

Motion by Greenan, seconded by Bedient, to approve Minutes #2022-11 of December 7, 2022.

Ayes: (3) Greenan Abstained: (2) Lang Noes: None Motion Carried
 Hicks Tronolone
 Bedient

Chairperson Hicks noted the 2023 meeting dates: January 25th, February 22nd, March 22nd, April 26th, May 24th, June 28th, July 26th, August 23rd, September 27th, October 25th, and December 6th.

Chairperson Hicks stated the variance renewals for chickens will now be staggered throughout the year. The Department of Health requests the town to renew and monitor the keeping of the chickens on individual properties. The owning of chickens is against the town code and is treated as a use variance and probably should be a special use permit; this will be investigated.

Ms. Greenan stated her suggestion was not to amend the town code to allow chickens but to amend the process. An example would be like a Home Occupancy Permit which allows residents the opportunity to speak along with regular town review.

OLD BUSINESS

2011-047

Request of Lynda Otto for renewal of a variance for property located at 183 Westcliff Drive to allow raising chickens on property (raising of poultry/farm animals not permitted)

Ms. Otto stated she has had chickens for twelve years and currently has six hens and no roosters.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no, as the chickens are pets and provide food; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-created hardship - yes, but the family uses the chickens for food and this is not the determining factor.

Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance for property located at 183 Westcliff Drive to allow the raising of six hens on the property, noting the variance is valid until the April 2024 meeting.

Ayes: All Noes: None Motion Carried

2020-048

Request of Jeffrey Walters for renewal of a variance for property located at 49 Country Lane to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Mrs. Walters stated she has six hens and no roosters; the chickens are pets and used for food.

Code Enforcement Officer Doug Busse stated no complaints have been filed with the town relative to chickens.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no, as the chickens are pets and provide food; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-created hardship - yes, but the family uses the chickens for food and this is not the determining factor.

Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance for property located at 49 Country Lane to allow the raising of chickens on the property, noting the variance is valid until the February 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2011-060

Request of Dennis Sullivan for renewal of a variance for property located at 1481 Orchard Park Road to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Liam Sullivan stated the family no longer has chickens and no need for the variance.

2012-036

Request of Melinda & Edward Bauerlein for renewal of a variance for property located at 72 Sunset Creek Drive raising chickens on property (raising of poultry/farm animals not permitted)

Ms. Bauerlin stated she has two hens that are pets and used for food. The previous variance was for five and Ms. Bauerlin wishes to keep that number.

Code Enforcement Officer Doug Busse stated no complaints have been filed with the town relative to chickens.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no, as the chickens are pets and provide food; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-created hardship - yes, but the family uses the chickens for food and this is not the determining factor.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant a variance for property located at 72 Sunset Creek Drive to allow the raising chickens on the property, noting the variance is valid until the April 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2013-13

Request of Brian and Lisa Hirsch for renewal of a variance for property located at 122 Tampa Drive to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Ms. Hirsch stated she has had five chickens for approximately the past ten years; there are no roosters.

Code Enforcement Officer Doug Busse stated no complaints have been filed with the town relative to chickens.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no, as the chickens are pets and provide food; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-created hardship - yes, but the family uses the chickens for food and this is not the determining factor.

Motion by Tronolone, seconded by Bedient, to close the public hearing and grant a variance for property located at 122 Tampa Drive to allow the raising of chickens on the property, noting the variance is valid until the April 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2016-018

Request of Deborah Arzaga for renewal of a variance for property located at 227/229 Pellman Place to allow raising of chickens on property (raising of poultry/farm animals not permitted)

The applicant was not present.

Motion by Hicks, seconded by Greenan, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2016-099

Request of Josephine Morcelle for renewal of a variance for property located at 45 Parkside Drive to allow keeping of a pig on residential property (raising of poultry/farm animals not permitted)

Ms. Morcelle stated her pig is still an indoor pig and approximately 60 pounds.

Code Enforcement Officer Doug Busse stated no complaints have been filed with the town.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant a variance for property located at 45 Parkside Drive to allow the keeping of a pig on the property, noting the variance is valid until the March 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2017-022

Request of Julie Dembski for renewal of a variance for property located at 171 Wetherstone Drive to allow raising of chickens on property (raising of poultry/farm animals not permitted)

The applicant notified the Zoning Board of Appeals that she no longer raises chickens.

