

PLANNING COMMISSION

December 20, 2011

MINUTES OF A REGULAR MEETING OF THE PLANNING COMMISSION OF THE TOWN OF CLARKDALE HELD ON TUESDAY, DECEMBER 20, 2011, IN THE MEN'S LOUNGE OF THE CLARK MEMORIAL CLUBHOUSE, 19 N. NINTH STREET, CLARKDALE, AZ.

A Regular Meeting of the Planning Commission of the Town of Clarkdale was held on Tuesday, December 20, 2011, at 6:00 p.m., in the Men's Lounge of the Clark Memorial Clubhouse, 19 N. Ninth Street, Clarkdale, AZ.

Planning Commission:

Chairperson	Jack Van Wye	Present
Vice Chairperson	Vic Viarengo	Present
Commissioners	Jorge Olguin	Present
	Karen Daniels	Present
	Dave Puzas	Absent

Community Development Staff:

Community Development Director	Jodie Filardo
Senior Planner	Beth Escobar
Special Projects Planner	Enalo Lockard

Others In Attendance: Gayle Mabery, Town Manager (left after Director's report).

1. AGENDA ITEM: CALL TO ORDER: The Chairperson called the meeting to order at 6:00 p.m.

2. AGENDA ITEM: ROLL CALL: The Community Development Director called roll.

3. AGENDA ITEM: PUBLIC COMMENT: - The public is invited to provide comments at this time on items that are not on this agenda. Action taken as a result of public comment will be limited to directing staff to study the matter, or scheduling the matter for further consideration and decision on a later agenda, as required by the Arizona Open Meeting Law. Each speaker is asked to limit his or her comments to **FIVE MINUTES**.

Ellie Diercksmeier from Clarkdale spoke during the public comment and requested more information regarding the proposed park in the Crossroads at Mingus Subdivision. This information was provided in the Director's report.

4. AGENDA ITEM: MINUTES: Consideration of the **Regular Meeting Minutes of November 15, 2011**. The Chair entertained a motion to accept the minutes as amended.

Commissioner Daniels **motioned to approve the amended Regular Meeting Minutes of November 15, 2011**. Vice Chairperson Viarengo **seconded the motion**. **The motion passed unanimously**.

5. AGENDA ITEM: REPORTS:

Chairperson & Members Special Events Report: None.

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Staff Report: The Chairman moved the “Director’s Report” listed under the last agenda item to this item.

The Community Development Director provided the following update to the Commissioners:

- 1. Welcome to Beth Escobar.** After an exhaustive two-round search with thanks to Planning Commission Chair Jack Van Wye and previous Chair Jorge Olguin for their assistance, we are pleased to welcome Senior Planner Beth Escobar back to the Community Development Department (CDD). As a Clarkdale resident and a former employee of the Town (in the planning department), Beth brings an extensive knowledge of the community and its history coupled with solid planning skills honed through additional employment with Yavapai County and the City of Sedona. Her talents are many, and we are thrilled to have her as a member of the CDD team.
- 2. Crossroads at Mingus Park Update.** Following concerns noted from the previous Planning Commission meeting about the particulars relating to the Crossroads at Mingus Park (especially on Tract F) and additional questions raised about the process by which the park’s design will be realized, the CDD staff conducted an extensive review of the entire process to date related to the park and its design and have found the process to be in keeping with state and local regulations governing such a process.

As a point of information, the role of the Planning Commission in the process is to evaluate the modifications to the zoning related to the project and the Planned Area Development, which has occurred. The design of the park is the purview of the Parks & Recreation Commission as a recommending body and the Design Review Board as an approving body for the site plan based on guidance from the 2002 General Plan and public input.

