



TOWN OF SWAMPSCOTT

ZONING BOARD OF APPEALS

ELIHU THOMSON ADMINISTRATION BUILDING
22 MONUMENT AVENUE, SWAMPSCOTT, MA 01907

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DOUGLAS DUBIN
HARRY PASS, ESQ.

MAY 18, 2016 MEETING MINUTES

Time: 7:00 – 10:40 PM
Location: Swampscott Senior Center, 200 Essex Street (rear)
Members Present: M. Kornitsky, D. Doherty, A. Rose, A. Paprocki, B. Croft, H. Pass, D. Dubin
Members Absent: None
Others Present: Pete Kane (Planning), Ken Shutzer (attorney), Michael Callahan (attorney), Paul Lynch (attorney), Tony Scibelli (resident), Fred Phelps (resident), Charles Patsios (applicant), Edith Miller (resident), Don Ganz (resident), Mr. Municello (resident), Norma Rooks (resident), Patty Ryan (Crown Pointe property manager), Mr. Collins (landscape architect), Joe Hennessey (Hanover project manager), David Hall (Hanover), Steve Gadman (resident), Chris Soucy (resident), Terry Gadman (resident), Carl Goodman (attorney), Donna Farwell (resident), Rabbi Yossi Lipsker (applicant), Ellen Bernard (resident), Stephanie Kelly (resident), Pat Robins (resident), Brian LeClair (attorney), Joseph Walsh (architect)

Meeting called to order at 7:07 PM by Chairman Kornitsky.

MEETING MINUTES

The Board reviewed the minutes from the April hearing. On a motion by D. Doherty, and seconded by D. Dubin, the April 27, 2016, minutes were unanimously approved.

ZONING RELIEF PETITIONS

PETITION 16-10 (326-330 PARADISE ROAD) : Application of CROWN POINTE CONDOMINIUM TRUST seeking at appeal of the determination of the Inspector of Buildings related to the issuance of the final Certificate of Use and Occupancy as it pertains to the installation of a “greenbelt” at Hanover Vinnin Square. Map 34, Lot 111. *Continued from the April hearing.*

Ken Shutzer (applicant’s attorney) spoke regarding Crown Pointe’s desire to appeal the Building Inspector’s granting of the Certificate of Occupancy for the Hanover Vinnin Square project. Mr. Shutzer requested that the Board when constituted should include Board members for the original special permit (Don Hause from the previous special permit is no longer on the Board). It included Kornitsky, Hause, Dubin, Doherty, Paprocki. Mr. Shutzer also stated that a seated Board member is a direct abutter (A. Rose) and requested that he not sit at the table for the hearing.

M. Kornitsky then constituted the Board - Kornitsky, Paprocki, Dubin, Pass, Doherty.

With Mr. Shutzer were Edith Miller, Don Ganz, Mr. Municello, Norma Rooks, and Patty Ryan (property manager). They also brought with them Mr. Collins (landscape architect) from HJ Collins Architects.

The original decision granted Hanover the ability to construct the apartment development. There were a number of conditions and two conditions needed to be met prior to the granting of the Certificate of Occupancy which included the installation of a green belt. Mr. Shutzer had inquired with the Building Inspector back in March about the planting (because spring hadn't arrived).

Hanover then submitted a letter to the Building Inspector which outlined why Hanover met their burden for landscaping and areas that were not possible to be met. Mr. Shutzer stated that if Hanover hadn't been able to meet certain conditions, they had an opportunity to appeal the original decision and conditions - but they hadn't. Mr. Shutzer also noted that ZBA members had visited the site to see the condition of the landscaping near the Crown Pointe property line.

Mr. Shutzer noted that Crown Pointe had done a land survey. During that, it was noted that Hanover installed trees on Crown Pointe property. He stated that it was due to a misunderstanding of where the property line (and fence) is located. There's an older 1970s chain link fence and a newer fence, but it's not on the property line. Mr. Shutzer stated that due to significant ledge, Hanover planted trees in a different area than intended. He also noted that there's a 12-foot elevation change and therefore the installation of even a 12 foot tree isn't going to provide screening. He also pointed out that on the landscaping plan (L-7) called for a retaining wall that would allow for soil fill and planting but that hasn't been installed.