2019-010

Request of Tim and Robin Stolinski for renewal of a variance for property located at 227 Seneca Creek Road to allow raising of chickens on property (raising of poultry/farm animals not permitted)

The applicant was not present.

Motion by Hicks, seconded by Greenan, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2020-019

Request of Cynthia Gaasch for renewal of a variance for property located at 68 School Street to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Motion by Hicks, seconded by Greenan, to table the request until the February 22, 2023 meeting at the request of the applicant.

Ayes: All

Noes: None

Motion Carried

2020-024

Request of Elisa and Jason Kirby for renewal of a variance for property located at 102 Toby Hill Drive to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Mr. Kirby stated he has six hens and no roosters. The chickens are being raised for their eggs.

Code Enforcement Officer Doug Busse stated no complaints have been filed with the town relative to chickens.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no, as the chickens provide food; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-

created hardship - yes, but the family uses the chickens for food and this is not the determining factor.

Motion by Bedient, seconded by Greenan, to close the public hearing and grant a variance for property located at 102 Toby Hill Drive to allow the raising of six hens on the property, noting the variance is valid until February 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2021-011

Request of Kevin Richlmayr and Stacy Greiner for renewal of a variance for property located at 4211 Clinton Street to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Mr. Richlmayr stated they currently have eight chickens that are pets and used for food. The lot is an acre in size and set far back from the road adjacent to the creek.

Code Enforcement Officer Doug Busse stated no complaints have been filed with the town relative to chickens.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no, as the chickens are pets and provide food; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-created hardship - yes, but the family uses the chickens for food and this is not the determining factor.

Motion by Lang, seconded by Greenan, to close the public hearing and grant a variance for property located at 4211 Clinton Street to allow the raising of eight hens on the property, noting the variance is valid until the February 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2021-064

Request of Jessica Sawyer for renewal of a variance for property located at 866 Mill Road to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Ms. Sawyer explained she does not currently have the hens, but would like to keep the variance in place. Ms. Sawyer is a teacher and the hens would be kept on the property when school was not in session. The plan is for three hens. The property is about a half-acre and a coop is ready for the chickens.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states the hens are being kept for educational purposes 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-created hardship - yes, but the family uses the chickens for food and this is not the determining factor.

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Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance for property located at 866 Mill Road to allow the raising of three hens on the property, noting the variance is valid until the February 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2022-008

Request of James and Erin Rathmann for renewal of a variance for property located at 42 Beechwood Drive to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Mr. Rathmann stated the family has five hens and no roosters.

Code Enforcement Officer Doug Busse stated no complaints have been filed with the town relative to chickens.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no as the chickens provide food; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no complaints have been received; 4) Is this a self-created hardship - yes, but the family uses the chickens for food and this is not the determining factor.

Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance for property located at 42 Beechwood Drive to allow the raising of five hens on the property, noting the variance is valid until January 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2022-046

Request of Melissa Fazzio for renewal of a variance for property located at 165 Willowdale Drive to allow raising chickens on property (raising of poultry/farm animals not permitted)

The applicant was not present.

Motion by Hicks, seconded by Greenan, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2020-049

Request of New Hope Methodist Church for renewal of a variance for property located at 2846 Seneca Street to construct a LED sign within 500' of residential property (LED signs not permitted within 500' of residential zoning)

Denise Knight was present and stated the name of the church has changed to Agape United Methodist Church; the sign is the same and has not had any issues.

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Code Enforcement Officer Doug Busse stated no complaints have been filed with the town relative to the sign. If any issues arise, this is the duty of the Code Enforcement Office to address. Town Attorney Chris Trapp concurred; the power to revoke lies with the Code Enforcement Office. No comments were received from the public.

Motion by Hicks, seconded by Greenan, to close the public hearing and grant a variance for property located at 2846 Seneca Street to construct a LED sign within 500' of residential property, noting there will not be a renewal stipulation on the variance.

Ayes: All

Noes: None

Motion Carried

2022-055

Request of Paul Daley for a variance for property located at 800 Reserve Road to allow raising of a goat and chickens on property (Raising of farm animals/poultry not permitted)

The applicant was not present.

