

Clearwater, Florida, December 4, 2014

The Board of Adjustment met in regular session in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida on this date with the following members present: John Doran, Chairman; Alan C. Bomstein, Vice-Chairman; Joe C. Burdette; Ray Hoeneisen; Gregory Pierce; Deborah White; and Stephen G. Watts.

Also present: Chelsea Hardy, Assistant County Attorney; Todd F. Myers, Environmental Code Enforcement Director; John F. Cueva, Planning Department Zoning Manager; other interested individuals; and Trudy Futch, Board Reporter, Deputy Clerk.

### CALL TO ORDER

Chairman Doran called the meeting to order at 9:03 A.M.

### PUBLIC HEARING ITEMS

Due notice having been given to interested persons pursuant to Comprehensive Zoning Ordinance No. 90-1, public hearings were held on the following applications:

#### # 1 APPLICATION OF BA PHAM FOR A VARIANCE (BA-8-10-14) – WITHDRAWN

John F. Cueva, Planning Department Zoning Manager, referred to the application of BA Pham for a variance to reduce the number of parking spaces from seven to six, re property located at 6710 46<sup>th</sup> Avenue North, St. Petersburg (BA-8-10-14), and reported that the application has been withdrawn.

#### # 2 APPLICATION OF MICHAEL RABAUT FOR A VARIANCE (BA-2-12-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Michael Rabaut for a variance to allow a garage having an eight-foot front setback from the property line adjacent to Madonna Boulevard where a 20-foot front setback is required, re property located at 390 4<sup>th</sup> Avenue North, Tierra Verde (BA-2-12-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of the request due to the unique and unusual location as it relates to the bridge and its location to the subject lot. As the elevation of the lot is well below the road leading up to the bridge, access to Madonna Boulevard from this lot is not possible, and, as such, this lot does not require the 20-foot front setback imposed by the zoning code. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The front setback from the property line adjacent to Madonna Boulevard shall be eight feet.

Michael Rabaut, Tierra Verde, appeared and being duly sworn, indicated that he is seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Watts, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 3     APPLICATION OF DENNIS L. MURPHY THROUGH J. BRADLEY TATSCH, REPRESENTATIVE, FOR A VARIANCE (BA-4-12-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Dennis L. Murphy through J. Bradley Tatsch for a variance to allow for the construction of a single family residence having zero-foot frontage on a private road where 90 feet of frontage on a public right of way is required, re property located on the south side of Morrow Road (private), 450 feet west of North Highland Avenue, Tarpon Springs (BA-4-12-14).

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John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of the request as it is apparent the applicant cannot obtain property fronting on a public road as there are other property owners between the public road and the applicant's property that make this impractical. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. All setback requirements shall be met.

J. Bradley Tatsch, Clermont, appeared and being duly sworn, indicated that he represents the applicant.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein moved, seconded by Ms. White, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 4     APPLICATION OF JOANNE M. JONES FOR A VARIANCE (BA-5-12-14) – DENIED

Public hearing was held on the application of Joanne M. Jones for a variance to allow a 14-foot by 18-foot shed to remain at a zero-foot front setback where 50 feet is required and a five-foot side setback where a 25-foot side setback is required from the north property line, re property located at 1221 Lake Avenue Southeast, Largo (BA-5-12-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one letter in opposition to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of the request as the lot which fronts the private drive that provides access to this lot is at the end of the private road, and, as such, this lot is uniquely situated at the end of the road, thereby negating any adverse impact to the adjacent property to the north. Lot is substandard in terms of area and setbacks on the existing home (see BA-20-4-02). Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The 14-foot by 18-foot shed shall have a zero-foot front setback and a five-foot side setback.

Joanne Jones, Largo, Karl Jones, Crystal Beach, and Jeff Hamburg, Largo, appeared and being duly sworn, indicated that they are seeking the aforesaid variance; and that due to safety concerns related to a new baby, the shed is needed to store tools now kept in the home.

Responding to inquiries by Mr. Bomstein, Ms. Jones displayed photographs, and stated that the shed is located in the front yard; and that it could not go in the back yard due to low hanging electrical wires.

Responding to inquiries by Messrs. Watts and Bomstein, Mr. Hamburg, with input by Ms. Jones, stated that he has a large number of tools, that the shed was a prefabricated kit; that the Florida Shed Company informed him that he did not need a permit; that he is not running a business out of the shed; that it would be expensive to have the power lines lifted; that a fence would have to be torn down to get the shed in the back yard; that Mr. Hamburg lives in the home; that the property is classified as single family residential; and that the shed does not obstruct anyone's driveway.

