



## **Planning Board Minutes**

Wednesday, August 9, 2006

7:00 pm.

### **Raymond Town Hall**

**Planning Board Attendance:** Patrick Clark, Chairman; Robert O'Neill, Vice Chairman; Ginger Wallace; and Patrick Smith.

**Members absent:** Nelson Henry, Allen Tait, and Samuel Gifford.

**Staff Attendance:** Hugh Coxe, Town Planner; and Karen Strout, Recording Secretary.

**Call to order:** Chairman Clark called the meeting to order at 7:08 pm.

Chairman Clark asked for a roll call and determined that there was a quorum present to conduct business.

#### **Approval of minutes:**

**MOTION:** moved by O'Neill and seconded by Smith to approve the minutes dated June 28, 2006, with minor edits. Vote 4/0. Motion carried.

**MOTION:** moved by O'Neill and seconded by Smith to table the minutes dated July 12, 2006, until there was a quorum from that meeting present to vote on those minutes. Vote 4/0. Motion carried.

**MOTION:** moved by O'Neill and seconded by Wallace to approve the workshop minutes dated July 12, 2006. Vote 4/0. Motion carried.

**Correspondence:** Chairman Clark read the following letters into the record. Copies have been placed in the Planning Board files.

a. A letter dated Aug. 1, 2006 from Land Services Inc. re: Proposed Residential Subdivision at Inlet Point Road by Liastasa Management, LLC.

b. A DEP letter dated July 26, 2006 re: Sabcor Inc. for Tenny Hill Estates.

#### **Public Hearing:**

Map 8 Lot 58 LRR1

109 Webbs Mills Road

Stephen & Yolanda Catir

Pre-application, Preliminary, and Final Plan Review for a 2 lot subdivision.

Chairman Clark opened the public hearing at 7:15 pm.

Presentation was made by Pat Cayer of Land Services Inc. Cayer started by handing out the following documents to the Board:

- Letter dated August 8, 2006 from Dept of Inland Fisheries & Wildlife written by Kendall Marden, Asst. Regional Wildlife Biologist.
- Letter to Mike Johnson of Maine Historical Preservation Commission dated August 1, 2006 for review of the Catir project site for historical issues.
- Letter dated August 4, 2006 from Ronald Munger, MDOT Southern Region Traffic Engineer re: permit 3515 driveway permit for up to 5 residential units.
- Photocopy of MDOT Driveway/ Entrance Permit 3959.
- Photocopy of subsurface wastewater disposal system application for Map 8, lot 58, dated 5/17/02 in the name of Carol & Earl Kline.
- Subdivision plan prepared for Stephen & Yolanda Catir referenced as Land of Stephen & Yolanda Catir 109 Webbs Mills Road prepared by Land Services Inc. dated 8-9-06 with revisions 1. updated wetland delineation and note #12. ( These documents have been place in the Planning Board File).

Cayer reviewed the waivers that the applicant was requesting which included a procedural waiver to view the application as a sketch plan, preliminary, and final application in order to gain approvals in a single meeting.

Chairman Clark asked Town Planner Hugh Coxe to review his memo.

**Planner's memo:**

**Project Description**

This is an application for a subdivision to create two new lots. The applicants split off one 2.16 acre lot from the original parcel on July 13, 2006 and conveyed it to Priscilla Catir ("Priscilla Catir lot"). That first division did not require subdivision review but with this proposed division they trigger subdivision review. The applicants propose to divide their remaining 33 1/2 acres into a 2.03 acre lot for sale ("lot 1") and retain the remaining 31.46 acres for themselves. Their current house and driveway are on the portion of the lot they propose to retain.

The applicants purchased the land which is the subject of this application in January 2003 and soon after made an application to subdivide the land. As part of that application they sought a waiver from the subdivision ordinance section which prohibits "direct access from any public road to any lot in a proposed subdivision." (**Article IX, section 3.2.9 of the Subdivision Ordinance**). The history of that application is long and somewhat tortured but ultimately resulted in the board granting the waiver, so the two new lots could access Webbs Mills Road by a common access drive, on the condition that the applicant provide a conservation easement for the permanent protection of the retained land. The applicant subsequently sought reconsideration by the board to remove that condition and the board refused. Apparently no further action was taken on the application.

