BOROUGH OF HARVEY CEDARS LAND USE BOARD

Regular Meeting – Minutes

July 16, 2020

A regular meeting of the Land Use Board of the Borough of Harvey Cedars was held in the High Point Firehouse, 10 W. 80th Street., Harvey Cedars, New Jersey on the above date.

The meeting was called to order by **Chairman Bob Romano** at 07:00 PM.

Chairman Romano made the following announcement: "This is a regular meeting of the Harvey Cedars Land Use Board, notice of which was duly posted on the Bulletin Board in the Municipal Clerk's office, advertised in the Beach Haven Times and Asbury Park Press, and filed with the Municipal Clerk as required by the Open Public Meeting Act."

Members of the Board present: Mark Simmons, John Tilton, Chairman Robert Romano, Terry Kulinski, Tony Aukstikalnis, Mayor Jonathan Oldham, and Commissioner John Imperiale

Members of the Board absent: Daina Dale

Alternate members of the Board present: **Kathy Sheplin** Alternate members of the Board absent: **Sandy Marti**

Also present were the following: Stuart Snyder, Esq., Kevin Quinlan, Esq., and Frank Little,

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### Application – 2019:05 – 12 E. Burlington Ave. – William & Amy Sheffield

**Stuart Snyder Esq.**, announced that there was an issue with the publication for 2019:05. The applicant requested that the Beach Haven Times publish the notice on July 2<sup>nd</sup> but the notice did not run until the following Thursday, July 9<sup>th</sup>. Due to the change of date, the applicant was unable to provide notice on time for the hearing. **Mr. Snyder** explained that the applicant will not need to provide notice to individuals within 200ft but will be required to serve notice to the newspaper. The application will be heard at the August 20<sup>th</sup> meeting.

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Application – 2020:05 – 2 E. 70th Street – Walters-Design Build LLC

Chairman Romano explained that the application for $2 ext{ E. } 70^{th}$ Street is a continuance of the application from the June 18^{th} meeting.

Kevin Quinlan Esq. added that since the last meeting additional revised documents had been submitted for review.

The following was entered into evidence:

- A4 Najarian Associates Revised Variance Plan
- A5 Revised Architectural Plans by Walters Architectural
- **B2** Updated Engineer Review Letter

Richard Visotcky with **Kelly & Visotcky** appeared before the board for the applicants **Walters-Design Build LLC**. **Mr. Visotcky** revisited the application and details that were shared at the previous meeting. He explained that there were concerns on the location of the pool based upon the front deck of the house. With concerns raised by the board and public at the previous meeting, **Najarian Associates** and **Walters Architectural** prepared new plans showing a revised location of the pool. The pool would be moved away from the deck and placed where the proposed fireplace would have been. The equipment for the pool would be placed in an enclosure under the house. **Rich Visotcky** also explained that landscaping would be added to buffer the noise in the fenced area.

John Freeman with Najarian Associates was sworn in. Mr. Freeman is responsible for preparing the revised variance plan for the application. Richard Visotcky requested an explanation on the changes of the proposed pool. Mr. Freeman explained that the pool is now moved back to the rear lot line to avoid the deck and the pool equipment will be placed under the house in an enclosure. He also added that there will be landscaping for screening and sound buffer.

Richard Visotcky provided the board additional colored photographs of the property.

The following was entered into evidence:

A6 – 2 5x7 Property Photos

For clarification **Frank Little** added that the drawing shows a perpendicular distance of 4 feet from the fireplace to the pool. He explained that the corner of the deck extends past the fireplace, bringing that distance to 3 feet. **Mr. Little** stated that it's important to know both distances when voting on the application.

Tony Aukstikalnis revisited the proposed distance between the deck and the pool causing potential safety issues. The distance required is 8 feet but only 3 feet is currently proposed. **Frank Little** explained that the distance is on an angle and would be a stretch for someone to jump from the deck to the pool. **Mr. Little** suggested the possibility of shortening the deck to increase the distance. **Chairman Romano** asked if the applicants would consider adding a higher railing in that area.

