

Planning and Zoning Commission City of Derby

Theodore J. Estwan, Jr., Chairman

Steven A. Jalowiec

David J. Rogers

David Barboza II

Richard A. Stankye

Eric D. Lindgren

Glenn H. Stevens

David L. Savo (Alternate)

Joseph Gruttadauria III (Alternate)

Maryanne DeTullio, Clerk

A meeting of the Planning and Zoning Commission of the City of Derby was held on Tuesday, February 21, 2006 at 7:00 p.m. in the Aldermanic Chambers, New City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 7:05 p.m. by Chairman Ted Estwan. Present were Ted Estwan, Glenn Stevens, David Barboza, , Steven Jalowiec, Eric Lindgren, David Savo and Joseph Gruttadauria. Also present were Atty. Joseph Coppola, Mike Joyce, Milone & MacBroom and Maryanne DeTullio, Clerk.

Public Portion

Rodger Birtwell, 8 Third Street asked about the work that is being in the downtown area with the power vaults and Mr. Joyce stated that the Department of Public Works issues road opening permits.

Approval of Minutes:

A motion to approve the minutes of 01/17/06 minutes was made by Mr. Stevens, seconded by Mr. Savo and carried unanimously with Mr. Lindgren abstaining.

Acceptance of Applications:

Mr. Estwan stated that an application for CDD approval was received from Joe Mylen, Sr. and Third & Elizabeth Street, LLC for 49 Third Street. The use will be for retail/convenience store. A motion to accept the application for the March meeting was made by Mr. Lindgren, seconded by Mr. Jalowiec and carried unanimously.

Mr. Estwan stated that an application for site plan approval was received from Eric Lindgren for 750 Hawthorne Avenue. The use will be for storage. A motion was made by Mr. Jalowiec to accept the application for the March meeting. The motion was seconded by Mr. Stevens and carried unanimously with Mr. Lindgren abstaining.

Mr. Estwan stated that an application for text change was received from Mangione Properties, LLC. A motion to accept the application and schedule for public hearing at the April meeting was made by Mr. Jalowiec, seconded by Mr. Savo and carried unanimously.

Public Hearing

(a) Application from Clark Development LLC for CDD approval for corner of Main and Caroline Streets for commercial use with supporting offices.

Mr. Philip Clark was present and stated that the City Engineer had some remaining issues that needed to be clarified. One of these had to do with the proposed lighting and the three carriage lights on Caroline Street will be deleted. Mr. Clark stated that as far as the parking issue they redid the calculations and found that 64 spaces will be required. He stated that since the regulations allow for parking at a municipal lot if it is within 300 feet of a structure they are proposing to use the parking there. He asked if the question was the capacity of that municipal lot. Mr. Joyce stated that part of the issue is the capacity but the new calculations were faxed to him but he did not know if the Commission had those calculations. Mr. Clark stated that the calculations include a 20% reduction is given by the Commission.

Carl Jacobacci presented photographs of the municipal lot. He stated that they were told that various businesses have leases for use of spaces in that lot. He stated that he did some research and found that the lease with Life Touch Studios is unsigned and the lease can be terminated with 60 days notice. He also stated that there is no lease with Housatonic Lumber Company but they have lumber stored on the lot which is taking up a lot of spaces. He stated that the City could possibly work with Housatonic Lumber to remove and relocate that lumber to free up the spaces there. He also stated that there is another lot near Route 8 at the old railroad station that could be used which has approximately 40 spaces available. He stated that most of the time that lot is not utilized and it is within 300 feet of LifeTouch. He stated that two-thirds of their building will be office space and there will not be a large retail use. Mr. Joyce stated that the parking has been an issue since the onset of this application and these things are just being brought to the attention of the Commission at this meeting. There are things that need to be worked out regarding parking in that area. Mr. Estwan stated that the Commission does not have a copy of the calculations and the parking is a huge issue with this application. He also stated that what is being proposed needs to be thoroughly reviewed. Atty. Coppola stated that they are offering a solution that is only speculative. Mr. Jalowiec stated that if it is an unsigned lease he feels that it is not legal and while the Commission has not received the parking calculations we need to find out what is going on there. The lumber needs to be looked into. There has always been a parking issue in downtown and we need to resolve it once and for all. Mr. Stevens asked about the other lot that was referred to and Mr. Jacobacci stated that he understands that the City has the ability to use that lot. Mr. Joyce stated that all information needs to be

reviewed and submitted in support of this application. The Commission has to vote on this application tonight because of time restrictions. He also stated that the application could be withdrawn and resubmitted with additional information and develop a well defined plan for the parking.

