

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

OCTOBER 26, 2005

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 26, 2005 beginning at 7:30 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Phyllis Sherman; Luigi Bartolomeo; Andrew Chalmers; Jeana Hale; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:35 p.m. to consider a **VARIANCE** requested by **JONATHAN WELLS** in regard to Article 147.13.19.10.1 of the Conway Zoning Ordinance to allow relief from the buffer planting requirement in the Special Highway Corridor District along a street intersecting the proposed bypass at 90 Cranmore Road, North Conway (PD 219-104). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on October 19, 2005.

Doug Burnell of H.E. Bergeron appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four-members present and the applicant is allowed a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing to the next meeting. Mr. Burnell agreed to proceed with four-members.

Mr. Burnell stated that the subject area would not provide much of a buffer due to the size of the area. Mr. Irving stated that the ordinance requires nine trees to be planted in a 45-foot by 25-foot area. Mr. Irving stated the likely hood of the trees competing with each other before reaching maturity is great. Mr. Burnell stated at this may create more of a hazard.

Mr. Bartolomeo stated that the visibility from an intersection is a good argument. Mr. Irving stated that the Town does require street trees as part of a subdivision application and the applicant would have to plant a few trees, but it shouldn't be so the trees would block the visibility from an intersection. Mr. Burnell stated that there are some qualified street trees that would remain. Mr. Bartolomeo asked if they would plant something in the subject area. Mr. Burnell stated that the existing trees would remain and the trees in the State's way would be replaced by the State.

Ms. Sherman asked for further comment from the Board; there was none. Ms. Sherman asked for public comment; Mark Frydman stated that he lives next door and asked why the applicant was seeking a variance and not just planting the trees. Mr. Burnell stated that it would be a safety problem when the road is realigned.

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Barbara Frydman stated that she understands the overcrowding of the trees in that area, that there are trees already in that area and she can understand that the State may tear up the trees, however, the Town voted in a majority to have this zoning ordinance. Ms. Frydman stated that she would really not like to see a variance granted negating this ordinance that the majority of the Town's people voted in favor for. Ms. Frydman stated that in regard to the plantings is there a way the State and the applicant can work together and come to an agreement for plantings for that area.

Ms. Sherman stated there are certain times when properties need alleviation from the ordinance and that is what a variance is designed to do. Ms. Sherman stated a hardship is necessary for a variance, which could be the possible traffic hazard with the density of the trees required. Mr. Burnell stated that there are three trees that exist in that area; however, they are technically in the realignment area. Ms. Frydman stated that the applicant should be held to that ordinance.

Mr. Frydman submitted a statement to the Board from John Damore. Ms. Sherman read Mr. Damore's statement. Mr. Bartolomeo stated that the unique situation is that this is an intersection and it has merit. Mr. Bartolomeo suggested a compromise by having the applicant plant three trees. Ms. Sherman asked for further public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1 .b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that the some other means would be another number. **Motion unanimously carried.**

Ms. Hale made a motion, seconded by Mr. Chalmers, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo voting in the negative.**

Ms. Sherman read item 2. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; Ms. Sherman stated that this would not make a bit of difference to surrounding property values. **Motion unanimously carried.**

Ms. Sherman read item 3. **Ms. Hale made a motion, seconded by Mr. Chalmers, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that the public safety has a higher value, as there could be blind spots. Ms. Sherman stated that the density of the buffer is overkill. **Motion unanimously carried.**

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Ms. Sherman read item 4. **Ms. Hale made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; Ms. Sherman stated granting the variance would be in the public interest not against it. **Motion carried with Ms. Hale voting in the negative.** Ms. Hale stated that the Board has heard from the public.

Ms. Sherman read item 5. **Ms. Hale made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.19.10.1 of the Town of Conway Zoning Ordinance to allow relief from the buffer planting requirement in the Special Highway Corridor District along a street intersecting the proposed bypass be granted with the condition that three trees be planted in the subject area. Motion unanimously carried.