Mr. Meyers confirmed that this is a violation case; and indicated that a complaint was received due to the large shed being located in the front yard; that the size of the shed exceeds the size allowable for the primary structure; and that the shed would be allowed elsewhere on the property if placed so that it did not impinge upon the setbacks.

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Responding to inquiries from Messrs. Bomstein, Doran, and Cueva, Ms. Jones and Mr. Hamburg stated that there is a fence and another home across the street, but no through access; that there are neighbors to the east and north of the property and an empty lot to the right side of the house; and that a gate, which is not used, is located in the easement and opens into their neighbor's yard.

Mr. Cueva elaborated that the gate allows the neighbors to get into the back of their property line, but there is not a road; that a prior owner was granted variances for this site to allow the house to be built; that the house is close to the property line, making it difficult to get a shed in the backyard; that this has created a unique situation, which is why staff is recommending approval; and that because the shed was placed in the front yard and within setbacks without a permit, a variance is needed.

During discussion and displaying a Google image showing where the house and driveway are located, Mr. Cueva explained that after visiting the site, staff concluded that the shed would not adversely affect the adjacent property to the north; and reiterated that there is no adverse affect to the surrounding properties.

During discussion, Mr. Pierce indicated that due to the Board initially granting a variance allowing the house to be placed where it is, he would be uncomfortable with granting another variance to allow a shed in the front yard.

In response to the Chairman's call for opponents to the application, Christine Brown, Largo, appeared and being duly sworn, indicated that she is speaking on behalf of herself, her husband and the Wagner family, who are located to the south of the shed; that at least two letters were submitted in opposition to the variance; that her property abuts the subject property; and that the neighborhood is opposing the variance due to the location of the shed in the front yard and its detrimental visual effects on the small community.

In response to queries by the members, Ms. Brown discussed the location of the shed in relation to her house, stating that she sees the shed each time she steps outside her front door; that her family has lived in the community for decades and wants the neighborhood to remain aesthetically pleasing; and that she would not oppose the shed being placed in the backyard.

In rebuttal, Mr. Hamburg stated that the request for the variance is reasonable; and that it would be a financial hardship to move the shed into the backyard; whereupon, he reiterated that the reason for the shed is due to safety concerns of having tools and chemicals in the house with a newborn baby.

Chairman Duran closed the public hearing. During deliberation, Mr. Burdette expressed concern that the shed companies continue to misinform people about permit requirements, but noted that there are recourses to help recoup the expense of moving the shed. Mr. Bomstein stated that it would be unusual for the Board to approve an oversized shed in a front yard that does not meet minimum setback requirements; and expressed concern that approval would set a bad precedent for front-yard sheds.

Thereupon, Mr. Pierce moved, seconded by Mr. Watts, that the variance be denied.

Upon call for the vote, the motion carried unanimously.

# 5     APPLICATION OF JEAN AND CLYDE CHOONG THROUGH JOSEPH E. PUGH, JR., REPRESENTATIVE, FOR A VARIANCE (BA-6-12-14) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of Jean and Clyde Choong through Joseph E. Pugh, Jr. for a variance to allow for the replacement of an existing balcony with a new balcony having a 17-foot front setback where a 25-foot front setback is required, re property located at 516 Indiana Avenue, Crystal Beach (BA-6-12-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this variance as the request is to replace a balcony that has a 17-foot front setback, which is consistent with the various setbacks found in this area. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.

2. The front setback shall be 17 feet for the balcony.

Joseph Pugh, Palm Harbor, appeared and being duly sworn, indicated that he represents the applicants; and stated that the existing dilapidated balcony would be replaced with a new balcony of the same dimensions.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Watts, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 6     APPLICATION OF S. E. COMBINED SERVICES OF FLORIDA, LLC, THROUGH KATHERINE E. COLE, ESQUIRE, REPRESENTATIVE, FOR A VARIANCE (BA-8-12-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of S. E. Combined Services of Florida, LLC, through Katherine E. Cole for a special exception to allow for the expansion of the existing funeral home and maintenance buildings, which are ancillary to the existing cemetery, along with the following variances: (1) for parcel #05-29-16-00000-130-0400, a 14-foot side setback, a 15-foot rear setback, and a site area variance to allow a 1.48 acre site; (2) for parcel #05-29-16-00000-420-0100, a side setback of zero feet for an existing storage building and a 10-foot side setback for a proposed covered area; (3) for parcel #05-29-16-00000-130-0300, a side setback of 24 feet for an existing funeral home, where 25-foot side and rear setbacks are required, respectively, for all three parcels, re property located at 2853 Sunset Point Road, Clearwater (BA-8-12-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Approval with Conditions. The variances are from the owner's own property lines and, as such, will not adversely affect other property owners. However, because these are individual parcel numbers, the variances are being

