

**Zoning Board of Appeals  
Newburyport City Hall  
March 8, 2011**

The meeting was called to order at 7:15 P.M.  
A quorum was present.

**1. Roll Call**

**In Attendance:** Ed Ramsdell, Duncan LaBay, Charles Ciovacco, Jamie Pennington, Nat Coughlin (arrived @7:45 P.M. because attending CPC meeting)  
**Absent:** Rob Ciampitti, Sean Leonard

**2. Business Meeting**

**a) Approval of Minutes**

**Minutes of February 22, 2011 Meeting**

Mr. LaBay made a motion to approve the minutes as submitted.

Mr. Pennington seconded the motion.

The motion passed unanimously.

**Votes Cast:**

Chairman Ramsdell – approve

Duncan LaBay – approve

Charles Ciovacco - approve

Jamie Pennington – approve

**b) Minor Modification Request for 244 High Street**

A request for a minor modification of an application previously granted for 244 High Street was made by Gino Ranaldi. The request is associated with a 3 family renovation. Originally, there was a request to keep the ridge significantly below that of the main house, but he would like to add a shed dormer because one bedroom doesn't work very well as a bedroom. The historic commission did not have any issues with this minor modification.

Mr. LaBay asked if he had spoken with the abutters on the back side of the home. Mr. Ranaldi said he had not, but would be happy to do so. Mr. Pennington asked how close is the nearest structure is to the rear of the home. Mr. Renaldi answered that he thought it was about 60 feet away. Mr. Ciovacco asked if the abutters needed to be notified of this change. Chairman Ramsdell indicated that if the Board considers the request to be a major change then a new application would have to be filed and the abutters would have to be notified. Mr. LaBay indicated that he did not think this was a major change but would like the abutters behind the property to be aware of the change.

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Gino Ranaldi indicated that he would bring letters from the abutters to the next ZBA meeting. Chairman Ramsdell indicated that the minor modification request for 244 High Street would be put back on the Business Meeting portion of the agenda for the 3/22/2011 meeting and Mr. Ranaldi should speak with the abutters and report back at the next meeting.

**3. Public Hearings**

*Chairman Ramsdell indicated that the special permit for 4-6 Hale Street could go forward with only 4 board members present, but the decision will be restricted to 4 board members. The applicant for the 4-6 Hale Street Special Permit asked if they be could move to the second public hearing on the schedule and wait until Mr. Coughlin's return. Mr. Bob Watt, representing the applicant for the special permit for non-conformities for 11 66<sup>th</sup> Street, originally the second public hearing on the agenda, indicated he would go forward and be the first public hearing on the agenda with the understanding there were just 4 board members.*

**3a) William Byrnes**

**11 66<sup>th</sup> Street**

**Special Permit for Non-Conformities: raze existing single family dwelling and construct new single family dwelling**

**The notice of public hearing was read aloud for the record.**

Mr. Bob Watt spoke, representing William Byrnes. He said the applicant was proposing to raze the existing dwelling which is located in the Plum Island Overlay and R3 Districts and construct a new structure with attached entry and decks. The proposed dwelling will increase the floor area ratio, increase the height (from 15 feet to approximately 32 feet), and increase the lot coverage by 14 square feet.

Mr. Watt presented the site plan showing the 2 streets (Overlook and 66<sup>th</sup>) converging. He indicated the interesting paved circle. Highlights were used to show the actual hot top. The owner wants to center the building more and get some actual driveway space. When initially proposed, the abutter at 20 Overlook took issue with the driveway access. Taking the abutters concerns into account, the owner proposed tightening the curve and now the access is entirely on Mr. Byrnes property, which is best for the abutter. The proposed dwelling is not increasing any non-conformities and will reduce the non-conforming set-backs (currently nonconforming set-backs on west and south sides will still be non-conforming with proposed project, but less non-conforming). Five photos were presented because of the interesting site issues. Picture #1 provided a viewpoint looking down Overlook; Picture #2 provided a view from 66<sup>th</sup> street, also facing north; Picture #3 demonstrated a view looking South, with the subject property on the left; Picture #4 demonstrated the fact that this project will not be more detrimental to the neighborhood and is fairly minimalist compared to the adjacent neighbor on Overlook; and, Picture #5 provided a general look at the lot.

