City of Newburyport Joint Public Hearing Planning Board and Planning & Development Subcommittee June 17, 2015 Minutes

The meeting was called to order at 7:00 PM.

1. Roll Call

In attendance for the Planning Board: James Brugger, Sue Grolnic, Noah Luskin, Jim McCarthy, Doug Locy, Leah McGavern, Andrew Shapiro, Bonnie Sontag and Don Walters

In attendance for the Planning & Development Subcommittee of the City Council: Jared Eigerman, Barry Connell, and Ed Cameron (arrived 7:12 PM)

Planning & Development Director Andrew Port was also present.

2. Planning Board and Planning & Development Committee of the City Council Joint Public Hearing on proposed zoning amendments:

a) Amend the Zoning Ordinance and the Zoning Map to establish a new zoning overlay District entitled "Smart Growth District" (Continued from 5/6/2015)

Director Port reviewed documents and information required by the state and placed copy of the 40R application materials at the end of the table for everyone to access. The application included highlights of the 40R district, benefits to the City, a delineation of developable and undevelopable land, and detailed how 40R would increase affordable housing. Infrastructure upgrades were required to receive the award and for developments to connect to the sewer system. The pump station was already part of infrastructure improvements scheduled for completion within five years. The district, entirely built out, would add a maximum of 155 new school-aged children and 135 affordable units. The calculation used to estimate students for the entire area was based on 542 units. The state was obligated to pay for any gap in revenue to support additional students. The superintendent said space for additional students was phasing in now and the number of new students would not have an impact. The net revenue for a full build out was \$661,653. With 200 units there would be a revenue increase of \$263,000 per year. The revenue fell to \$22,000 per year for 80 units. The state must approve the overall build out and would tell the City which lots were most likely to be developed first. There would be no credit for properties unlikely to be developed. The Department of Public Services letter answers Councilor Eigerman's questions about sewer flow for a full build out. The Merrimack Valley Planning Commission (MVPC) would perform an analysis in about a week on area roadways: how roads would be utilized, handle new traffic and turning movements, and the intersection reconfiguration. The state would work with MA DOT who controlled Route 1. The last page was a financial analysis of 540 units. The items accorded with the table of contents in the application.

Chairman McCarthy said the comprehensive technical and financial information in the application, submitted to the state last Friday, took considerable coordination within the City. Usually, parcels like those in the district were developed one at a time. The board demonstrated a concerted planning effort making decisions for all parcels in the district at one time.

Members noted the sensitivity of traffic and more students. Irrespective of a 40R overlay district, the area would eventually develop anyway. What was gained by approving the application compared to doing nothing? What other costs would the City would incur? Director Port said there no significant cost increases for City services would be incurred. Water and sewer existed in the area and revenue shortfalls for students would be covered by the state. The MVPC proposed a \$31,000 study of the entire Route 1 corridor, from the circle to the bridge, for the next calendar year to determine pedestrian/bicycle friendly designs in the next few years.

The subcommittee had not yet reviewed the application and Councilor Eigerman recommended taking testimony now, setting a date for the vote, and postponing if the traffic study was not ready. Councilor Connell asked for assumed number of vehicles. Director Port said a full build out assumed 650 vehicles; 80 units assumed 100 vehicles. Councilor Cameron noted the assumption was a little more than one car per unit Director Port had factored in commercial space. Councilor Connell asked if the percentage of 1-2- and 3-bedroom units and number of students were the same on for each build out figure? Director Port said 35% were 1-bedroom units, 52% were 2-bedroom units, and 12% were 3-bedroom units. Councilor Cameron asked if the City was permitted to reduce the district size once the application had been submitted? Director Port said a size revision would require resubmission. The state would assess and categorize the land included. Minor adjustments would not require resubmission. Councilor Cameron asked what future development would resemble without the 40R, now and in 20 years. Director Port said without 40R, the area would be less residential and become more commercial and industrial, similar to today. The City would not have control over building design or massing, resulting in a mixed bag that could include strip malls. 40R would increase infill around the train station and improve the aesthetics of the overall area.

