

**Town of Mound Desert Planning Board
Planning Board Meeting Minutes
Meeting Room, Town Hall
6:00 PM, February 14, 2018**

Public Present

Mike Gillis, Noel Musson, Roger St. Amand, Jerry Miller, Kathy Miller, Robert Putnam, Katrina Carter, Irene Driscoll

Board Members Present

Chairman Bill Hanley, Meredith Randolph, Joanne Eaton, Lili Andrews

Also present were CEO Kimberly Keene and Recording Secretary Heidi Smallidge.

I. Call to Order

Chairman Hanley called the meeting to order at 6:00 PM. Board Members present were noted. All members were confirmed as voting members.

II. Approval of Minutes

There were no Minutes presented for approval.

III. Public Hearing:

A.) Land Use Zoning Ordinance, Official Land Use Map and Public Road Acceptance Ordinance Amendments for the 2018 Town Meeting.

CEO Keene confirmed adequate public notice.

Noel Musson from The Musson Group presented the list of proposed ordinance amendments identified for the Annual Town Meeting:

- **Conditional Use Permit Amendment:** This will amend a provision in the ordinance addressing amendments to Conditional Use Permits. This will allow the CEO to authorize minor changes. Otherwise an amendment to the Conditional Use Permit will have to be applied for.

It was reiterated the CEO would only make minor amendments. Mr. Musson suggested as examples - if an approved color was unavailable, the CEO would be able to approve another, similar color. If a building is revised to be smaller, the CEO could approve that amendment. CEO Keene felt the wording would make the Board's job clearer.

1 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, RECOMMENDTION OF
2 APPROVAL FOR THE PROPOSED ORDINANCE AMENDMENT IDENTIFIED AS ITEM
3 A IN NOEL MUSSON’S EMAIL OF FEBRUARY 9, 2018, AS PRESENTED. MOTION
4 APPROVED 4-0.

- 5
6 - **Standards for Animal Husbandry 2:** This refers to domesticated chickens. This
7 will make the standards that currently apply only to Village Commercial District
8 and Shoreland Commercial District applicable in all zones.

9
10 CEO Keene said it wasn’t a big problem, but she has received complaints.

11
12 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, RECOMMENDATION OF
13 APPROVAL FOR THE PROPOSED ORDINANCE AMENDMENT IDENTIFIED AS ITEM B
14 IN NOEL MUSSON’S EMAIL OF FEBRUARY 9, 2018, AS PRESENTED. MOTION
15 APPROVED 4-0.

- 16
17 - **CEO Approval of Dwellings:** This is a proposed change to the Land Use
18 Ordinance that will allow the CEO to approve one- and two-family dwellings and
19 accessory structures in the Village Commercial and the Shoreland Village
20 Commercial Districts. The CEO already approves these in other districts.

21
22 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, RECOMMENDATION OF
23 APPROVAL FOR THE PROPOSED ORDINANCE AMENDMENT IDENTIFIED AS ITEM C
24 IN NOEL MUSSON’S EMAIL OF FEBRUARY 9, 2018, AS PRESENTED. MOTION
25 APPROVED 4-0.

- 26
27 - **Rooming Houses:** Mr. Musson noted there are structures in Town that can be
28 deemed Rooming Houses. There is no use in the LUZO that accurately reflects
29 this. Rooming Houses are categorized as multiple rooms around a centrally
30 located kitchen and rented out for longer intervals than the normal transient
31 stays. This is the definition the State uses for Rooming Houses. Additionally,
32 standards have been included to regulate Rooming Houses; kitchens in rooms
33 will not be allowed, there must be a bathroom on each floor, rooms must be a
34 minimum size of 70 square feet, and limits on the number of Rooming Houses
35 per lot.

36
37 Regarding size, the wording is such to deter, for example, a closet from being
38 converted into a room. Minimum standards are in place, but not maximum. A
39 room can’t be any smaller than 70 square feet, but it may be larger. A Rooming

1 House is defined as housing guests no less than thirty days. A building housing
2 guests merely for overnights would be a hotel.