Because of prior divisions of land, the applicants did not have the option of dividing a single lot off from their parcel until June 2006 or thereabout. In July 2006 they exercised that right by conveying the Priscilla Catir lot. Prior to doing so, in December 2005, they obtained a MDOT Driveway/ Entrance permit. That permit allows for a 22 foot wide entrance and driveway, to a single family dwelling, off Webbs Mills Road at a point 240 feet south from Ai Road. The applicants received a Road Opening permit from the town on June 6, 2006.

The applicants now propose one new lot and are seeking to gain access to that lot (lot 1) from the driveway access off Webbs Mills Road which was permitted outside of the subdivision review process. To do so they seek a waiver to the **Article IX.3.2.9** prohibition against direct access to a lot from a public road, on the basis that they have met condition ‘c’ in section 3.2.9 which requires common access “which will allow all proposed lots to be serviced by common curb cuts.”

The proposed lot layout meets basic zoning requirements and each lot is proposed to have on site wells and private subsurface septic.

### **Decisions/ Issues**

The applicants have requested a procedural waiver to have the pre-application, preliminary application and final application review all considered at one meeting. They also have numerous substantive waiver requests, including the driveway access waiver mentioned above.

### **Procedural Waivers**

The subdivision ordinance requires applicants to submit a pre-application sketch plan and to meet with the planning board prior to making a formal application for preliminary approval. It also requires that subdivision applicants appear before the board separately for a preliminary approval and a final approval. The board has the authority to waive these requirements pursuant to waiver standards of **Article XI, Section 1 of the Subdivision Ordinance**. Although the board has granted procedural waivers to combine two stages of the review process, it has not conducted all three review phases in one meeting in recent history. In deciding whether to grant final approval in one meeting, the board should consider the number and complexity of any remaining issues and whether it is satisfied such issues could be dealt with as conditions of approval.

### **Road Access Waiver Request**

The applicants have requested a waiver of the requirements in **Article IX, section 3.2.9 of the Subdivision Ordinance**.<sup>1</sup> That section has two corresponding parts. It requires lots in a subdivision be accessed by an interior road and it prohibits subdivision lots from gaining direct access from any public road. The ordinance allows for a waiver provided the Planning Board determines that some “physical conditions unique to the parcel” justify the waiver. The ordinance then lists three conditions that could be used to demonstrate that a waiver is justified. At least one of those conditions must be present for the board to grant a waiver but the mere existence of one of those conditions does not require the waiver be granted.

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<sup>1</sup> All subdivisions shall be designed to provide access to individual lots only by interior subdivision roads. Direct access from any public road to any lot in a proposed subdivision shall be prohibited unless the Planning board determines that physical conditions unique to the parcel justify the granting of a waiver from this requirement. A waiver shall be granted only if one of the following conditions is met:

- (a) There is too little road frontage to reasonably allow creation of a new way;
- (b) The shape or physical condition of the parcel does not permit access to or creation of a street other than the existing public way; or
- (c) Common access will be utilized which will allow all proposed lots to be serviced by common curb cuts. Street entrances onto existing state-aid or state highways in the above described areas, and driveway or street entrances onto existing state-aid or state highways in all other areas must be approved by the Maine Department of Transportation. Copies of such approval shall be submitted to the Board at the time of final review.

Here the first two conditions listed in section 3.2.9 are not present. The applicants suggest in their waiver request that the third condition - common access that allows all proposed lots to be serviced by common curb cuts – is present and alone justifies the requested waiver. They seem to suggest in their waiver request that because the Priscilla Catir lot gains its access from an approved driveway curb cut along Webbs Mills Road, they have met the condition that “all proposed lots be serviced by common curb cuts.” In fact only two of the lots in the subdivision (lot 1 and the Priscilla Catir lot) would meet that condition as the retained lot would continue to gain its access off its own private drive. Though the applicant had the right to get a driveway access permit when it split the Priscilla Catir lot outside of subdivision review, they can not now claim that a common curb cut serves all proposed lots.

It may be that it now makes little practical difference, from an access management perspective, whether lot 1 is served from a common access with the Priscilla Catir lot or from a common drive off the existing driveway to the Catir’s house. Either way there are now two curb cuts where the goal of the ordinance was to have one<sup>2</sup>. But the board is not required to grant the waiver simply because of the existence of the new access if it determines that all lots should gain access from one common curb cut. Because the Catir’s lot is part of the subdivision, the board probably could require that it gain its access off the new curb cut in order to have all lots on one common curb cut.

