

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, MAY 21, 2008
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, May 21, 2008 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Tom Auer, Kim Griffo, Greg Mayes, Ed Davis, and Scott Seiber

Board Members Absent: Darren Jones and Bill Whitaker

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, Reta Gray, Matt Mattingly, Mayor Rushing, Deana Wright, Robert Price, Brittany Salling, Attorney Sid Easley, Dr. Hal Houston, Gregory Bryant, Steve Arant and public audience

Vice-Chairman Scott Seiber called the meeting to order at 4:30 p.m., and welcomed all guests and applicants. Chairman Seiber asked for approval of the minutes from the April 16, 2008 regular meeting. Greg Mayes requested that there be an addition to the minutes showing that Mr. Haverkamp presented some drawings of other properties that he owns and that the Board had an opportunity to view them.

Kim Griffo made a motion to approve the minutes from the April 16, 2008 regular meeting with an amendment showing that Mr. Haverkamp submitted plans of other properties that he owns and that the Board had an opportunity to view them. Greg Mayes seconded the motion and it carried with a 5-0 voice vote.

Public hearing to review the conditional use permit application to allow three non-related persons to occupy the premises in an R-2 zoning district – 201 South 13th Street- Robert and Renee Price: Peyton Mastera used a Power Point presentation to show the home of Robert and Renee Price at 201 South 13th Street where their daughter Megan has lived for the past two years. The Price's applied for a Conditional Use Permit approximately two (2) years ago for Megan and two (2) additional friends to occupy the premises at 201 S. 13th Street. Megan has recently graduated and has moved from the premises. According to the conditions set forth in May 2006, the Conditional Use Permit is void upon Megan no longer residing at the house. According to the applicant, they are requesting approval for one of the girls which lived with Megan to remain at this home, along with two of her friends. This would only be allowed as a Conditional Use in an R-2 zone. All adjoining property owners were notified of the public hearing and no complaints have been recorded for the property since the original Conditional Use Permit was issued.

Vice-Chairman Seiber opened the public hearing and asked if there was anyone there wishing to speak in favor of the application.

Mr. Robert Price, 7702 Nottaway Circle, Louisville, KY was sworn in. Mr. Price stated when they first purchased the house the goal was for their daughter Megan to live there until she

finished school at Murray State University. The Price's expect their son, who is now a student at MSU to occupy the house and continue to reside there until he finishes school; however, since MSU has a requirement that Freshman and Sophomores live in student housing for two years he will not be able to move for another year. The Price's would like to rent the property to three girls who attend MSU. Mr. Price said that they had made several minor improvements to the home since they bought it. He also added that there is ample parking for four to five cars in the driveway. The girls that currently live there are aware of the limitations of the previous conditional use permit concerning parking and partying on the premises. Mr. Price stated that one of the girls that wished to occupy the house had formerly lived in the house with Mr. Price's daughter and that there are two additional girls wishing to reside there at this time. Mr. Price is seeking the conditional use permit for a period of one year and at that time, his son will be able to occupy the home; thus, he will come back to the Board at that time for another permit that will extend throughout his son's enrollment in school.

Brittany Salling, 201 South 13th Street, was sworn in. Ms. Sallin currently resides on the premises and will continue to stay there if the permit is granted. Vice-Chairman Seiber asked Ms. Sallin if there were any overnight guests that frequented the residence. She stated no and that the only overnight guest was Megan's fiancé who lives out of town and when he comes in, he usually will stay a night but he did not visit that frequently. She stated that all the girls had boyfriends, but they did not stay overnight. She also stated that their boyfriends came over and had dinner and sometimes came over early in the morning to help walk the dog.

Vice-Chairman Seiber asked if there was anyone that would like to speak in opposition of the permit.

