

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JANUARY 4, 2012

The Reorganization Meeting of the Zoning Haring Board of the Township of Lower Makefield was held in the Municipal Building on January 4, 2012. Mr. Bamburak called the meeting to order at 7:10 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
 Jerry Gruen, Secretary
 Anthony Zamparelli, Member
 Mark Moffa, Member

Others: Robert Habgood, Code Enforcement Officer
 John Koopman, Township Solicitor (left meeting in
 progress)
 James Majewski, Township Engineer
 Barbara Kirk, Zoning Hearing Board Solicitor
 Jeff Benedetto, Supervisor Liaison

Absent: Gregory J. Smith, Zoning Hearing Board Vice Chair
 Keith DosSantos, Zoning Hearing Board Member

REORGANIZATON OF THE BOARD

Mr. Bamburak asked for nominations for Chairman of the Zoning Hearing Board for 2012. Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to elect Paul Bamburak as Chairman.

Mr. Zamparelli moved, Mr. Gruen seconded and it was unanimously carried to elect Gregory J. Smith as Vice Chairman.

Mr. Zamparelli moved, Mr. Bamburak seconded and it was unanimously carried to elect Jerry Gruen as Secretary.

APPOINTMENT OF SOLICITOR

Mr. Gruen moved, Mr. Bamburak seconded and it was unanimously carried to appoint Rudolph, Clarke, & Kirk as Solicitor.

APPOINTMENT OF COURT REPORTER

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to appoint DDL Court Reporting as Court Reporter.

APPEAL #11-1616 – MARTINA B. WARREN

Ms. Kirk stated she received a copy of a letter that was delivered to the Township at 2:28 p.m. today directed to Nancy Frick, the Director of Zoning, Inspection, and Planning and Robert Habgood, the Code Enforcement Officer, regarding this property at 1499 Overlook Road. She read the letter as follows:

“Dear Ms. Frick/Mr. Habgood: Habgood:

I am sincerely apologetic regarding canceling tonight’s meeting (January 4, 2012) due to severe medical conditions both for myself and my son, Derrick.

I have severe back, neck, arm, leg and need an MRI of brain due to migraines daily. Should you need medical documentation I will have doctors contact you if needed. Attached is a MRI script for the brain.

Due to the catastrophic illnesses of my son who bleed out for 4-5 hours in the house and the er at Aria the night of 11/14/11 after the Township meeting afterwards, he was in epileptic seizures for 3 weeks.

Please extend this meeting for at least 60 days due to stabilization of my son at hospitals and my brain migraines.

I am extremely sorry for this inconvenience; however, my life is hospitals, doctors, medical for the last 20 years. Both my son and I are disabled and living on SS1 or Workers Comp. so I would appreciate your extending Permit Applications or any township business for at least 60 days.

Should you have any questions please call me at (phone number provided). I have to get my son into a full service hospital in Philadelphia and alert his 20 specialists in multiple States and hospitals of his condition so they can call the hospital specialists.

Unfortunately my computers were stolen by my son's brain injury attendant as well as other items from my house. Vital Support was the Waiver provider from the State. So all of my letters have to be handwritten with 5 torn nerves in my L arm and 3 torn nerves in my R arm and detached shoulder my handwriting is terrible – I apologize.

Please let me know of your decision as I did not expect the ER @ Aria not to admit my son on 3 occasions from 11/14/11 thru 12/7/11 and no doctors from KMHP, however would take him on from June, 2011.

My doctors are awaiting to fuse my back from C2 to T2 however that must be deferred until later this year

Respectfully yours,

Martina B. Warren”

Ms. Kirk stated attached was a prescription from a doctor dated 11/30/11 for an MRI. This letter with attachment was marked as Exhibit A-6.

Mr. Bamburak stated the Board needs to consider this request for Continuance, and he would suggest that if there is a Motion for a Continuance that it be made known in the Motion that this will be the last Continuance that is granted.

Mr. Gruen moved and Mr. Zamparelli seconded to grant the Continuance for sixty days, March 6, 2012, with the understanding that this is the last Continuance, and there will be no further Continuances.

