

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

October 13

14

The City of Cortland Planning, Zoning & Building Commission met on Monday, October 13, 2014 at 7:00 P. M. at the City Administration Building, 400 N. High Street, Cortland, Ohio. In attendance were the following board members: Chairman Bill Sasse, Vice Chairman Charles Peck, Sally Lane, James Chubb, and John Picuri. Also present were Mayor Curt Moll, Law Director Patrick Wilson and the following individuals:

Jubal Parris	511 Union St.	Nashville, TN
Bill Brewer	Cortland Fire Dept.	Cortland
Cindy Krizinsky	1535 Millbrook Rd.	Grove City, PA
Kevin Denman	234 N Mecca St.	Cortland
Jerome Foskey	125 Topaz	Cortland
Judy Foskey	125 Topaz	Cortland
Brian Pietras	119 Topaz	Cortland
Renee Massucci	119 Topaz	Cortland

Bill Sasse: It is 7:00, Monday, October 13, 2014. I'd like to call to order the regular meeting of Cortland Planning, Zoning & Building Commission. Can we have roll call please?

Roll Call: Bill Sasse, here; Sally Lane, here; John Picuri, here; Charles Peck, here; Jim Chubb, here.

Bill Sasse: Can I have a motion for approval of commission minutes for September 8, 2014 regular meeting?

Charles Peck made a motion to approve September 8, 2014 meeting minutes, seconded by **John Picuri**.

Roll Call: Jim Chubb, yes; Sally Lane, yes; Bill Sasse, yes; John Picuri, yes; Charles Peck, yes. **MOTION APPROVED.**

Bill Sasse: Under old business 16-14 Appeal to reverse the decision of the Zoning Administrator that the buffer requirement as stated in Ordinance 1125.16(a) is not required at 680 Delbert. Do we have anyone here to speak against the decision?

Charles Peck: Do we need a motion first?

Patrick Wilson: The proposal as it stands on the agenda is to reverse... the request of the board is to reverse Don's decision not to cite the property owner into a zoning code violation. That is what is in front of you. That would be a motion to reverse Don's decision.

Bill Sasse: How do we request a roll call on that?

Patrick Wilson: Before you get to a roll call, what you were doing I think is inviting anyone who is here tonight to speak on behalf of that request.

Bill Sasse: And then we just have one vote?

Patrick Wilson: Correct.

Don Wittman: I think you need a motion to open discussion.

Charles Peck: In order to open discussion, I will make a motion.

Patrick Wilson: Well, okay that's fine.

Charles Peck made a motion to open discussion on 16-14, seconded by **John Picuri**.

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Bill Sasse: Do we have anyone here to speak for the reversal?

Jerome Foskey: Yes, Jerome Foskey, 125 Topaz. We are here to speak to the zoning commission as we did last meeting regarding the reversal. Since the last meeting, we are not discrediting Mr. Wittman's decision. He made a decision based on the information that he had so this is certainly not intended against him. Based on the information that I supplied Ms. Barnovsky showing Google maps, our contention is the property no longer exists as it did when the zoning laws were passed. My perception of the zoning laws were when they were enacted, the grandfather clause said that if a property, the zoning commission granted existing property owners the right to continue as they were. If they made a change to the property, then that would put them in non-conformance. Our contention is by removing the buffer which is currently required under the 2005 zoning ordinances that the property in fact has changed from its original state when the grandfathered ordinance was granted in 2005 with the new zoning permits. It also during that period of time, the building I believe, and it is difficult to have time action photos of everyday on a building, but that the building was not in use for some period of time. Under those grandfathered provisions, also if a building was not used for a period of 12 months then it had to come back before the zoning board for approval for its use. Now not being familiar and I believe last time we asked what was the original zoning classification of the building, it appears it was industrial. No one seems to know what the building was originally zoned to do. Our contention is that the building is no longer being used for what it was originally zoned for, but no one can seem to tell us what it was originally zoned for. Beyond that, granting an industrial zoning classification does not appear that it is an open ended thing, that if you have an industrial classification, you can do anything within that classification without coming back before the zoning board for change in use of the property. So in sum, we feel the property has changed from its condition in December of 2005 and those changes triggered it being in non-conformance with the current zoning ordinance. We feel that the barrier was removed improperly. I believe the pictures I supplied show you that the barrier was intact, it was very robust and over a period there of several years even after the zoning code was passed that the property remained largely as it was and at a later date that the barrier was removed and not kept in place. So from that standpoint, if the commission were to review the property today, the property would not be in conformance with your current zoning ordinances. So as citizens, Mr. Sasse last time you said, "If you like your view, you should own it". We are citizens, we are taxpayers, we are your customers and it is impractical to own your view. Were it practical, we would have bought the building ever how many years ago if we had a use for it. But we look to the zoning commission and the City of Cortland's zoning ordinances to protect us as taxpayers and to protect that view and to protect the value of our property.

