

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Wednesday, February 11, 2015

- Call to Order:** At 6:30 PM Chair Denis Hebert called the February 11, 2015 meeting that had been postponed from February 9, 2015 due to winter weather.
- Present:** Vice Chair, Mike Marconi; Chris Cross; Jack Pare; Justin Richardson; Alternate, Ken Latchlaw; Jane Kendall, Recorder; and Thomas Morgan, Town Planner
- Absent:** Bernie Christopher; Alternate, Peggy Lamson; Board of Selectmen Rep, Rick Stern
- Public Guests:** Attorney Chris Mulligan; Doug LaRosa with TriTech Engineering; Keith Frizzell; Steve Haight of Haight Engineering; Attorney Steven Roberts; Attorney John Ratigan; Ann Beebe; Todd Galiano; Norman LeClerc; Paul Reardon; Sandy Sweeney; Mr. Corey Caldwell with MSM Engineering

1) Public Hearings:

- A) Proposal by **Bruce C. Belanger** for a 3-lot subdivision at the corner of **Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2.**

Board member, Justin Richardson recused himself.

Attorney Chris Mulligan asked the Board to postpone consideration until their next meeting because the applicant had appealed the Board's previous ruling that there was a provision in the Zoning Ordinance that required a variance.

Attorney Mulligan said he conversed with Town counsel, Attorney John Ratigan and broached the idea of a modification from a 3-lot subdivision to a 2-lot subdivision. He said they did not yet have a conceptual sketch to present, but were asking for feedback from the Board. He said the current plan had three lots with two drives on Nimble Hill Road and one drive on Fox Point Road. He said the driveway on Fox Point Road met NH Department of Transportation (DOT) specifications with no wetlands issues, but there were two wetlands crossings on the driveways on Nimble Hill Road. He said they were suggesting the removal of the middle lot and reconfiguring the driveways so that there would only be the approved curb cut from Nimble Hill Road and one wetlands crossing on the driveway from Fox Point Road to the larger lot.

Vice-Chair Marconi said the change was an improvement from the original proposal. Town Planner, Tom Morgan agreed that two lots was a reasonable compromise, but he thought the curb cut on Nimble Hill Road was in a dangerous location. Attorney Mulligan said he thought the curb cut had been approved by DOT and a curb cut any place else would need another wetlands crossing, whereas this would be minimize the wetlands disturbance. Mr. Morgan clarified that DOT no longer had

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authority over Nimble Hill Road and that the previous property owner had obtained the curb cut permit from the Town.

Mr. Morgan said Nimble Hill Road was no longer a quiet country road and there was more traffic traveling faster. He suggested they might consider other options that would also limit the amount of wetlands crossing, including a Town road or building a shared driveway. Chair Hebert objected to the idea of a Town road for two homes and said he usually was against shared driveways, but he might consider it in this case for safety reasons. He said he didn't think crossing wetlands twice was a good idea and he wasn't sure if they could do a shared drive on Fox Point, but said they would need to establish a shared drive agreement if it was approved. Mr. Richardson said it would not be a shared driveway if they built a private road to Town standards as the developer for the former Beane Estate across the street on Nimble Hill Road had proposed. Board member, Chris Cross agreed that Nimble Hill Road had become busier, but disagreed that it was so busy that it couldn't support a curb cut as other properties had. Mr. Cross said the responsibility was on the landowners to make their own determination if they wanted a private road or shared driveway and the Town would tax the property accordingly. Attorney Mulligan said it would not be a deal killer, but there was no momentum from the developer for a shared or private road.

Board member, Jack Pare said the Board had previously approved the location of the curb cut for the former owner, but traffic had changed since that time. Chair Hebert said the conditions on that approval also included removing trees to improve the line of sight.

Mr. Richardson asked if there would be enough changes that would require re-noticing the plan or if this plan had been vested. Attorney Ratigan said it was the same parcel. He said everyone knew that the number of lots could go down and occasionally up during consideration so he didn't believe a requirement to re-notice would apply. He said the only reason to re-notice would be if there were interruptions from date certain. Chair Hebert said the applicant was presenting an alternate plan in good will and he would continue the hearing. Mr. Richardson said abutter, Alan Wilson who wasn't present because the hearing dates had changed and he thought they should hold off the discussion until the abutters could be present. Chair Hebert said the changes of dates had been posted and it was not uncommon for dates to change to accommodate weather and travel safety. He said the Board owed the applicant the courtesy of sharing their thoughts.

