

December 5th, 2013

A Special Meeting of the Town Board was held on Thursday, December 5th, 2013 with the following members present: Richard Rowland, Supervisor; Daniel Pemrick, Thomas Kinsella, Daniel Cochran and Walter E. Chandler, Councilmen. Also present were Town Counsel Mark Schachner, Highway Supt. Walter Barss and approximately 40 residents.

At 7:25 PM Proposals were received for EMS Billing Services. Town Clerk advised that two proposals were received. Proposals were opened from Certified Ambulance Group and Multi Med. Town Clerk to provide Town Board members with copies of the proposals for their review for the next meeting.

At 7:27 PM the Supervisor called to order a special meeting of the Town Board
RESOLUTION # 161 - Sales Tax Distribution

Motion: Kinsella, C.

Seconded Chandler, C.

RESOLVED, That the Town Board hereby requests that the Town's share of the 2014 Sales Tax Revenues be returned to the Town by a cash distribution.

VOTE: Ayes: Rowland, Pemrick, Kinsella, Cochran, Chandler

Noes: None

RESOLUTION # 162 - Appoint Town Assessor

Motion: Chandler, C.

Seconded: Pemrick, C.

RESOLVED, That the Town Board appoints Lorraine Fiorino to the position of Town Assessor and that said term shall expire September 30, 2019.

VOTE: Ayes: Rowland, Pemrick, Kinsella, Cochran, Chandler

Noes: None

Proposed Local Law – Skidmore PUD - Supervisor Rowland stated that the Town had received three items of correspondence on December 3rd – a letter from Couch White LLP; a letter from Tuczinski, Cavalier & Gilchrist, PC; and Protest Petition from Tuczinski, Cavalier & Gilchrist, PC. There was also a letter submitted by Couch White LLP on December 4th, 2013. All Board members received copies of the correspondence. Town Supervisor then asked for discussion regarding the resolution. Town Counsel Schachner advised that the resolution that the Supervisor was referring to was a draft proposed resolution that he was asked to prepare at the last meeting for the Board's consideration. Town Counsel Schachner stated that he takes no position as to whether or not the Town Board should adopt this proposed resolution. That was a Town Board policy decision. Kinsella, C. stated that he has reviewed all of the information that has been provided to the Board. He stated that he has been on the Planning Board and then Town Board for the past 12 years or more. He was involved in the writing of the current Comprehensive Land Use Plan and the current Zoning Law. He was on the Planning Board when the PUD's for Prestwick Chase and Saratoga Polo were approved and he was on the Town Board for the Wayside Inn PUD. He tried to compare what those PUD's are versus what is being proposed with the Skidmore PUD. In reading the PUD language, it was his opinion that the uses being discussed for this PUD, do not really fit the nature of the PUD law and does not match well with the Land Use Plan. Kinsella, C. read a section of the Town Code describing the purpose of a PUD, "...one or more diverse areas may be created together containing both building sites and common properties in a compatible and unified development." For Prestwick Chase, they took a large piece of property and proposed to construct housing, open space, recreational use, medium care health facility, etc. For Polo, they proposed to add a banquet/reception facility, housing, common green space, etc. The Shook/Wayside Inn PUD came in shortly after the Zoning re-write, where the use of home occupations was changed on many uses which had been pre-existing but not authorized. There were several things