Councilor Cameron said 40R was relatively new, only a few communities had completed projects. What were potential issues for receiving the funds for the one-time and 40S payments? Director Port had not heard of any problems. The Department of Revenue required DHCD review. The three or four communities with a 40R had received the full amount expected. Councilor Connell asked about the revenue stream that supported payments. Director Port said it was not tied to the Registry or the legislature. Councilor Cameron asked if Director Port had seen any design review enhancements that fit with Newburyport? Director Port showed a 40R mixed-use building with differentiated materials on lower and upper floors. The Planning Board would addressed articulation around windows, parking lots with shade, plantings, elevations, floor plans, building ornamentation, and similar items.

Chairman McCarthy said 40R provided flexibility. Instead of being constrained by a 20-foot setback, buildings could be repositioned on a lot. How long would it take to fully build out? Director Port said a full build out would take several decades and 5-7 years for 200 hundred units. Chairman McCarthy said full build out assumed about 1,000 people. Councilor Connell

asked what options existed if the first project was a miserable process? Director Port said the City could un-adopt the ordinance and return any payments to the state. Councilor Connell asked about the Ambulance property. Director Port showed the property location on the map. The MBTA put it out to bid. Any parcel filing in a year or two would be part of the second phase.

Members asked for the anticipated approval date and when the first project was anticipated. Director Port said the earliest date for another hearing was July 15th. The state needed 30 days and their feedback would be a City level discussion. The City's response would be posted on the website. If the board and subcommittee were comfortable, the subcommittee could recommend adoption to the whole Council. Two hearings would take place to include the second reading.

Members asked if the financial analysis was yearly and for how long? Director Port said the analysis would be yearly in perpetuity. The Department of Revenue was obligated to make the allocated payments to the City. Developers would designate a percentage of the units for affordable housing, such as 20%, which would be subsidized by market rate units. Tenants would be required to meet an income threshold in their application process. Members asked if there was local preference? Director Port said the group could work with the Council to create that preference. The units would be deed restricted and generally remain at lower rental prices. Members asked about the district-financing letter. Director Port said internal conversations did not support applying for the district-financing program at this time.

Public comment open.

Tom Kolterjahn, 64 Federal Street, saw benefits in the added revenue. He was concerned about the real impact of 130 students on the schools and what 540 units would look like.

Jeanette Isabella, 1 Lime Street, asked if there was a plan to fix existing problems prior to adding new infrastructure? Additional sewage for the malfunctioning plant did not make sense. The odor at the corner of Water and Lime Streets was worse than ever before.

Jim McCauley, 27 Storeybrooke Drive, said water and sewer infrastructure not in good shape would be burdened by a 12-15% increase in population. Betterment fees could help upgrade systems and keep current ratepayers from shouldering the burden. The state stopped matching taxes the way they used to, an indication that the school money might not last forever either.

Charles Tontar, 29 Jefferson Street, said Smart Growth encouraged density in order to protect open space in other areas and eliminated the separation of business and residential uses by promoting mixed-use buildings to create a livelier community. There would always be a need for new housing; if clustered by the train station, there would be less need for neighborhood infill. Would the City take additional steps to discourage infill in other ways, such as through zoning changes? Director Port agreed that infill could be addressed better.

Bruce Menin, 83 Lime Street, said 155 new students was about a 7% increase in the student body. What were the assumptions for children in the build out? Director Port said growth elsewhere in the City was expected to decrease evenly in lower grades, producing an even outcome with today. Mr. Menin said the school committee has re-opened school choice in the

lower grades, hoping to fill those spaces now. Space may not be available next year or year after next. The \$600,000 payment seemed good now, but the school committee did not want to return to using trailers later. Director Port said the \$600,000 was a one-time payment from the state after the pump station was upgraded. The City was submitting a state grant to cover all or part of upgrade expenses and had a good chance of winning the grant. There were also state payments per unit constructed and the 40S school-aged children reimbursement to consider.

Attorney William Harris, 56 Lime Street, said reducing infill within National Historic Registry neighborhoods by developing a high-density district could stop the disruption to neighborhoods and preserve their authenticity. Infill projects did not meet Department of Interior standards. Did the 40R make the City eligible for state/federal transit funds or a higher priority for grants? Director Port said the City would receive higher priority on grant applications, as would the MVRTA for bringing their transit system to Newburyport.