Mr. Cross asked if there would be any guarantee that a future owner would not subdivide further and Attorney Mulligan said there could be a provision in the approval that would be a part of the recorded plan. He said they were trying to get the lots approved first, but it could be a non-starter if they insisted on single-family residences on both lots.

Chair Hebert said the Board was still concerned with wetlands crossings and the water table wasn't very deep in the uplands so they were concerned with that as well. Mr. Cross also expressed concern that they might need extra fill to prevent the wetlands from draining into basements. Chair Hebert wondered if it made any sense to put the wetlands into conservation for mitigation, which might help with the wetlands crossing

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permit from the Department of Environmental Services (DES). Mr. Cross said they would need to get the Conservation Commission aligned with a conservation easement and that could be time consuming. Attorney Mulligan said it didn't matter if the land was in conservation or not because they couldn't build on wetlands anyhow, but they would consider it if the Board was concerned with limiting future development there. Mr. Morgan said the Conservation Commission would meet in the following week and he could ask them.

Chair Hebert continued the hearing to Monday, February 23, 2015. Mr. Morgan said they were scheduled for an appeal before the next Zoning Board of Adjustment (ZBA) on March 2, 2015.

Mr. Richardson returned to his seat.

B) Proposal by Keith Frizzell to construct an industrial building at 34-46 Patterson Lane, Tax Map 19, Lot 6 and Map 13, Lot 11.

Mr. Steve Haight of Haight Engineering said they considered previous comments from the Board, the fire dept and the public when putting together their site plan proposal. Mr. Haight displayed the industrial and residential lots that had been merged and the existing industrial use building and the residential caretaker's building that would be considered an accessory use. Mr. Haight presented their proposal to replace the existing industrial building with eight units that would include office space and high bay storage at the rear.

Mr. Haight said there were two wetlands areas on the industrial side and they would be filing an alteration of terrain permit. He said they were going before the Conservation Commission the following week and then the ZBA for a variance.

Mr. Haight explained that only one principal use building was allowed on a lot and the residential building qualified as an accessory use for the current industrial building, but legal counsel had advised them that the residential building would become the primary use building once they tore the industrial building down so they would need a variance to keep the residential building as an accessory while building the principal use industrial building.

Mr. Haight said they had a letter from a traffic engineer to show their design could handle the largest trucks on the roadways and keep trucks off Patterson Lane when making deliveries. He said they had submitted utility plans, grading and storm water drainage plans with their site plan. He said there would be snow storage on site and a detention pond to treat runoff. He said alteration of terrain requirements and the treatment criteria were incorporated in the design.

Mr. Richardson asked a series of questions regarding the details of the plans and Mr. Morgan reminded the Board that they needed to make a determination if the application was substantially complete before getting into the merits of the application. Chair Hebert added that the Board could look at the engineering plans that had been submitted and ask more questions on the details once they determined if the plan was substantially complete. Mr. Richardson continued to question whether the plans were complete and acceptable and Chair Hebert replied that the Board was not expected to

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accept the proposed plans before determining if the application was substantially complete. Mr. Cross commented that Mr. Richardson had had similar procedural questions before and asked Mr. Morgan if he could supply the Board with a list of dates when the proposal had been presented, the application, plans and all requirements that had been submitted. Mr. Morgan said he would. Mr. Richardson said he thought it sounded as if they were abandoning the lot line and would need to consider Section 7 of the Site Plan Regulations. Mr. Morgan said there was separate statute for voluntary lot mergers. Vice-Chair Marconi asked if they were being premature, considering the applicant had not been before the ZBA. Mr. Morgan said the Board's determination if the plan was substantially complete was not the same as accepting the final proposal that required the variance.

Mr. Haight briefly reviewed the history of their proposal to date, stating that they had submitted three sets of plans, provided wetlands delineation, soils and drainage reports, and a traffic report.