Arnold Boyle with **Walters Architectural** was sworn in. **Mr. Boyle** was responsible for preparing the revised architectural plans. In the revised plans the pool was moved back to meet the 10-foot rear setback and the pool equipment was moved into an enclosure. **Mr. Boyle** also explained that to block and buffer the pool, landscaping would be placed on the rear property line 16 feet apart and 10 feet apart on the left property line. **Frank Little** determined that

landscaping 16 feet apart would not form a buffer of any kind and 7 feet would be a more appropriate distance between plants. **Mr. Boyle** agreed to the recommended changes to both the rear property line and side property line. **Richard Visotcky** revisited the requested change in railing height in the deck area near the pool. **Arnold Boyle** stated that the building is currently complete and is up to building code. **Frank Little** suggested a railing at least 5 feet in height within an 8-foot radius from the corner of the pool.

Kevin Quinlan reviewed the changes made to the application with the board. The variance being requested is for the 3-foot distance where 8 feet is required from the pool to the structure. A buffer of plantings with a 7-foot spacing will be placed on the rear and left property lines with a minimum of 5 feet in height. Finally, the board is requesting a railing height a railing 5 feet in height using an 8-foot radius from the pool to the deck.

Chairman Romano opened up the meeting to board discussion.

Commissioner John Imperiale applauded the applicants on an excellent presentation. He continued to thank the public for coming to both meetings and raising excellent points that some may have missed. **Commissioner Imperiale** added that the revisions were exactly what he had hoped for.

Tony Aukstikalnis revisited the issue with this application being considered a hardship. He explained that there was no hardship when the home was being built, so why is there a hardship now when it is completed. **Mr. Aukstikalnis** shared that he has no sympathy for this application.

Mayor Jonathan Oldham explained that he believes there should be some grace given for the two front yards. He also added that if the applicants were to put in a 10x24 pool, no variance would be needed.

Public Portion was opened.

Jill Frost, neighbor at 4 E. 70th Street, was sworn in. Mrs. Frost commented on Commissioner Imperiales comment that everything that was requested had been addressed. She argued that the only thing that has been addressed is the placement of the pool. In her opinion, Mrs. Frost believes that if the applicant wanted to add a pool it should have been in the original design. As she stated in her previous testimony, she witnessed the home being advertised with a pool but the final plan including the pool was never submitted to borough hall. She explained that the applicant went with building a larger home rather than including a pool. Jill Frost added that the applicant created their own hardship with the sizing of the house and adjustments could have been made if the pool was submitted with the original plans. Even though the applicants took her previous testimony into consideration in regards to the possible noise issue, she wishes there would not be a pool. When it comes to the pool equipment, Mrs. Frost added that it is being placed in a breezeway that would cause the noise to travel with nothing to block it. With the pool equipment running, it will cause a major detriment to her. In conclusion, she explained that the applicant created their own hardship and does not believe the board should allow builders to come into Harvey Cedars and circumvent the rules.

Denise Simmons, neighbor at 1 E. 70th Street, was sworn in. **Mrs. Simmons**' family built the home and she is one of only two original owners left on 70th Street in Harvey Cedars. She explained that she would be directly affected by the pool and it will not bother her family. The pool will be visible from her deck and she does not see any issue. She added that she doesn't understand why this pool is being considered a hardship. In her opinion, she believes the builder could have changed their mind when it came to the decision of including a pool. In regards to the safety concerns, **Denise Simmons** explained that the individuals that will own or rent the home will most likely have common sense when it comes to jumping in the pool. She does not see the future homeowners throwing parties or tearing the home up. **Mrs. Simmons** explained that the noise from the pool will not bother them because they are used to the noise of the boulevard and air conditioning units. In conclusion, she added that the home is beautiful and if an individual is going to purchase the home for the price they are asking for, it should have a pool.

Public Portion was closed.

Richard Visotcky explained that the applicants worked hard to take everything the public requested into consideration in the revised plans. In the new proposed plans, the applicants will be shifting the pool, moving the pool equipment, planting buffer plants and adjusting the railing height on the deck.

Commissioner John Imperiale made a motion to approve the application, seconded by John Tilton. The following vote was recorded Chairman Romano and Commissioner John Imperiale voted Yes to approve. Terry Kulinski, Tony Aukstikalnis, Mayor Jonathan Oldham and Kathy Sheplin voted No to approve the application. The application was denied.