Mr. Estwan asked if they had a pre-application meeting with the city engineer or building official to get input before the formal application process. Mr. Jacobacci stated that they met with the building official and went through the plans. He stated that from the beginning it was their intent to use the municipal lot because of the proximity to the proposed building. Mr. Estwan stated that it seems as if all the information and discussion is going in the right direction but he did not feel comfortable making a decision at this point because all data has not been properly submitted. He stated that they could withdraw and meet before the next meeting to informally discuss the matter. He also stated that the parking calculations are important and need to be submitted and reviewed. Mr. Clark stated that they were submitted to Mr. Joyce and they thought ti would have been forwarded to the Commission.

Ed Leavy, Engineer stated that the calculations were based on a 20% reduction. He also stated that Mr. Joyce wanted to have the storage area included even though it is just storage and they were included. He also stated that the city may have taken away the use of the municipal lot from other businesses by its lease with one particular business.

Mr. Estwan stated that they are asking to have the city allow them to use 60 spaces in that lot for their business. Mr. Joyce stated that he was concerned with setting a precedent with granting use of the municipal lot to this one business for so many spaces.

Mr. Estwan asked if there was anyone from the public wishing to speak.

Dan Waleski, 21 Elm Street stated that this is an unique situation. He stated that there are other businesses in the are that could use that lot and they should be included in the computations. The entire area should be considered.

Mr. Jalowiec asked if a response was received back from the Redevelopment Agency and Mr. Estwan stated that the last scheduled meeting was canceled. Mr. Jalowiec asked if the applicant was approached by the preferred developed and it was indicated he was not. Mr. Lindgren stated that he felt that this is a beautiful building and need to move forward to do what we have to do. Mr. Estwan read a letter dated 1/23/06 sent to Atty. Salvatore informing her to contact the Redevelopment Agency and Corporation Counsel regarding some questions raised at the January meeting. Atty. Coppola stated that he was never contacted.

Rodger Birtwell, 8 Third Street stated that the redevelopment project included a 1500

able to use it. Mr. Estwan stated that he did not know if that was possible.

Andy Baklik, Roosevelt Drive stated that the parking issue needs to be addressed and the Commission should make the recommendation that someone look into the lumber being stored there and the other lease. The municipal lot could be used in a better way. He felt that this was a good plan for downtown Derby.

Al Misiewicz, 171 Derby Avenue stated that he liked the plan and felt that someone is trying to do something for downtown.

Tom Baklik, property owner in Derby stated that the plan shows a lot of merit and should be considered. He felt that the Commission should do something to help them out.

Mr. Joyce stated that there is information that has only been submitted this evening and if the hearing is closed the public would not have a chance to review and comment on those submittals. Mr. Estwan asked if it would be their intent to withdraw their application. Mr. Clark stated that the parking issue is the main item and they really don't need that many spaces. He felt that there was an issue with the leases and stated that they will not withdraw.

Leo Moscato, 34 Lewis Street asked how the 300 feet is measured and Mr. Joyce referred to Section 195-43, sub-section b4.

A motion to close the public hearing was made by Mr. Lindgren, seconded by Mr. Jalowiec and carried unanimously.

A motion to add this item to the agenda as New Business Item (a) was made by Mr. Lindgren, seconded by Mr. Jalowiec and carried unanimously.

(b) Application from A.J. Grasso/Prestige Builders LLC for 8 lot subdivision - 170-178 David Humphreys Road - R-4 Zone.

A.J. Grasso stated that he submitted a formal request to have the sidewalks waived and also submitted a draft of a homeowners storm water management agreement which will be referred to corporation counsel. Mr. Joyce asked about the planting schedule for the buffer along Sunset Drive and in particular Lot 8. Mr. Grasso stated that the garage on that house is situated so that it is not that close. He would also be willing to have a 16' buffer there.

Mr. Estwan asked if there was anyone from the public wishing to speak on the application.

and egress is good.

John Dorosh, 89 Hawthorne Avenue asked what guarantee there would be that it will remain as a hotel and who would have the responsible to make sure that it did. He wanted to make sure that it does not become a liability in the future. Atty. Rizio stated conditions could be placed on the approval and if any changes were made a cease and desist could be issued. He also stated that the ZEO would be responsible to monitor it. Mr. Dorosh asked if the developer would be agreeable to any deed restrictions and Atty. Rizio stated that he was not sure that there could be a deed restriction but they would agree to any reasonable conditions.

Jim Audet, 126 Park Avenue stated that it is an eyesore but he was concerned about traffic in the area and this will compound it. He also asked if the traffic study included service vehicles. He was concerned about the possible effect on property values. Atty. Rizio stated that service vehicles were taken into consideration and they feel it will be a reduction in traffic compared to an industrial use.

Diane Cannon, 142 Caroline Street felt that this was a convenient location for corporate use in the area and was a good idea.

Ray Violette, 71 Park Avenue asked about fire access.

Daryl Cotter felt that this would be a big impact on everyone in the area.

Jack Moore, 25 A Street asked about a deed restriction so that it cannot be changed into anything else.

Bill Purcell, President Valley Chamber of Commerce stated that there is general support from the business community. He stated that a meeting was held with business owners in the area and they were in favor of it.

Kristin Dorosh, 89 Hawthorne Avenue stated that the developer did not invite anyone from the neighborhood to that meeting and the people are concerned with the project. She was concerned that no one was invited to the meeting. Atty. Rizio stated that the response that they received to their other proposal was very vehemently opposed and they did not feel that they could overcome the neighbors feelings with a meeting and brought it to the public hearing.

Tom Baklik, property owner in Derby stated that this will have a beneficial impact on taxes to all taxpayers in Derby and it was a good project that should be approved.

Carol Senfield, 238 Hawthorne Avenue stated that she was concerned with the two bedroom suites and would feel more comfortable if they were only one bedroom suites. She was also concerned with what could happen in the future. She also asked about deed restrictions. Mr. Estwan stated that there are conditions that can be placed on the

project.

Rosemarie Ward, A Street had traffic concerns and felt that they will have to open up the curb cuts in the future.

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Dan Waleski, 21 Elm Street stated that this project must be in harmony with the neighborhood in order to be considered.

Andy Baklik, Roosevelt Drive stated that the business owners in the area have a stake in what happens in this area and they are in favor of it.

Mr. Joyce asked that the applicant submit occupancy records and parking availability from other hotels to the Commission. He also asked that vacancy rates and lighting intensity be submitted. He asked if there would be any unit specifically for the manager and Atty. Rizio stated that there would not be; just an office area.

A motion to continue the public hearing to the March 21, 2006 meeting was made by Mr. Jalowiec, seconded by Mr. Stevens and carried unanimously.

(c) Application from Automotive Restoration, Inc. for special exception for 67 Minerva Street for automotive use - CDD Zone.

Michael O'Bymachow and Kent Bain were present and the certified mailing cards were presented. This is a special exception application for automotive restoration work. They will be leasing a vacant building and will need 32 spaces, which are located on site. Mr. Joyce stated that he has not reviewed the application but will have a review letter prepared shortly. He asked that the site details for plantings and replacement fencing be furnished. Mr. O'Bymachow stated that he will do that and stated that there is an existing chainlink fence around the property. They will add some screening to the site with plantings. Mr. Estwan read the letter from the Fire Marshal which stated that he had no problem with fire accessibility but there were Connecticut State Fire Code violations in the building. Mr. O'Bymachow also stated that the junk cars will be removed and there will be no repair work done on the site.

Mr. Estwan asked for anyone from the public wishing to speak on the application.

Frances Tracz, 152 Caroline Street stated that in the past there was a problem with cars being parked on the street and taking away spaces from residents. Mr. Bain stated that the previous owners used the entire parcel and they will only be doing autobody work. He also stated that they will keep all vehicles on the lot.

Yvonne Kusley, 178 Caroline Street stated that she was concerned with safety since they would test drive the cars on the street.

