



BOARD OF SELECTMEN

TOWN HALL
365 BOSTON ROAD
BILLERICA, MASSACHUSETTS 01821
978-671-0939
FAX: 978-671-0947

Andrew N. Deslaurier, *Chairman*
Edward J. Giroux, *Vice Chairman*
Kimberly J. Conway, *Secretary*
George J. Simolaris, Jr., *Member*
Michael S. Rosa, *Member*

MEETING MINUTES FEBRUARY 5, 2018

A regular meeting of the Board of Selectmen was held on Monday, February 5, 2018 at 7:00 p.m. in the Conway Hearing Room. Present were Selectmen Andrew Deslaurier, Chairman, Selectman Edward Giroux, Vice Chairman, Selectman Kimberly Conway, Secretary, Selectman George Simolaris, Member, Selectman Michael Rosa, Member, Town Manager John Curran, and Assistant Town Manager Cathleen O'Dea.

CALL TO ORDER

Chairman Andrew Deslaurier called the meeting to order at 7:00 p.m.

OPEN MICROPHONE

Frank Busalacchi, 13 Kirk Road came to the podium to discuss the Veteran's Service Officer, Dom DeMambro, who will have office hours on Monday and Friday at the VA in Bedford, Bldg. 9, Room 136, and on Wednesday, from 9:00 a.m. to 3:00 p.m. at the VFW 8819 on Phinney Street in Billerica.

Mr. Busalacchi also discussed getting the Agent Orange Committee revitalized and having Selectman Rosa be the other Board appointee to that Committee.

Vito Couch, 30 Billerica Avenue came to the podium to discuss the Food Pantry.

America's Yankee Doodle Town

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ANNOUNCEMENTS

Selectman Conway stated there were 4 openings on the Scholarship Foundation Committee and 4 openings on the Cable Advisory Committee. All other announcements may be viewed on the Town of Billerica Website, Selectmen's Page.

Selectman Conway stated the date for the Billerica Health and Wellness Fair is Saturday, April 14, 2018 from 10:00 a.m. to 1:00 p.m. at the Billerica Elks on Webb Brook Road.

Selectman Conway read the following message from the Town Clerk:

BILLERICA ELECTION INFORMATION

April 7, 2018 TOWN ELECTION

Town Clerk Shirley E. Schult reminds all registered Voters that nomination papers for the 2018 Town Election are available at the Town Clerk's Office. Open seats for this election include One Selectman, One Moderator, One School Committee Member; Two Planning Board Members and One Shawsheen Technical High School Committee Member, all for terms of three years..

There are also openings for Town Meeting Members in each of the eleven precincts. Interest has been very slow. The following precincts still have openings where no one has taken out papers:

Precinct 1 – has 4 seats	Precinct 2 – has 2 seats
Precinct 3 – has 12 seats	Precinct 4 – has 5 seats
Precinct 5 – has 1 seat	Precinct 6 – has 9 seats
Precinct 7 – has 1 seat	Precinct 8 – has 3 seats
Precinct 9 - has 4 seats	Precinct 10 – has 7 seats
Precinct 11 – has 4 seats	

Remember: Just because someone has taken out nomination papers, does not mean that they will return them. Only 10 people have returned their nomination paper as of today.

The deadline for filing nomination papers is Tuesday, February 20, 2018 at 5:00 p.m.
NO EXCEPTIONS!

Nomination papers are available during office hours, Monday through Friday, 8:30 a.m. to 4:00 p.m. Anyone interested in being a Town Meeting Member should call the Town Clerk's Office at (978) 671-0924

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MINUTES

Selectman Conway, seconded by Selectman Rosa made a motion to approve the minutes of January 24, 2018.

It was voted:

- 3 – In Favor
- 0 – Opposed
- 2 – Abstentions (Selectmen Deslaurier and Conway)

Selectman Conway, seconded by Selectman Rosa made a motion to approve the minutes of January 29, 2018.