Charles Peck: Do you have any pictures of the property today? You had pictures from some period of time...

Jerome Foskey: 2014 I believe one of the -

Charles Peck: Since our last meeting?

Jerome Foskey: Since our last meeting, the pictures taken of the trees certainly were taken since our last meeting. 10-3-14 is the last google aerial shot that I provided you and those were actually done on 10-9 so those were done about a week ago or less than a week ago. So if you look at the progression of the property, you have an aerial photo from December 2005. As you can see, the parking lot is really non-existent. The property is heavily wooded. A very small portion of it is occupied by the building and the green space going up to the creek, so this would be the condition when the new zoning ordinances were adopted. In 2006 October you can see that it remains essentially the same, all of the green space remains. The property remains intact. In August of 2009 all the green space remains intact, the parking lot has been cleared, slightly expanded and

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there is a pile of asphalt or crush whatever there but the buffer is still in place. Between that and 2014 it looks pretty much like a wasteland.

Charles Peck: Has there been any activity as far as replanting trees in that area?

Jerome Foskey: The Friday before the last zoning meeting, Mr. Westbay dug a ditch and started setting pine trees that he had dug up from other places on his property. Those are the pictures of the trees I sent. Essentially the trees were cut off at the roots. They were about ten feet high. They were dug out with a backhoe and set into the ditch. There has been no fill around them, so the trees definitely will be stressed. My concern is that with the snow and what have you, it is going to kill the trees and we will have a bunch of dead pine trees come spring.

Charles Peck: Has there been any improvement in that situation since our last meeting?

Jerome Foskey: As of this afternoon, 6:00, no sir. Originally he had indicated to my father-in-law that he was going to put in two rows of pine trees. He worked for about 3 occasions, I was able to gather, right around the last meeting and as best as I can determine no activity has existed since then.

John Picuri: I was actually out there today. I talked to your father-in-law and I went back and took a look at it. I counted twenty-two pine trees, probably between ten and fifteen feet tall. I assume that they are probably not done because I agree that they would likely be distressed the way they were currently installed. I want to say at the first meeting, the meeting we had last month there were maybe ten put in ... so there has been some action.

Jerome Foskey: There were 8, there were about 3 occasions – he put 8, and then I think about 8 more and I believe he may have moved one or something so there are around 20. I haven't counted exactly.

Charles Peck: I was also up there this afternoon.

Jerome Foskey: Thank you.

Charles Peck: I was there on the Delbert side and I would say there are at least twenty something trees there. Whether they are planted like a landscaper would do I don't know but they were there and they are of significant size. There is a possibility they will start doing their job in the near future.

Jerome Foskey: I think it is much like if you buy a Christmas tree and you don't – if it is a live tree and you don't protect it and you set it out in the snow – odds are it is not going to be a very good Christmas tree come spring.

Bill Sasse: Anyone else? I do empathize with your plight here, you do realize that? If I was in your position, I would probably feel exactly the same way. Can you tell me how you feel other than cutting the trees down, there has been a major change in the property use?

Jerome Foskey: Well in 2005, the property was not being used as a parking lot, it was not being used as - there was no equipment to crush and grade gravel or asphalt shavings, there was no burying of concrete pieces in the back part of the property which they have done – pieces of curb or roadway which they have buried all across the property and across the back. So, the building was essentially vacant at one time. From what I understand, I came here in 2003 and at some time the building had something to do with an electrical process or they had large transformers for some activity. So at some point in the past it was used differently. But in 2005 my perception is that the building might

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have been used for storage, but beyond that, there was no commercial activity outside of the building.

