

TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2019

10/8/19

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2 The meeting was called to order at 6:30 p.m. by Planning Board Vice Chairman Mark
3 Suennen. Present were regular Board members David Litwinovich and Ed Carroll, and Alter-
4 nate Board member Amy Sanders.

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6 Also present were Planning Coordinator Shannon Silver, Planning Board Assistant Na-
7 dine Scholes and Planning Consultant Mark Fougere.

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9 Absent were Planning Board Chairman Peter Hogan and Ex-Officio Joe Constance.

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11 Present in the audience for all or part of the meeting were Road Agent Dick Perusse,
12 Conservation Commission members Laura Bernard and Barbara Thompson, Michael Dahlberg,
13 Robert Fehsinger, Ellen Ruggles, Scott Byam and Robert Garside.

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15 **Continued Discussion, re: Subdivision Regulation Amendments.**

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17 Mark Fougere said he had incorporated the updated language for the Fire Fighting Water
18 Supply and the specifications for the cistern changes. He said that the version he emailed for
19 distribution is the final draft.

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21 Mark Suennen noted that Barbara Thompson had asked when the appropriate time
22 would be to recommend some changes/additions to the Subdivision Regulations to include the
23 Conservation Commission earlier in the application process. The Planning Coordinator, Shan-
24 non Silver explained that all departments, including Conservation Commission, receive a memo
25 from the Planning Department when any application is submitted along with a copy of the
26 plans. The memo specifically asks each department to review and provide any feedback as soon
27 as possible or at least before the first Public Hearing to the Planning Department. Barbara
28 Thompson noted that in the past someone from Conservation used to attend the Planning Board
29 meetings, but this was hard because the members are volunteers. The Conservation Commis-
30 sion would like to be more involved with the application process and the process of updating the
31 Regulations. Mark Suennen said that the Planning Board planned to schedule the first public
32 hearing on November 12, 2019, to adopt the revised Subdivision Regulations. Mark Suennen
33 asked if the Conservation Commission could get the commentary for the Board to review in 2
34 weeks and then attend the Public Hearing in 4 weeks to be sure the items suggested are dis-
35 cussed. He also recommended someone from the Conservation Commission get together di-
36 rectly with the Planning Consultant, Mark Fougere to discuss what changes would be suggested.
37 Barbara Thompson agreed.

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39 Mark Fougere stated that the table of contents is messy because the hyperlink needs to
40 be fixed within the document.

41
42 Mark Suennen said that he had not had a chance to review the final draft that was
43 emailed the day before the meeting. He will review, and the changes could be discussed at the
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Continued Discussion, re: Subdivision Regulation Amendments, cont.

next meeting, on October 22, 2019. The Board agreed. Mark Fougere noted that minor changes could also be made at the Public Hearings, as long as the intent does not change.

There were no other comments.

Miscellaneous Business and correspondence for the meeting of October 8, 2019, including, but not limited to:

1. Approval of the September 10, 2019, meeting minutes, with or without changes. (distributed by email)

David Litwinovich **MOVED** to approve the September 10, 2019, meeting minutes as amended. Ed Carroll seconded the motion and it **PASSED**.

2. Distribution of the September 24, 2019, meeting minutes, for approval at the October 22, 2019, meeting, with or without changes. (distributed by email)

3. Email copy, received October 2, 2019, from David Litwinovich, re: NHMA Webinar, Regulating Short-term Rentals in New Hampshire, for the Board's information.

4. Letter dated October 8, 2019, from Benjamin Kibler, re: request to extend Conditional Use Permit Conditions Subsequent deadline of October 9, 2019, to November 8, 2019, for the Board's action.

David Litwinovich **MOVED** to grant the extension of the Conditions Subsequent deadline for the Conditional Use Permit of October 9, 2019, to November 8, 2019. Ed Carroll seconded the motion and it **PASSED** unanimously.

EDWARDS, JOSHUA W. (OWNER)

Adjourned from September 24, 2019

EDWARDS, JESSICA L. (OWNER)

KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT)

Submission of Application/Public Hearing/Major Subdivision/6 Lots

Location: Tucker Mill Road & Dougherty Lane

Tax Map/Lot #2/151

Residential-Agricultural "R-A" District

Mark Suennen stated that Alternate Amy Sanders would be appointed as a full voting member for the hearing tonight.

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KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT), cont.

David Litwinovich reviewed the items that had been discussed at the site walk as follows:

- reviewed the front lot corners and proposed driveway locations on both Dougherty Lane and Tucker Mill Road. Most of the driveways on Dougherty Lane will need some improvements to achieve the required site distance.

- viewed the vernal pool located on Tax Map/Lot #2/151-2 & the possibility of a 75' no cut/no disturbance boundary was discussed.

- the Road Agent had suggested the Town may want to request easements to allow maintaining and improving the road.

- walked along the river, viewing the High Water Mark and required setbacks.

Michael Dahlberg presented the proposed subdivision for Tax Map/Lot #2/151. The owners are proposing to subdivide the 18.66 acre lot into 6 lots, 3 lots located on Tucker Mill Road and the other 3 lots on Dougherty Lane. The lot with the existing camp will be retained for the family and the other 5 lots will be sold. Michael Dahlberg explained that Robert Fehsinger, one of the abutters, had mentioned that one of the lots, Tax Map/Lot #2/151-2 had a vernal pool. The wetlands scientist reviewed the area, added the delineation for the vernal pool on the plan and provided a report re: the wetland investigations. Michael Dahlberg said that he had added the 75' buffer around the vernal pool and the boundaries could be identified with tags on-site.

Michael Dahlberg noted that some of the driveways will need some clearing of the trees and brush to achieve the site distances, but he did not feel that the road would need any profile changes. One of the lots on Tucker Mill Road would require a fairly good amount of clearing within the Town's R.O.W.

Michael Dahlberg noted that he agreed the intersection at Tucker Mill Road and Dougherty Lane is very poor but a subdivision plan approved back in 1986, noted that the intersection was supposed to be fixed with the approval of that subdivision plan. He felt that the Town should now take responsibility to fix this intersection since it was not done back in 1986.

Michael Dahlberg noted that the Road Agent had also suggested filling in the wetlands pocket on Dougherty Lane to complete the road improvements, but he believed there is plenty of room within the R.O.W. on the opposite side of the road to avoid impacting the wetlands.

Michael Dahlberg explained that the Road Agent also discussed a possible slope & drainage easement on Dougherty for the reopening of the bridge and an easement for road

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KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT), cont.

widening along the entire frontage of Tucker Mill Road. Michael Dahlberg said he does not think it would be an issue but will still need to discuss this with the property owners.

Mark Suennen asked if the road improvements and widening included replacing the 36" culvert on Tucker Mill Road. Michael Dahlberg said yes.

Mark Suennen noted that the application had not been accepted as complete because there are several waivers that the Board wanted to review after conducting the site walk. The waivers requested were as follows:

Certified Erosion & Sediment Control Plan

Soils Map (HISS)

Traffic/Fiscal/Environmental Studies

Watershed Outline Drainage

Mark Suennen asked for the Board's comments/opinions on the waivers requested.

Amy Sanders stated that the Certified Erosion & Sediment Plan should be held off until it was known what road improvements are going to be required but she would be in favor to waive the requirement for the individual lots. The Planning Coordinator, Shannon Silver explained that the ISWMP are required with the submission of an application because the Board reviews and approve the ISWMP plans & worksheets along with the subdivision plan. If the Board decided to grant the waiver at this time, then the ISWMP plans & worksheets would need to be submitted for the Board to review prior to issuing a building permit, which could easily be overlooked by the Building Department. The Building Department normally receives the approved ISWMP and the amount needed for the bond for each lot when the Board approves a subdivision. The proposed lots shown do not have many options for a suitable building envelope and the ISWMP most likely would not change because there really is nowhere else suitable to build. Mark Suennen agreed that the lots do not have many options for building and the terrain also determines the suitable building envelope. Michael Dahlberg noted that the owners are not developers and they plan on selling each lot individually. The likelihood that all the lots would sell immediately is slim. He also noted that the ISWMP and amount need to be updated after 2 years and he did not feel it would be beneficial to submit the ISWMP at this time.

The Board discussed further and Mark Suennen noted that the consensus of the Board would be not to hold up accepting the application as complete if the ISWMPs are not submitted and that could be a pending waiver.

David Litwinovich stated that he would be concerned waiving the Traffic Study because of the dangers at the intersection of Dougherty Lane and Tucker Mill Road but was unsure if a Traffic Study would be the appropriate means to finding out this kind of information. Mark Suennen noted that the Regulations are vague as to what a Traffic Study should include, and the

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KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT), cont.

Board could specify what concerns the study should cover. If the main issue is that intersection, the Board could request a safety and traffic evaluation for that intersection as it exists today and what impacts on volume would 6 new lots generate at that intersection. Mark Suennen stated that the Road Agent has recommended the road improvements are done by the Edwards and not just an amount bonded for him to complete those road improvements.

Mark Suennen noted that although there were specific requirements for road improvements at that intersection from the subdivision approved back in 1986, that predates the current Board, and there is nothing that could be done to correct this now.

The Board identified what items should be included in the Traffic Study as follows:

- site distance improvements and the dangers at the intersection of Tucker Mill Road and Dougherty Lane
- existing and potential traffic volumes if the 6 lots were added
- estimated changes in traffic volumes/activity once the bridge is reopened
- improvements required to upgrade to current road standards

Ed Carroll **MOVED** to reject the waiver and require a Traffic Study as outlined. David Litwinovich seconded the motion and it **PASSED** unanimously.

David Litwinovich **MOVED** to grant the waiver request for the Fiscal Study. Ed Carroll seconded the motion and it **PASSED** unanimously.

Mark Suennen said that the Watershed Outline Drainage would not be necessary because Middle Branch is known to be the watershed for this area.

David Litwinovich **MOVED** to grant the waiver request for the Watershed Outline Drainage. Ed Carroll seconded the motion and it **PASSED** unanimously.

Mark Suennen asked if the Conservation Commission would like to speak regarding the Soils Map and Environmental Study.

Barbara Thompson noted that this is a keystone lot, located in the Stream Corridor. The request for calculations on exact amounts for the soils that are poorly drained or very poorly drained and exactly what areas could be developed.

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Mark Suennen confirmed that the Conservation Commission is requesting that because of the location, adjacent to the river, the lot should be considered part of the Conservation Stream Corridor District, therefore, those regulations apply. Mark Suennen confirmed that the Conservation Commission also requested that the 50' boundary be increased to the optional 100' boundary. Barbara Thompson said that was correct. The lot is surrounded by protected land and there maybe a lot of wildlife found in this area. Laura Bernard noted that an email written by Chris Wells from the PLC had suggested that an easement with a 250' no disturbance buffer along the river be delineated to protect the natural features found on the lot.

Mark Suennen read the key points from the email that Chris Wells at the PLC had suggested after the site walk 'walking the land confirmed that this portion of the property should be left in an undisturbed state so it can continue to do its job as a natural floodplain, riparian buffer protecting water quality, and wildlife corridor linking conservation lands to the east and west. The boundary of the natural area could be delineated to follow natural features - the tops of steep slopes and around wetlands - resulting in a buffer 'depth' of 250 feet or more from the river. This would maximize the watershed and wildlife value of the buffer, without impacting the buildable area of any of the proposed lots. The natural area should be delineated on the final subdivision plan and be surveyed and monumented at the same time as building lots. Alternately, the natural area could be made its own lot within the final subdivision plan and be conveyed to the town in fee.' Mark Suennen said that obviously Chris Wells could not speak for the Town purchasing the land for a fee, but it should be presented to the applicant as an option to accommodate more protection on the land adjacent to the river.

Michael Dahlberg said there is already the State's Shoreline Protection that protects the area near the river. Mark Suennen explained that only protects the land against construction, it does not protect it as a no cut/no disturbance buffer. Barbara Thompson added that she believed if a Certified Soils Scientist were to evaluate the lot, they would find more of the land to be very saturated on the entire lot. Michael Dahlberg noted that the wetlands shown on the plan were delineated by a Certified Wetlands Scientist and the plans submitted have the required buffers around those areas.

Michael Dahlberg explained that the purpose of a HISS Map is to determine the pre-construction drainage and is normally for much larger sized developments, it would not generally apply to individual house lots. Barbara Thompson asked if it were possible to come up with a percentage of the lot as a whole of how much of the lot is poorly drained and very poorly drained soils. Michael Dahlberg said yes, that was possible, those calculations were already done.

Scott Byam, 46 Dougherty Lane, noted that the wetland along the road on Dougherty Lane had some drainage issues and created issues on the road when the water freezes.

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Robert Garside, 188 Tucker Mill Road, noted that his house lot has a non-menace dam that could let go. He expressed concerns that maybe the Environmental Study should include the level that the river could rise too. He would not want legal issues if the dam on his lot let go and creates flooding down the river. Mark Suennen noted that the Planning Board could not protect citizens from any kind of civil lawsuit, but he does not see a benefit to include an evaluation of a dam on another lot if it were to let go in the future. Robert Garside respectfully disagreed, he said the study could include a brief evaluation if the dam were to let go, would that impact this lot beyond the 100 year flood plain. Michael Dahlberg said he did not feel that was his client's responsibility to have a dam evaluated if it were to let go on someone else's property as part of the requirements. He explained that the house proposed closest to the river was 30 feet above the river and that dam should not be holding back that much water to raise the river 30 feet.

Amy Sanders believed that no additional data would be found requiring a Soils Map (HISS). Both a Wetlands Scientist and a Soils Scientist would look at the same items, and those had already been identified by the Wetlands Scientist for this project.

Mark Fougere asked Michael Dahlberg if he had mentioned that the applicant would be willing to not disturb 250 feet from the river. Michael Dahlberg noted that the State required 250' for Shoreline Protection and the only lot that may need a permit from the State would be proposed Tax Map/Lot #2/151-5. He noted that on this lot there would be no disturbance within the 150' Natural Woodland Buffer (N.W.B.L) along the river but there maybe some disturbance between the 250' and the 150' boundaries, but the backside of all the other lots, 2/151, 2/151-1 & 2/151-4, there would be no disturbance within the 250' boundary. He said he could designate the 250' as a permanent no disturbance/no cut boundary. Mark Suennen questioned how would that boundary be designated. He suggested it could be an easement. Michael Dahlberg said he could not offer that as an easement but could be demarcated on site, shown on the plan and included in the deeds. Mark Suennen replied that if it were included in the deed, that would be acceptable because that would allow it to be enforced. Michael Dahlberg mentioned that it could be included in the Subdivision Agreement or in the Notice of Decision, which is also recorded. Mark Suennen asked the Planning Coordinator, Shannon Silver if the Planning Department has done Subdivision Agreements in the past. The Planning Coordinator replied yes, only if the approval has Conditions Subsequent. Michael Dahlberg noted that the buffer could follow along the 150' N.W.B.L on Tax Map/Lot #2/151-5, then transition to the 250' SWQPA boundary at the Tax Map/Lot #2/151-4, property line following that across the backside of Tax Map/Lot #2/151-1 & 2/151, all the way to Dougherty Lane. Mark Fougere noted that the Town's wetland buffer would protect any wetlands found outside of this boundary. Mark Suennen explained that the Town's 50' wetlands setback was a no build buffer and not necessarily a no cut buffer. Barbara Thompson said that she thought the Town's 50' wetland buffer also

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KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT), cont.

included no cutting. The Board clarified that the definition only stated that 'no structures' are allowed within the setback.

Mark Suennen noted that the Conservation Commission had requested that the 50' wetland setback be increased to 100' around all wetlands. Amy Sanders questioned if the 100' setback would be around all of the wetlands or just for the vernal pool. Barbara Thompson said that she would like to know which of the wetlands were poorly drained and which were very poorly drained. Michael Dahlberg noted that the wetlands shown near the river are very poorly drained but all the other are poorly drained.

Scott Byam asked if the Board could explain what a vernal pool is. Mark Suennen referred to the document that had been submitted to explain what identifies a vernal pool as follows: a vernal pool is an ephemeral wetland which fills annually from precipitation and rising ground waters. Vernal pools can vary in appearance, source of water, habitat and time of filling, but typically are comprised of two main characteristics, the inability to hold and maintain surface water permanently and are completely free of breeding fish populations. Mark Suennen summarized that it is a seasonal pool that is not connected to any other water source to allow fish to breed and only wet some of the year. Scott Byam questioned what was proposed for the setback on the vernal pool. Mark Suennen replied 75' no cut setback and demarcated with some type of markers approved by the Conservation Commission. Barbara Thompson noted that vernal pools can also have wild flowers. Robert Fehsinger said that a vernal pool is mainly a breeding area for amphibians. Mark Suennen agreed and noted that the document he read off from went on to explain this in further detail.

The Board reviewed and agreed on the 250' permanent no cut/no disturbance boundary that will follow the natural contours along the river. Amy Sanders preferred that the Board required all the setbacks be marked on the property. Mark Fougere said the Board requested that a stipulation be included on the plan that prior to any tree cutting the buffer will need to be marked in the field and inspected. Wetland delineation is only good for 5 years. Laura Bernard noted that is why the Conservation Commission would like to have oversight of the setbacks and could update as needed. Mark Suennen explained that would need to be an easement and the applicant had already stated that they are not in favor of an easement. He suggested that the Conservation Commission contact the property owners to discuss an agreement further. He opined that the applicant has offered and identified protection of some sort, although it may not be as controlled as the Conservation Commission would like, the Board acknowledges the protection that has been offered. It may not be a long-term or permanent protection, but neither is a wetland.

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KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT), cont.

Mark Suennen noted the 3 open items that the Board still needed to decide on before adjourning the hearing, what specifics will need to be included in the Environmental Study, if a Soils Map will be needed and if the application can be accepted as complete.

Ed Carroll and David Litwinovich both mentioned that Amy Sanders was knowledgeable in the field and she had indicated the Soils Map will not provide any additional information then what the wetlands scientist already provided. Amy Sanders agreed it would not further identify the very poorly and poorly drained soils. Barbara Thompson disagreed, there are different specifics for classifications and calculations, plus she believed there is more wet than what has been delineated on the plan. This lot is special because of where it is located. Mark Suennen responded that the Board agrees this is a special lot and treating it as such. Barbara Thompson asked Michael Dahlberg if he thought it would be possible to discuss a different approach with the land owner. Michael Dahlberg said the Conservation Commission could try but he felt a more than adequate setback to protect the wetlands was provided and the no cut/no disturbance restriction is agreed upon on a large portion of the property. A Soils Map will not change any of the wetlands, it would just identify a drainage class. Barbara Thompson said that poorly drained soils can only count for 25% of the lot and very poorly drained soils cannot be included at all. Michael Dahlberg said that there is enough data to provide the calculations surveyed. Amy Sanders suggested adding a table to the plan for each lot's calculations. Michael Dahlberg agreed that could be added.

Mark Suennen noted that a wildlife corridor study was recommended, and he believed it would be appropriate because of the continuous protected land surrounding this lot. The study could identify what wildlife could be found using this land as a corridor. Michael Dahlberg questioned to what extent should the wildlife study include. Barbara Thompson said the Conservation Commission would like more protection, especially along the river. Ed Carroll asked what other options are available besides an easement. Barbara Thompson replied that a strip of land could be cut off and sold to Conservation. Mark Suennen noted that the study should include identification of the wildlife found and determine if a higher level of protection is of value to the Town. Mark Suennen noted that he would like the Environmental Study to also include what impacts filling in the small wetland on Dougherty Lane, if that would be required to widen the road or should the land on the opposite side be considered for the road widening. Michael Dahlberg noted that he preferred not filling in a wetland if it were avoidable.

The Board agreed that a Soils Map would not be required with adding the tables for each lot to the plan showing calculations.

David Litwinovich **MOVED** to grant the waiver for the Soils Map. Ed Carroll seconded the motion and it **PASSED** unanimously.

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KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT), cont.

The Board identified what items should be included in the Environmental Study as follows:

- wildlife corridor, specifically to determine if a higher level of protection would be of value along the stream/river corridor.
- the wetland towards the front of proposed Tax Map/Lot #2/151-1 may need to be filled when the road is improved and widened (should be in conjunction with traffic study) what impacts would filling that wetland have or should filling be avoided and use the land on the opposite side of Dougherty to achieve the appropriate road width.
- any threatened or endangered species and plant material found on the lot, also to include any invasive species or plants.

David Litwinovich **MOVED** to reject the waiver and require an Environmental Study as outlined. Amy Sanders seconded the motion and it **PASSED** unanimously.

Mark Suennen noted that the Board could not accept the application as complete because there are required studies that will need to be submitted. The Planning Coordinator, Shannon Silver asked what the Board would like to do regarding the waiver requested for Certified Erosion & Sediment Control Plan. Mark Suennen replied that waiver would be decided on once the Traffic Study had been submitted to be able to determine what off site road improvements are required.

Mark Suennen encouraged that the applicant should discuss the need for Fire Fighting Water Supply with the Fire Wards, although the Board acknowledges that it is noted on the plan that the lot is within the distance of an existing cistern, not requiring a Fire Fighting Water Supply. Michael Dahlberg asked what specifically would need to be discussed. Mark Suennen believed just simply notifying them that the lot is within the distance of an existing cistern and that note was added to the plan. The Fire Wards still may encourage each dwelling have a sprinkler system installed but obviously would not be required.

Mark Suennen asked how long would be needed to complete the items required. Michael Dahlberg replied about 6 weeks. Mark Suennen asked if the hearing were adjourned to November 26, 2019, would that be enough time. Michael Dahlberg agreed.

Mark Suennen asked if the public had any other comments.

Robert Fehsinger questioned if any other wildlife corridors should be included in the Environmental Study that connect to this lot. The Board stated that the Board could only request that the lot in question is included in the study.

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2 **EDWARDS, JESSICA L. (OWNER)**

3 **KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT), cont.**

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5 Ellen Ruggles noted that she had concerns if any construction on this property would
6 impact drainage onto her property. The Board explained that no increase of water is allowed
7 onto other abutting properties.

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9 Mark Suennen closed the public hearing.

10
11 The Board scheduled the site walk for Saturday, October 5, 2019, at 8:00 a.m., and ex-
12 plained that the hearing would be adjourned but abutters would not receive another notice by
13 mail.

14
15 David Litwinovich **MOVED** to adjourn the hearing to November 26,
16 2019, at 7:00 p.m +/- . Ed Carroll seconded the motion and it
17 **PASSED** unanimously.

18
19 Ed Carroll **MOVED** to adjourn the meeting at 8:21 p.m. Da-
20 vid Litwinovich seconded the motion and it **PASSED** unani-
21 mously.

22
23
24 Respectfully submitted,
25 Nadine Scholes, Planning Board Assistant

Minutes Approved: 11/12/19