**Chairman Ramsdell opened the hearing to public comment.**

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**In favor:**

No one spoke in favor of this application.

**In Opposition:**

Rich McCoy, 20 Overlook Street, was also representing his father from 13 Overlook Street. Mr. McCoy indicated that the changes in parking are a significant improvement. However he was concerned about how they will make the turn with the radius. He said his father indicated that though the setback is further in; the deck is only 3 feet from the road. He has requested that the deck be moved in.

Paul McCoy, 14 Overlook Street, was concerned the deck would actually be closer to his property than the house is now.

Todd Bailey, 12 66<sup>th</sup> Street, is concerned about congestion and visibility. There are lots of children in the neighborhood.

John McCoy, 14 66th Street, is concerned with the "tightness" of the area and how the work will actually take place with the trucks, and dumpsters. He was concerned about the small children in the area.

**Chairman Ramsdell closed the hearing to public comment.**

**Questions from the Board**

*[Nat Coughlin returned from CPC meeting and joined the ZBA meeting at 7:45 P.M. – Chairman Ramsdell informed Mr. Coughlin that the 4-6 Hale Street Project had wanted to wait for a 5 person Board, so the 11 66<sup>th</sup> Project was being heard first and that they were part way through the process with that project]*

Mr. Pennington asked if they were driving piles for support. He asked if the question of whether the dwelling was 9 feet versus 7 feet from the roadway had been raised because the road is actually on the property? **Mr. Watt indicated that the hot top versus the assessor's line caused discrepancies and that they used the assessor's line as their guide.** Mr. Pennington asked if the distance between the deck and the property line was 3 feet. **Mr. Watt referred to Picture #3 which demonstrated that the deck columns would be behind the stockade fence.** **Mr. Byrnes, the property owner, discussed where things are and referred to Picture #3.**

Mr. Labay asked what they know about the infrastructure and what is under the hard top. **Mr. Watts answered that the infrastructure is under the hot top. This is really no different than any other project on the island. In the worst case scenario, the piling driving companies provide collateral damage.** Mr. LaBay asked if there was anything under the horseshoe connection. He did not know if Newburyport had assumed it was private property (there was a manhole on the property). **Mr. McCoy's driveway is part of 66<sup>th</sup>, and it is the only way he can get to his property and Mr. Watt indicated that Mr. Byrnes would rather**

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**work with the abutters.** Another concern was the size/mass of the decks. Mr. Labay asked how integral the decks were to the design. **The owner, Mr. Byrnes, indicated that there had been several conversations with the McCoy's and that he verbally agreed to move it back 1 foot. He explained how that is really the maximum it can be moved and that the deck is an integral part of the house. He discussed how there were French doors that opened to the outside (30-32 inches). He said they could possibly move into 11 feet and bump-out to 9 feet. This would be further back than the houses and fence in the photo. He had had this dialog with the abutters and tried to be reasonable. He feels he is doing the best he can to accommodate the abutters. The deck is integral to the house. If the widest part moves to 10 feet, with a table and chairs, things are very tight.**

Chairman Ramsdell asked if water could flow through the decks. **Mr. Watt said yes. Mr. Watt continued that they tried to stay away from just building a box and wanted to put some character into the building.**

Mr. Ciocacco asked if the conservation and historical commissions had signed off yet. **Mr. Watts indicated that the conservation commission had signed off, but the Historical Commission has not happened yet.** Mr. Ciocacco asked if there had been a discussion with emergency services. **Mr. Watt answered that the current stockade fence is closer than any of the structures they are proposing. They have not spoken with them, but they are not making things tighter. Things are currently working with snow plowing. Logistics not allowed on property, pile driving company is well-versed about working around the island, having done this for 35 years. No work will be done from Overlook Street; all will be done with access from 66<sup>th</sup>. He indicated that would get dig-safe out to mark the facilities.**

Chairman Ramsdell asked if there were any further questions. Nancy Wiley, 12 66th Street, said there was a lot of soft sand and was concerned about where they would park the trucks to do work. **Mr. Watt indicated that they would first harden the driveway for the logistics to work.**

Mr. Pennington asked Chairman Ramsdell about the by-law with dimensional controls and what criteria do they need to think about? Chairman Ramsdell indicated that they should think purely about greater impact.

**Deliberation:**

Mr. Pennington indicated he was pleased with the quality of the presentation and the architecture of the building. He was just wrestling with the peculiarities of the site. The deck on Overlook will squeeze the road down.

Chairman Ramsdell indicated, for better or worse, the decks aren't effectively there. The ZBA does not regulate decks.

Mr. Ciocvanno praised the completeness of the application and that there had been dialog with the direct abutters. He gave the applicant credit for having done that and would have been more concerned if there had been no dialog.

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Mr. LaBay agreed that one aspect of the application was troubling – the proximity of the deck to Overlook, but indicated that the ZBA can't regulate that. He said the conversation had already taken place on how the decks could be made smaller. He was pleased with the visuals that Mr. Watt presented to give a sense of the neighborhood. And stated that, on-balance, it is an improvement to the neighborhoods and, in dealing with the set-backs, there was some improvement and no worse.

James Pennington made a motion to approve.

Charles Ciovacco seconded the motion.

The motion passed unanimously.

**Votes cast:**

Chairman Ramsdell – approve

Duncan LaBray – approve

Charles Ciovacco – approve

Jamie Pennington – approve

**3b) Ron Ranere c/o Ranere Associates, Inc. Architects.**

**4-6 Hale Street**

**Special Permit for Non-Conformities: expand a pre-existing non-conforming use by constructing a new nursing home facility (continuation of 2/08/2011 ZBA hearing)**

Ron Ranere, Architect from Ranere Associates, 135 Massachusetts Avenue, Boston, indicated they were here to continue from the last meeting. They were going to present things in a different way. Michel Arcidi, Owner, Whittier Health, was going to discuss how the operation has been in Newburyport, Brian Sullivan, Administrator at the Port Facility was going to speak about operations, Jeff Gangi, Facilities Manager, was going to talk about support from local health care facilities, and Steve Sawyer would talk about drainage issues.

Michael Arcidi, Owner, Whittier Health Network, indicated that the Whittier Health Care Network has 14 facilities. Mr. Arcidi indicated that the existing nursing home in Newburyport, Port Health Care, has 100 beds and has been operational for 40+ years. They employ 175 people, the majority being from Newburyport and surrounding communities. The facility has a 5 star rating issued by the Department of Public Health. They are proposing the new construction because the current design is antiquated and congested. There is only one elevator for three floors. The program rooms are inadequately sized or nonexistent. Patients are often 3 to a room with 6 patients sharing a bathroom or 2 to a room with 4 sharing a bathroom. The nursing stations are undersized. The heat is electric and there is no air-conditioning in the patient rooms. There is a lack of sound and heat insulation. They want to change the building so it is not as institutional.

Brian Sullivan, Administrator at Port Health Care Center, from 21<sup>st</sup> Street in Salisbury said that the new design will increase the quality of life for residents. It will be much more home-like versus like an institution. Instead of multiple rooms sharing a bathroom, there will be one

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bathroom for each room. They will expand the rehab. area and provide separate activity rooms and function rooms.

Jeff Gangi, Facilities Manager, Port Health Care Center, from 10 Bissell Ave., referenced the 2/11/2011 Letter to the Editor in the Daily News recognizing the work that the Port Healthcare Center does and also an e-mail from Marc Goldstein, Executive Vice President and CFO, Anna Jacques Hospital, strongly supporting the proposed project.

The representatives from Port Health Care were very concerned about the neighbors' concerns with delivery times. Once they were made aware they were violating ordinances, they contacted all their vendors immediately to ensure they understood that ordinances had been violated. The vendors spoke at the meeting to let the neighbors and the City of Newburyport know that there would be no more violations.

The following vendors were at the meeting and indicated they would follow City ordinances:

Robert Martin, 65 Manchester Street, Lawrence, MA. Advanced Linen Service. Once he was notified, he took care of it.

Pacific Packaging, 34 Daniel Lucy Way indicated they were made aware of early deliveries and have adjusted their schedule.

