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**MINUTES OF THE
PLANNING BOARD**

**MEETING OF
June 9, 2009**

A meeting of the Planning Board was held on June 9, 2009 at the Salem Town Hall, 33 Geremonty Drive, Salem, NH.

PRESENT: Jim Keller, Chairman; Gene Bryant, Vice-Chair; Phyllis O’Grady, Secretary; Beth Roth, Selectman’s Rep; Ronald Belanger; Robert Campbell; Linda Harvey; Ed DeClercq, Alternate; and Ross Moldoff, Planning Director.

The meeting was called to order at 7:00 p.m. Chairman Keller introduced the board members. The Mammoth Development site plan has withdrawn. Chairman Keller then went over the agenda.

REVIEW OF MINUTES

1.) May 26, 2009 – Regular Meeting

Ms. O’Grady made the following correction:
Page 10, line 40 – change “recreation” to “recommendation”

Ms. O’Grady made a motion which was seconded by Mr. Belanger to approve the minutes as amended.

VOTE ON MOTION: 6 – 0 - 1 (Mr. Bryant abstained.)

NEW BUSINESS

1.) SALEM YOUTH BASEBALL SITE PLAN – Public Hearing for addition of ballfield lights at 200-202 Lawrence Road, Map 129, Lot 9252.

Abutters: There were no abutters present.

Ms. O’Grady made a motion which was seconded by Mr. Bryant to accept the Salem Youth Baseball site plan application as complete.

VOTE ON MOTION: 7 – 0

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1 Kurt Meisner, with Meisner Brem Corporation, here with Craig Dufton, President of Salem
2 Youth Baseball and Andy Dyjak from Musco Sports Lighting. He explained where the fields are
3 located on the site, and where the proposed lights will be. The heights of the poles are 70 and 80
4 foot poles, and the other ones on the little league fields are 60 and 70.

5 Andy Dyjak, with Musco Sports Lighting, will talk about the two major issues, which are spill
6 and glare for the properties in close proximity to the fields. He showed an aerial view showing
7 distance to the abutters. You will see we show spill and glare readings at approximately 150 feet.
8 Musco Sports Lighting is a member of IDA (International Dark Skies Association). He discussed
9 the evolution of light control. The lighting on the field now is called Sportscluster 2. Their core
10 values are constant light, 50% reduction in spill and glare, 25-year warranty, and 50% reduction
11 in energy use. He discussed the five ways to reduce spill and glare. The lights are specifically
12 designed for each individual field. He showed the lighting plan including the spill scan. He
13 showed pictures of various lighting using the spill and glare technology on actual fields.
14

15 Mr. Meisner added that Michele Park has rules and regulations set up by the Recreation
16 Department that governs the amount of time the kids can play. Those notes are listed on the plan.
17 We have over 500 kids playing at this age level and we're limited to spaces where we can put the
18 kids. This will allow the league to put more kids on the field and play more games. He talked
19 about the volunteers who take care of the fields.
20

21 Mr. Moldoff said the facility is a town field so the Board of Selectmen has to approve this.
22

23 Chris Dillon, Salem Recreation Director, said that Mr. Meisner and Mr. Dyjak came to him
24 about this project. There is a need for field space. We had a meeting with the abutters and we
25 discussed the technology. They seemed happy with the improvements.
26

27 Mr. Moldoff read the following staff comments:

28 The impact on the residential abutters was the only issue. They've addressed that.

29 The plan contains notes on when the lights will be shut off.

30 Received an OK from Public Works, and a conditional OK from Engineering. They asked
31 that the electric lines be shown on the plan.

32 Received a letter from Brian Wall at 11 Applewood Lane. Mr. Moldoff read his letter about
33 his concerns regarding the hours of use, who will be using it, and overspill/glare.

34 Recommend - conditional approval tonight
35

36 Mr. Bryant said he'd like answers to the abutter's questions.

37 Craig Dufton, President of Salem Youth Baseball. He met with Mr. Wall and a couple other
38 abutters. Regarding the change to the established hours of operation, we won't be asking for any
39 change. We wouldn't allow anyone else to use the field, but the town owns the field.

