

SUDBURY ZONING BOARD OF APPEALS
MINUTES
January 9, 2017

The Board consisted of:

Jonathan F.X. O'Brien, Chair; Jonathan G. Gossels; Jeffrey P. Klofft; Nancy Rubenstein; John Riordan, Clerk and William Ray, Alternate.

Also present at the meeting on behalf of the Town were: Meagen Donoghue, Director of Planning & Community Development and Beth Suedmeyer, Environmental Planner, and Janet Carter Bernardo from Horsley Witten Group.

The meeting was called to order at 7:30 p.m.

Mr. O'Brien opened the hearing by asking the Clerk to read the notice as published in the newspaper.

1. Public Hearing, Case 16-25 – Justin Oliver, Applicant and owner, for Renewal of Special Permit 15-20 under the provisions of Section 2340 of the Zoning Bylaw, to conduct a Home Business, specifically for music lessons, Assessor's Map G05-0108, 17 Barton Drive, Residential Zone A-1. To be immediately continued to February 6, 2017.

The Board was in receipt of a request from the Applicant to continue this case to the next hearing.

Motion made, seconded to continue petition 16-25 to February 6, 2017. All voted in favor.

2. Public Hearing, Case 16-26 – Peter Cramer and Ada Vassilovski, Applicants and Owners, for Renewal of Special Permit 11-14 under the provisions of Section 2313 of the Zoning Bylaws, to raise hens at 40 Singletary Lane, property shown on Town Assessor Map K09-0123, Residential Zone A-1.

Peter Cramer was present at the hearing. The Board received complaints about chickens roaming on the street. The Board asked the Applicant to submit pictures with more detailed information about the chicken coop and more specifically, about the existing vegetative fencing. The Applicant agreed to come back at a further date.

Motion made and seconded to continue petition 16-26 to February 6, 2017. All voted in favor.

3. Public Hearing, Case 16-27 – Ashraf Youssef, Applicant and Owner, for a Special Permit under the provisions of Section 3226 and 3241 of the Zoning Bylaw, to install LED signs at 100 Boston Post Road, property shown on Town Assessor Map K11-0010, Business Zone.

Ashraf Youssef was present at the hearing to request installing a LED sign on top of the awning that will show the price of regular unleaded gas. The sign will be located on both ends (east and west side) of the awning. The Applicant will remove the sandwich board sign. The Applicant placed LED signs on top of the pumps and has an illuminated ATM sign in the window, above the entrance.

Mark Herweck, Building Inspector and Zoning Enforcement Agent was present and shared with the Board that he received complaints about the lights not complying with the Bylaw.

The Board agreed this request is appropriate with the business district, nor does it change the nature of the district, or impact traffic. On the contrary, the location of the illuminated signs improves public safety and is safer. Additionally, the total illumination of the site is at a minimum and fits with the current trends of gas stations within the region.

The Board conditions that the signs lights should be off when the station is closed and remove the current sandwich board signage.

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Motion made and seconded to approve petition 16-27 for an ATM sign, awning signs and fuel pump signs. All voted in favor.

4. Public Hearing, Case 16-29 – Applicant Michael A. Palmer and Owner Woodside Development, LLC, for a Variance under the provisions of Section 2600 and Section 2620 Appendix B of the Zoning Bylaw, to request a dimensional variance of 10 inches to the maximum height of the structure which is 35 feet in the subject Zoning District at 34 Candy Hill Lane, property shown on Town Assessor Map G10-0505, Residential Zone C.

Michael Palmer, Robert F. Dionisi and John B. Malone were present at the Hearing to request a zoning variance of 10 inches to the maximum height of the structure on the north facing side of the house, after construction was determined to be 10 inches higher than allowed by town Bylaws.

Sullivan and Connors were in charge of the Engineering for this dwelling. After construction of the house was completed, it was noted that while the front of the house is in compliance within the Bylaw, when height compliance is measured at the northern corner of the building, at the rear of the house the calculation from the ground to the roof peak is 10 inches higher than permitted by the bylaw.

The applicant noted the positioning of the house on the lot is due to the slope in the back of the house, which commences at a high point of 254 to 248 feet, and then drops to 230.