Scott Blackman, 16 ½ Hill Street, said infrastructure and schools costs would equal money coming in from a 10 % population increase. There was no money in the proposal. The City's recent right sizing of schools did not factor in this increase. Trailers were not good for education and who would pay for them? The opportunity for more industrial and commercial business at the train station, like in Beverly, developed a tax base that did not stress schools and brought people to work and shop in Newburyport. The City had not defined ideal growth. When zoning individual projects, the neighborhood voice was not heard, as with the wind turbine.

Mary Eaton, 3 Foster Court, asked if traffic studies would provide visuals for a rotary redesign and whether the board had the power to say no if residents hated a particular 40R project? Director Port said 40R gave the board control over design guidelines and other criteria that influenced a project, but had no control over use. The circle redesign to address traffic volume would consider a much smaller roundabout or a T-intersection. The study would make a recommendation. Chairman McCarthy said circle redesign priorities were pedestrians and bicycles and connecting to both to the rail trail and downtown.

Erik Metzdorf, 17 55th Street, local business owner, had spent considerable time in the train station area the past year. His customers wanted a rail trail connection. The district's first floor height and articulation was favorable. Schools were not an issue because 10% growth would occur anyway, without the district. He supported reducing infill through a high-density district and was sympathetic to pressure for affordable housing for seniors. He paid betterment fees on Plum Island and supported that idea, but the Plum Island upgrade was not enough. Was more information available on the \$500,000 and \$5 million?

Alex Bellinger, 3 Dexter Street, supported the 40R overlay district.

Sheila Mullins, 7 Parsons Street, said the Daily News reported 906 units. Director Port corrected the misprint as the number of bedrooms. Ms. Mullins asked what the City had received for the project so far, what had other communities received, and who were they? Director Port said funds from the state would not come until the district was adopted and the pump station upgraded in about 2 ½ years.

Hugh Secker-Walker, 8 Cherry Street, urged the City to address the lack of parking. Why were half the recommended units under consideration when creating a vibrant, easily accessible area was the goal? He lived less than 1,000 feet from the traffic circle that he crossed daily to take the train and wanted pedestrian issues prioritized. The train brought people who walked up Hill Street not knowing how to get downtown. Development around the station would be 4-500 feet from the rail yard where train noise started at 4 AM and ended after midnight. The undesirable noise would create problems. Director Port said Smart Growth deemphasized cars and provided housing where residents could walk. The business park would have walkable office space in the future. Despite noise, the concept worked well in other areas. Mr. Secker-Walker said Newburyport had a train depot, not a station; other communities had train stations.

Ann Spraker, 20 Tremont Street, said documented research showed that children living close to train depots suffered from the health effects of diesel exhaust.

Sharif Zeid, 192 Water Street, asked why a Smart Growth district was needed when zoning changes could suffice? He challenged the assumption of perpetuity. Chapter 70 was an example of state money disappearing over time. He supported self-sustaining development. A residential environment around the train station would differ from living in Wards 1 or 2.

Andrew Morris, 23 Cherry Street, said a 650 car parking capacity for 500 units was unrealistic. Every adult would have a car, resulting in 1,000 cars. If schools were at capacity now, 155 new children could require a new building, eliminating any gain from the ordinance. Enhancing the attractiveness of the traffic circle while planning for a traffic increase were incompatible goals. The mayor had said development needed to be done slowly over time in order to readjust assumptions. The ordinance should manage the growth over time to avoid undue pressure on infrastructure. How were residents' best interests served by the 40R?

Rob Germinara, 2 Ashland Street, demonstrated on the map the main drain swale moving through part of the district. Three developable parcels showed water present and had six feet of water from a flooding rainstorm nine years ago. The parcels should be designated undevelopable unless used as a percentage of property. Nothing should be built on south side of Boston Way.

Diane Teed, 58 Spofford Street, said a full build out would not take decades. The Dunkin' Donuts area developed rapidly. The timing of development needed to be controlled. She encouraged residents to look at the reasonableness of the proposal's assumptions.

Chairman McCarthy asked residents with expertise to read the material and ask questions. Members requested timely access to documentation to allow time for review and questions.

Don Walters made a motion to continue the Smart Growth District zoning overlay to August 5th. James Brugger seconded and all members voted in favor.