40 Mr. Dillon said that at this point, we don't plan on having outside organizations use it.

41 Mr. Dufton said, regarding the current baseball field that has a different style of lights on it, we
42 are looking into retrofitting that. Our controlling system that we have will be a cellular based
43 control panel that will be accessed from the internet, an 800 number or Musco Lighting. If the

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1 lights don't go off, we can call and the lights can be shut off remotely. Both fields can be tied
2 into this.

3
4 Mr. Campbell mentioned item 2. You said Salem Youth Baseball will be limiting the use of it.
5 It's the property of the town. There are other youth groups in town who may want to play there.
6 Are you saying that you can prevent anyone who's not Salem Youth Baseball from ever using
7 this field?

8 Mr. Dufton replied, no.

9 Mr. Campbell asked, so it is possible that other teams from Salem may play on this field?

10 Mr. Dillon explained that the facility is the town's and all the scheduling for it comes through the
11 Recreation Department. We can give it out to other organizations from Salem.

12 Mr. Bryant asked, you wouldn't usually go out and rent it to teams from outside of Salem for
13 revenue?

14 Mr. Dillon said no. Some of those requests may come in. Typically when requests come in, he
15 also double checks with baseball since they are the primary users to make sure it doesn't conflict
16 and we will maintain the same procedures that we always have with that facility.

17 Mr. Bryant said his opinion is that the field should be run for the benefit of the citizens of Salem.
18 It shouldn't be used in off times.

19
20 Mr. Campbell had a question on lighting. There is a chart labeled maximum vertical footcandles.
21 He presumes that means the illumination against a vertical surface of that distance?

22 Mr. Dyjak explained that the reading would be taken at 3 feet above grade.

23
24 There was discussion of the vertical and horizontal foot candles.

25
26 Mr. Campbell asked, what would be the maximum foot candles at the abutters?

27 Mr. Dyjak said his estimation is that it would be zero.

28 Mr. Moldoff asked about Mulberry Lane.

29 Mr. Dyjak replied that it would be very close to zero, if not zero.

30 Ms. O'Grady asked, will there be any time when all 3 fields are in use?

31 Mr. Dillon replied, yes. Currently Veterans Field doesn't have lights. It's possible that all 3 could
32 be used at once. At night, it would only be two fields.

33 Ms. O'Grady mentioned her concern about noise if all three fields are being used at once.

34 Mr. Belanger asked, can a Salem resident request to use a field if they play for a team that's out
35 of town?

36 Mr. Dillon said he is currently working on revising the request form. Basically anyone can
37 request a field.

38 Mr. Belanger said he is very impressed with the way this is set up. We're fortunate to have a
39 place like this for kids to play. There aren't as many abutters objecting as there were in the past.

40
41 Chairman Keller asked for public input. There was none. He asked about the rating with respect
42 to wind, storms, and the fall zone.

43 Mr. Dyjak said the poles are rated to the building code for Salem. The wind speed is 140 mph.
44 The fall zone is, for a 70-foot pole, it would be a 70-foot radius. He described the material of the

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1 pole. There is no corrosiveness. They do inspections of the poles about every 15 years and it's
 2 covered in their warranty.

3
 4 Mr. Moldoff read the following conditions:

- 5 1.) Submit approval from the Board of Selectmen.
- 6 2.) All representations made by the applicant are incorporated as part of
 7 this approval.

8
 9
 10 **Mr. Belanger made a motion which was seconded by Ms. O'Grady to grant conditional**
 11 **approval of the Salem Youth Baseball site plan with the 2 conditions as stipulated by Mr.**
 12 **Moldoff.**

13
 14 Ms. Roth said Mr. Dyjak is the most knowledgeable expert she has seen and you supported your
 15 presentation with documentation.

16 Chairman Keller thanked Salem Youth Baseball for their investments in the fields.

17
 18 **VOTE ON MOTION: 7 - 0**
 19 **UNANIMOUS**

- 20
 21 2.) SALEM ROCKINGHAM SITE PLAN – Public Hearing for reapproval of 25,000 sq. ft.
 22 retail building and 4 conditional use permits at 398-412 South Broadway, Map 143, Lots
 23 192, 193, and 194.