Mr. Neil McKeon, 1474 Overlook Road, was present and it was noted he was previously sworn in. Mr. McKeon stated the last time he was present, he indicated that most likely this is what was going to happen. He stated there are safety concerns far beyond what the Zoning Hearing Board knows. He stated after every Township meeting, there are altercations in the neighborhood involving Derrick Warren, the son of Martina Warren. He stated after the last meeting, Mr. Warren was arrested for making threatening phone calls to two neighbors. He stated the neighbors were up until 2:00 a.m. talking to the Police trying to get Mr. Warren arrested for violation of parole.

Mr. McKeon attempted to explain the reason Mr. Warren was on parole, and Mr. Bamburak asked Ms. Kirk if this should be discussed without Ms. Warren being present. Mr. McKeon stated it is public knowledge. Ms. Kirk stated she understands Mr. McKeon's concern; however, the criminal record of Mr. Warren is not really an issue

in front of the Zoning Hearing Board. She stated the matter before the Board is a Zoning issue; and the Applicant has submitted the requisite Zoning Application for the Board to make a Decision, and based on the information provided in the letter from Ms. Warren due to medical issues, the Board feels inclined to grant at least this Continuance which is being made with the understanding that the next date is the date of the Hearing. Ms. Kirk stated Ms. Warren needs to show up or the Board will proceed without her.

Mr. Bamburak stated if Ms. Warren should Appeal the Board's Decision, typically it would go to Court which puts everything on hold for possibly six months. He stated he recognizes that the neighbors want to get this resolved tonight; but if the Board does not grant the Continuance and Ms. Warren Appeals, the matter will last longer.

Mr. McKeon stated by granting the Continuance for sixty days, there will be sixty days where Mr. Warren will be antagonizing the neighbors. Mr. Bamburak stated that is a Police matter. Mr. Bamburak stated it is standard practice of the Board to grant Continuances within reason when requested. Mr. McKeon stated the neighbors are concerned about their safety since every time they come before the Township, they are threatened that night. Mr. Bamburak stated while he understands this, if the Board votes no tonight, he does not feel the problem will go away. Mr. McKeon stated Mr. Warren is currently in prison. Mr. Bamburak stated the matter must go through the process. He stated if the Board were to vote this evening, and the matter were Appealed, the process would take even longer.

Mr. Gruen stated the Board is doing this for the neighbors' benefit; however, Mr. McKeon stated he does not feel this way adding this issue has been going on for five to six months. Mr. Bamburak stated the matter is now before the Zoning Hearing Board, and it must go through the normal course or it could get worse. He stated he sympathizes with the situation of the neighbors, but the way the system works, they must follow this process. Mr. Gruen stated if the Board voted no this evening, and Ms. Warren Appealed, she could win the Appeal, and it will then be worse. He stated if the Board does not proceed in the right order, Ms. Warren could have grounds for an Appeal. Mr. Bamburak stated Ms. Warren could indicate that the Board acted arbitrarily and capriciously, and she could win an Appeal. Mr. Gruen stated they are trying to protect the residents.

Mr. McKeon stated there are multiple boarders in the home currently in violation of the Code. Mr. Bamburak stated the Board cannot do anything about this until they hear the Appeal. He stated if the Board ultimately votes against the Appeal, the Township has enforcement power.

Mr. McKeon stated the Board of Supervisors advised the neighbors that Ms. Warren cannot be in violation of the Zoning Code while she waits for the approval.

Mr. Gruen asked if the Township could issue a Cease and Desist Order or something where they could remove the tenant while she is waiting for the Appeal. Mr. Habgood stated a Violation Notice was sent, and the Applicant then submitted the Zoning Hearing Board Application to the Board to request a Special Exception. Mr. Habgood stated he did visit the property in early December; and at that time the Applicant indicated that other than herself and her son, the only other occupants were one brother and one cousin.

Mr. McKeon stated Ms. Warren is actively showing the house to potential boarders.