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going on on that property, i.e. Bed & Breakfast, conference center, wedding receptions area, etc. and they could not get through the Planning Board Special Use Permit process. He did not see where the Skidmore PUD was that type of Planned Use Development. Kinsella, C. added that Section 129 of the Law states that a PUD shall strive to achieve more useable Open Space. This proposal is not creating more open space. There is approximately 120 acres which is pretty much open right now, however the proposal would make 8 acres not useable. The law states that it should create recreational areas which it is not. The recreational areas are already there and no additional areas are being proposed. Kinsella, C. did not feel that it met the intent of the Planned Unit Development Law and he did not support the proposal. Chandler, C. stated that he has lived in Greenfield all of his life and operates a business as a Home Occupation. When the Zoning law was updated he had to fight to be able to continue to operate his business because that didn't fit in the Town either. Chandler, C. stated that he believed in property rights. He worked real hard with his neighbors to try and take care of their concerns. He added that some of the businesses throughout the Town were not screened at all and were very offensive looking. The Planning Board has worked very hard to make sure that this Skidmore project will be properly screened and has required bonding to make sure the project remains properly screened throughout the life of the project. Chandler, C. stated that he spoke with the neighbors and their biggest concern that they had was with the sight impact. Chandler, C. stated that he was also asked if he would like this project in his back yard. He answered that if the project could be screened, he would not have a problem with it in his back yard. Chandler, C. stated that he was a timber harvester and works hard at doing the right thing with the New York State Forest Guidelines. He believes that Skidmore should be given the opportunity to put in the solar array as long as they can guarantee that the project will be properly screened. Chandler, C. stated that he also spoke with the engineers and he believed that this project would fit. There were other projects which could be proposed that would be much more aggressive than this project such as dormitories. He felt that looking out in your backyard and seeing a row of trees would fit. However, the neighbors have said that they would rather see dormitories. Chandler C. stated that he would not like to impose a site impact on the neighbors however if a 30' building covered with solar panels could be screened, then a field of solar panels that are 6' off the ground could be screened. Chandler, C. stated that he has visited the site and has spoken with the neighbors. The proposed project would cover 8 acres out of the 120 acre parcel and he would like to see the project move forward. He is a firm believer in property rights and feels that every business should get a fair shake. Chandler, C. stated that he respects the neighbors and agrees with some of their points and he feels that most of their concerns have been addressed. Kinsella, C. understood that screening could help but the big driving difference that changed his mind was the size. He stated that this project would cover over six football fields. Pemrick, C. stated that he supported the PUD legislation. He felt that the PUD Law gives the Town the administrative authority to be innovative and blend uses within the Town that they feel are appropriate. The Planning Board has spent a great deal of time doing just that. Pemrick, C. noted that Kinsella, C. referenced the Zoning Law that was created in 2007 and added that it was very hard to envision everything that the Town is going to have to face in the future. He felt that this was a perfect example why PUD legislation exists in the Town Code. It allows the Town to be innovative, creative and/or unique in terms of its ability to make decisions that are in the best interest of the community. Pemrick, C. stated that although the proposed project does not create recreational space, it preserves it. Given all the other uses that are currently allowed in that particular area, he would assume any recreational space would be squeezed out over a period of time. He would much prefer to see the remaining 93% of the 120 acres remain open space and be dedicated to polo practice fields and other recreational uses that it is limited to in this legislation. Pemrick, C. stated that as far as density, there is no question that this is a large number of solar panels. However, the