Board member, Ken Latchlaw asked if the detention pond would be in place prior to construction to prevent erosion runoff and Mr. Haight said it would and storm water management protocols would be in place before construction.

Mr. Latchlaw asked if they had talked with the direct abutter for input regarding planting trees as a buffer and Mr. Haight said they did speak with Ms. Ann Beebe of Patterson Lane whether she would want trees running along her parcel or on the Patterson Lane parcel. Mr. Latchlaw said they were proposing eighteen parking spaces and the ordinance required one tree for every seven parking spaces. He asked if that requirement would be used near the building or as part of the buffer for the abutter. Mr. Haight said the trees for the abutter would be separate if she wanted them.

Attorney Steve Roberts suggested the public wait until a plan had been presented so their comments could speak to them. Chair Hebert said he still wanted to hear from the public.

Ms. Beebe said she had plenty of trees on her property and didn't want any more leaves, branches, needles or cones to pick up, but she would not object to trees in front of the building on Patterson Lane. She also said she didn't think the existing berms prevented noise and didn't see that another would do any good. Chair Hebert said he understood her concerns, but said the noise would be louder without a barrier and suggested she consider allowing evergreens to be set back so there would be no maintenance required.

Mr. Paul Reardon of Patterson Lane expressed concern with the wetlands and the slope from Westinghouse. Mr. Haight said they had provided reports from a wetlands and soil scientist. Chair Hebert said the Town would also have their wetlands consultant review the report. Chair Hebert commented that there was some confusion in regards to the high water mark. Mr. Haight said the data on the test pit was not what the wetlands scientist used to determine the wetlands and Chair Hebert said wetlands observations still had some merit.

Inquiries regarding toxic and hazardous waste materials ensued. Mr. Haight said there was a plan to follow for implementation if there was a spill during construction. Mr. Reardon asked what would be stored in the building and Mr. Haight and owner Keith

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Frizzell said whatever their tenants like HVAC or plumbers and other small business contractors might store. Chair Hebert said the applicant wouldn't know who his tenants would be at this point, but every home, business and industry had some kind of chemical even if it was just for mopping the floor. Mr. Reardon said they would need a trained and licensed individual on site to clean up if they were storing hazardous materials and Attorney Roberts and Mr. Haight agreed. Attorney Roberts added that hazardous materials fell under State law anyhow. Mr. Richardson added that hazardous waste was not allowed in the zone and DES would give notice to abutters and the Town if the tenant operated any business that involved hazardous storage or waste disposal. Mr. Haight said the building inspector and the fire chief were the ones that issued the Certificate of Occupancy. Chair Hebert pointed out that they were a land use board that took the laws that were in place into consideration, but the building inspector could shut them down if they violated the law. Attorney Roberts said DES could shut them down as well.

Mr. Richardson commented that the Board had previously discussed a deed restriction to prevent industrial or commercial use on the residential side. He said the industrial building appeared to have moved back on the plan and he wondered what paving materials they were proposing for the surrounding apron. Mr. Haight said the apron was for access as requested by the fire department and would be gravel. Mr. Richardson said there was no legal instrument memorializing the apron to prevent cars from parking there. Mr. Haight said they could put a note on the plan that no parking would be allowed for the fire lane. Chair Hebert said that would also be one of things the Board would go through when doing the site review. Mr. Richardson said there was no reference in the application and he was afraid of encroachment in the residential area. Mr. Norman LeClerc of Patterson Lane shared Mr. Richardson's concern that the industrial use would be extended by allowing the fire lane to support the industrial use. Mr. Pare pointed out that a gravel drive was not considered a structure in the industrial zone.

Mr. Todd Galiano of Patterson Lane asked how much further down Patterson Lane the industrial use could go and Chair Hebert said the zoning line had not changed and would remain the same.

Mr. Richardson said he thought the zoning line issue warranted thorough evaluation to be sure the application met all the requirements and to be sure the industrial use proposal did not extend into the residential zone. Chair Hebert said they could make that a condition of approval and Mr. Richardson agreed. Mr. Haight pointed out that sheet C-3 of their plans already had a note that the proposed gravel driveway was for emergency access. Attorney Roberts added that it was not for their benefit, but for the Town's benefit as requested by the fire department.

Attorney Roberts suggested that the Board accept the plan as substantially complete with the suggested conditions that they receive ZBA approval for the wetlands and signage variances so they could move forward with the discussions. Mr. Haight said the buildings would go away if the ZBA didn't grant the variances. Mr. Richardson said he also wanted a condition that any other use in the residential zone would be prohibited.

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Justin Richardson moved to accept the proposal by Keith Frizzell to construct an industrial building at 34-46 Patterson Lane, Tax Map 19, Lot 6 and Map 13, Lot 11 as substantially complete subject to the condition that the plan shows that other uses will not occur in the residential zone. Jack Pare seconded the motion.

Chair Hebert said he thought the public had a few more questions first, but agreed to the motion for the sake of discussion.

Mr. Richardson withdrew the motion for later and Mr. Pare seconded the withdrawal.

Mr. Reardon expressed concern over the size of trucks that might be going in and out of the business and the three-axle restriction of sign that had been moved down the road from the entrance of Patterson Lane. Mr. Haight said the sign was at the zone line. He added that they were not proposing to use the largest WB67 trucks, but the report from their traffic expert was just saying that Patterson Lane could accommodate that size of truck because residents had brought the question up. Mr. Reardon said the residents brought the question up out of concern over large trucks coming in, especially during icy winter driving conditions.

Ms. Sandra Sweeney said two trucks were trying to leave recently and she had to wait before she could exit Patterson Lane. She said she was told to call the police if the trucks were obstructing traffic. Chair Hebert agreed that they should call the police if warranted, but the applicant was saying the new proposal would allow trucks to drive on and off the site so that would not happen anymore.

Ms. Beebe said the Town Ordinance said they could not start operations before 7 a.m. and asked what time their hours of construction and operation would begin. Mr. Haight said a plumber might need to go in earlier. Chair Hebert advised the applicant that they would need to address the hours of truck deliveries.

Discussion ensued regarding the retention of the residential house. Chair Hebert said he did not get a sense at the last meeting that there was any architecturally redeeming about the house for anyone to save. Mr. Frizzell said he had a barn expert do an evaluation when he purchased the house and he said nothing could be done. He said he could go either way if the Town wanted him to keep it or tear it down. Ms. Beebe said Mr. Morgan had said he wanted to save it because it was old, but a lot of the original work had been changed in the interior. Attorney Roberts said they would appreciate a recommendation because they could eliminate the need for a variance if they could remove the building.

Chair Hebert said he was concerned what might follow if the application didn't go through and suggested they consider putting the residential lot into conservation as a means of preserving green space. He said that would also prevent future development of the residential lot.

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Mr. Richardson moved to accept the proposal by Keith Frizzell to construct an industrial building at 34-46 Patterson Lane, Tax Map 19, Lot 6 and Map 13, Lot 11 as substantially complete subject to the condition that the plan shows that other uses will not occur in the residential zone.

Mr. Morgan suggested that the Board keep the motion simple. Mr. Cross agreed and asked Mr. Richardson why they would need to stipulate conditions that would predetermine what the Board would decide before reviewing the details of the site plan if the Zoning Ordinance already listed what was and was not allowed in each zone. Mr. Richardson said he thought they needed to have something in the motion defining the use because the fire lane apron extended from the Industrial Zone into the Residential Zone. Mr. Cross replied that the plans would be reviewed and that they sometimes changed before they were approved, but there was no reason to require pre-conditions prior to final approval. Chair Hebert agreed that the Board still had the power of approval and they still needed to keep the motion simple. Mr. Richardson said Board members could just vote against the motion if they didn't agree.

Mr. Cross moved to remove condition.

Mr. Richardson asked that the Board vote on the motion on the table. Chair Hebert said he hadn't heard a second and Jack Pare said he had previously seconded Mr. Richardson's motion, not Mr. Cross' motion. Attorney Ratigan said the Board needed to follow the motion that Chair Hebert recognized.

The motion (failed to) pass(ed), 4-2? with Ken Latchlaw?, Mike Marconi?, Jack Pare and Justin Richardson voting in favor and Chris Cross, Chair Hebert opposing.

Mr. Cross moved to accept the proposal by Keith Frizzell to construct an industrial building at 34-46 Patterson Lane, Tax Map 19, Lot 6 and Map 13, Lot 11 as substantially complete. Mike Marconi seconded. The motion passed, 4-1 with Mr. Richardson opposing.

Mr. Richardson said he was surprised that his suggested condition was removed from the motion because he thought there was a universal feeling that they wanted to define what was allowed in the residential zone. Mr. Cross agreed, but it was not the right time and place. Mr. Pare said it was not based on the content, but was procedural and they would address the issue of what was allowed during the site review process.

Attorney Ratigan advised Chair Hebert to have all previous comments put into the minutes for the public hearing and Chair Hebert agreed. Vice-Chair Marconi seconded and all were in favor.

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Chair Hebert opened the public hearing and asked for comments on the residential structure. Ms. Beebe said the house might be 130 or 140 years old and she had gone into the house when Mary Yeton was still alive and their neighbor, Larry Haas who did restoration work also looked at the old doors, but many were gone or had been changed. She said the building had asbestos shingles and no one cared if it stayed or was torn down.

Mr. Cross expressed a dislike of retaining a non-conforming structure. He said he had previously led efforts to save the Isaac Dow house and now he wondered about the pitfalls of a non-compliant building being so close to the road.

Chair Hebert said they had approved caretaker buildings before and wondered if a caretaker would actually take care of the building.

Mr. Richardson said it was not a Town issue to keep or get rid of it. Mr. Latchlaw seconded that sentiment.

Mr. Morgan said he was not happy to hear Ms. Beebe's report that the interior had not been maintained, but he still thought it premature for Town government to pressure a landowner to get rid of the structure. Chair Hebert it should be considered if there was something worth preserving, but it was still up to the landowner to determine whether they wanted to keep it. Vice-Chair Marconi agreed.

Mr. Haight asked if they would submit the plan to Altus Engineering for review. Mr. Morgan said they could do that the following day. Chair Hebert said he also wanted Town wetlands consultant, Mark West to review the wetlands. He said they would also need to escrow \$5,000 to cover legal costs and the Town consultants' fees.

Chair Hebert continued the hearing to March 9, 2015 after they met with the ZBA on March 2, 2015.

Other Business: Amendment to Master Plan

Attorney Ratigan said he and Mr. Morgan would work further on the amendment.

Mike Marconi moved to send the Master Plan amendment to public hearing. Mr. Pare seconded and all were in favor.

1) Public Hearings:

C) Proposal by **Northeast Medical Properties** Inc for a 2-lot subdivision of the Beane Farm property at **2299 Woodbury Avenue, Tax Map 19, Lot 9.**

Mr. Corey Caldwell with MSM Civil Engineering presented a plan before the Board. Mr. Morgan said the plan was brought in two weeks ago and he didn't see that anything was missing.

Mr. Latchlaw asked for clarification on determining if the application was substantially complete prior to the public hearing. Mr. Morgan said RSA 676:4 required that abutters be notified before the Board determined if an application was substantially complete and then the proposal could be moved to a public hearing. He said the statute

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required that abutters also be notified prior to the public hearing, but he had been sending the notice for the initial application and the public hearing notice together to reduce the number of mailings. Mr. Morgan said the law also gives the option for preliminary consideration or formal consideration.

Vice-Chair Marconi said receiving a checklist prior to consideration would move the process along quicker.

Chair Hebert said Mr. Morgan could make a recommendation on whether the application was substantially complete. He said Mr. Morgan was only one person doing everything and that was why he would also like a technical advisory committee to review proposals as well.

Mr. Caldwell said the application was for a 2-lot subdivision in the Office Zone currently owned by Northeast Medical Properties with frontage on Woodbury Avenue, Shattuck Way and Patterson Lane. He said there were several easements on the property including a conservation easement, of which one-third could not be built upon. He added that there was an underground electric line easement that couldn't be built upon either. He said DOT also held a slope easement and there was a landscape easement, which would expire in 2025 or one year after the construction of Woodbury Avenue was complete. He said the purpose of the site easement was for the line of site at the exit.

Mr. Caldwell said they were proposing to use frontage on Shattuck Way for the 2.5-acre lot and Patterson Lane for the lot with the existing medical building. He said the conservation easement would use Woodbury Avenue for frontage.

Mr. Richardson asked if there was a high-pressure gas line on the Maritime and Northeast easement. Mr. Caldwell said it was a cathartic electric easement. Chair Hebert asked Mr. Caldwell to provide the Board with more information.

Mr. Richardson noted that the Isaac Dow sewer line was bisecting the property so the buildable lot wasn't as large as it appeared. Chair Hebert said they would have to move the line or it could go down River Road.

Discussion ensued regarding ease of access on the proposed curb cuts. Mr. Morgan said he checked elevations and recommended that Board members do a site walk to consider the truck traffic and the curb cut on Shattuck Way, which was on the side of a hill.

Mr. Cross asked if the owners ever considered aligning their entrance with the Wal-Mart entrance and a traffic light. Mr. Caldwell said DOT controlled the right of way access with the median strip. Chair Hebert said DOT would be deeding Woodbury Avenue to the Town soon. Mr. Caldwell said a light wouldn't be warranted with the current number of trips a day, but perhaps it might be later. Mr. Latchlaw wondered if a traffic light might cause traffic to back down to the exit on the Spaulding similar to what occurs at Exit 9. Mr. Cross said that might be the reason why DOT wouldn't consider it when it was their road.

Discussion ensued whether the private road could be considered a shared drive or not. Chair Hebert said the road around the mall was privately owned, but it was open for public use and they would need to address that further. Mr. Caldwell said their primary access was through Woodbury Avenue and it was always their intent to keep

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the driveway private to be used as a secondary means of access. He said it would be no different than a residential driveway that patrons could use, but it was not the same as a public right of way with any Town involvement.

Mr. Morgan said they were getting wrapped up on the merits of the proposal again before deciding if the application was substantially complete.

Mike Marconi moved that the proposal by Northeast Medical Properties Inc for a 2-lot subdivision of the Beane Farm property at 2299 Woodbury Avenue, Tax Map 19, Lot 9 was substantially complete and Ken Latchlaw seconded the motion.

Mr. Richardson said he didn't agree because the applicant hadn't provided enough information on the plan. Mr. Morgan said the subdivision plans were submitted two weeks prior and nothing else was required.

Vice-Chair Marconi said using the private road would make the property less marketable and they would need a curb cut. Chair Hebert said he understood, but he couldn't agree with it being on Shattuck Way. He asked if there were any potential buyers and Mr. Caldwell said they didn't yet, but they could only support a small operation. Chair Hebert said they didn't know who might develop the property and how much traffic would be on River Road, but they could still move on to a public hearing even though it was a bone of contention. He said would be against a curb cut on Shattuck Way and would support going for a variance. Mr. Morgan said the access issue was tricky and needed further consideration.

The motion passed 4-1 with Mr. Richardson opposing.

Chair Hebert asked Board members to work with Mr. Morgan if they had any questions for the application. He said they needed to consider the right in and right out curb cut on Woodbury Avenue because it would lead onto the Spaulding Turnpike and the new traffic circle at Pease.

Chair Hebert continued the public hearing to March 9, 2015.

Discussions:

Mr. Latchlaw said he would like to see the size of the wetlands buffers listed on page Z32 of the Wetland Buffer Provisions go from 25' to 50' around wetlands. He said other communities were making similar changes and it would allow for a more gradual transition and more protection for wetlands because he thought 25' was insufficient. Mr. Richardson said there already was a 50' structure setback. Mr. Morgan said it had been 0' and was increased to 25'. Mr. Cross expressed concern that would limit roads going through lots. He said everyone wants to keep the town rural until they want to subdivide to pass property on to their descendants. Mr. Richardson said there were almost no descendant transfers anymore. Chair Hebert said they couldn't act on any new amendments until September but they could discuss it further.

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Adjournment: *Vice-Chair Marconi motioned to adjourn, and Mr. Pare seconded. All were in favor and the meeting adjourned at 9:32 p.m.*

Next Meeting: Monday, February 23, 2015

**Respectfully
Submitted by:** Jane K. Kendall, Recording Secretary