24
 25 **Ms. O'Grady made a motion which was seconded by Mr. Bryant to accept the Salem**
 26 **Rockingham site plan application as complete.**

27
 28 **VOTE ON MOTION: 7-0**
 29 **UNANIMOUS**

30
 31 **Abutters:** There were no abutters present.

32
 33 Mark Gross is representing Rockingham LLC. This is for a site plan extension and conditional
 34 use permit. This plan was approved in August 2007 and appealed by an abutter, which was
 35 dismissed by Superior Court. Then it went to the Supreme Court and was withdrawn. With the
 36 passage of time, we felt that we should come back to the board. We had received variances that
 37 are now taken care of through the conditional use permit. He has submitted a letter outlining
 38 those four requests. We are requesting a conditional use permit for the reduction in parking of 9
 39 spaces. The other three requests are for signage. We're requesting an increase in the freestanding
 40 sign for the development parcel, two wall signs on the development parcel and off premises
 41 signage on the existing Circuit City sign as well as on the development sign. The first conditional
 42 use permit request is under Section 309-68.1 to allow reduction of 9 spaces. He read the criteria
 43 for this section. Lazyboy could be classified as a furniture store and could be calculated at the
 44 one parking space per 500 square feet. However, we calculated it at the 1 per 200 square foot

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1 ratio. He discussed Article 11, Section 309-67 regarding lot design and landscaping
2 requirements. We received variances for the lot coverage. All these conditional use permits that
3 we're requesting were previously granted several times as variances for the past 5-6 years and
4 the board has reviewed those as part of the site plan package and approved the site plan with
5 those variances in place. He continued reading the permit request. He then discussed conditional
6 permit request # 2 under Section 309-88.1 to allow a freestanding sign with an area of 150 square
7 feet, where 100 square feet maximum is allowed. We're allowed 3 freestanding signs, but since
8 we're consolidating the lots from 3 to 2, we're only allowed the two signs. We have provided the
9 board with a sign elevation drawing. He then read conditional use permit request # 3 under
10 Section 309-88.1 to permit two wall signs, each 100 square feet for the proposed retail building
11 (Lazyboy) where one wall sign of 100 square feet maximum per sign is allowed. At the previous
12 meeting, there was discussion of the architectural design of Lazyboy. There was a lot of
13 discussion of where the front door will be on the building. We ended up with a condition that we
14 could choose whatever frontage, as long as the building architecture showed that we had two
15 frontages for the building and that the elevation that didn't have the entrance, have a set of doors
16 that look like the entrance. To not have signage on one of those fronts does create confusion. He
17 showed photos of the site. It was suggested that we have two signs 50 square feet each but that's
18 inadequate. He continued reading the request. He then discussed conditional use permit # 4.
19 We're requesting one off premises sign on the Lazyboy site to advertise for Circuit City on their
20 freestanding sign and to permit two off premises signs on the Circuit City existing freestanding
21 sign to advertise the tenants on the Lazyboy site including Lazyboy. We're requesting this under
22 Section 309-88. He showed the existing Circuit City sign which has a panel for Circuit City and
23 two blank panels. We want to use one for Lazyboy and the other for one of the retail tenants on
24 the Lazyboy site. The proposed sign for Lazyboy will have Lazyboy at the top, a panel for
25 Circuit City and two individual tenants. That's based on the 150 square feet of proposed signage.
26 The existing Circuit City sign is 200 square feet. Our sign is 150 but it's consistent with the same
27 size as Circuit City. He showed where the Lazyboy freestanding sign will be and the existing
28 pylon sign is that will be removed. This parcel was being consolidated and subdivided into two
29 parcels and that's the only reason why we need the off-premises sign. He continued reading the
30 request.

31
32 Mr. Moldoff explained that this was granted in August 2007 and then the town was sued by an
33 abutter. The town won. It was appealed, and it was not withdrawn from the Supreme Court until
34 November 2008. The date it's finalized by the courts is the new date that the clock starts. The
35 regulations say they have to be under construction within a year, and done in two years. In
36 March 2008 and March 2009 we changed the zoning ordinance so that the sign regulations now
37 come to the Planning Board. You could look at this as an extension. If you don't want to do that,
38 we can go into the conditional use permits in some detail. He has strong feelings on the sign
39 requests.

40
41 Chairman Keller asked, do we not have to grant the conditional use permits? When do the
42 variances expire?