Ms. Rubenstein expressed some concern for the fact that this is a variance, she understands that this is an honest mistake, but maybe in the future for another property it might not be a mistake.

The Board agrees that the conditions to grant a Variance have been met, where special conditions on the topography of the land and the position of the house on the land resulted in the height deficiency.

The Board noted that if the Bylaw is enforced literally the re-design will be excessive and it would not substantially change the construction but perhaps make it wider leaving the volume facing the road approximately the same. The Board noted that visually, the noncompliance has no effect on the neighborhood as the noncompliant portion of the house is not visible from Candy Hill road and no abutting exits to the rear of the house as the abutting property to the rear is conservation land.

The Board is in receipt of a letter of support from 4 abutters to the property.

Motion made and seconded to approve a variance for petition 16-29. All voted in favor.

5. Public Hearing, Case 16-30 – Applicant Pro's Home Services and Owner Christina Gill and Sander Alves for a Modification of Special Permit 16-9 under the provisions of Section 2460B of the Zoning Bylaw to build a 2 car garage on grade level including a mud room measuring approximately 749 square feet on a non-conforming property at 429 Dutton Road, shown on Town Assessor Map H05-0257, Residential Zone A-1.

Ms. Gill, Mr. Charles Orlando and Sander Alves were present at the hearing. The Applicant received a letter from Department of Public Works stating that the proposed garage and driveway were not designed in accordance with the Town's Bylaw because of the grading was approximately 18%; making the design impossible to be built as originally proposed.

The Applicant is requesting to build the garage next to the house instead of originally under the house.

The Board asked the Applicant if they could push the location of the garage back, to be closer to the front line of the house looking more flushed.

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The Board suggested moving the garage further back about seven (7) feet and asked the Applicant to submit a revised plan to re-advertise the changes in a detail hearing notice to meet again on February 6, 2016. The Applicant may be adding square footage and encroaching in the land, thereby reducing the side-yard setback.

Matthew Wallis from 417 Dutton Road expressed concern about the construction of the garage and its proximity to Summer Street. He asked about the engineering plans to build the garage underground. Mr. Wallis suggested that the garage could be built on the back of the house with an entrance of Summer Street.

Mr. Orlando replied that the septic is located on the back of the house, therefore the garage could not be located there.

Mr. Gossels replied that on the other hand, the garage will be smaller in proportion to the house. He further noted it is one level and will be in proximity to Summer Street; which is an appropriate location for a garage.

Mr. Klofft asked the Applicant about their intentions in regards to the space where the garage was intended to be. The Applicant replied that it will be used for cold storage, once about 5 inches of concrete will be poured there.

Mr. O'Brien stated that they are planning in putting the garage in the most appropriate place for a typical house design.

Mark Herweck, Building Inspector and Zoning Enforcement Agent was present and expressed that the Applicants have come to the Board before and their original proposal was reduced in size three (3) times, resulting in a design that is in front of the Board tonight.

The Board decided to continue this application to the next hearing waiting to receive from the Applicant a revised design for the attached garage and a detail landscape design.

Motion made, seconded to continue Petition 16-30 to February 6, 2017, and to have the Applicant re-submit the application and re-advertise a detailed hearing notice. All voted in favor.

6. Public Hearing Case 16-31- Applicant Roberta Henderson and Owner Henderson House of Sudbury Realty Trust for a Variance from Article 4200 Section 4243M (2) of the Zoning Bylaws to increase the capacity of wastewater works at 642 Boston Post Road "Sudbury Pines", property shown on Town Assessor Map K06-0004, Zoning District LBD1.

Roberta C. Henderson, Matthew Watsky, Esq. and Kevin O'Leary appeared at the hearing representing Roberta Henderson, Trustee.

Mr. O'Brien stated that the Board is aware that the Applicant needs to comply to an order from a Judge according to DEP regulations.

The property is located in the Water Supply 2 District and the Applicant is required to install the wastewater works, due to their current system's failure.

Mr. O'Brien asked the Applicant about the sequencing of the project.

Mr. Watsky replied that they are working on that plan at the moment. As part of this sequencing, a parking lot will need to be relocated and all of those details will be discussed with the Planning Board. They are also working with DEP to run tests to identify if a leaching field could be placed in a particular portion of the lot.