Mr. Shutzer submitted photos and 156 signatures from Crown Pointe residents who feel that the developer hasn't met their burden. They are requesting that the final Occupancy Permit be rescinded (they would still have a temporary permit). Mr. Shutzer also noted that the Building Inspector that granted the permit wasn't the same Building Inspector when the project was originally approved and under construction. A fence along the perimeter was also to be installed.

Mr. Shutzer noted that while Hanover installed the trees on Crown Pointe property has led Hanover to say they can't care and maintain the trees because they're not on the Hanover property. Crown Pointe desires those trees to be maintained by Hanover (and run with the title of the property).

Mr. Collins then provided a landscape plan of Crown Pointe's request. The proposal establishes an evergreen screening planting on the Hanover property. He hasn't done any test digging to determine if any large trees can be planted in the proposed area, therefore the plan shows a retaining wall to create a fill area. Part of the wall was part of the original project plan and includes a recommendation by Mr. Collins to continue the wall and continue the planting area in a northwest direction near the Crown Pointe property line. They showed photos that demonstrate cuts into the land that were made for the construction of the building. The photo shows that one of the trees planted is now dead. Mr. Collins believes that a majority of the plants that have been installed will live, but that the size of those plantings doesn't create a vegetated screening. The evergreens he's selected will grow 75-80 feet while some will stay low-level (35-40 feet). He feels that the plantings that have been installed are haphazard and don't meet their intent.

Mr. Shutzer noted that in the ZBA decision, there's a statement that if there's any difference between the plans and the conditions, that the conditions shall govern. He had requested the approved plans from the Town Planner who then sent them to the Building Inspector. It shows the retaining wall that hasn't been built. He stated that Hanover has said they have done more than they were required, but Mr. Shutzer believes they just mean they planted more in quantity but not in the actual creation of a green belt for year-round screening. He also pointed out that the new proposed plan by Mr.

Collins calls for less trees than originally proposed but it's because the design is more effective in their belief. He says the residents at Crown Pointe feel they deserve better.

M. Kornitsky asked for a show of hands for those who felt the same as what Mr. Shutzer gave - about 50 people raised their hands.

Mr. Shutzer noted that there was a letter from Hanover in February that Hanover stated two of the Board of Trustees from Crown Pointe had authorized the planting on the Crown Pointe land, but he said that's incorrect. They then showed photos of what was done on the Crown Pointe side versus what was done on the Longwood Drive side.

Michael Callahan (attorney for Hanover) then opened up for the Hanover side of the story. He agrees with Mr. Shutzer that the decision is very detailed. It took into account a lot of potential issues. It also included an allowance for the planting of 20 more trees at the discretion of the Town if needed. Mr. Callahan said that the Building Inspector took 30 days to give a decision and even conferred with the previous Building Inspector. He then went through the February letter from Hanover that was written to the Building Inspector. Hanover had worked with Trustees and then found out afterward that they didn't have the authority to make any decisions. Where the trees were planted may be the best location. Mr. Callahan also noted that the decision doesn't state that all screening must be planted on the Hanover property itself. David Hall (Hanover) distributed photos of the vegetation. M. Kornitsky asked if the cut that was made meets the location as shown in the approved plans. Joe Hennessey (Hanover project manager) confirmed that the location is the same. He acknowledged that the plans show a retaining wall but later it became a ledge wall. M. Kornitsky said that he remembers in the decision that it calls for a retaining wall. Mr. Hall then pointed to the construction documents which had been reviewed by the Building Inspector (previous inspector) and acknowledged that the change in the wall may have needed to come back to the ZBA. The rock from the blasting serves the purpose of a retaining wall, noted by Mr. Hall. He said that if the ledge is performing and secure like a retaining wall, there's no need to create the retaining wall which would require additional blasting and removal of existing trees. He also noted that the decision called out not cutting down trees.

M. Kornitsky stated that there's a significant difference in the screening installed on the Longwood Drive versus with Crown Pointe. He also said that the original decision had been reviewed by Hanover, Mr. Scibelli (Longwood Dr) and Crown Pointe's counsel and that all had come to an agreement on the landscaping.

Mr. Hall stated that there was no fencing included in the plans. The decision states and calls for intentional open areas. Installing a fence on the property line with Crown Pointe would have created an inaccessible area due to the other fence already existing on the Crown Pointe property.

Mr. Hall said that they're willing to add a number of additional trees - they are very focused on the landscaping which M. Kornitsky noted has been done well on the property. Mr. Hall said they've tried their best to meet the requests of Crown Pointe.

H. Pass said that it's obvious that they haven't met the need due to the presence of so many residents from Crown Pointe. He said that during the site visit, it was obvious how poor the landscaping is done on that side. Mr. Callahan feels it's important for the Board to review all of the correspondence between Hanover and Crown Pointe.

M. Kornitsky said that this is an appeal of the decision of the Building Inspector. He said that Mr. Hall's point of detrimental reliance may not be valuable nor appropriate as that's an issue with Crown Pointe whereas the question here is whether they met the requirements of the special permit decision. M. Kornitsky felt that it should be continued to next month. H. Pass disagreed and said that there's plenty of evidence to take a vote. D. Doherty requested more time to review the correspondence. D. Dubin would like to see the groups work it out together. M. Kornitsky said he's not sure the correspondence will be compelling enough.

Mr. Shutzer followed that the decision granted the construction of the project as long as certain requirements were met. He then noted that Hanover admits they didn't complete some of those actions, but they don't have the authority to make that decision themselves. He feels the February letter from Hanover is one-sided and painted Ms. Miller and Mr. Ganz inappropriately. He believes Hanover knew that the tree planting area was actually Crown Pointe's but failed to tell Crown Pointe that prior to the planting.

M. Kornitsky requested to continue to next month.

Don Ganz (Trustee of Crown Pointe) said that he reached out to Mr. Hall to attempt a negotiation. He said that Mr. Hall was short and that he wouldn't do anything unless the Building Inspector or the Board made him do it. He said he's tried to work with Hanover and has notes from the phone calls. Mr. Hall responded that they offered money as well as many trees as Crown Pointe would want. He disagrees with Mr. Ganz's statement that Mr. Hall didn't offer anything.

H. Pass felt that there's no need for continuation and that a vote should be taken. A. Paprocki agreed to vote. D. Doherty, M. Kornitsky, and D. Dubin requested to continue.

MOTION : to continue the hearing to the June meeting by D. Doherty, seconded by D. Dubin, 3-2 to continue (Pass & Paprocki dissenting).

PETITION 15-42 (12-24 PINE STREET): Application of FRANK ORNE seeking a use special permit to allow for storage of vehicles and light vehicle servicing. Map 3, Lot 4. *Continued from the April hearing.*

Paul Lynch (attorney) stated that this is the third hearing on this petition. At the last hearing, there was a request for hours of operation of similar businesses in town (that abut residential properties) and that they meet with the neighbors. Mr. Seligson (attorney for neighbors) was having an operation and was unable to meet with Mr. Lynch. Mr. Seligson is no longer representing the neighbors.

Mr. Patsios (applicant) pulled hours of operations for similar businesses (submitted). The Board asked to clarify if the hours were specific to automotive work or just gas service. Mr. Patsios reminded the Board that they would not have Sunday hours and the garage doors would be shut. M. Kornitsky asked about hours for use of power tools. Mr. Patsios said the garage doors will be kept shut unless the vehicles are going in/out. H. Pass asked if they will then use power tools at night - Mr. Patsios said they might. D. Doherty asked what kind of power tools they would use. Mr. Lynch confirmed it would be compressors. M. Kornitsky asked what a reasonable time would be to stop using the compressors. Mr. Lynch said 8p. The Board noted that the hours provided for Silver Star were incorrect (compared to what the business states on their website). They also noted the hours for Citgo were incorrect.

M. Kornitsky asked about their proposed hours. Mr. Patsios said 7a-9p Mon-Fri and 8a-8p Sat, with the doors shut. Confirmed by Mr. Lynch. Mr. Lynch said they could stipulate that there be no outside activity.

M. Kornitsky then asked if the Board were to grant the permit for the light auto service, what hours the neighbors thought would be appropriate.

Steve Gadman (11 Pine St) said that they shouldn't be allowed the permit. He said that nothing has changed. Things have gotten worse. He pointed out that in the minutes it was stated that they are leasing out the space. The occupants have said they are doing this as a hobby. What they're doing there now exceeds what they're asking to do. He also pointed out in the minutes that the applicant said they would be doing general auto service which isn't allowed in this zone. If you give them the permit, you're saying the bylaws aren't for everyone.

M. Kornitsky pointed out that the Board has no power to give a permit for general auto service due to the limitations of the bylaws. He said if they grant a permit, it will have conditions that will be enforced by the Building Inspector.

Chris Soucy (27 Pine St) said that it's important for the Board to understand how the property owner is using the building now. He heard an exchange at the property the other day at the subject property. The people that were there talked about the fact they needed to pull the vehicle into the building but kept the door open. He said that even given a special permit, they won't follow the rules. It appears another part of the building has now been rented out to a new tenant, a contractor. He asked if a contractor's yard was allowed in the B-1 district. He said no. There's a bobcat on a trailer parked outside rather than indoors.

D. Doherty asked what was seen when the garage door was left open. Mr. Soucy said there was a large red tool chest and the hood of the vehicle was up. He also noted that if it's a business with exchange of money, it needs to be reported for taxing. He wants to make sure that there's proper ventilation.

D. Doherty asked if this is a hobby and not a business. Mr. Patsios confirmed that it's a hobby. He then followed that if this special permit were granted, then something like a Town Fair Tire could then go in at that property because of the special permit granted. But what's being discussed is that it's a hobby. So then they can't do this for 8-10 hours a day. He's been in the building. He felt that it's an appropriate setting for what they want to do and he didn't observe any inappropriate activity nor any signs of painting or equipment for painting. He said there's competing statements from the neighbors and what the applicant has stated. He feels it's a hobby and proper conditions can be placed. He said he's gone by the property a number of times and saw the doors open but nothing that would be in violation of the special permit being considered.

M. Kornitsky suggested a possible sunset clause in order to review the hours. D. Doherty agreed. With that, it would encourage the applicant to ensure they were complying so that the permit could then be extended after the sunset clause.

P. Kane asked that if the Board is going to consider it a hobby, shouldn't the hours be hobby hours. Questioned whether it should really open at 7a on weekdays. D. Doherty said it could be possible for people to do their hobby prior to their full-time job.

Terry Gadman (11 Pine St) said that people have been doing work from 7a to 1:30a. D. Doherty noted that there have been previous statements that weren't credible. She said she reached out to Mr. Patsios months ago, but he never followed up.

M. Kornitsky acknowledged that the applicant admits that they're doing work that would require the special permit.

Motion to close public hearing by M. Kornitsky, seconded A. Rose, unanimous.

M. Kornitsky then read the definition of light auto service from the zoning bylaw. A. Rose noted that he doesn't have a problem with what the definition states. He wants the Board to treat it like a business and not hobby hours (8a-5p and not on Sunday). It shouldn't be 9p at night nor on Sunday. H. Pass felt there could be a compromise on hours. M. Kornitsky suggested 8a-6p Mon-Fri and 8a-4p on Saturdays. A. Paprocki said that given the location, he's okay with M. Kornitsky's hours but restrict hours on Saturday from noon-5p. M. Kornitsky would like a sunset clause (for hours) and would like the Building Inspector present during that sunset review. H. Pass said that hours should be limited to 5p except one day for 8p or 9p (with doors shut). With the decision, there'll be conditions that can be enforced which could help the neighbors.

MOTION : by H. Pass for the use special permit requested with conditions that hours be Mon, Tues, Thur, Fri 8a-5p, Sat 9a-4p, Sun closed, and Wed 8a-9p with no compressor after 8p. Garage doors closed, no outside activity, no power tools while doors open, and sunset provision of 6 months to review at the December hearing. Seconded by A. Rose, unanimously approved.

PETITION 15-40 (121 ELMWOOD ROAD): Application of ALEC CHELOFF seeking a dimensional special permit to install a shed at rear of house within the rear yard setback. Map 2, Lot 5. *Continued from April hearing.*

M. Kornitsky called to open the petition. Alec Cheloff wasn't in attendance. The Board discussed that this was the second time he hasn't attended. M. Kornitsky pointed out that they need to withdraw the petition without prejudice. D. Doherty recalled that the Board had granted a shed in a front yard long ago but A. Rose said that the bylaws were different then. The current bylaws don't allow that.

MOTION : by M. Kornitsky to dismiss without prejudice, seconded by D. Doherty, unanimous.

