



**ZONING BOARD OF APPEALS
Regular Meeting
March 1, 2017
7:00p.m.**

1. CALL MEETING TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF MINUTES FEBRUARY 01, 2017
5. CORRESPONDENCE / BOARD REPORTS
 - Boards and Commissions Expiration Dates
6. APPROVAL OF AGENDA
7. PUBLIC COMMENT: Restricted to (3) minutes regarding issues not on this agenda
8. PUBLIC HEARINGS
 - A. Text Interpretation 2017-01: Kuhn Rogers PLC
9. NEW BUSINESS
 - A. Text Interpretation 2017-01: Kuhn Rogers PLC
10. OTHER BUSINESS
11. EXTENDED PUBLIC COMMENT: Restricted to 5 minutes regarding any issue
12. FINAL BOARD COMMENT
12. ADJOURNMENT

Peter Gallinat, Township Planner
pgallinat@uniontownshipmi.com
2010 South Lincoln
Mt. Pleasant, MI 48858
Phone 989-772-4600 Ext. 241
Fax 989-773-1988

TO: Zoning Board of Appeals 02/24/2017
FROM: Township Planner

SUBJECT: **A) Text Interpretation 2017-01 Kuhn Rogers PLC**
(Requires Public Hearing)

Location: Unknown B-5 (Highway Business District) located in the Charter Township of Union

Current Zoning: B-5 Highway Business District

Adjacent Zoning: Unknown

Future Land Use/Intent: Unknown

Current Use: Unknown

Reason for Request: Applicant request for an interpretation of the zoning ordinance as it relates to principal permitted uses, accessory uses and accessory building size in a B-5 (Highway Business District). More specifically the applicant has requested an interpretation on the following:

1. *Office space of any service company which provides services on or off premises as a permitted use*
- 2a *Partially enclosed vehicle washing facility not open to the public, but ancillary to the permitted use, for trucks and related equipment used in providing a service off premises as an accessory use if the principal use is permitted.*
- 2b *Enclosed service garage facility not open to the public, but ancillary to the permitted use, for trucks and related equipment used in providing a service of premises as an accessory use if the principal use is permitted.*
3. *The sale of new or used vehicles, trucks and related equipment as a permitted use*
4. *An accessory building larger than the principal permitted use building when both the accessory use and principal use are permitted.*

Objective of board: MCL 125.3604(5) states "If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing

on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3)."

I agree with the applicant and the applicant's reasoning for request 1, 2a-b, and 4. However, I disagree with request 3 "The sale of new or used vehicles, trucks and related equipment as a permitted use in a B-5(Highway Business District).

- Applicant claims a strict reading of the Ordinance does not permit a landscape company to sell its mowers and trailers. However, 22.2.A allows for the retail of garden and lawn supply stores. Mowers and trailers would be commonly found and associated with garden and lawn supply stores.
- Applicant claims that if a strict reading was adhered to there would be no place in the Ordinance that permits the sale of new or used utility trailers, ATV's and lawn equipment. As noted before I find that lawn equipment and utility trailers would be permitted under 22.2.A.
- The sale of new or used ATV's would be permitted in a B-6 (Auto-related Highway Business Distinct). 24.2.E states "Retail of new or used automobiles(outside areas for display purposes are allowed, providing all servicing, repair or conditioning of such vehicles shall be in a fully enclosed building) This differs from 23.2.D because the word "automobile" is used instead of "cars, trucks, boats, farm equipment, travel trailers and motor homes."
- Automobile is not defined specifically in the zoning ordinance but section 3.10 Automobile or vehicular sales area is defined as "Any space used for display, sale, or rental of motor vehicles, trailer of all kinds, farm equipment, mobile homes, boats, motorcycles, snowmobiles, or similar vehicles, either new or used, that are in an operable condition."
- By using the word "Automobile" 24.2.E is broader with which vehicles can be sold whereas 23.2.D is more specific in which vehicles can be sold.

Peter Gallinat

Twp Planner

MICHIGAN ZONING ENABLING ACT (EXCERPT)
Act 110 of 2006

125.3604 Zoning board of appeals; procedures.

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

(2) An appeal under this section shall be taken within such time as prescribed by the zoning board of appeals by general rule, by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken.

(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed. However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

(4) Following receipt of a written request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.

(5) If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

(7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as otherwise allowed under this act.

(8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.

(9) The authority to grant variances from uses of land is limited to the following:

(a) Cities and villages.