Mr. Klofft asked if the parking lot were to be moved will this move be temporarily or permanent?

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Mr. Watsky replied that if a new parking lot is created and the work is done, perhaps they will keep it as an employee parking lot.

Mr. Klofft replied that he would like the decision to be specific stating that if the need to relocate the parking lot arises the new temporary parking lot should go back to its original state and vegetation should be planted back.

Mr. O'Leary explained this is an old facility and probably preceded the outside parking lot requirements within the Zoning Bylaw. What is established is two (2) asphalt parking areas: a 40-space visitor parking lot between the building and Route 20, and a parking lot for employees and a day care to the north of the building. This particular lot has a secondary access entrance from Robbins Road. A third informal parking area exists, consisting of a gravel lot, and is located to the east of the facility, that appears to have been cleared years ago.

Mr. Klofft expressed two concerns with the new asphalt; one of which is stormwater management and the second one is lot coverage. After site plan approval from the Planning Board, the Applicants might need to come back to the Board of Appeals to get a Variance for lot coverage.

Mr. Gossels asked for clarification in regards of the size of the plant that the Applicants are proposing to build.

Mr. Watsky replied that under 4243M(2) replacement of existing subsurface sewage system tank to a similar size tank for the same capacity is permissible with an Special Permit. If the system is replaced by a larger capacity tank, then it needs a Variance. Thinking forward and planning ahead, it makes more economical sense for the Applicant to invest in a larger facility at this time. There will be no increase in the flow once the project is completed. The Applicant is looking for this Variance to increase the capacity to 21,000 gpd but they will not increase the flow until a later date and the appropriate permits with the Town are issued.

The Board finds that (i) the soil conditions and the location of the buildings on the land in question, (ii) the financial hardship to the Applicant if the variance is denied, (iii) the fact that the applicant will not be in compliance with the DEP and Suffolk Superior Court order if the variance is not granted for a wastewater treatment facility that complies with DEP requirements, (iv) that there will be no substantial detriment to the public, (v) installation of a DEP-approved wastewater facility will be an improvement and this variance does not nullify or derogate from the intention of the Bylaw, and (vi) in particular the new facility better protects safe drinking water in town.

The Board agrees that if there are temporary changes to the parking impervious surface, this surface should be returned to its original condition once construction is finish. If the parking area where to permanently increase the Applicant will need to obtain a variance from the Zoning Board of Appeals.

Motion made seconded to approve a Variance for petition 16-31. All voted in favor.

7. CONTINUATION - Public Hearing Case 16-21 – B'nai Brith Housing New England, Inc./Covenant Commonwealth Corporation—Post Road Limited Partnership (Owner), Applicants, for a Comprehensive Permit and Substantial Modification of the existing Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B and 760 CMR 56.04 & 56.05, to allow construction at 187 Boston Post Road of a second 56-unit senior age-restricted housing building. This application constitutes Phase II of the project originally approved in 2011, and includes the subdivision of the 6 acre parcel into two 3 acre parcels to accommodate the new structure. The project is known as Coolidge at Sudbury, Phase Two, and is identified as Assessor's map and parcel K10-0012.

Mr. Fox noted the topic of discussion would be about stormwater and introduced Mr. Peznola. Mr. O'Brien also noted there would be a presentation by the Council on Aging.

Joe Peznola provided an overview of the drainage system from the initial presentation. He pointed out the isolated depression between the railroad and the site itself and all runoff drains into that area. He noted that for Phase I,

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there were many parts to the system, including an extended detention pond, a swale on the outlet side of it. Additionally, there was an infiltration system on the front of the site and grass pavers with infiltration stone underneath, and at the far end of the site, there was a bio retention swale, to capture sheet flow from a large half of the parking lot. He said it was not capturing attenuation, but providing treatment, which led to an extended detention basin to the south of the property.

For Phase II, the project calls for cutting the site in half and routing flow in a different manner. The original site will continue to use the extended detention basin.

