FERGUSON TOWNSHIP PLANNING COMMISSION MEETING MINUTES MONDAY, JUNE 26, 2017 6:00 PM

I. ATTENDANCE

The Planning Commission held its regular meeting of the month on Monday, June 26, 2017 at the Ferguson Township Municipal Building. In attendance were:

Commission:

Marc McMaster, Chairman Rob Crassweller, Vice Chair Ralph Wheland Lisa Strickland Bill Keough Eric Scott, absent Andrea Harman, absent Cristin Mitchell, alternate

Staff:

Ray Stolinas, Director of Planning & Zoning-absent Lindsay Schoch, Community Planner Jeff Ressler, Zoning Administrator

Others in attendance were: Marcella Bell, Recording Secretary; Derek Anderson, Residential Housing Development LLC; Peter Crowley, Land Design; Charles Suhr, Stevens & Lee; Brian Heiser, State College Borough Water Authority; Andy Arnold, Gwin, Dobson & Foreman; Ken Beldin, Gwin, Dobson & Foreman; Fran Jones, Private Skate Park in the TSD; David Vandenbugh, Pine Hall TTD Text Amendment; Jeremie Thompson, Ferguson Township Resident; Deanna Nardozzo, Toll Brothers Appeal; Anne Fry, Toll Brothers Appeal; Mary Lou Pae, Toll Brothers Appeal; Joe Green, Ferguson Township Solicitor; Dwight Ferguson, Circleville Road Partners Solicitor; and David Pribulka, Ferguson Township Manager

II. CALL TO ORDER

Mr. McMaster called the June 26, 2017 Planning Commission meeting to order at 6:00 p.m.

III. CITIZEN INPUT

There was no citizens' input.

IV. State College Borough Water Authority (SCBWA) Proposed Text Amendment Ms. Schoch stated that on May 25, 2017, the State College Borough Water Authority (SCBWA) submitted an application proposing changes to both Chapter 26 (Stormwater Management) and Chapter 27 (Zoning). The SCBWA has an interest in constructing a new Water Treatment Facility on tax parcel 24-003-007F in Ferguson Township and the current regulations do not allow for this use. On March 28, 2017, the SCBWA went before the Zoning Hearing Board with a variance request, and the Zoning Hearing Board denied the request. The SCBWA has decided to take a different route since the variance was denied and is now requesting an ordinance change to allow the Water Treatment Facility in the Rural Agricultural (RA) Zoning District. This is an opportunity for the Planning Commission to take time and review the amendment while staff prepares a thorough analysis and response to the proposed ordinance change. Ms. Schoch then opened the floor for any questions or comments.

The discussion centered around the proposed text amendment for Chapter 27-204.1.P. The proposed text amendment includes any form of essential service to be permitted as a conditional use by the Board of Supervisors. It was also proposed to revise the use tables (Tables 301-304,401-406, 501-502, and 601-602) to include essential services as a conditional use. The Commission members were concerned about including all "essential services" in the proposed text amendment because the requirements that might be needed for a sewer service plant would be vastly different than the requirements for a water treatment facility. Mr. Brian Heiser of the SCBWA stated that their intention was not to propose a text amendment to strictly benefit the SCBWA, but also benefit other essential services. Mr. Hesier stated that the SCBWA could certainly tailor the text amendments specifically to the water authority's needs. Mr. Ressler stated that he is opposed to the text amendments, specifically allowing the SCBWA to build in the floodplain. The Township does not allow anyone to build in the floodplain and Mr. Ressler is concerned that there would be issues if the Township allows the water authority to build in the floodplain.

The Planning Commission provided the following comments:

- Mr. Crassweller stated that on page two of the SCBWA's application, number 7
 mentions having a 400-foot setback from all adjacent properties; however, number
 12 on the same page states that the minimum lot size shall be one (1) acre.
- The Planning Commission requested that the SCBWA go back to the drawing board and create text amendments that only pertain to what the water authority needs to build the Water Treatment Facility. The Commission felt that the proposed text amendment was too broad and could be problematic for other essential services.
- Mr. Crassweller stated that a maximum of 75% impervious coverage could be problematic.
- Define "essential service" as it related to the proposed text amendments.
- The Planning Commission requested that the SCBWA provide a strike through copy to easily see the changes from the current ordinance and the proposed text amendments.
- There was concern about the impact that the proposed text amendments might have on the ordinance itself, as well as other entities that want to build in the floodplain.
- Mr. McMaster was concerned that the property in question would not be covered under the National Floodplain Insurance.
- Mr. Crassweller was concerned that Township staff would not have the resources to conduct a hydrological analysis.
- Define "laboratory" as it relates to the proposed text amendment.
- The Planning Commission would like to schedule a work session to review all of the proposed text amendments as to not tie up regular meeting times.

