



Special City Council Meeting regarding potential revisions to the City's Downtown Mixed Use Core Overlay - Wednesday, August 24, 2016 - 5:00 pm - 8:00 pm, Contois Auditorium, City Hall 8/24/2016

MINUTES SUBJECT TO CORRECTION BY BURLINGTON CITY COUNCIL. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE CITY COUNCIL.

BURLINGTON CITY COUNCIL

CONTOIS AUDITORIUM, CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

August 24, 2016

MEMBERS PRESENT: Jane Knodell, (Council President) – Central District

David Hartnett – North District

Joan Shannon – South District

Selene Colburn, East District

Sharon Foley Bushor – Ward 1

Kurt Wright – Ward 4

William “Chip” Mason – Ward 5 [recused]

Karen Paul – Ward 6 [arrived 5:50 PM]

Adam Roof – Ward 8

MEMBERS ABSENT: Max Tracey – Ward 2

Tom Ayres – Ward 7

Sara Giannoni – Ward 3

ADMINISTRATION: Miro Weinberger, Mayor

Eileen Blackwood, City Attorney

Katie Vane, Mayor’s Office

David White, Planning & Zoning

OTHERS PRESENT: Erhard Mahnke

Bob Wolf



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Mark Kalloz

Louise Andrews

Kathy Olwell

Frank Bouchett

Phinn Sonin

Peggy Luare

Mary Twitchell

Leslie Mackenzie

Bill Truex

Suki Rubin

Alex Farrell

Alex Lavin

Richard Hillyard

Carolyn Bates

Barbara Wynroth

Andrew Simon

Ibnar Avilix

Michael Long

Caryn Long

Jay Vos

Jonah Schulte

Matt Bushey

Eric Morrow

Genese Grill

1.0 CALL TO ORDER and AGENDA

City Council President Jane Knodell called the special meeting to discuss potential revision to the DMUC Overlay to order



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at 5:22 PM.

1.01 Agenda

MOTION by Councilor Bushor, SECOND by Councilor Roof, to approve the agenda as presented. VOTING: unanimous; motion carried.

2.0 1ST PUBLIC FORUM

Councilor Shannon publicly acknowledged the thoughtful notes of concern about her recent diagnosis of Lyme disease and spoke about the people of Burlington being able to discuss and disagree and still be neighbors recognizing at the end of the day all hold the interest of the city at heart.

Public Forum commenced at 5:25 PM.

PUBLIC COMMENTS

- Erhard Mahnke, Grove Street, recalled the 17 story building proposed by Bobby Miller over 30 years ago and the height ordinance the Planning Commission crafted as a result. City Council is urged to keep the bonus and incentive basis in the existing ordinance. The BTC property has more housing that is affordable than inclusionary zoning and more benefits for the community. The setbacks and maintenance of viewshed and corridors as set 30 years ago are still good. The proposed project is a little big.
- Bob Wolf, Burlington resident since the 1960s, read a statement agreeing the mall needs renovation and more housing is needed, but disagreeing with the scale and TIF financing. The plan fails to meet the height and street criteria of PlanBTV. There is concern of setting future precedent for developers to build ever larger buildings in Burlington. The 1980 Alden development plan for the waterfront was similar to the BTC project and the citizens declined that plan and replaced it with a more thoughtful plan. The same should be done with the BTC plan that supports PlanBTV guidelines. More time is needed for discussion of the transformational project in the heart of Burlington.
- Mark Kalloz, resident, spoke in support of the building being 14 stories or higher, saying the development is good for the city, the community, and everyone. The project should be expanded and more done to bring more housing and industry to the city.
- Louise Andrews, new north end, expressed concern about the BTC project and losing the character of the focal point of the city, the town center. The project is a cookie cutter rendition of a town center that does not reflect the character, beauty, and scale of Burlington. There is not enough truly affordable housing in the plan for Burlingtonians in need of inexpensive housing. The focus is directed more toward the affluent rather than the ordinary Burlington resident and the rapidly aging population on fixed incomes. The proposal should be scrapped or the false deadline extended to work with the developer over time and with further public input to inject creativity into the project and lower the height to eight stories. Do not destroy the lovely lakeside city of Burlington.
- Kathy Olwell, Ward 1, spoke against the project that will ruin the view of the city from the lake. The buildings behind the development will lose their breezes in the summer. Financing is not secure. The city cut the school budget in the last three to four years and is not sure that will come back. Millions of dollars are needed to bring school buildings up to code yet funding is proposed for the BTC project. It is not clear if the streets can be done. Parking is not clear. More housing is needed for low income people in the city, but families in the downtown will not have space for



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children to play. The process needs to slow down.