Mr. Klofft asked about where the divide line is in the pavement is there any portion of that area being treated by the existing system. Mr. Peznola said it was not because it was at the ridgeline, but rather the flow to one side was being picked up with new catch basins. He noted that to the front at the far east of the proposed site, they cannot put any drainage in the area because that is where septic is located, but there will be two catch basins located in the parking and turn-around areas to handle the parking lots. Mr. Klofft asked if he envisioned having the catch basins far enough away from the entrance area. Mr. Peznola stated he purposely designed the connection points at high points along the parking lot, which will be piped to the lower part of the site and connected to other drainage from the garage and lower driveway. He noted there would be a treatment device that is an isolated closed filtration system.

Mr. Gossels asked about the system's maintenance. Mr. Peznola explained there is a jet vacuum to clean out at the manhole on the lower end of their system that shoots water back towards you. A sump collects the sediment and then the vacuum is removed.

Mr. O'Brien asked if this is the only system requiring maintenance. Mr. Peznola stated everything else will have standard catch basin maintenance. Mr. O'Brien asked if all of the other catch basins would have to be maintained. Mr. Peznola indicated absolutely all catch basins would have to be maintained and monitored. Mr. O'Brien asked again if this particular system would require special maintenance. Mr. Peznola said the catch basins are the first line of defense. He has installed this type of catch basin system in other sites and if the site is kept clean, and the catch basins are maintained, then the sediment level are low and it is a case of more monitoring rather than jetting to clean. He further pointed out that the flow outlet to an infiltration basin to the south of the property will provide the required recharge and assisting the other BMPs that have been in place prior. Mr. Peznola noted they are taking all of the roof drainage and putting into that infiltration system.

Mr. Gossels asked as part of final submissions pointing out the key part of an Operations & Maintenance Plan. Peznola stated the Operations, Maintenance Plans is required and DEP requires it to comply with the standards. Mr. Gossels asked Mr. Fox if it is one of the final documentations as part of the process. Mr. Fox noted it is usually a condition in the Decision, prior to occupancy. Mr. Peznola indicated an additional review of the system is part of the filing with the Conservation Commission.

Mr. O'Brien noted he spoke to the Conservation Commission earlier in the day and stated the Zoning Board of Appeals sits in lieu of the Conservation Commission on a Comprehensive Permit. Mr. Peznola stated the Board only sits in lieu in terms of the local wetlands bylaw, but under the State's wetlands bylaw, the project has to go before the Conservation Commission. Mr. Peznola further noted that they are asking for a number of waivers but they still have to go to the State. He stated that if approved, then as they move forward with construction documents, during that process is when they have to go to the Conservation Commission. Mr. O'Brien asked to make sure the Conservation Commission understands that process. Mr. Fox stated he has spoken to the Conservation Commission and they are aware the applicant will have a full-blown state filing. Mr. Fox continued stating they received Debbie Dineen's email earlier in the day and will submit a response at a later date.

Mr. Peznola closed with the overview and referred to a memo received from Horsley Whitten. He would like to provide a written response to include additional calculations with newly revised plans and additional materials.

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Mr. Klofft referred to the Horsley Whitten memo's comment number 20, asking who would handle the enforcement of the stormwater prevention plan. Mr. Peznola stated stormwater pollution prevention is a multi-pronged process, noting the main impetus is the federal EPA filing for more than an acre of disturbance. He said it is highly critical that they develop an Operations and Maintenance Plan (O&M Plan) because daily and hourly, prior to stormwater events, implementation of an O&M plan is key. So they want to get the input of the Conservation Commission and have a draft of the O&M Plan with the SWPP. Mr. Peznola also indicated there will be a SWPP Coordinator to implement the plan. He noted the owner is the one filing with EPA and ultimately responsible. Enforcement is put upon the contractor. Any breaches in the plan will be reported. He also noted he has seen other towns hiring an environmental monitor. He noted his vision of sequencing, but needed the contractor's input.

Mr. Klofft asked about Horsley Whitten comment number 24, what is the cost difference on integrating something into irrigation? Mr. Peznola indicated they need a private well. He noted there is no way they can have a private irrigation system with just roof drain. It is a matter of what are we trying to achieve? He continued to speak on the process of why we need a tank. He said the applicant is looking at a \$10,000 tank and if they put in an irrigation system, it would cost \$20,000.