If the board does grant the waiver it should require that the applicant resubmit its access permit application to MDOT for review and re-approval since the access would then serve two lots rather than the one for which it was approved. Also the permit is for a 22 foot wide access and the drawing seems to indicate an access wider than that.

### **Request for Other Substantive Waivers**

**Article V, Section 2.2.12, 2.2.17 and 2.2.26 of the Subdivision Ordinance** requires applicants to submit a storm water management plan, an erosion and sedimentation plan and a phosphorous control plan. The applicant has requested a waiver from these standards on the basis that no new infrastructure or other such improvements are planned and the subdivision is minor in size and scope.

In recent history the board has required applicants to provide most submission materials - even for small subdivisions. But in some instances where there is evidence that the lots will not be built on immediately, the board has permitted waivers of plans for storm water management, erosion control and phosphorous control with the condition that any building permits be subject to the requirements of **Article IX, sections U.4, U.6 and U.7 of the Land Use Ordinance** which requires those plans. The applicant has requested that the board take that approach here and has provided a note on the plan

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<sup>2</sup> The Planner notes from the previous application by the Catir’s helps to understand the reason for the ordinance provision. Bob Faunce wrote in his January 2, 2004 memo, “The town enacted section IX .3.2.9 to preserve the rural character of the community’s roads by avoiding unnecessary driveway cuts. While the Board can grant a waiver, Mr. Catir currently has a good driveway curb cut that can serve the new lots so he does not qualify for the waiver. The Board and the staff have consistently applied this section since it was enacted and this has resulted in a number of new lots sharing existing points of access, thereby preserving the rural character of the roads.” And in his February 6, 2004 memo he wrote, “If you approve the access as requested, he will then have two driveways where the ordinance envisioned only one and there is no way of avoiding creating a significant precedent. In addition, I believe it will unfairly penalize those other property owners who have already modified their own development plans to conform to the community’s goal of maintaining the rural appearance of its public ways.”

that would require the owner to comply with these standards before a building permit is issued.

**Article V, Section 2.2.5** requires applicants to provide five foot contour lines on the plan for all areas of the property proposed for development. The applicant has provided detailed (2 foot) topographic information on the plan for lot 1 and the Priscilla Catir lot but not for the retained land and have requested a waiver. **Article V, Section 2.2.20** requires that a proposed subdivision plan include a landscape plan. The applicants have requested a waiver on this requirement.

### **Wetland Delineation and Mapping**

**Article V, Section 2.2.5** requires applicants provide a plan showing the location of wetlands as delineated by a wetlands scientist. The applicants have provided wetland mapping on the plan for lot 1 and the Priscilla Catir lot but not for the retained land and have requested a waiver due to the minor size and scope of the project.

They have also indicated in a note on the plan that the wetland limits shown on the plan were estimated “due to heavy snow coverage” and that if there is to be any disturbance in the area during construction that further delineation should be performed to determine “the actual wetland limits.” The effect of this note is that the true wetland delineation becomes the responsibility of the person who buys the lot and builds on it. However, the board would have no oversight or review authority at that time to ensure that the delineation is performed properly and that sufficient safeguards are in place to protect and wetland. Moreover, generally purchasers of building lots do not have the experience or resources to arrange for and carry out wetland delineation.

As this is a good time of year to delineate wetland I asked the applicant’s consultant to arrange for that and to provide further submissions with the updated delineation.

### **Other Issues**

The applicant has provided most submissions required by **Article V, Section 2 of the Subdivision Ordinance**, or waiver requests, with a few exceptions. **Article VIII, section 4.1 of the Subdivision Ordinance** requires a minimum of 10% of the land in a subdivision to be set aside as open space; **Article V, Section 2.2.23 of the Subdivision Ordinance** requires applicants to provide information on the location of the proposed development to the State Historic Preservation Office; **Article V, Section 2.2.21 of the Subdivision Ordinance** requires applicants to provide information about the location of significant wildlife habitat. The applicants have not provided these submissions and have not requested waivers.

There are also a few submissions (such as the test pit logs and the MDOT permit) that were illegible that staff has requested be resubmitted. Also, the final plans are required to have a surveyor’s seal, which does not appear on the current set of plans.

### **Public Comment:**

There were no public comments.

### **Comments from the Board:**

Ginger Wallace asked if they intended to do further subdivisions other than the Priscilla Catir lot. Yolanda Catir stated that they did not intend to further subdivide lot 2. Bob O'Neill asked when the Priscilla Catir lot had been created. He was told that it was just recently. O'Neill also asked why they did not want to go off from the other curb cut?

Cayer commented that the Catirs would have to add more infrastructure. Frontage off from a road built to Town standards makes more sense. Smith inquired about culverts and monumentation. Clark commented on waiver 3.2.9 (interior road) and stated that his opinion had not changed since the applicants' last appearance before the Board, and would favor the waiver. Pat Cayer's comment regarding the procedural waiver was that granting the waiver would eliminate the need for further meetings and would be more efficient. O'Neill stated that it might be fewer meetings, but less time to digest the information and think about the project. O'Neill's personal preference was two meetings. Ginger Wallace commented that there were an awful lot of waivers to consider and would like time to consider them. Chairman Clark stated that since many had expressed concerns about the number of waivers that they should consider this as a pre-application.

**MOTION:** moved by O'Neill and seconded by Wallace to deny the procedural waiver pursuant to waiver standards of Article XI, Section 1 of Subdivision Ordinance to allow the application to be reviewed as a sketch plan, preliminary, and final plan in one meeting. Motion carried. Vote 3/1 (Clark). Procedural waiver was denied.

Waiver discussion:

Chairman Clark stated that the real issue with this project access to the lot was the waiver form **Article IX, section 3.2.9 of the Subdivision Ordinance**. Clark continued by polling the Board. Consensus was that with some fine tuning (additions of note to the plan, and an amended permit from DOT) that the members present ( three members were absent: Tait, Henry, Gifford) probably would approve the access waiver.

**Article V, Section 2.2.12 of the Subdivision Ordinance**, (storm water waiver) did not seem to be a concern because the applicant was not creating any infrastructure. Wallace stated that she was in opposition to granting all of these waivers to small subdivisions. Consensus of the Board was not to grant a waiver from **Article V, Section 2.2.26 of the SO ( phosphorus)** . In regards to the waiver from **Article V, Section 2.2.2.5 of the SO**, Smith stated he would like to see 10' USGS contours. There were no issues with a waiver for a landscaping plan **Article V, Section 2.2.20 of the SO**. Consensus was they would grant a waiver for wetland delineation and mapping **Article V, Section 2.2.2.5 of the SO** as well. Clark commented that the issue of 10% open space could be considered later on down the road, even though the consensus was to grant a waiver for that requirement.

Cayer commented that they had not received a reply from the letter they had sent to the Maine Historical Preservation Commission, but would provide that at the next meeting, therefore a waiver would not be necessary.

Chairman Clark summarized that most of the waivers with the exception of the phosphorous would seem to be justified by the applicant. Clark questioned the driveway entrance permit. He did not understand how the permit could be issued before the Priscilla Catir lot was created. The deed from the lot was dated 7-13-06 and the Town issued an entrance permit 6-6-06. Clark commented that the entrance permit should be under the owner's name, Priscilla Catir and told the applicant to check with CEO Cooper and get a new one in the name of Priscilla Catir.

Yolanda Catir told the Board that this project had been going on for a long time and that it had created a financial strain for them.

Clark replied that if there were no issues they might be able to get their approval at the next meeting.

Public hearing was closed at 8:53 pm.

**Application:**

Map 1, Lot 20 LRR2  
297 Cape Road  
Norman & Janet Pullen  
Pre-application Conference for 3 lot subdivision.

**Presentation by applicant:**

Mr. Terrence DeWan of DeWan & Associates, Landscape Architects & Planners represented Norman and Janet Pullen who were also present to answer questions. DeWan gave an overview of the plan for a 3 lot Open Space Subdivision to be located at 297 Raymond Cape Road. The property has an existing single family dwelling that will be incorporated into the subdivision. They plan an access easement over lots 1 and 2 to gain access to the lots. They plan a 10' easement to the lake. The Pullens are looking at this as a family compound and have a daughter who wants to build on one of the lots. The Pullens stated that they themselves plan to eventually build on the remaining lot when they retire and sell the residence that is on the water. An existing tennis court and recreational storage structure are proposed to be incorporated into the proposed open space area.