It was voted:

- 5 – In Favor
- 0 – Opposed

PUBLIC HEARING

7:15 P.M. Show Cause Hearing for Triple Sushi, Inc., d/b/a Nana Japanese Steak House, Restaurant All Alcoholic License, Violating Chapter 138 of the Massachusetts General Laws, and the Rules and Regulations of the Town of Billerica

Selectman Conway, seconded by Selectman Rosa made a motion to open the Public Hearing

It was voted:

- 5 – In Favor
- 0 – Opposed

Selectman Conway recused herself from this Agenda item and left the Hearing Room.

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Police Chief Dan Rosa came to the podium and stated this was a Manager of record issue and would give his recommendation at the conclusion of the hearing

Police Lieutenant Gerald Roche came to the podium and stated Triple Sushi (DBA Nana Japanese Steakhouse) has not updated the Manager of the License since November 7, 2016 at which time we were told during a public hearing in front of the Board of Selectman that they would be removing David Tom and transferring the Manager position to Yong Hao Wu. The subject of the public hearing was to take action against Triple Sushi because they had served a person under the age of 21, on July 14, 2016, which violated Chapter 138 Section 34, see attached report 16-1423. As a result of the hearing the Liquor License for Triple Sushi was suspended for 8 days, 5 days to serve and 3 days to be held in abeyance for 1 year and the Triple Sushi was ordered to hire a private company to perform compliance checks.

Throughout the year I would continue to receive progress reports from the compliance company Douglas Hansen & Associates however I hadn't heard from the attorney, Craig Mulcahey, who had represented them during the November 7, 2016 hearing regarding the violation of selling to someone under age 21. I emailed Attorney Mulcahey on June 1, 2017 inquiring on the status of the transfer. On June 2, 2017 attorney Mulcahey responded informing me that he contacted the business lawyers and was awaiting their reply. On June 28, 2017 I received an email from Attorney Chung Lee informing me that his office would be representing Nana Japanese Steak House for the license transfer and apologized for not contacting me sooner and that they needed to clarify certain corporate matters in order to proceed. On November 16, 2017 still not having heard from Attorney Lee I sent him and Attorney Mulcahey another email informing them that Triple Sushi's license was up for renewal and because the Manger of Record was still in question it could cause a problem with getting the license renewed. As you probably recall Chief I did not hear back from either attorney in timely manner so it was decided that during the license renewal hearing in front of the Board of Selectmen on December 18, 2017 we would ask for a date to come back in front of the Board of Selectmen to discuss setting up a Show/Cause Hearing. The Board granted our request and we were given a date of January 8, 2018. On December 28, 2017 I sent an email to both Attorneys Lee and Mulcahey informing them of the next date to discuss taking action against the license. On January 3, 2018 I received an email from Attorney Lee explaining the reason for the delay and asked if agenda item could be pulled from the January 8, 2018 meeting. I replied that at this

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point it couldn't be pulled and that it would be best if he submitted the new license as soon as possible. On January 5, 2018 I received an email from Attorney Lee explaining that he would get the new application to the licensing board next week and that he would send the licensing clerk an email explaining the delay. On January 8, 2018 an email was sent to Selectman Kim Conway from Attorney Lee apologizing for the delay and told her he expected to file the new license to me and her office by the following week. On January 9, 2018 I sent Attorney Lee an email informing him that the Board of Selectmen had set a Show/Cause Hearing date of February 5, 2018 and that a notice was being sent out as well as a copy was being hand delivered to the business.

- All emails referenced in the above paragraph are attached to this report

Further evidence being offered also concerns the status of the manager. Previously I mentioned the violation that occurred in July of 2016 and as result a hearing was set up. As is the case when these hearings notices are sent out to the Manager of the business and in this case the manager on record was David Tom. Sgt. Mirasolo hand delivered a notice as well and Mr. Tom was not present however Mr. Yong Hao Wu was and he signed for the letter on October 28, 2016. After the hearing was set for this incident another letter was sent to the Manager of the record, David Tom, as well as one being hand delivered. Again Mr. Tom was not on the premise but again Mr. Yong Hao Wu was and he signed for the letter on January 9, 2018. Mr. Wu also signed for Billerica's rules and regulations dated January 9, 2018.