O'Brien asked if the system can be turned off in a situation of severe drought. Mr. Peznola said some towns have put a moratorium on wells and does not know if the sole collection of rain will be enough in terms of irrigation. Mr. Klofft noted that for any private residence built, it is mandatory to get an in-ground well and up to the homeowner to maintain, it and the Town did this so it does not pull from the main aquifer. Mr. Peznola noted they are pulling the water from the aquifer and putting it back in the ground.

Mr. Gossels asked to address the main concerns of the Horsley Witten memo. Mr. Peznola explained the path of the water flow from the site and it being recharged in the same way as with Coolidge I. He further noted the site on the eastern and southern sides and the channeling of the water by the placement of swales to push the water to the south side.

Ms. Suedmeyer mentioned a conversation had already started about private well and irrigation use and is being considered for a bylaw change. This would possibly hinder future 40B applicants considering using private wells. Mr. O'Brien noted this discussion began due to the extreme drought conditions over the previous summer and the Sudbury Water District would have to pull from Framingham's water source if conditions were to worsen.

Mr. O'Brien turned the presentation over to Janet Bernardo from Horsley Whitten Associates. She commented about the applicant's response memo from regarding stormwater and wanted someone to review the calculations. Ms. Bernardo also asked if the response numbers could match the numbers she assigned to the items on the review. Mr. Peznola commented on the response numbers corresponding to their memo. Mr. O'Brien asked about Ms. Bernardo's letter on Page 5, Item 6 of her letter regarding the meaning of a "critical area." She answered with a critical area a wellhead protection area, and the MA stormwater handbook has a list of criteria specific to a regulated area and it is not wetlands. A critical area has to be a specific designated area and listed on a map.

Ms. Bernardo further indicated the applicant will have to meet 10 standards at the Conservation Commission meeting under state requirements. Mr. O'Brien noted he spoke to the Conservation Commission earlier in the day and expressed if they have any questions for the applicant to come directly to the ZBA meetings. Ms. Bernardo indicated that she didn't see anything shocking.

Mr. Gossels referred to the Conservation Commission's letter sent earlier in the day referring to the dividing of the parcel. He asked what regulations apply to the total volume of water in terms of wastewater, and whether the ZBA should be treating it as one site or split? Mr. Peznola stated that over 10,000 gallons a day need a Title 5 through the Board of Health and it is their job to make sure the applicant complies with that. Both systems combined would be more than 10,000 gallons applied. Mr. Klofft asked if the division of the land and simplifies 40B funding aspect.

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Mr. Fox, referred to what he called an old trick called “checker boarding,” when changing the name to show current ownership. This case is different with two different investors and different buy-ins. Mr. Klofft noted the management is shared, so why wouldn’t the wastewater be shared? Mr. Peznola indicated they would have to move towards a wastewater treatment plant with that function and they are two separate entities and DEP recognizes that there are two separate legal functions and act independently and not subject to the 10,000 gallon threshold.

Mr. Gossels asked if Coolidge Phase II will be done as one big project, not Phase 1 & 2, as the project would have done a treatment plant if done at the same time. Mr. Klofft said that that could not subdivide. Mr. O’Brien said they won’t get investor. Mr. Klofft said he believes it functions under one site. Mr. O’Brien noted that it came in two phases, so cannot be considered as one. Discussion ensued about the subdivision of the land and its relation to the financing and the State’s requirement of a wastewater treatment plant. Mr. Fox discussed the shared resources. Mr. Peznola noted the economics of a shared treatment plant and annual price for maintaining/operation.

Mr. Gossels stated if the applicant approached the Board as a comprehensive proposal of a phase 1 and 2 as one, they would have looked at the project having a waste water treatment plant. However, because they applied as two separate entities, with two separate sets of investors, they need two separate systems.

Discussion ensued about the subdivision of the lots. Mr. O’Brien indicated two different applications with separate financing came in. Mr. Fox indicated there are examples around the Commonwealth with shared resources but two different companies. Mr. Klofft wanted to see what the parking looked like along with everything else separately. Mr. Peznola stated the realities of the economics of a waste water treatment facility of two separate septic systems. A waste water treatment facility would cost well over a million dollars, not including annual maintenance, according to Peznola, while a septic system costs around \$200,000 and \$5,000 to maintain annually. He stated it isn’t economically feasible and in the eyes of DEP, and feels a large septic system in terms of the financial set up is appropriate.

Mr. Klofft asked if forced to go with a wastewater treatment facility, how that effects stormwater management. Mr. Peznola spoke of the use of leach fields and the use of 10,000 gallons at the state level. He further indicated a wastewater treatment plant is not warranted by the State’s standards. Mr. Peznola stated they are using the standards of the State, coupled with the economics to have the best system in place.

Mr. O’Brien turned the presentation over to Alice Sapienza from Council on Aging (COA). She presented on a topic focusing on an aspect of the 2001 Master Plan: housing for seniors. She spoke of the need for transportation services from Coolidge. She further stated on behalf of the COA a request is in acknowledgement of the strained transportation situation and they seek to have Coolidge provide a van to partner with COA, Senior Center, and MWRTA. She further noted transportation is key to healthy aging, noting it is a lifeline to independence and social connectedness, and picking up on a request made to the DHCD in June. She further noted the cost to cover the rides and operating costs for a seven-hour day. Mr. O’Brien asked about the Raytheon mitigation funds for transportation. Ms. Sapienza noted the funding is for a bus turnaround and shelter. Mr. O’Brien asked if it was one-time fee. Ms. Sapienza noted it was \$100,000 for one-time fee. Mr. O’Brien noted it seemed high and asked for a breakdown.

Mr. O’Brien and Mr. Klofft stated it should not go as an on-going fee—fixed instead. He noted he had a hard time asking the applicant going on in perpetuity. Ms. Sapienza noted that we are in a critical time. Mr. O’Brien noted that it is a critical time, but we can’t do something ongoing.

Ms. Bernardo noted that in Needham they have done an Uber & Lyft arrangement and it has worked well.

Mr. Gossels stated he noted there is a huge aging population and noted that he is also against an on-going request. Mr. O’Brien noted that it is a valid discussion to have, but not for on-going.

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Mr. O'Brien asked the applicant his thoughts on Ms. Sapienza's request. Mr. Fox noted he values the COA request, but stated the organization he represents is a non-profit and on a limited budget. He noted at least 1 person within each unit has a car and doesn't think the request would be a tremendous burden. What he would like to offer on behalf of his client is a \$10,000 contribution to use for their transportation needs. Mr. O'Brien asked about reducing landscaping to provide more money to services. Mr. Klofft and Mr. Gossels stated that would not a good idea.

Mr. Fox wanted to discuss the maintenance of a generator and had Ms. Grace provide the overview. The generator of Phase I undergoes weekly operational tests and has a contract on a generator services company annually and on an as-needed basis. Mr. Gossels noted the two strategies of generators. A transfer switch or manual switch was discussed and there would be a separate maintenance agreement on transfer switch.

Mr. O'Brien asked if the heating will be a shared cost. Ms. Grace noted there is a central system. Mr. Gossels stated that once pipes freeze, the facilities are destroyed. It was noted the system is a single plant.

Landscape will be discussed at the next hearing.

Mr. O'Brien stated that Fire Chief, Bill Miles expressed his concern to the chairman in regards of the need to have a full time person on site. Mr. O'Brien asked about the on-calls situation. Mr. Fox noted the maintenance person lives in Hopkinton but it is 24 hours a day, seven days a week. It was noted that since Sept 1-Dec. 1—10 calls. Gossels asked if could show a graph from past 18 months. Also noted, there has been education/outreach to the residents.

Mr. O'Brien noted the topics to be discussed next time would be landscaping first and wastewater. Meeting was continued to Feb. 6th at Town Hall. Mr. Fox asked for a potential follow up hearing for February 21, 2017 because financing applications are due on March 12, 2017. Ms. Vert noted 180 days would be March 11. Mr. O'Brien noted a decision would be issued on March 6, 2017.

Mr. O'Brien motioned to continue to February 6, 2017. All voted in favor.

8. Approval of Meeting Minutes for November 7, 2016 Regular and Executive Sessions.

Motion made seconded to approve Minutes for November 7, 2016 Regular and Executive Sessions. All voted in favor.

9. Approval of 2016 Annual Reports for the ZBA and ERB.

Motion made seconded to approve Annual Reports for the ZBA and ERB. All voted in favor.

Other Business Items.

There being no further business, the meeting was adjourned at 10:08 p.m.