Township Planning & Zoning staff will review the comments provided and provide a thorough analysis and response to review at a meeting in July.

V. PROPOSED TRADITIONAL TOWN DEVELOPMENT (TTD) ORDINANCE AMENDMENT

Ms. Schoch stated that on March 16, 2017, Charles M. Suhr, on behalf of Residential Housing Development LLC, submitted an application proposing changes to the Traditional Town Development (TTD) section of the Zoning Ordinance. On Thursday, June 22, 2017, an updated letter and amended application was submitted. Staff had the opportunity to meet with Derek Anderson and Michael Pratt and discussed, in detail, each proposed amendment. Early in June, Planning & Zoning staff sent the Planning Commission members a packet of information regarding Pine Hall and the events leading up to this point. At this time, staff feels the amendment is acceptable to move forward to the Board of Supervisors so the project can move forward. Land Design, Inc. will be present to make a presentation, describing the proposed amendments. Ms. Schoch turned the floor over to Mr. Charles Suhr and Mr. Peter Crowley.

Mr. Suhr stated that the Planning Commission last saw the ordinance amendment at the May 8, 2017 meeting. Since then, the Commission has heard a presentation from Mr. Dwight Ferguson and his land use planning consultant, Steven Victor. After the presentation from the Circleville Road Partners representatives, the Pine Hall representatives revised the proposed text amendments to minimize some the changes that were being requested while still being able to implement the overall goal of the project. Mr. Suhr referred to the history sheet located in the agenda packet of how Pine Hall has arrived at this point in time with the proposed text amendments. Mr. Suhr stated that zoning ordinances are living documents that are meant to be changed, developed, and meant to be reactive and proactive. Mr. Suhr turned the floor over to Mr. Crowley for a short presentation.

Mr. Crowley referred to the projector and showed several of the towns and areas that Land Design has worked with to create "traditional town developments". The images he showed are the design manual interpretations that Pine Hall representatives felt represented the Township's specifications. He reiterated that the goal of the of the TTD ordinance is encourage innovation; promote flexibility, economy, ingenuity, and development. Mr. Crowley feels that over the past 18 months, staff and Pine Hall representatives have come up with a good product that shows the values of the community, as well as how a place can be created, designed, and built that works in the market. 10 key elements came out of the design charrette that Township staff held with Pine Hall representatives, the Planning Commission, the Board of Supervisors, and several community members that have been incorporated into the plan. Providing a diverse community, preserving open space, and vibrancy were just a few of the key elements that came from the charrette. Mr. Crowley stated that the proposed text amendment really just accommodates the master plan of Pine Hall, which reflects the community vision. The intention of Pine Hall is to sell the for sale homes, to operate the retail, and to be a long-term tax payer in Ferguson Township.

Mr. Suhr reviewed the biggest changes to the proposed text amendment from the last time the Planning Commission saw the proposed text amendments:

- In section 27-701.4.A(1)-Changed the five (5) unrelated people to four (4) unrelated people.
- In Section 27-701.4.A(2), regarding the percent of commercial structures with two (2) or more stories—the percentage was 25% and has been changed to 35%.
- In Section 27-701.4.A(2), regarding the maximum number of stories on a residential unit—the number changed from no more than three (3) stories to no more than eight (8) to allow for higher density.
- In Section 27-701.4.C(1)(e), section 10 was deleted. There was a limitation of 24 condominium units in a single structure. That limitation was removed to allow for greater density.
- In Section 27-701.4.C(1)(e), regarding the maximum number of townhouse structures that may be located adjacent to each other when townhouse dwellings are established on individual lots—the number changed from ten (10) to six (6).
- In Section 27-701.4.D(1), regarding the percentage of the front façade on the ground floor of non-residential structures—a minimum percentage of 50% of transparency (consisting of window or door openings to allow views into and out of the interior) is being proposed for all non-residential structures except for grocery stores, pharmacies, and hotels.