Bill Sasse: So the grinder has been added since it was grandfathered in?

Jerome Foskey: Yes, and the gravel or the crush pile that you saw and expanding the parking lot. And again, expansion of the parking lot would require...

Bill Sasse: Other than that, has there been any other changes that you know of?

Jerome Foskey: Increase in noise and dust when it is operating, increase in noise from Route 11 year-round and certainly when the crusher is running.

Bill Sasse: I haven't heard the crusher noise yet so there really is nothing I can bring up there.

Jerome Foskey: I am usually not at home when he runs it.

Bill Sasse: Thank you. Does anyone have any other questions?

John Picuri: I have one. The Service Director had sent a letter to Mr. Westbay asking him to comply with some requirements and it appears that he is attempting to comply. How do we get to the basis of this request? You made a request, Don sent a letter asking him to comply and he is attempting to comply, so where do we get to the point where you I guess are of the understanding that the city is not enforcing the zoning regulations?

Jerome Foskey: Mr. Wittman's letter did not specify any time frame for anything to happen. Nothing in fact happened until I petitioned to appeal Mr. Wittman's decision. And at that point, whether Mr. Westbay was notified or whether someone on Council had a conversation with him, no action was taken. And since that time, the action that was taken has not been completed, there is nothing carried forward. So it is kind of like there is no teeth in the commission from that standpoint. The commission cannot say this needs to be rectified on this date, and it needs to be done to a certain type of standard so that essentially he is perhaps somewhat complied with the intent, but he hasn't complied from the standpoint of completion, he hasn't complied from the standpoint of putting trees in that will for some period of time - It is wonderful to have trees but they have to grow or they are a little more than just sticks over a fence. We made an effort by installing the fence quite a number of years ago to shield some of that when he took some of the trees. We understood that he could take some of the trees out, but when he removed all of the trees that's when we really had an issue. Because there was a barrier that remained of probably 20-30 feet that remained for a year or so after the initial trees were removed.

Bill Sasse: And just what would you like to see? How do you feel this issue could be resolved?

Jerome Foskey: I'd like to see two rows of pines properly planted across the back of the property.

Bill Sasse: You wouldn't want the building taken down or the machines stopped or anything like that?

Jerome Foskey: No. I would like the machine stopped certainly. The building has existed for quite some period of time. It's perfectly fine to park equipment there, to use it during normal business hours. It is not good to use it at eleven o'clock at night when headlights are shining in my bedroom window. That is not a good use of it. But in normal business hours I have no issue. He has a property across the street which is not in

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the city's purvey and the condos that he built and whether Fowler required it or what, but there is like a 10 foot stockade fence across the back and I am not looking for a stockade fence. We are looking for some resolution that provides some reasonable barrier that we don't have to sit on our deck and try to have a nice dinner and look at a gravel crusher and look at a white building and a wasteland between our property and theirs even though we put in a six foot fence.

Bill Sasse: I am not trying to put words in your mouth, but do you feel that the city and the service director have the wherewithal to make this happen?

Jerome Foskey: I feel that if you don't have the wherewithal then you have effectively removed that property from your jurisdiction in perpetuity because he can literally do anything he chooses to do on that property based on this and you are saying he is grandfathered – We can't touch it.

Bill Sasse: Thank you. I appreciate your input and that's very good. Is there anyone else who would like to speak?

Renee Massucci: My question has to do with the waterway too and I don't know if that comes with this as well.

Bill Sasse: State your name, please.

Renee Massucci: Renee Massucci. We are neighbors, I am at 119 Topaz. My question is with all of the gravel and everything and what is apparently underneath the surface, what they kind of buried and everything if that affects all of the waterway. The creek comes through our backyard and goes actually to Mosquito Lake, so that is my concern as well. I don't know if that is in this conversation or not, what they are zoned to do or what they are allowed to do – what they are allowed to be burying in the backyard and how it affects – is it something we have to call the EPA or?

Bill Sasse: Don, can you answer that?

Don Wittman: That is outside the scope of this appeal. The appeal was based on the action of not enforcing the buffer so I am not ready to answer that at this point.

Mayor Moll: I would refer to Soil and Water.