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance.

(11) The authority to grant use variances under subsection (9) is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.



R. EDWARD KUHN
 TERRY C. ROGERS
(LLM, Taxation)
 EDGAR ROY III
 JOSEPH E. QUANDT
 GREGORY J. DONAHUE
 GREGORY L. JENKINS
 TROY W. STEWART
 GINA A. BOZZER

412 SOUTH UNION STREET
 TRAVERSE CITY, MICHIGAN 49684
 TELEPHONE: 231-947-7900
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LANSING OFFICE:
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 OKEMOS, MICHIGAN 48864
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MATTHEW L. BOYD
 CHRISTOPHER G. ROGERS
(also admitted in Illinois)
 MARC S. McKELLAR II

OF COUNSEL:
 LEWIS G. GATCH
 A. BROOKS DARLING

January 17, 2017

**VIA EMAIL – pgallinat@uniontownshipmi.com
 AND FIRST CLASS MAIL**

Peter Gallinat
 Zoning Administrator
 Charter Township of Union
 2010 S. Lincoln Road
 Mt. Pleasant, MI 48858

Re: B5 District Property

Dear Mr. Gallinat:

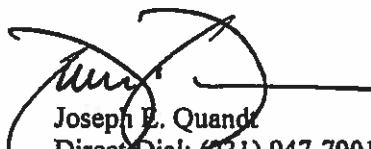
Please be advised that I represent a company which is interested in purchasing property within Union Township that is zoned in the B5 (Highway Business District) District. At this point, my client, for competitive and other reasons, wishes to remain anonymous.

My client has several questions regarding whether or not their proposed use of property in the B5 District would be permissible. In reviewing the zoning ordinance for Union Township, we have noted that, while we believe that our client's use would be lawful within the B5 District, we would seek clarification from the Zoning Board of Appeals which, by state law, is the only body who may interpret the ordinance. Please see MCL 125.3604(5). We would appreciate your placing my client's interpretation request on the agenda for the Zoning Board of Appeals in compliance with the notice requirements established under MCL 125.3604(5),(6).

Please contact me after your review of this application and request, so that I can be advised of the next appropriate date for the ZBA public hearing, as required under the above referenced statute. I look forward to hearing from you.

Sincerely,

KUHN ROGERS PLC



Joseph E. Quandt
 Direct Dial: (231) 947-7901 x115
 jequandt@krlawtc.com

JEQ:shp

conducted in an enclosed building” at page 22-2. It is clear if these uses were the main use they would be permitted uses, however, these uses may be ancillary to our client’s main use. When reviewing the Ordinance for compliance of the ancillary uses, section 3.2 at page 3-1 defines Accessory Use as, “Any use customarily incidental and subordinate to the main use of the premises.” The Ordinance further defines Accessory Use in section 8.2 at page 8-1 as, “Accessory use, incidental only to permitted use, are permitted when located on the same property; provided, that such use shall not involve the conduct of any business, trade or industry.”. Given these definitions, it would appear, that so long as the main use of the premises is permitted, any accessory use would be allowed. In our client’s case the main use is providing off site services which require certain vehicles, trucks and related equipment to provide those services. When such vehicles, trucks, and related equipment are customary and incidental to the permitted service provided, as we have here, such accessory uses should also be permitted. Consequently, vehicles, trucks, and related equipment that will need to be parked, washed, and serviced on the same B-5 zoned property, in this case, should be a permitted Accessory use. Again, using the examples listed in Request 1, vehicles and related equipment used in the Permitted Use would need cleaning and repair and it would only make sense that the applicant could do so on the B-5 zoned premises.

In conclusion, the above referenced uses appear to be appropriate accessory uses by definition. Furthermore, these uses do not appear to be uncommon to this zoning district, as they are permitted if they are the main use. Therefore, the applicant specifically requests that the ZBA provide an interpretation of the Zoning Ordinance that Sections 22 and 23 of the Ordinance, and therefore the B-5 Business District, includes as permitted accessory uses: 1. partially enclosed vehicle and equipment washing facility not open to the public, but ancillary to

the permitted use, for trucks and related equipment used in providing a service off premises, and
2. enclosed service garage facility not open to the public, but ancillary to the permitted use, for trucks and related equipment used in providing a service of premises.

Request 3

The applicant respectfully requests a text interpretation from the Zoning Board of Appeals of the Charter Township of Union's Zoning Ordinance 1991-5 ("Ordinance"). Specifically, does Section 23 of the Ordinance, being B-5 Highway Business District, provide for the following use as a "Permitted Use":

1. The sale of new or used vehicles, trucks and related equipment.

Analysis

The B-5 District permits at 23.2(D), "Retail sales of new or used cars, trucks, boats, farm equipment, mobile homes, travel trailers and motor homes." As the SBA is aware, it is customary for some businesses to sell their used equipment from time to time. It would logically follow that the sale of such equipment can be conducted on the premises where they conduct their principal business. In our client's case, it would seem that used vehicle and equipment sales would be permitted in the B-5 District. However, the strict language of the Ordinance does not specifically reference any equipment other than farming equipment. Again, if we used an example from Request 1, a landscape company may want to sell its mowers or trailers. A strict reading of the Ordinance would seem to not permit the sale of such items. If a strict reading was adhered to, there would appear to be no place in the Ordinance for the sale of new or used utility trailers, ATV's and lawn equipment, to name a few. A strict reading of this Ordinance seems to be more restrictive than the drafters of this Ordinance likely intended, but it is a gray area at best

without clarification from the ZBA. It is the applicant's belief that the list of permitted types of sales in 23.2(D) at page 23-1 is not an exhaustive list and allows for a more all-encompassing definition, including a definition that allows for sales of used vehicles and equipment that are or were used in the permitted use of the business of the applicant.

In conclusion, it would appear that new or used vehicle and equipment sales are permitted in the B-5 District. The applicant specifically request that the ZBA provide an interpretation and finding that section 23.2(D) allows for on premises sales of new and used vehicles and equipment that are or were used by the permitted use in the B-5 Zoning District.

Request 4

The applicant respectfully requests a text interpretation from the Zoning Board of Appeals of the Charter Township of Union's Zoning Ordinance 1991-5 ("Ordinance"). Specifically, does Section 23 of the Ordinance, being B-5 Highway Business District, provide for the following when the accessory use and main use are permitted uses:

1. An accessory building larger than the principal permitted use building.

Analysis

Accessory buildings are permitted in the B-5 District. The Ordinance's only restrictions on accessory buildings are listed in section 23.4(E) and section 8.1. Section 23.4(E) at page 23-6, simply limits that accessory buildings cannot be any closer than 40 feet from the property line of any residential use or district. The Ordinance defines accessory buildings in section 3.1 at page 3-1 as, "A non-dwelling structure.". The Ordinance further describes an accessory building, applicable to the B-5 District, in section 8.1 on page 8-1 as:

- A. An accessory building may be erected detached from the permitted use building or it may be erected as an integral part of the permitted use building.
- B. An accessory building may not be allowed when there is no principal building.
- C. The distance between detached accessory buildings or garages and the principal building or buildings shall not be less than ten (10) feet. Accessory buildings or garages shall be considered as attached to the principal building when the distance between structures is solidly covered by a breezeway, portico, covered colonnade or similar architectural device.
- D. An accessory building shall not be located nearer than five (5) feet to any alley line or lot line.
- E. A detached accessory building, when located nearer than sixty (60) feet to the front line, shall provide the same front and side lot lines as required for the principal building.

As is customary for some businesses, the principal use may be office space for the day-to-day management of the business and that space may be substantially smaller than the accessory building(s) use in providing the services of the business. Again, using a prior example, a pool servicing company may have a 2,000 sq. ft. office but may require a 20,000 sq. ft. accessory building to service and store its vehicles, equipment, water tanks, pool inventory supplies, etc. The Ordinance does not appear to prohibit accessory buildings larger than the principal building. Therefore, our clients believe that so long as the principal office use is to provide off site services as a permitted use, then the accessory use of storing and servicing the vehicles and equipment necessary to provide such off site service of would also be an allowed accessory use, regardless of the size of the accessory building. Consequently, our client believes that because there is no size restriction in the Ordinance regarding accessory buildings in the B-5 District, that the accessory building(s) can be larger than the building that houses the principal use.

In conclusion, it would appear that an accessory building can be larger than a principal building in the B-5 District. The applicant specifically requests that the ZBA provide an interpretation that section 23 allows for accessory buildings larger than principal buildings in the B-5 Zoning District.

UNION TOWNSHIP PUBLIC HEARING NOTICE -Interpretation

NOTICE is hereby given that a Public Hearing will be held on Wednesday, March 1, 2017, at 7:00 p.m. at the Union Township Hall located at 2010 South Lincoln Road, Mt. Pleasant, Michigan, before the Union Township Zoning Board of Appeals for the purpose of hearing any interested persons in the following request for an Interpretation from Section 23, B-5 (Highway Business District) of the Union Township Zoning Ordinance 1991-5 as amended.

Requested by **Kuhn Rodgers PLC**, an interpretation from section 23, B-5 (Highway Business District) on the following:

1. Office space of any service company which provides services on or off premises as a permitted use
- 2a Partially enclosed vehicle washing facility not open to the public, but ancillary to the permitted use, for trucks and related equipment used in providing a service off premises as an accessory use if the principal use is permitted.
- 2b Enclosed service garage facility not open to the public, but ancillary to the permitted use, for trucks and related equipment used in providing a service of premises as an accessory use if the principal use is permitted.
3. The sale of new or used vehicles, trucks and related equipment as a permitted use
4. An accessory building larger than the principal permitted use building when both the accessory use and principal use are permitted.

All interested persons may submit their views in person, in writing, or by signed proxy prior to the public hearing or at the public hearing.

All materials concerning this request may be seen at the Union Township Hall, located at 2010 S. Lincoln Road, Mt. Pleasant, Michigan, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Phone (989) 772 4600 extension 241.

Peter Gallinat,
Township Planner

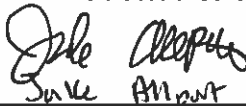
AFFIDAVIT OF PUBLICATION

48 West Huron Street • Pontiac, MI 48342

CHARTER TOWNSHIP OF UNION
2010 S Lincoln

Mount Pleasant, MI 48858
Attention: Peter Gallinat

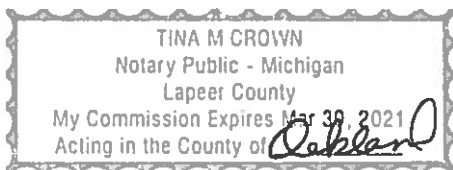
STATE OF MICHIGAN,
COUNTY OF ISABELLA

The undersigned 
Julie Allopeter, being duly sworn the he/she is the principal clerk of Morning Sun, morningstarpublishing.com, published in the English language for the dissemination of local or transmitted news and intelligence of a general character, which are duly qualified newspapers, and the annexed hereto is a copy of certain order, notice, publication or advertisement of:

CHARTER TOWNSHIP OF UNION

Published in the following edition(s):

Morning Sun	02/14/17
morningstarpublishing.com	02/14/17



Sworn to the subscribed before me this 14th February 2017



Notary Public, State of Michigan
Acting in County of Isabella

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Peter Gallinat,
Township Planner
Published February 12, 2017

Advertisement Information

Client Id: 531226

Ad Id: 1255691

PO:

Sales Person: 200307



Board Expiration Dates

Planning Commission Board Members (9 Members) 3 year term			
#	F Name	L Name	Expiration Date
1-BOT Representative	Norm	Woerle	11/20/2020
2-Chair	Phil	Squatrito	2/15/2020
3- Vice Chair	Bryan	Mielke	2/15/2018
4-Secretary	Alex	Fuller	2/15/2020
5-Vice Secretary	John	Zerbe	2/15/2018
6	Ryan	Buckley	2/15/2019
7	Denise	Webster	2/15/2020
8	Erik	Robinette	2/15/2018
9	Dwayne	Strachan	2/15/2018
Zoning Board of Appeals Members (5 Members, 2 Alternates) 3 year term			
#	F Name	L Name	Expiration Date
1-Chair	Tim	Warner	12/31/2019
2-PC Rep / Vice Chair	Bryan	Mielke	2/18/2018
3-Vice Secretary	Jake	Hunter	12/31/2019
4-Secretary	Mike	Darin	12/31/2019
5	Paul	Gross	12/31/2018
Alt. #1	Andy	Theisen	12/31/2019
Alt. #2	Taylor	Sheahan-Stahl	2/15/2018
Board of Review (3 Members) 2 year term			
#	F Name	L Name	Expiration Date
1-Chair	Ronald	Mclvor	12/31/2018
2	James	Thering	12/31/2018
3	Brian	Neyer	12/31/2018
Alt #1	Mary Beth	Orr	1/25/2019
Citizens Task Force on Sustainability (4 Members) 2 year term			
#	F Name	L Name	Expiration Date
1	Laura	Coffee	12/31/2018
2	Mike	Lyon	12/31/2018
3	Jay	Kahn	12/31/2018
4	Phil	Mikus	11/20/2020
Construction Board of Appeals (3 Members) 2 year term			
1	Colin	Herron	12/31/2017
2	Richard	Klumpp	12/31/2017
3	Andy	Theisen	12/31/2017
Hannah's Bark Park Advisory Board (2 Members from Township) 2 year term			
1	Mark	Stuhldreher	12/31/2018
2	John	Dinse	12/31/2017
Chippewa River District Library Board 4 year term			
1	Ruth	Helwig	12/31/2019

CHARTER TOWNSHIP OF UNION
Zoning Board of Appeals
Regular Meeting

A regular meeting of the Charter Township of Zoning Board of Appeals was held on February 1, 2017 at 7:00 p.m. at Union Township Hall.

Meeting was called to order at 7:00 p.m.

Roll Call

Present: Paul Gross, Jake Hunter, Bryan Mielke, Tim Warner, Andy Theisen (alt.), & Taylor Sheahan-Stahl (alt.)

Late: Mike Darin (7:10 p.m.)

Alternate, Andy Theisen, called to the table for the first ten minutes of the meeting in the absence of Mike Darin.

Others Present

Peter Gallinat and Jennifer Loveberry

Approval of Minutes

Hunter moved **Gross** supported the approval of the January 4, 2016 minutes as presented. Vote: **Ayes: 5 Nays 0. Motion carried.**

Correspondence / Board Reports

Planning Commission: Mielke updated the Board on the Master Plan

Approval of Agenda

Gross moved **Mielke** supported to approve the agenda as presented. Vote: Ayes: 5 Nays 0. **Motion carried.**

Public Comment: Restricted to (3) minutes regarding issues not on this Agenda

Open – 7:03 p.m.

No comments.

New Business

A. **Public Hearing Variance: 2017-01: Pat McGuirk**

Public Notice was read by Township Planner, Gallinat

Open 7:04 p.m. – No comments.

Township Planner stated that he had received two phone calls requesting information regarding the variance, no names given.

A1. Variance 2017-01: Pat McGuirk: Consider Request

Location: 1314 S. Mission Rd.

Gallinat gave a brief history of the property. The reason the applicant is requesting the variance is to change from one non-conforming use to a new non-conforming use of the same basic character and intensity involving structural alterations.

Representing the applicant, Randy Golden (ReMax) and Mark Carrier (Pat McGuirk), presented their request for the variance.

Discussion was held by the Board. **Mielke** moved **Gross** supported to approve Variance 2017-01: Pat McGuirk as this request is not expanding the non-conforming use. **Vote: Ayes: 5 Nays 0. Motion carried.**

Chair Warner stated that there would be a 21 day appeal period before the decision is final. Peter Gallinat read sections 5.4f and 5.11 of the zoning ordinance.

- B. Public Hearing Variance 2017-02: Mid Michigan Health Development (MMHD)
Public Notice was read by Township Planner, Gallinat
Open 7:28 p.m. – No comments.

- B1. Variance 2017-02: Mid Michigan Health Development (MMHD): Consider Request
Location: 4851 E. Pickard Rd.

Gallinat gave a brief reason for the request for the variance stating the proposed number and size of the signs do not comport with section 11 of the Zoning Ordinance.

Representing the applicant, Julie Couturier (Valley City Sign) presented reasoning for the variance being sought, requesting additional wall signage. As well as, additional height and square feet for free standing signs.

Discussion was held by the Board. **Mielke** moved **Hunter** supported Variance 2017-02: Mid Michigan Health Department by granting additional wall signage to the Building for directional signs as they are essential to the facilities services. To deny the additional height variance on both free standing signs. Lastly, to approve a 25 % allotment for the Emergency lettering for both ground and elevated signs that can only be used for Emergency, not to be included in the allowed 100 sq ft. for signage. **Vote: Ayes: 5 Nays 0. Motion carried.**

Chair Warner stated that there would be a 21 day appeal period before the decision is final. Peter Gallinat read sections 5.4f and 5.11 of the zoning ordinance.

EXTENDED PUBLIC COMMENT

Open 8:23 p.m.
No comments.

ADJOURNMENT

Chair Warner adjourned the meeting at 8:23 p.m.

APPROVED BY:

Mike Darin –Secretary

(Recorded by Jennifer Loveberry)