Peyton Mastera presented a letter of opposition from David Roberts as Exhibit A. Mr. Roberts's letter stated that he had been a long time resident of the area. The contents of the letter referred to one of the goals of the City's Goals and Objectives stating: *to provide adequate, safe and affordable housing* and under the objectives: *encourage a greater sense of community within the city's residential neighborhoods.* Mr. Roberts does not believe that granting this type of conditional use permit is in accord with the goals and objectives. He added that approvals of this nature prohibit and or defer the opportunity for potential single family buyers to purchase homes in an R-2 district. Mr. Roberts referred to comments made at a recent public hearing where Mr. Bob Rogers, Murray Independent School Superintendent, strongly commented against the loss of single family homes within the school district with a resulting loss of enrollment. The conclusion of the letter suggested that a parent of a MSU student should exhaust all avenues to purchase property for these uses within the appropriate R-4 districts.

Vice-Chairman Seiber asked if there was any rebuttal.

Mr. Price said that the lady that lived across the street from this house had told him that she appreciated the girls living there. She told Mr. Price that she felt safe with the girls there. Mr. Price added that he had spoken to each of the new girl's parents about conditions that he expected while the girls were living there and each set of parents agreed with him on the conditions. They each wanted their daughter's first priority to be school and for them to have a normal college life with a few more amenities than a dorm room would offer.

Vice-Chairman Seiber closed the public hearing and opened it up for Board discussion.

Greg Mayes asked if this was a trend for the town or if these instances were exceptional. Ms. Dowdy stated that Mr. Roberts was probably correct when he made the referral in his letter to these types of permits as “creeping” conditional uses. She added that these types of applications were more common in the summer and winter months before the next school semester were to begin at MSU and that they were usually in the areas south of Main Street and west of 16th Street where they were in closer proximity to campus and more moderately priced. Ms. Dowdy said a lot of times there were people using a residence as multi-family when in fact they were in a single family district and unless there were complaints made, the city was not aware of it. Realtors are aware of the multi-family districts in the area and when they show properties, they could be held liable for not passing this information on to the home buyer at the time of the sale. Ed Davis commented that a conditional use permit was very rare 10 years ago and that there were more people that would come in opposition to an application. He added that over the past three to four years, there has been a trend to grant this type of conditional use with stringent conditions placed on it. Ms. Dowdy then referred to the city school superintendent’s statements concerning the loss of single family homes within the school district. She stated that as the city limit boundaries have moved that the city school district boundaries have not; they are set by the state.

Ed Davis made a motion to deny the conditional use permit application for Robert and Renee Price at 201 South 13th Street and that the property owners have ninety (90) days to come in compliance. Greg Mayes seconded the motion and the motion to deny the permit was approved with a 3-2 voice vote. Kim Griffo and Scott Seiber voted no. Vice-Chairman Seiber added that if one of the girls wished to stay at the residence that would be allowed as that will meet the definition of a single family.

Review of conditional use permit – 103 North 16th Street – Pi Kappa Alpha: Ms. Dowdy explained that the Conditional Use Permit for Pi Kappa Alpha was granted on June 7, 2005. Because the original tract of land did not meet the zoning ordinance requiring a minimum of 15,000 square feet for a fraternity/sorority house, the Board approved a variance on this lot. At the June 2006 BZA meeting, a 12 month review was held and it was agreed upon by the BZA members that the fraternity was meeting the conditions set forth in the permit. The two (2) year time limitation expired on June 7, 2007, and at that time Pi Kappa Alpha requested an extension of the Conditional Use Permit. The extension for the Conditional Use Permit was granted and it will expire on June 7, 2008. Since the last meeting, Pi Kappa Alpha has purchased the property to the north of 103 N. 16th Street which is 105 N. 16th Street, on the corner of 16th and Farmer. The fraternity is currently in the process of soliciting for pledges from alumni towards the construction of a new house at the location of the two adjoining properties. Ms. Dowdy stated that there were four separate incidents where the police were called to the property since the last approval of the conditional use permit: March 8, 2008 there was a call made reporting noise and a fire in the backyard, a second call was on the same day an hour later for noise and for vehicles blocking the drive, on April 9, 2008 there was a complaint of someone screaming at that location, and one other call was when someone was having an asthma attack and 911 was called to the property.