Diane Cannon, 142 Caroline Street asked how her home will be effected as it is right next door to this site. Mr. O'Bymachow stated that they will only be utilizing a portion of the building not near her home.

Rodger Birtwell, 8 Third Street asked about the driveway out to Third Street and Mr. O'Bymachow stated that it will be blocked off. Mr. Birtwell stated that Caroline Street was to be the main thoroughfare for the redevelopment project and he did not feel that this would be appropriate for this neighborhood.

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Barbara Full, 94-96 Caroline Street stated that the neighbors want to upgrade this area and she wanted to know who will enforce the use. She was also concerned with noise and pollution.

Dan Waleski, 21 Elm Street stated that it does not see that this project will be the best for this neighborhood and he had some reservations in regard to the application.

Mr. Savo asked if it was classic car restoration and Mr. Bain stated that it was and there are generally 3 to 4 cars at one time and no cars are left outside.

Mr. Jalowiec asked about the parking lot and if they do not need the entire lot perhaps they could offer some spaces to the neighbors which might be an improvement to the parking situation there.

Leo Moscato, 34 Lewis Street stated that this is in the middle of the CDD zone and the Commission should do what is good for Derby and this might not be the best for this location.

Diane Cannon, Caroline Street felt that it was better to have it cleaned up than left abandoned. She also felt that it might be a good idea to possibly rent out some of the parking spaces in the lot.

Yvonne Kusley, Caroline Street stated that there are a lot of children in the area and they are trying to get the neighborhood cleaned up.

Rodger Birtwell, 8 Third Street felt it was detrimental to the neighborhood. Mr. Bain stated that the property will be cleaned up and fenced in. He stated that if they can help with the parking situation they will try and do so.

A motion to continue to the public hearing to the March 21, 2006 meeting was made by Mr. Stevens, seconded by Mr. Gruttadauria and carried unanimously.

(e) Application from City of Derby Planning & Zoning Commission for zone text change and zone map change for New Haven Avenue adjacent to and south of Gilbert Street from R-5 to B-2 Zone.

Michael Joyce representing the City of Derby stated that this is a change to Lot 108, 108A and 109 located at Gilbert Street and Route 34. They are located adjacent to the B-2 Zone and with the change it reduce non-conforming issues on those properties.

Mr. Estwan asked for anyone from the public wishing to speak on the application.

Dan Waleski, 21 Elm Street asked that the application be continued in order to give the

public opportunity to look into the changes. Mr. Estwan stated that the uses on these properties have been in place and they are the only commercial uses in the zone. It will not effect any residential units.

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Regina Cairone, 16 Gilbert Street owns property which was originally commercial and asked if this would return it to what it had been zoned. Mr. Joyce stated that it would.

A motion to close the public hearing was made by Mr. Lindgren, seconded by Mr. Jalowiec and carried unanimously.

A motion to add to the agenda under New Business Item c was made by Mr. Lindgren, seconded by Mr. Jalowiec and carried unanimously.

Old Business:

(a) Update on Redevelopment Zones - Mr. Estwan stated that the last meeting was cancelled.

New Business:

(a) Application from Clark Development LLC for CDD approval for corner of Main and Caroline Streets for commercial use with supporting offices.

Mr. Estwan stated that he had some concerns with this development particularly parking concerns. The applicant was asked to withdraw and they indicated that they have no desire to do so. He felt that it could not be approved as there are too many variables and a lot were brought up during the public hearing. He also stated that since the mandatory action date is 2/25/06 a vote needs to be taken. He stated that he would be inclined to deny without prejudice and waive any application fees and anything else since it would be a re-application. He felt that it was a good plan and he would like to see them come back. He stated that they raised some issues with regard to the municipal parking lot that need to be addressed. Mr. Jalowiec was concerned with setting a precedent within the CDD zone with parking. There are issues which need to be looked into.

Atty. Coppola stated that they filed the application without a defined parking plan. The applicant needs to address the parking in the beginning or at some point and they should have had a substantive plan. At this point we have an applicant who wants to use the municipal lot, which has issues that need to be resolved. Mr. Joyce stated that it is the applicant's responsibility to supply the exact parking requirements to the Commission. Atty. Coppola stated that they are indicating that they need 64 spaces which is a lot of parking and we need to know where it will be.