requested and it is the applicant's desire for these parcels to stand on their own with their own specific variances. Staff has no objection to the conditional approval of this request provided the Board is satisfied that the "Standards" of Section 138-238, Division 7 of the Pinellas County Land Development Code have been met and subject to the following conditions:

1. Full site plan review.
2. Setbacks as described in the applicant's narrative.

Katherine E. Cole, Esquire, appeared and being duly sworn, indicated that she represents the applicant; that the property is named the Sylvan Abbey Memorial Park and Cemetery; that the applicant purchased the assets of the funeral home and cemetery services last year; and that a special exception was granted around ten years ago for an expansion of the funeral home, which was never constructed. She pointed out that the land use is Institutional, but the zoning remained Agricultural Estate, which is for single family homes and requires a special exception for cemetery and funeral use, noting that the established use of the property has been well defined for many years although the zoning has changed; and that because the funeral home was in existence at the time of the zoning change, there was no reason to come before the Board for an exception until today, as modifications to the existing funeral home are now needed.

In response to query by the members and referring to maps and aerial photographs, Ms. Cole affirmed that all three parcels are special exceptions and variances and all lie south of Sunset Point Road; that the proposals are for expansions of the funeral home and the maintenance area, which are existing structures; that there is vacant land abutting the property that is owned by the applicant; that Sylvan Abbey Methodist Church is unrelated to the applicant; and that there is a single family home that is approximately 1,500 feet from the renovations. She related that she and Mr. Cueva debated whether to come before the Board or to simply unify the properties by title, but her client wished to bring everything into conformity.

In response to the Chairman's call for those wishing to speak in opposition to the application, Gerrad and Glenys Guerre, Clearwater, appeared and being duly sworn, expressed concern that the construction would cause traffic problems and might



result in flood and home insurance issues for their property; and Cary Linkfield, Clearwater, indicated that he is no longer in opposition.

Mr. Bomstein clarified the laws of Pinellas County with regard to funeral homes and special exceptions, indicating that the owner of the funeral home would have to come before the Board at a public hearing before any future expansions or modifications, such as roads, were made to the property. Whereupon, he moved, seconded by Mr. Burdette, that the variance be granted.

Upon call for the vote, the motion carried unanimously.

# 7     APPLICATION OF G. KIRK AND MYRNA Q. SMITH THROUGH GENE LANTON, REPRESENTATIVE, FOR A VARIANCE (BA-1-12-14) – GRANTED, WITH THE EXCEPTION OF THE 16-FOOT-HIGH FENCES, WHICH WERE DENIED WITHOUT PREJUDICE

Public hearing was held on the application of G. Kirk and Myrna Q. Smith through Gene Lanton for a variance to allow a 16-lot subdivision to be located on a private road and to allow six-foot-high fences for each lot having a zero-foot front setback and garages to also have a 20-foot front setback where lots fronting on public roads having 25-foot front setbacks for fences and garages are required, re property located at 1982 Belleair Road, Clearwater (BA-1-12-14).

John F. Cueva, Planning Department Zoning Manager, stated that the plan submitted is strictly conceptual and does not represent what will ultimately be built. He indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Approval with Conditions re 16 Lots Fronting on Private Road and Garages Having 20-Foot Setbacks; Recommend Denial of Six-Foot-High Fences Having Zero-Foot Front Setbacks. Staff has no objection to the proposed private road with garages having 20-foot setbacks from the private road as the variance will impact these lots only and is unique only to this development. With regard to the proposed six-foot high fences being placed along each lot having a zero-foot front setback, staff cannot support this portion of the request because the placement of the

proposed fences will not provide adequate sight distance for vehicles or pedestrians of this subdivision. Approval of the private road and garages should be subject to the following conditions:

1. Full site plan review and approval.
2. The garages shall have 20-foot front setbacks.

Mr. Watts indicated that he would not participate in any discussion on this case due to a conflict of interest in that the applicants are friends and former clients, and in accordance with the provisions of the Standards of Conduct Law, submitted a Memorandum of Voting Conflict, which has been filed and made a part of the record.