Mr. Koopman stated the Township is opposed to the Continuance. He stated looking at the Continuance request, while Ms. Warren may very well have health issues, there was nothing in the request to indicate that she was unable to be present this evening despite the health issues adding that it seems that her surgery has been postponed for some length of time in the future. He stated if the Board is inclined to grant the Continuance, the Township would suggest that it be for only one month to the next available meeting which he understands would be the first meeting in February. He stated he understands it is the Board's practice to grant a least one Continuance, the Township would like to see the minimum Continuance possible which he understands would be the first meeting in February.

Mr. Koopman stated to address the issue raised by the residents, what Ms. Warren told Mr. Habgood at the time of his inspection of the property and what she testified to at the last Hearing was that she had a family member living there in addition to her son. Mr. Koopman stated if the Township has evidence that there are boarders there that are not family members, they may be able to take action by proceeding with further citations. He stated the Township would need to have some affirmative evidence that there are boarders at the home in violation of the Ordinance. Mr. Koopman stated he had hoped that Ms. Warren would have been present this evening so that he could have cross-examined her about those issues and find out who is living there. He stated if there is some reason to believe that there are boarders there and information could be provided to the Township, there may be a basis for the Township to take action. He stated based on what Ms. Warren has testified it is her cousin that is there not as a boarder but as a family member, and this is permitted under the Township's Zoning Code.

Mr. Bamburak stated he feels Mr. Koopman's suggestion of thirty days as opposed to sixty days would be appropriate.

Mr. McKeon stated he feels there are two issues – one is the request for the Extension; and if the Board is inclined to grant an Extension, he would request the thirty-day Extension. He stated the other issue is the enforcement issue since no one has been able to advise them what the enforcement of this is currently and what it will be once this comes to a conclusion.

Mr. Bamburak stated the Zoning Hearing Board has no enforcement power. Mr. McKeon stated it does not appear that anyone does. Mr. Gruen stated the Township does.

Mr. Koopman stated if the Township has evidence that Ms. Warren has boarders at the home, the Township may be able to take action and cite her for violation. He stated they have to go through certain procedures. Mr. Koopman stated he previously spoke to an attorney who was present on behalf of the residents. Mr. Koopman stated the Township does have to follow the procedures in the Municipalities Planning Code; and if there is evidence that she has a boarder there currently, they could commence steps necessary to take action. He stated they would need evidence.

Mr. McKeon stated she has had boarders for five months. Mr. Koopman stated they would need current evidence that there is a violation taking place now. Mr. McKeon stated Ms. Warren will tell them that that it is her cousin. He stated the current tenant was released from prison on November 12. He stated he does not know if he is a cousin, but he does not want him in his neighborhood. He stated he doubts that he is her cousin, but feels Ms. Warren will say that he is her cousin.

Ms. Kirk stated she understands the residents' frustration. She stated if there is an opportunity that they see this person entering/exiting the house or if there is evidence that he has a separate vehicle, they should take a picture and submit it to the Township. Mr. McKeon stated they have done this. Ms. Kirk stated the Zoning Hearing Board does not have enforcement powers, and their function is to make decisions about the use of property under the Township's Zoning Ordinance. She stated the Zoning Hearing Board does not have the authority to issue Citations, Cease and Desist Orders, or anything of that nature; and that function goes to the Township. She stated the Township enforces those Ordinances. The Zoning Hearing Board just makes decisions on questions for property use under the Zoning Ordinance.

Mr. Koopman stated he feels Ms. Kirk has made a good suggestion. He stated the neighbors feel that there is someone living there now who is not a relative, and Mr. McKeon stated there are multiple people living there now. Mr. Koopman stated he feels they should provide the Township with what information they have as to the fact that in addition to Ms. Warren and her son there are multiple other people living in the house who are not family members and are boarders, and the Township could look at this and make a determination as to whether they can take action.

Mr. McKeon stated they have submitted this documentation multiple times, and at this point no one has been able to enforce any part of the Code. Mr. McKeon stated there are eight bedrooms in the home. He stated they have seen the advertisements on Craig's List. He stated if he submits evidence today of boarders, in two weeks those boarders will be different since that is how quickly this changes over.

Mr. McKeon stated in terms of the request for Continuance, the last time the residents were present there were two meetings in between, and Ms. Warren requested the Extension to January 4. Ms. Kirk stated this is incorrect as Ms. Warren was present for the Hearing on December 6, and testimony was provided. At that point someone in the audience handed up a business card that the son was operating a landscaping business, and the Board determined that they wanted her son to be present at the next Hearing; and this is why it was continued until January 4. The Board wanted to question her and her son about this business. Ms. Kirk stated this is the first time Ms. Warren has asked for a Continuance based on her and her son not being available. Ms. Kirk stated when the Board started to ask Ms. Warren about this business, she was not answering or indicated she did not know anything about it; and then someone from the audience brought up the business card and handed it to a Board member as proof that the son is not as disabled as Ms. Warren claims.

Mr. McKeon stated Mr. Warren will not available for the next meeting.

Ms. Kirk stated the Board has now made the decision that regardless of what happens, the next date is the date the Hearing will proceed. If Ms. Warren is present she can provide more evidence and testimony and the Township will have the right of cross-examination. If Ms. Warren does not appear, the Board will move forward with the Hearing without her and render its decision based on the information they have so far.

Mr. McKeon asked what the enforcement measures are if the Board does not grant the Special Exception.

Ms. Kirk stated enforcement is not an issue for the Zoning Hearing Board; and in light of the fact that there might be potential litigation, she feels it would be good for a representative for the neighbors to contact the Township or Mr. Koopman directly and have a separate conversation as what can be done with regard to enforcement.

Mr. Bamburak stated the letter sent by Ms. Warren which was read into the Record was also copied to an attorney.

Ms. Kirk stated if Ms. Warren does not attend the next meeting, and the Board denies the Application, the issues of enforcement are still a separate issue that the residents need to address with the Township.

Mr. Koopman stated all the Zoning Hearing Board can do is indicate that she cannot have a boarder; and if the Township then takes her to Court for having a boarder, the Township has the burden of proof and would have to prove that she has boarders there.

He stated the Township may need the help of the residents to be able to establish that there are boarders at the property. He stated they will need information that they can take to Court. Ms. Kirk stated this is why she recommended taking pictures. She stated when it is one person's word against another, to have a picture tells a different story. Mr. McKeon stated they have plenty of information which they have submitted to the Township, and they will continue to document it. Mr. Gruen suggested that they discuss this with the mailman to see who is getting mail at that property.

Mr. Bamburak stated they recognize the frustration of the residents but are concerned that it could progress even more slowly if they do not follow the proper procedures.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to amend the Motion to grant a thirty-day Extension to February 7, 2012 with the understanding that there will be no further Continuances.

Ms. Kirk asked Mr. Habgood to insure that Ms. Warren received notice that the Continuance is to February 7 and not further Continuances will be granted.

Mr. Koopman left the meeting at this time.

APPEAL #11-1619 – STEVEN AND MARIE HARRISON

The Application submitted was marked as Exhibit A-1. Included was a calculation for impervious surface coverage both existing and proposed, and this was marked as Exhibit A-2. A Pool Permit Plan was submitted which was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Yardley News, and Proof of Publication was marked as Exhibit B-1. The property was posted with Notice of tonight's Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners in accordance with the Township's Ordinance, and a copy of the letter along with the listing of the property owners was collectively marked as Exhibit B-3.

Mr. Steven Harrison, Ms. Marie Harrison, and Mr. John Amen were sworn in. Mr. Harrison stated they are seeking to replace a collapsing pool and in doing so, they will be over the permitted 18% impervious surface.

Mr. Bamburak stated there are four member present this evening; and in the case of a tie, they would lose so if they wish to, they could postpone the Hearing to a future date or they could proceed at that time. Mr. Zamparelli stated he does live in the area, but outside of the area required for notification. He stated he does not feel the need to recuse himself. Mr. Harrison agreed to proceed at this time.

Mr. Harrison stated they plan to install a drainage pit to handle the stormwater run off so that it will be well under the 18%.

Ms. Kirk stated with the current pool at the property, the impervious surface coverage was already at 19%, and she asked what is being changed which causes the impervious surface to go up to 24%. Mr. Harrison stated they would like to put pavers in around the pool area. He stated currently they have a deck. They will add additional coverage of 701 square feet. Ms. Kirk stated the calculation break down also shows a retaining wall, and Mr. Harrison stated this will hold the area where the pavers will be. Mr. Harrison stated the coping is also part of the pavers. Mr. Harrison stated currently they have a wood deck around the pool, an they are trying to make it maintenance free and use pavers. He stated they have designed a drainage pit to capture water coming off the house and the water from the paver area. Mr. Bamburak stated the net result when they are done is that they will be below the required 18%, and Mr. Harrison agreed.

Mr. Amen stated the patio and decking that they are installing will actually be smaller than what is there, but they are going from decking which is considered pervious to pavers which are considered impervious.

Mr. Majewski stated while he did not review the calculations, they could be reviewed at the Building Permit stage; and minor adjustments could be made if necessary. Mr. Gruen asked if the mitigation system they are proposing is acceptable, and Mr. Majewski stated he is familiar with it and several other residents in the Township have used something similar.

There was no one present wishing to speak to this Application, and the Testimony was closed.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to approve the Variance as requested Conditioned upon the installation of the stormwater management facility as shown on the Plan marked as Exhibit A-3.

APPEAL #11-1620 – YVONNE FOOTE

Ms. Yvonne Foote was sworn in. The Application submitted was marked as Exhibit A-1. A Site Plan submitted was marked as Exhibit A-2. A black and white photo of the proposed new sign was marked as Exhibit A-3. Notice of the Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. Notice of the Hearing was also published at the subject property, and that Notice was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by the Ordinance, and a copy of the letter with the listing of those property owners was collectively marked as Exhibit B-3.

Ms. Foote stated they are asking for a Variance because the current sign is falling apart and they would like to make a four-line changeable letter sign under with the sign on top similar to the sign at Quarry Hill. She stated in this way, they can let parents know of various events.

Ms. Kirk asked if she is an employee of the School, and Ms. Foote stated she is on the PTO Board. Ms. Kirk stated Ms. Foote needs to identify how she has the authority from the Pennsbury School District. Ms. Foote stated she is on the PTO Executive Board, and they had a fundraiser for this sign. Ms. Kirk stated this property is owned by the Pennsbury School District, and there should be a letter of authorization from the School District allowing Ms. Foote to proceed with this request. Mr. Bamburak stated he assumes Ms. Foote did not know she needed this, and Ms. Foote agreed.

Ms. Kirk stated this is not Ms. Foote's property to modify or alter as it belongs to another entity. Ms. Foote stated they have all been spoken to and this is who they got the Site Plan from. Ms. Kirk stated she should still get a letter of authorization from the School District. Ms. Foote stated she has asked several times what she needed to have for this proceeding. She stated she is just a parent who is trying to improve the School. Ms. Foote stated they have discussed this with the Principal and the Facilities Manager at Pennsbury. Ms. Kirk stated the problem is that the property is titled in the name of the Pennsbury School District; and as the property owner, they should supply a letter to the Zoning Hearing Board indicated that Ms. Foote has authority to proceed.

Ms. Foote stated she actually got all of the paperwork from Quarry Hill when they replaced their sign at that School, and there was no letter from Pennsbury School District. Ms. Kirk stated this does not matter as Pennsbury owns the property, and Ms. Foote does not have the right to construct something on someone else's property unless they give her the authority to do so. Ms. Foote stated Quarry Hill is in Lower Makefield and they did it without this letter. Mr. Bamburak stated the Board's attorney did not catch this then, and Ms. Kirk has now caught it.

Mr. Gruen asked when they plan on installing the sign, and Ms. Foote stated they had planned on doing it in October. She stated as soon as she gets approval, they were going to issue a check to the sign company. She stated their existing sign is falling apart. Mr. Gruen asked if they could grant the Approval subject to the submission of a letter from the School District; and Ms. Kirk stated this would not be property since it is not her property. She stated if the School District has an issue with the proposed sign being installed, they have the right to be present to make an argument. She stated they should not usurp property rights. Ms. Foote asked why the School District would be opposed when the sign is currently falling apart, and Mr. Bamburak stated it is a legal matter. Ms. Kirk stated someone cannot just come to a Zoning Hearing Board and make changes to a property unless the property owner agrees. She stated without a letter indicating that the property owner agrees, the Board should not proceed on a Decision. Ms. Kirk stated there would be more time wasted if they proceeded with a Decision this evening and for some reason someone at the School District indicates Ms. Foote had no right to come to the Board and get this Approval and then Appeals the Board's Decision and they could be in Doylestown for the next six to nine months. Ms. Foote stated this could be her risk. Mr. Bamburak advised Ms. Foote that Ms. Kirk is indicating that she does not have the standing to be here.

Ms. Foote stated she discussed the Appeal this afternoon with Mr. Habgood, and she was not informed of this. Mr. Habgood unfortunately he did not know that the Board would require this since in the prior Zoning Hearing Board Appeal for Quarry Hill School, no letter from the School District was requested. Ms. Kirk asked who submitted the Application for the Quarry Hill School, and Ms. Foote stated it was a PTO member. Ms. Kirk stated this was incorrect, and it should not have been done this way.

Ms. Foote asked why they paid \$750 and submitted what was asked for and no one looked at it until this evening. Ms. Kirk stated this is not accurate. She stated Ms. Foote submitted the Application listing her own name and address and the property owner as Afton Elementary School and Pennsbury School District. Ms. Kirk stated until Ms. Foote indicated this evening that she was the President of the PTO, Ms. Kirk had no prior knowledge of what her relationship was with the School District. Ms. Kirk stated Ms. Foote could have been an authorized agent from the School District Administration that had the right to proceed with this Application on behalf of the School District.

Ms. Foote stated on several occasions when she came in to speak to someone at the Township she clearly indicated she was a PTO parent. Ms. Kirk stated she does not process the Application. She stated Ms. Foote's name was listed, and when she asked Ms. Foote this evening to identify how she was related to the School District, this is when she said she was the PTO President. Ms. Kirk stated she could have been someone out of the Administrative Offices that handles real estate that had the authority to come to the Board.

Mr. Bamburak stated he understands that she is frustrated because she feels that somewhere in the process someone should have told her this, but they did not know. He stated while the Quarry Hill package did not have the letter, no one caught it at that time. He stated Ms. Kirk caught it this evening, and she is the Board's solicitor and tells the Board the legal ramification of legal procedures.

Ms. Foote asked what happens now. Ms. Kirk stated the Board can grant a Continuance to next month since the second meeting of this month is already reserved for the Aria Hospital Hearings. She stated they could Continue this matter to February 7 and between now and February 7, Ms. Foote should obtain a letter from the Administration at the School District stating that she has the authority to move forward with this Application.

Ms. Foote stated it is probably going to cost them even more money because the individual doing the sign had already discounted it several times, and will now be going to his new rates; and they will have to pay more money.

Ms. Foote asked for the Continuance.

Mr. Moffa asked if the photo provided is for the existing sign or the proposed sign, and Ms. Foote stated the sign being shown is the sign they want. She stated she does have a photo of the existing sign. Ms. Foote provided a photo which is the existing sign damage, and this was marked as Exhibit A-4. Exhibit A-5 was marked which is another photo of the existing sign condition.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to grant an Extension to February 7, 2012.

Mr. Bamburak apologized to Ms. Foote for the delay this is causing but stated they need to follow the legal process. Ms. Kirk stated Ms. Foote had indicated she has been involved with this since October, but the paperwork received by the Board for this Hearing does not show that anything was submitted in final form to the Township until December.

NEW BUSINESS

Mr. Gruen stated he received a brochure from the State offering a seminar for Zoning Hearing Board members which will provide information on how to be a good Zoning Hearing Board member, and he would like the Township to be asked to pay for any Board member who wishes to attend at a cost of \$50 per person. Ms. Kirk asked that Mr. Benedetto be provided a copy of the brochure so that he can discuss this with the Board of Supervisors, and a copy was provided to Mr. Benedetto this evening.

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Mr. Bamburak noted he will not be able to attend the next Hearing of the Board to be held on January 17, 2012.

There being no further business, Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to adjourn the meeting at 8:30 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary