



**CITY OF DANBURY**  
155 DEER HILL AVENUE  
DANBURY, CONNECTICUT 06810

**ZONING COMMISSION**  
www.danbury-ct.gov

(203) 797-4525  
(203) 797-4586 (FAX)

**MINUTES (REVISED)**  
**JUNE 9, 2020**

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The web based meeting (hosted on Zoom) was called to order by Vice-Chairman Rick P. Jowdy at 7:30 PM

Present were Sidney Almeida, Candace Fay, Chairman Theodore Haddad Jr. (arrived later in the meeting), Ryan Hawley, Angela Hylenski, Rick P. Jowdy, Michael Masi, Robert Melillo, and Alternates Michael Henry and Nelson Merchan Jr. Also present was Planning Director Sharon Calitro.

Absent were James Kelly and Alternate Thomas Nejame.

Vice-Chairman Jowdy explained that Chairman Haddad had been detained and hoped to join the meeting a little bit later in the evening. He then asked former Chairman Rob Melillo to take over as Acting Chairman for this meeting. Mr. Masi made a motion to have Mr. Melillo take over as Acting Chairman for the items on this evening's agenda. Mrs. Hylenski seconded the motion and it was passed unanimously by roll call vote. Mrs. Calitro said they are live streaming this meeting on the Planning & Zoning YouTube channel. She added that if anyone wishes to speak, they should use the "raise hand" function through the Zoom platform. Acting Chairman Melillo said that all votes will be taken by roll call.

Mrs. Fay made a motion to accept the May 12, 2020 minutes. Mr. Jowdy seconded the motion and it was passed unanimously by voice vote.

Acting Chairman Melillo asked Mr. Henry to take Mr. Haddad's place and Mr. Merchan to take Mr. Kelly's place for the items on tonight's agenda. He also noted that the next virtual meeting is scheduled for June 23, 2020.

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Mrs. Calitro read the legal notice for all of the public hearings, which pursuant to Executive Order 71, had been posted on the Zoning Commission page and the Town Clerk's page of the City website on May 26, 2020.

**PUBLIC HEARINGS**

**Petition of SC Ridge Owner LLC for a Zone Change from IL-40 to PND and Approval of Master Plan, 100 Reserve Road (C16022).**

Acting Chairman Melillo read the Planning Department Staff Report dated May 28, 2020 and the Planning Commission recommendation which was positive. He noted that this petition was sent to all of the neighboring towns as well as WestCOG, who issued their standard response: "of local interest with minimal intermunicipal impact".

Attorney Thomas Beecher spoke in favor of this petition. He said that last year they had amended the PND Regulations to include the adaptive reuse of an existing site. He spoke about the background of this site as the former Union Carbide location. He said the building consists of 1.2 million sq.ft. with approximately 800,000 sq.ft. of parking within the structure. He said the building design is quite unique with nine pods on the east side and six pods on the west side. He said in 1983, there were approximately 3,000 people working there. At that time the site consisted of 674 acres. After Bopal occurred, Union Carbide sold the building to Grubb & Ellis, who sold to Gera Danbury LLC, who sold to the Matrix Center LLC, and after that the property went into receivership. After Union Carbide sold, 574 acres were split off and became The Reserve development. The 99+ acres that remained became the donut hole surrounded by the Abbey Woods, Rivington, Crown Point, and other developments that are part of The Reserve. He continued saying that a single Fortune 500 tenant on a large property such as this is a thing of the past. There is not a sufficient or sustainable market to lease this much space and COVID will make this likelihood drop even more. Since Union Carbide left, the building could never reach full occupancy. They needed to do something different so the building does not deteriorate any further. He said they knew it should not be demolished and it really should be repurposed and rejuvenated. This is how the adaptive reuse proposal came about. Adaptive reuse of this building will avoid extensive site disturbance and urban sprawl and essentially result in urban recycling. He said it is just not financially viable for this site to be used in its entirety as office space. He then described other adaptive reuse projects that Summit Development has been involved in: the former Readers Digest site in Chappaqua, New York and the former Norden's facility in Norwalk, Connecticut. The Chappaqua Crossing development is similar to what is being proposed for this site. He said The Reserve is made up of conventional townhouses and other homes, whereas 75% of this proposal will consist of non-residential use. He said they are proposing 404 apartments although they would be permitted a maximum of 433 residential units. He said when you subtract out the proposed residential and non-residential space, there is still over 20% of the building unused. He said they want to create a marriage of uses where people can live/work/play/eat and shop within the site. He then went through the proposed development (referring to the documents in Ex. A) and explained how the space would be used floor by floor. He said this Commission has the authority to approve uses that will be complementary to what is proposed. Lastly he said this building cannot work unless there is a mixed use program within it. The 404 apartments will consist of a mix of 80 efficiency units, 244 one-bedroom units, and 80 two-bedroom units. There will be no three-bedroom units and that can be a condition of the approval. He added that they exceed the minimum amount of open space. He said this type of development is not expected to generate school age children, but the developer has agreed to pay an annual assessment to the City in case it does. At this point, he said the other experts would make their presentations and he would answer the Commission's questions after they speak.

Michael Galante, Traffic Engineer from Frederick P. Clark Associates/Harding & Hanover LLC, explained how the traffic report was compiled. He said they studied the five intersections that surround the site and compared them to ITE and CT DOT numbers. He reviewed several tables from the report and said he tried to simplify this but there is a lot of data here. He said the

reconfiguration of the existing space will include removing a significant portion of the office space, developing the residential units and maintaining amenities will result in an overall reduction in site traffic. He said this is a traffic engineers dream, a perfect world where people would live and work in the same place and have everything they need right there. Access to the site will remain the same but will also include a new access road off of Reserve Rd. to divert the traffic to a new main entrance within the building. He said the analyses of Saw Mill Rd, Reserve Rd., and Woodland Rd. indicate that acceptable levels of service will be maintained without requiring any modifications. The traffic conditions along I-84 at Exits 1, 2, & 2A/B are expected to remain the same due to the reduction in overall site traffic generation. The proposed development minus the removal of existing office space will result in no deterioration and some improvement in the Levels of Service (LOS).

Erik Lindquist PE from Tighe & Bond spoke about the wetlands, the site utilities and the access to the site. He said this property was originally designed to be hidden away, so they are proposing a new access road that will be much more visible. He said they had flagged the wetlands and re-evaluated the vernal pools. Since the wetlands are outside the existing building, they will not have to go to the Environmental Impact Commission until the second phase of the development. The second phase includes the warehouse which will be serviced from Saw Mill Rd. to avoid the wetlands. He said the first phase consists of the interior retrofit and redesign of the existing space. They exceed the amount of required common open space and there is plenty of capacity in both the utilities and the storm drainage.

Felix Charney said he started Summit Development in 1982 and now they have over eighty-five (85) buildings in Connecticut, New York, and Florida. He spoke about two of his adaptive reuse projects; the former Reader's Digest site in Chappaqua, New York, and the former Norden's site in Norwalk. He said they have become the quintessential mixed use developers, and their successes have been the result of collaboration with others including local government. He said the City had been extremely cooperative on this tall task. He explained that a project like this requires a tremendous amount of capital and flexibility. In closing he said they may not know what is to come, but they have a flexible plan for the adaptive reuse of this building.

Tony Rizzo Jr. said thank you to the Planning staff and Roger Palanzo for their cooperation in getting to this point. He said he became partners with Summit Development Group because he believed in this project right from the start. Industry in the City has gone from hatting to electronics to medical technology because we change with the times. He added that thirty-six years ago, this building at full capacity and with this project, the empty building will become vibrant again. He said his family would not support a project unless it was good for the City.

Attorney Beecher said that is all they have for tonight and he asked that this proposal be approved because the Master Plan complies with the requirements, the Planning Commission gave a unanimous positive recommendation, and this does comply with the Plan of Conservation & Development. He said this also complies with all of the criteria for a zone change as listed in the Regulations. In conclusion, he asked that they allow the adaptive reuse of this site which includes some IL-40 uses, as well as residential and retail uses. He said in the final analysis, this will create the ideal live/work/eat/play area.

Acting Chairman Melillo noted that the documents presented this evening were sent with a cover letter to Chairman Haddad today, and would be identified as Exhibit A. He then asked if any Commission member had questions for Attorney Beecher.

Mr. Almeida said this was a very thorough presentation with a lot to digest as there were over 300 pages of information provided to them. He asked about the phasing plans. Attorney Beecher said the first phase is the interior remodeling and renovation of the existing building and the second phase will be construction of the warehouse directly off of Saw Mill Rd. Mr. Almeida asked if there was any consideration given to including an affordable housing component. Attorney Beecher said they considered a variety of components for the residential portion of the development while trying to create a marriage of appropriate uses that would work together. The outcome was that the apartments would be at market rates.

Also speaking in favor of this was Attorney Neil Marcus, 158 Deer Hill Ave. He said this was a good presentation and he had sat through the original presentation for Union Carbide to build this structure. He said it was a sad day when Union Carbide left Danbury, although we are grateful for the improvements they made to Danbury Hospital when they were here. He said he was skeptical when Mr. Charney approached him about this project, but it looks great. This is a great example of the adaptive reuse of a significant building and he is fully behind this project.

Councilman Ben Chianese, 5 Briar Ridge Rd., said he is in favor of this because he has seen what has happened to this building from neglect. He said he remembers when the Mill behind the former El Dorado restaurant was converted to residential housing and that was a success. He added that this will be successful and the concern he has is for phase two of this project, but he will address that when it goes before the Environmental Impact Commission.

Acting Chairman Melillo asked Mrs. Calitro if there were any letters or emails in favor of this. Mrs. Calitro said she received an email at 5:59 PM this evening from Andrea Gartner, 112 Deer Hill Ave. Ms. Gartner said she commended the developers for listening to the neighbors and if a school ends up on this site, they should be sure the public is involved in that decision.

Acting Chairman Melillo asked if there was anyone to speak in opposition to this petition and one person came forward.

Councilman Paul Rotello, 11 Linden Place, questioned Attorney Beecher saying this proposal is in compliance with the POCD. He then said the basic issue here is the impact on the schools. Any proposed residential project requires looking at the impact on the schools. He said these residential developments start out with high-end tenants and eventually end up with serving the working class. He said the additional monies from the developer is essentially a gift to the City. Lastly he said he has not been assured that this land could not be used for IL-40 purposes. He added that Union Carbide transformed the City and without industrially zoned land that would not have been possible.

Acting Chairman Melillo asked Mrs. Calitro if she has any additional staff comments and she said in response to Mr. Rotello's comment that this is inconsistent with the Land Development Map in the POCD, that map has not been updated since 2002 which was before The Reserve

was approved. She added that when the 2013 revision to the POCD was done, the maps were not included in the revision.

Attorney Beecher spoke in rebuttal to the oppositions comments saying he wanted to make two points. The first is that the additional assessment that SC Ridge agreed to pay is above and beyond the regular property taxes to be paid. The second is that the Land Development Map is outdated and does not even show The Reserve.

Mrs. Fay made a motion to close the public hearing. Mr. Jowdy seconded the motion and it was passed unanimously by roll call vote.

Chairman Haddad joined the meeting after the motion was made. He asked Acting Chairman Melillo to continue chairing the meeting. Acting Chairman Melillo said since Mr. Haddad was now present, Mr. Henry would no longer be seated for him.

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Application of Fast Lane Auto Repair LLC/Payne Road Investments LLC, 60 Payne Rd. (N12001), for a Certificate of Location Approval for a Motor Vehicle General Repairer's License in the IG-80 Zone.

Acting Chairman Melillo said the legal notice was already read into the record and this type of application does have a staff report of any other kind of recommendation. Mrs. Calitro read an email dated June 8, 2020, from Zoning Enforcement Officer Sean Hearty stating that the Zoning Certificate of Compliance and the Building Department Certificate of Completion had been issued for the work done at this location.