Heath Johnson, Tampa, appeared and being duly sworn, indicated that he is a civil engineer and represents the applicants, and discussed the fence height and the front yard setback, indicating that the fence height is consistent with other developments in Pinellas County and is more aesthetically pleasing; and that a 20-foot setback is needed for the side-entry garage.

In response to safety concerns raised by Mr. Burdette pertaining to the six-foot-high fence, Mr. Johnson stated that mirrors and other safety measures would be used on the driveways; that the gate would be set back for better visibility; that the road is private with a gated entry, and the individuals living in the subdivision would be aware of the visibility concern; that although the fences could be moved back, the applicant is trying to impart a certain aesthetic quality to the development; that the type of fence being built has not yet been determined; that he does not have a site plan showing the style of houses being built; and that he is trying to decrease the right of way in order to preserve some of the large trees; whereupon, Mr. Bomstein expressed surprise that as it is a heavily wooded lot, the Planning Department staff did not take issue with the loss of the trees.

During discussion, Gene Lanton, Oldsmar, appeared and being duly sworn, provided further information about the fences, stating that a masonry wall is being considered for the lower portion of the fence, with a more decorative wall above; and that fences would be on both sides of the road. He stated that as many trees as possible will be saved; whereupon, he displayed the intersection of Druid Road and Jasmine Way on Google Earth, and Mr. Cueva clarified that the fences would not be on Belleair Road, just inside the private property.

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Following discussion, Mr. Lanton suggested that he could come back before the Board after the plans for the fence and the front entrance are further along.

In response to the Chairman's call for those wishing to speak in opposition to the application, the following persons appeared and being duly sworn, expressed their concerns regarding the density of the project, the loss of trees, the adverse impact on property values, the diminishing natural appeal and aesthetics of the area, the affect on the wildlife, flooding due to runoff, and the lack of information about the development.

David Phillips, Esquire, Clearwater  
(Representing Marsha and Mark Smitherman and other homeowners  
on Oak Lane. Asked that the entire application be denied until solid  
clarification can be provided by the applicant.)  
Grant Deec, Clearwater  
Rosemary Mobley, Clearwater  
Jim Birt, Clearwater  
Jeffrey Blanding, Clearwater  
Bill Frazier, Clearwater

In rebuttal, Messrs. Johnson and Lanton indicated that the site plan is not binding, noting that the plans have already been revised by creating the ponds in an attempt to save the trees; whereupon, responding to comments by the members, they indicated they would be amenable to the fence variance being brought back at a later date.

During deliberation, Mr. Burdette suggested that the developers meet with the neighbors and seek their input; whereupon, Mr. Bomstein moved that the private road and garage setback variances be approved and the fence variance be denied without prejudice, seconded by Ms. White.

Upon call for the vote, the motion carried unanimously.

# 8      APPLICATION OF GULF MANAGEMENT, INC. THROUGH MARK BRENCHLEY,  
REPRESENTATIVE, FOR VARIANCES (BA-3-12-14) – GRANTED WITH  
CONDITIONS

Public hearing was held on the application of Gulf Management Inc., through Mark Branchley for a variance to allow an existing identification sign fronting U.S. Highway 19 to be enlarged to 305 square feet of area and a variance to allow an

existing identification sign fronting Evans Road to be enlarged to 190 square feet where a 150-square foot identification sign is allowed, re property located at 27547 U.S. Highway 19, Clearwater (BA-3-12-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Denial. Staff cannot support the request, as it is of the opinion that the application does not meet the criteria established in Section 138-113 as follows:

- 1 *(1) Special conditions.* That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, including the nature of and to what extent these special conditions and circumstances may exist as direct results from actions by the applicant.
- 2 *No special privilege.* That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other similar lands, buildings, or structures in the same zoning district.
- 3 *Unnecessary hardship.* That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.

Mark Brenchley, Clermont, appeared and being duly sworn, indicated that he represents the applicant. He indicated that Lexus of North America has recently changed its “branding” and compared the measurements of the new trademark to the existing sign.