The Planning Commission provided a few comments:

- Ms. Mitchell expressed her thanks to the Pine Hall developers for being responsive in their revised text amendments by lowering the unrelated persons rule to four (4) or less per unit. She added that she is concerned about the 85% allowable impervious coverage. Ms. Mitchell clarified that the number of unrelated people that can reside in a multi-family dwelling unit depends on the housing code which comes from the Centre Region Council of Governments Codes Office.
- Mr. Keough stated that while it may not be suitable to place in the text amendments, he is concerned about the continuity of management onsite and addressing changes of ownership and management. He stated that this plan needs to maintain and achieve a sense of community, which is a major part of the intent of the TTD ordinance.
- Ms. Strickland stated that she appreciates the effort of the Pine Hall developers to get the plan right. She also appreciates receiving the Pine Hall history from back in 2009. She is still concerned about the totality of the zoning ordinance changes. It is Ms. Strickland's opinion that the revised text amendments have not changed much from the last version, especially with the four (4) vs. five (5) unrelated persons rule. Ms. Strickland agrees with Mr. Keough about the continuity of management and the transition of retail spaces. She stated that there is nothing nostalgic about student housing, and it's not as if there isn't development/retail in other parts of the Township.

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> Mr. Crassweller asked clarifying questing regarding what common management means regarding 100 or more dwelling units, the percentage of total acreage in Section 27-701.4.B(1), and off-street parking pertaining to a snow emergency in Section 27-701.4.E(1)

> After receiving comments, Attorney. Dwight Ferguson, Turnberry Solicitor, was invited up to speak. Attorney Ferguson asked the Planning Commission why it is thinking about recommending the proposed text amendments to the Board of Supervisors for approval. He went on to ask if the Planning Commission has been persuaded that the Pine Hall developers cannot build their plan without modifications. He stated that if the Commission believes that Pine Hall cannot be built without modifications, then modifications should be the first step of recommending an ordinance change to the Board of Supervisors; however, if the Planning Commission doesn't believe that, then they should rethink the text amendment recommendation. Attorney Ferguson stated that by going through the text amendment process, both the Planning Commission and the Board of Supervisors are stripping themselves of discretion. He stated that Pine Hall wants to make their modifications the laws so that the Board of Supervisors don't have any discretion, whereas the current ordinance allows the Board to consider each of the requests as a modification. Attorney Ferguson claimed that the Planning Commission is being boot strapped.

In response to a question from Mr. Keough regarding the granting of modifications, Attorney Ferguson explained that every time the Pine Hall developers wanted to make a change to the ordinance, they would have to present it to the Board of Supervisors for consideration. Attorney Ferguson stated that Pine Hall can request modifications without changing the current ordinance. He went on to explain that on page three of the TTD Design Manual, it states "When there are standards that use the term 'shall', compliance is required unless it can be demonstrated that an acceptable alternative one or more of the following conditions: the alternative better achieves the stated intent, the intent which the standards was created to address will not be achieved by application of the standard in this particular circumstance, the application of other standards and guidelines to achieve stated intents will be significantly improved by not applying this standard, and unique site factors make the standard impractical or cost prohibitive." Attorney Ferguson stated that yes, the Turnberry Development received many of the modifications that Pine Hall is seeking via the text amendments—which was done by modification requests through the Board of Supervisors. He stated that if the text amendments were made law. the Board of Supervisors could not carefully review the plan and compare it to the TTD ordinance.

Mr. Keough stated that the Planning Commission and Ferguson Township staff were under the impression that modification requests were not the right procedure. Mr. McMaster stated that the Planning Commission has gone back and forth regarding whether or not modifications or text amendments were the appropriate process, so it's confusing. Mr. McMaster added that he believes it was Attorney Ferguson's client (Turnberry) that stated modifications were not the right avenue and requested that the Pine Hall developers ask for text amendments to the zoning ordinance.