Paul Jarvis, 63 John Hancock Street, Taunton, MA can schedule his trucks to meet any distribution schedule required by the Whittier Group. He has very courteous drivers.

Keith Murphy, Dairy, was made aware of ordinance, had to pay a \$1000 fine. His drivers are all very aware.

Tom Dunfy, Meat Packing, has done business with the Whittier Group for 16-17 years. He was made aware of the situation, made a couple of tweaks in his system and now delivers appropriately.

Since January, the Port Health Care Administration has installed cameras so they can determine delivery arrival times. They can now check and ensure all vendors are continuing to stick to their commitments.

Letters from SYSCO (food company) and the garbage company indicated that they had also been made aware of the situation.

Ron Ranere, architect for the project, summarized their response to the comments made at the last ZBA Hearing. After the last meeting, they conducted a technical review with the city departments heads to go through the design and receive comments. Represented at the meeting were the fire department, the police department, the conservation commission, the planning and development office, and the building department. They developed greater detail on the exterior elevations. They reduced the size of the building from 58,000 square feet to 54,000 square feet. They studied a redesign to increase the height and reduce the footprint. However, they had to

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abandon the idea due to program requirements (would require a 4 story building) and DPH regulations. They redesigned the parking lot to eliminate one of the driveways (the one along the residential zone) and move the parking away from residences to create a wider green barrier. They removed the entrance to the site from Low Street to reduce the amount of traffic adjacent to the residential zone. The new design moves the building further away from the residential zone to create a larger green barrier at the northwest of the building. Instead of the current old fashioned parking light fixtures that spill light in all directions, the new lighting design will use 12 foot to 14 foot high poles with full cut-off light fixture. A photograph was provided that was taken along the length of the existing nursing home to show the amount of trees between the nursing home and the residences. Most of the green barrier is bushes and not trees. The new design will provide many more trees between the nursing homes and the residences than currently exist. Based on the survey plan, they will be cutting down approximately 6 trees, most of them inside the building footprint and well away from the residential zone. They developed multiple elevation designs. An elevation was presented that shows the new building with a clapboard look; they indicated the material with the clapboard look would be a light color. The fire access lane will use a geoblock system that looks like grass and will support a fire vehicle's weight. The Fire Chief was satisfied. Bollards will be used to mark areas for snowplows.

Steve Sawyer, Design Consultant, Design Consultants Inc., 68 Pleasant Street, Newburyport, talked about the preliminary drainage plan that has been completed. The demolition and construction on the new facility will slightly increase the impervious surfaces on the property. The existing facility currently does not have any storm water treatment or attenuation measures in place for storm water. Storm water is allowed to flow unchecked off site and into the adjacent wetlands. The new building and parking will include various types of stormwater controls. The drainage design will use both low impact and traditional design techniques to reduce the stormwater runoff from the site.

The new parking area will drain to a number of small rain gardens or bio retention swales located between each parking bay. Traditional catch basins will be provided to collect larger storm events and when the rain gardens are filled with snow. The new building roof areas will be connected to shallow underground infiltration chambers where runoff will be stored and infiltrated. The implementation of these storm water controls will reduce the drainage impact to the surrounding area. The detailed drainage design, when completed, will be subject to site plan review by the Newburyport Planning Board.

**Chairman Ramsdell opened the hearing to public comment.**

**In favor:**

- Brian Derrivan, 48 Bayberry Rd, Ward 5 Councilor, City of Newburyport
- Robert Cronin, 126 Merrimac Street, Ward 3 Councilor, City of Newburyport
- Ann Ormond, 38R Merrimack Street, President Greater Newburyport Chamber of Commerce and Industry
- Anita Delmotto, Salisbury Beach (father was a resident of Port Health Care; mother is currently a resident of Port Health Care)

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- Alison Linsky, 48 Hardy Street, Newburyport (father is currently a resident of Port health Care for 1 year)
- Julie Carver, Amesbury (mother and aunt residents of Port Health Care)
- Ben Consoli, 47 Ferry Road, Newburyport (brother is resident of Port Health Care)
- Daphne Tichelaus, Bradford (uncle is resident of Port Health Care)
- Beth S., Merrimack (employee, social worker, mother resident of Port Health Care)
- Mary Henessey, Newburyport (employee at Port Health Care)
- Everett Carr, 1 Anderson Lane, Newburyport
- Sandra, 34 Southern Boulevard, Newbury (employee; 3 members of family used Port Health Care facility)
- Low Street Abutter
- Kathy Peppy, 16 Drew Street, Newburyport (employee)
- Andrew Port, Planning Director, City of Newburyport, indicated that the applicant and the design team have been very responsive.

**In Opposition:**

Todd Gardner, 15 Colton Drive, Newburyport

Originally from Michigan, he purchased property in August. He felt he was investing in a town he was excited about but is now extremely concerned. He feels any equity he can get out of his house to put his children through college is gone. The proposed facility is 90 feet off his house. He said that a lot of people have spoken about the care the Port health Care facility provides but that this is not about care. This is about impact to the residents. This is a residential zone; the lack of respect for his family is a concern. He has to deal with a parking lot and a large building 90 feet from his home. His quality of life cannot be a cost and needs to be taken into account.

Cynthia Welch Philippino, 17 Colton Drive, Newburyport

She is a direct abutter to the property. Mrs. Philippino read a written statement that detailed a long list of complaints regarding issues they have had to endure due to living next to Port Rehab. Her family doesn't sleep well. The complaints include constant distress, chronic noise, substantial vibrations, fear, and dust. Port Rehab has had and will continue to have a detrimental impact on her family's life. They have to keep the eight windows that face the nursing home shuttered. With the Port Rehab expansion, they will have to keep sixteen windows shuttered. If the new facility is 90 feet away from Todd Gardner's house, it is 45 feet away from hers. The distance will be ½ of what it is today and they will be landlocked on 3 sides by this facility. Health Care is an industry and operates like one. They are open 365 days a year, 24 hours a day. The hours alone infringe on the residential neighborhood. Her family has the most to lose visually and financially. Privacy is a tenet of every home owner. She is tired of being at the mercy of Port Rehab and angry that Port Rehab adversely affects the quality of her family's life.

Tony Philippino, 17 Colton Drive, Newburyport

His wife just spoke. He invites anyone to sleep at their house for a weekend and get a better understanding of what their life is like.



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**Chairman Ramsdell closed the hearing to public comment.**

**Questions:**

Mr. LaBay asked where they were in the process of permitting in the City. **Response: they had met with Planning Director, Con Com, Police, Fire, and Building Departments and received comments on their plan. They have not made progress in terms of permitting. They need to get the Special Permit, then they will meet with Con Com and have a site plan review. Did you request any letters from the Departments you met with? Response: no letters were requested.**

Mr. Coughlin asked if they decreased the number of parking spaces. **Response: they went from 109 spaces to 104 spaces.**

Mr. Pennington asked about the topography. Did they happen to know about the grade between the fire access road and the neighbors at 15 Colton or the driveway at 17 Colton? **Response: Port Health Care is about 8.5 feet lower, the natural grade slopes down. The panoramic photo provides an idea of the grade change. What does the grade do on the north side? Response: it is pretty flat and starts to slope down to about 5 feet versus the 8.5 feet in the other area. Filling the resource wetland area? How will Con Com respond? Response: this is a fairly common practice. They will do it on-site, fill and replicate mitigation area. A little piece projects into the access road. They will relocate that piece.**

Mr. Ciovacco asked if there was any thought to build up the buffer zone with natural elements such as full grown trees. **Response: all the squiggly lines on the plan are evergreen trees, When they grow, they will create a wall and a complete buffer. They will start out with 14 foot trees that will grow to reach 30 feet. What has been done at another facility and could also be done here is that a stockade fence has been put up and plantings put in on the residential side of that fence. This helps to create a strong buffer.**

Mr. Ciovacco asked about the lights in the parking lot. **Response: Today they blast light. With the new light fixtures, glare will be reduced dramatically; the trees will also reduce the glare. Lighting associations recommend much lower lighting now than they did when the lighting was installed in the past. There are new lighting requirements which significantly reduce the impact to abutters. When are visiting hours over?. Response: 8pm**

Mr. LaBay indicated that he felt the plan looks good.

Mr. Pennington asked if it was safe to assume lighting will not be required on the fire access lane. **Response: yes., fire department has indicated ok not to have lighting here. Do you feel comfortable not making that a space where your staff congregates and smokes? Response: yes, break area will be hidden from abutters. Share neighbors concerns about bulk of building. There may be solutions you haven't explored, Response: we have thoroughly explored different options. Need to keep a certain amount of space, with restrictions on**

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**wetlands, residential zone, and fire access lane, we have presented the best solution. We have done many sketches and tried different things.**

**The applicant mentioned the heated sidewalks and compactor set-up, both of which will reduce impact. The applicant indicated that one of the reasons they are here is to show that the impact will not be more detrimental. Today, the facility is open to residential zone, with the new plan, they will be creating barrier; a green buffer. The Zoning by-law indicates if not more detrimental, in theory it is ok.**

**Deliberation**

Mr. Coughlin thought about conditions and believes effort to do a buffer is critical. Thought the idea of a fence with plantings on neighbor side might present a short term mitigation.

Chairman Ramsdell indicated that the record here will be available to Planning. He was less concerned about determining the specifics about the buffer.

Mr. Pennington indicated that it is all about the buffer, find ways to make the buffer better, make the best buffer in the City. The buffer needs to be given serious consideration; the applicant needs to create a super buffer.

Mr. Ciovacco agreed that the buffer is a key factor in the whole plan. Mr. Ciovacco commended applicants as to how they addressed most of major concerns raised at the last meeting. He felt a lot more comfortable. He was troubled by massing, but feels applicants are working with a limited space. He felt it should be noted that discussion about closing the Low Street entrance has been acted upon. Access by fire department has been addressed. Water drainage and lights look good. He would like to see more done to construct a buffer, given what was heard from the two direct abutters and would like to see that potentially as a condition of his approval. Whether it is more detrimental or not, completely a tossup in his mind. He felt he could let it go forward for planning and conservation commission review.

Chairman Ramsdell too commended the applicants. Much more comfortable, this is not the last stop. Site plan review and con com will be involved. He indicated he was comfortable thinking in gross scale about impact. He indicated that we can tie some strings about areas of importance to consider in site plan review. But he is much more comfortable with the project and letting planning and Con Com and their technical experts work on the final detail.

Mr. Pennington indicated that the applicant has been responsive to the things brought up at least meeting. Very comfortable that they have made an effort and there is a value to the community associated with the project. He is comfortable to see the project move on to next phases. He said the last hearing was a tense one, lot of unaddressed issues. The applicant has addressed all the issues, but has not been totally solved all the issues. As an architect, he would love to see more attention on this building to make it seem more residential. He is comfortable but would potentially like some strings attached, not sure what they are. He is concerned about the look of

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backside of building. Response from applicant: **Applicant: Backside of building, with its gardens, greenhouse, outdoor areas, will be as beautiful as other sides.**

Mr. Labay discussed balancing the understanding that this is an industrial complex in a residential zone. He felt the applicant clearly brought out the troops. There are definitely things that are an improvement over what is out there now. If he is to believe what he is being told, this is an improvement. He will be looking for a lot of 14 foot trees out there. He would not like to live next to this facility, but that is a choice.

Mr. Ciovacco indicated that the Board urges that a great effort be put into creating a satisfactory buffer.

Throughout the discussion, the concerns continued to be primarily focused on creating a significant buffer with the abutters and trying to determine if anything could be done with the mass of the building. There was general discussion about the fact there are so many additional reviews required in the City, that if there is any substantial change it will have to go back through the ZBA.

Charles Ciovacco made a motion to approve.

Nat Coughlin seconded the motion.

The motion passed unanimously.

**Votes cast:**

Chairman Ramsdell – approve

Duncan LaBray – approve

Charles Ciovacco – approve

Jamie Pennington – approve

Nat Coughlin – approve

The Board then went into Executive Session.

Motion made to adjourn.

Motion seconded.

Motion unanimously approved.

Meeting adjourned at 10:30.

**Respectfully submitted, Jennifer Lamarre - Note Taker**