- Frank Bouchett, business owner on Church Street next to the Sinex proposal, said he has been looking for a good partner out the front door of his business for the past 30 years. The Sinex project is needed and now. A taller building will not impact his business on Church Street and the building looks great. Support the project.
- Phinn Sonin, resident, did mime to demonstrate the people who do not have a voice and have been quiet behind the scenes. The project will affect the town beyond the vision. The timeliness of when people can have their voices heard is being condensed too quickly. It would be good to hear how the project will affect more people in the city which has the smallest tallest building in the state. If a taller building is construction that honor will be lost to Maine and North Dakota with a 12 story building. Many voices still unheard and affected by a decision that is irrevocable need to be considered. Consider having more thoughtful conservation.
- Peggy Luare, Ward 3, stated the needs of the developer are driving the project which does not seem to meet the needs of the residents. The lake is already polluted with beaches often closed in the summer. Montpelier is offering \$1,000 for a plan for the most sustainable development. Climate change needs to be considered, not about building the same way as usual. More parking, more pollution is going into the lake. The green roofs in the project are being removed. The financing is troublesome. People in the old north end will probably get taxed out of their homes. The project is out of scale and ugly. Nothing is sustainable. The project is being driven because the developer wants it and the Mayor wants a territorial mark on his Administration. Something has to be done about the lake. The green roof should be re-incorporated into the plan if the development is going to be built. Sustainability should be the #1 focus instead of shopping and luxury apartments. There are already many luxury apartments with lots of vacancies. The development will not be good for the Ward 3 part of town and the people who live there because they will be stuck with higher taxes over time. Regarding ecological design, there is lots that can be done, but there is none or very little in the project, only possible sewage abatement. The project should be driven by that and not the developer wanting to make some money.
- Mary Twitchell, south end, read a statement about developers routinely asking for as much as they can get and getting it by convincing the community they will withdraw their project if their demands are not met. It is important for the city to know what is wanted and make the demands heard. The residents will have to live with what Sinex builds. It is unclear if Sinex is asking for 14 stories or 160' limit or if the city is offering these. Three stories of underground parking needs to be added plus four stories for bonuses and a story for mechanicals and garden space so the project may actually be 200' in height. Fourteen stories at 160' equates to each story being 11' high with three feet for mechanicals and structural concerns leaving eight foot ceilings, but ceilings in retail space is higher so the math does not work. The city agreeing to the height and mass dimensions will erode the intimate, friendly, small town feeling that is Burlington.
- Leslie Mackenzie, resident and business owner, expressed concern about the cost of living in Burlington and the current state of the downtown center, the high cost of housing, and the property tax burden. The vitality and growth in Burlington needs to be increased. The proposal could bring improvement and growth to the Grand List. Ms. Mackenzie spoke in support of the redevelopment of the town center, the zoning amendment and the overlay, adding it is positive to add housing and commercial space downtown. The project brings significant benefit to the city and the residents. Support the project.
- Bill Truex, co-founder of Truex Collins, stated the Church Street Marketplace has been a success for the past 35 years and is at its best when there are piles of people there. There are similar concerns today as back then. Opportunity needs to be provided for people to be present and live downtown 24/7. There is not as much concern about height as bringing continued and renewed energy, revitalization, and life to all of the downtown. This is opportunity to ensure there is a significant diversified residential population in the heart of the community to help keep the downtown where people are and want to be.
- Suki Rubin, resident, said thanks for thoughtful comments on both sides of the issue. The city is in a hurry to meet the deadlines of the predevelopment agreement, but the developer has not done market studies or the feasibility analysis by August 1st. City Council needs to know why this has not been done.
- Alex Farrell, resident, said he is anxious about the future of Burlington. The project will send a signal to business





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owners and future investors who may help grow the city. City Council needs to figure out if Burlington is to become more affordable with jobs within walking distance or to have expensive rents with jobs that are hard to come by. The projects sends signals to a lot of people and many young people are watching.