3
4 The number of bathrooms was discussed. Currently the Ordinance will read that
5 up to 16 people will share a single bathroom. Mr. Musson reminded the Board
6 that this was a starting point. If the number of bathrooms proves to be an issue,
7 then it can be addressed. Chairman Hanley believed the State Plumbing Code
8 would offer an opinion on this issue. They'll require usage based on the number
9 of occupants, their sex, and other factors. Chairman Hanley felt the safety issues
10 will require the State Fire Marshall's opinion as well. Rooming Houses will be
11 required to comply with State codes.

12
13 Mr. Musson felt that Rooming Houses will be a growing trend. This amendment
14 is a first step.

15
16 Ms. Randolph asked about the wording "No bathrooms will be permitted in any
17 sleeping room." She asked for clarification; the wording was confusing. Mr.
18 Musson noted that a common bathroom is the only allowed bathroom. A
19 bathroom, with its own walls and doors, is therefore considered separate from a
20 bedroom. Mr. Musson felt this wording could be improved and he would work
21 on it but it couldn't be changed at this point. Sinks would not be allowed in
22 rooms. Sinks, bathroom facilities, and cooking apparatus in a room can suggest a
23 room is an apartment.

24
25 Existing Rooming Houses will only have to retro-fit to meet the code if they want
26 to expand. They would be required to comply with State law. CEO Keene stated
27 there would be no annual inspections. Inspections would be on a complaint-
28 driven basis. Mr. Musson noted that a licensing process would include more
29 enforcement. Due to time constraints, there was not time to fully discuss or
30 include the potential for licensing in these proposed amendments.

31
32 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, RECOMMENDATION OF
33 APPROVAL FOR THE PROPOSED ORDINANCE AMENDMENT IDENTIFIED AS ITEM
34 D IN NOEL MUSSON'S EMAIL OF FEBRUARY 9, 2018, AS PRESENTED. MOTION
35 APPROVED 4-0.

- 36
37 - **Map 9, Lot 120-10-1:** This amends Map 9, Lot 120-10-1, making it a lot requiring
38 a 100-foot setback. This lot was created from a lot with the same setback.
39

1 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, RECOMMENDATION OF
2 APPROVAL FOR THE PROPOSED ORDINANCE AMENDMENT IDENTIFIED AS ITEM E
3 IN NOEL MUSSON'S EMAIL OF FEBRUARY 9, 2018, AS PRESENTED. MOTION
4 APPROVED 4-0.

- 5
6 - **Shoreland Zoning Consistency:** These amendments are designed to keep the
7 Town's Shoreland Zoning Ordinance in line with the State Shoreland Zoning
8 Ordinance. This includes a provision for Hazard Trees, giving the responsibility of
9 commercial timber harvesting permitting to the State, amending maximum lot
10 coverage to 20%, changing shore frontage from 250 feet to 200 feet, and
11 permitting lots without actual shore frontage to be divided.

12
13 CEO Keene estimated there are approximately 284 lots that currently can't be
14 divided due to a lack of shore frontage. She has received calls from people
15 wanting, but unable, to divide the lots. She's been in contact with the DEP
16 regarding this issue. The DEP helped to write the language. This will create
17 more buildable lots in these areas.

18
19 Additionally, there is some wording regarding campsites. CEO Keene reported
20 this was verbatim the wording in the DEP regulations.

21
22 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, RECOMMENDATION OF
23 APPROVAL FOR THE PROPOSED ORDINANCE AMENDMENT IDENTIFIED AS ITEM F
24 IN NOEL MUSSON'S EMAIL OF FEBRUARY 9, 2018, AS PRESENTED. MOTION
25 APPROVED 4-0.

- 26
27 - **Road Ordinance:** This is a correction to the Road Ordinance which makes the
28 terminology consistent in the ordinance.

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30 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, RECOMMENDATION OF
31 APPROVAL FOR THE PROPOSED ORDINANCE AMENDMENT IDENTIFIED AS ITEM
32 G IN NOEL MUSSON'S EMAIL OF FEBRUARY 9, 2018, AS PRESENTED. MOTION
33 APPROVED 4-0.