Attorney Ferguson referred to the proposed language for page three of the TTD Design Manual, "The Board of Supervisors may allow for modification of the design standards and criteria applicable to a Traditional Town Development provided for in this Section 27-701, including, but not limited to compactness, pedestrian orientation, street geometry or other related design features, in accordance with the standards applicable to the grant of modifications under Chapter 22, Subdivision and Land Development, § 22-105." He stated that the Municipalities Planning Code (MPC), which is state law, with regard to Traditional Town Developments (TTDs), says you may modify design standards. He explained that the proposed text under section three allows the Board to modify the criteria in addition to design standards, which goes beyond what state law permits. Attorney Ferguson explained that if the aforementioned proposed text only referenced to the design standards and did not include "criteria", it would be legal and he would not challenge it in court. It was of his opinion that the proposed text is too broad and goes beyond the power that the Board of Supervisors has been given under the MPC. He went on to state that the Board can only grant modifications to design standards and nothing else.

Attorney Ferguson stated that at every meeting he's been to regarding the Pine Hall Development, there is a heartwarming, tear jerking, and beautiful panorama presentation of other towns that have been designed; however, the Planning Commission does not have possession of these presentations, nor a conceptual plan. He stated that the Planning Commission does not know if the text amendments are even needed since they have never seen a plan, which is why he believes the ordinance calls for the plans to be seen first, and if necessary, modifications could then be requested. Attorney Ferguson stated that Pine Hall developers should be able to present plans that show why they need modifications or text amendments.

In response to a question from Mr. Keough regarding Turnberry's modifications, Attorney Ferguson clarified that yes, Turnberry presented a master plan and then requested modifications. Mr. Keough stated that Pine Hall first sought to request modifications, but it was determined that the Ferguson Township ordinance did not actually give the Board of Supervisors the power to grant modifications, thus recommending that Pine Hall request text amendments. Mr. McMaster asked what Turnberry's objection was to Pine Hall when they first presented their plan and requested modifications. Attorney Ferguson stated that their objection was that Pine Hall was not being held to the same standards as Turnberry. Mr. McMaster stated that it was at that point that a representative of Turnberry recommended that Pine Hall pursue text amendments instead of modifications, since they were not legal through the ordinance. Attorney Ferguson stated that modifications do not apply to everything, only design standards, and Turnberry felt that some of the modifications that Pine Hall was seeking was best achieved through a zoning variance.

Township Manager, David Pribulka, stated that he thought Attorney Ferguson characterized the applicability of modifications accurately. He explained that inserting the modification language, which the MPC enables, into the Subdivision and Land Development Ordinance applies to the TTD district. Municipalities can put modification language into the TTD ordinance that would relieve applicants from having to abide by

the design guidelines if they met certain criteria. Mr. Pribulka stated that staff plans to place the design guidelines in the Subdivision and Land Development Ordinance as an alternate, so this way the modification language being proposed applies. Any modifications requested from the text of the ordinance amendment is intended to be done through variances or text amendments to the ordinance overall. Variances are stricter, whereas modifications are more flexible. Attorney Ferguson agreed with Mr. Pribulka's statements. Mr. Pribulka clarified that when requesting text amendments, the typical procedure starts with the text amendment application and then a land development plan is submitted after the fact. Attorney Ferguson replied that the Township should not even consider a text amendment until a plan is presented that justifies the text amendment requests.

Attorney Ferguson addressed Mr. Keough's concerns about having a sense of community within the Pine Hall plan, stating that he doesn't believe it will be traditional families moving into single-family homes—instead it will be students with pricey cars. similar to what has happened in the Turnberry development. He wondered why the Planning Commission would consider exacerbating the problem, regarding the proposed text amendment that would allow four (4) unrelated people in one dwelling unit. He questioned why the proposed text amendment depicts a 5% minimum of single-family dwelling units, when the only way there will be a sense of community is if people who plan to stay in the area move into the development. Attorney Ferguson asked why the Planning Commission would allow the Pine Hall developers to maximize the percentage of multi-family units to 50% and reduce the percentage of single-family dwelling units. He explained that the Pine Hall text amendments propose to decrease the lot sizes to build more houses, increase impervious coverage, increase the population, decrease the garage setbacks, increase the commercial footprint, increase the number of residential units, and decrease the useful greenspace. Attorney Ferguson stated that this area is a rural community and what is being proposed at Pine Hall is for an urban area. The retail space being proposed is a regional retail space, instead of being scaled for the Pine Hall community.