**Planner Hugh Coxe reviewed his memo:**

**Project Description**

This is a pre-application sketch plan review for a 3-lot open space subdivision on 9.45 acres on Sebago Lake with access from the Raymond Cape Road. An earlier sketch was before the board in June of 2005. At that time the applicants proposed a traditional subdivision for three lots. However, under standard zoning they would not be able to meet the density calculation requirements and they therefore sought waivers to alter the method for calculating the density. The board was not receptive to the waiver requests but did suggest that the applicants might be able to achieve their goals under the open space subdivision ordinance. Since that meeting, the applicants have met with staff several times and have retained the services of a landscape architect to design an open space subdivision that meets the town's ordinances.

The applicants propose three two-acre lots accessed from a common driveway within a 25 foot access easement. The project will include 3.3 acres of contiguous open space dedicated to the homeowners and an easement to provide access to the lake for the owners of the interior lots. Each lot is proposed to have on site wells and private subsurface septic.

Currently one house is located on the parcel about 60 feet from the shore of the lake. This house is currently served by a 10 foot wide dirt driveway. The proposed driveway would follow the existing driveway but would be upgraded to meet the street ordinance requirements for a Private Street serving up to four lots (12 foot travel way with 2 foot shoulders on each side). The existing home is served by overhead electrical and the applicants propose to serve the two new houses from that existing line. The parcel also

contains an existing garage and tennis court, both of which are proposed to be in the open space.

### **Decisions/ Issues**

The pre-application sketch plan review is an informal discussion in which no votes are taken. It provides an opportunity for the board to see the general concept of the proposal without requiring the applicant to do the detailed engineering and site work that will be required for the preliminary application. It also allows the board to provide some feedback to the applicant and for the applicant to get some direction from the board.

Issues the board may want to discuss include the appropriateness of the lot configurations, the applicant's waiver request for road frontage, the use of the open space, and whether to hold a site walk. When this project comes to the board for preliminary review the board will need to decide if the proposed subdivision meets the overall requirements of the open space subdivision ordinance (***LUO, Article XIII***) and the general performance standards and design standards of the subdivision ordinance (***Articles VIII and IX of the Subdivision Ordinance***).

### **Discussion**

The applicant has provided all necessary documentation for the pre-application review including a sketch plan of the open space subdivision proposal and a sketch plan of a traditional subdivision. The traditional sketch plan shows two lots as that would be the maximum permissible under the density calculations applicable to a standard subdivision proposal.

### **Open Space Subdivision Requirements**

As an Open Space cluster subdivision, this application must meet the requirements of ***Article XIII of the Land Use Ordinance***. The board is required to find that the proposal meets the policy and purposes of the open space subdivision ordinance (***Section A.1 and A.2***) which include long term protection and conservation of existing natural and other resources including unique natural features, historic land use patterns, scenic vistas, access to water bodies, and stands of mature trees.

The applicant has submitted a narrative describing how their proposal seeks to meet the specific provisions of ***Article XIII, Section A.2*** by preserving mature evergreens, preserving stone walls, retaining buffers between the proposed development and abutting properties including an historic cemetery, and by providing walking access to Sebago Lake for other lot owners within the subdivision.

### **Density Calculations**

Because the subdivision will create less than 5 lots in 5 years, allowable density for this proposed Open Space Subdivision is determined pursuant to Article XIII.C.2.A of the Land Use Ordinance. As such the applicant is not required to deduct the unbuildable land, such as 100 year flood plain, steep slopes, or wetlands, when determining the allowable density. They also are not required to deduct the area within any right-of-way. Their density calculations show they are able to achieve three lots on this site.

## Lot Size

The ordinance (**Section C.4.c**) permits a reduction of minimum lot size in order to achieve the goals of the open space subdivision ordinance. In the LRRII zone, in which this property is located, lot sizes may be reduced to 1½ acre, provided that the total amount of open space in the development equal or exceed the sum of the areas by which the lots were reduced below the normal minimum lot size. The applicants have reduced the lots by a total of 3 acres below the normal minimum lot size but have proposed 3.3 acres of open space.