- Alex Lavin, Coalition for a Livable City, said there has been much said about the "glass half empty" with the project. This can be fixed. Fourteen stories is too high. Any geographic impracticability or infrastructure impracticalities that prevent connection of streets has got to go. No impracticalities, just what is best for the city. Jobs with better pay or people will get priced out and there will be class enmity in the city. If people get priced out it will get ugly. Sinex is encouraged to reach out to local businesses that produce goods in the State of Vermont or at the very least in the USA, and have a vested interest in honoring the community rather than sending money out of town. Whoever develops in the city owes the community. Do not forget the concept of "no bless, no oblige".
- Richard Hillyard, Ward 1, spoke of visiting a city in North America that updated and preserved their buildings and attractions without destroying what made them worth preserving in the first place. This could be the charter for Burlington. Four meetings have been held and there is still no evidence of due diligence. Mr. Hillyard spoke against going ahead with the project of unnecessary scale without a feasibility study to suggest economic viability. Instead of student dorms, a tier of parking, and some housing, save the zoning gymnastics for something creative. Get Devonwood and Sinex to partner with the city in a public/private enterprise devoted to rehab of dilapidated housing stock and properties into affordable housing which will result in the same tax impact and more revitalized neighborhoods exponentially. Have a downtown that is in scale. The city should have more leverage with the developer and promote growth and progress for a city to be proud. Slow down and get it right.
- Carolyn Bates, resident and business owner since 1973, said the Coalition for a Livable City wants the mall to be rebuilt, wants more jobs, and housing for all incomes including seniors. The overlay district needs to be modified. Gold LEED standard needs to be included or the standard used by the state. The word "healthy" should be added to the type of building the city wants like San Francisco does and which investors like to see. The incredible landscaping, highline, and public parks for public use and storm water management in the town center plan of May 2015 need to be added. Philadelphia mandates this and saves money as a result. Reduce the F.A.R. to 8.5. The mass is way too big. For every square block of property there must be at least three buildings from the ground level up with walking and biking paths between them. Add that the maximum height must include all the mechanicals. Add a daylight analysis of the street level. Reduce the amount of parking mandated and put the parking underground. Return bonuses to mandate this and other items. Include storm water management as defined. Burlington can go forward in a positive team effort.
- Barbara Wynroth, resident, said there has been comment the proposal will duplicate large squat buildings under the existing zoning. The design of the new building is too tall and squat, too wide and presents a wall like effect on the street. The proposal is a bad piece of architecture and not an improvement. The overall design quality of the buildings is nowhere indicated in form base code which is a problem.

Public forum was recessed at 5:58 PM.

3.0 DISCUSS DMUC OVERLAY DISTRICT

3.01 Discussion of the DMUC Overlay

Green Buildings

David White stated the Planning Commission wanted to require LEED Gold Certification. Currently, LEED AP is required and points garnered for LEED Gold Certification. Before a Certificate of Occupancy (CO) is issued the developer must demonstrate the building systems and mechanicals perform as intended. A security bond may be needed for this and storm water management.





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Councilor Bushor pointed out the ordinance discusses pervious soil and being able to absorb water at a certain rate. Clear direction needs to be given to someone wanting to build in Burlington. David White said the Table of Dimensional Standards covers the pervious requirement. Ten percent of the area of a lot needs to be pervious. Currently 100% lot coverage is allowed, but the change would be to allow 90% lot coverage and 10% pervious area and where water is to be directed. Councilor Bushor asked that the Planning Commission look at the language and provide additional comment if needed.

Councilor Shannon asked about existing buildings. David White said redevelopment of a property must meet the requirements. Councilor Shannon asked if the Planning Commission will comment on the amendments by City Council. David White confirmed this.

