

TOWN OF NEWTON  
PLANNING BOARD  
AUGUST 17, 2016  
MINUTES

The regular meeting of the Newton Planning Board took place on the above date. Chairman Le Frois read the Open Public Meetings Act and requested Mrs. Citterbart to call the roll. Mrs. Citterbart stated there was a quorum.

**SALUTE TO THE FLAG:** Was recited.

**OATH OF OFFICE:**

None

**ROLL CALL:** Was taken

Attendance: Mr. Flaherty, Mr. Hardmeyer, Mr. Ricciardo, Mr. Russo, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois

Excused: Mr. Marion

Professionals present: David H. Soloway, Esq. of Vogel, Chait, Collins & Schneider; David Simmons of Harold E. Pellow & Associates; Malvika Apte of J. Caldwell & Associates

**THE SUNSHINE STATEMENT:** Was read.

**CONSIDERATION OF MINUTES**

July 20, 2016

A motion was made by Mrs. Diglio and seconded by Mr. Hardmeyer to approve the July 20, 2016 meeting minutes.

AYE: Mr. Flaherty, Mr. Hardmeyer, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois

The motion was carried.

**HISTORIC RESOLUTIONS**

None

**RESOLUTIONS**

Thorlabs (#MSP-07-2016)

56 Sparta Avenue

Block 18.03, Lot 11

SD-5 and T-5 Zone

Resolution granting the installation of an air compressor.

Mr. Flaherty made a motion to approve the resolution. Motion seconded by Mr. Levante.

AYE: Mr. Flaherty, Mr. Hardmeyer, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois

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**Motion carried.**

Brian Giblin (#MSD-07-2015)  
Block 14.03, Lot 11  
36 Halsted Street

Resolution grants an extension of time for minor subdivision granted from January 20, 2016

**Mr. Hardmeyer made a motion to approve the extension. Motion seconded by Mrs. Diglio.**

**AYE: Mr. Flaherty, Mr. Hardmeyer, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois**

**Motion carried.**

**OLD BUSINESS**

None

**NEW BUSINESS**

The Mitchell Agency, LLC (#PBSPV-8-2016)  
Block 9.06, Lot 1  
29 Trinity Street

Applicant is requesting minor site plan & bulk variance approval for construction of an electronic message board sign.

Todd Hooker, Esq. from Askin and Hooker, is representing the applicant.

Mr. Flaherty recused himself from the application due to a conflict.

Mr. Russo questioned: Is it a conflict that Mitchell Agency is the insurance agent for the Town of Newton?

Mr. Soloway stated: No. It is not a conflict. I spoke with Mr. Hooker about this and told him about the question and my feeling and asked him if he felt differently.

Mr. Hooker stated: I happen to agree. More importantly, the applicant is not the Mitchell Agency who is the broker of the Town. It is HCS Mitchell, LLC who is the property owner. Functionally it may seem similar, but legally it does make a difference.

Mr. Russo stated: I was also wondering about the interests of the Town being within 200' of the property.

Mr. Soloway stated: I don't see that being a conflict.

Mr. Hooker stated: HCS Mitchell, LLC wants to replace the existing sign at the property with a new sign with similar dimensions but with an electronic message board. There are others around Town: the College, Walgreens, and Camp Iliff were approved for one. There are some others throughout the County as well such as Wingle Supply. This is the wave of the future in allowing

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businesses to display what kind of service they offer without being static. It also eliminates the unsightly sandwich boards in front of the businesses that have to be changed, or they blow away. It is not as professional looking as an electronic message board. We have Ron Yando from EM Signs who will be doing the design and install. Mr. Mitchell is available to answer questions specific to the property. The nature and substance of the sign area on the property is not going to change. It will be the same landscaping and location of the existing sign. We've addressed all Mr. Simmons's concerns with respect to the site triangle and there is no issue with that. The issue we need the Board to look at and provide some insight on is how bright should the sign be? Mr. Yando can testify to that. Ms. Caldwell's letter to the Board was very helpful. Rather than picking a static number, the field testing is a fantastic idea and then we can report back or follow certain limits. To say this # of nits and that # of nits would be premature because the technology of these signs change and there is a fundamental difference between illuminants and luminescence. It's hard to say one way or the other which is the appropriate measurement.