Ed Cameron made a motion to continue the Smart Growth District zoning overlay to August 5th. Jared Eigerman seconded and all members voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

b) Amend Section V-E of the zoning Ordinance to change the definitions of two-family and multi-family use

An example of a problematic two-family project was displayed. Chairman McCarthy said the building inspector was liberal in allowing two structures connected with a stick to be designated two-family like the buildings on Lime, Woodland, and Tremont Streets were in the last economic cycle. Several more are under development again. The board was aware that a more specific definition of a two-family building would further convolute existing two-family buildings.

Councilor Eigerman said design review would not be addressed tonight. The ordinance change was a remedy in the code to end the dispute over what defined a two-family building. Should the definition be based on interior habitable space or consider what other communities were doing? He recommended the Ipswich use definition defined by the exterior: Half of the footprint of each building must touch each other. Whether or not ganged parking garages, rather than habitable space, should be allowed was a design issue. Avoiding gamesmanship in order to connect two buildings was the goal. He read the full Ipswich definition, and asked if a double-decker or common wall connection give the appearance of two houses connected to each other?

Councilor Cameron ceded subcommittee chairmanship to Councilor Connell and left temporarily. Councilor Connell asked if a decision was needed tonight? Councilor Eigerman said yes. Newburyport's high land values were accelerating the disruptive trend. Councilor Connell asked if lot coverage percentage worked? Councilor Eigerman said no lot coverage studies had been done in Newburyport. Rezoning had been under discussion for 13 months. Waiting longer was not possible. Dimensional requirements could not stop the South End trend.

Chairman McCarthy agreed. The issue affected character in the tightest neighborhoods, in the tightest spaces. He favored the Ipswich definition and wanted to know if it was working? He hoped the subcommittee would take the matter. The Planning Board had already established rules requiring an applicant to go before the ZBA. Applications were all passing despite the rules. The board did not like the way 'two-family' was interpreted and a rewrite was necessary. Councilor Cameron said the process required two votes from City Council. Sometimes the Council did not meet in July. If the matter came out of committee on June 29th for the full Council, with more public comment at that time, a second vote could occur on July 13th. Otherwise the matter waited until August.

Members said feedback from Ipswich and staff was needed. Could further language adaption occur without noticing a second public meeting if there were a recommendation tonight? Councilor Eigerman said zoning ordinances could be amended without public notice. Due process was met if the opportunity to be heard had taken place. It was a judgment call. Members

asked if the Planning & Development Subcommittee could work out details after tonight's vote to recommend. Could the board say that a garage connection between two houses was an unacceptable use because that typology did not exist or fit in Newburyport? Chairman McCarthy said connected garages might be a design issue. He could not think of anywhere in R2 or R3 where it would fit, nor did an up front garage as a prominent architectural visual fit because it reduced Newburyport's competitive strength as a walkable city. A subcommittee was needed to address the language. Councilor Eigerman said representatives from the Planning Board could meet with his Subcommittee to discuss it at their meeting on June 25th.

Public comment open.

Attorney William Harris, 56 Lime Street, suggested contacting Paul McGinley, Ipswich resident and architect with historical preservation experience to ask whether the demolition statistics were connected with economic activity. One house was not technically demolished, but all the historic features were gutted, highlighting a loophole the City can't close without the ordinance.

Tom Kolterjahn, 64 Federal Street, said infill projects that destroyed historic structures by gutting the inside and outside were also destroying the South End. He asked for prompt action.

Howard Fairweather, 4 Parsons Street, a former Historic Commission member, supported quick action.

Jeanette Isabella, 1 Lime Street, agreed action could not be quick enough. Residents had requested action for many years with no results. Could a moratorium be imposed?

Robert Levins, 84 Federal Street, encouraged Councilor Eigerman to recommend action.

Director Port said the Planning Office thought the best approach was combining the Ipswich provision with language that addressed garages, in Option 2.

Chrstina Bellinger, 3 Dexter Street, lived in an R3, 3-family house on a small piece of land. The difference between one massive building and three massive buildings on a small piece of land was negligible. Councilor Eigerman said it was harder to approve three buildings because of lot size. Developers would not get a Variance to split the lot in half. Councilor Connell said it was a foot in the door for a future lot split. A member said one issue was unnecessarily big buildings.