Councilor Colburn asked about the language on bonding being excised. David White said the Planning Commission recommended a bonding requirement. There is mechanism to ensure performance (checklist for LEED AP Certification, third party commissioning on building systems prior to issuance of a CO). Councilor Colburn said an amendment to require bonding will be introduced. Councilor Colburn mentioned also having an amendment that establishes a small 2030 challenge district to set the standard on energy use, water use, and carbon emissions for new and existing renovations.

Councilor Roof spoke in support of assuring buildings will meet certain environmental standards. A bond puts a dollar amount on the cost not to meet the standard. A more efficient way to reasonably expect the developer to meet the standard is needed. One option may be having ongoing audit access by the city to audit the process the developer and contractor are going through and applying corrective or punitive action if the standards are not being met. The community is looking for more assurance of LEED Gold. Attorney Blackwood said there is a general provision in the zoning ordinance on surety (Section 3.2.10) which allows the DRB to require surety on any project essentially. Under state law the surety is in the amount of cost to remedy the violation. LEED is a series of parts to meet the certification so it is a challenge to figure out what is needed to give surety. The DRB can specify items and a bond can be put up for this. David White added if the developer does not perform the city will do it for them using the developer's money. With LEED buildings the ordinance needs to be precise on what the city can modify after the fact.

Councilor Bushor stated the ordinance should require that a developer who fails to do what is supposed to be done should pay a significant fine. Attorney Blackwood advised only the court can set the penalty per state law. The penalty can be up to \$200 per day and accrues each day the violation exists. Councilor Bushor stressed there should be language saying the city will pursue the matter to the full extent possible and have the ability to enforce and remedy. Language is needed to address a development that takes away air and green space and creates areas to absorb heat through trees, grass roofs, and other opportunities.

Councilor Shannon stated Burlington should have green buildings not just through bonuses. There should be requirement for LEED Certification, not just LEED standard, and surety of one dollar per gross square foot of floor area not to exceed \$1 million. An alternative is to have the developer add an additional 10% of residential units in a building or additional 10% affordable housing. Councilor Shannon asked if many communities are requiring LEED Certification. David White said the



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requirement is often associated with public financing so the community has a more refined leverage. There are differences in what a community can require and regulate from one state to another.

Mayor Weinberger stated every new building in the city, particularly in the downtown, presents opportunity to move closer to sustainability and environmental goals. New buildings have potential to have higher performance standards than older buildings. In the downtown there is opportunity to impact transportation patterns and impact emissions. With new development there is opportunity to ensure storm water remains on the site for a period of time which will actually decrease the stress on the sewer and storm sewer system and improve the chance to keep the lake clean. The language in the zoning is attempting to ensure the opportunity is fully realized and anything built in the zone moves the city closer to its environmental goals. The language regarding high performance buildings is strong language aimed at committing the developer to make all reasonable efforts to achieve the certification. There is no gaming the system. The language is good and better than any already in the ordinance. The issue was highly discussed and negotiated in the predevelopment agreement process.

Council President Knodell pointed out there is the consequence of not being issued the final CO if there is not compliance determined through third party commissioning. The building envelope and mechanicals are covered by third party commissioning prior to the CO.

Right-of-Way

David White stated the Official Map is a legal mechanism by which the community articulates its desire to acquire private property for a new park or school or road, for example. With a new development proposal the public interest is identified and the city can acquire the property. For the BTC project this is the 60' street right-of-way at St. Paul and Pine Street for pedestrians, bikes, and vehicles.

Councilor Bushor noted the Ordinance Committee discussed establishing and defining a mechanism to allow the right-of-way to reconnect the streets eventually if the BTC project does not move forward and each parcel is developed privately. Mayor Weinberger stated connectivity has been a major goal of the city with on grade, ADA compliant, multi-modal streets. There is a team working on the conceptual design of the streets. The design will be done before the vote on the TIF ballot.

Council President Knodell asked how the language helps with the street connection. Attorney Blackwood said once on the Official Map then the only way to build on the land is if the permit is denied and City Council does not institute condemnation proceedings within 120 days. A permit can be denied if the proposal violates the right-of-way.

Councilor Colburn said the Planning Commission recommendation is that there is no other provision to articulate any other development. David White explained if the city is looking to utilize the space then the land must be purchased otherwise development activity cannot be prohibited.