Attorney Neil Marcus spoke in favor of this application. He said this property is located on the Danbury side of Payne Rd. with the residential properties across the street being located in the Town of Bethel. This site has a long history, dating back to 1961 when a single-family dwelling with an attached garage was constructed by Read (Skip) Turner. In 1980, the Zoning Board of Appeals granted variances to permit the construction of a detached commercial garage and issued a location approval to the same owner to permit the operation of an automobile service garage in the commercial garage. The variances were recorded in the Danbury Land Records in Vol. 637/Pg. 279. In 2018, this property was sold to Payne Road Investments, LLC, and the service garage was closed. In 2019, the Zoning Enforcement Officer (ZEO) and the Environmental Compliance Officer issued cease and desist orders to Payne Investments, LLC for the filling, grading, and excavation of the property in violation of the Zoning Regulations. A settlement between the City and the current property owner, which was filed in Superior Court on September 16, 2019, required the full restoration of the property. This lot is pre-existing and non-conforming as it does not comply with the minimum lot requirement. Additionally, the existing single-family dwelling is considered non-conforming in the IG-80 zoning district. Sec. 3.H.1 of the Zoning Regulations requires that non-conforming lots shall be limited to one permitted use only subject to compliance with Sec. 9.B. Any additional uses beyond the existing auto repair facility and single-family house are not permitted as that would be an expansion of the non-conforming use, which is prohibited in the Regulations. The commercial garage includes 375 sq.ft. of office space on the second floor. This office is considered an accessory to the primary repair garage use. The uses on the site require a total

of 8 parking spaces, of which, the automobile repair facility requires a 6 parking spaces and the single-family dwelling requires two parking spaces. The plan titled "Site Restoration Plan", prepared by CCA, LLC, dated June 27, 2019 and revised 7/16/19 shows a total of 10 spaces, consisting of 6 spaces (3 interior spaces and 3 spaces in front of garage bays) for the commercial garage and 4 spaces for the single-family dwelling. Therefore, adequate parking is available for the auto repair use and the single-family dwelling. He said the Planning Department approved a Waiver to Site Plan Requirements on November 5, 2019. There were two conditions placed on this approval: (1) retail sales of vehicles is prohibited, and (2) the parking spaces/areas located on the property shall be used only for transient parking of motor vehicles, with no sales, dead storage, dismantling, or servicing of any kind taking place on them. This waiver approval was subject to compliance with the Stipulation for Judgment between the City and the property owner dated September 16, 2019. Attorney Marcus said the property owner had to do a tremendous amount of work to bring the property into compliance including ripping out illegal dwelling units that were added to both structures without any permits. He then said they are here this evening to request that the Commission approve the automotive repair use which has existed on this site since approximately 1980. Acting Chairman Melillo said this is the third time this application has appeared on the Zoning Commission agenda because they have been waiting for the property owner to finish bringing it into compliance. He reiterated that Mrs. Calitro had told them the Zoning Certificate of Compliance and the Building Department Certificate of Completion were just issued, so it has taken quite a while to get to this evening. Mrs. Fay asked if the current property owner had been unaware of the violations that existed on the site. Attorney Marcus said he was not aware until the citations were issued. He did not know that the previous owner, Mr. Turner, had done work on the site without permits.

Acting Chairman Melillo asked if there was anyone to speak in opposition to this application and there was no one. He then asked Mrs. Calitro if she had staff comments. Mrs. Calitro said she might not agree with Attorney Marcus's description of what went on with this site, but they have now satisfied the Zoning Enforcement Officer and the Building Official. Their compliance with the Court settlement has taken time and that is why this application has been around for a while.

Mrs. Hylenski made a motion to close the public hearing. Mrs. Fay seconded the motion and it was passed unanimously by roll call vote.

Mrs. Fay made a motion to move this matter to number one under the Old Business on tonight's agenda. Mr. Masi seconded the motion and it was passed unanimously by roll call vote.

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Petition of D & B Wellness to Amend Sections 3.C.4., 5.A.2.b., 5.A.5., 5.B.2.b., 5.B.5. of the Zoning Regulations. (Medical Marijuana Dispensaries as Special Exception in CG-20 & CA-80 Zones)

Acting Chairman Melillo read the Planning Department Staff Report dated May 28, 2020 and the Planning Commission recommendation which was positive. He also noted that this petition was sent to all of the neighboring towns as well as WestCOG, who issued their standard response: "of local interest with minimal intermunicipal impact".

Attorney Neil Marcus spoke in favor of this petition. He said the staff report is very complete and does not leave much to say. He said he worked with staff on the language because he wanted them to support this proposal. In 2012, after the State approved the sale of Medical Marijuana, no one knew what to expect. He said he was involved in the opening of the Bethel dispensary and many people were concerned because there were misconceptions about how the operation would be run. He said at that same time, Danbury put a moratorium on any regulations regarding the sale of Medical Marijuana. They later passed an amendment that only would permit the sale of Medical Marijuana in pharmacies. In the years since then, the State program has undergone a lot of changes although Marijuana is still considered a class one drug and pharmacies cannot sell it. The applicants are the current owners of the Medical Marijuana dispensary located in Bethel and they have outgrown that site and want to move the business to Danbury. He said these amendments do not propose any changes to the definition in the Regulations, although they do propose specific use regulations for each of the two zones. The amendment does limit the number of dispensaries that would be permitted in Danbury to just two. This amendment also spells out the required distance from sensitive uses in the same manner as for package stores. It requires vehicular access from an arterial or collector street and it is proposed as a special exception use in both zones, so there is an extra layer of site review by the Planning Commission. He continued saying it does prohibit any facility from being located on Main St. and there is no dispensing permitted via a drive-thru window. He said the way these regulations are written, this use is considered retail sales which is permitted in both zones. He said he has visited the Bethel operation and it is amazing how much people can be helped by the use of Medical Marijuana. He added that only four states do not permit this and it is their duty to provide access to the people who need this pharmaceutical to relieve their suffering. He said this addresses the changing needs of the community and really has no impact on land use. He said this language does not provide for the sale of recreational Marijuana, that would have to be addressed in a separate petition if it becomes legal in Connecticut. Lastly he said he agreed with the conclusion in the staff report which says that *"allowing medical marijuana dispensaries within the CG-20 and CA-80 commercial zones subject to compliance with the additional conditions, as well as standard requirements for the issuance of a grant of special exception and site plan approval, could now be appropriate"*.

Mrs. Calitro said that there were nine letters in support of this amendment received from people who participate in the Medical Marijuana program. They all basically say the same thing and the Commission members were provided copies of these letters so it is not necessary to read them into the record. Attorney Marcus said during the Bethel hearing, approximately 30-40 people spoke in favor of this saying the use of Medical Marijuana had a positive impact on them and changed their ability to function on a daily basis despite their health problems.

Acting Chairman Melillo asked if there was anyone else to speak in favor of this petition and Councilman Paul Rotello, 13 Linden Place, said there are many people in favor of having a dispensary located in Danbury. He added that this is an established drug and there should not be any prejudice against it; it should be sold in a regular retail environment. He added that he does not agree with the prohibition on dispensing this via a drive-thru window, because many of the people that need it, have mobility issues and that would make it easier for them to get their medication.

Also speaking in favor was Councilman Roberto Alves, 7 West Redding Rd. He said he supports this petition and thinks this should be allowed in Danbury. He also said he agrees that maybe in the future we will need to allow this to be dispensed by drive-thru to limit contact with others.

Acting Chairman Melillo asked if there was anyone to speak in opposition to this petition and there was no one. He asked Mrs. Calitro if she had any additional comments and she said the staff report says everything that needs to be said.

Mr. Almeida made a motion to close the public hearing. Mr. Masi seconded the motion and it was passed 8-0 by roll call vote with one member not voting.

Mr. Masi made a motion to move this matter to number two under the Old Business on tonight's agenda. Mr. Jowdy seconded the motion and it was passed unanimously by roll call vote.

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Application of Ingersoll Auto of Danbury, 3 & 5-7 Morgan Ave. (K11046 & K12165) for a Certificate of Location Approval for a Motor Vehicle General Repairer's License in the IL-40/CG-20 Zones.

Acting Chairman Melillo said the legal notice was already read into the record and this type of application does have a staff report of any other kind of recommendation.

Benjamin Doto PE spoke in favor of this application. He explained that these two properties had received site plan approval in May of this year and a condition of the approval required these lots to be combined into one lot. This has been done and the compilation map was filed in the land records as TC map #13625. The lot that was 5-7 Morgan Ave. is zoned CG-20 and had a previous site plan approval from 2014 to permit the storage of motor vehicles on it. The applicant purchased the lot at 3 Morgan Ave. which is zoned IL-40 and contained a non-conforming dwelling which had been damaged by fire. The proposal is to demo the house, and construct a six-bay two-story garage to be used for auto repair and detailing of cars for sale on the Federal Rd. site. Auto repair is a permitted use in both zones and the Zoning Enforcement Officer has determined that detailing is an accessory use to the main use of the site which is a parking facility. The access to the newly combined lot will be gated and locked as the proposed building is not for customer access. The doors to the building will face the rear of the Modzelewski property located on Federal Rd. As part of the site plan review, a landscaping plan was also approved. Mr. Doto described the proposed landscaping and said there will be a sidewalk extended across the frontage of the site on Morgan Rd. He offered to answer questions but there were none.

Acting Chairman Melillo asked if there was anyone to speak in opposition to this application and there was no one. He then asked Mrs. Calitro if there were any staff comments and she said the site plan approval contains the requirements for this use on this site.

Mrs. Hylenski made a motion to close the public hearing. Mr. Almeida seconded the motion and it was passed unanimously by roll call vote.



Mr. Almeida made a motion to move this matter to number three under the Old Business on tonight's agenda. Mr. Haddad seconded the motion and it was passed unanimously by roll call vote.

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### OLD BUSINESS

Application of Fast Lane Auto Repair LLC/Payne Road Investments LLC, 60 Payne Rd. (N12001), for a Certificate of Location Approval for a Motor Vehicle General Repairer's License in the IG-80 Zone.

Mr. Masi made a motion to approve this petition for the following reasons: The location has been found suitable for the business intended with due consideration to its location in reference to schools, churches, theaters, traffic conditions, width of highway and effect on public travel. Mr. Jowdy seconded the motion and it was passed with eight AYES (Mr. Almeida, Mr. Haddad, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Masi, Mr. Merchan and Acting Chairman Melillo) and one NAY (from Mrs. Fay).

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Petition of D & B Wellness to Amend Sections 3.C.4., 5.A.2.b., 5.A.5., 5.B.2.b., 5.B.5. of the Zoning Regulations. (Medical Marijuana Dispensaries as Special Exception in CG-20 & CA-80 Zones.)

Mr. Almeida made a motion to approve this petition for the following reasons: (1) It will have no adverse impact on the City, (2) the location will have be approved by the Planning Commission; (3) this language excludes the sale of recreational marijuana; (4) allowing two medical marijuana dispensaries in the City will serve the needs of area residents who use this product to manage debilitating illnesses and conditions; and (5) it is consistent with the Plan of Conservation & Development. Mr. Hawley seconded the motion and it was passed with six AYES (Mr. Almeida, Mr. Haddad, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, and Mr. Merchan) and three NAYS (from Mrs. Fay, Mr. Masi, and Acting Chairman Melillo).

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Application of Ingersoll Auto of Danbury, 3 & 5-7 Morgan Ave. (K11046 & K12165) for a Certificate of Location Approval for a Motor Vehicle General Repairer's License in the IL-40/CG-20 Zones.

Mr. Masi made a motion to approve this petition for the following reasons: The location has been found suitable for the business intended with due consideration to its location in reference to schools, churches, theaters, traffic conditions, width of highway and effect on public travel. Mrs. Fay seconded the motion and it was passed unanimously by roll call vote (nine AYES from Mr. Almeida, Mrs. Fay, Mr. Haddad, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Masi, Mr. Merchan and Acting Chairman Melillo).

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Acting Chairman Melillo said there was nothing listed under New Business or Correspondence. He then asked if there anything to discuss under Other Matters and there was nothing. He noted that there public hearings (scheduled for June 23, 2020 and July 28, 2020) listed under For Reference Only. Chairman Haddad thanked everyone for their patience and apologized for being unable to chair the meeting tonight

At 10:55 PM, Mrs. Fay made a motion to adjourn. Mr. Masi seconded the motion and it was passed unanimously by voice vote.

Respectfully submitted

JoAnne V. Read  
Planning Assistant