- All 3 signature pages are attached to this report

I am also attaching two reports from the Secretary of the Commonwealth, Corporations Division. The first is dated January 7, 2018 which lists; Shuo Tong Zou as the President, Secretary and Director of Triple Sushi INC, Yong Hao Wu as the Treasurer and David Tom as a Director. The second report is dated January 16, 2018 which lists; Huachang Zheng as the President and Director, Yong Hao Wu as the Treasurer and Director and Jie Xu as the Secretary and also a director.

Lastly I'm attaching a Decision from the Alcoholic Beverage Control Commission dated July 29, 2014, the Rules and Regulations from the Town of Billerica governing the Licensing and Sale of Alcoholic Beverages and the 2018 License Certificate which lists David Tom as the current

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manager. The document from the ABCC covers the serving of an individual under the age of 21 violating Chapter 138 Section 34. As a result of the hearing Triple Sushi was suspended for 3 days and of that the 3 days were held in abeyance for 2 years provided no further violations occur. As for the rules and regulations I would call your attention to sections 9 and 11 which covers the approval of Managers by the Board of Selectmen prior to them taking responsibility for the license.

Based upon the above facts I believe Triple Sushi is not in compliance with the Rules and Regulations of the Town of Billerica governing Alcohol Licensing and I recommend that the Liquor License for Triple Sushi be suspended until such time the issue of the true manager can be resolved.

Chief Rosa returned to the podium and stated that his suggestion be that Nana 7's license be suspended indefinitely effective February 27, 2018. The reason he is suggesting February 27 as that is the day after the next Board Meeting; and assuming they have all their paperwork in order and can get on the Agenda, the Board can lift the suspension. Chief Rosa further stated that the reason he is suggesting suspension as opposed to revocation because it would make it harder for the licensee to re-apply.

Selectman Simolaris stated he concurred with Chief Rosa's recommendation and hoped the licensee can get everything in order to be on the Agenda on February 26th.

Selectman Rosa stated that Lieutenant Roche's report was very thorough.

Selectman Rosa clarified with Chief Rosa the course of action that is being recommended. Selectman Rosa voiced a concern that this establishment has been without a Manager of record for some time. When an establishment is licensed by the Board, they are being entrusted to dispense alcohol in a safe and conscientious manner. Selectman Rosa further stated that the Manager needs to be on premise a certain amount of hours to make sure everything is running smoothly and alcohol is not being served to minors as had previously occurred through the ABCC suspension.

Selectman Rosa stated that although he takes Chief Rosa's recommendations very seriously, he is of the opinion that the suspension should take place immediately; and if they get everything in line, then hold a special meeting to lift the suspension.

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Selectman Giroux stated he would like to hear from the applicant but shared many of Selectman Rosa's concerns.

Attorney Craig Mulcahy, representing Nana Seven came to the podium to address the circumstances surrounding the change of manager and license and stock transfers of the establishment.

Attorney Mulcahy stated he was standing in this evening for Attorney Chung Lee who could not be there due to an immigration hearing in Connecticut.

Attorney Mulcahy stated there were violations in July of 2014 and July of 2016. Those issues had been rectified and there has been no more violations and police activity since 2016. Attorney Mulcahy noted that was substantial.

Chairman Deslaurier stated that he felt it was not substantial as opposed to establishments in Town with no violations.

Attorney Mulcahy responded that it was a massive improvement.

Attorney Mulcahy continued by stating that Mr. Yang Hao Wu who was a 40% owner in 2016 was the onsite manager. However he was not the Manager of Record on the paperwork. The paperwork was incorrect, but management was going along much more smoothly. Attorney Mulcahy stated that Mr. Wu decided he wanted to be a majority owner. The negotiations with Mr. Tom were difficult and contentious. Another stock holder was stealing money, Di Pin Lee.

Chairman Deslaurier stated there was a particular license in Town that was not renewed due to a missed deadline for one item. That establishment was closed for approximately 2.5 weeks.

Attorney Mulcahy stated that the financial issues surrounding Nana Seven were extraordinary where they were dealing with theft.

Selectman Rosa stated that in regards to the corporate structure issues; there was no reason that Nana Seven could not have informed the Board that the Manager had changed.

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Selectman Rosa further stated Nana Seven could have come before the Board with the change of Manager and then when the corporate issues were resolved come back before the Board for that approval.

Attorney Mulcahy stated he was in agreement with Selectman Rosa. He stated he failed to put in writing that Mr. Wu was going to be manager. He stated he also failed to inform Attorney Lee that Billerica should be a priority.

Selectman Rosa emphasized the importance of having a manager of record on the License. Selectman Rosa further stated that the Board cannot just take Attorney Mulcahy's word that an individual is reliable without following the proper procedure.

Selectman Rosa stated to Board members that the Town and Lt. Roche have gone above and beyond for this establishment. Nothing has precluded them from getting their manager of record changed.

Selectman Giroux stated he felt that this seemed to be a lack of seriousness on the part of the establishment. Selectman Giroux asked if Lt. Roche was not available on Friday to accept the paperwork, would someone else be available to accept it. Selectman Giroux also stated there was a special meeting held for Playoff's.

Selectman Simolaris stated he agreed with what his colleagues stated. He also stated he agreed with Chief Rosa's recommendation. However, if Nana should come before the Board again, he would be looking for a harsher penalty.

Chairman Deslaurier stated his opinion on the Change of Manager and the Corporate issues

Chief Rosa returned to the podium and stated that as to the corporate issues, it needs to be an advertised public hearing no less than 10 days before a regularly scheduled Board meeting. The change of manager is a less cumbersome process. He also stated that if the Board wanted to do the Manager prior to February 26th that did not require an advertisement.

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Selectman Rosa stated that Nana should be treated the same as Homewood Suites. They submitted their paperwork for the change of Manager. If Nana got their paperwork in for Change of Manager, then a special meeting could be held to approve that.

Chairman Deslaurier asked Selectmen Giroux and Rosa their opinions on when the suspension should take place.

Selectman Giroux stated he was inclined to support Chief Rosa's recommendation. He did, however, say that he thought the applicant was treating this matter lightly.

Chairman Deslaurier stated he did not think enacting a 3 week suspension was in line with the appropriateness. Chairman Deslaurier suggested enacting the suspension on February 19th.

Selectman Rosa proposed making a motion suspending the license until which time all the pertinent paperwork for the Manager of Record is submitted and comes before the Board to be voted on.

Chairman Deslaurier stated the suspension length would be predicated on the Board's scheduling ability.

Selectman Rosa stated that if the suspension began on February 19th, it would give them a 7 day suspension.

Chairman Deslaurier asked Selectman Giroux to make a motion with the Chief's recommendation.

Selectman Giroux, seconded by Selectman Simolaris, made a motion to close the public hearing.

It was voted:

4 – In Favor

0 – Opposed

1 – Abstention (Selectman Conway)

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Selectman Giroux, seconded by Selectman Simolaris, made a motion to suspend the License for Triple Sushi, d/b/a Nana Japanese Steak House indefinitely as of February 27, 2018.

It was voted:

	3 – In Favor
	1 – Opposed (Selectman Rosa)
	1 – Abstention (Selectman Conway)

Selectman Conway returned to the Hearing Room.

OLD BUSINESS

Town Manager's Report

-Fiscal Efficiency

-Professional Recognition

Town Manager John Curran highlighted for the Board items on his Town Manager's Report such as the State Revolving Fund Awards, Green Communities Meeting, and the Yankee Doodle Bike Path. Mr. Curran gave a very detailed account on the progress being made to find a new location for the Food Pantry.

In regards to the State Revolving Funds, Selectman Rosa asked Mr. Curran what the 2% interest will save the Town.

Mr. Curran responded that due to the present Market situation, it could save a substantial amount, and he would get back to the Board on specific expenses.

Selectman Rosa stated he had done some research on houses being built under Green Communities as opposed as those that were not. He stated that during the course of his research he found significant savings on those homes that were built under Green communities. Selectman Rosa stated that when the time was right, he felt that was important

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information to broadcast. In regards to the Food Pantry, Selectman Rosa asked if the founders were involved with this process. Mr. Curran replied they were. Selectman Rosa concluded his remarks with congratulating Mr. Curran and State Representative Lombardo for their efforts in the Bike Path Grant process.

Selectman Giroux stated that it was good news about the Revolving Funds. He also thought it was a good idea to combine efforts within Town relative to the Food Pantry.

Selectman Conway asked for clarification on upcoming projects being funded by the State Revolving Fund Awards. She also asked how long the Town was locked into the awards.

Mr. Curran stated that as long as the Town followed through on the projects, they were locked in.

Selectman Simolaris asked that since the Food Pantry was not accepting any food, where would people bring donations for the Food Market. He suggested possibly having a trailer at a location to accept food donations.

Mr. Curran stated he would inquire into that.

Selectman Simolaris expressed disappointment that Aggregate Energy was not included on the Agenda after he asked that it be included.

Chairman Deslaurier responded that as Chairman he decided not to include it. He felt that it had been discussed at length, and that this was a constituent matter to be discussed with the Town Manager.

Mr. Curran announced to the Board that Katie Durand of the Conservation Department passed away after a lengthy and hard fought battle with Cancer.

Katie was 28 years old, a graduate of Boston University, with a degree in Environmental Science. She was the Land Use Assistant for the Conservation Commission. Katie was instrumental in many of the Land Donations that have come before this Board. She had worked for the Town since 2014.

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Katie was intent on coming to work every day and living her life as normally as possible, despite what she faced. She never brought it with her. She was kind, a good person to work with and talk to. Katie's passing has left a huge hole in the Town Hall Family, and she will be greatly missed.

Chairman Deslaurier asked that a moment of silence for Katie be placed on the next Agenda.

FIRE DEPARTMENT ASSESSMENT

Mr. Curran stated he had received a preliminary draft, and that he has provided the Board with some of the parameters of the study to get an idea of how the study was conducted and the aspects that were looked at.

Mr. Curran stated that there was no intent or recommendation to take a station out of Pinehurst. The preliminary recommendation was that if it were to be moved, it would be moved further from the Town line and more towards Shawsheen and Boston Roads.

Mr. Curran stated that he would get back to the Board with the final report, probably within the next couple of weeks.

There were comments and questions from the Board; i.e., ambulance bays, the pros and cons of having the Pinehurst Fire Station moved to the old Ditson School, having the vendor present at the meeting after the final draft, getting the document to the Board enough in advance for their review, and recommendation on the Old Ditson School stating the reasons why not to have the Fire Station at that location.

FOOD PANTRY

Selectman Simolaris asked where the food for the Food Market came from.

Selectman Giroux stated that it came from the Boston Food Bank, and it was delivered the day of the Food Market.

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Selectman Simolaris suggested working with the School Department to find a location for donations.

Notice of Intent to Sell – 10 Charnstaffe Lane, Unit 508, Billerica, MA – Town’s Right of First Refusal

Chairman Deslaurier stated that the Board received this notification. There was also a letter included in the Board’s packets from the Housing Authority stating they did not have the funds available to purchase this property.

Selectman Simolaris asked that since the Housing Authority did not have the funds, would it now go out for sale at market rate and the Town would receive the difference.

Mr. Curran and Chairman Deslaurier stated that was correct.

Selectman Simolaris wondered why the public wasn’t buying these properties at the affordable rate.

Mr. Curran explained that with the 40 B’s and the law that it was sometimes difficult for people to have the 10-20% for a down payment to purchase a home at 75% of market value.

Selectman Simolaris stated that the Housing Trust puts money in an account. Why couldn’t the Town lend the down payment with the 25% that goes back to the Town?

Mr. Curran stated that was a good idea and would look into it.

Selectman Rosa commented on analysis on housing that was done some time ago.

Selectman Conway, seconded by Selectman Rosa made a motion to forego its right of first refusal for the property located at 10 Charnstaffe Lane, Unit 508.

It was voted:

5 – In Favor
0 – Opposed

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FY2019 Budget

Mr. Curran explained the new format for the Budget. Mr. Curran stated that Budget Analyst Clancy Main has done a great deal of work on this Budget process. Mr. Curran further explained they are putting in more detail in the budget to make it more descriptive with other than just numbers, and to give people a better understanding of what the Town does.

Mr. Curran stated that the Budget is just over \$150 million. The General Budget is going up 2.8%. The total Budget including Water Enterprise and Waste Water will be under 2% which is consistent with the Board's Goals.

Mr. Curran gave an extensive review of the Budget for the Board citing increases and decreases and the reasons for it. He also placed special emphasis on the reorganization of the Cemetery Department and the Parks and Trees Department.

Selectman Giroux stated he was impressed with the levy capacity and felt this was a very thorough presentation.

Selectman Rosa stated it was a great presentation and that he liked the new format. He felt it was great that the levy stayed under 2% and that the \$40,000 from the schools for Parks and Trees will mean no increases in fees for sports parents. Selectman Rosa also commented on Fox Hill Cemetery and that is probably time for another expansion.

Selectman Simolaris hopes the capacity will continue to grow and that taxes will stay as low as possible for residents.

Chairman Deslaurier stated that the new budget format was a better user manual and provided more information to the residents. He also commented on the services the Town provides residents while still keeping Billerica affordable.

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Selectman Conway had a question relative to the water meters and the revenues on the residential side.

Mr. Curran stated he would get her the numbers for the commercial side.

New Water Meter Installations and Water Rules and Regulations

Selectman Rosa stated he put this item on the Agenda because he had a concern with correspondence that had been sent out to residents relative to the installation of the new meters. There was a series of correspondence asking residents to call to make an appointment to have the new water meter installed. The final piece of correspondence stated that if there was no attempt made for an appointment, the water would be shut off. Selectman Rosa also cited that the Water Rules and Regulations talk about Town of Billerica personnel entering a residence. For the installations, there are third party subcontractors entering the home. Selectman Rosa also stated that people go away for the winter and sometimes it is difficult with change of addresses. His concern is that people will miss the correspondence due to that. He also suggested perhaps having residents use a licensed plumber to do the installation at their expense.

DPW Abdul Alkhatib came to the podium and explained the process of these installations. He stated they have installed 450 residential meters out of 13,000 home. He said he understood Selectman Rosa's concerns, but is following what is done by the industry. No water has been shut off and in some cases, an additional piece of correspondence has been sent out. He also explained there are two meter readers that accompany the contractors on the installations. Mr. Alkhatib further stated there will be no shut-offs during the winter months, and does not anticipate any shut-offs until April or beyond.

Mr. Curran stated that case law supports the Town being represented by contractors, and he does not believe the Town is in violation of the policies. Mr. Curran further stated that the Town has discontinued shut-offs for non-payment of bills; and unpaid bill have gone up.

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Selectman Conway asked Mr. Curran to advise the Board at a subsequent meeting if the non-responsiveness is going down. It is at 15%. Selectman Conway stated she shared some on Selectman Rosa's concerns on the correspondence.

Selectman Giroux asked about the time line for the correspondence. He also asked about the possibility of advising residents via social media on the particular section in Town that is being worked on that the cards are coming in the mail.

Chairman Deslaurier stated that it is on the website. He further stated that not everyone is signed up for code red.

Mr. Curran stated they do a Code Red at the beginning of the process for each particular section in town.

Selectman Simolaris suggested putting notices in water bills.

Selectman Rosa stated that anything that could be done should be done before anyone's water is shut off.

MEETING SCHEDULE

February 26, 2018

March 5 and 19, 2018

ADJOURNMENT

Selectman Conway, seconded by Selectman Rosa made a motion to adjourn.

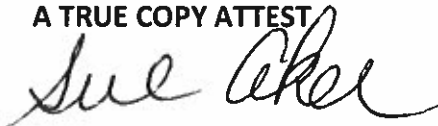
It was voted:

5 – In Favor

0 – Opposed

Chairman Deslaurier adjourned the meeting at 10:30 p.m.

A TRUE COPY ATTEST



Sue Aker, Recording Secretary