Chairperson Hicks noted this is the second time the applicant was not present; after three missed meetings the application will be received and filed.

Motion by Hicks, seconded by Greenan, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2022-063

Request of Patrick Melski for a variance for property located at 1 Mansperger Place to erect a pole barn with 14' 6" midspan (maximum 12' height permitted)

Mr. Melski stated he has classic cars and would like have a pole barn with a lift. Mr. Melski also is the owner of the adjacent property. No commercial business or a living area will be in the garage/pole barn.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 1214, 1218, 1222, 1224, 1246, 1262, 1258, 1245, and 1244 Indian Church Road. Correspondence was received from the Erie County with no objection to the variance request as this is of local concern.

Code Enforcement Officer Doug Busse stated the project meets the required setbacks and the variance is strictly for the height of the structure.

Ms. Tronolone questioned if the structure will be connected to any utilities. Mr. Melski stated the garage will have electric.

No comments were received from the public.

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Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance for property located at 1686 Center Road to allow a 62' 4" lot width for a future home.

Ayes: All

Noes: None

Motion Carried

2022-066

Request of Kevin Weber for a variance for property located at 461 Seneca Creek Road to erect a garage with 16' midspan (maximum 12' height permitted)

Received and filed.

2022-067

Request of Birgo Realty for a variance for property located at 72 Oakridge Drive to install a ground sign with 4' height (maximum 3' height permitted)

McKenzie Smith with Birgo Realty stated the company has recently purchased the property which is a thirteen-building multifamily residential property; there is currently no signage for the property. The owner would like the signs located across WNY to be consistent in size.

Mr. Lang noted the request is for the height being 2' off the ground. Code Enforcement Officer Doug Busse stated this is correct. The zoning is residential with the sign, setbacks and size permitted; the height is the reason for the variance.

Mr. Busse noted the entire street is owned by Birgo Realty and across the street is a vacant lot. There are no adjoining neighbors. Ms. Smith noted this is a basic sign with no lighting.

Mr. Bedient stated he has been on the street and understands the need for a sign to help locate the main office and has seen the other signs across WNY; they are very nice signs.

No comments were received from the public.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, the applicant owns the street and properties; 2) Is there an alternative - yes, but the applicant wishes the signs to be uniform; 3) Is the request substantial - this is not substantial; 4) Does the variance have an impact on the environment - there is no impact on the environment; 5) Is this a self-created difficulty - yes, but this is not the determining factor.

Motion by Lang, seconded by Greenan, to close the public hearing and grant a variance for property located at 72 Oakridge Drive to install a ground sign with 4' height.

Ayes: All

Noes: None

Motion Carried

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TABLED ITEMS

2016-018

Request of Deborah Arzaga for renewal of a variance for property located at 227/229 Pellman Place to allow raising of chickens on property (raising of poultry/farm animals not permitted)

The applicant was not present.

2019-010

Request of Tim and Robin Stolinski for renewal of a variance for property located at 227 Seneca Creek Road to allow raising of chickens on property (raising of poultry/farm animals not permitted)

The applicant was not present.

2022-046

Request of Melissa Fazzio for renewal of a variance for property located at 165 Willowdale Drive to allow raising chickens on property (raising of poultry/farm animals not permitted)

The applicant was not present.

2022-055

Request of Paul Daley for a variance for property located at 800 Reserve Road to allow raising of a goat and chickens on property (Raising of farm animals/poultry not permitted)

The applicant was not present.

2022-064

Request of Michael Flicinski for a variance for property located at 1000 Center Road to erect a garage with 12' 6" midspan (maximum 12' height permitted)

The applicant was not present.

Motion by Hicks, seconded by Lang, to table the following items until the February 22, 2023, meeting: 2016-018, 2019-010, 2022-046, 2022-055, and 2022-064.

Ayes: All

Noes: None

Motion Carried

OLD BUSINESS

2022-062

Request of Dan Warren for an appeal and interpretation of the Code Enforcement Officer issuance of a permit for property located at 2448 and 2885 Clinton Street

Chairperson Hicks recused herself from the interpretation and left the meeting room.

The applicant was not present.

Ms. Greenan requested guidance on hearing the item due to the applicant not being in attendance. Town Attorney Chris Trapp stated there is no need to table the item; the applicant was on notice of the meeting as he was present at the December meeting.

Ms. Greenan questioned if this was different than the other items tabled tonight when the applicant was not present; is this item different because this applicant was present at the previous meeting and the agenda was published. Mr. Trapp noted the applicant was present at the previous meeting and provided a lengthy presentation along with numerous documents in regard to the matter. The applicant has been heavily involved in various litigations surrounding this project. The applicant was present at the last meeting where the tabled date was stated.

Deputy Town Attorney Stephan Stachowski advised Ms. Greenan to continue with the item.

Motion by Greenan, seconded by Tronolone, to remove item 2022-062 off the table.

Ayes: (4) Greenan	Noes: None	Motion Carried
Lang		
Bedient		
Tronolone		

James Cosgrove, attorney for Canisius High School stated it is his wish the Zoning Board of Appeals denies the appeal made.

Mr. Trapp stated Mr. Warren was a plaintiff in a case from 2009 that was decided by the Appellate Division. The Zoning Board of Appeals was one of the defendants in the case. Mr. Warren, along with others, sued the town over the exact same project. The Appellate Division, which is the intermediate Appellate Court in the State of New York, after, was heard by the lower court, took the case to the Fourth Department. The Fourth Department stated: Mr. Warren and other petitioners commences CPLR Article 78 to annul the determination of the respondent Zoning Board of Appeals of the Town of West Seneca issuing a building permit for the construction of athletic facilities to Canisius High School. The determination of the Zoning Board of Appeals that the proposed high school athletic facilities constitute a permissible educational use under town code within the subject's zoning district was neither unreasonable nor irrational.

Mr. Trapp stated we are now fourteen years later, and the exact same issue has been raised by Mr. Warren asking the Zoning Board of Appeals to overturn the earlier decision and to overturn what the Appellate Division has said. Mr. Trapp noted, the Zoning Board of Appeals does not have the authority to overturn the decision of

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the Appellate Division. There is a basis to do so by taking the matter to the Court of Appeals and this could have been done thirteen years ago. Mr. Warren is now asking the Zoning Board of Appeals to reverse itself; the zoning code does not allow this. Mr. Trapp referred to Chapter 120.56 and noted it states: Rehearing. There shall be no rehearing of an appeal or application by the Board of Appeals, except in accordance with Subsection 6, Section 267, Article 16 of the Town Law. Mr. Trapp stated this deals with how many members are on the board not a decision made. By town code the Zoning Board does not have the authority to rehear the same thing. Under the Appellate Division decision they have final determination of this particular case. The legal term is res judicata.

The project has been approved multiple times by the Planning Board, Zoning Board of Appeals, and in essence by the courts after multiple cases. Mr. Warren is attempting to argue these are baseball diamonds and it is different. The Appellate Division states athletic fields and is not limited to football or soccer. It was decided by the former board that the athletic fields are an educational purpose.

Construction has been going on for over a year, and the application should have been filed immediately. This was filed after Mr. Warren lost in front of Judge Grisanti.

Mr. Warren has raised arguments with regard to his standing to bring the case. What the Zoning Board needs to decide is: is the individual an aggrieved party. With the Zoning Board of Appeals, you must be an aggrieved party in order to file a claim. Courts define an aggrieved party as someone who is in the zone of interest. The courts consider an aggrieved party as someone who is an adjoining property owner, an abutting property owner, or the owner of the property. Abutting and adjoining usually has a maximum distance of 500'. You must be close to raise an issue. Papers submitted by Mr. Warren state he lives 2,550' away from the Canisius project. This distance does not fall into the zone of interest; it is too far away.

Mr. Warren has been in front of three different Supreme Court Judges on the matter. In terms of the Zoning Board of Appeals, in terms of jurisdictionally, an aggrieved party, and already been heard and decided, there is no basis for this board to change what happened thirteen years ago.

Deputy Town Attorney Stephen Stachowski questioned what the Zoning Board is deciding on tonight; is it the standing or the interpretation. Mr. Trapp stated the board may decide if Mr. Warren is an aggrieved person and should the board hear this again and based on the town code there would be a hearing of an appeal that was already decided.

Mr. Stachowski advised the Zoning Board of Appeals members to use rational thinking on their decisions.

Motion by Greenan, seconded by Tronolone, to close the public hearing to allow the Zoning Board of Appeals members to discuss and render a decision.

Ayes: (4) Greenan
Lang
Bedient
Tronolone

Noes: None

Motion Carried

Ms. Greenan stated with consideration to what has already been established today and in the minutes of the last meeting, additionally, she would like to formally recognize some findings of fact:

1. An appeal seeking an interpretation, is an appeal to the board of appeals, claiming that the decision of the enforcement official was incorrect. However, there are proper parties by which an appeal may come from.
2. In 2007, the Town of West Seneca Zoning Board of Appeals determined that the use of the property by Canisius for an athletic facility was permitted.
3. Later, the Appellate Division determined that the use of the property for athletic fields was an educational use and permissible under the town code in the residential zone.
4. Mr. Warren has come before us to request an appeal and interpretation of the issuance of a permit allowing for Canisius High School to build a baseball diamond in an R-100 A zoned area.
5. On page 10 of the guide produced by the NYS Division of Local Government, titled "Zoning Board of Appeals" found on dos.ny.gov, under "The basis of an interpretation", it states: Where a board of appeals has interpreted a particular provision of the municipal zoning law in a prior case, it should follow that precedent.
6. Regardless, you must be a proper party before the board. In determining if Mr. Warren is an "aggrieved person" we must turn to case law.
7. According to page 24 of the previously referenced document in point 5: As a general rule, any person whose legal rights or interests or property would be detrimentally affected by an action taken by the building inspector or zoning enforcement officer is properly an 'aggrieved person' no matter how distant his/her property may be, as long as it is within the municipality affected.
8. Mr. Warren claims to be an aggrieved person, but it has been established that he is not the property owner, contractor for the work concerned herein, or prospective tenant. Mr. Warren lives across the creek, at least 2,500' away at 826 Indian Church Road, West Seneca, which according to google maps is a 6 – 7-minute drive away.
9. In *Blumberg v. Hill*, residents of a town who lived one and half miles from a proposed guest house were held not to be persons aggrieved. The court placed on the term "persons aggrieved" the requirement that there be some special injury or damage to their personal or property rights. Considering Mr. Warren's address, the project does not cause any injury or damage to his personal or property rights.
10. In *Village of Russell Gardens v. Board of Zoning Board of Appeals*, the court stated that even close proximity to the property involved in a variance proceeding was insufficient to make a person aggrieved, unless there were some showing of detrimental effect on a property of those contesting a variance. Considering Mr. Warren's address, he has not shown that there is any special detrimental effect on his project because of this project.

Motion by Greenan, seconded by Lang, to accept the findings as presented.

Ayes: (4) Greenan
Lang
Bedient
Tronolone

Noes: None

Motion Carried

Ms. Greenan questioned if any Zoning Board of Appeals members had any questions or further comments on the matter.

No comments or questions were received.

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Motion by Greenan, seconded by Lang, to reject the request for a further interpretation and appeal of the Code Enforcement Officer issuance of a permit for property located at 2448 and 2885 Clinton Street on grounds that: 1) Mr. Warren is not a proper applicant based upon the fact that he is not an aggrieved person within the zone of interest as recognized by prior case law; 2) even if Mr. Warren was an aggrieved applicant, the issue is res judicata, meaning it has already been decided by a previous Zoning Board of Appeals and the Appellate Division.

Ayes: (4) Greenan
Lang
Bedient
Tronolone
Noes: None
Motion Carried

Mr. Lang noted the Town of West Seneca has formed a Historic Commission who is currently working on rules and regulations. Mr. Lang asked the various agencies to be aware of any decisions that may affect historic properties. If there may be an affected property, please notify the Historic Commission so that they may be in attendance to represent those interests as a public member until the policies are in place.

A discussion was held regarding Zoning Board of Appeals training with Town Attorney Chris Trapp in February.

ADJOURNMENT

Motion by Hicks, seconded by Greenan, to adjourn the meeting at 8:03 P.M.

Ayes: All
Noes: None
Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary