



TOWN OF WAKEFIELD, NEW HAMPSHIRE
PLANNING BOARD

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**Planning Board
Minutes of the Meeting – As Amended
18 August 2005**

Members Attending John Blackwood, Selectmen Rep.; Rod Cools, Vice-chair; Joe Fluet, Chairman; Ed Morrison, Member; Nancy Spencer-Smith, Member; Desiree Tumas, Secretary

Others Attending Richard Atwater, Alternate Member; Donna Faucette, Alternate Member; Al Huntoon, Alternate Member;

ZBA Members Cecille Arnone, Member; Dianne Bishop, Secretary; Marge Cutter, Alternate Member; George Frothingham, Vice-chair; Rick Sager, Chairman; Doug Stewart, Alternate Member

Public Attending (As signed in) Jerry O'Connor, Kim O'Connor, David S. Stevens, Walter P. Tierney, Lance Moulton, Shirley DiPrizio, Beth MacRury, Fred Klittich, John Kenney, William Hughes, Charles McLaughlin, Francis Bruton, Bryan D. Berling, Adam Brooks, Jon Springer, Paul Winkler, Tom Lavender, Dulcie Lavender, Cheryl Schlenker, Larissa Mulkern

Pledge of Allegiance

Chairman Fluet called the meeting to order following the Pledge of Allegiance.

Public Hearing Joint Hearing with the Zoning Board of Adjustment

- 1. The Applicants, Jeremiah & Kim O'Connor, Property Owner and SBA Properties, Inc./ATC Communication Networks, Leaseholder; has applied for a Major Site Plan Review in which they seek approval to construct a 130' monopole telecommunication tower with related equipment cabinets and appurtenances. The proposed telecommunication tower would be able to accommodate up to five telecommunication carriers within the 100' x 100' leased area on the property shown as Wakefield Tax Map 48 Lot 6B. Said property is located on 3365 White Mountain Highway, Wakefield, NH.**

The Applicants, Jeremiah & Kim O'Connor, Property Owner and SBA Properties, Inc./ATC Communication Networks, Leaseholder; have applied for a Variance (Case File: 2005-5) to Wakefield Zoning Ordinance Article H3, Section 4.06 and Article H6, Section 4.06 in order to construct a 130' monopole telecommunication tower with related equipment cabinets and appurtenances. The proposed telecommunication tower would be able to accommodate up to five telecommunication carriers within the 100'x100' leased area on the property shown as Wakefield Tax Map 48 Lot 6B. Said property is located on 3365 White Mountain Highway, Wakefield, NH.

Following introductions of the Planning Board and Zoning Board of Adjustment Members, and an explanation of the procedures to be followed during the joint meeting, Chairman Fluet recognized Adam Brooks. Mr. Brooks explained the purpose of the joint hearing and his client's plans to expand cell coverage along the Route 16 corridor.

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When questioned about the existing coverage provided to Wakefield, Mr. Brooks explained the difference between PCS telecommunications that have a higher frequency and lesser transmission area than lower frequency conventional cellular telecommunications transmissions.

When questioned about the coverage provided by the existing 190' Access Road tower and 200' Juniper Ridge tower, Mr. Brooks explained that due to the topography of the area between the existing towers there is approximately a 1-mile gap where service is not provided. It is expected that the proposed tower will provide service within the 1-mile gap.

Mr. Brooks went on to explain that within the leased area, there will be a fenced compound 75' x 75'. The compound area will house the 130-foot monopole. The monopole will be able to accommodate up to five telecommunication carriers, thus lessening the need for those carriers to seek towers elsewhere in the Town. There will be cables located inside the monopole, which run to the base of the tower, where there will be equipment situated. The equipment will either be in small (generally, 10' x 20') equipment shelters, or in equipment cabinets located on concrete pads (the equipment cabinets being about the size and shape of refrigerators.) As the site is unmanned, there is no need for water or sewer. The only utilities needed are telephone and electric, and these can be easily run from existing services on Route 16. The tower will not be lit. An eight-foot high chain link fence or similar fence, topped with three strands of barbed wire, will secure the site. There is no pedestrian traffic generated, and the only vehicular traffic will be one or two trips per month per carrier by a technician in a pick-up or similar vehicle.

Chairman Fluet noted that the Board's concern is with adequate coverage to the Town of Wakefield and SBA's concern is with expanding the Route 16 corridor without regard to the actual coverage provided to the towns that approve the towers.

Mr. Brooks explained that there are no guarantees that coverage will be provided to all of Wakefield, but certainly, the additional tower will provide better coverage to the "gap" area between the two existing towers.

Mr. Brooks went on to address the Zoning Requirements. (See attached ZBA Minutes)

§4.06 E – Procedure

§4.06 F – Burden of Proof

§4.06 G – Use Provisions

§4.06 H – Dimensional Requirements

§4.06 I – Abandonment or Discontinuance of Use

Board Members and Members of the public debated the visual sightings of the balloon test and due to conflicting statements; the Board requested an additional balloon test.

Secretary Tumas questioned public notice requirements and due to the prior notice that was published in the Granite State News and included in the abutter and regional notices it is determined that additional notice would not be required.

Mr. Brooks agrees to schedule an additional balloon test when the leaves have fallen from the trees on Saturday, October 29, 2005 between the hours of 8:00 am and 4:00 pm with a "bad weather" date of Saturday November 5, 2005.

It was further explained that upon review of existing structures within the Town of Wakefield it was determined that there are no suitable co-location sites. All items of the TRC Report have been addressed and the only remaining study is the NEPA Study that is still pending. Currently the only outstanding items of the NEPA Study are the Historical response and the Indian Tribal Counsel. It was noted that the project couldn't proceed without meeting all the criteria of the NEPA Study.

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Chairman Fluet explained the Planning Board process of approval as well as the purpose of the Technical Review Committee and calls for further discussion from the Board, hearing none; entertains a motion to accept the application as complete.

Member Cools moved to accept the application, Member Blackwood seconds the motion as stated; the motion passed unanimously.

Chairman Fluet opened the public discussions explaining the discussion process and recognized Ron Murray, Brookfield Planning Board Member who stated that Town of Brookfield was not notified, as required by RSA; upon review of the file it was confirmed that Brookfield did receive notice by Certified, Return Receipt mail signed by Robert Leonard on August 5, 2005.

While reviewing the file, it was found that Member Smith is an abutter to the property. Following brief discussion, and counsel opinion, Mr Fluet noted that each member of the Planning Board is elected by the good citizens of Wakefield, and the Board therefore has no power to demand that any member recuse themselves. Each member must decide for themselves, based on the facts of the case, whether to recuse themselves. Ms. Smith asked the applicant's attorney how he felt, and the attorney replied that he was confident that Ms. Smith should recuse herself. Ms. Smith stated she had formed no opinion regarding the proposed telecommunication tower, she had no perceived conflict since she does not live on the abutting undeveloped parcel, and therefore decided not to recuse herself. Member Smith will therefore remain on the Board.

Board Members and Members of the Public discussed the use of multiple small towers and the monopole design, discussing which is better suited for the proposed location.

Assessor David Stevens commented that there have been two known abatements that have been granted as a result of the visual impact from the Access Road Tower.

Mr. Winkler questioned use of camouflage making the tower look like a tree. Members Fluet and Cools noted that they felt that tower trees are more of an eyesore than the tower themselves.

Pastor Klittich questioned if the addition of the antenna to the immediate area would cause bleed over interference with the PA system installed in the church. Mr. Brooks explained that the analog technology first used did cause intermittent interference, but that the current PCS services are digitally encrypted and transmit at frequencies that do not interfere with PA systems or other electronic devices.

Following brief discussion regarding the proposed 130' tower and the possibility of smaller towers, it was noted that using multiple shorter towers can only accommodate one carrier requiring the need for 5 towers, and that they would lose their usefulness within 5-10 years because of tree growth.

The Board and Members of the Public again entered discussions regarding interference; Mr. Brooks reiterated the 1850-1950 MHz encrypted frequency does not interfere with electronic devices.

Mr. Murray reiterated the multiple small tower configurations were preferred by Brookfield.

Chairman Fluet called for further discussion, hearing none; Chairman Fluet closed the public discussion and recognized Mr. Brooks who reviewed the following outstanding items:

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1. NEPA Study
2. Coverage provided by lower bandwidth located on the proposed tower
3. What coverage area would be enhanced
4. Mr. Brooks will provide computer graphics on site
5. Balloon Test photos from Garney Road, Hilltop Drive, Brookfield abutting town line, Wakefield Historic District

Mr. Fluet requested that the applicant provide a “coverage map” showing the area that conventional lower frequency cellular carriers would cover should they choose to locate on the proposed monopole. Mr Brooks agreed to do so.

Chairman Fluet called for further Board discussion, stating that he is torn between the visual impact verses coverage to the town. Member Blackwood stated he is in favor of the proposed tower that will provide better coverage to the Town of Wakefield as did Member Morrison, Smith and Cools. The Board briefly discussed the need to provide support to all carriers and noted that under the Telecommunications Act, towns must provide equally to all carriers and cannot allow some and not others opportunity to locate within the town.

Chairman Fluet entered into the record a signed petition opposing the tower that was handed to Member Smith prior to the meeting.

Chairman Fluet went on to explain the Board requires additional data including the additional balloon test that is scheduled for the end of October and beginning of November.

Mr. Brooks submitted a written request to continue the hearing until November 17, 2005 to allow time to receive the NEPA Study and gather the requested data from the balloon test.

Member Cools moved to continue the hearing the public hearing at the applicants request until November 17, 2005, Member Smith seconds the motion as stated; the motion passed unanimously.

Having nothing further, Chairman Fluet explained to the public that the hearing was continued until November 17, 2005 and that no further notice will be provided. Discussions were concluded.

The Board entered a 10-minute recess at 8:30 pm.
The Meeting was called back to order at 8:45 pm.

- 2. The Applicant, Lance Moulton has applied for a Home Occupation Review in which he seeks approval to operate a shop to fabricate granite counter tops, marble vanities, fireplace and tub surrounds from the existing building shown as Wakefield Tax Map 33 Lot 17. Said property is located on 2106 Wakefield Road, Sanbornville, NH.**

Chairman Fluet recognized Lance Moulton who came forward and explained he is interested in operating a marble and granite fabrication operation from the barn located on the property.

The materials would be stored within the barn and all cutting would be confined to the barn.

Board Members and Mr. Moulton discussed the noise generated by the cutting tools used for marble and granite fabrication. Mr. Moulton stated that the current tools available can be much quieter and a person can carry on a conversation while cutting is ongoing.

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Board Members and Mr. Moulton discussed containment of the dust that results from cutting of marble and granite. Dust can be collected by a fan/vacuum and forced into water which is then directed to a settling area/pond behind a retaining berm. Mr. Moulton agreed to install a settling area/pond with berm.

Chairman Fluet reviews the Home Occupation Criteria again reiterating the need to minimize the noise generated by the cutting tools. Mr. Moulton again reiterated the use of current cutting tools that are a lot quieter than previous tools.

Upon completion of the checklist, Chairman Fluet called for further Board discussion, hearing none; Chairman Fluet opened the public discussion recognizing Mr. McLaughlin who as an abutter to the property is in favor of the proposed Home Occupation.

Chairman Fluet called for further public discussion, hearing none; Chairman Fluet entertains a motion to conditionally approve the proposed Home Occupation pending development of a settling tank and retention berm (18" high –downhill).

Member Cools moved to conditionally approve the proposed marble and granite fabrication home occupation pending development of a settling tank and retention berm (18' high –downhill), Member Blackwood seconds the motion as stated; the motion passed unanimously.

- At the Applicants Request, the following Public Hearing has been rescheduled until September 15, 2005**
- 3. The Applicant, Jacqueline M. McPhail, (Wakefield Tax Map 81 Lot 18) has applied for a Home Occupation Review in which she seeks approval to produce non-perishable baked goods; cakes, cookies, breads, etc., to be delivered to retail stores and farmers markets. Said property is located on 4252 Province Lake Road, East Wakefield, NH.**

Secretary Tumas explained that the applicant would like to include the sale of baked goods from the home and the additional request would require additional notice due to the intensity change from the original notice, which indicated that the product would be delivered for sales.

The Applicant has submitted additional fees to cover the cost of the additional notice as well as the required mailing labels, the application will be reprocessed for hearing September 15, 2005.

Having nothing further, discussions were concluded.

Public Hearing (Continued from July 21, 2005)

- 1. The Applicant, Mark Murphy has applied for a Minor Site Plan Review in which he seeks approval to operate a business office from the existing building shown as Wakefield Tax Map 28 Lot 35A. Said property is located on 1621 White Mountain Highway, Wakefield, NH.**

Secretary Tumas explained Mr. Murphy has requested to continue the hearing until September 15, 2005 to allow additional time to receive the required NHDOT documentation and for the surveyor to add the required items as outlined during the July 21, 2005 public hearing.

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Member Cools moved to continue the hearing at the Applicants request until September 15, 2005, Member Blackwood seconds the motion as stated; the motion passed unanimously.

- 2. The Applicant, Charles & Charletta McLaughlin w/McLaughlin Real Estate have applied for a Boundary Line Adjustment in which they seek approval to adjust the Boundary Line between the properties as shown on Wakefield Tax Map 33 Lot 81 and Tax Map 33 Lot 81A by adding 6,446 square feet to Tax Map 33 Lot 81 from the existing 0.516± acre parcel shown as Wakefield Tax Map 33 Lot 81 located on the corner of Wakefield and Witchtrot Roads, Sanbornville, NH.**
- 3. The Applicant, Charles & Charletta McLaughlin, have applied for a Minor Subdivision Review in which they seek approval to subdivide the newly created 16,020 sf parcel shown as Wakefield Tax Map 33 Lot 81 creating 1-additional 0.184 acre parcel. Said property is located on the corner of Witchtrot and Wakefield Roads, Sanbornville, NH.**
- 4. The Applicant, Charles & Charletta McLaughlin, have applied for a Minor Subdivision Review in which they seek approval to subdivide the newly created 17,732 sf parcel shown as Wakefield Tax Map 33 Lot 81A creating 1-additional 0.184 acre parcel. Said property is located on Wakefield Road, Sanbornville, NH.**

Chairman Fluet recognized Mr. McLaughlin who came forward with Land Agent, Bryan Berling and Attorney Bruton.

Chairman Fluet began by noting that he had been informed that there were monitoring wells that are located on the property, and inquired as to the current status of the state findings. Mr Fluet then strongly admonished the applicant, his agent and his lawyer because the monitoring wells were not included on the plan.

Mr. McLaughlin explained the monitoring wells have been in place for a long time and that the State has approved the land as developable and Mr. McLaughlin did not find it relevant to the application since the State has provided written approval allowing for development of the site.

Mr. Berling and Attorney Bruton denied any knowledge of the monitoring wells. Mr. Berling agreed to locate the monitoring wells on the plan and Mr. McLaughlin will provide the State data.

Board Members noted that the current regulations should prompt an applicant to notify the Board of environmental issues. Nonetheless, in an abundance of caution and clarity, the Board would add notification requirements to the Subdivision and Site Plan Review regulations.

Attorney Bruton argued that the Board's interpretation of the subdivision language pertaining to no further possibility of subdivision was wrong and conflicted with the RSA's. He maintained that the language only applies to property that cannot be further subdivided because none of the involved or remainder lots were large enough to subdivide. He then posed the following hypothetical question to Mr. Fluet. If an applicant with a 100 acre lot applied for a Minor Subdivision to subdivide a single 1 acre lot (assuming 1 acre zoning), did Mr. Fluet believe that that applicant would therefore be precluded from further subdividing the remaining 99 acres? Mr. Fluet replied yes, and went on to explain that the only purpose of a Minor Subdivision was to expedite the application process and diminish the expense and effort of a subdivision in certain cases.

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In the hypothetical case, to protect his privilege of further subdividing the 99 acres, the applicant need only apply for a Major Subdivision, which requires more extensive submittals and data and thus allows the Planning Board to consider larger scope issues associated with the remainder 99 acres, and precludes the applicant from applying for a series of Minor Subdivisions in order to avoid a Major Subdivision review.

Member Fluet then summarized that, procedurally speaking, the Minor Subdivision allows for an expedited application for proposals of three or less lots, and that the requirement of no potential for further subdivision deters developers from submitting multiple minor applications to circumvent the requirements of a Major Subdivision. Additionally, if an applicants wishes to have the possibility for future subdivision an applicant may submit a Major Subdivision application.

Attorney Bruton explained that in his letter dated April 15th he attempted to obtain town counsel's opinion of the Minor Subdivision language to which town counsel replied that he could not offer an opinion unless an application was before the Board. Attorney Bruton then further argued his position that the Board's interpretation was wrong and conflicted with RSA language. Mr Bruton then agued that the fact that the Board had accepted this application showed that the Board agreed that the application was complete and that the Minor Subdivision language was not an issue. Mr. Fluet responded that this latter argument felt like the Applicant's attorneys had tricked the Board into voiding its own position on Minor Subdivisions, when in fact the Board had no inclination toward voiding its position. Mr. Bruton assured the Board that they had no intention of tricking the Board.

After polling the Board, Chairman Fluet stated that the Board holds firm in its interpretation of the definition of Minor Subdivision regarding the no further possibility of subdivision language. If a Minor Subdivision application is submitted and approved, regardless of the size of the subdivided lots or remainder lots, no further subdivision would be permitted and the plans should be noted as such. He also reiterated the availability of Major Subdivision for property owners wishing to preserve the ability to re-subdivide at a later time in accordance with the Subdivision Regulations.

Mr. Berlind and Mr. McLaughlin asked the Board whether it had made up its mind to deny the application based on the Minor Subdivision language, and, if so, they would not incur the additional cost of locating the monitoring wells on the drawings. Mr. Fluet polled the Board and assured the applicant that no decision would be made until all the evidence, data, and testimony had been collected, and that Board members will not reach a final decision until that time. Mr. Fluet did note, however, that the applicant was free to ask the Board to reach a decision at this time, without submitting any more information or testimony, and that if the applicant wished the Board to end the public hearing at this time and to deliberate and decide at this time, it would do so. The applicant chose to continue the hearing.

Following more spirited discussion, Attorney Bruton requested a brief recess to confer with his client.

The Board entered a 10-minute recess at 9:25 pm.
The Meeting was called back to order at 9:35 pm.

Attorney Bruton submitted a written request for a waiver from the Board's interpretation of "no potential for subdivision"

Chairman Fluet entertains a motion to act on the submitted waiver; ***Member Cools moved to deny the request for a waiver from the Board's interpretation of "no potential for subdivision", Member Blackwood seconds the motion as stated; the motion passed unanimously to deny the requested waiver.***

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Mr. Fluet noted that, at the last meeting, there was some confusion as to which version of the Subdivision Regulations applied: the subdivision regulations available at the time of application or the proposed amended regulations. Mr. Fluet stated that he had researched the issue and discussed it with Town Counsel, and concluded that the regulations available at the time of application apply. He then polled the Board to see if anyone disagreed. Hearing no opposition, he ruled that the Subdivision Regulations current at the time of the application applied.

Mr. Berlind went on to explain the proposed configuration of the Boundary Line Adjustment and subsequent configuration of the proposed subdivision would not change the status of the lots; they would remain as they are with the exception of the proposed additional lake front lot that would be undeveloped. Mr. Berlind added that the shared parking would remain, and that the odd shaped configurations are to allow for existing buildings to be located on individual lots instead of multiple building with multiple uses existing on the same property. Mr. Berlind went on to explain Mr. McLaughlin has received the necessary Setback Variance and that Sewer and Water Permits are pending.

Chairman Fluet noted that, during the recess, he had thought about the issue of whether the Board had been tricked. He then offered his recollection that, at the last meeting, the Board was disinclined to accept the application because of missing information, confusion in the TRC recommendation, and Board unease with several legal issues. However, the Board also noted that, because of the Subdivision Moratorium and the resultant reduction in “applications” meetings to one/month, the Board was faced with potential violations of the RSA 30 day and 65 day rules. The applicant’s attorney then offered a suggestion that if the Board would accept all three applications (one BLA and two subdivisions), then the applicant would agree to request a continuance of the public hearing. In this way, the Board could meet the 30 day rule and not encounter problems with the 65 day rule. The Board agreed this was a good solution and thus accepted all three applications and the applicant requested a continuance of the public hearings for all three applications. Mr. Fluet then asked if any member of the Board or anyone else remembered differently. No one did.

Mr Fluet then stated that, for the applicant’s attorney to now suggest that the Board’s acceptance of the applications under compromise conditions resulting from duress somehow voided the Board’s standing interpretation of the Subdivision Regulations, seemed inappropriate at best and did suggest trickery. Mr. Burton reiterated that his firm would never seek to trick a Board.

Board Members agree they are not prepared to act at this time and would like to conduct a site walk to view the monitoring wells and the proposed boundary lines.

Chairman Fluet again reiterated the Board’s need to gather more information before rendering a final decision. Mr. Fluet outlined the following items of concern, reiterating that he had not reached a conclusion on any of them:

- Environmental – State Monitoring Well Data
- Potential neighbor issues, access issues, and common sensibility issues, as a result of the odd configurations of the lots
- Proposed use of the newly created lot that will be undeveloped
- Compliance with the Shoreline Protection Act
- Compliance with the Subdivision Regulations
- Compliance with the Zoning Ordinance
- Development is within the Spirit of the Ordinance
- Issues that might be uncovered on the Site walk

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Attorney Bruton challenged the notion that the Spirit of the Ordinance had not been met considering the 30 + year existence of the buildings that are in no way dependent on the newly created lots.

Member Cools reiterated his concern regarding civil disputes related to the property configuration when the same person no longer owns the lots. He then suggested the undeveloped lot could be deeded to the town for a public boat launch. Mr. McLaughlin strongly objected to the latter suggestion.

Mr. Berlind revisited the additional subdivision issue, suggesting that the 12-year lapse of time since the previous subdivision might be a sound reason for the Board to waive its position. Having considered Mr. Berlind's point, Chairman Fluet polled the Board and then confirmed that the Board was not at this time convinced that it should change its position.

Chairman Fluet called for further Board discussion. Board Members agree the Monitoring Wells are to be located on the revised plan, and to conduct a site walk. After conferring with the applicant, the Board Members scheduled a site walk on Tuesday, August 30, 2005 at 6:00 pm.

Mr. McLaughlin submits a written request to continue the hearing until October 20, 2005; ***Member Smith moved to continue the hearing until October 20, 2005 at the applicants request, Member Morrison seconds the motion as stated; the motion passed unanimously.***

Having nothing further, discussions are concluded.

Preliminary Discussions

1. **Wakefield Tax Map 70 Lot 71, 71A, 72 – John Shaffer to discuss Boundary Line Adjustment**

Mr. Shaffer rescheduled discussions until the September 15, 2005 meeting. No discussions were conducted and the Board took no action.

2. **Wakefield Tax Map 46 Lot 5 – John Deveau – to discuss consignment sales of vehicles from the property**

Mr. Deveau did not attend the meeting, no discussions were conducted and the Board took no action.

3. **Ralph Atkins to discuss possible used car sales – Tax Map and Lot Number were not available**

Mr. Atkins did not attend the meeting, no discussions were conducted and the Board took no action.

**Board Business
Code Enforcement Q & A
Approval of the Minutes**

1. **August 11, 2005**

Member Smith moved to approve the August 11, 2005 Minutes of the Meeting, as amended, Member Cools seconds the motion as stated; the motion carried, 4-in favor, 1-abstained vote by Member Blackwood who was not in attendance August 11, 2005.

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Correspondence and Miscellaneous

- 1. Regional Notice – Wolfeboro Planning Board and Zoning Board of Adjustments RE: Site Plan Review and Special Exception to be discussed Tuesday, August 23, 2005 at the Wolfeboro Public Library beginning at 7:00 PM.**

Notice provided for informational purposes only.

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Adjournment

Chairman Fluet called for further business to come before the Board, hearing none; Chairman Fluet entertains a motion to adjourn the meeting at 10:15 pm.

Member Cools moved to adjourn the meeting, Member Blackwood seconds the motion as stated, the motion passed unanimously.

Respectfully submitted,

Desiree Tumas, Secretary