Pamela Kipp, 11 Tremont Street, supported of quick action. The ZBA had ignored a well-written 3-page letter with 40 signatures. No Newburyport attorney would represent an appeal, leaving neighbors with no recourse. Something had to be done. Her basement flooded due to additions at 80 and 88 High Street. The City seemed to support developers' rights over the taxpayers.

Sharif Zeid, 192 Water Street, asked what would differ on this project under the Ipswich language? Councilor Eigerman said buildings would slide together. The design would be a coherent single building instead of two separate architectural styles. The lot-coverage maximum could be an issue and it did not address garages, but the ordinance was not a cure all. As a start, it

would change what the building inspector approved. Mr. Zeid said neighbors had a right to know what would be built next to them, but decisions should not be pushed through too fast.

Rob Germinara, 2 Ashland Street, said sidewalks should be addressed before developers' projects were approved. Where street trees had been cut out, new trees should be a required part of projects, along with a surcharge to improve or reinstall sidewalks.

Chairman McCarthy said the downside to going fast was the pressure to develop a suitable definition. The ZBA did not address sidewalks and trees, but the Planning Board did.

Dorothy Fairweather, 4 Parsons Street, said there was no oversight and unacceptable things were done after approvals. Chairman McCarthy agreed an enforcement problem existed and asked Ms. Fairweather to communicate her information directly to the mayor.

Diana Kerry, 33 Temple Street, said oversight was the fundamental problem. She suggested an interim moratorium until the issue was fully reviewed and desired language established. Councilor Eigerman said the ordinance was introduced six weeks ago. That satisfied the Charter. Legislation did not happen fast because special rules in Massachusetts were difficult to meet in order to impose a moratorium. Proposed language was not a drastic change. At present, everything was tilted against the community on the issue.

Sheila Mullins, 7 Parsons Street, said the board and subcommittee had not acknowledged that botched two-family projects had been going on for decades. Today, the problem was worse and destroying property values. The City was giving away taxpayers' futures.

Mr. Zeid said zoning was all about the language. A quick fix was needed, but some residents wanted a public conversation on design review. Would more relief have to be given on the demolition portion? Could the subcommittee identify five projects that would have been affected and determine how they would be different under new language?

Councilor Eigerman said the ordinance goal was to specify that a two-family house could not be accomplished by adjoining two disparate structures with a stick without a Use Variance. The ZBA would be reluctant to grant a Use Variance. Councilor Connell said the way in which hardship was defined was important. The courts gave zoning boards' discretion and sided with the local appellate body.

Chairman McCarthy said under normal circumstances, when a matter was not urgent, the process included prepared language for the public hearing. He was comfortable with a member of the board and the subcommittee drafting language. Councilor Eigerman asked whether the board supported the idea. Chairman McCarthy said the public wanted to stop the destruction of the South End immediately. The situation was worth the risk of moving fast. A board member agreed and volunteered to attend the subcommittee meeting. A member wanted more consideration for design review and use. Members agreed new language had to be clear with no loopholes. Enforcement was paramount; without it new language would be ineffective. Two structures on one lot had been considered preferable on Oakland Street. New language could be more inclusive. Fast track the work, including language for issues with garages. A June 25th

subcommittee meeting could send language in advance of the first July City Council meeting. Councilor Eigerman said the Council had only one meeting in July. Councilor Connell said the open meeting law prevented consulting on issues in the meetings. Deliberation on Councilor Eigerman's proposed language was not possible outside of an open meeting. Councilor Cameron said the subcommittee wanted the proposed definition on Council's agenda for the public record and a 2nd reading by the Council on July 13th.

Don Walters made a motion to establish a Planning Board subcommittee to work with the City Council Planning & Development Subcommittee on the Ipswich law and modified language for the garage. Bonnie Sontag seconded and all members voted in favor.

The three volunteers were Leah McGavern, James Brugger, and Doug Locy. Ms. Isabella encouraged residents to all write a letter to the mayor.

Don Walters made a motion to approve changing the definitions of two-family and multi-family use. James Brugger seconded and all members voted in favor.

Ed Cameron made a motion to approve changing the definitions of two-family and multi-family use. Jared Eigerman seconded and all members voted in favor.

Motions Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

Ed Cameron closed the public hearing for the subcommittee. Jared Eigerman seconded and all members voted in favor.

Doug Locy closed public hearing for the board. Don Walters seconded and all members voted in favor.

a) Amend Sections V-D and VI.A of the Zoning Ordinance to allow office uses in the Business Park by Special Permit

Councilor Eigerman said two redistricting amendments would address office uses not permitted in the park without a Use Variance. The change had been discussed for a couple of years. Were the dimensional requirements correct? The setback needed only 20 feet and would be under Conservation Commission controls. Should use be Special Permit or By Right? Councilor Eigerman's inclination was that the Site Plan Review precluded the need for a Special Permit. Planning Office staff favored By Right use. Some board members supported By Right use. Dimensions were correct. What was the downside? Councilor Connell said the park was originally industrial, but the world had changed. Chairman McCarthy agreed to the dimensions and said the Zoning Chair would not be slighted if a Special Permit process were preferred over

a Use Variance. A Site Plan Review was stronger with a Special Permit and he preferred the increased legal standing conferred by a Special Permit. Discretionary decisions by the City carry more weight. Developers would not be discouraged if it was not By Right. Subcommittee and board members noted there were already a few office buildings in the park. Councilor Eigerman had included a 50-foot setback; a change to 20 feet was acceptable. Director Port said the Conservation Commission would cover wetland encroachment. There was no detriment to City neighborhoods. Councilor Connell asked if there was a Planning Office opinion on density and the impact on water/sewer services? Director Port said the pump station upgrade would accommodate the change. Members said design issues mattered and affected the look of the park. Councilor Eigerman had not addressed design because he hoped that allowing up to 40-foot buildings would create an incentive for more attractive projects. Chairman McCarthy said a Use Variance could not be conditioned the way a Special Permit could. Conditions were important for design control. A member agreed.

Mr. Zeid supported By Right use. Specific design requirements should be discussed and written.

Rob Germinara, 2 Ashland Street, supported the Special Permit.

Councilor Eigerman said with set back, the zone mattered. He advocated for the amendment a year ago in the Master Plan group. Chairman McCarthy said with each use, parking would remain as it was today. A member asked if medical offices were as acceptable as industrial, why not By Right just like industrial? The paradox sent the wrong message. Chairman McCarthy said an existing industrial building could be converted to a business use. Councilor Eigerman agreed with Chairman McCarthy that the Site Plan only had teeth with a Special Permit.

Mr. Zeid said there might be a missed an opportunity to be competitive by adding a Special Permit hurdle. A member said an applicant was required to undergo a Site Plan Review anyway. The Special Permit, if needed, would be done in one hearing. The process would be streamlined by eliminating a ZBA hearing. The Special Permit should not be seen as a deterrent. Chairman McCarthy said applicants had an inviting opportunity to come in for pre-application conversations without an application.

Councilor Cameron closed the public hearing.

Don Walters made a motion to accept as presented the change in Newburyport's zoning law, including the Special Permit. Sue Grolnic seconded and eight members voted in favor. James Brugger abstained.

Motion Approved.

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A member asked why design review was needed? Chairman McCarthy hoped to influence lighting, water quality, pedestrian connections, water flow, building design and other things in the Site Plan Review. Site Plans had more strength under MA law with a Special Permit because without it, the City was not required to allow the use. Councilor Eigerman added that the essence was whether it mattered how the industrial and business park looked.

Ed Cameron made a motion to approve the amendment as written. Barry Connell seconded and all members voted in favor.

2. General Business

- *a*) The minutes of 6/3/2015 were approved as amended. Andrew Shapiro made a motion to approve the minutes. Don Walters seconded the motion and seven members voted in favor.
- b) Daniel Eyink and Jacqueline Carroll 3 New Pasture Road Application Completeness Vote (2015-SPR-02)

Bonnie Sontag made a motion to approve the Application Completeness. Doug Locy seconded and all members voted in favor.

Motion Approved.

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6. Adjournment

Sue Grolnic made a motion to adjourn. Bonnie Sontag seconded the motion and all members voted in favor.

The meeting adjourned at 10:20 PM.

Respectfully submitted -- Linda Guthrie