A public hearing was opened at 8:14 p.m. to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **VIRGINIA TRAFFORD** in regard to Article 147.14.1.1 of the Conway Zoning Ordinance to expand the nonconforming use by adding a propane filling station with a 1,000-gallon propane tank at 1571 East Main Street, Center Conway, NH (PID 260-48). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on October 19, 2005.

Virginia Trafford appeared before the Board. Mr. Chalmers stepped down at this time. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only three-members present and the applicant is allowed a five-member Board. Ms. Sherman asked if the applicant would like to proceed with three-members or continue the hearing to the next meeting. Ms. Trafford agreed to proceed with three-members.

Mr. Chalmers asked if the applicant could have 400 propane bottles at this facility rather than the bulk storage. Mr. Irving answered in the affirmative.

Mr. Bartolomeo made a motion, seconded by Ms. Hale, that the Administrative Decision pursuant to §147.141.1 of the Conway Zoning Ordinance to expand the nonconforming use by adding a propane filling station with a 1,000-gallon propane tank be upheld. Motion unanimously carried.

A public hearing was opened at 8:25 p.m. to consider a **VARIANCE** requested by **VIRGINIA TRAFFORD** in regard to Article 147.13.5 and 147.16 of the Conway Zoning Ordinance to expand the nonconforming use by adding a propane filling station with a 1,000-gallon propane tank at 1571 East Main Street, Center Conway, NH (PID 260-48). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on October 19, 2005.

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Virginia Trafford appeared before the Board. Mr. Chalmers remained stepped down. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only three-members present and the applicant is allowed a five-member Board. Ms. Sherman asked if the applicant would like to proceed with three-members or continue the hearing to the next meeting. Ms. Trafford agreed to proceed with three-members.

Ms. Sherman read a letter from the Center Conway Fire Chief, David Pandora. Mr. Bartolomeo stated that the propane is germane to the business and is clearly accessory to the product being sold. Mr. Chalmers stated that the other option is to have hundreds of propane cylinders. Ms. Sherman stated that this ordinance was a reaction to Reliable Oil. Ms. Sherman stated that they took a baseball bat to hit a fly. Ms. Sherman stated if there was a farm, you couldn't have what was expected and reasonable as part of a business. Mr. Bartolomeo asked if the canopy over it would require fire suppression. Ms. Trafford answered in the negative. Ms. Sherman asked for public comment; there was none.

Ms. Hale read item 1.a. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Hale read item 1 .b. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on this property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Hale read item 1.c. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that the variance would not injure the public or private property rights of others.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that based on the findings of a, b, and c above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 4. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Hale made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.5 and 147.16 of the Town of Conway Zoning Ordinance to expand the nonconforming use by adding a propane filling station with up to a 1,000-gallon propane tank be granted. Motion unanimously carried.

A public hearing was opened at 8:40 p.m. to consider a **SPECIAL EXCEPTION** requested by **JEANNE WHITNEY, ANTHONY FRANCHI, PHILIP MCDONNELL AND PATRICIA FRANCHI/MEADOW GREEN REALTY TRUST II** in regard to Article 147.13.16.10.8 of the Conway Zoning Ordinance to allow the construction of a detention basin (north of the proposed road) within the wetland buffer off Thompson Road (PID 2 19-303). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on October 19, 2005.

Mr. Chalmers rejoined the Board at this time. Doug Burnell of H.E. Bergeron appeared before the Board and Josh McAllister of H.E. Bergeron was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four-members present and the applicant is allowed a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing the next meeting. Mr. Burnell agreed to proceed with four-members.

Mr. Irving stated that the applicant is applying to cross the wetland, as there is no special exception to cross the buffer. Mr. Irving stated if allowed to be within the wetland then it is applied that it would be allowed in the buffer. Mr. Burnell stated that it would be a closed system, but the water needs to go somewhere and be treated. Mr. Burnell stated that the system is designed for a 25-year storm event and designed to be as small as possible. Mr. Chalmers asked if the drainage pond would drain into Artist Brook. Mr. Burnell answered in the affirmative.