Sid Easley, 1610 Loch Lomond, was sworn in. Attorney Easley stated that Candace had stated the previous information correctly. Mr. Easley stated that this is an R-4 district. He stated that in 2005 when the initial conditional use was issued, the fraternity only owned the property at 103 North 16th Street. This past year, the corporation has purchased the 105 North 16th Street property. Since this purchase, they now have 25,900 square feet of property which allows them to come into compliance with the fraternity/sorority house minimum lot size requirement as stated in the ordinance (* staff notation - this is contingent upon a minor plat being done abolishing the lot line). There are no fraternity residents living in the house and no plans for residents in the future. Ultimately the goal is to tear down both houses presently located on the lots and build a fraternity house on the corner. Attorney Easley stated that they are simply requesting that the permit be extended for another year so that they can raise more money towards the construction of this fraternity building.

Dr. Hal Houston, 1000 Riverwood Road, was sworn in. Dr. Houston added that there are two other adjoining properties that are owned by former Tau Sigma Tau's who are the original Pi Kappa Alpha's and they have stated that they will sell their properties to the fraternity should they be interested. So the potential is there to own the entire block. Dr. Houston said that there are 1500 alumni scattered around and they have been calling them for pledges one-by-one. Dr. Houston said that no serious complaints have been filed against the fraternity and he feels that after a year's time, that was an incredible low rate of trouble for a fraternity house. Dr. Houston said that this location for the new fraternity house will be a plus for Murray State because when parents come to town to see the campus, they don't have to go to Stadium View Drive to see the fraternity house.

Ed Davis made a motion to extend the conditional use permit through June 7, 2009, with all the conditions on the current permit, while they are working on their fund raising efforts towards building. Kim Griffio seconded the motion and it carried with a 5-0 voice vote.

Mayor Rushing left at 5:35 p.m.

Public hearing to review the dimensional variance application for an additional wall sign – 818 North 12th Street – Culver's: Peyton Mastera showed pictures of Culver's restaurant with property lines on a Power Point presentation. Culver's (Jim Foster, owner) is requesting to place an additional wall sign on the western side of the business within the front tower (side facing N. 12th Street). The size of the proposed sign will be approximately 10.5 square feet. Culver's current sign permit is approved for a wall sign on the north and south sides of the building. The wall sign over the drive-thru (North side) is 18 sq. ft. The wall sign over the main entrance (South side) is 32 sq. ft. Mr. Mastera stated that Culver's current signage is well within compliance with the ordinance and that the variance requested is for an additional wall sign, but not a size variance on the proposed sign.

Vice-Chairman Seiber asked if there was anyone there wishing to speak in favor of the application.

Mr. Gregory Bryant, 1352 South Main Street, Calvert City, was sworn in. Mr. Bryant stated that he is the general manager of Applebee's which is directly adjacent to Culver's. He does not feel that the additional signage would be an intrusion or a drivable distraction. When Applebee's opened, they also requested additional signage. Mr. Bryant feels that due to the compliance of the ordinance, he feels that this should be looked at very carefully in the future with other competitive openings in order for the restaurants to continue to develop the community from a casual theme dining stand point. He feels that approval of this will allow current and future establishments to have the ability and the capacity to advertise to their buyer in a reasonable fashion.

Vice-Chairman Seiber asked if there was anyone there wishing to speak in opposition of the application. There was no one.

Vice-Chairman Seiber closed the public hearing and opened it for Board discussion.

Ed Davis made a motion to grant the request for one (1) additional wall sign on the western side of the building (side facing N. 12th Street) of Culver's due to the fact the combination of all three signs will not exceed their allowable square footage; Culver's has an access road on the north side which will allow an additional wall sign and that it will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Kim Griffo seconded the motion and the motion carried with a 5-0 voice vote.

Public hearing to review the conditional use permit application for Steven's Place Residential Planned Development – 104 Parks Street – Farmer and Arant: Candace Dowdy pointed out the location of Steven's Place using a Power Point presentation. Steven's Place PDP located at 104 Parks Street received final approval by the Planning Commission in August 2003. The BZA approved this project as a conditional use in a B-2 zone in July 2003. There are currently 12 – 2 bedroom units at this location. The developers are requesting approval for two additional buildings that will consist of 4 – 2 bedroom units. The PDP section of the ordinance states: *No changes will be permitted unless prior approval is received by the Board of Zoning Adjustments and these must be consistent with the Planning Commission's intent and direction. All changes will also be recorded with the clerk and the Planning Commission and will originate with the zoning official. There shall be no change, alteration, amendment or extension of any approved PDP final plat unless such change, alteration, amendment of extension is approved in conformance with this ordinance.*

Everything except what they have added for the proposed amendment is the same as it was previously approved by the Planning Commission and Board of Zoning Adjustments. Ms. Dowdy stated that this went before the Planning Commission the previous night for preliminary/final approval and the motion was to approve this plat as it was presented contingent upon the BZA's approval and that construction of the additional buildings meet all city regulations. The location of a freestanding sign was shown on the original plat but has not yet been constructed. The size of the proposed sign is 6' x 6' and there is ample room for the sign to meet the ten foot front and side setback requirement. The developers have been made aware that

the dumpster will need to be in an enclosed and appropriate area. Storm water detention is in place and was designed to accommodate the future construction of two additional buildings.

The existing project meets all parking requirements; however, based on the current plat a five parking space variance may be needed. The total required parking spaces would be 48 spaces with the plat showing 43 spaces. The proposed addition to this project will not require any further extension of utilities. The developers have not been able to have the parking lot paved because they didn't make the last paving season; however, they were first on the list to have the parking area paved this year when the asphalt companies opened for the season. The developers have requested permission from the city to once again delay the paving of the parking area pending review of this amended plat and the construction of the additional buildings. (The initial reason for holding off on the paving of the property was to let the ground settle after putting the sewer lines in.)

Vice-Chairman Seiber opened the public hearing and asked if there was anyone there wishing to speak in favor of the application.

Mr. Steve Arant, 6354 State Line Road West, Hazel, was sworn in. Mr. Arant pointed out the topography of the back part of the property using the Power Point presentation. He stated that since the property drops off fairly quickly they could build some of this area up with gravel to possibly get two additional parking spaces if it was necessary to accommodate the parking situation, but that he had rather not do this because of cracks that would eventually form in the asphalt once the gravel settled. Mr. Arant also stated that initially the sewer line was drawn north of the property and once they physically tried putting it in, it was almost impossible to squeeze it in at that site; therefore, they redesigned it and put the sewer line in a different location requiring the addition of two man holes. Each time another building was finished, they had to dig another massive hole in order that the sewer could be connected. The first units were opened in the fall of 2004.

Mr. Arant stated that they would either be adding an additional dumpster or getting a bigger one. Ms. Dowdy stated the Sanitation Department would help Mr. Arant with the size requirements for the pad. Mr. Arant pointed out the front area of the project stating that initially there was a plan for all of that area to be a grassy area; however since they have decided to pave the majority of the proposed grassy area, they believe that they will be able to have all the required parking available and therefore will not have to ask for a parking variance.

Vice-Chairman Seiber asked if there was anyone wishing to speak in opposition of the application. There was no one so Chairman Seiber closed the public hearing and opened it to the Board for discussion.

Ed Davis made a motion to grant a conditional use permit for the amended PDP plat for Steven's Place, Phase I and II, located at 104 Parks Street, as it was approved previously by the Board of Zoning Adjustments and Planning Commission; and that it remains compatible to the area; and to grant a five parking space variance if necessary; while it remains consistent to the previously accepted PDP project, and contingent upon it meeting all city regulations. Tom Auer seconded the motion and it carried with a 5-0 voice vote.