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remaining 112 acres is something that he believed the Town should focus on in terms of being open. He stated that over a period of time he could see this property looking very differently if this legislation is not passed. Supervisor Rowland stated that he has been very mixed regarding this proposal. He was not sure if there was adequate screening. He did not feel that the three photographs were not the same, but from different elevations. He was not sure that a 6' fence could adequately screen a 6' object because of the slope of the land. However, he did feel that it could be accomplished. Supervisor Rowland stated that this project allows a certain amount of energy development to be taken away from the "bad methods" of developing energy to what is considered a good "green" energy development, like wind. He stated that the Town heard the same kind of controversy with the wind towers. Supervisor Rowland stated that we need to be cognizant of the fact that someday, in probably the not too distant future we are going to run out of the stuff that we are using to make our energy. As for the proposed project, he felt that there needs to be provision for conditions if something were to go wrong with the panels. He believed that there needed to be training so that individuals know what to do if something goes wrong, i.e. fire protection. Supervisor Rowland stated that his understanding is that the purpose of a PUD is for possibility of a mixed use development, which this certainly is. It will create energy and there will be recreational uses and green space. It provides the opportunity for a variety of uses that do not normally fit in our Zoning Law. Supervisor Rowland stated that the land belonged to Skidmore and that he did not believe that it made any difference as to who the company is that they are dealing with to construct the array. Skidmore has the opportunity to recoup some of their electricity costs. He added that he has heard a variety of comments stating that this would not generate enough electricity to make a difference. He felt that NYSERDA, Skidmore and the company that is going to construct the array must have determined that it is going to produce enough energy to make a benefit somehow. Supervisor Rowland stated that questions were raised at the Planning Board and Town Board meetings as to what benefit the Town would receive. There has been a document drawn that gives the Town a Community Development Benefit. It is a way for the property owner and/or developer to offset the fact that this property is a non-taxable piece of property. Supervisor Rowland was upset with the innuendo that has gone on that there were back door improper meetings to negotiate this agreement. He felt that if someone having a conversation with someone else regarding this project was an improper meeting then both sides have accomplished that. Supervisor Rowland stated that he was planning on writing up a document which explained what the concept of the meeting was that was held early on in the process of determining whether there would be a community benefit. Supervisor Rowland stated that the letter that was submitted by Couch White, LLP today stated that very clearly, very concisely and very well. He added that the meeting between Mike Hall, Dan Pemrick and himself was held to see if the concept was acceptable. It was not done to make a deal. If the concept was acceptable then they would move forward. If it was not acceptable, then the question that came before the Planning Board and Town Board regarding how the community would benefit would be answered. Supervisor Rowland felt that Skidmore and the neighbors need to get together and try and work things out. He did not feel that it was up to the Town Board to make good neighbors. Supervisor Rowland stated that the PUD was a vehicle that allowed the property owner to do something that was totally different than what the Town envisioned and by presenting good information to the Board's that are involved in the decision making process, hopefully the Boards can make a good decision. He added that the development agreement has some flexibility and that it includes general information that states what the Board looks to see to represent the people of this Town. Supervisor Rowland also felt that this field of solar arrays would bring people to the Town to see it, just like what we talked about with the wind towers. Town Counsel Schachner was concerned that one statement made by Supervisor Rowland could be taken out of context and perhaps misinterpreted. He asked if he could clarify the statement

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made regarding the meeting with Mike Hall, Dan Pemrick and himself. He believed that what he said was something like “ we were just trying to see if the concept was acceptable”. He had a concern that that could be taken out of context when somebody that was not here reviews the record of the minutes and try to portray that as somehow himself and Deputy Supervisor Pemrick were signing off or agreeing to something. Supervisor Rowland stated that Deputy Supervisor Pemrick and himself did not agree to anything. They were very careful and concerned about the meeting. This was not something that normally happens. The meeting was meant to be a generic idea to determine if there was an opportunity for the community to gain some benefit from this being located on a property that is tax exempt. The meeting was requested by the Town Board members. In reading through the Planning Board minutes, the question arose on a regular basis as to whether the taxpayers could benefit from this project. Supervisor Rowland stated that he saw the article in the paper which stated that this was agriculture. He stated that it was not agriculture and that it was a project that has agricultural and recreational components in addition to solar, if approved. Chandler, C. stated that as far as screening was concerned, the fencing would help some however he was thinking more along the line of 20’ trees. He spoke with the Town Engineer and he agreed that it was doable and that there was a bond to make sure that it was done. Chandler, C. stated that he was also told that he did not fit into the Plan with his home occupation business. Chandler, C. stated that as far as the PILOT was concerned he was speaking with Kinsella, C. and he believed that what he said was that Skidmore would have to be assessed for 8 million dollars for what they are offering to pay the Town. Chandler, C. felt that they were offering a lot of money. Chandler, C. added that he spoke with Mr. Mina and he stated that he felt that Chandler, C. would do what was best for the Town. He stated that if it has to go in that 8’ pines should be planted. Chandler, C. feels that 20’ spruce should be planted. Norway Spruce is very hearty and very thick and it would be a great buffer for the project. Chandler, C. added that there is an industrial business down the road that is located on 15 acres and is screened very well. Businesses need to understand how important screening is and that they have to talk to their neighbors and protect them. Pemrick, C. stated that one other item that Supervisor Rowland mentioned was a concern for safety. He believed that Kinsella, C. had added that condition at the last meeting which would alleviate some of those concerns regarding fires, etc. Cochran, C. stated that all the members of the Board have been giving a lot of thought to this project. He added that he spoke with many people around Town and 70% of the people he has talked to felt that the Town was not going to get anything out of this project and that it was just going to cost the Town money. He explained to those individuals that payments to the Town are being proposed. Cochran, C. stated that the Planning Board is a group of volunteers who spend a lot of time and effort to learn all of the policies and procedures. The rural nature of the Town is very important to them. He thanked them for all the time and effort that they have put into this project. Cochran, C. stated that one of his concerns was what would happen if all of a sudden in 5 years down the road, the company goes bankrupt and the solar panels are not producing the energy that they want and the panels are removed. He questioned if Skidmore could just decide to construct a dormitory which is allowed in the current Zone. Town Counsel Schachner stated that if the solar array is disbanded and removed, the PUD would remain until and unless it is amended. A dormitory building would not be allowed without an amendment to the PUD. Cochran, C. stated that as long as he has been on the Planning Board and Town Board he has always believed that you really should be able to do with your land what you want to do. They have put together legislation on hobby farms, wind mills, wood burning stoves, etc. to give the people the right to do what they want on their own land. After reading through all the information and knowing what the legislation for this project was going to do, he stated that he would be in favor of the project. Kinsella, C. stated that screening is a large item. He felt that there was a hole in the screening section of the legislation that should be discussed. It reads that “it shall be