## Lot Layout

The open space subdivision ordinance gives the Planning Board discretion for lot layout and configuration in order to try to maximize the open space principles set out in **Section C.3**<sup>3</sup>. Priority should be given to the preservation of the open space for its natural resource value, with development located on the lower valued natural resource portion of a parcel.

In addition to the open space provisions, the lot layout should comply with **Article VIII, Section 10 of the Subdivision Ordinance** requirements that the lot layout should not result in odd shaped lots or length to width ratios of greater than 3:1. Lots 1 and 2 should be examined with these provisions in mind. The very wide and shallow lots proposed by the applicants exceed a 3:1 ratio but technically are not in violation of the length to width ratio as their width exceeds their length by more than a 3:1 ratio whereas the ordinance prohibits the length exceeding the width by more than a 3:1 ratio.

It is also important to note that this subdivision regulation is not the same as a zoning space and bulk requirement which the Planning Board does not have authority to waive. Subdivision regulations generally are more flexible standards than zoning standards and should be weighed along with other factors to best achieve the purposes of the subdivision ordinance found in Article I. That is particularly true in the context of an open space subdivision which directs the board to apply dimensional standards in a flexible manner in order to achieve the open space subdivision purposes.

In this instance the applicants are fairly constrained in their lot layout by the very long narrow parcel (it has about a 5.5:1 ratio) they are developing. The board will need to weigh whether the proposed departures from traditional subdivision lot standards adequately promote the maximization of the open space principles of Section C.3.

## Open Space

The applicants have proposed common open space in areas where there is an existing tennis court and garage building. The board will have to determine whether these are acceptable uses within common open space. The ordinance states that use of open space “for other than agriculture, forestry, recreation or conservation... shall be prohibited” and only permits “structures and buildings accessory to agriculture, recreation or conservation uses” on open space. (**LUO, Art. XIII, Section D.1.f**). The tennis court probably meets the standard for an acceptable use in the common open space but it is

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<sup>3</sup> **Section C.3** provides a long list of principles but in essence says lots and buildings should be sited to avoid high value agricultural soils, to preserve scenic views, to enable new residential development to be visually absorbed by natural landscape features, to minimize potential conflict between residential or commercial uses and agricultural or forestry uses, to respect natural landscape features and topography, to be compatible with the surrounding uses and the surrounding built environment, and to conserve energy and natural resources.

more difficult to see how the garage could be considered an acceptable use. The recreational purpose of the Open Space subdivision ordinance appears to be consistent with a tennis court but not with a garage.

### **Road Frontage Waiver**

Minimum road frontage may be waived or modified provided that applicable provisions of the street ordinance are satisfied. (*LUO, Art. XIII, Section C.4.d*). The applicant has proposed a common access driveway, which is permissible under the street ordinance, for all three lots beginning at the Raymond Cape Road. The board has the discretion to permit this where the common driveway will only serve three lots.

### **Comments from the Board:**

Smith commented that he was fine with the length width ratio of the lots. He would like to see road improvements to lot 3 for emergency vehicle access. He would like a site walk. O'Neill also wanted a site walk, and felt a need to to be convinced of lot shape justification. He also requested to see documents for open space and outlining its intended use, as well as the forestry practices proposed. Wallace asked about pedestrian and boat access to lake. She was told that there would not be any boat access because the banks were too high, and they would need a mooring for a boat. She also wanted to see the road continue all the way to lot 3. Clark's comment on the shape of lots was that they allowed for continuous open space, which made more sense. The "garage" structure in the open space was discussed. The Pullens said they had been storing a car and tennis equipment there. It is roughly a 2 1/2 car garage, but there is no driveway to it. They would like to leave it as a recreational storage building for the tennis court, but will remove the structure if it cannot be justified.

A site walk was scheduled for August 30th at 6:30 pm. The Board will meet at Hasty Cemetery.

### **Other business:**

The Board authorized the Chairman to write a letter requesting that the \$7775 remaining in the ordinance update fund be rolled over into the current year in order to be used for ordinance work.

Next CPIC meeting is Thursday, August 17<sup>th</sup>.

Deadline for September 13<sup>th</sup> meeting is August 22<sup>nd</sup>.

**MOTION:** moved by Wallace and seconded by O'Neill to adjourn at 9:35 pm. Vote 4/0.

Karen Strout

Recording Secretary