Those interested in providing public input to the design of the park are welcome to participate in any one or all of the three upcoming opportunities to share thoughts and suggestions:

1. Neighborhood meeting on January 5, 2012 from 5:30 – 7:30 p.m. at the Men’s Lounge. The Director noted this is a change from previously published meeting times.
2. The subsequent Parks & Recreation Commission meeting is tentatively scheduled for January 18, 2012 at 5:30 p.m. in the Men’s Lounge. At this meeting the Parks & Recreation Commission will discuss two major topics:
 - a. The definition of a ‘passive’ park and an ‘active’ park. The National Park definitions may be used as a model to guide this discussion.
 - b. The Commission will also explore the issue of whether each park on Tracts F or K in the Crossroads at Mingus Subdivision should be active or passive parks.
3. The Parks & Recreation Commission will make a recommendation to the Town Council regarding the two items listed above. Staff anticipates that Town Council review this recommendation at their February 14, 2012 meeting. Staff is expected to ask Town Council for a specific direction to the Parks & Recreation Commission to work with staff and the developer on proposed designs for the parks. These designs will then be vetted through the Design Review Board.

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4. It is anticipated that the Design Review Board will take action on the park design at their March or April 2012 meeting. As a point of information, only a member of Town Council or the applicant (developer) may appeal a decision by the Design Review Board, per Section 11-7 of the Town Zoning Code. This appeal must be filed within 15 days of the Design Review Board action. If an appeal is filed, the item moves forward to the Town Council for a decision. Public input is a vital part of the process in making this park the best it can be in service to all the residents of Clarkdale.
3. **Mountain Gate Update.** On November 29, 2011, the Town Council accepted a portion of the roads within the subdivision following the successful completion of a chip-seal project within the most inhabited and frequently-used portions of the subdivision. This acceptance enables the Clarkdale Police Department to enforce civil traffic violations (such as speeding) within the subdivision. The acceptance also means the Town is now responsible for the ongoing maintenance of those streets within the subdivision.

In other Mountain Gate news, BC Land Group completed the purchase of 381 lots within the subdivision while also assuming the obligations of the previous developer. In an initial meeting with several Town staff members, BC Land Group indicated their intention is to spend approximately 3 months compiling a plan related to the subdivision, and they will be in contact with the Town following completion of that plan.

On a related note, Dorn Homes, the other company that recently purchased 11 homes and townhomes from the bankruptcy, removed a large real estate sign on Mountain Gate Drive at the request of CDD. The sign was not in compliance with the Town's sign code, and it was not located on the premises offered for sale.

4. **Open Meeting Law Reminder.** Just as a reminder, please don't send email directly to members of this Commission as it may be construed to be a circumvention of the Open Meeting Law. Based on item 7.5.2 Circumvention of the Open Meeting Law on page 43 of the Town of Clarkdale Public Service Handbook distributed this October, "Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members."

Should you want something shared with your fellow commissioners between meetings, please contact CDD and we'll be happy to take care of the distribution for you.

6. NEW BUSINESS

WORKSESSION: DISCUSSION REGARDING NEW IMPACT FEE LEGISLATION

Staff Report: Provided by CDD Senior Planner, Beth Escobar.

Summary: During the Fall 2011 Arizona State legislative session, new rules were adopted pertaining to the ability of municipalities to assess development impact fees. This new regulation, ARS 9-463.05, becomes effective January 1, 2012.

Staff Analysis:

The new legislation requires that development impact fees may only be collected for a 'necessary public service'. Those items that qualify as a necessary public service are listed in Subsection S.7 of the new law. These include water, wastewater, and storm water facilities, fire and police facilities and

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equipment and vehicles, neighborhood parks and recreational facilities under 30 acres and library facilities up to ten thousand square-feet. The necessary public service must have a life expectancy of three or more years and must be owned and operated by the Town.

Per Subsection B.1 of the legislation, development fees collected must result in a beneficial use to the development. The developer's share must be proportionate to the benefits the development will gain.

In specific instances, a developer is entitled to a refund of paid impact fees if the facility for which the fee was collected is not completed within three years.

The new legislation requires that all development impact fees collected by the Town must have a direct relationship to an Infrastructure Improvements Plan (IIP). This is a written plan that is adopted by the municipality that identifies necessary public services that need to be developed. The IIP must assign an approximate cost of development for each proposed infrastructure project. The IIP must also provide funding details for each infrastructure project.