Mr. Estwan moved that following review of the plans and supporting documentation submitted in support of this application, the Derby Planning & Zoning Commission hereby denies without prejudice the application for site plan and use approval for the proposed retail/office building proposed on the corner of Main Street and Caroline

Street, property shown on Derby Assessor's Map 8-5, Lot 185 (hereinafter the "Application") and based upon the following documentation:

1. Statement of Use.

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2. Site Plans - "Proposed Building - 148-156 Main Street, Derby, CT" prepared for Clark Development, LLC and including the following sheets:

- a. Cover Sheet.
- b. Property survey - Land now or formerly Alphonse Ippolito, prepared by Mark L. Ford, L.S., dated Feb. 23, 2005, drawn at a scale of 1"=20'.
- c. Existing Conditions Plan - Sheet 3 of 5 - Prepared for Clark Development, LLC, prepared by Washington Cabezas, Jr., dated October 6, 2005 and revised December 19, 2005 drawn at a scale of 1"=10'.
- d. Site Plan - Sheet 4 of 5 - Prepared for Clark Development, LLC, prepared by Edward C. Leavy, P.E. dated October 10, 2005 and revised December 19, 2005, drawn at a scale of 1"=10'.
- e. Details - Sheet 5 of 5 - Prepared for Clark Development, LLC, prepared by Edward C. Leavy, P.E. dated December 19, 2005, drawn at a scale of 1"=10'.
- f. Sheet A0 - Floor Plans - Clark Development, LLC prepared by Claris Construction, Inc., dated 12/13/05, drawn at a scale of 1/8"=1'.
- g. Sheet A1 - Floor Plans - New Building for: Clark Development, LLC, prepared by Claris Construction, Inc., dated 12/13/05 drawn at a scale of 1/8"=1'.
- h. Sheet A2 - Elevations - New Building for Clark Development, LLC prepared by Claris Construction, Inc. dated 12/13/05 drawn at a scale of 1/8"=1; or as noted.

3. Drainage Report - 148-156 Main Street, prepared by Edward C. Leavy, P.E.

4. Site Traffic Generation Evaluation - Multi-Use Development, Main Street (State Route 34), Derby, Connecticut, prepared by Frederick P. Clark Associates, Inc. dated December 12, 2005.

5. Construction Sequence - Project 128-156 Main St. Derby, CT - Submitted December 20, 2005.

6. Comment and Response letter, prepared by Edward C. Leavy, P.E. dated December 20, 2005.

7. Correspondence from Milone & MacBroom, Inc. dated November 10, 2005.

8. Correspondence from Milone & MacBroom, Inc. dated February 15, 2005.

For the following reasons:

1. The Commission has exhausted the statutory time requirements and must close the public hearing and render a decision on this application before February 25, 2006. The applicant has consented to extensions of the statutory time requirements in order to respond to comments offered by Commission members and staff. The applicant submitted new information and/or revised information on February 21, 2006 which the Commission will not have time to review in its fullest, particularly the parking information that was brought up at tonight's public hearing.

2. Based upon the Commission's review of the Application materials and discussions during the Commission meetings and public hearings held on December 20, 2005,

January 17, 2006 and February 21, 2006, the Commission finds that the proposed development does not comply with the objectives established in the Derby Zoning Regulations for uses in the Center Design Development District (CDD) zone, which are intended to:

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- a. "Protect and enhance development downtown against congestion, offensive noise, hazards or objectionable influences by restricting the types of development, particularly 195-20-A(4) specifically parking.
- b. "Provide appropriate space to satisfy the needs of modern local retail development, including the need for off-street parking and loading facilities, and encourage local retail development to the mutual advantage of both consumers and merchants." 195-20-A(5).
- c."Promote the most desirable use of land and direction of building development in accord with a well-considered plan, to promote stability of commercial development, to strengthen the economic base, to protect the character of downtown and its particular suitability for specific uses, to conserve the value of land and buildings, and to protect the community's tax revenues." 195-20-A-(6)

In addition, the applicant has failed to submit documentation verifying:

- a. Also, the location, size, design and scale of the proposed use, building or structure, as well as the nature and intensity of operations involved in or conducted in connection therewith, will be in general harmony with the character of the surrounding neighborhood and will not be hazardous or otherwise detrimental to the appropriate and orderly development or use of any adjacent land, building or structure. 195-31-l
- b. That the municipal parking lot south of Hallock Court can accommodate the parking which the proposed building will create.

As referenced in correspondence from Milone & MacBroom, Inc. dated November 10, 2005 and February 15, 2006 and discussed during the public hearing the proposed site improvements failed to meet certain requirements such as:

- a. The site plan does not show that the loading space, maneuvering space and all vehicles using the loading space will be contained within the lot.

The motion was seconded by Mr. Barboza. Mr. Lindgren felt that it should be added that the fees will be waived. Mr. Estwan amended the motion to include the waiving of any re-application fees. Mr. Barboza seconded the amendment and the amended motion was carried unanimously.

(b) Application from A.J. Grasso/Prestige Builders LLC for 8 Lot Subdivision - 170-178 David Humphreys Road - R-4 Zone.

Mr. Estwan made the following motion which was seconded by Mr. Jalowiec. Mr. Lindgren moved to waive the reading of the motion, which was seconded by Mr. Jalowiec and carried unanimously.

With the following stipulated conditions:

1. This approval includes a waiver of the sidewalk requirements in Section 3.9 of the subdivision regulations.

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2. The Commission has determined that the scope of the proposed project and the conditions associated with it justify a variation of the spacing requirements between intersections in accordance with Section 3.6.12a of the Subdivision Regulations.

3. The subdivision map shall be revised to include a note stating that parcel of land along the western side of the development labeled as a "buffer strip" is "not a building lot". Ownership and maintenance of the area shall be assigned to the same entity responsible for the maintenance of the storm drainage system (i.e. Homeowner's Association).

4. Prior to the commencement of construction activities, a bond in an amount and form acceptable to Corporation Counsel and the City Engineer shall be posted for the sediment and erosion control measures associated with this project, the construction of the Subdivision roadway, including all drainage and sanitary sewer improvements and the work associated with the installation of utilities in David Humphrey's Road.

5. Prior to endorsement by the Chairman and conveyance of any lots from the Owner, the following items shall be completed.

i. Per Section 2.5.6 of the Derby Subdivision regulations, prepare the proper documentation for review and approval by the City Engineer and Corporation Counsel for the Storm Drainage Maintenance Agreement. Also, prior to the conveyance of any lots, the applicant shall create a successor entity composed of all the owners of lots in the subdivision. This entity shall be responsible to the City of Derby under the terms of the Agreement as the successor to the applicant. The applicant shall submit the appropriate documents to Corporation Counsel for review.

ii. Provide evidence (Volume & Page) that the approved easements, agreements and this approval have been properly filed on the Derby Land Records.

6. Prior to any construction activities covered by this approval, the applicant shall have the following items both completed by a qualified party and verified as complete by the City Engineer and/or Zoning Enforcement Officer.

i. Prior to any clearing or earthmoving activities, the accurate staking and/or flagging of all clearing limits shall be performed and approved by the City.

ii. The proper installation of all sediment and erosion control measures indicated on the above referenced plans. These measures shall remain in place following completion of the project until the site is properly stabilized unless otherwise directed by the City.

7. Any significant changes or modifications to the plans presented will require subsequent review and approval by the Planning & Zoning Commission.

The motion was carried unanimously.

(c) Application from City of Derby Planning & Zoning Commission for zone text changes and zone map changes for New Haven Avenue adjacent to and south of Gilbert Street from R-5 to B-2 Zone.

A motion to approve the zone text change and zone map changes for New Haven Avenue adjacent to and south of Gilbert Street from R-5 to B-2 Zone effective March 15, 2006 was made by Mr. Estwan, seconded by Mr. Jalowiec and carried unanimously.

Old Business:

(a) Update on Redevelopment Zones - Mr. Estwan stated that the last meeting was cancelled.

A motion to pay the bills from Milone and MacBroom was made by Mr. Stevens, seconded by Mr. Lindgren and carried unanimously.

A motion to adjourn was made by Mr. Stevens, seconded by Mr. Lindgren and carried unanimously. The meeting was adjourned at 11:00 p.m.

Attest:

Maryanne DeTullio