43 Mr. Moldoff said he thinks the clock would run a year from November 2008.

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1 Chairman Keller asked, in the past, the applicant would just request a 12 month extension and
2 we'd grant the 12 months?

3 Mr. Moldoff said yes.

4 Chairman Keller said the board needs to decide which way we want to go.
5

6 Mr. Bryant said he is confused about whether we may end up with different dates on this plan. If
7 we provide an extension on the site plan, that extension would start today for a year? But his
8 variances have been running since November 2008 so he'd only have his variances until
9 November 2009?

10 Mr. Moldoff said we can decide if you want it from November 2009 or from today's date.

11 Mr. Bryant suggested that we take this as an extension of the site plan, for a year dated today,
12 with whatever if any, conditional use permits that we approve, attached to that site plan for a
13 year dated today.
14

15 Mr. Campbell had a question on the variances. The variances weren't the subject of the court
16 filings. It was the site plan that was the subject of the suit. So he doesn't know how one would
17 infer that the variances had some starting date of November. So he'd like to know, what is the
18 duration of the license granted by variances? What would be the expiration of the variances? Do
19 variances go forever?

20 Mr. Moldoff said they have to be implemented within one year. The expiration of the variances
21 would be the same as the site plan because they can't implement the variances without the site
22 plan approval. So it would still be November 2009.
23

24 Mr. Campbell asked, where does the fact that this got wrapped up in court have any link to the
25 variances? He is trying to understand if there is some statutory deadline date for variances that
26 might be different for the site plan implementation.

27 Mr. Bryant suggested again that we address the extension of the site plan for a year dated today
28 and decide on their merits, the conditional use permits, for a year, attached to the site plan dated
29 today.

30 Ms. Roth said she is having trouble with us interpreting the law. She recommended that all the
31 legal questions, we get a written opinion from the town attorney. She'd like to get something in
32 writing from the town attorney.
33

34 Mr. Belanger mentioned that if everything was passed at the Planning Board, and then there was
35 litigation, and everything is on hold, it's never come out of the Supreme Court yet to be
36 discharged. Does that mean that their door is still open for them to continue to be on hold? It's
37 important to have town counsel answer that.

38 Mr. Moldoff said it is out of the Supreme Court. The people that were opposing the town
39 withdrew the case and we received something from the Supreme Court saying that it's gone as of
40 November 2008.

41 Ms. Roth asked, was it withdrawn with or without prejudice?

42 Mr. Moldoff said there was just a motion to withdraw their appeal. He read from the letter.
43

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1 Mrs. Harvey said the fact that the current site plan and variance approvals are effective through
 2 November 2009, if the applicant doesn't like our decision, would they be able to pick one or the
 3 other, or would the current one override?

4 Chairman Keller said they can implement the plan as approved with the variances up until
 5 November. They can either proceed without ever coming back here, or they would appear before
 6 us for an extension and any approvals they feel that they need.

7 Mr. Moldoff said, they may not want to continue with this action. He asked Mr. Gross, if you're
 8 good until November 2009, do you want to continue with this?

9 Mr. Gross said the variances were granted in June and July of 2007. Then those variances were
 10 just re-granted in May. In this case, since it's tied to another approval process which was
 11 appealed, he believes that those variances are also continued until the court case is discharged.
 12 So these variances are good until November of this year along with the site plan approval.

13 Mr. Moldoff explained that he thinks that everything, the site plan and the variances, would be
 14 good until November of this year

15 Chairman Keller recommended that we get that finding and let the applicant know, and then they
 16 can decide if they want to proceed. We should also get the final court judgment.

17
 18 **Mr. Bryant made a motion which was seconded by Mr. Belanger to continue the Salem**
 19 **Rockingham site plan.**

20
 21 Ms. Roth pointed out that Attorney Sullivan who represents the applicant, states that she's under
 22 the impression that the variances need to be renewed. So Ms. Roth thinks we really need to
 23 follow through on that.

24
 25 Mr. Campbell asked, in the applicant's presentation, they said that there may be a readerboard.
 26 Are your signs going to include readerboards?

27 Mr. Gross said one of the stipulations on the variance for the off-premises sign is that there
 28 would be no readerboards.

29 Mr. Campbell also mentioned that he heard that Circuit City is bankrupt. What is the effect of
 30 that?

31 Mr. Gross said, as far as he knows, as of today they still own the real estate.

32 Chairman Keller asked, what is the lease/ownership structure in terms of parking?

33 Mr. Gross said those are still in place. He will get an answer to the question on whether the sign
 34 will say Circuit City.

35
 36 **VOTE ON MOTION: 7 – 0**

37 **UNANIMOUS**

38
 39 Mr. Belanger stepped down from the board. Mr. DeClercq joined the board.

40
 41 **PUBLIC MATTERS**

42
 43 1.) Mark Pearson
 44

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1 Mr. Moldoff explained that Mr. Pearson received a variance in March 2008 to allow a home
2 business. One condition was that he come in and get Planning Board approval. He came in at the
3 February meeting. The board wanted to see a site plan and a certified plot plan was prepared. So
4 that we have something that documents what was granted by the ZBA.

5 Chairman Keller said he thinks the big question was that there was a depiction of the driveway
6 going to the rear of the building, but we couldn't see it in the pictures.

7
8 Mark Pearson said there's a driveway that goes behind the house that goes to a residential garage
9 underneath the house. It's been there since the house was built.

10
11 Ms. O'Grady said the depiction shows no foliage in the front. In the petition to the ZBA, it
12 mentions that the foliage was to stay. The picture shows that there are no trees.

13 Mr. Pearson said there is a driveway entrance there. We angled the driveway to try to keep as
14 much foliage as we could and we even planted green shrubbery to create foliage during the off-
15 season. The picture in P2 is in his yard, taking a picture of the house not out at the street.

16 Ms. O'Grady asked, the trees in picture P1 are not affected, they're staying?

17 Mr. Pearson replied, absolutely. Picture P1 is what it looks like most of the time. Picture P4
18 shows the driveway entrance and it will show you that he took pictures down into the driveway.
19 Other than having a driveway opening, there are trees across the 355-foot frontage and additional
20 plantings that are depicted in picture P4.

21
22 Mr. Campbell said we have a provision for home occupations which don't require variances, yet
23 there was a variance here.

24 Mr. Moldoff explained that the only thing allowed in the ordinance is a minor home occupation
25 which says no customers and no employees. This is the type of business where there were
26 customers coming to the house. We told them they can't do that, they have to apply for a
27 variance, so they did.

28 Mr. Campbell asked, with that sole exception of one client vehicle at a time, it will in all other
29 respects meet the requirements of the home occupation ordinance?

30 Mr. Pearson replied, yes.

31 Mr. Campbell said he'd like to see as a condition, that it's acknowledged with respect to
32 everything except the permission to have one client at a time, that it would in all other respects
33 meet the requirements of the home occupation ordinance. He'd also like an explanation of, on
34 page two of the letter, the negligent traffic.

35 Mr. Pearson said he'd use the word "non-existent". He meant to say "negligible".

36
37 Mr. Moldoff said there was some question as to whether or not they need site plan approval. If he
38 doesn't that's fine. You could make a motion just to cover the bases.

39
40 **Mr. DeClercq made a motion which was seconded by Ms. O'Grady to approve the Pearson**
41 **site plan.**

42
43 **Mr. Moldoff said the condition could be that they meet the home occupation ordinance**
44 **other than the customers coming to the house.**

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1 **Mr. DeClercq and Ms. O’Grady agreed to this condition.**

2
 3 **VOTE ON MOTION: 7 – 0**
 4 **UNANIMOUS**

5
 6 2.) Taurus New England Investments

7
 8 Mr. Moldoff said they own the Furniture World Plaza at 419 South Broadway. The proposal is to
 9 re-use a portion of the site, the second floor above where the Furniture World store was, about
 10 14,500 square feet. They want to put in a tenant called First Choice Training Institute, which is a
 11 school to train students in the field of nursing. They are currently at 19 Keewaydin Drive. They
 12 meet the parking calculations. It’s a change of use, but its pretty low key, not a big traffic
 13 generator. The applicant has given him a letter and a copy of the plan.