Details of what needs to be included in the IIP are provided in Subsection E of the new legislation. A consolidated Infrastructure Improvement Plan will also need to be reviewed through public hearing and adopted by the Town Council. The plan needs to be compiled by a 'qualified professional', such as a financial consultant or engineering firm. The new legislation requires that an advisory committee of at least five members be appointed by the Town Council to review the IIP and provide comments. At least fifty percent of the advisory committee must be representatives of the real estate or development industry. Members of this committee cannot be employees or officials of the town.

Once adopted, the IIP will need to be updated and reviewed every five years. The Town will be required to submit an annual report to the state regarding the collection and disbursement of development impact fees.

In response to this new legislation, the Town will need to adopt, through an ordinance, new rules for the collection of development fees and a new fee schedule. The Arizona League of Cities and Towns has produced a draft ordinance and this is included in the Commission's packet for reference. The IIP, and any related financial records, are subject to audit by the State.

Any development impact fees collected by the Town previous to the effective date of this legislation must be placed in a separate fund and accounted for separately. Any development fees collected based on the previous fee schedule, which do not qualify under the new legislation, must be used for the purpose they were collected prior to January 1, 2020 or disbursed among categories qualifying as necessary public services.

Until the required IIP is adopted, the Town may continue to collect development fees in force prior to January 1, 2012 as long as these fees meet the new definition of a 'necessary public service' and the fees collected will be replaced by a development fee created under the new IIP.

Under the new legislation, development impact fees may no longer be collected for construction or expansion of public facilities not qualifying as a necessary public service, repair, operation or maintenance of existing facilities, upgrading of existing facilities or administrative cost.

Staff Recommendation: This information is provided to the Commission as reference only and there is no staff recommendation at this time. The Community Development Department will be preparing a

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report for City Council. At that time, staff will be recommending a suspension of the current development fee schedule. Historically, the development impact fees assessed by the Town have not paid for the necessary improvements to address growth throughout the community. It is staff's opinion that the costs associated in meeting the new regulation, both in staff time and consulting fees, would exceed the development impact fees that could potentially be collected under the new regulations.

Staff will be exploring other methods to secure funding to help mitigate the cost of growth. This might include changes to current regulations, including the Subdivision regulations that are included in the Town Code. Staff would present any proposed code changes to the Planning Commission for review and input prior to moving the proposed changes forward to Council.

Subsequent to the staff presentation, the Commission asked the following questions.

Chairman Van Wye asked what is the anticipated cost of preparing the Infrastructure Improvement Plan? Senior Planner Escobar responded that based on previous reports prepared for the Town, staff is estimating this cost to be approximately \$20,000 and that this report would need to be updated on a regular basis at additional cost.

Chairman Van Wye asked whether staff could estimate how much funding could be obtained from means other than development impact fees. Community Development Director responded that staff will be researching this information to bring forward to the Town Council in a Worksession scheduled for January 10, 2012.

Commissioner Olquin stated that it is important to validate the assumptions on which cost estimates are based.

This being for discussion only, there were NO actions taken.

7. AGENDA ITEM: WORKSESSION: SIDEWALK CAFÉS IN THE CENTRAL BUSINESS DISTRICT.

Information provided to the Commissioners by CDD Special Projects Planner, Enalo Lockard:

Project Description: Amend the Zoning Code to address use of public right-of-way for private business use - sidewalk dining or also known as sidewalk cafes.

Summary: This matter was instituted by a request from a business owner in the Town center area. It was brought to the Commission for a work session. During the Commission Meeting of November 15, 2011 a work session was held to review options of the consideration of sidewalk cafés. After much deliberation, the Commission directed staff to come back with some suggestions that were less intense than the Sedona ordinance, but more enforceable than the City of Cottonwood's policy.

Finding of Fact: The use of Town property for private use must be addressed in such a manner that is beneficial to the Town and its' citizens while still addressing liability issues. Staff also has concerns with permanent barrier installations regarding their penetrations into the sidewalk that may cause premature failure of the walking surface.

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Staff Analysis: In light of the foregoing direction given by the Commission, staff offers the following proposed draft Zoning Code additions/amendments for the Commission's consideration and direction. The proposals below are open for discussion and additional direction from the Commission.

Section 4-16 Sidewalk Cafés Permit

A. Purpose and intent: This section shall apply to the establishment, operation and maintenance of all sidewalk/outdoor café dining areas accessory and incidental to lawful restaurants/dining establishments within the Town's rights-of-way directly in front of and or adjacent to the specific business to which they pertain. The purpose of this section is to promote general economic development, protect the public health, safety and general welfare and the atmosphere of the Town for the benefit of all businesses and our citizens and visitors. No rights of individuals or individual businesses are created therein.

B. Definitions:

1. *Furniture* means tables, umbrellas, chairs, benches or other objects used for the purpose of seating or of supporting the dining business.
2. *Sidewalk café* means a dining experience created within a portion of the public right-of-way kept, used, maintained and held out to the public as a place for sidewalk dining, where food, beverages or other refreshments are served for consumption on the premises adjacent to a business licensed to operate as an eating and/or refreshment establishment.
3. *Removable barrier* or *barrier* means a physical separator that can easily be lifted and moved immediately without the assistance of tools.
4. *Sidewalk* means that area of public right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property lines reserved for pedestrian traffic, not including street crossings.
5. *Operator* means the persons or businesses permitted to operate a specific sidewalk café.
6. *Applicant* means persons or businesses applying for a permit to operate a specific sidewalk café.

C. Permit required and fees: An annual permit issued by the Town to operate a sidewalk café is required and shall be issued only to a business that holds all current Federal, State and Local licenses required to operate said business wishing to establish a sidewalk café on the public or private property directly adjacent to the business to be used by the general public.

1. Permit application: The application shall contain the following information:
 - a. The name, home and business address, email address, and telephone number of the applicant/operator, and the name, email address, telephone number and address of the owner/operator of the business, if other than the applicant.

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- b.** The name, home address, email address, and telephone number of a responsible person whom the Town may notify or contact at any time concerning the applicant's permit.
 - c.** A copy of the current business license to operate a business establishment which is the subject of the application.
 - d.** A statement of how the sidewalk dining area will be supervised and maintained.
 - e.** Proof of current liability insurance, issued by an insurance company licensed to do business in the State of Arizona, protecting the licensee and the Town from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the sidewalk dining permit. Such insurance shall name the Town as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advanced written notice to the Town.
 - f.** Two copies and an original sketch to scale of the proposed location showing the layout and dimensions of the proposed sidewalk cafe area.
 - g.** Proof of any required permit from the Arizona Department of Liquor Licenses and Controls.
 - h.** Photographs, drawings, or manufacturer's brochures fully describing the appearance of all proposed dining area furniture or other objects related to the operation of the sidewalk dining area by the applicant.
 - i.** Non-refundable annual fee as shown in the Town of Clarkdale fee schedule. The applicant must pay necessary water and or sewer capacity fees for additional seats within the sidewalk dining area. In addition the applicant must pay monthly sewer fees as agreed in order for the permit to remain valid. Failure to pay sewer fees as agreed shall result in the immediate revocation of the permit.
- 2.** Permit process. All sidewalk café applications shall be reviewed and approved by the Design Review Board (DRB) prior to commencement of operations of the sidewalk café. DRB application fees are one time unless the operator wishes to make significant changes i.e. to the approved layout such as increasing the number of tables or area of service or overall theme/design of the café. Appeals of the application decision by the Design Review Board may be made by the Applicant to the Town Council within 15 days of the meeting at which the decision is made.
- D. Furniture:** Use furniture and any other objects of such quality, design, materials, and workmanship that are approved or otherwise authorized by the Design Review Board, including but not limited to barriers, umbrellas, chairs, and tables made of fire retardant and/or pressure treated materials and that can be properly secured/weighted to withstand strong winds. Umbrellas, chairs or tables with advertising, signage or other writing on them are not allowed.

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- E. Signage:** One temporary sign not exceeding six square feet in area, non-illuminated and displayed at a height not exceeding three feet, shall be permitted. The wording of such temporary sign shall be limited to the name of the business operating the sidewalk café and may state the items and prices of food offered for sale. The temporary sign shall not be placed on the adjacent building or on any structure and shall be displayed only while the sidewalk café is open and operating. The following types of signs and decorations are prohibited: Signs painted or lettered on banner-type material; moving, fluttering and flapping pennants, flags, balloons and similar decorations.
- F. Hours:** Sidewalk cafes may operate during the regular business hours of the restaurant operating the sidewalk café, but no later than 11:00 p.m. No orders for food and/or beverages shall be taken after 10:00 p.m. for service at the sidewalk cafe.
- G. Lighting:** Lighting shall be that from the existing business or street lamps. For safety reasons, no extension cords or free standing temporary lighting will be permitted. Battery operated lights attached to the umbrella poles so as to minimize impact on dark skies and adjacent properties will be permitted.
- H. Other restrictions:**
1. No outdoor cooking of any type is permitted within the sidewalk café area.
 2. No amplified music is permitted within the sidewalk café area. Single acoustic instruments such as a guitar will be allowed so long as musicians have applicable Town licenses.
 3. Liquor Service. Each sidewalk café serving alcoholic beverages shall provide all services in compliance with relevant local, state, and federal laws, including but not limited to the compliance with State Liquor License requirements and the verification of the legal drinking age of all patrons. No alcoholic beverages shall be removed from the sidewalk café in which they were served. Food service shall be available at all times commensurate with alcohol service. The operator of the sidewalk café shall comply with all barriers as may be required with an extension of premises of the relevant liquor license.
 4. Health Codes Compliance. Each sidewalk café shall ensure compliance with all applicable County Health Codes and obtain any necessary extension/expansion permits required by the County.
 5. Trash removal. The operator of the sidewalk café shall ensure all trash is removed from the sidewalk café area at the close of operating hours daily.
 6. Sidewalk Café Location Restrictions. The café shall not block or restrict the sidewalk to less than applicable Americans with Disabilities Act (ADA) requirements or block the ingress/egress to any building. Also, no items shall be placed so as to block any doorway, driveway, crosswalk, or counter service window. Clearances should take into consideration nearest immovable object on the sidewalk.

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7. Smoking. The availability of smoking areas shall be in compliance with applicable Federal, State and Local laws.
8. Any outdoor heating devices need Fire District and Building Official review and approval.

I. Indemnity & Liability: As part of the permitting process set forth herein, any person or entity receiving a permit set forth herein shall execute an indemnity agreement indemnifying and releasing the Town of Clarkdale, its agents, employees and elected officials from any and all liability against any and all claims, actions and suits of any type whatsoever. The Town shall not be liable to any permitted or any license holder for any damage, loss, inconvenience, business interruption, demolition, loss of business, loss of property or any other loss as a result of the town conducting regular maintenance of the right-of-way (and or utilities there under) and or public safety emergency vehicles responding to an emergency call that must encroach upon the public right-of-way of the Town of Clarkdale.

Other Sections of the Ordinance that will need to be amended to include the proposed Sidewalk Café amendment: Additions are shown in bold italics and items to be eliminated are shown with a strikeout.

Section 3-9 Central Business District (CB)

A. Principal Uses Permitted: (Not requiring a use permit)

5. Restaurants, taverns ~~and bars~~ *and sidewalk cafés in conformance with Section 4-16*

Section 3-10 Town Center Commercial (TCC)

A. Principal Uses Permitted

10. Restaurants ~~and cafes~~ *and sidewalk cafés in conformance with Section 4-16* which do not serve alcoholic beverages such as liquor, spirits, wine, or beer, which beverage contains greater than one- half of one (0.5%) percent of alcohol by volume.

Section 3-11 Commercial (C)

A. Principal Uses permitted: (Not requiring a use permit).

5. Restaurants, taverns ~~or bars~~ *and sidewalk cafés in conformance with Section 4-16*

Section 3-12 Neighborhood Commercial District (NC)

A. Principal Permitted Uses

9. Restaurants *and sidewalk cafés in conformance with Section 4-16* without bars

Section 3-13 Highway Commercial District (HC)

B. Principal Permitted Uses

13. Restaurants ~~and cafes~~ *and sidewalk cafés in conformance with Section 4-16* which do not serve alcoholic beverages such as liquor, spirits, wine, or beer, which beverage contains greater than one- half of one (0.5%) percent of alcohol by volume

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Information from other Agencies:

During the November 15th work session, staff provided the Commission with examples of sidewalk café ordinances and policies from the Cities of Sedona and Cottonwood. Preparing this report staff also went on the internet to generalcode.com which had some examples of sidewalk dining ordinances in Connecticut, New Jersey and New York. Some minor items were gleaned from these internet examples such as no cooking outside, some signage issues and addressing outside music & additional lights.