Don Wittman: The bringing of fill in and storm water run-off that is really not a zoning issue other than the requirements for retention on new construction.

Mayor Moll: You can go down to the Ag Center and talk to the people in Soil and Water.

Don Wittman: If you are looking at it from a pollutant standpoint, that is one thing. If you are looking at it from a volume, erosion and deterioration of property values that is whole other...

Renee Massucci: That as well.

Mayor Moll: They deal with both issues there.

Don Wittman: Ohio drainage law is just an untenable beast, Patrick?

Patrick Wilson: Yes, but are you suggesting that there has been dumping in the creek and that is affecting you downstream?

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Renee Massucci: Possibly, yes. If you look at the pictures that were sent, it clearly shows how close to the creek it is.

Don Wittman: Absent any malevolent acts or intention, it is probably just standard construction fill material used to grade off the property. Talking with Mr. Westbay he did have plans to build some storage units and that's where I said you would have to come before this board. Unfortunately in this situation, he really hasn't conducted any activities that give rise to pulling a permit. The removal of the trees is outside the scope of the Zoning Code because it falls under silviculture which is agricultural exemption from zoning rules. I can't require him to pull a permit for that. That is why all of that property out at 11 and 305 which was mainly Fowler, and some in the city, could be cleared without any approval of the city board. The removal of the trees themselves did not require zoning action. Whether or not they served as a buffer is where I was wrestling at because it was never brought to this board as a site plan to require the enactment of the buffer requirement of 1125.16a. I know I dovetailed off on your question – the drainage issue would be something to go to Soil and Water if you think there are things being polluted.

Bill Sasse: Is there anyone else here who would like to speak? Is there anyone else who would like to speak against the reversal? Hearing none, I would like to take a vote. Just to remind you, a yes vote would reverse the decision and direct Don to issue a citation to the owner.

John Picuri: Can I ask Patrick a question? I guess it is my understanding that the question is if the Service Director basically abused his discretion in enforcing the zoning regulations.

Patrick Wilson: Yes, that is a good way of putting it. That's the gist of this, yes.

John Picuri: And just to make sure I understand all of the facts here. We don't have anything concrete that says that the use has changed. Also, the trees were removed five years ago, and I guess in my mind this should have been addressed four or five years ago, when they were being removed. I think this is sort of a gray area and I just want to understand that the question is did Don abuse his discretion in enforcing this based on all of these facts.

Patrick Wilson: That is as good a way of putting the gist of the question as anyone else has. Correct. That is what you are looking at.

Bill Sasse: Anybody else have anything?

Patrick Wilson: And to be honest with you, there could be an argument on statute of limitations when something has happened 5 years ago and now it is brought to a head, but we haven't chosen to raise that argument. We wanted to let everything get out on the record and look into it.

Jerome Foskey: Excuse me. We started talking about this in 2012 and tried to resolve it as a good neighbor with Westbay without involving the city. We made an effort to resolve it. This is a last resort. I understand it has been 5 years, Mr. Wilson.

Patrick Wilson: It is some of us at the city's opinion that the city didn't have any involvement in the issue and we could have raised that earlier but we didn't.

John Picuri: And what further complicates it, is that he appears to be attempting to comply. I guess another question would be, the trees that have been planted if someone were to go out there and ask if the buffer is in compliance now – is it or isn't it? He is attempting to comply.

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Mayor Moll: It is certainly in the process of moving toward compliance. You look at the evidence that is there now and you would say he is in the process. If it doesn't fulfill that requirement then obviously he hasn't done it. But, how do you predict what he is going to do?

Bill Sasse: Hearing no further comments, can I have a vote on 16-14 please?

Roll Call: Sally Lane, no; Bill Sasse, no; Jim Chubb, no; John Picuri, no; Charles Peck, no. **MOTION FAILED.**

Bill Sasse: Any questions on the vote?

Jerome Foskey: Not at this point. I understand. Thank you for your time.

Bill Sasse: Moving on to new business, can I have a motion for 17-14 Replat of Lots 272, 273, 274, 282, 283 and 284 of the Brookside Allotment and part of vacated Brook Drive and part of vacated Park Drive creating Lot 273A.