- 34
35 - **Zero Setbacks:** This is a change to Footnote "O". It includes additional lots that
36 would have zero-foot setbacks in some areas of the Village Commercial District.
37 The lots in question are on the Main Street in Northeast Harbor. It was noted
38 the actual Village Commercial District is larger than the area affected. Many lots
39 on Main St. already have zero-foot setbacks. Chairman Hanley felt it made sense
40 to make the core village block of Main St. consistent.

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2 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, RECOMMENDATION OF
3 APPROVAL FOR THE PROPOSED ORDINANCE AMENDMENT IDENTIFIED AS ITEM
4 H IN NOEL MUSSON’S EMAIL OF FEBRUARY 9, 2018, AS PRESENTED. MOTION
5 APPROVED 4-0.
6

- 7 - **Area Per Dwelling:** Mr. Musson noted this amendment creates a term, “Area
8 Per Dwelling Unit” which is essentially half of what the current minimum lot size
9 is. The amendment removes the requirement that a second lot dwelling unit
10 must be 75% or less than the size of the primary residential dwelling unit. The
11 only area where this will increase density is in the Village Commercial District. In
12 the Village Commercial District, the minimum lot size is 5,000 square feet and
13 the area per dwelling unit is 1,000 per square feet. Additionally, this
14 amendment will uncouple Footnote G of the provision which notes if a lot is in a
15 Village Commercial District but a Residential Use is planned, the standards of the
16 adjacent Residential District must be adhered to. This will better facilitate
17 multiple use buildings.
18

19 Ms. Randolph thought it was just last year that the system for a main structure
20 and smaller, supplemental structure was created; and asked will this
21 amendment eradicate that provision? Mr. Musson affirmed it would. CEO
22 Keene noted that lot coverage regulations and separation of buildings will be the
23 controlling factors for multiple buildings and their size. Ms. Randolph voiced
24 concern at this change.
25

26 Mr. Musson noted the kind of multiple building growth proposed can already be
27 done now. The only thing controlling it is the size of the supplemental structure.
28 Mr. Musson noted that a lot owner can currently build a second structure larger
29 than the original as long as he labels it the “Main Structure”. Ms. Randolph
30 opined that the relationship of scale was important to the feeling of the
31 provision currently in place.
32

33 Chairman Hanley noted the provision in place has a loophole. An owner can
34 consider either building the primary residence at will. Thus, both buildings can
35 increase in size, simply by changing their status.
36

37 Ms. Randolph felt the size requirement was the most important point. New
38 property owners may start with a small garage apartment, and eventually build a
39 primary house and rent the apartment. This essentially makes the lot size
40 minimum half. Mr. Musson noted that the requirement of a three-acre parcel is

1 still in place. The density has not changed. Ms. Randolph maintained that the
2 differing structure sizes encourages a dynamic and a relationship. She prefers
3 the ordinance remain as it currently is. Ms. Andrews agreed.
4

5 MS. EATON MOVED RECOMMENDATION OF APPROVAL FOR THE PROPOSED
6 ORDINANCE AMENDMENT IDENTIFIED AS ITEM I IN NOEL MUSSON'S EMAIL OF
7 FEBRUARY 9, 2018, AS PRESENTED.
8

9 THE MOTION FAILED FOR LACK OF A SECOND.
10

11 THE PLANNING BOARD OFFERED NO RECOMMENDATION FOR THE PROPOSED
12 ORDINANCE AMENDMENT IDENTIFIED AS ITEM I IN NOEL MUSSON'S EMAIL OF
13 FEBRUARY 9, 2018.
14

15 Katrina Carter inquired whether the building size was the only issue the Board
16 had with the proposed amendment. Ms. Randolph asserted it was. Ms. Carter
17 noted there can only be a certain amount of lot coverage. She wondered if the
18 Board would be willing to accept passage of the amendment, excluding that
19 particular part of the proposal. CEO Keene stated the wording cannot be
20 changed at this time. Mr. Musson noted that there were several issues to be
21 clarified from this amendment, but they are tied to this provision.
22

23 Further discussion ensued. No further action was taken.
24

25 **IV. Nonconformity – Sections – 4.3.6 & 4.3.5 Non-conforming Structures –**
26 **Reconstruction or Replacement**
27

- 28 **A. OWNER(S):** Randall Lee Poulton, Trustees
29 **APPLICANT(S):** Irene Driscoll
30 **AGENT(S):** William Hanley, WMH Architects
31 **LOCATION:** 50 W.I. Pojereno Road, Mount Desert
32 **TAX MAP:** 009 **LOT(S):** 044 **ZONE(S):** Shoreland Residential Five (SR5)
33 **PURPOSE:** Sections 4.3.6 & 4.3.5 Reconstruction or Replacement of a Non-
34 Conforming Structure
35 **SITE INSPECTION:** 3:30 PM
36

37 Ms. Eaton confirmed adequate public notice and abutters were notified.
38

39 Chairman Hanley declared his conflict of interest and recused himself from the
40 Board.

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MS. ANDREWS MOVED, WITH MS. EATON SECONDING, ACCEPTANCE OF CHAIRMAN HANLEY’S RECUSAL. MOTION APPROVED 3-0.

MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, NAMING VICE-CHAIR ANDREWS AS ACTING CHAIR. MOTION APPROVED 3-0.

Ms. Eaton attended the site visit. She reported that: The lot is narrow and steep. If the Applicant can remove the upper cabin and the shed as proposed they will be able to curve the driveway so it’s less steep. This should improve drainage on the lot. The proposed building will be set back approximately three feet from the current building footprint. Changes at the water are planned, improving the visual impact. The proposed building will be no higher than the current building.

Mr. Hanley pointed out a copy of the Purchase and Sale Agreement presented to the Board. It was determined that the Applicant has standing to apply.

Mr. Hanley reported on the proposed changes to the site. This is an older camp on the Southern end of Long Pond. The existing driveway has both paved and unpaved sections and is extremely steep. Additionally, the driveway encroaches on the abutting property. The driveway creates a sheeting effect with water runoff. The Applicant is proposing re-positioning the driveway and using recycled asphalt on the reconstruction. This will bind well yet remain porous.

Mr. Hanley mentioned a delineated stream to the south of the property and an associated 75-foot setback, about which he has been in contact with John Cullen of the DEP. Mr. Cullen has been on the site to inspect the property. Mr. Cullen is encouraged to see that potential new owners are hoping to reduce the nonconformity. The driveway and parking areas will be pulled further away from the stream. Mr. Hanley reported that Mr. Cullen would not consider the proposed camp expansion extending straight back from the existing footprint as encroachment on the stream.

Mr. Hanley pointed out that the lot is a small, nonconforming lot .83 acres in size. This is one of several similar lots in the neighborhood. The Applicant is trying to reduce the overall non-conformity by reducing the overall lot coverage. The Applicant proposes to restore several places on the lot to vegetative area including several outbuildings, footpaths, and steps.

1 The Applicant proposes to pull the cabin back nearly three feet from the shore
2 setback. The camp's existing floor elevation will not be raised and the existing ridge
3 height will remain the same. The appearance of the camp from the water will
4 remain essentially unchanged. The only additional extension of the camp will be
5 back towards the parking area. The expansion proposed for the camp is
6 approximately 380 square feet.

7
8 The shoreline is currently a railroad tie retaining wall and a rough seating area. The
9 Applicant proposes to do some naturalized shoreline restoration.

10
11 The existing septic system is within the shoreland zone setback. The Applicant is
12 proposing to move the leach field out of the shoreland zone, and push it uphill with
13 a lift station and holding tank, and a standard chambered system.

14
15 The Applicant hopes to retain as many existing mature trees as possible. There are
16 some standing dead trees that should be dealt with.

17
18 Abutter Rob Putnam has voiced concern regarding stormwater runoff. The
19 Applicant is proposing to have two bisecting culverts in the driveway. Mitigation
20 efforts such as a plunge pool will be implemented. If the proposal is approved, there
21 will most likely be some discussion between the owners.

22
23 Overhead utility lines come from Mr. Putnam's property to the camp. The lines
24 should be higher and an extra pole may be necessary. Mr. Hanley pointed out the
25 power line on the plan.