Enforcement issues:

Staff believes that the proposed ordinance should address most liability issues with the use of public right of way for private uses. Further, permits from the County Health Department and licenses from the State Liquor License Board should address accountability as to food handling and monitoring liquor dispensing. Based on conversations with the Public Safety Director, a barrier would be good (swing away or other to keep general public from walking through/between café's tables) for the Police Department to enforce liquor dispensing laws. The Director also noted that their enforcement would be on a complaint basis with emphasis on citations for alcoholic beverage infractions and warnings for smoking infractions. It was also noted that for the business to more easily stay in compliance with their liquor license, the operator (bartender) should have clear visibility of the café area, even though they may be within the business structure.

Staff Recommendation:

Staff is recommending that the Commission take any public comment, make any modifications they deem appropriate and then continue this matter to their next regularly scheduled meeting to potentially take action at that time that could be forwarded as a recommendation to the Town Council for final action/adoption.

Chairman Van Wye asked about enforcement of the state smoking regulations. Special Projects Planner responded that he has had discussions with Public Safety Director John Wintersteen regarding this issue. It is assumed that warnings would be issued to anyone found in violation of no-smoking regulations.

The Chairman asked if there was any public comment on this item.

Dane Wombacher of Clarkdale asked if there have been any major enforcement issues in communities that have similar regulations. Special Projects Planner responded that the City of Cottonwood has had some issues with smoking violations. Community Development Director stated that the City of Sedona has had no major issues.

Mr. Wombacher also asked how fees would be calculated. Mr. Lockard responded that this has not been determined and that the fee would need to be brought forward to Town Council as a separate action to review the fee schedule.

The Commission discussed what amount of fee would be appropriate for these permits. Commissioner Daniels suggested that the fee be based on the size of the off-premise area, so that someone who has a 400 square-foot area should not be charged the same as someone who has a 1,000 square-foot area.

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Commissioner Viarengo asked if barriers were required if liquor was not sold. Special Projects Planner Lockard responded that barriers would not be required for someone serving food and non-alcoholic beverages.

The Commission discussed what businesses in the Central Business District might take advantage of this new permit.

The Commission stressed the importance of accommodating ADA regulations and pedestrians using the sidewalk.

This being for discussion only, there were NO actions taken.

8. AGENDA ITEM: DIRECTOR'S REPORT: UPDATE ON CURRENT PROJECTS UNDERWAY IN THE COMMUNITY DEVELOPMENT DEPARTMENT.

This item duplicated AGENDA ITEM: REPORTS above.

9. AGENDA ITEM: FUTURE AGENDA ITEMS:

The Sidewalk Café Ordinance will be scheduled for action on the January 17, 2012 Planning Commission Meeting.

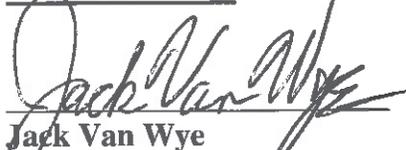
Commission Olquin requested that a review of the Commission's Work Plan be scheduled for a future meeting.

10. AGENDA ITEM: ADJOURNMENT: If there is no further business for the good of the order, the Chair will entertain a motion for adjournment.

Vice Chairperson Viarengo **motioned to adjourn the meeting.** Commissioner Daniels **seconded the motion.** **The motion passed unanimously. The meeting adjourned at 7:07 p.m.**

It has been moved and seconded that we adjourn. All in favor; all opposed. We stand adjourned. Thank you everyone for attending.

APPROVED BY:



Jack Van Wye
Chairperson

SUBMITTED BY:



Beth Escobar
Senior Planner