Mr. Chalmers asked if there would be standing water or would they be dry. Mr. Burnell answered they would be dry and they would be adjacent to the wetland, but not in a wetland. Mr. Irving asked with the recent two significant events would they have exceeded their capacity. Mr. McAllister stated that they may have been equal too, but a lot are oversized. Mr. Irving stated that Artist Brook would be more protected with the development then it is today without the development. Josh agreed. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Chalmers made a motion, seconded by Ms. Hale, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance**

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of development permits in 404 jurisdictional wetlands. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Chalmers made a motion, seconded by Ms. Hale, that site plan review approval is not applicable to this application. Motion unanimously carried.**

Ms. Hale made a motion, seconded by Mr. Chalmers, that, based on the foregoing findings of fact, the Special Exception pursuant to §147.13.16.10.8 of the Conway Zoning Ordinance to construct a detention basin (north of the proposed road) within the wetland buffer be granted. Motion unanimously carried.

A public hearing was opened at 9:00 p.m. to consider a **SPECIAL EXCEPTION** requested by **JEANNE WHITNEY, ANTHONY FRANCHI, PHILIP MCDONNELL AND PATRICIA FRANCHUMEADOW GREEN REALTY TRUST II** in regard to Article 147.13.16.10.8 of the Conway Zoning Ordinance to allow the construction of a detention basin (south of the proposed road) within the wetland buffer off Thompson Road (PID 219-303). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on October 19, 2005.

Doug Burnell of H.E. Bergeron appeared before the Board and Josh McAllister of H.E. Bergeron was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four-members present and the applicant is allowed a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing the next meeting. Mr. Burnell agreed to proceed with four-members.

Mr. Burnell stated that they designed the system to be as small as it can, but due to the grading of the land it needs to be within the buffer of the wetland. Ms. Sherman asked if the detention basins would be grassed. Mr. Burnell answered in the affirmative.

Ms. Sherman read item 1. **Mr. Chalmers made a motion, seconded by Ms. Hale, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Chalmers made a motion, seconded by Ms. Hale, that site plan review approval is not applicable to this application. Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Ms. Hale, that, based on the foregoing findings of fact, the Special Exception pursuant to §147.13.16.10.8 of the Conway Zoning Ordinance to construct a detention basin (south of the proposed road) within the wetland buffer be granted. Motion unanimously carried.

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A public hearing was opened at 9:03 p.m. to consider a **SPECIAL EXCEPTION** requested by **JEANNE WHITNEY, ANTHONY FRANCHI, PHILIP MCDONNELL AND PATRICIA FRANCHUMEADOW GREEN REALTY TRUST II** in regard to Article 147.13.16.10.7 of the Conway Zoning Ordinance to allow a driveway (crossing the buffer once) within the wetland buffer off Thompson Road (PD 219-303). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on October 19, 2005.

Doug Burnell of H.E. Bergeron appeared before the Board and Josh McAllister of H.E. Bergeron was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four-members present and the applicant is allowed a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing the next meeting. Mr. Burnell agreed to proceed with four-members.

Ms. Sherman read item 1. **Ms. Hale made a motion, seconded by Mr. Chalmers, that use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Chalmers made a motion, seconded by Ms. Hale, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Chalmers made a motion, seconded by Ms. Hale, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that site plan review approval is not applicable to this application.** **Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Ms. Hale, that, based on the foregoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Conway Zoning Ordinance to allow a driveway (crossing the buffer once) within the wetland buffer be granted. Motion unanimously carried.

A public hearing was opened at 9:10 p.m. to consider a **SPECIAL EXCEPTION** requested by **JEANNE WHITNEY, ANTHONY FRANCHI, PHILIP MCDONNELL AND PATRICIA FRANCHI/MEADOW GREEN REALTY TRUST II** in regard to Article 147.13.16.10.7 of the Conway Zoning Ordinance to allow a driveway (crossing the buffer twice) within the wetland buffer off Thompson Road (PD 2 19-303). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on October 19, 2005.

Doug Burnell of H.E. Bergeron appeared before the Board and Josh McAllister of H.E. Bergeron was in attendance. Ms. Sherman read the application and the applicable section of the ordinance.

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Ms. Sherman stated that there were only four-members present and the applicant is allowed a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing the next meeting. Mr. Burnell agreed to proceed with four-members.

Ms. Sherman read item 1. **Mr. Bartolomeo made a motion, seconded by Ms. Hale that use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Bartolomeo made a motion, seconded by Ms. Hale, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Bartolomeo made a motion, seconded by Ms. Hale, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Bartolomeo made a motion, seconded by Ms. Hale, that site plan review approval is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Bartolomeo made a motion, seconded by Ms. Hale, that, based on the foregoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Conway Zoning Ordinance to allow a driveway (crossing the buffer twice) within the wetland buffer be granted. Motion unanimously carried.

A public hearing was opened at 9:12 p.m. to consider a **VARIANCE** requested by **JOSEPH AND MAUREEN SORAGHAN** in regard to Article 147.13.1.3 of the Conway Zoning Ordinance to allow a two-lot subdivision with unqualified road frontage at 31 Worcester Hill Road, North Conway (PD 202-3 5). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on October 19, 2005.

Bob Tafuto of Ammonoosuc Survey Company appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four-members present and the applicant is allowed a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing the next meeting. Mr. Tafuto agreed to proceed with four-members.

Mr. Tafuto stated that the NHDOT would not issue a driveway permit for the second lot, but they did amend the driveway permit for the existing house to allow two units. Mr. Irving stated that the requirement is for the lot to be accessible from it's own road frontage. Mr. Irving stated that the Planning Board was of the opinion that they did not want a circumstance where the road frontage doesn't qualify. Mr. Tafuto stated that it is the topography of the lot that is unique, as they wouldn't be allowed to build that steep of a road [Worcester Hill Road] today.

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Mr. Tafuto stated that the owners do have the option of a unit subdivision, but the owner would like two separate lots of record. Mr. Bartolomeo stated there would be a deeded right-of-way. Mr. Chalmers stated that there is an alternative with the unit subdivision. Mr. Tafuto stated that it is an alternative that it not beneficial to the owners.

Ms. Sherman read item 1.a. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1 .b. **Mr. Chalmers made a motion, seconded by Ms. Hale, that the benefit sought by the applicant couldn't be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; Mr. Chalmers stated that the applicant could feasibly achieve this with a planned unit development, so there is another option. Ms. Hale agreed with Mr. Chalmers. **Motion defeated with Mr. Chalmers and Ms. Hale voting in the negative and Mr. Bartolomeo and Ms. Sherman voting in the affirmative.**

Mr. Chalmers made a motion, seconded by Ms. Hale, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Chalmers made a motion, seconded by Ms. Hale, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Chalmers made a motion, seconded by Ms. Hale, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Chalmers made a motion, seconded by Ms. Hale, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Chalmers made a motion, seconded by Ms. Hale, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Ms. Hale, that, based on the forgoing findings of fact, the variance from §147.13.1.3 of the Town of Conway Zoning Ordinance to allow a two-lot subdivision with unqualified road frontage be granted. Motion unanimously carried.

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OTHER BUSINESS

Alvar Nelson (PID 214-7) - Motion for Rehearing (File #05-43): After a brief discussion, Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that there was no additional information provided nor was there a technical error. Motion unanimously carried.

Review and Acceptance of Minutes: Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of September 28, 2005 as written. Motion unanimously carried.

Meeting adjourned at 9:30 p.m.

Respectfully Submitted,

Holly Meserve
Recording Secretary