PETITION 16-13 (10-12 PHILLIPS STREET): Application of NORTH SHORE CHABAD LUBAVITCH, INC. seeking an appeal of the determination of the Inspector of Buildings related to a request to continue the permitted use of the structure as a two-family residence and to use a portion of the first floor apartment as a "mikvah" ritual bath as a religious use defined in MGL Chapter 40A, Section 3. Map 1, Lot 128.

Attorney Goodman (representing the applicant) stated that the building is a three-story structure with one unit on first floor and second residential unit on upper two floors. The purpose for acquiring the property was to construct a mikvah which is used by one person at a time and would be created out of part of the first floor apartment.

They sought the ability to construct the mikvah but the Building Inspector gave a determination that it wasn't permitted. He noted that in the bylaw, both the two-family use and the religious use are permitted uses in the A-3 district. He believes that the Building Inspector may have confused "structure" and "use." They aren't seeking to change the exterior of the building, just modify the interior space to add in the religious use. It will be tucked within the existing footprint. He noted that in the Building Inspector's decision, he referred to the property as a nonconforming two-family. The building is nonconforming but the use isn't nonconforming. He also stated that the Dover Amendment says that you can't regulate a religious use. He said there was a similar issue in the City of Lynn but included two structures. The Supreme Judicial Court stated that the exempt use being added in doesn't make the property nonconforming. He suggests that the Building Inspector was wrong. They had considered using the building for some religious classrooms. The Building Inspector at that time just had a concern for parking. But in this instance, it's just a space used by one person at a time and they have adequate parking. People won't even know that it's there.

M. Kornitsky opened for public comment.

Donna Farwell (17 Phillips St) said that Phillips Street and Claremont Terrace is a small neighborhood with narrow streets that are one-way and with parking only on one side of the street. She had packets of neighbor concerns as well as photos demonstrating parking issues happening in the neighborhood connected with the synagogue. M. Kornitsky stated that with both the Dover Amendment and the Town's zoning bylaw, there are permitted and exempted use and that the Board has the ability to make a finding that it fits within that use. The Board is only being asked to appeal the Building Inspector's determination regarding the use. Parking restrictions can be applied.

Attorney Goodman said that the mikvah would be open at any time. It is meant to be discreet. There is no particular time when a person would use the mikvah. They have no problem with a condition that there be no on-street parking because they have enough off-street parking. H. Pass asked how many times it might be used a day. Attorney Goodman answered that it might be zero to once a week.

Rabbi Yossi Lipsker said that mikvahs today look like you're walking into a well-appointed bathroom with a larger than usual bathtub. It's similar to a baptismal pool. The mikvah would occupy about 500 square feet at most. Because they are taking away space from the first-floor unit, they need to limit how large the mikvah will be. The residential unit will have two bedrooms. The mikvah will have a separate entrance. There will be an ADA-compliant secondary egress.

B. Croft asked how scheduling is done. Attorney Goodman said it's first come, first serve. If it's occupied, you come back later. Rabbi said it's designed to be low-profile and doesn't have a lot of people. He said there used to be a mikvah in Lynn but it closed due to disrepair. His congregants may have used it once or twice a week. It would be used more often during summer wedding season. Traditionally used before a wedding. A person spends about 20-25 minutes during a visit. Attorney Goodman said that there are strict religious requirements for the building of it and it would comply to building code.

Ellen Bernard (30 Phillips St) asked for clarification if it's going to be a two-family with a religious use - yes. She's done research and she couldn't find mikvahs that were only used once or twice a week. She said that since there isn't any on the North Shore, it may be used often. She found that other mikvahs do scheduling. She said there are a number of residential units on Phillips and Claremont that already has a lot of traffic but it's quiet during the weeknights and weekends.

Attorney Goodman pointed out some information on the internet isn't all correct. Some mikvahs are very popular due to dense locations like Brooklyn. That doesn't exist in this community. A. Rose asked how many congregants they have - about 100 families. He said this is low volume.

A. Rose asked if there will be multiple baths. Rabbi said that it'll be fitted with just one.

Attorney Goodman provided a copy of the floor plan.

D. Doherty asked if there's a fee to use it - no. There're no fees in the congregation. They may make a donation.

Ms. Bernard asked if it'll be open to just congregation members or to the public. Attorney Goodman confirmed that any Jewish person that wanted to use it would be welcome to.

A. Rose noted that since they're just looking for a single bath, it represents the limited population they believe will be using it. Attorney Goodman said that there are six parking spaces. Ms. Bernard pointed out that those six spaces are tandem - yes, they're tandem.

Ms. Bernard noted that there's resident permit parking on street for Phillips St. So the residential use in the building could use the on-street, then allowing more people to park in the off-street spaces.

Attorney Goodman is appreciative of the concerns of the neighbors but they are looking for an exempt use, not a special permit. He said they won't know the mikvah is there.

Stephanie Kelly (74 Humphrey St) said their parking abuts the parking of 10-12 Pine St. She doesn't want to see the parking extended into the yard because it helps to keep the property look better. The Rabbi stated they will be doing a lot of repairs to the building and property.

Pat Robins (14 Claremont Ter) has lived in the condo since 1982. They've had to have the parking restrictions changed on the street twice due to the parking issues. She was concerned that there are no set hours of operation. The Rabbi said that typically it's used in the early evening. She's concerned that it may be popular and then a lot of traffic.

D. Doherty agreed that conditions should be considered. This is a use that he has no knowledge of. He isn't even sure of what conditions to set. He asked Attorney Goodman what would be reasonable conditions. B. Croft noted that if traffic is during pickup/dropoff of the day care, that it won't conflict with late night traffic to the mikvah. M. Kornitsky read from Mass Practice relating to conditioning of a religious use. He pointed out that there's a governmental interest regarding parking and traffic which can be conditioned.

A. Rose asked if setting specific hours of operation would be a limitation to the religious use element. Attorney Goodman said that while a synagogue may be closed at certain hours, the discreet use of a mikvah could mean that limiting the hours could be a negative. He noted that very few people would want to use it between midnight and 5a and if they did, you wouldn't know if they were a tenant or not. He noted that the question here is an appeal of the Building Inspector and therefore setting conditions isn't appropriate (it's not a request for a special permit).

They can use the "conditions" as facts to why the Inspector's decision should be overturned.

Ms. Robins asked where mikvahs are typically located. She believes they are mostly in a temple. The Rabbi agreed that many are in temples and others in residences. A. Rose noted that temples are in residential neighborhoods. Attorney Goodman said they looked at constructing the mikvah in the synagogue but it would have required dimensional relief to expand the building.

Ms. Bernard said the neighbors are concerned that it'll be both a two-family and a mikvah. It's an additional use from what it is now - a two-family. She suggested that it be a one-family and the mikvah.

Ms. Robins asked if there will be any advertising - there will be none.

M. Kornitsky made a motion to close public hearing, seconded by B. Croft, unanimous.

MOTION : by M. Kornitsky to overturn decision of Building Inspector due to reasons that were suggested in the application primarily the religious use and the protection afforded thereto and that the Board make findings that the petitioner has suggested that there will be no on-street parking for the use, that there will be no mikvahs between midnight and 5a. Seconded by D. Doherty, unanimous.

PETITION 16-14 (443 ESSEX STREET): Application of 443 ESSEX STREET, LLC seeking an amendment of previously-approved special permit for site plan dimensions due to Handicap Access Board rulings on parking locations and Building Code change on separation of elevators and stairs. No dimensional or other relief requested. Map 13, Lot 7.

Attorney Brian LeClair stated that architectural plans were being prepared for the building permits. However the state building code has changed requiring an increase in separation between stairs and elevators and a larger lobby area as well as that the handicap parking spaces should be provided in covered parking when provided and so the height needs to be adjusted to allow for handicap vans. There were no variances originally nor any requested now. The changes are listed in the application and on the revised site plans.

M. Kornitsky inquired why the building square footage is proposed to increase. Mr. LeClair said this was due to the increase in lobby size which impacted a unit and so they had to regain that space. Joseph Walsh (architect) showed the footprint increase for the stair/elevator change.

MOTION : by M. Kornitsky to approve the amendment to the special permit to allow the changes in the plans and letter as filed (to be specifically included). Seconded by D. Doherty, unanimously approved.

2016 MEETING SCHEDULE

The Board reviewed the calendar to determine the remaining meeting schedule for 2016. The following dates were selected: June 15, July 20, August 17, September 21, October 19, November 16, and December 21.

Meeting closed at 10:40 PM.

S. Peter Kane
Director of Community Development