26
27 Mr. Hanley noted that if the camp is moved higher on the lot and out of the
28 setbacks, the steep topography will make the camp far more visible from the water.
29 The Applicant is proposing to cut into the slope for the additional space and retain
30 the hillside with "faux ledge" consisting of boulders and vegetation set between the
31 proposed expansion and new parking area. The Applicant is proposing to forego a
32 traditional foundation. The grade will continue under the camp, which will be built
33 up on piers. The current foundation is nearly non-existent.

34
35 Abutter Robert Putnam lauded the plan, and has no objection. His only concern was
36 the water runoff.

37
38 The existing height of the building on the downhill side to the ridge is 24.5 feet. This
39 height should not change.

40

1 CEO Keene reminded the Board that on another case similar to this case, the Board
2 required the house to be moved out of the setback. Ms. Randolph recalled that in
3 that case there was significant acreage the house could be moved to, and a good
4 spot to rebuild on. Mr. Hanley noted the other property was significantly larger with
5 a large open area behind the building. The large available space, and the sizable
6 addition planned for that house, made it a different situation from the application
7 currently before the Board.

8
9 Vice Chair Andrews wondered if there was another place on the property the house
10 could be moved to.

11
12 Mr. Hanley said that if the building is moved back, given the steep grade, the
13 building will be at a much higher point on the property. Once behind the setback,
14 other modifications to the building become a possibility as well, such as adding a
15 second floor.

16
17 Ms. Randolph mentioned there were two setbacks; the shore and the stream
18 setbacks, both equally important. Mr. Hanley agreed. John Cullen of the DEP
19 conveyed to Mr. Hanley that he preferred the Applicant work with the existing
20 footprint, so as not to encroach further on the stream setback. Ms. Randolph felt
21 that taking both setbacks into consideration would require moving the footprint up
22 the property to the gravel parking area.

23
24 Mr. Hanley reiterated that if the building was required to be outside of all the
25 setbacks, it will be sited high up the hill. The buildable area there is quite small. Ms.
26 Eaton felt keeping the building on the footprint would keep it small, and in keeping
27 with the character of the other cabins in the area.

28
29 Ms. Randolph felt the Board could not forbid building within one setback, but ignore
30 the other setback. She felt the only option would be to move the building up the hill
31 and out of both setbacks. Mr. Hanley felt the character of the project would change.
32 The project as proposed does reduce the non-conformity of the property. The
33 building will be moved further from the shore, it will not get any closer to the
34 stream, all non-vegetative structures will be moved away from the stream, reducing
35 overall lot coverage, and it will be kept in scale with the existing character of the
36 structure.

37
38 Lot Coverage calculations were discussed. Driveways and parking areas are deemed
39 not exempt outside the setbacks. Lot coverage would have to be revised to exclude
40 those.

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It was confirmed the entire structure was proposed to be demolished, the footprint moved three feet back from its current location. The stream setback was pointed out on the survey. The square footage for the current and proposed building was discussed at length.

Vice Chair Andrews felt that re-building in the stream setback only makes it more non-conforming. Ms. Randolph felt there was no way to move further out of the setback using the current footprint. Mr. Hanley reiterated that moving the footprint three feet back from the shore increases the conformity for the shoreland setback, and doesn't increase the non-conformity of the stream setback. Vice Chair Andrews maintained that it was nevertheless in the stream setback, regardless of the improvement to the shore setback.

Mr. Hanley restated that the 75-foot setback from the stream is not changing. The DEP has stated that as long as the footprint goes no closer, they would not consider it an encroachment to the stream. Mr. St. Amand noted that a 30% footprint increase is allowed within the setback, so long as it does not bring the footprint closer to the stream. Additionally, a shed within the setback is being removed.

Vice Chair Andrews maintained that the stream setback is not being changed.

CEO Keene noted that additional buildings can be added to the footprint footage of the proposed building if it's in the setback. Discussion of footprint size again ensued. Ms. Keene noted that up to 881.4 square feet can be added. An addition of 418.5 square feet is being proposed; less than the maximum amount allowed. Mr. Hanley agreed they were only considering the existing camp and not including any additional structures. CEO Keene noted the gravel is not considered part of the footprint. If it was included in the calculations, it would have to be removed. The footage coming from other outbuildings can be included in the calculations. Vice Chair Andrews and Ms. Randolph felt the second camp structure should not count in the calculations as it is not in the stream setback. Ms. Keene noted it is within the other setback as well as the boundary setback and is an existing non-conformity. Ms. Randolph felt that if each setback was dealt with separately, the extra cabin would not count, and it should not be added to the stream setback. This addition adds more to the stream setback than is currently in the stream setback. CEO Keene noted that it counts due to the two waterbody setbacks.

1 The square footage was recalculated to be total square footprint 2204.8, maximum
2 allowable square footage to be increased 1813.5, and 391.3 the actual amount of
3 square footage increase being proposed.
4

5 It was noted the Ordinance sections to be reviewed include Sections 4.3.2, 4.3.5, and
6 4.3.6. Mr. Hanley referred to his letter to the Board which offers responses to
7 Section 4.3.5 and 4.3.6.
8

9 Mr. Hanley noted that as pro forma for Section 4.3.6 the Applicant had the property
10 appraised to determine the value of the structure. The Board has appropriate
11 jurisdiction, i.e. the Applicant is proposing to replace more than 50% of the market
12 value as appraised.
13

14 Vice Chair Andrews felt the first determination should be whether the proposed
15 building has been setback to the greatest practical extent.
16

17 CEO Keene pointed out worksheets to be used in conjunction with Sections 4.3.2,
18 4.3.5, and 4.3.6. The Board concluded that the determination as to whether the
19 proposed reconstruction is in compliance with the setback requirements to the
20 greatest practical extent is to be made by the Board (see worksheet 4.3.6 attached).
21 The Board began a review of Section 4.3.5 (see worksheet attached).
22

23 MS. EATON MOVED TO APPROVE THE PROPOSED LOCATION AS PRESENTED AS IT
24 MEETS THE SETBACKS TO THE GREATEST PRACTICAL EXTENT.
25

26 MOTION FAILED FOR LACK OF A SECOND.
27

28 Ms. Randolph felt the only issue with moving the building is the size of the lot. She
29 felt the building was a good structure where it is. Mr. Hanley disagreed. He noted it
30 was a somewhat run-down camp, not well maintained, and the foundation is nearly
31 non-existent. Ms. Eaton noted that, having seen the camp, she did not feel the site
32 proposed for relocation was a good one.
33

34 CEO Keene reminded the Board that with just the three members, any vote must be
35 unanimous to pass.
36

37 Mr. Hanley felt that allowing the building to stay in the footprint honors the
38 character of the area. Ms. Randolph countered that honoring the setbacks is even
39 more important when trying to honor the area.
40

1 Vice Chair Andrews asked whether Mr. Hanley felt there was other buildable area.
2 Mr. Hanley affirmed there was a small buildable area near the top of the property.
3 Building on that site will create a very different feel for the property.
4

5 Mr. Gillis noted that both the building and the foundation have been found to be
6 lacking. This is not a case of discarding an otherwise sound building. Ms. Driscoll
7 stated the redesign would be improving on the initial design.
8

9 Vice Chair asked whether there was anything preventing the Applicant from creating
10 a guesthouse. Ms. Driscoll pointed out the plan includes everything they can do to
11 reduce the lot coverage. Mr. St. Amand felt that if a new building were built, no new
12 development would be allowed. CEO Keene noted that accessory buildings could be
13 built, as long as it doesn't exceed lot coverage. Mr. Hanley noted the coverage is
14 reduced by 4% with this redesign, however it is still beyond the allowed lot
15 coverage.
16

17 Discussion ensued with regard to Continuing the meeting.
18

19 It was agreed to continue the meeting to February 28. It was agreed to schedule a
20 site visit for Vice Chair Andrews and Ms. Randolph.
21

22 VICE CHAIR ANDREWS MOVED, WITH MS. RANDOLPH SECONDING, TO CONTINUE
23 THE MEETING TO FEBRUARY 28. MOTION APPROVED 3-0.
24

25 **V. Adjournment**
26

27 MS. EATON MOVED, WITH VICE CHAIR ANDREWS SECONDING, TO ADJOURN THE
28 MEETING. MOTION APPROVED 3-0.
29

30 Meeting was adjourned at 9:23 PM.
31