Charles Peck made a motion for approval of 17-14, seconded by **Jim Chubb.**

Bill Sasse: Is there someone here to speak for the replat of lots?

Jubal Parris: Jubal Parris – Gresham, Smith, and Partners. I am a civil engineer representing GBT Realty. The project surveyor is GPD group. It is basically – there are six lots today and we are going to combine those into one lot to build a Dollar General store which is a replacement of the Dollar General that is two doors down from that property.

Bill Sasse: Does anyone have any questions?

Charles Peck: Exactly where is that store going to be?

Jubal Parris: It is 384 S High St. Do you know where the existing Dollar General store is on High Street?

Charles Peck: Yes.

Jubal Parris: It is two doors I believe to the south. There is I believe an existing white block building.

Charles Peck: Is that going to be torn down or is it going to be renovated?

Jubal Parris: It is a brand new store. We are going to tear everything down and build a brand new store.

Don Wittman: The matter before the board is a lot consolidation. If you look on your map, parcel 273 will be approximately where the block building is. So we are looking at a much larger area than the existing parcel that the Dollar General currently sits on. As well it is going to clear up some vacated roadways and create a single parcel upon which a facility can be built.

Bill Sasse: Does anyone have any questions? Hearing none, can I have a vote on 17-14 please?

Roll Call: John Picuri, yes; Charles Peck, yes; Sally Lane, yes; Jim Chubb, yes; Bill Sasse, yes. **MOTION PASSED.**

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Don Wittman: Jubal, just for your information that matter will be referred to council for their next meeting for final approval. A representative does not need to be there to present that. After such time as that is passed it will be ready to be recorded.

Bill Sasse: Can I have a motion for 18-14 Commercial Building – 384 S High St. – Dollar General Store, 10,640 sq. ft. with 47 parking spaces.

Sally Lane made a motion for approval of 18-14, seconded by **Jim Chubb**.

Bill Sasse: Anyone here to speak for the new commercial building?

Jubal Parris: Yes sir, that is me as well.

Bill Sasse: Does anyone have any questions?

Jim Chubb: My question – the white one which has been here since I built my house – are you going to go wider than that building?

Jubal Parris: I am not sure of the dimensions on the existing store, but the new one I believe will be bigger.

Jim Chubb: 47 parking spaces, I guess you will be.

Bill Sasse: I guess the only question I have, is the entrance and exit going to be wider than on the current one?

Jubal Parris: I am not sure of the dimensions on the existing one.

Don Wittman: Right now, Bill, I think there is barely enough room for a few cars to get in and out – it may be 24 foot wide if that. It appears that this entrance not only behind the sidewalk is going to be 36 feet but also the approach is going to be flared out coming into and out of the curb. You have more room to navigate.

Curt Moll: Your drawing here with all of the stuff on it, that is the truck access?

Don Wittman: I believe that is the truck access.

Bill Sasse: That was my next question. Are trucks going to get out of the middle of the road now?

Jubal Parris: Absolutely. That is one reason why the entrance is so large and those radiuses are so big, so the big trucks can come in and back up to the stock room door and unload.

Bill Sasse: That was my only other concern. Now I do have one other question. I have noticed that other Dollar Generals have a little bit fancier design on the front. Is there any possibility of that happening with this one?

Jubal Parris: If I can be candid, not if it is not required by this board.

Bill Sasse: Well gee whiz, let's require that.

Don Wittman: Well Bill, before you rush to judgement if by fancier you mean split face concrete block and not a metal front (Multiple people speaking) but the sidewalls and rear walls will still be metal. (Multiple people speaking) The elephant in the room is it is going to mirror what Family Dollar looks like because of competition.

Jubal Parris: The name of the game is to keep costs as low as possible.

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Bill Sasse: I guess I am so excited that we are getting a different one.

Jim Chubb: There are going to be a hundred thousand people so glad that they are moving because when you go in there now you can't get out.

Jubal Parris: This one will be a large improvement over the existing Dollar General.

Don Wittman: But as far as this board doesn't enforce the zoning regulations, they just review new proposals: the parking spaces meet the zoning ordinance, the buffer on the front setback of ten feet from the property line is in compliance with the zoning regulations, and the width of the driveway. All zoning regulations as it pertains to site layout have been met. As far as the storm water retention, that is currently under review by myself. It will have adequate storm water retention to meet the regulations.

Bill Sasse: You do know about the Knox box?

Jubal Parris: Yes sir.

Bill Sasse: Any other questions? Can I have a vote on 18-14?

Roll Call: **John Picuri, yes; Jim Chubb, yes; Sally Lane, yes; Charles Peck, yes; Bill Sasse, yes. MOTION PASSED.**

Bill Sasse: Can I have a motion to approve 19-14 New Business – Dollar General – 384 S High St. – Retail sales – Open 7 days a week?

Jim Chubb made a motion for approval of 19-14, seconded by **John Picuri**.

Bill Sasse: Does anyone have any further questions? Can I have on vote on 19-14?

Roll Call: **Bill Sasse, yes; Sally Lane, yes; Charles Peck, yes; Jim Chubb, yes; John Picuri, yes. MOTION PASSED.**

Bill Sasse: Can I have a motion for 20-14A Wall Mounted Sign – Dollar General – 384 S High St. – 26' x 3'9"?

Charles Peck made a motion for approval of 20-14A, seconded by **Sally Lane**.

Bill Sasse: Who is here to speak for the sign?

Cindy Krizinsky: Hi, I am Cindy Krizinsky from Custom Signs. What is a new building without signs? (laughter) We are asking for not only the wall sign but a pole sign which we did make smaller.

Severall: We will vote on each one separately.

Cindy Krizinsky: This is the wall sign.

Bill Sasse: Is it pretty much the same size as the one that is on there now?

Cindy Krizinsky: Internally illuminated. Honestly, I am not sure what size is there now. They typically hang them directly over their entrance ways.

Bill Sasse: Does anyone have any other questions? Can I have a vote on 20-14A?

Roll Call: **Bill Sasse, yes; Sally Lane, yes; John Picuri, yes; Charles Peck, yes; Jim Chubb, yes. MOTION PASSED.**

Bill Sasse: Can I have a motion on 20-14B Pole Mounted Sign – Dollar General – 384 S High St. – 4' x 8' and 12' in height.

Sally Lane made a motion for approval of 20-14B, seconded by **Charles Peck**.

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Bill Sasse: And who is here to speak for the pole sign?

Cindy Krizinsky: I am here for that as well.

Bill Sasse: Does anyone have any questions? Does that fit the regulations?

Don Wittman: Yes the initial sign was taller and larger so upon initial review we said you can scale it back or go for a variance and they chose to come back with a sign that fits their company requirements as well as our ordinance.

Bill Sasse: Thank you. Any further questions? Can we have a vote on 20-14B?

Roll Call: **Jim Chubb, yes; Sally Lane, yes; Bill Sasse, yes; John Picuri, yes; Charles Peck, yes. MOTION PASSED.**

Bill Sasse: Can I have a motion for approval of 21-14 – Commercial Building – Cortland Hardwoods – 234 N Mecca – 6,084 Sq. Ft.

Sally Lane made a motion for approval of 21-14, seconded by **Charles Peck**.

Bill Sasse: Who is here to speak for the building?

Kevin Denman: Kevin Denman, Cortland Hardwoods Products.

Bill Sasse: Is this to replace the one that burned?

Kevin Denman: Yes.

Bill Sasse: Does anyone have any questions?

John Picuri: Does it meet all of the requirements, Don?

Bill Sasse: This is pretty much just for storage?

Kevin Denman: Storage building. The same size as the one that burnt.

Bill Sasse: Anything you would like to add? Can I have a vote on 21-14?

Roll Call: **Sally Lane, yes; Bill Sasse, yes; Jim Chubb, yes; John Picuri, yes; Charles Peck, yes. MOTION PASSED.**

Bill Sasse: Is there any further business to come before this board? Hearing none, I would like to entertain a motion to adjourn.

John Picuri made a motion to adjourn, seconded by **Charles Peck**.

Roll Call: **John Picuri, yes; Charles Peck, yes; Sally Lane, yes; Jim Chubb, yes; Bill Sasse, yes. MOTION APPROVED.**

Meeting Adjourned: 7:36pm.

William Sasse, Chairman

Date

Teresa Barnovsky, Secretary