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required to ensure that the trees and screening of the solar array are adequate". He questioned what the definition of adequate was and according to whom. Town Counsel Schachner noted that the same section states that "the final landscaping shall be determined during Site Plan Review by the Town Planning Board". Kinsella, C. asked what happens after it is all reviewed, the Site Plan has been approved and the trees have been planted and someone comes in says that the screening is not adequate. Pemrick, C. felt that the Town would get to decide. Town Counsel Schachner stated that as currently written, the PUD legislation as currently written would give the Planning Board the power to determine if additional screening is necessary and shall use the surety to pay costs if the owner does not comply with the Planning Boards directives regarding additional or replacement landscaping. Pemrick, C. believes that there is teeth in the legislation to handle this. There is a \$25,000. Bond which can be used for additional or replacement screening. If any funds are expended it will have to be replenished and can be used at another time if necessary over the 20 year period. ** Supervisor Rowland found Mr. Jayko to be out of order at this time and stated that this was a Board discussion and that the Board would not be accepting public comments. Kinsella, C. stated that he would like to clarify the statement of Chandler, C. made earlier regarding the 8 million dollars. What he stated was that based on the draft agreement, the property would have to be assessed at around 8 million dollars to come up to \$15,000. per year in taxes. Cochran, C. noted that if this law is adopted, this project would still have to go back to the Planning Board to go through the Site Plan Review process. Thomas Mina stated there was an affidavit from Mike Hall and a paper trail that an agreement was negotiated and suggested that Town Counsel Schachner should advise the Town Supervisor that what he says has been happening isn't true based upon the affidavit that was submitted today.

RESOLUTION # 163 - Adopt Local Law # 2-2013 – Skidmore PUD

Motion: Pemrick, C.

Seconded: Chandler, C.

Discussion: Town Counsel Schachner suggested that the prior to adoption of the resolution that the two additional December 3rd submissions from Tuczinski, Cavalier & Gilchrist be listed as well as the Dec. 3rd and Dec. 4th submissions from Couch White LLP.

Motion: Pemrick, C.

Seconded: Chandler, C.

RESOLVED, That the Town Board hereby amends the Proposed Resolution to Adopt Local Law # 2-2013 as suggested by Town Counsel Schachner.

VOTE: Ayes: Rowland, Pemrick, Cochran, Chandler

Noes: Kinsella

RESOLUTION # 164 – Adopt Local Law #2-2013 Amending Zoning Law to Create Skidmore College Planned Unit Development District

WHEREAS, the Town Board received an application from Skidmore College for establishment of a Planned Unit Development District including, among other things, a baseball field, a polo field and an approximately 8 acre solar facility (the "PUD"); and

WHEREAS, the Town Board referred the application to the Town Planning Board and the Planning Board was established as Lead Agency for environmental review of the proposed Project under the State Environmental Quality Review Act ("SEQRA"); and

**From the audience, John Jayko identified that the proposed screening was not adequate. (Amended 1/9/2014)

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WHEREAS, on September 24, 2013 the Planning Board adopted a SEQRA Negative Declaration for the PUD, made a report to the Town Board on the application which included a discussion of the proposal's compliance with certain criteria and recommended Town Board approval of the proposed Project with two suggested conditions; and

WHEREAS, the Saratoga County Planning Board reviewed the application and found that there would be no County impact; and

WHEREAS, the Greenfield Environmental Commission reviewed the application and recommended its approval with two suggestions; and

WHEREAS, the Town Board met at open public meetings on May 9, July 13, August 8, August 14, October 10, October 30, November 14 and December 5, 2013 to discuss and review the proposed PUD; and

WHEREAS, the Town Supervisor and one Member of the Town Board met informally with representatives of the Applicant to discuss provisions of the Development Agreement, but conducted no official business and provided no promises or assurances that the Development Agreement or the PUD would be approved by them or the Town Board; and

WHEREAS, various Members of the Town Board also met individually with other proponents and opponents of the application, but such meetings never consisted of any quorum of the Town Board and no commitments to approve or deny the application were ever made; and

WHEREAS, the Applicant revised the proposed Local Law and the Development Agreement required by the Local Law in response to concerns expressed by Town Board Members and the public at all of these numerous meetings and provided additional submissions dated June 13, June 20, July 17, July 22, August 2, August 7, August 12, August 19, August 26, September 3, October 4, October 9 and November 12, 2013; and

WHEREAS, the Town Board held a Public Hearing on proposed Local Law No. 2 on October 30, 2013 and heard all interested persons; and

WHEREAS, the Town Board received and reviewed the following submissions related to the proposed Local Law establishing the PUD:

May 9, 2013	LA Group Submission of Application
June 13, 2013	Couch White, LLP
June 20, 2013	Couch White, LLP
July 16, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC
July 17, 2013	LA Group
July 22, 2013	Couch White, LLP
July 23, 2013	Town of Greenfield Environmental Committee
July 23, 2013	Town of Greenfield Historian
July 23, 2013	Saratoga County Planning Board
August 1, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC
August 1, 2013	Bob Hyndman

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August 2, 2013	Couch White, LLP
August 6, 2013	Pentkowski, Pastore & Freestone
August 7, 2013	Couch White, LLP
August 8, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC
August 12, 2013	Couch White, LLP
August 19, 2013	Couch White, LLP
August 26, 2013	Couch White, LLP
September 3, 2013	Couch White, LLP
September 6, 2013	Peter Goutos
September 6, 2013	Wendy Stein
September 16, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC
September 17, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC
October 4, 2013	Couch White, LLP
October 8, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC
October 9, 2013	Couch White, LLP
October 9, 2013	Couch White, LLP (2 separate submittals)
October 18, 2013	Town of Greenfield Planning Board
October 18, 2013	Army Corp of Engineers
October 25, 2013	Flyer received by US Mail from unknown source (Town Hall received 17 phone calls in response to flyer)
October 30, 2013	Petition submitted by Tom Mina
October 30, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC (Andrew Gilchrist)
October 30, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC (Daniel Tuczinski)
October 31, 2013	Sean Crotty
November 5, 2013	Toni Holbrook
November 6, 2013	Ruby Grande
November 7, 2013	Wendy Stein
November 8, 2013	Tom Mina
November 10, 2013	Bill Boehmke
November 12, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC
November 12, 2013	Tom Mina
November 12, 2013	Susan Celia
November 12, 2013	Sterling Environmental Engineering
November 12, 2013	Wendy Stein
November 12, 2013	Peter Goutos
November 12, 2013	Couch White, LLP
November 12, 2013	Amanda Sausville
November 12, 2013	Gregory J. Daley, LEED Green Associate
November 12, 2013	John Jayko
November 12, 2013	Tuczinski, Cavalier, Gilchrist & Collura, PC
December 3, 2013	Tuczinski, Cavalier & Gilchrist, PC (two submittals – letter and Protest Petition establishing “supermajority” voting requirement for PUD approval)

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December 3, 2013

Couch White, LLP

December 4, 2013

Couch White, LLP

WHEREAS, the Town Board has thoroughly reviewed the proposed Local Law establishing the PUD, including the Development Agreement required by the Local Law, the recommendations of the Town Planning Board and the Greenfield Environmental Commission and the comments provided by and on behalf of the public;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Board recognizes that this is a very controversial application for rezoning and some neighbors have expressed some legitimate concerns about it. However, the Town Board and Town Planning Board have thoroughly reviewed the application and these concerns and the Town Board believes that, on balance, the proposed use of land is suitable and more beneficial to the Town than numerous other potential uses which would not require rezoning. In exercise of its legislative discretion, the Town Board believes that as a result of the exhaustive review by the Town Planning Board and the numerous revisions and conditions which will govern the proposed uses if adopted, the proposed rezoning is beneficial to the Town of Greenfield and its residents.

2. Although some neighbors have expressed grave concerns about the fact that the Applicant will not actually own the equipment included in the solar facility, this is not required. Section 105-129(B)(5) of the Zoning Law specifically provides that the tract of land under application for consideration for a Planned Unit Development may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations, but that the application for a Planned Unit Development must be filed by the owner of the property included in the project. The Town Board is basing its decision, like any other zoning decision, on the proposed uses of land, rather than identity of ownership.

3. The final application and Local Law No. 2-2013 include conditions and requirements the Applicant must meet which the Town Board believes will fully protect the health, safety and general welfare of the community. These include, but are not limited to, (a) maintaining visual screening, (b) conducting noise monitoring, (c) restriction and elimination of additional uses following installation of the solar array, (d) staging of infrastructure, (e) provisions for discontinuation of the solar facility and decommissioning; (f) prohibition of expansion of the solar facility, (g) requirements for annual temporary special use permit for large events, (h) maintaining performance bonds or other surety, (i) execution of a Development Agreement which provides for significant economic contributions in furtherance of Town projects to enhance the quality of life of residents of the Town and the Town's economic stability and (j) assessment of real property taxes on any portion of the property which ceases to qualify for exemption from real property taxation.

4. As required by Section 105-129(d)(4) of the Town Zoning Law, the Town Board determines that the land use intensity in the PUD is appropriate. The total area of the PUD is approximately 120 acres, greatly exceeding the 15 acre minimum for a Planned Unit Development. Development of the solar facility will be the most intense use within the PUD and will occur on approximately eight acres or roughly 7% of the site. This intensity is appropriate given the amount of open space to remain and the fact that the most intense use will be adequately screened from view and prohibited from expanding. The PUD legislation provides that the PUD may be subdivided pursuant to approvals granted in the

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future by the Planning Board; however, no subdivision or other transfer of property is proposed in connection with the Project nor is any subdivision approval promised or guaranteed. In addition, any resulting lots would remain subject to the requirements and limitations of the PUD.

5. The Town Board hereby adopts Local Law No: 2 of 2013 amending the Town Zoning Law and Map to create Planned Unit Development District No. 5, Skidmore College Planned Unit Development District.

6. The Town Board hereby authorizes and directs the Town Clerk to file the Local Law with the New York Department of State in accordance with the provisions of the Municipal Home Rule Law and acknowledges that the Local Law will take effect upon filing with the Department of State.

7. The Town Supervisor is hereby authorized to execute and deliver the Development Agreement between the Town of Greenfield and Skidmore College substantially in the form presented at this meeting with such changes as may be acceptable to the Supervisor and Town Counsel and to take such other actions as may be needed to accomplish the purposes of this Resolution and the Development Agreement.

Duly adopted this 5th day of December, 2013, by the following vote:

Ayes: Rowland, Pemrick, Cochran, Chandler

Noes: Kinsella

On motion of Pemrick, C. and seconded by Cochran, C., the meeting was adjourned at 8:20 PM.

Town Clerk