14
 15 Peter Carbone, manager of Taurus New England Investments, is the owners of the property.
 16 We’re still in discussions with the tenant. They’re current lease is up and they’d like to come
 17 here. There is a lease going back and forth so it’s not absolute yet. We also wanted to come
 18 before the board to make sure you’re comfortable with the use. They need to be here in time for
 19 the next semester which starts in September.

20 Mr. Moldoff said there would be a substantial investment in modernizing the building, including
 21 an upgrade for fire safety, building code, and a potential new elevator. It’s a vacant building in a
 22 variety of vacant buildings. So in his opinion, it’s a good thing for the town to have a tenant like
 23 this on Rt. 28.

24
 25 Ms. Roth asked, what kind of degree will they be given?

26 Mr. Carbone explained that it’s a two year program, so it’s an associate degree. It’s a typical 3
 27 classroom school and a lab which is just 3 cots.

28 Ms. Roth asked, the clinicals will be done offsite?

29 Mr. Carbone said he thinks that’s correct

30
 31 Mr. Bryant asked, if we’re going to approve a change of use, it would then be noted on the site
 32 plan in the file?

33 Mr. Moldoff said yes.

34 Mr. Carbone asked whether or not, if the tenant does come in, do we change the site plan then?

35 Mr. Moldoff said yes.

36 Chairman Keller asked for public input. There was none.

37
 38 **Mr. DeClercq made a motion which was seconded by Mr. Bryant to approve the change of**
 39 **use.**

40
 41 **VOTE ON MOTION: 7 – 0**
 42 **UNANIMOUS**

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1 Mr. Moldoff said he sent the board something about a request for a one day use at the racetrack,
2 but he can handle that.

3
4 **Planning Board Matters**

5
6 Chairman Keller asked about the road impact fee.

7 Mr. Moldoff said they are coming back the first meeting in July. He has received feedback from
8 a variety of parties. We talked about the 25% reduction and maybe looking at further reductions
9 to see how close that gets us to the existing fees. That will be for the July 11th meeting.

10 Chairman Keller asked, have we confirmed that we don't need town meeting?

11 Mr. Moldoff said he was asked to check on the validity of this approach as it relates to the
12 rational relationship argument, regarding the location of a project and the use of the impact fees.
13 He asked, will it be OK to have a project in North Salem and use the impact fees in South
14 Salem? He received that legal opinion and it was positive.

15 Chairman Keller asked about the challenge raised with respect to the board's ability to
16 implement it because of the ordinance.

17 Mr. Moldoff said he will check on that.

18
19 Mr. Bryant mentioned the goals regarding workforce housing. He thought research would be
20 done in advance on things such as inventory and calculations.

21 Mr. Moldoff said he met with Ben Frost who did the presentation. There may be money to hire a
22 consultant to do the inventory and get the information that is needed. Mr. Moldoff will call him.

23
24 Chairman Keller mentioned the Depot Committee. We need one member.

25 Mr. Bryant asked, will they be meeting in the morning?

26 Mr. Moldoff said yes.

27 Ms. Roth said there was a request that the meetings take place anytime between 8:30 to 5:30.

28 Ms. O'Grady said she has a desire to attend the meetings but she may need a back-up if she can't
29 attend. She would volunteer only if there is an alternate.

30 Chairman Keller said they need continuity.

31 Ms. Roth said they will meet once a month. We're making appointments for a year.

32 Chairman Keller asked the board to think about it and let him know.

33 Ms. Roth said the Board of Selectmen held interviews last Monday night. We will make the
34 appointments next Monday night. We'd like to have the board together by then.

35 Mrs. Harvey said she would do it, but she may also be gone for periods of time.

36 Chairman Keller asked people to email him if they're interested.

37
38 Mr. Moldoff said he has the May 2009 version of the land use control books.

39
40 Chairman Keller said he and Mr. Moldoff need to put together a worksession schedule for zoning
41 and board goals.

42
43 **Ms. O'Grady made a motion to adjourn.**

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1 **VOTE ON MOTION: 7 – 0**

2 **UNANIMOUS**

3

4 The meeting adjourned at 8:57 p.m.

5

6 For further information, kindly refer to the videotape dated 6/9/09, located in the Planning
7 Office.

8

9 Minutes by: Susan Strugnell, Planning Board Recording Secretary

10 Approved: Planning Board

11 Date: