

Town of Copake Zoning Board of Appeals

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Meeting Minutes of June 26, 2014

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on June 26, 2014, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. An audience of about 45 was present as well as, Jef Nayer: Town Supervisor, Bob Haight: Planning Board Chairman, Edward Ferrato: Building Department and Susan Sweeney: Town Board Liaison.

The meeting was called to order by Hilarie Thomas at 7:20 PM.

Roll call:

Present at this meeting were: Frank E. Peteroy, Hilarie Thomas, and Jon Strom. Michael DiPeri had notified the board that he will be late for the meeting. Adam Resnikoff was expected late as well. Kenneth Dow: Copake Town Attorney was present. Veronique Fabio was present to record the minutes.

Reading and approval of the minutes of preceding meeting:

Hilarie Thomas asked for a motion to waive the reading of the May 22, 2014 minutes and approve them, Frank Peteroy made the motion, Jon Strom seconded, all in favor.

Correspondence:

Hilarie Thomas noted that most of the correspondence was pertaining to Berkshire Mountain Club and it will be reviewed during the public hearing.

Closed Public Hearing:

None

Because Jon Strom has to recused himself from the Farmland Renewal matter, and in he absence of a quorum for that matter, Hilarie Thomas indicated that the order of the agenda will be modified tonight.

The new application will be reviewed first.

New Application:

- 1) 2014-08 Murkofsky, 26 Longley Rd. Tax Map # 165.10-1-10 , Area Variance requested for the installation of a fence higher than 6 feet .

Mrs. Barbara Strauss came to the table; She represents the applicant Susan Murkofsky. Mrs. Strauss indicated that the project includes a deer fence of 8' high as well as a decorative gate across the driveway. The deer fence will be installed only on two sides of the property and part of the driveway with also a decorative gate.

Frank Peteroy asked where exactly Longley Rd. was.

Jon Strom asked about the proposed fenced area shown on the applicant's plan located near the lake.

Applicant will need to provide more details of project as well as a site map showing the location of the property on the lake.

Hilarie Thomas asked for a motion to accept the application for a public hearing July 24, Jon Strom made the motion, Frank Peteroy seconded, all in favor.

Public Hearing:

- 1) 2014-05 Maggiacomo, Arrohead Acres Cherokee Drive
Tax Map # 165.10-1-31.
Area Variance for 20 x 20 deck near water and repair retaining wall.
Work within 100 feet of water body.

The applicant, Mr. Maggiacomo had notified the board that he will no be present due to the fact that he was not in possession of the new survey that had been requested by the board.

It was decided that because the public hearing had been posted in the Columbia paper and the abutters had been notified and were present tonight, the public hearing should be open.

Hilarie Thomas asked for a motion to open the public hearing., Frank Peteroy made the motion, Jon Strom seconded, all in favor.

Hilarie read the Planning Board memo;

July 28, 2014

To: Hilarie Thomas, Chair, ZBA
Fr: Bob Haight, Chair, Planning Board
Re: John Maggiacomo

Project Location: Cherokee Drive, Copake Lake

Dear Hilarie,

At the June 5, 2014 Planning Board meeting the members reviewed the application for a retaining wall on John Maggiacomo's property. The members discussed the fact that the area used for people placing their boats in the water has a right-of-way and the retaining wall is being made larger. The Board has concerns regarding whether there are measures being taken to protect the tree between the construction of the deck and the retaining wall and whether this wall might encroach on the right-of-way. It is their understanding that a DEC permit is not needed however they also had concerns regarding erosion and sediment control.

The Board discussed the fact that a ninety-three foot (93') setback variance from the lake, a thirty foot (30') side yard variance and a twenty foot side yard (20') variance are all needed.

They had questioned about the right of way for the boat ramp access to the lake for the residences of Arrowhead acres is as well as what the width for this is as the notes on the master print of Arrowhead acres was not readable. They also request that the high water mark location be put on construction drawings.

Sincerely, Bob Haight, Chair

Five abutters were present and came to the table.

* Marissa Shedd explained that all the abutters present have had lake rights for the past 28 years. The applicant recently purchased the property and the easement is mentioned in the deeds. The abutters have the right to use the road to get to the lake and have been launching their kayaks and boats from the shore for years. They are concerned that the improvement proposed by the applicant will block their access to the lake. They also provided pictures showing two large boulders that are now blocking the access road to the lake. Emergency vehicle would be unable to get to the shore as well.

* Michael Mc Govern an abutter noted that the applicant is aware of the easement and just ignoring it. If allowed to proceed, 12 abutters will be denied access to the lake.

* Ken Dow indicated that the board will take in consideration the concerns of the abutters however enforcing the easement rights cannot be handled by the ZBA and the matter should be taken to an attorney. The board in its determination to grant or deny the variance will take in consideration the benefit and / or the detriment to the community.

It was noted that the fire department needed access to the shore for water in case of a fire; the boulders that are now in place would prevent that.

Hilarie Thomas asked for a motion to keep the public hearing open. Jon Strom made the motion, Frank Peteroy seconded, all in favor.

- 2) 2014-07 Goldman, 163 Golf Course Rd. Tax map # 165.5-1-13. Area Variance to pave driveway, build an arbor, a retaining wall and install an 8x8 shed: work will be executed within 100 feet of water body.

Hilarie Thomas asked for a motion to open the public hearing. Jon Strom made the motion, Frank Peteroy seconded, all in favor.

Mr. Goldman came to the table.

Hilarie read the Planning Board memo;
July 28, 2014

To: Hilarie Thomas, Chair, ZBA
Fr: Bob Haight, Chair, Planning Board
Re: Marilyn Goldman
Project
Location: Golf Course Road, Copake Lake

Dear Hilarie,

At the June 5, 2014 Planning Board meeting the members reviewed the application for a driveway in front of the house of Marilyn Goldman. The members discussed the fact that there will also be a retaining wall which uses Allen Block and the driveway will be asphalt.

They acknowledged that relief was needed for development within one-hundred feet (100') of a body of water and it is their understanding that the shed is new.

The Board has concerns regarding run off and pollution of the lake and encourages plantings below the retaining wall to help control this. The members recommend that you ask for more details on the proposed Arbor height and roof design.

Sincerely, Bob Haight, Chair.

Mr. Goldman provided pictures of arbors as requested by the board at the previous meeting. He indicated that drainage will be handled. The retaining wall will be 7' at its highest point. All the trees will be kept as they are now. Mr. Goldman also described the landscaping plan.

Ed Ferrato asked Mr. Goldman if the proposed shed could be moved over a few feet so there would be no need for a side yard variance. The proposed shed will be 8' x 8'.

Frank asked that the shed be screened by vegetation.

Hilarie noted that silt/sediment fence control should be installed during construction.

The arbor will be similar to the pictures provided by the applicant.

The retaining wall will not exceed 7' at its highest point. Drainage will be provided.

Existing trees will remain and landscaping will be improved with additional shrubs.

It was decided that the variance for the shed will be revisited at a later date. The fee for the shed will be waived.

All the abutters had been notified.

Hilarie asked if anyone had comments or questions being none;

Hilarie Thomas asked for a motion to close the public hearing. Frank Peteroy made the motion, Jon Strom seconded, all in favor.

Hilarie proceeded to read the 267-b Permitted action by board of appeals.

- a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.***
- b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall consider:***

1; Whether an undesirable change will be produced in the character of the Neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Answer: NO

2; Whether the benefit sought by the applicant can be achieved by some method,

feasible for the applicant to pursue other than an area variance;

Answer: NO

3; Whether the requested area variance is substantial;

Answer: NO

4; Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

Answer: NO

5; Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

Answer: Yes

c. The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The board tonight will vote on;

Relief from Section 232-9P. (1) . Development within 100 feet of a body of water for the purpose of paving a driveway, installing a decorative arbor over the driveway and a retaining wall.

Roll call vote;

Frank E. Peteroy, YES. Hilarie Thomas, YES. Jon Strom, YES.

Variance granted

Continuation of Public Hearing for ;

2013-26 Berkshire Mountain Club @ Catamount ski area. Tax Map #157.1-11.100
Special use Permit, for a 3 building resort hotel project.

Pat Prendergast Engineer, Harry Freeman from Rock Solid Development and Andrew Howard Attorney were present. Richard Edwards was in the audience.

Correspondence:

May 27 : From Stephanie Ferradino.

June 3 : From Gilchrist attorney in ref to litigation against Catamount and Rock Solid.

June 4 : From Jolanda Alper in support of Swiss Hutte.

June 5 : From Gilchrist attorney in ref to litigation against Catamount and Rock Solid.

June 5 : From Liah Wallace in support of the Swiss Hutte.

June 6 : From Barbara Holcombe in support of the Swiss Hutte.

June 7 : From Elise Wallace in support of the Swiss Hutte.

June 12 : From Pam Strompf in support of the Swiss Hutte and Catamount.

June 18 : From Elizabeth Goodman, Esq. requesting to review the BMC files,

she represents an abutter in Massachusetts.

June 24 : From Planning Board in ref. to BMC, negative declaration on second part of the SEQRA.

Hilarie Thomas noted this was a continuation of the public hearing opened January 2014.

* Andrew Howard indicated that the BMC had a special meeting with the Planning Board and a negative declaration on the 2nd part of the SEQRA was found, therefore an EIS (Environmental Impact Study) is not needed.

Andrew Howard handed out a letter dated June 19 from Clark Engineering.



19 June 2014

**Robert Haight, Chairman
Town of Copake Planning Board
230 Mountain View Road
Copake, NY 12516**

**Re: Berkshire Mountain Club
Catamount Ski Area**

Dear Bob:

We have reviewed the series of updated lighting and erosion control plans prepared by Pat Prendergast. We also reviewed the revised plans that Pat distributed at the June 5th Planning Board meeting. We have updated our June 3, 2014 review letter as follows:

Administrative

1. As Lead Agency under SEQR you will be coordinating the review of the project among various agencies requiring permits. At this point, most permits are in hand or will be acquired as the project moves forward.
 - a. DEC Wastewater SPDES Permit – The previous permit was modified to extend the deadline for construction of the wastewater treatment plant to December 2014. The permit limits have remained unchanged. The permit is valid until January 2017.
 - b. Army Corps of Engineer's National Permit – This permit has been renewed and is for the disturbance to the wetlands associated with the installation of the treatment plant outfall. The permit is valid until March 2017. A related permit from DEC for stream disturbance has been issued.
 - c. Columbia County Health Department Water System Approval – An approval letter for the 2005 project was issued in January 2006 and has been updated based on a review of the current plans. The County will be requiring permits for the kitchen, swimming pool, and approval of the fire suppression system from the Building Department.
 - d. DEC Stormwater SPDES Permit – A stormwater SPDES permit was issued in 2005 for the stormwater quality and quantity treatment. A permit renewal was applied for and granted in December of 2013 by DEC.
 - e. NYS Department of Transportation – The 2005 project included an improved entry onto Route 23. The entrance design has since been revised and is under review by DOT. Creighton Manning has prepared a letter summarizing the new traffic impacts and indicating that there would be no change. Since actually obtaining a permit may take some time, we suggest that a letter of approval from DOT would help the Board complete the SEQR process.
 - f. Building Permit – The Town of Copake Building Department must issue a permit.

Technical Review

1. The proposed fire pump and generator have been relocated to snowmaking reservoir no. 2 and Pat Prendergast has submitted calculations to demonstrate that adequate volume is available from that pond.
2. The developer has confirmed that the fire pump at the reservoir will be provided with emergency power.
3. From the comments by the Fire Company at the June 3rd Planning Board meeting, we believe that the issue of emergency access has been resolved to the satisfaction of the respective fire companies.
4. The modified access drive designed by Creighton Manning is included in the plan set however it is still not clear where this occurs with respect to the development. In addition, the plan is concept level and does not include grading or profile information. This plan and associated grading should be fully developed and submitted as part of the site plan review process. The amount of fill implied on the plans may require easements be given to the Town for the road bed.
5. The lighting plan has been updated to show foot-candle light levels. They appear to meet the minimum levels recommended.
6. An erosion and sediment control plan has been included in the plan set.

We trust this is satisfactory. Unfortunately, I cannot attend your June 21st meeting but please feel free to call me if you have any questions on the above.

Sincerely,



**Thomas H. Field III, P.E.
Clark Engineering & Surveying P.C.**

cc: Pat Prendergast PE, via email
Harry Freeman, via email
Andy Howard, Esq via email
Ken Dow, Esq via email

A letter dated June 20 from NYSDOT was also handed out by Andrew Howard. It was noted that the DOT will not take any actions until there is a formal site plan approval.



State of New York
Department of Transportation
Region Eight
4 Burnett Boulevard
Poughkeepsie, New York 12603
www.nysdot.gov

Joan McDonald
Commissioner

William J. Gorton, P.E.
Regional Director

June 20, 2014

Mr. Robert Haight, Chairperson
Copake Planning Board
230 Mt. View Road
Copake, New York 12516

**Re: NYSDOT SEQRA# 14-0088
Catamount Resort
Town of Copake, Columbia County**

Dear Mr. Haight:

We have received Concept level plans to modify Route 23/Catamount Road Intersection along with brief history of the referenced proposal, dated March 17, 2014 and received on March 24, 2014, from Creighton Manning Engineers, representing the applicant. This proposal was reviewed and conceptually approved by this Department in March of 2005.

We concur with the applicant's assessment of Trip Generations, its impacts on the highway system and proposal to mitigate the Route 23/Catamount Road Intersection. However, considering difficult topography in the immediate vicinity of the above mentioned intersection, we have the following comments to offer:

- The fill for the embankment widening below the proposed Rte 23 right turn lane should be "benched" into the existing side slope as per the Standard Sheets, Section 203. This will help minimize future cracks in the pavement. We also recommend that about 75+ ft of the Rte 23 embankment side slope, located to the east of the proposed intersection, receive additional fill and reduce the steep incline of the embankment slope. This will help stabilize a roadway dip that is occurring near the proposed intersection.
- The Right turn lane shoulder is proposed to be 2 ft. It must be at least 4 ft.
- The Right-Out movement blocks the sight line of the Left-Out movement. The grade contributes to this. This must be addressed.
- The submission will need to be more substantial with profiles.
- The steep slope to the east should be reviewed as part of this review.
- The highway boundary appears sufficient for the proposed fill. Just verify ownership of adjoining parcel.
- We need to look at the revised topography as it relates to the approach and access point. It may be possible to raise the Right-Turn lane without negatively impacting drainage.

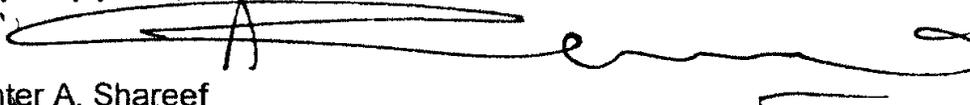
We conceptually approve the proposed mitigations as part of this proposal. However, the applicant must address the above mentioned comments as part of detail design and Highway Work Permit review process.

The applicant should also be encouraged to review the permit process and all required HWP forms on the

NYSDO I website (<https://www.dot.ny.gov/index>).

Thank you for your interest in highway safety.

Very truly yours,



Akhter A. Shareef
Senior Transportation Analyst

cc: Michael Sassi, Traffic Engineering and Safety Group, Region 8
Joseph A. Visconti, Permit Field Engineer, Residency 8-1
Don Adams, P.E., PTOE, Creighton Manning Engineers

Hilarie questioned the waste water connection between Catamount and BMC and the moving of the utility shed to the Massachusetts side . Is it resolved yet?

Harry Freeman indicated that no permits were issued but a meeting was planned.

Frank Peteroy suggested that Clark Engineers should sit with the board to help examine the issues still pending. The ZBA members agreed that it would be beneficial.

The size of the sewage treatment building came up.

It will be a three sided pole barn type of building, approximately one and a half story high.

Hilarie read five letters that were sent to the ZBA in support of the Swiss Hutte.

- June 4 : From Jolanda Alper in support of Swiss Hutte.
- June 5 : From Liah Wallace in support of the Swiss Hutte.
- June 6 : From Barbara Holcombe in support of the Swiss Hutte.
- June 7 : From Elise Wallace in support of the Swiss Hutte.
- June 12 : From Pam Strompf in support of the Swiss Hutte and Catamount

* David Colby from the Columbia County Chamber of Commerce said a few words in support of the BMC project. In his opinion it will be of great benefit to the area, 65 job opportunities will be created. Products and services will be purchased by the clientele using the resort. Overall the chamber of commerce sees that project favorably.

* Andrew Gilchrist handed out a letter dated June 26, 2014 and stated that the issuance of a special permit allowing the project the way it is presented by BMC will create a significant detrimental effect on the existing Swiss Hutte Inn and restaurant. He continued that the Planning Board limitation of the number of trucks per day is insufficient. The impact of the noise, dust and vibration created by the use of Catamount Road during construction was mitigated in the Neopolis project by building a separate secondary access road that would divert all the traffic away from the Swiss Hutte.

BMC has now eliminated that road. The impact on the Alper's business could be catastrophic and this project is clearly detrimental to them.

* Stephanie Ferradino handed out a letter dated June 26, 2014.

She stated that the applicant conceded that the prior approvals were "not binding but important". If this is a re-approval BMC should comply with all the conditions of the prior approvals such as building the second access road. Permits were never issued for the prior project; the variances granted for the Neoplolis project were never used and expired. The right to the old variances granted does not exist and new applications need to be submitted.

Ms. Ferradino went on to explain that an application for density control schedule relief should be filed by the applicant.

Also, the applicant is presenting the project as a Resort / Hotel to the town of Copake; clearly a commercial use. However the small amount of tax relief that the project qualifies for (17%) under the Columbia County Industrial Development Agency indicates that only a small portion of the project is commercial. In reality, the majority of this project consists of residential units; the retail and restaurant were taken in consideration by the Columbia County Industrial Development Agency to qualify for the tax relief.

Ms. Ferradino stated that the applicant does not meet the standards of the town zoning codes and a special use permit should be granted only if there is "no detrimental effect by the establishment of such use" and the use is in harmony with the district in which it is located.

*Frank Peteroy handed out a drawing of the project superimposed over the Roe Jan school to give a perspective of the size of the proposed building. He also showed a sketch of the 24 foot chairlift that would be located behind the project for perspective. Frank analyzed in details the BMC plans and found a number of discrepancies.

* The number of parking spaces has been increased from 180 to 208.

* The town right of way and turn around space to new site mentioned in the Planning Board notes is pegged at 30 feet; the minimum by code is 50 feet.

* The height of the clock tower is unclear, a variance was granted for Neopolis for a 67foot clock tower now the foot print from BMC indicates that the entire buildings will be 67 feet with a tower culminating at 72 feet.

* Pat Prendergast gave explanations for the differences on numbers and measurements.

* Frank Peteroy noted that a professional traffic study should be done to estimate the actual impact of the construction of the project . It is his opinion that an enormous amount of materials and products will have to be brought to the area via Catamount Rd..

* Harold Freeman indicated that Catamount entrance will be redesigned and any damage will be repaired, BMC is willing to give money in escrow to the town of Copake for that purpose. A damaged roadway would be detrimental to BMC.

* Frank argued that Clark engineering had suggested boring tests.

* Harold Freeman responded that he did not think it was necessary, that he had spoken with the Highway Supervisor who was confident that Catamount Rd could sustain the load of large trucks.

* Frank noted that already the shoulders of the road are giving way.

* Andrew Gilchrist reminded the board that the Swiss Hutte septic system line passes under the road.

* Stephanie Ferradino suggested that BMC provide the drawings to scale of the project. The brochures used for marketing are not adequate for the purpose of the ZBA. She also noted that the standards of the ZBA in granting a special use variance should be “No Detrimental Effects whatsoever”.

* Jon Strom, going back to the impact on the Swiss Hutte, commented that you cannot have construction of anything without some type of disturbance.

* Adam Resnikof asked BMC if they had considered making provisions to lessen the impact of the construction besides a new access road.

* Freeman debated that Catamount Rd. is not closer to the Swiss Hutte than the road by the Red Lion Inn in Stockbridge Mass. It is not credible that the project would be detrimental to the Swiss Hutte when 80% of its income comes from the restaurant. When the road will be repaired it will be in a much better condition that it is at present.

* Someone in the audience commented that the Red Lion Inn is a whole different situation, the Inn is located in town and some noise and traffic is expected by the clientele.

* Andrew Howard argued that this project will reconfigure and improve an infrastructure that is now in poor condition. The area will benefit from the economic development that this project will bring.

* Gurt Alper said that the previous Planning Board and Zoning Board of Appeals had understood the impact of such a project on his business. He also mentioned that the Columbia County hotel rate occupancy is 31% and that he did not think that this large scale project was viable.

Hilarie Thomas, in consideration to the height of the project asked for a motion to have a ballon test. Michael Diperi made the motion, Frank seconded all in favor.

The test will be scheduled for Tuesday July 8 weather permitting.

The public hearing for Berkshire Mountain Club remains open until next meeting July 24.

2014-06, Farmland Renewal LLC.122 acres in Copake. Area Variance for deer
Fence higher than 6 feet.

Hilarie Thomas asked for a motion to open the public hearing, Michael Diperi made the motion, Frank Peteroy seconded, all in favor.

Rachel Kelly and Jacob Meyer Esquire, came to the table.

* Mr. Meyer read a statement and asks the board to make an interpretation and a determination that there is no need for a variance to install the deer fence taking in consideration that the purpose of the fence is to protect agricultural crops.

Hilarie read the memo from the Planning Board dated June 21, 2014.

* Mike Fallon, a Copake resident commented that the farm project is a beautiful addition to the area and that he supported the farmers.

* Hilarie clarified that the reason why the applicant has to apply for a variance is supported by article 232-9 (F) of the Copake zoning code.

* Ed. Ferrato added that agricultural properties are not exempted from town zoning laws.

* Yvonne Acevedo, a Copake resident read a statement. She finds the fence offensive and suggested shrubs and small evergreens tree be planted around the posts.

* Jon Strom noted that he was in support of the project.

* Mat Kane an investor in the project indicated that Farmland Renewal had applied to the Columbia County Land Conservancy for a conservancy easement. The project benefits from an agricultural exemption but taxes are paid. Money was borrowed for installation of infrastructures.

* Susan Sweeney , Town Board Liaison indicated that she supported the project.

* Jeff Nayer, Town Supervisor, as an individual resident of Copake indicated that he was in favor of the project and that in his opinion the ZBA should consider an interpretation.

* Lindsey Lebreck stated that other agricultural exploitations in the town had erected fences higher than 6 feet .Camp Hill Village for example has an 8foot fence around their healing flowers garden.

* Rachel Kelly explained that a lot of research went into the project and the type of posts that would be the most eco friendly. People will be able to walk around the cultivated lots, gates will be installed to allow entry.

* Ken Dow pointed out the AG and market Law 305 A;

“ 1. Policy of local governments. a. Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.:

He noted that a bonafied agricultural activity should be allowed to erect an 8 foot fence to protect their crop.

* John Chicorelli questioned how to determine a “bonafied agricultural activity”.

Hilarie asked if anyone had comments or questions being none;

Hilarie Thomas asked for a motion to close the public hearing. Michael Diperi made the motion, Adam Resnikof seconded, all in favor.

The board tonight will vote on;

Relief from article V Section 232-9 (F), to erect an 8 foot fence surrounding 122 acres of land used for agricultural purpose in Copake.

Roll call vote;

Frank E. Peteroy, YES. Hilarie Thomas, YES.

Michael Diperi, YES. Adam Resnikof, YES.

Variance granted

Meeting was adjourned at 12: 00 AM.

Respectfully submitted.

Recording Secretary.

Veronique Fabio

