to include it in the Zoning Ordinance is because it has never really been part of
277 the Regulations but it is a Policy. Mr. Marquise explained that it basically says that you cannot keep
278 your rights forever if you take a business out of a certain location. There was further discussion
279 regarding this issue as well as including it in the Zoning Regulations which would then require a Town
280 vote to be changed.

281 Donna Davis Larrow made a motion to approve Amendment Five which is Article VI – Non-Conforming
282 Structure, Lots – to include the Grandfathered Rights Policy. Robert Stanley seconded the motion. The
283 motion passed unanimously.

284 **Amendment #6**

285 **Amend Article XI – Definitions – Height – by redefining the measurement of height as the distance**
286 **from the lowest ground elevation around the structure to the highest roof peak (excluding cupolas,**
287 **weathervanes, etc...).**

288 Mr. Hastings noticed that the full text of Definitions – Height – as amended will be as follows should
289 read:

290 Height – The vertical distance measured from the average established finished lot grade at the building
291 line *lowest ground elevation around **the** structure* to the highest level of the roof (*excluding cupolas,*
292 *weathervanes, etc...*)

293 Mr. Marquise reminded the Board that they had previously decided to keep the existing height at 40'.
294 Mr. White said the only input he had received was one on aesthetics as when you use the average on a
295 Lake front lot, the roof peaks tend to be a little steeper. By making it an absolute number, it may
296 influence some of the architectural design and aesthetics on the Lake. There was further discussion
297 regarding this issue.

298 Shane Hastings made a motion to approve Amendment Six, definition of Height to be the vertical
299 distance measured as the lowest ground elevation around the structure to the highest level of the roof
300 (excluding cupolas, weathervanes, etc...). Donna Davis Larrow seconded the motion. The motion
301 passed unanimously.

302 **Amendment #7**

303 **Amend Article XI – Definitions – by adding a new definition entitled “Rain Gardens” that would give a**
304 **specific definition of what a rain garden consists of and require that a form of pre-treatment (i.e. catch**
305 **basins, tanks, etc...) be part of the design.**

306 Rain Gardens would be defined as: *A water collection-recharge system, which consists of a pretreatment*
307 *device (such as a catch basin, tank, etc...) and a vegetated leach area. May be mandatory for shoreline*
308 *overlay properties due to the lot coverage requirements.*

309 Mr. Landry gave examples of a few cases that caused this Amendment to be proposed.

310 An audience member said that she agrees that having a substantial definition for a rain garden is good
311 but asked if a home owner sells and the Rain Garden was part of a Zoning Variance, is it possible to keep
312 records in Town to educate the new owners that it is part of the lot requirements. Mr. Landry asked if
313 there was a way to require the information to be recorded at the Registry of Deeds. Mr. Marquise
314 recommended that it be done at the administrative level and when an approval is granted that the
315 Boards make it a condition to the approval. There was further discussion regarding this question.

316 Robert Stanley made a motion to accept Amendment Seven to amend Article XI – Definitions – by
317 adding a new definition entitled “Rain Gardens”. Donna Davis Larrow seconded the motion. The
318 motion passed unanimously.

319 **Amendment #8**

320 **Amend Article XI – Definitions – Structures – to require that a fence measure less than 5’ in height**
321 **above the ground surface at all points if it is to qualify as a minor installation.**

322 Mr. Landry explained that the problem with fences before was people were measuring from the bottom
323 of the fence to the top. The new wording makes the definition clearer.

324 Donna Davis Larrow made a motion to approve Amendment Eight which is to amend Article XI,
325 definition of structures. Shane Hastings seconded the motion. The motion passed unanimously.

326 **MYLAR**

327 The Board signed the Mylar for the subdivision and annexation case heard at a previous meeting on
328 Brandolini and Flier.

329 Donna Davis Larrow made a motion to adjourn. Robert Stanley seconded the motion. The motion
330 passed unanimously. The meeting was adjourned at 9:17 pm.

331 Respectfully submitted,

332 Melissa Pollari

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336 Bruce Jennings, Chairman

Peter White

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339 Erin Andersen

Donna Davis Larrow

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342 Robert Stanley

Kurt Markarian

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344

345 Shane Hastings, ex-officio member

Emma Smith, ex-officio alternate member