Mr. Brenchley discussed the three criteria used to deny the application, and referring to streetscapes he displayed of the area, stated that the proposed sign using the new design does not meet the code requirements, although the height of the new sign

will not change and it is significantly more narrow; that it will be set back even further than the sign for Pinellas County Utilities, which is in the immediate area; that the trees, the travel lane, and the four large tanks belonging to Utilities obstruct the visibility of the sign; and that messages on both sides of all the signs will be illuminated internally.

In response to queries by Messrs. Burdette and Bomstein, Mr. Cueva discussed what the code allows pertaining to columns, or supports, for signs; whereupon, Mr. Bomstein indicated that there could be safety concerns due to the solid structure of the new sign and expressed apprehension that the large column could be used in the future to display reader boards or other messages; whereupon, Attorney Hardy confirmed that a condition could be imposed on the variance that would limit the square footage of the message.

During discussion of the smaller sign located on Evans road, Mr. Brenchley displayed a concept drawing and remarked that the existing sign meets the code, but the new sign would need a variance for the square footage of the message area.

Thereupon, Mr. Bomstein moved, seconded by Mr. Hoeneisen, that the variance be granted with the following conditions:

1. The sign on U.S. Highway 19 is restricted to 30 square feet of message area, and the sign on Evans Road is restricted to 50 square feet of message area.
2. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.

Upon call for the vote, the motion carried unanimously.

# 9     APPLICATION OF BENJAMIN D. RODDEY, III, THROUGH DAVID LOPEZ, REPRESENTATIVE, FOR A VARIANCE (BA-7-12-14) – GRANTED

Public hearing was held on the application of Benjamin D. Roddey, III, through David Lopez for a variance to allow an ice/water vending machine nine feet from the front property line within the 30-foot non-permeable area adjacent to U.S. Highway 19, where a 50-foot front setback with no structures within the first 30 feet is required, re property located at 38799 U.S. Highway 19, Tarpon Springs (BA-7-12-14).

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John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Denial. Staff cannot support the requested variance as it is of the opinion that the application does not meet the criteria established in Section 138-113 as follows:

1. *(1) Special conditions.* That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, including the nature of and to what extent these special conditions and circumstances may exist as direct results from actions by the applicant.
2. *No special privilege.* That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other similar lands, buildings, or structures in the same zoning district.
3. *Unnecessary hardship.* That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.

David Lopez, Lutz, appeared and being duly sworn, indicated that he represents the applicant; and displaying an aerial image, described the area and pointed out different places where the ice machine could be located, and indicated that the ice machine is a small, non-permanent structure.

Responding to queries by the members, Mr. Lopez stated that he needs a variance because the location where he wants to put the ice machine is in the setback, as are portions of the building; and that there are numerous nearby businesses and residents, as well as a high volume of possible customers using U.S. Highway 19, who would benefit from the clean, filtered water.

Chairman Doran reiterated that the application does not meet the requirements for a special condition, and in response to his queries, Mr. Lopez

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demonstrated with a diagram why the ice machine could not be located behind the setback, noting that the parcel directly across the street has similar structures located within their setbacks.

In response to query by Mr. Watts, Mr. Cueva provided information regarding CP-1 zoning, and explained that the intent of the County is to leave open and permeable areas for road expansion and for aesthetic reasons. He acknowledged that variances have been granted before within the first 30 feet of setback; whereupon, Mr. Lopez restated that the ice machine is non-permanent and could be removed in case of future road developments.

Mr. Bomstein voiced his concern that granting the variance would be setting a precedent and lead to future aesthetic issues on U.S. Highway 19.

No one appeared in response to the Chairman's call for objectors to the application.

Thereupon, Mr. Pierce moved, seconded by Mr. Watts, that the variance be granted.

Upon call for the vote, the motion carried 5 to 2, with Messrs. Bomstein and Hoeneisen casting the dissenting votes.

**MR. WATTS ELECTED AS CHAIRMAN FOR YEAR 2015; MR. HOENEISEN ELECTED AS VICE-CHAIRMAN**

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Upon Chairman Doran's call for nominations, Mr. Bomstein moved, seconded by Mr. Burdette and carried unanimously, that Mr. Watts be elected as Chairman and Mr. Hoeneisen be elected as Vice-Chairman for 2015. Upon call for the vote, the motion carried unanimously.

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ADJOURNMENT

At the direction of Chairman Doran, there being no further business, the meeting was adjourned at 10:56 A.M.

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Chairman