

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
October 5, 2011

ORIGINAL

The meeting was called to order at 7:30 PM by the Chairman, Mr. Richard Kell, who then led the assembly in the flag salute.

Mr. Kell read the Statement of Compliance pursuant to the "Open Public Meetings Act, Chapter 231, PL 1975."

ROLL CALL OF MEMBERS PRESENT: Mrs. Bonis, Mr. Gardell
Mr. Kopcsó, Mr. Swiss,
Mrs. Murphy, Mrs. Alexander, Mr. Kell

ABSENT: Mr. Correal

ALSO PRESENT: Mr. Thomas G. Knutelsky, P.E.
Mr. Ken Nelson, Planner
Mr. David Brady, Esq.
Mr. James Kilduff, Director

APPROVAL OF MINUTES:

Mrs. Murphy made a motion to approve the **Franklin Borough Zoning Board of Adjustment Meeting Minutes for September 7, 2011**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Bonis, Gardell, Kopcsó, Swiss, Murphy, Kell
NAYS: None ABSTENTIONS: None
(Motion Approved)

APPROVAL OF RESOLUTIONS:

There were no resolutions to approve.

APPLICATIONS FOR COMPLETENESS:

There are no applications for completeness.

ADJOURNED CASES:

There are no adjourned cases.

APPLICATIONS TO BE HEARD:

ZM-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances Block 29 Lot 30.

Mr. Robert Gaccione, Esq., attorney for the applicant. Mr. Gaccione gave an overview of the application.

Mr. Todd Maino was sworn in at this time. Mr. Maino's occupation is commercial development; he is the managing member of CM Franklin LLC. Mr. Maino explained the existing conditions of the site. Mr. Maino said he is looking to divide up the existing building right now into multiply uses maybe three to four, it could be one use but up to four uses. Mr. Maino said an additional pad of up to 2800 sq, foot on the

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southerly side of the property. Mr. Gaccione asked if there were any specific tenants who are interested in leasing should this application be approved. Mr. Maino said he had some tenants actually look at the building.

Mr. Brady asked Mr. Maino what kind of tenants are looking at [the building]. Mr. Maino said he had Stewarts look at it [the existing building], PNC looked at the pad site, 7-11 looked at the pad site, Denny's looked at the existing building but they just can't see it. They go there and think it is falling down. Mr. Brady asked for the pad do you have a type of business that you have in mind. Mr. Maino said any kind of national brand whether it is a fast food restaurant or it is a bank, something that other tenants will be able to draw off of.

Mrs. Bonis made a motion to open to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30**, to address Mr. Maino's comments. Seconded by Mr. Swiss. All were in favor.

Efrain Martinez, 2 John Wilton Street, stepped forward. Mr. Martinez is concerned if this is developed will it affect any tax increase on properties around this development.

Mr. Brady said at this point in the proceeding we are only asking questions of Mr. Maino, you will have an opportunity to give you own testimony later. If you don't have any questions for him you will have an opportunity later to make your statement.

Mr. Bonis made a motion to close to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30**, to address Mr. Maino's comments. Seconded by Mr. Swiss. All were in favor.

Mr. Eric Keller, engineer for the applicant was sworn in at this time. Mr. Keller is a civil engineer, practicing over 30 years. Mr. Keller told the Board his educational background. Mr. Keller told the Board his experience in engineering and traffic planning.

Mr. Keller marked exhibit A-1 today's date 10-5-11, title site plan rendering Borough of Franklin dated 10-3-11, it is a color rendering of the landscape plan at 30 scale, an aerial view. Mr. Keller said what exhibit A-1 shows is Rte 23 running from left to right. Mr. Keller explained the property using the exhibit.

Mr. Gaccione asked Mr. Keller to review any existing bulk violations that is currently at the site. Mr. Keller said the HC zone has a minimum lot size of 5 acres. This lot is 1.2 acres. Mr. Keller explained the bulk violations; he described the proposed 2800 sq. foot pad on the site and DOT requirements for the site. Mr. Knutelsky said the two way driveway obviously provides the major access to the site, the one way driveway to the north is going to provide the one way circulation around the existing

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building. Mr. Knutelsky asked in your opinion this will go to DOT for a major access permit due to the change of use of the site and both driveways would be permitted. Mr. Keller said we have enough frontage and there is justification for having that other driveway in the rear.

Mr. Gaccione asked Mr. Keller to explain the bulk violations connected with the new site plan. Mr. Keller explained the bulk variances relating to the new site plan, ingress, egress and parking of the site.

Mr. Keller marked exhibit A-2 today's dated 10-5-11 titled Kulsar Court truck turning pad layout plan of site. Mr. Keller explained the circulation of the site using exhibit A-2.

Mr. Keller referred to exhibit A-1 and explained the lighting. Mr. Keller said they are installing decorative cut off fixtures, there is a mix of whole mounted lights and building mounted lights. Mr. Keller said the fixtures are the same whether they are on the pole or on the building. They are mounted a little differently, the pole mounted lights are 160 watt, and building mounted lights are 60 watt they have cut off fixtures.

Mr. Keller referred to the landscaping; we have 21 evergreen trees to the west, we have three shade trees we are going to increase that to six to meet the requirements of one shade tree for every ten parking spaces. Mr. Keller said 91 shrubs scattered throughout the site mostly along Rt 23 and also along the northerly property line. Mr. Keller said to the west there are trees that are off the property. They are not proposing anything in that area because of the existing vegetation. Mr. Keller said the lights in the northwest corner [by] the residential properties to the west will be fitted with outside shields so there will be a minimal amount of intrusion. Mr. Keller said the lights will turn off one hour after the last store closes on the property. We are proposing that three lights remain on from dusk to dawn. One to the southwest of the pad building and one to the main parking isle at the rear and one in the northwest corner for the site. Mr. Keller continued to explain the landscaping on the site.

Mr. Keller marked exhibit A-3 today's date 10-05-11 revised site layout it is the layout plan you have in your set with some modifications. Mr. Keller explained they parking using the exhibit; they provided a loading area on the west side of the large building 25 feet long 10 feet wide adjacent to the building. They bumped the curb out just a little bit to get a 12 foot drive isle which conforms with the ordinance requirements for a one way driveway. Mr. Keller said the widened out the drive thru lane at the west side of the pad building 18 feet that way we have a nine foot drive isle for the drive thru and nine foot bypass around back. Then it widens out as you come along the south side of the building where we have added a parking space. Mr. Keller said we now have 52 spaces which is what is required by code so we do not need a parking variance.

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Mr. Keller said we added a loading space and shifted the dumpster a little to the west to line it up so a truck can pull right into it pick up the refuse and recyclables and then leave the site.

Mr. Keller explained the pad site on the property and the parking for that site if it was a fast food restaurant or a bank. Mr. Keller said drive thru facilities reduce the requirements for parking for fast food restaurants people are going to go through the drive thru and be on their way.

Mr. Gaccione asked Mr. Keller to discuss the drive thru further with regards to any possibility of back up. Mr. Keller explained the traffic flow through the drive thru.

Mr. Gaccione asked Mr. Keller the amount of traffic they expect from this proposal. Mr. Keller said we calculate 41 trips in the morning both in and out, 140 in the afternoon and 197 on Saturday in the peak hour. Mr. Keller said a lot of the traffic that's generated in and out of that driveway comes from the traffic that is already there. It's not adding traffic to Rt 23. Mr. Keller said they have to file a major access application [that] goes to Trenton and they go through the process.

Mr. Gaccione asked Mr. Keller to explain the sight distance at this location. Mr. Keller said to the south Rt 23 is pretty straight you can see well past Mitchell Avenue. Mr. Keller said looking to the north as you come out 23 does curve we are on the outside of the curve which is the better place to be so we have sight distance up through Mabie Street. We have more than adequate sight distance.

Mr. Knutelsky said in regard to Mr. Keller's testimony about the pervious coverage and the variance requirements. Mr. Knutelsky said in the HC zone it is not a pervious area it is a building coverage based at 20 percent based upon the lot size and the two buildings proposed it's less than 20 percent so he doesn't think you need a variance. Mr. Knutelsky said in regards to lighting you were going to use cut offs in the rear of the property and that is where we identified our problem because that spills over onto residential property. Mr. Knutelsky said the ordinance requires 0.1 foot candles and the property lines; it is a little over on the Rt 23 side. Mr. Knutelsky said illumination of a State highway as long as there are no hot spots is not a bad thing the more light the better along the commercial aspect but along the residential aspect will cut offs allow you to meet the requirement of 0.1 foot candles. Mr. Keller said they should, for any reason we can't meet that 0.1 we can modify the height of the fixture. Mr. Keller said the fixtures that we selected are very effective in cutting off light trespass. Mr. Keller said the lights are 18 feet above grade if that is an issue where we are exceeding we can drop those down, still provide the coverage that we need and meet that standard. Mr. Keller said if we have to make some adjustments to the height he doesn't think that is going to be a problem.

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Mr. Knutelsky said in regards to parking we haven't seen the revised plans yet. Mr. Knutelsky said they are short one stall based on the size of the two buildings in the parking requirements. Mr. Knutelsky said the Borough's parking standards for restaurants are one per two seats not one per three. Mr. Knutelsky said one per three is for deli's, if that is a restaurant then it's one per two, if it's a bank it is based upon retail. Mr. Knutelsky said we need to discuss this a little more how many possible seats will be in the building in order to get that parking count. Mr. Knutelsky said a parking variance is required based upon just retail.

Mr. Knutelsky referred to the change to the parallel parking stalls. Mr. Knutelsky said you are adding a stall and you are creating a variance for parking stall size so he thinks that will still be a variance in regards to the actual parking stall size.

Mr. Knutelsky said the one way drive isle behind, he is not as concerned about having a one way drive isle around the building as much as the parking stalls located in that north west corner, there is no visibility there what so ever. Mr. Knutelsky said he recommends the Board review that a little more closely. Mr. Keller said obviously we need to put up directional signs. Mr. Knutelsky said he isn't comfortable with a stop sign it isn't at an intersection; he is looking for something to slow the cars down along the back so if there is a conflict it can be avoided. Mr. Keller said we can work with Mr. Knutelsky on something that is agreeable to him and to us; he has no problem with that.

Mr. Knutelsky asked if the new pad building is retail only you need 51 or 52 spaces. Mr. Keller said 52 spaces which we have with this revised plan. Mr. Knutelsky said the seating knowing that we need one stall for two seats can we still get a viable size building there with that particular seating or are we talking about a variance. He thinks this is something we need to discuss. Mr. Keller said he miss understood the code as far as the parking requirements, ITE also publishes standards for fast food restaurants and what they have is .4 spaces per seat which comes out to one space for every two and a half seats. Mr. Keller said if it was 60 seats in that restaurant which he thinks is probably the upper limit you would be a 2800 sq foot space that is 24 parking spaces. Mr. Keller said there is 30 spaces required for the large building per thousand, we are at 54 and we have 52.

Mr. Knutelsky said the details show a 10 by 11 trash closure and there are two located one for the north and one for the south. Mr. Knutelsky said we question the adequacy of those trash enclosures especially when it comes to food. Mr. Knutelsky said will that be for trash and recycling or will a compactor be proposed. Mr. Keller explained the trash enclosures.

Mr. Knutelsky said there are two free standing signs proposed on the plans there is only one detail, he is in the understanding that one free standing sign in front of the pad building will probably be for that tenant only, the other one would be for the other building. Mr. Keller said that is correct and the detail that we do show needs to

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be adjusted the name would be Kulsar's Court then the tenants. The pad site would have its own free standing sign.

Mr. Knutelsky said to restate the variance required would be because you are allowed a free standing sign you are proposing two for the one road frontage, then you need set back variances for both signs because the minimum setback would be the height of the sign. Mr. Keller explained the location of the signs.

Mr. Knutelsky asked in regards to the environmental aspects of the site, he knows in the environmental impact statement there was a letter from the DEP can you address what is going on at the site is this considered a contaminated site, is there clean up required as part of this development or is there a clean bill of health for this site. Mr. Keller said he is not aware of this, he isn't involved in that.

Mr. Maino said prior to him purchasing the property there was an [NFA] issued it is on file with the Borough as well as the NJDEP. Mr. Knutelsky said NFA no further action. Mr. Maino said NFA no further action, correct. Mr. Knutelsky said he thinks it was in the environmental impact statement again he wanted to hear it as testimony just to make sure that the Board is aware as well.

Mr. Knutelsky said for the Boards knowledge normally with stormwater management we are in agreement with Mr. Keller's report for drainage. Mr. Knutelsky said there is a drainage ditch in the back that the Borough owns and we recommend the requirement that a drainage easement be provided to the Borough for us to access that point since there isn't too many places to access that drainage ditch. Mr. Keller said that is fine, we need to have an easement so that is not a problem. Mr. Knutelsky said we can work out the details of that. Mr. Nelson asked if there are any requirements to do with any work on that ditch. Mr. Keller said the ditch is actually off the property. There was a discussion on site plan approval, variance and phase one, phase two of the site, the drive thru and fire department having access on the site.

Mr. Kopcsó made a motion to open to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variance, Block 29 Lot 30**, for comments to Mr. Keller. Seconded by Mrs. Murphy. All were in favor.

Jim Kilduff, Franklin Borough Administrator, stepped forward. Mr. Kilduff asked how wide was the main driveway, the two way access. Mr. Keller said 24 feet. Mr. Kilduff said he sees how you aligned it with the drive isle but on the north side it is actually flush with the end of the parking stalls. He is concerned if the cars didn't pull up all the way in the parking stalls you might have a conflict as they enter there. Mr. Kilduff asked if that 24 feet could be widened. Mr. Keller said what they could do if we widened the driveway we have to reduce the curb [radii]. Mr. Keller explained how this could be done.

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Mr. Kilduff said the sidewalk that goes on the Rt 23 portion in the plans ends abruptly even with the property line although it is in DOT right of way. Mr. Kilduff said to make the transition a little more favorable for pedestrians it would be nice if it went up to the return where the driveway to the south. Mr. Kilduff asked if they would have any objections in doing that if DOT permitted it, we are talking another 20- 24 feet of sidewalks. Mr. Kilduff said it is in the right of way so it is a matter of getting permission from DOT. Mr. Keller said as long as DOT doesn't object to it. There was a discussion on the DOT and right of way.

Mr. Kilduff said you have a T section of the sidewalk to connect to the sidewalks surrounding the north building which he thinks is a very good idea; for the drive thru building. Mr. Keller said [take it out to Rt 23]. Mr. Kilduff said right. Mr. Keller said we can do that. Mr. Kilduff asked about interconnection with the adjacent properties. Mr. Knutelsky explained the problem with this site and an interconnection to the adjacent properties.

Mrs. Murphy made a motion to close to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variance, Block 29 Lot 30**, for comments to Mr. Keller. Seconded by Mrs. Bonis. All were in favor.

Mr. Roger Winkle, architect for the applicant. Mr. Winkle gave the Board his credentials. Mr. Winkle described the existing structures on the site.

Mr. Winkle marked exhibit A-4, proposed elevation. Mr. Winkle referred to exhibit A-4 to describe the proposed exterior and interior of the structure.

Mr. Nelson asked did you have an opportunity to look at any historical pictures of the building. Mr. Winkle said not historical just when he visited the building about six months ago. Mr. Nelson asked about the color scheme of the building. Mr. Winkle described what they planned to do to the inside and outside of the building.

Mr. Knutelsky asked Mr. Winkle in regard to the over head door in the north side of the building, he understands that is for construction only and will be removed. He thinks that is a good thing, is there any thought or requirement that there is any type of rear ingress or egress to these building from those parking stalls in the back. Mr. Knutelsky asked is there any way of getting an access from the northwesterly corner where there is perpendicular parking.

Mr. Knutelsky said you have five signs on the exhibit [A4], he did a quick check of the HC zone for signs and it actually indicates there is one wall sign for road frontage for each building. Mr. Knutelsky said the building that we are looking right there is allowed one wall sign by code and we are proposing five so there is a variance there for the number of signs. Mr. Knutelsky asked what is the height of the signs above the sidewalk at the doors. There is a Borough requirement of 10 feet to the bottom of the sign for clearance. Mr. Winkle said they are all over 10 feet the

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smaller signs are approximately 12 and a half feet and he would say the larger two on the canopy are 13 to 13 and a half. Mr. Knutelsky said all the signs are over 10 feet. Mr. Winkle said yes. Mr. Knutelsky said the projection from the base of the wall the Borough ordinance requires a six inch projection maximum will these signs be greater than that or less than that. Mr. Winkle said they will comply with the projection but he doesn't know the sign on the canopy.

Mr. Winkle marked exhibit A-5 black and white photo of sign in front of the building. Mr. Winkle use exhibit A-5 to explain the sign on the canopy.

Mrs. Murphy made a motion to open to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variance, Block 29 Lot 30**, for comments to Mr. Winkle. Seconded by Mr. Swiss. All were in favor.

No one from the public stepped forward.

Mrs. Bonis made a motion to close to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variance, Block 29 Lot 30**, for comments to Mr. Winkle. Seconded by Mr. Swiss. All were in favor.

Mr. Bill Hamilton, Planner for the applicant was sworn in at this time. Mr. Hamilton told the Board his credentials.

Mr. Hamilton referred to exhibit A-1 briefly describing the site. Mr. Hamilton said looking at the Master Plan there is a number of goals that will be advanced by this application. Mr. Hamilton said one for the goals is to encourage commercial and office uses along Rte 23 throughout the community. Mr. Hamilton said a second goal to advance this development is encouraging reuse of vacant none residential buildings.

Mr. Hamilton referred to the circulation plan element. Mr. Hamilton said one of the goals is to provide safe vehicular and bicycle circulation and provide adequate parking on the site.

Mr. Gaccione asked Mr. Hamilton to describe the bulk variances. Mr. Hamilton explained the variances and gave justification for the variances referring to the land use ordinance.

Mr. Hamilton explained to the Board the negative and positive criteria. Mr. Hamilton said with respect to the public good what is the impact of this development on the neighboring properties. Mr. Hamilton said we don't believe there is any impact with regards to the gas station to the north or with regards to the retail uses to the south. Mr. Hamilton said we have looked at the impact to the residents particularly to the west. Mr. Hamilton said with the buffer planting we are proposing the fact we are

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providing stormwater management these are things he thinks go towards supporting the variance request.

Mr. Kell asked the Board professionals if they had any comments. Mr. Nelson asked about the signs. Mr. Nelson said it almost seems to him that the second free standing sign is very difficult to justify. Mr. Knutelsky said based on the Borough standards the parallel parking stalls have not been met. Mr. Knutelsky said he doesn't think we can truly say the condition has been met but he believes the applicant has testified that based upon ITE calculations that the parking is suitable for the site. Mr. Knutelsky said he wants to clarify that he doesn't believe the conditions have been met. Mr. Hamilton said he agrees with that there are two conditions we don't comply with. Mr. Brady said he doesn't know how he could write a resolution that would adequately addresses the possibility of a restaurant. Mr. Hamilton said they could limit any restaurant use to a maximum of 60 seats.

Mrs. Murphy made a motion to open to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variance, Block 29 Lot 30**, for comments to Mr. Hamilton. Seconded by Mr. Swiss. All were in favor.

No one from the public stepped forward.

Mrs. Murphy made a motion to close to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variance, Block 29 Lot 30**, for comments to Mr. Hamilton. Seconded by Mr. Swiss. All were in favor.

Mr. Maino said Mr. Nelson you mentioned that second pylon sign for the pad site. Mr. Maino said there is a bill board there that blocks out the sign you will not even see this building it needs to have some distinction when you drive down Rt 23 that you know that it is even there.

Mrs. Bonis made a motion to open to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30**. Seconded by Mrs. Alexander. All were in favor.

Ed Fears, owner of the Shell Station, was sworn in at this time. Mr. Fears said he is all for the development of the property it has been an eyesore for years. Mr. Fears only concern is access to his property.

Jim Kilduff, Administrator, was sworn in at this time. Mr. Kilduff said the core question before the Board is can this site accommodate a drive thru use. Mr. Kilduff said he thinks it can the more difficult question maybe what type of use. Mr. Kilduff said if the Board takes the position of no restaurant of any kind that is very restrictive and would limit their possibilities. At some point you would have to consider what are reasonable limitations he doesn't know if you need to decide that tonight it appears from all the conversation there would have to be some sort of follow up to this were

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the Board would see what those plans were going to be. Mr. Kilduff said the applicant did a good job putting this together.

Mr. Gardell made a motion to close to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30.** Seconded by Mr. Swiss. All were in favor.

The Board took a break at 10:23 PM.
The Board reconvened at 10:32 PM.

Mr. Gaccione gave a summary of the application to the Board. There was a discussion between Mr. Brady and Mr. Gaccione on whether or not to vote on the application tonight. The Board members gave their comments.

Mr. Brady said for members of the public if he is authorized to draft the resolution we will come back and consider that and if anything changes in the plans between now and then it is presented and the public can comment on it. There will not be a second set of notices going out tonight is your notice that it will be carried to the [November] 2nd.

Mr. Kell said he needs a motion to allow the professionals, Mr. Nelson, Mr. Knutelsky, Mr. Brady and Mr. Kilduff to draft a resolution at will be in your packets for the next month. Mr. Brady said it will be a resolution of approval with conditions.

Mr. Swiss made a motion authorizing the Board Attorney and Board Professionals to draft a resolution for application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30.** Seconded by Mrs. Murphy.

Upon Roll Call Vote:

AYES: Bonis, Gardell, Kopcsó, Swiss, Murphy, Alexander, Kell

NAYS: None ABSTENTIONS: None

(Motion Approved)

OTHER BUSINESS:

PAYMENT OF BILLS:

Mrs. Bonis made a motion to approve the **Franklin Borough Zoning Board Escrow Report for October 5, 2011.** Seconded by Mrs. Murphy.

Upon Roll Call Vote:

AYES: Bonis, Gardell, Kopcsó, Swiss, Murphy, Alexander, Kell

NAYS: None ABSTENTIONS: None

(Motion Approved)

DISCUSSION:

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Mr. Kell reminded Board members to hand in the Professional Evaluation forms for the Board professionals.

CORRESPONDENCE:

OPEN PUBLIC SESSION:

Mrs. Murphy made a motion to Open to the Public. Seconded by Mr. Swiss. All were in favor.

No one from the public stepped forward.

Mrs. Murphy made a motion to Close to the Public. Seconded by Mr. Swiss. All were in favor.

ADJOURNMENT: There being no further business Mrs. Murphy made a motion to adjourn the meeting of the Franklin Borough Zoning Board of Adjustment. Seconded by Mr. Swiss. All were in favor. Meeting was adjourned at 10:54 PM.

Respectfully Submitted,



Robin Hough
Secretary