Mr. Soloway stated: The problem with that is that the Town has an ordinance that sets a specific level in nits. What you're suggesting is that the Board grants a variance. But when the Board grants a variance, the Board has to define what it is they are permitting. For example, if you grant a front yard variance when you have a 15' setback requirement based on a particular application the Board is going to say 12'. You have an application, you have a variance, and you can now have a 12' setback instead of a 15'. If we go with your suggestion you would seem to in effect be delegating to Mr. Simmons on what the extent of the variance will be.

Mr. Hooker stated: We'll offer testimony on what the manufacturer requirements are based on these signs and leave it in your hands.

Mr. Ronald Yando from EM Signs, LLC is sworn in.

Mr. Hooker questioned: Where is EM Signs located and what is your experience?

Mr. Yando stated: 80 Merriam Avenue in Newton. I've been working in the sign business for 29 years in which I've been designing and installing signs.

Mr. Hooker stated: Please give the Board examples of message signs.

Mr. Yando stated: Monochrome would be an amber or red, like Walgreens or the College. Full-color or RGB is the Dairy Queen sign in Hampton. The monochrome sign nit requirements are 8,000 daytime nits. The full color is 10,000. It varies between manufacturers. We are a dealer for Electromatic which sells a Hyperion Plus which is their color unit. That one is 10,000.

Mr. Hardmeyer questioned: Can you explain nits in a couple of sentences?

Mr. Yando stated: It's a unit of measuring brightness. I know the levels that are recommended and what it drops down to at night. Most of these signs are set to automatically go down at night. It goes down about 95% at night.

Mr. Hardmeyer questioned: Is the nit similar to the lumen in an incandescent bulb?

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Mr. Yando stated: I think 80 nits, which the Town of Newton allows, according to the manufacturer is approximately the brightness of a cell phone screen or Christmas bulb. Every manufacturer in the business of LED signs has a range of 8,000 to 10,000 daytime nits.

Mr. Hooker stated: I spoke with Ms. Caldwell regarding the ordinance. I think the idea was to take that number and allow the number to increase because the technology has advanced.

Mr. Le Frois questioned Mr. Yando: Would 80 nits have been appropriate 5 years ago?

Mr. Yando stated: Probably not. 5,000 was the standard for monochrome 10 years ago.

Mr. Ricciardo questioned: What is the lowest nits setting?

Mr. Yando stated: 400 for monochrome and 500 for full-color.

Mr. Ricciardo stated: You mentioned the Wingle Supply sign. How many nits is that? It is very bright.

Mr. Yando stated: 10,000.

Mr. Hooker stated: What are the specifications recommended by the manufacturer?

Mr. Yando stated: The manufacturer, Electromatic, recommends the sign be run at 10,000 daytime nits and automatic dimming is set to 95%. It dims gradually.

Mr. Hardmeyer questioned: Is the dimming based on time or the brightness?

Mr. Yando stated: It's a photo cell so it's based on how bright it is outside.

Mr. Hooker questioned: Is there a manual dimmer setting that can override the automatic dimmer?

Mr. Yando stated: Yes. It can be reprogrammed and can be adjusted from a computer. It is the same software that you can input the messages that are displayed on the sign.

Mr. Hooker stated: The Town of Newton has specifications on how many messages can be flashed and how frequently. There is also a requirement that it not be a moving animated sign. Is this sign capable of meeting those specifications and will it comply with those requirements?

Mr. Yando stated: Yes.

Mr. Hooker questioned: In your years of experience of installing electronic message boards, have you come across any studies that identify whether or not they are more dangerous than regular signs.

Mr. Yando stated: I don't have it with me. But there were studies done. They have not been proven any more dangerous than regular signs.

Mr. Hooker questioned: Based on your experience, what is your recommendation to the Board as to what the nits of the sign should be?

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Mr. Yando stated: The manufacturer has done the studies. These are the light levels that they recommend for optimum viewing. We installed the same signs in the Town of Dover for the municipal building and park. They are 10,000 nits on auto dim to 95% at night which is the same as what we are looking at here.

Portion opened to public. None stepping forward, portion closed.

Mr. Keith Mitchell, 29 Trinity Street, Newton is sworn in. He is the managing member and owner of HCS Mitchell, LLC.

Mr. Hooker questioned: What kind of messages does the Mitchell Agency intend to run on the message board?

Mr. Mitchell stated: We want to state the different types of insurances we sell. We want to be able to offer bundling benefits. We will just be advertising our own items. No time and temperature.

Mr. Ricciardo questioned: Will you advertise for other businesses like Wingles Supply?

Mr. Mitchell stated: No. But if the Town or the Police Department need something posted I would be happy to help. It would be all static signs. No animation.

Mr. Ricciardo stated: Mr. Yando stated that the sign gives you the ability to manually dim it. Would you leave it as automatic dimming?

Mr. Mitchell stated: Yes. That is what I would prefer.

Portion opened to public. None stepping forward, portion closed.

Ms. Apte reviewed Ms. Caldwell's report dated August 9, 2016 and stated: The sign size and location meets the ordinance. In terms of lumens, I know much has been discussed. We reviewed a 2015 report on EMBs from the United States Sign Council that recommended maximum night nits at 350 to 760 nits. Regarding the daytime nits of 10,000, we are ok with this since they are the recommended nits requirement. To put it on the record, this is a full color sign which is why this is the range that the applicant is proposing. The other question I have is, I know it's self-regulating, but does this mean it changes during the weather changing or just in the evening?

Mr. Yando stated: On the side of the sign there is an electronic eye that senses the ambient light around the sign. If a thunderstorm comes in and darkens the sky, it will read that light and dim the sign. If a cloud rolls over head you won't see a difference. But significant darkening will cause it to dim.

Ms. Apte questioned: Will the messages be displayed for at least 15 seconds at a time?

Mr. Yando stated: Yes. It is in the software. You create the message and program it to run for however long you need it. You can default it to a minimum of 15 seconds so you can't make a mistake. The end-user will be in charge of that.

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Ms. Apte stated: Our office's only concern is the brightness issue. That is why we have proposed a field testing to try and measure it at 10,000 units. It's on a main road but it's not a highway. To field test it would be a condition that can be put on the application.

Mr. Le Frois stated: With Mr. Soloway's concern, I think it's a good idea but we would still need to set some sort of a limit and then confirm with a field test.

Mr. Ricciardo questioned: What kind of testing are you recommending?

Ms. Apte stated: It is almost like a lighting test. You test the lumens. It's done mostly at night time so it should not distract motorists. The daytime brightness is not such a big concern.

Mr. Ricciardo questioned: You said the Wingle sign is the same as this one?

Mr. Yando stated: Yes. This is the same. 10,000 daytime and 500 nighttime nits.

Mr. Ricciardo questioned: How can the sign be tested to provide the information that they want?

Mr. Yando stated: There is a nit testing device. We don't have one. We can measure lumens and candle power.

Mr. Soloway stated: Mr. Ricciardo may be trying to figure out if there is a way to go out and find out if it's the same sign before the Board approves this. Is that correct?

Mr. Ricciardo stated: Yes. That's correct.

Mr. Soloway stated: It would be investigated before the Board members make a decision on the application.

Mr. Hooker stated: So there would need to be a second meeting to present it to the Board?

Mr. Ricciardo stated: If we grant a waiver for this, we may be setting a precedent for signs of this type that want to come in. If it falls within the proper nits, then it may be fine throughout Town. If it doesn't, we could be creating a battle for future Board members to examine.

Discussion ensued between Chairman Le Frois and Mr. Ricciardo on existing and future EMB signs within the Town.

Mr. Soloway questioned Ms. Apte: Do you know where the 80 nits have come from? It seems to be so radically different than the material that has been submitted.

Ms. Apte stated: I spoke with Ms. Caldwell regarding this. She said she wrote the United States Sign Council on this.

Discussion ensued on the number of nits.

Mr. Hooker stated: The other EMB signs in the Town don't have any requirements about every 15 seconds or maximum number of nits allowed.

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Mr. Soloway stated: The Walgreens and College signs predate the ordinance. Iliff will need to comply with this ordinance as well. Their sign is not up yet anyway. I don't think the Board is looking to make trouble. They are just looking for guidance because they are not sure exactly what they are being asked to approve.

Mr. Yando stated: I know Iliff went to the Board with our specs and it is basically the same sign. If it was put forth to the Board it would have been spec'd out at 10,000.

Mr. Soloway stated: I don't recall the Board granting a variance from that requirement.

Portion opened to the public.

1<sup>st</sup> Public: Theresa Iliff, Camp Iliff, 280 Spring Street, Newton. We provided specs on the sign including the nits and had extensive conversation on it. We talked about brightness and compared it to other signs.

**No more public stepping forward. Portion, closed.**

Mr. Hooker stated: I request that you consider not setting the brightness limit to less than the manufacturer's recommendations. There should be some basis for that.

Mr. Le Frois stated: I don't think we can say a specific number at this point. We don't know enough to do that.

Mr. Hooker stated: In the memo from the United States Sign Council, and Ms. Caldwell's office agrees, there is a recommendation that the nits be between 350 and 750 at night and between 8,000 and 12,500 during the day. So we are right in the middle of what the national recommendations are. I would submit to the Board that to make something up that bears no testimony would be unfair to the applicant.

Mr. Hardmeyer stated: Do they burn a lot of wattage?

Mr. Yando stated: No. This sign is 672 watts. It will take 5.6 amps at 120 volts to run. Energy consumption is 33 cents a day.

Mr. Simmons referenced his report dated August 9, 2016 and stated: On page 2 number 2 we talk about the sign being within the limits. The applicant has stated they will not be violating the ordinance with any moving, animated, or flashing signs. They are not taking up any parking spaces. The biggest thing is to make sure the sign is outside of the site triangle easement. The applicant provided a survey done by Mike Cattalano. Mr. Cattalano indicated that he could plot on the proposed sign to make sure it is outside the site triangle easement. Every once in a while something will happen when the light will go into blinking red/yellow mode and you'd have to be able to see coming up Moran Street to the left, so it's important to still keep it outside the site triangle easement. One question I have, are there proposed hours for the sign to be running?

Mr. Hooker stated: It would be on all night on the lowest setting.

Mr. Hooker presented Exhibit A1, Foundation Plan, and questioned Mr. Yando: Can you please explain to the Board what Exhibit A1 represents.

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Mr. Yando stated: It is two pure footings. It's a 5x9 by 132" steel post, 3/16<sup>th</sup> direct buried into concrete. It's going to be 48" deep, 20" wide. It will go the full height of the sign. The sign is bolted to these posts and end capped with a radius extrusion.

Mr. Soloway stated: This was submitted per Mr. Simmons's request?

Mr. Yando stated: Yes.

Mr. Soloway stated: If the Board approves this tonight it will be subject to Mr. Simmons's approval.

Mr. Ricciardo questioned: Was this done by a professional engineer?

Mr. Yando stated: It was done by my office. Not a professional engineer. If the building inspector requires it, we can get it stamped. We have an engineer that we use.

Mr. Ricciardo stated: If you provide it to Mr. Simmons and he approves it, then he is taking the liability of it. I would much prefer that he review the calculations from another Professional Engineer and then sign off on it.

Mr. Hooker stated: We will get it stamped as a condition of the approval.

Mr. Simmons continued to review his report and stated: If the Board approves this, Mr. Cattalano, if the applicant hires him, can show it on an as-built that it's outside of the site triangle easement. Back to number 8, we've had some signs come in for other municipalities and they didn't have existing ordinances to deal with it. So they did have me do some research on some different sign organizations throughout the county. Basically, 500 nits in the evening and 10,000 nits in the day are the figures that I've seen also. I did see quite a few references to 5,000 nits. I'm not sure if it was for monochrome or full color. I would ask the applicant this, if you put the sign up and it has the necessary control software and we find that during the day the 10,000 nits is too high it can be overrode?

Mr. Yando stated: Yes. It can be.

Mr. Simmons continued: Perhaps we could add a condition built into this. If the Zoning Officer or whoever is designated, receives complaints from the neighbors then the applicant could progressively turn it down.

Mr. Hooker stated: My only concern is that the neighbors should be here tonight since they were noticed and it is subjective between neighbors who aren't here tonight. If there is leeway built in there should be a step of some kind other than just the neighbors complaining.

Mr. Russo stated: If you want this approved tonight, you may need to compromise and have to shut it down from midnight to 6AM. It might alleviate some potential complaints.

Mr. Ricciardo stated: I don't think the minimum of 500 is where there may be a problem. I think the problem may be in the 10,000 during the day. We don't know how bright it will be.

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Mr. Hooker stated: We would be willing to entertain any suggestion the Board might have, but it wasn't part of our application. The night time might not be the issue. I don't know how we decide today that 10,000 is too much. It is different than what the manufacturer recommends?

Mr. Ricciardo stated: Is there any way to measure other signs in the area to compare?

Mr. Yando stated: No. My company does not have an instrument to measure nits.

Mr. Ricciardo questioned: Is there a device to do it and is it costly?

Mr. Yando stated: From what I've heard it's very costly.

Mr. Levante questioned: Can you use the instrument that measures lumens and convert it to nits?

Mr. Yando stated: It can be done, but I'm not sure how reliable it would be.

Mr. Ricciardo questioned: Would an engineer be able to do it?

Mr. Simmons stated: In my research, measuring the light, talked about a particular chart measuring so many foot candles at a certain distance. That is basically how they gaged it.

Mr. Ricciardo questioned: Who can perform a test like that?

Mr. Simmons stated: If it is with a light reader, our office could perform such a reading.

Discussion ensued on light measurements.

Mr. Le Frois stated: I'm inclined to go with David Simmons's recommendations. We leave at the manufacturers settings and we let Mr. Simmons determine if it's appropriate.

Mr. Soloway stated: I believe that Mr. Hooker and I agreed that if you are going to give Mr. Simmons the authority to set the limits of the variance, from the applicant's perspective the applicant may not agree with Mr. Simmons's report. Number one you have the problem of who is setting the limits of the variance. Secondly, from the applicant's perspective, they may not agree with Mr. Simmons's determination.

Mr. Russo stated: Would we authorize the engineer to do a field change on the development project like with Martoranna?

Mr. Soloway stated: On a field change, number one it's not on a variance. You're not authorizing the engineer to fix the limits of a variance and secondly the field change by definition is a minor item that is considered to be of insufficient significance. To have to come back to the Board and hear a field change, the field change would be the extent of the variance relief.

Mr. Russo stated: My only issue is whether or not the sign detracts from the traffic signal. Other than that I don't have a concern. My concern is safety.

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Mr. Hooker stated: The United States Sign Council findings on the sign indicates there would not be an impact on the traffic.

Mr. Ricciardo stated: Knowing Mr. Mitchell, he is extremely cooperative. If a situation arose and it was found to be detrimental in the neighborhood I'm sure Keith would adjust it. He is always amenable to making adjustments.

Mr. Soloway stated: It seems to me that the basic problem is everyone wants to know what 10,000 nits look like and there is apparently no way to do that. My suggestion is to grant the application at 10,000 and 500, giving Mr. Simmons the right to monitor it and if it's too bright, give him the authority to ask the applicant to adjust it down. In that event, if the applicant is not happy with it he has the right of recourse to come back to the Board to make the decision. Maybe put in there, to turn the sign off between midnight and 6AM.

Mr. Hooker stated: I would submit to the Board that the burden has been met.

Mr. Russo stated: We're throwing you a lifeline and you're arguing about the color of the boat right now. Maybe you should talk to your client.

Five minute recess.

Returned from recess at 8:32 PM.

Mr. Hooker questioned Mr. Yando: You spoke about other signs in the County that your company has done. Are there any others?

Mr. Yando stated: When it was done it was Anastasias, and now it's Casa Capri on Route 15 in Sparta. It's an Electromatic monochrome, red sign which is 8,000 nits during the day. It's on automatic. There were no stipulations on the nits. The only stipulation was the message can only change once a day in Sparta.

Portion opened to the public. None stepping forward, portion closed.

Mr. Soloway crafted a motion to include that we oversee the brightness, the actual brightness of the sign, with the stipulation that we oversee it to make sure it's not too bright in the neighborhood. If there is any disagreement over what is too bright, they have the right to come back before the Board. Also the drawing for the foundation has to be provided by a P.E. and provide Mr. Simmons with calculations for his review. There would also be the condition that they comply with all other requirements in the ordinance.

Mr. Soloway crafted a motion to allow a variance to have up to 10,000 nits during the daytime and reduce by 95% at night. The brightness of the sign will be subject to review by Mr. Simmons within 30 days of the sign being installed and operational. If Mr. Simmons makes the determination that it is too bright, he will be required to issue a letter to the applicant confirming that determination and directing the applicant to lower it to whatever level Mr. Simmons finds is appropriate. If the applicant wants to contest that determination, he has the right to do so by filing a letter appeal to the Board within 15 business days of the determination. No notice would be required to the public. Escrow needs to be current. The foundation drawings must be

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submitted to Mr. Simmons for approval after being certified by another engineer. Plus, the normal conditions.

**Mrs. Diglio made a motion to approve the application. Mr. Ricciardo seconded the motion.**

**AYE: Mr. Hardmeyer, Mr. Ricciardo, Mr. Russo, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois**

**Motion carried.**

Mr. Flaherty rejoined the Board.

**DISCUSSION** –

Mr. Soloway stated: This is not a hearing, just a discussion. When the Board approved the variance change in the signage for Camp Iliff, the question was asked based upon the different nomenclature for the usage. If there was an actual change in use, or a failure to change the use in one unit and not the other unit the applicant might have to bring that back to the Board because part of the site plan on the original application tied into the compatibility and interaction of the separate uses. Particularly with reference to making sure there were no issues with unsafe circulation of busses and cars on the site especially because there are little kids there. Ms. Citterbart was asked to reach out to the applicant and find out if there was any change in use. Ms. Citterbart did try to reach out to the applicant and there hasn't been a substantive response yet. I understand the applicant is here this evening. If she wants to discuss it now, that's fine. If she wants to submit something more formal to Ms. Citterbart that is fine, too.

Ms. Iliff stated: I would like to go back to my original sign as the "Camp Iliff" sign instead of the Child Care sign. Is that a problem?

Mr. Soloway stated: The sign isn't an issue. The concern was whether Camp Iliff was something different than what was approved on the site plan.

Ms. Iliff stated: No it is not. It is the same use. I was just changing the name, not the use. But I am going back to the original name, "Camp Iliff".

Mrs. Diglio stated: I believe there was also a time constraint on the day care.

Mr. Soloway stated: The applicant is obligated to comply with all the conditions.

Mr. Ricciardo questioned: So is it going to be Camp Iliff, It'-z-a-buffet, and It'-z-a-Dollar Store?

Ms. Iliff stated: No. Right now it will say "Camp Iliff" on the right side, in the center it will say "It'-z-a-buffet", and on the left side it will be "It'-z-a-Dollar" depending on if it goes there.

Mr. Soloway stated: Ms. Iliff submitted plans to Ms. Citterbart. Kathy looked at the plans and they were different than what the Board approved. They were different in the name and the size of the signs that were approved. It didn't increase the total square footage, but she allocated it differently among the separate uses. Ms. Citterbart, to be on the safe side, asked the Board whether that was a problem. The Board said "no, but what is this Camp Iliff"?

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Mr. Simmons stated: I just wanted to make the Board aware that I received emails from the applicant's engineer with some slight revisions to the concrete pad by the dumpster area. It's a minor field change.

CORRESPONDENCE - Reviewed

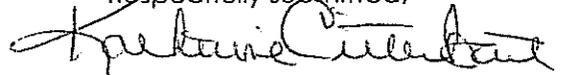
EXECUTIVE SESSION - None

PUBLIC PORTION - None stepping forward

ADJOURNMENT

Mr. Ricciardo made a motion to adjourn the meeting. Motion seconded by Mrs. Diglio. The meeting was adjourned at 8:55 PM with a unanimous "aye" vote. The next meeting will be held on September 21, 2016 in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart

Planning Board Secretary