Prior to the start of the next application, **Tony Aukstikalnis** recused himself from the remainder of the meeting at 7:55PM.

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Application – 2020:06 – 16 E. 84th Street – 84th Street LLC

Richard Visotcky appeared before the board for the applicant, 84th Street LLC. 84th Street LLC is owned by Edward Walters. Mr. Visotcky explained that the property is an oceanfront property consisting of 7500sqft. The current ordinance requires 5000sqft in this location, bringing the property over by 2500sqft. The applicants are requesting to add a pool to the rear of the property bringing the lot coverage over the required amount. The pool stairs also raise an issue with the distance to the structure. In addition, they are requesting an interior foyer area.

The following was entered into evidence:

A1 – Application

A2 – Najarian Associates Variance Plan

A3 – Architectural Plans by Walters Architectural

A4 - Color Photographs of the property

A5 – Two renderings B1 –Engineer Review Letter

John Freeman with Najarian Associates was previously sworn in before the board. Mr. Freeman was responsible for preparing the variance plan provided for this application. Richard Visotcky requested the witness to review what variances the applicants are requesting. John Freeman explained that the applications are requesting an impervious coverage variance due to the proposed pool. He added that the applicants will be over maximum structure area with 38% where 33% is allowed. In addition to the pool, the applicants are seeking a variance for the distance between the pool stairs and the house. The distance between the stairs and the structure has a minimum of 8ft but 1.9ft is currently proposed. Mr. Freeman explained that the bottom of the structure is open and the measurement of that distance is taken from an overhang. Mr. Visotcky asked the witness to describe the proposed pool. John Freeman shared that the proposed pool would be an above ground fiberglass pool placed on pilings so it would not be easy to move. He added that coping for this pool is not proposed due to the pool being above ground. Richard Visotcky stated that the Harvey Cedars variance for coping around pools lists both in-ground and above ground swimming pools. In order to follow the ordinance in place, the applicants would also need to seek a variance for coping on the proposed pool. In concluding his testimony, Mr. Freeman added that any water drainage on the property drains towards the street and away from the surrounding properties.

Kevin Quinlan asked Mr. Freeman to comment on paragraph D of the Engineer Review Letter regarding the pool safety fence extending beyond the building line. Frank Little added that from his understanding this property has an oceanfront building line. The borough does not permit any building beyond that line besides protective dune devices. Mr. Little added that the building line is not shown on the survey so it needs to be clarified. If the building line is in place the fence would not be able to go past there, unless it was a sand fence for dune protection. Richard Visotcky stated that applicant's environmental specialist, Junetta Dix, would be able to comment. He added that she was responsible for handling the CAFRA permit for this project. Frank Little commented that CAFRA does not recognize the boroughs building line so the board would not be concerned with CAFRAs thoughts. The board does not have jurisdiction to vote or grant anything beyond the building line so the applicants would need to comply. Mr. Little shared with the applicants where he believed the building line is located. The applicants agreed to add the building line to the plans and make it conforming.

Arnold Boyle with **Walters Architectural** was previously sworn in before the board. **Mr. Boyle** was responsible for preparing the architectural drawings for this application. **Arnold Boyle** began by discussing the foyer that is being requested by the applicants. The variance is being requested due to the heated foyer being below the first main floor of the home. The foyer will be 83.9sqft keeping the house under the required floor area ratio. **Mr. Boyle** confirmed that this space will only be utilized as a foyer with access and no living space.

Kevin Quinlan requested further clarification on the foyer and what the board is being asked to approve. **Arnold Boyle** explained that the foyer is heated space below what the borough ordinances consider a first floor. **Richard Visotcky** added that the requirements for the square footage have been met. Frank Little included that they proposed foyer would also be above base

flood. With the space being above base flood level, FEMA would allow the space to be heated. **Kevin Quinlan** confirmed with the board and applicants that if approved, the board would be approving 83.9sqft. of heated first floor living space.

Chairman Romano questioned the coping on the back of the proposed pool since the back of the pool will be 7 feet height. With the pool being 7 feet out of the ground, he asked for clarification on a possible safety railing or protection. **Arnold Boyle** stated that the railing is not a requirement but if the board is requesting a railing, the applicant would conform with a 36inch high railing.

Terry Kulinski questioned if the garage and the foyer would be the same level. **Mr. Boyle** confirmed that the foyer is step-up from the garage.

Junetta Dix with ACT Engineers was sworn in. Ms. Dix began her testimony with an overview of the property and explained that the DEP classified the entire lot as a dune. She is responsible for seeking the CAFRA permits for this applicant and property. Ms. Dix explained that the initial request to CAFRA was for an in-ground pool with a different configuration and many revisions. She continued by adding that the applicants are at the maximum amount for building coverage. The DEP considers an in-ground pool or a pool on a major foundation part of the building envelope. In order for CAFRA to approve the in-ground pool, it would need to be within the CAFRA approved foot-print. Richard Visotcky added that the CAFRA limitations is the reason behind the above ground pool. Junetta Dix explained that CAFRA does not regulate decks. She added that decks can be built up to the building line or cantilevered with pilings through the dunes. Pools and spas can be placed on those decks. Ms. Dix added that the only way the pool could be permitted on the property would be for it to be placed on a deck not included in the building envelope.

Kathy Sheplin requested confirmation on the time frame of the planning for the proposed pool and the construction of the home. **Junetta Dix** explained that the property had pilings at the time of the CAFRA application and the home was not built.

Junetta Dix confirmed that if the property was not considered a dune, an in-ground pool would meet all of the boroughs lot coverage requirements.

John Leoncavallo with John Leoncavallo Associates was sworn in. Mr. Leoncavallo confirmed that he reviewed the zoning ordinances and drawings in regards to this application. To begin his testimony, Mr. Leoncavallo described the pool as small scale and raised per CAFRA's guidelines. He continued with a description of the property and the overall compliance. Mr. Leoncavallo explained that zoning relief is required for the lot coverage of the structure, the pool coping, and the heated space on the first floor. He continued to explain that the applicants are seeking a C1 hardship. Mr. Leoncavallo shared that relief is due to the land and not the size of the pool.

Kevin Quinlan reviewed the application with the board and the applicants.

Public Portion was opened.

Mark Devlin, neighbor at 11 E. 83rd Street, was sworn in. Mr. Devlin is the neighbor directly south of the property. He believes that there were many of the same issues in application 2020:05 that appear in this application. Mr. Devlin does not understand why now that the home is built, is there a hardship. He explained that the applicant is requesting egregious deviations from the borough ordinances in regards to pool coping and lot coverage. As a neighbor directly behind the property, Mr. Devlin explained that the pool will bring infringement on his privacy rights and noise issues. He shared that there is no above ground swimming pool in his neighborhood and that it would not fit in with the nature of the area. Mr. Devlin showed photographs to Richard Visotcky taken two weeks prior from his bedroom window.

The following was entered into evidence:

OBJ1 – Photographs taken from neighboring property of proposed pool location

Mark Devlin explained that there is a deck over the pool that is proposed. He shared that there is a glass railing that could be easily scaled by a homeowner or renter. **Mr. Devlin** believes that there would be a negative impact on his property. He would have a direct view of the pool from his northside windows. **Mr. Devlin** added that if the pool was to rupture, the water would move towards his property. He explained that he does not believe this is a hardship and asked the board to deny this application.

Anthony Ellenbogen, neighbor at 13 E. 83rd Street, was sworn in. Mr. Ellenbogen was present with his attorney Jonathan Sontz. Mr. Sontz requested Anthony Ellenbogen to present his objection to the board. Mr. Ellenbogen shared that he has lived at 13 E. 83rd Street for 48 years and he respected that Harvey Cedars strived to not be over developed. He believes the applicants are developers that are trying to over develop Harvey Cedars. Mr. Ellenbogen reflected back on the testimony from Junetta Dix and explained that the applicants knew from the start that they needed to do an above ground pool but decided to maximize the home. He does not believe there is any hardship in this application and claims this is all being done because of greed. Mr. Ellenbogen voiced his concerns regarding safety and the negative impacts on the neighbor's quality of life due to the proposed pool. He brought up the possibility of another Superstorm Sandy that could turn the pool into a projectile and harm neighboring homes. In his opinion, the only reason for this pool is for a developer to sell this house for more money. As a resident of the town for almost fifty years, Mr. Ellenbogen does not believe his quality of life should have to suffer because of a developer wish for a pool.

Mark Devlin, previously sworn in, wanted to ensure the board was familiar with the deck that he previously mentioned in his testimony. He revisited that individuals could easily jump from the railing of that deck into the pool below. Frank Little and Chairman Romano explained that the deck does not stick off of the house and there is a distance of 8 feet. Arnold Boyle, the architect that prepared the plans, confirmed that the deck does not project off of the building and the deck is a conforming distance from the pool. Mr. Devlin still believes individuals would be enticed to jump into the pool.

Public Portion was closed.

Richard Visotcky revisited the testimony of **Junetta Dix** where she mentioned that if an inground pool was permitted, they would not have to seek approval. **Mr. Visotcky** explained that if the in-ground pool was permitted, the pool would have been 5 feet from the property line instead of the proposed 10 feet. The in-ground pool also forced the applicant to come before the board on the lot coverage issue. **Richard Visotcky** continued with describing the home as a modest size on the reduced footprint due to the environmental constraints.

Chairman Romano opened up the meeting to board discussion.

Commissioner John Imperiale believes that there is no issue with the proposed foyer. He sympathized with the neighbor's reactions to the pool. With the applicants following the guidelines provided by CAFRA and making all revisions that they were requesting; he believes that there should be no issue with the proposed above ground pool.

Terry Kulinski raised the issue of the possibility of children falling into the pool or even falling out of the pool since the pool is above ground.

Edward Walters, the applicant and owner of 84th Street LLC, was sworn in. In response to the board members concern with safety, Mr. Walters explained that a safety railing will be added to one side of the pool. The other sides of the pool with exposed 6ft sides will have planters. Mr. Walters added that if there were an issue and someone fell out of the pool, the furthest distance they could fall is only 24 inches. Edward Walters addressed the comments that the pool was his original intentions. He explained that the pool was not in the original plan and that an interested buyer requested the pool to be added. Mr. Walters continued to share that he would like this pool to be approved for a future homeowner that could benefit from this pool.

Commissioner John Imperiale made a motion to approve the application, seconded by Mayor Jonathan Oldham. The following vote was recorded John Tilton, Chairman Romano, Mayor Oldham, and Commissioner John Imperiale voted Yes to approve. Mark Simmons, Terry Kulinski, and Kathy Sheplin voted No to approve the application. The application was approved.

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Application – 2020:07 – 18 Kinsey Lane – Pizer Living Trust

Richard Visotcky with **Kelly & Visotcky**, **LLC** appeared before the board for the applicant, **Pizer Living Trust**. The principals of the trust are Donald and Marcia Pizer.

The following was entered into evidence:

A1 – Application

A2 – Nelke Tyska Variance Plan

A3 – Robert Roth Architectural Plans

A4 - Color Photographs of the property

B1 – Engineer Review Letter

Richard Visotcky shared that the applicants have owned the property at 18 Kinsey Lane for 23 years. Earlier in the year, the home on the property was destroyed by a fire. The applicants are proposing to remove the remains of the fire damaged home and rebuild a home in the same footprint. The applicants are also proposing to raise the first floor of the new home to base flood elevation of 8ft. The existing home has side-yard setbacks of 10ft and 8ft. The Harvey Cedars ordinance requires the home to have 10ft side-yard setbacks. **Richard Visotcky** explained that in order to construct a replica of the existing home, the applicants are seeking a variance for the 8ft side-yard setback.

Robert Roth was sworn in. Mr. Roth was responsible for preparing the architectural plans. With the existing home being severely damaged by a fire, the applicants are looking to build in the same footprint and utilize their existing pilings. Robert Roth discussed the applicants plan to keep their existing pilings by structurally creating a box base that would support and raise the new home. Mr. Roth confirmed that the only outside changes for the home would be some additional steps. Richard Visotcky asked Mr. Roth to provide additional information in regards to the variance being requested. Robert Roth explained that the original home followed the ordinances at the time. In order to replicate the original home and set-backs, a variance would need to be granted.

Stuart Snyder requested clarification on the May 28th date provided on the architectural drawings. **Robert Roth** explained that the plans were prepared after the fire and the date provided on the plans is incorrect.

Frank Little visited item four in the Engineer Review Letter where he mentions the new lot fill ordinance for Harvey Cedars. **Mr. Little** explains that the ordinance would require that the garage slab would need to be at elevation 4.14, where the current slab is at 3.13. **Mr. Little** continued his explanation by adding that the slab would need to be raised an additional foot and retaining walls may need to be placed on the sides. **Robert Roth** agreed to comply to **Mr. Littles** recommendations and all current ordinances.

Donald Pizer, the applicant and homeowner, was sworn in. **Mr. Pizer** began his testimony by thanking the High Point Fire Company for responding to the house fire in February and saving the neighboring homes. **Mr. Pizer** stated that they are looking to rebuild what they had and meet the current borough requirements.

Terry Kulinski made a motion to approve the application, seconded by Kathy Sheplin. The following vote was recorded Mark Simmons, John Tilton, Chairman Romano, Terry Kulinski, Mayor Oldham, Commissioner Imperiale, and Kathy Sheplin all voted Yes to approve.

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Application – 2020:08–7 E. Mercer Ave – James & Santina Beslity

Richard Visotcky with Kelly & Visotcky, LLC appeared before the board for the applicants, James and Santina Beslity.

The following was entered into evidence:

A1 – Application

A2 - Horn, Tyson, & Yoder Variance Plan

A3 – Architectural Plans

A4 - Photographs

B1 – Engineer Review Letter

Richard Visotcky explained to the board that the applicants are seeking to extend the second-floor deck towards Mercer Avenue by 5.5ft. The deck would meet the front yard setback requirement, but the 5.5ft deck enlargement would bring the home to 37.1% lot coverage. The lot coverage overage is the only variance the applicants are seeking.

James Bryzowski with Horn, Tyson, and Yoder was sworn in. Mr. Bryzowski prepared the variance plan for this application. James Bryzowski described the property as a two-story single-family dwelling with 50 yards of frontage and a lot size of 5000sqft. He explained that the applicants are proposing a 5.5ft by 19.5ft deck off of the front of the home that would not affect parking. The setback from Mercer Avenue to the deck would be 15ft, which is permitted. Mr. Bryzowski stated that the proposed deck would increase the building coverage to 37.1% which would require a variance for total building coverage.

Stuart Snyder requested further information on any detriments the deck could cause for neighboring properties. **James Bryzowski** confirmed that there would be no detriments.

William Esarey with **Hand Line Architect** was sworn in. **Mr. Esarey** was responsible for preparing the architectural plans. He explained that the original deck was on an angle and does not provide adequate space for adults. With the proposed plans, the applicants will be able to fully utilize the deck. **Mr. Esarey** confirmed that the railings will match the remainder of the railings on the home.

Public Portion was opened.

Public Portion was closed.

Mayor Jonathan Oldham requested further information on any existing drainage issues and any potential gutters that would be added. **Frank Little** added that the water will flow towards Mercer Avenue.

James Beslity, the applicant, was sworn in. **Mr. Beslity** confirmed for the board that there are no drainage issues on the property.

John Tilton made a motion to approve the application, seconded by Commissioner John Imperiale. The following vote was recorded Mark Simmons, John Tilton, Chairman Romano, Terry Kulinski, Mayor Oldham, Commissioner Imperiale, and Kathy Sheplin all voted Yes to approve.

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Resolution - 2020:07 - 18 Kinsey Lane - Pizer Living Trust

Stuart Snyder, Esq. reviewed the Resolution of Memorialization with the board.

Tony Aukstikalnis made a motion to approve the resolution, seconded by Terry Kulinski. The following vote was recorded Daina Dale, Chairman Romano, Terry Kulinski, Mayor Oldham, Commissioner Imperiale, Tony Aukstikalnis, and Kathy Sheplin all voted Yes to approve.

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Minutes – Regular Meeting – 06/18/2020

Kathy Sheplin made a motion to approve the minutes of the regular meeting on June 18, 2020, seconded by John Tilton. The following vote was recorded Chairman Romano, Terry Kulinski, Mayor Jonathan Oldham, Commissioner Imperiale, and Kathy Sheplin all voted Yes to approve.

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At 10:13PM the meeting was adjourned.

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Respectfully submitted,

Christine Lisiewski, Secretary