In response to a question from Mr. Keough, Attorney Ferguson stated that his objection to the Pine Hall Development is that the Planning Commission is being shown beautiful pictures of other places and is being asked to change the ordinance without ever seeing a plan. Attorney Ferguson stated that the pictures being shown are the antithesis to the TTD ordinance, and Ms. Strickland stated that she agreed with that comment.

Mr. McMaster stated that in every meeting with the Pine Hall Developers, they have explained why they cannot build the Pine Hall development under the current TTD Ordinance. Attorney Ferguson replied that they have only said that—the Planning Commission has not actually received a plan that demonstrates that. Mr. McMaster stated that the Planning Commission has seen a sketch plan of Pine Hall. Attorney Ferguson replied that when he did a right-to-know request to the Township, the sketch plan was not included. Mr. Pribulka explained that the Township has received a concept plan, but not an actual general master plan. Attorney Ferguson asked if the sketch plan persuades the Planning Commission to think that the Pine Hall Developers cannot build their plan any other way. Mr. McMaster reiterated that at each meeting, the Pine Hall

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Developers have explained why they cannot build their development under the current TTD Ordinance.

Mr. Pribulka referred to a memo that the Township Solicitor, Joe Green, wrote regarding the modifications that were granted to the original general master plan of Pine Hall. There has been a question to whether or not the modifications granted to that plan can be transferred to the new master plan that will be submitted by the Pine Hall developers. It was of the opinion of Attorney Green that there was no enabling ability to transfer those modifications from the original master plan to a new general master plan, unless the Board of Supervisors determines that the new master plan, when submitted, has significantly deviated from the original master plan. If it has, the modifications granted to the original Pine Hall Master Plan will not carry over to the new master plan.

In response to a question from Mr. Keough, Attorney Ferguson stated that his client (Turnberry) would be harmed if the proposed text amendments were to be approved by the Board of Supervisors. He stated that his client was held to the standards of the Township's TTD ordinance and presented a general master plan and then went to the Board of Supervisors to request modifications. It was of his opinion that his client would get buried if the Pine Hall Development received special legislation, especially since the Planning Commission has yet to see an actual plan of what's being proposed at Pine Hall. He believes that if Section 27-701.2, section three is approved, it would give the Board of Supervisors authority to grant modifications outside of the design manual, which surpasses what state legislation allows.

Mr. Crassweller stated that Turnberry has only built student housing. Attorney Ferguson clarified that multi-family, townhomes, and single-family detached units have been built in the Turnberry development so far. Mr. McMaster replied that all but about a dozen units are student housing. Attorney Ferguson stated that if the fact that Turnberry has mostly students living in the dwelling units displeases the Planning Commission, why in the world would it recommend changes to the ordinance that encourages more student housing.

Mr. Keough stated that when the Planning Commission was reviewing the proposed plan for the Turnberry development, the representatives avoided using the words "student housing". He went on to say that within a week of master plan approvals, there was a very large sign placed on Turnberry property that advertised student housing. Attorney Ferguson asked Mr. Keough if he felt the Pine Hall representatives have presented their plans as predominately student housing. Mr. Keough replied that he would not use the word predominately, however, they have shown that there will be student housing in the Pine Hall development. Mr. Keough stated that the representatives of the Turnberry development were not forthcoming with their plan.

Mr. Crassweller suggested that the Planning Commission table the recommendation for the Pine Hall text amendments. Mr. Keough stated that believes the Planning Commission should move it forward and let the legal process take place if need be. Attorney Suhr pointed out that in 2016. Turnberry requested a text amendment to the TTD ordinance to allow for personal care homes. He explained that he received word from the Township Solicitor that under the current ordinance, the Board of Supervisors could not grant modifications, so without amending the ordinance to begin with, Pine Hall could not request modifications. The modifications that Turnberry received were improperly granted. Attorney Suhr explained that reason for amending the ordinance to include the language in chapter 27-701.2, section three is to actually give the Board of Supervisors the authority to grant modifications under the design manual of the TTD ordinance. Attorney Suhr stated that their intent is to implement the concept plan of Pine Hall that came out of the charrette process. He explained that if Pine Hall could build the current approved plan, it would; however, there is evidence through the market that it cannot be built, which is why it has not been built in the first place. Attorney Suhr stated that he knows this is a complicated process and that it's been in the works a very long time, which is why the Pine Hall representatives would like to move this forward. He stated that the Board of Supervisors don't have to schedule a Public Hearing for the plan. and if they don't, Pine Hall will sit empty and Mr. Anderson will probably walk away from the project.

Mr. David Vandenbugh, Ferguson Township resident, commented that the Planning Commission has to decide whether the proposed text amendments are going to improve the TTD ordinance, and one way to answer that is by asking whether or not the development, after it has been built, looks better than what they had envisioned it to be.

A motion was made by Mr. Keough and seconded by Mr. Wheland to recommend approval to the Board of Supervisors the proposed Pine Hall TTD text amendments as presented in the June 23, 2017 memo. The motion carried 3-2.

VI. ACTIVE PLANS UPDATE

Ms. Schoch reviewed the active plans in the Township which includes: West Cherry Lane Multi-Use Building, J.L. Cidery at J.L. Farms, CSC Northland-Buffalo Wild Wings, The Cottages at State College, and the Whitehall Road Regional Park.

Ms. Schoch stated that the opposers of the Cottages at State College have appealed the Commonwealth Court's decision to the Pennsylvania Supreme court, so at this time the plan is still on hold. Ms. Schoch stated that staff will not have a timeline for this project until the Supreme Court makes a decision. The plan has been conditionally approved, so once the time clock starts, the applicants have 45 days to complete the remaining comments and conditions of approval, as well as to record the plan

In response to a question from Mr. Keough, Ms. Schoch explained that the Whitehall Road Regional Park plan expires at the end of the month, and Pam Salokangas, Director of Centre Regional Parks and Recreation, has indicated that they will not be moving forward with their plan until a decision is made by the Pennsylvania Supreme Court regarding the Cottages at State College.

VII. CENTRE REGION PLANNING COMMISSION (CRPC) REPORT

Ms. Strickland stated that CRPC has not met since her last report. However, she attended the State College Borough Water Authority Board meeting, and the Cottages at State College plan was discussed. The water authority Board motioned a proposal to perform a dye trace study on the Toll Brother's property. The water authority would like to be certain that there is no risk of contamination should the Cottages at State College plan be built. The water authority also discussed the blasting that is occurring at the Turnberry development, specifically at the Crossings and the proximity of the Chestnut Ridge well.

Mr. Keough mentioned that there is a development occurring on Shingletown Road, across from Hess Field. He believes that the development is occurring less than or almost 1,000 feet from the Thomas-Harter well field. He stated that he is not hearing any protests about the impacts from that housing development on the Thomas-Harter well field.

VIII. SOURCEWATER PROTECTION WORK GROUP UPDATE

Ms. Schoch stated that the work group met on June 15, 2017. Todd Giddings reported on the State College Borough Water Authority Board meeting regarding the Board suggesting to stop allowing new water connections in Ferguson Township. The work group reviewed the Executive Summary from the State College Borough Water Authority Sourcewater Protection Plan that was adopted in May 2017. The work group was concerned that the State College Borough Water Authority's Sourcewater Protection Plan did not mention that Ferguson Township was in the process of creating a Sourcewater Protection Ordinance. The work group decided to draft a memo to the State College Borough Water Authority to ask them to review the Ferguson Township draft Sourcewater Protection Ordinance and compare the Township's goals to their own goals. Ms. Schoch stated that Mr. Stolinas will go back to the drawing board and draft a new version of the Sourcewater Protection Ordinance based on the State College Borough Water Authority's goals from their Sourcewater Protection Plan.

The work group will meet again in July.

IX. ZONING/SALDO STEERING COMMITTEE UPDATE

Planning & Zoning staff has received the draft Zoning/SALDO ordinance and will meet with EPD in the near future. After meeting with EPD, staff will schedule a meeting with the Zoning/SALDO Steering Committee.

X. APPROVAL OF THE REGULAR MEETING MINUTES – APRIL 10, 2017 A motion was made by Mr. Crassweller and seconded by Mr. Keough to approve the June 12, 2017 Planning Commission meeting minutes. The motion carried unanimously.

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XI. ADJOURNMENT

There being no further business for the Planning Commission, Mr. Wheland made a motion to adjourn the meeting at 8:41 p.m. The motion carried unanimously.

RESPECTFULLY SUBMITTED,

LISA STRICKLAND, SECRETARY

FOR THE PLANNING COMMISSION