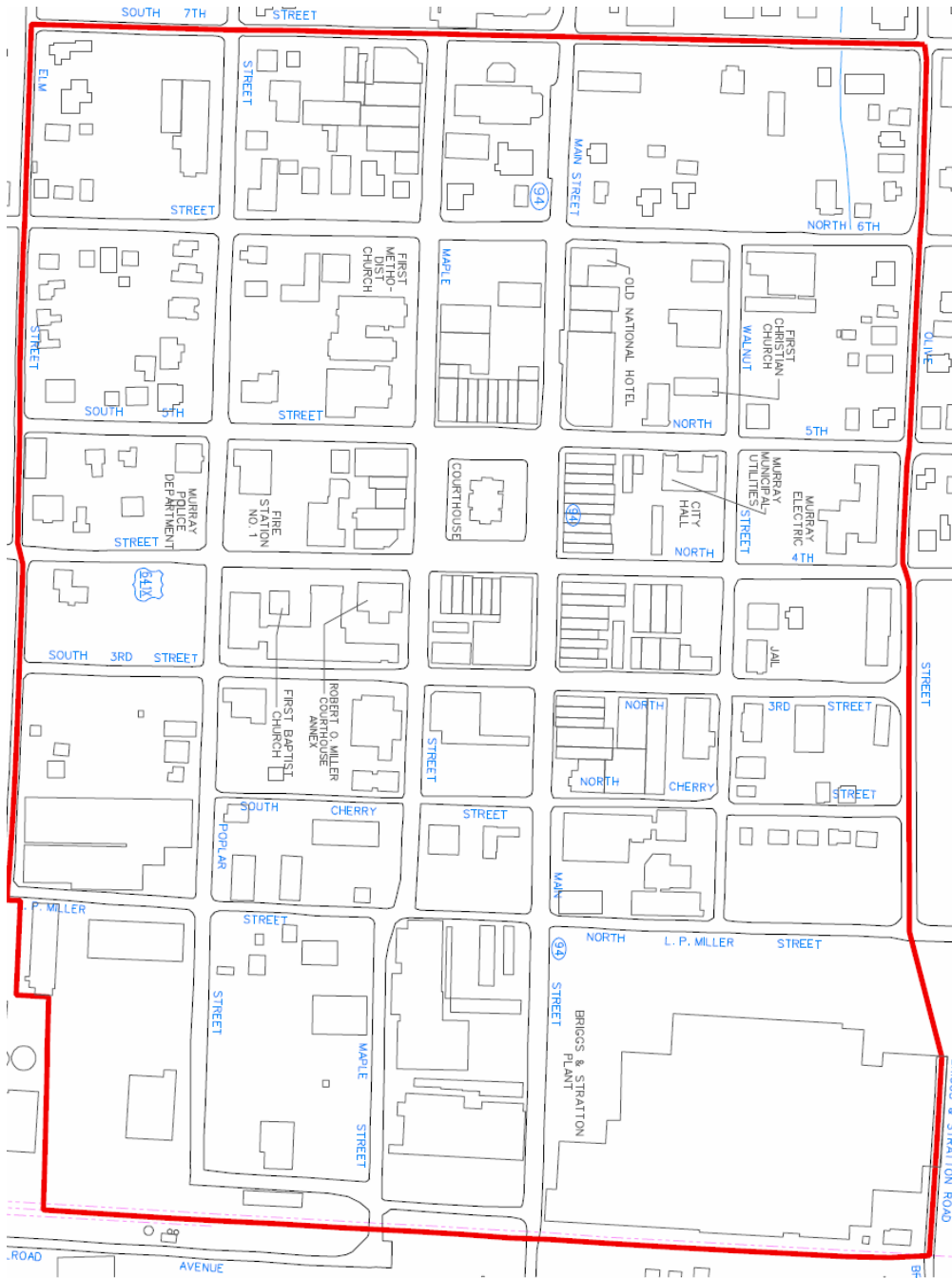
Ed Davis asked permission to be excused from the meeting. He left the meeting at 6:10 p.m. Attorney Mike Pitman also left the meeting at 6:10 p.m.

Discussion of Proposed Historic Overlay District: Matt Mattingly used a Power Point presentation to go over what the Architectural Review Board had been working on the past year. The Board was established in November of 2003 basically with the intent of receiving grant funds from the State. The State required establishment of the Board to oversee any type of grant funds coming in. The members of the board are John Resig; Chairman, Chris Clark; Co-Chair, Cindy Reichmuth; Secretary, Karen Welch and Stan Henley. June 2007 was the first time the Board met. Matt stated that Deana Wright had brought to his attention that the Kentucky Heritage Council was given an ultimatum of activating their Architectural Review Board or lose their Murray Main Street program.

Deana Wright, representative for Murray Main Street, came forward and stated that less than two years ago there were approximately 115 Main Street programs in the state of Kentucky that were certified and now there are less than 80. She stated that there are several cities that are just not serious about retaining their certification; therefore, there will be less competition for the funding. She also added that in the late 90's, money was abundant and there was millions of dollars available at that time; however, that money is gone and last year, there was only two million dollars in the budget for all of the Main Street programs and Murray received \$75,000.00 of it for the renovation of the building where Mugsy's is located. In order to receive this funding the project has to be of significance to the city.

The Kentucky Heritage Council has an attorney representative that came to work with the Board to review the ordinance. They noted that the ordinance "had no teeth", establishment, or boundaries that they govern. At the time, the established area was known as the "Renaissance Area", which was Railroad Avenue to 7th Street and from Elm to Olive; however, it had never gone through a public hearing and had not been voted on through proper channels. (The name has now been changed from the Renaissance Area to the Historic District because Historic District is a common name used in City government.)

In June 2008 there will be a public hearing to review the establishment of the Historic Overlay District boundaries by the Murray Planning Commission. With a subsequent recommendation, it will then be forwarded on to the City Council for approval. The City Council will then have a public hearing as required by KRS. A new section in the zoning ordinance must also be created. It too will require a public hearing and recommendation from the Planning Commission with subsequent City Council approval. City Staff feels that the Planning Commission as well as the Board of Zoning understands the process. Hopefully, in October 2008 (or sometime in the fall), the Architectural Review Board will be active to oversee the newly established Historic District with rules, regulations, and design guidelines. Basically it will include any cosmetic features done to the exterior of a contributing structure within the Historic Overlay District. The goal is to preserve the architectural ascetic, integrity and characteristic of original Murray or the Historic District.



Matt stated that if the boundaries were to be expanded in the future, it would first have to go to the Architectural Review Board with that request and then letters would be sent out to the property owners for another public hearing. Basically the way that the process will work will be that a person will come into City Hall to get a building permit and if they are recognized to be in the Historic District, they will be referred to Murray Main Street (who will oversee the changes). If they are requesting something that varies from the design guidelines, it will go to the Architectural Review Board for review. If the board approves the application, the applicant gets a Certificate of Appropriateness. The Certificate simply states that they are allowed to do the changes as governed inside the guidelines. If the application for proposed changes is not

approved by the Architectural Review Board, the participant will at that time have the opportunity to go to the City Council within 30 days to challenge that decision.

Tom Auer asked if all of the buildings that were located in the Historic District were of historical status. Ms. Wright stated that some of the properties are not historic; but, if the property did not qualify as historic (which is based on the property's age), it would still go through the same procedures; however, at the Main Street level it would be approved and moved on because it is not of historic significance. For the historic ones, there would be guidelines to adhere to in order to keep the historic fabric intact.

Vice-Chairman Seiber asked if grant funding was at the federal or state level. Ms. Wright said that it could be both, but the Renaissance money is state funded. Vice-Chairman Seiber then asked how this was going to affect the downtown merchants. Ms. Wright stated that they were already under the Renaissance area so this would not affect them that much. She stated that it was basically the people who had properties that had not been in the original area that were concerned. They are afraid that they won't be able to make changes to their property without going before a board for approval. Ms. Wright added that it has been noted that if you have a Historic District, the property values would increase 26%. This is actually not intended to be a very strict Architectural Review Board and ordinance. They are just trying to keep the integrity of the older homes and businesses intact.

Greg Mayes asked if there would be fines if people did not go before the Board. Mr. Mattingly stated yes. He said they could be fined from \$10.00 up to \$500.00 and this would be set by the Board at their discretion. Mr. Mayes stated that he thinks this is a great thing for the city and that it is not just about getting grant funding but for making improvements to the community. He stated that in communities where there is Historic Districts and Architectural Review Boards they prosper. *Matt Mattingly left the meeting at 6:30 p.m.*

Questions and comments: Ms. Dowdy stated that the Planning Department had been notified by the developers of the Haverkamp property (that was presented last month for compatibility) and they wished to suspend the project at this time. Ms. Dowdy stated that if the developers should decide to start this project up again at a future time, it will have to go back through the full process.

Greg Mayes made a motion to adjourn. Tom Auer seconded the motion and it carried with a unanimous vote. The meeting was adjourned at 6:35 p.m.

Chairman, Scott Seiber

Recording Secretary, Reta Gray