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Councilor Roof asked if the city has the right to purchase land on the Official Map even if the land is private. David White confirmed this.

Council President Knodell asked if there would be a joint agreement with the developer to create a project that opens up the street. Attorney Blackwood said shy of condemnation there can be a joint agreement negotiated. With condemnation the city must prove there is public purpose for the property.

Recommended Amendments by Planning Director

- Conditional Use Review – Major impact projects without a conditional use included should not have to go through the conditional use review process. The change in the ordinance could be unique to the overlay district or citywide. Councilor Colburn suggested the Ordinance Committee complete the process and bring the change to City Council. Council President Knodell pointed out the policy decision was made that post-secondary and community colleges were conditional uses. This change was subsequently made, but not discussed.
- Clarification of the urban design standard relative to street activation and treatment of principal building entrances – The urban design standards require a range of physical changes in the façade of the building. A principal building entrance is being created in a bay of the façade. Changes for the bay should not be imposed on the principal entrance. Setback of the building is required at the 3rd or 4th or 5th story so change is forced there. Councilor Shannon asked David White to draft language on mixed use buildings of over 100' to include 25% commercial and 25% residential in the mix of uses and eliminate ground floor residential and offices.

Next Steps

City Council must vote on the amendments brought forth. The date is to be announced. Mayor Weinberger said the amendments and votes will be prepared for the next meeting and a public hearing warned 15 days thereafter. Further comments if any will be heard from the Planning Commission and the vote held at the next meeting. If there are material changes to the ordinance then another public hearing will be warned.

Councilor Colburn stated it would be unfortunate and shortchange the process for the individual who wanted the amendments and offered opposition to the overlay to not have the opportunity to fully vet and debate the comments. The vote on the amendments should be at the full City Council meeting on 9/12/16. Council President Knodell said an email on the matter was received and taken under advisement. City Council did authorize the Mayor to enter into a predevelopment agreement with a set timeline and it is important to stay as close to that timeline as possible.

4.0 2ND PUBLIC FORUM

Public Forum recommenced at 7:05 PM.

PUBLIC COMMENTS

- Ilnar Avilix asked when the design recommendations for the streets will be available and discussed by City Council.



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Mr. Avilix also mentioned inclusion of a city architect in the ten year capital plan. The city architect would review the LEED Gold standards during construction and ensure the developer is meeting the standards. There should be language in the ordinance requiring bonding. It has been heard that a PR firm is being hired. It is suggested the city negotiate with the people in Coventry for a site for soils. The three or four extra stories are because the parking is no longer underground. People would likely put up with the cost and truck traffic to remove the soil in order to have underground parking and reduce the height of the building.

- Michael Long read a statement about zoning changes of great magnitude not being considered in the narrow context of a specific project. The zoning changes before City Council are being considered expressly because of a specific project. That should disallow the zoning amendments. No one can provide a rationale for the zoning amendment beyond the Sinex project or evidence that the changes conform to PlanBTV. It is amazing to hear David White quote part of PlanBTV as if any zoning amendment fancied will fit. Not so. The plan says allowing taller buildings is not necessarily the answer which means explicitly that taller buildings are not needed. People are happy with Burlington's human scale, and the few parcels zoned 65' or 105' with bonuses have chosen to develop that vertical potential. PlanBTV highlights Burlington's latent vertical potential and rallies to use it. There are many parcels such as the mall using less of their permitted 65' or potential 105'. There is more than enough room to grow, to make progress, to respond, build on, stimulate economic vitality, cultural enrichment, social justice, and equitable prosperity. The ram-rod amendment process has been a mistake from the start. The amendment is beyond repair and City Council should vote it down.
- Caryn Long stated a PlanBTV poll showed the majority are satisfied with the current scale, and to ignore this is to ignore the public process. The development agreement is not part of the municipal plan or PlanBTV. No one has yet said how to not abide to PlanBTV. The 80 units of student housing in the BTC development will free up 80 apartments in Winooski in the Skinner Building. Winooski is worried about having empty units. The 50 affordable units are one bedroom, one window, one entrance through the "poor door". Clarification is needed on the F.A.R. (65' is 5.5 by right and now 9.5 at 160' by right which is an increase of four, not one as stated by the Planning Director). The TIF money for the BTC project takes money from schools in Burlington and the state. This is illegal in California. The TIF money will take 20 years to pay down. LEED Certification which is a checklist has been going on since 1996 so the surety should be maintained.
- Jay Vos read comments from friends regarding discussion in 2015 about the plan and keeping with Burlington's human scale. The plan includes gardens on roofs, diversity of housing, walking plans, public green spaces, lake views, and civic places. The Sinex project was on target, but now changed. If City Council approves the zoning change that is not what people wanted.
- Jonah Schulte, resident and worker in the tech industry, stated Burlington is rich with local shops. The redevelopment of BTC must be to human scale. The project is not about job or affordable housing creation in Burlington. The number of affordable units is a tiny fraction of the planned luxury units. The project is not for the lower or middle class, but for those who have deep pockets. The average resident would rather have the benefit of seeing the Adirondack Mountains and dining locally than to have an IMAX theatre or Hard Rock Café. The average resident will not ever see the inside of the condos on the 14th floor because the units are unaffordable to most, but an eyesore to all. The project should be limited to eight stories with setbacks. The Burlington human scale should be maintained. Community benefits should clearly be specified. The planned inhabitants in the mall should be listed so people will know if there are corporations or local businesses or other groups. Plans for artist spaces or other plans should be stated. Pivot to the sensible moderation of the existing not very sensible plan. A petition will be circulated to add a binding referendum to stop the proposed zoning changes and keep the city development from spiraling out of control.
- Matt Bushey, Ward 6, architect and chairman of the Burlington Design Advisory Board (DAB), spoke in favor of the proposed amendments and creation of the downtown overlay district. The DAB does not have a role in approval of the proposed zoning amendment so it is not improper to speak in favor of modifying the zoning code to allow for higher structures in the downtown core. This is necessary for increased density and more housing. Sprawling housing developments are popping up in communities around Burlington. Many people want to live in the city, but



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because of limited housing stock and high costs are forced to these surrounding towns. The zoning amendment is supported because it has prescriptive design guidelines that will dictate form including setbacks, massing, and facade articulation. All will engage the street level and lead to a more pedestrian friendly, walkable and revitalized downtown. It is good the reconnection of St. Paul and Pine Street is mandated by the amendment. Through a public-private partnership this can be done. It is impossible to separate the zoning issue from the BTC development. People are responding to plans and renderings. The model in the library is for a specific project. People have very visceral reactions to shopping malls and to change in general. The BTC development current design does not meet the standards of the proposed zoning amendment, but everyone should be assured that it will. Projects typically look different after going through the review process than when first submitted. There has been one pre-application sketch plan review with the applicant (Sinex) and there will be at least two or more design review meetings once the project is submitted. The project will go through more changes and the DAB will guide the developer to bring the project in line with the zoning amendments that are passed.

- Eric Morrow, Ward 2, spoke of his extensive experience working on LEED projects and personally administering LEED projects over \$70 billion. Meeting LEED Gold is an easy target to hit and not a big "ask" so that should remain. There should be solid language that states the "ask", in this case LEED Gold, and the follow through with teeth to make it happen (surety, bond, payment in lieu of taxes). A 1% or thereabouts payment bond/surety is reasonable. Mr. Morrow offered his services as a resource to work on sustainability issues.
- Genese Grill spoke of the group mentioned by the Mayor trying to achieve fully accessible streets and the developer's consultant saying one of the streets is too steep to be fully accessible. The streets are a selling point for the zoning change and the project from the beginning. It would have been more honest to have waited to promise the streets until it was known to be possible. The Mayor said there will be more information before the vote on the TIF financing, but it is not clear if that means more information before the vote on the zoning change. Answers are needed before pushing the zoning change through. The cost of the possible toxicity of the soil under the streets has not been discussed. Drive through speed zoning is being done which is crazy.

There were no further comments. Public forum was closed at 7:22 PM.

5.0 ADJOURNMENT

MOTION by Councilor Hartnett, SECOND by Councilor Roof, to adjourn the meeting. VOTING: unanimous; motion carried.

The meeting was adjourned at 7:22 PM.

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