



## RINDGE BOARD OF ADJUSTMENT

30 PAYSON HILL ROAD

RINDGE, NH 03461

Tel. (603) 899-5181 X100 Fax (603) 899-2101 TDD 1-800-735-2964

www.town.rindge.nh.us

### MEETING MINUTES: August 28, 2012 APPROVED 10/23/2012

Regular members: ..... Janet Goodrich (Chair), Dave Drouin (Vice Chair), Marcia Breckenridge, Phil Stenersen, Bill Thomas

Alternates: ..... Charlie Eicher, Joe Hill, Rick Sirvint

Absent: ..... None

Recusals: ..... Janet Goodrich recused herself for Case # 1045

Incoming Clerk..... Susan Hoyland

Outgoing Clerk..... Linda Stonehill

The meeting convened at 7:00pm with the Pledge of Allegiance.

Case # 1043: Board of Selectmen, P. O. Box 720, Town of Fitzwilliam, NH 03447, 603-585-7723: Application for Rehearing (Motion for Rehearing) of Rindge Zoning Board Hearing and Decision of May 10, 14 & 15, 2012 concerning Case # 1039 – access to property of John and Lynda Hunt known as The Castle and Holloway House.

Sitting on this case were: Dave Drouin, Marcia Breckenridge, Bill Thomas, Phil Stenersen, Janet Goodrich. Rick Sirvint read the case before the board, and Joe Hill summarized the ordinances.

Summary by Jan Goodrich: The Board of Adjustment found that the Select Board was correct in its Decision, and the ZBA placed some conditions on that Decision. This evening's hearing concerns the condition involving the road used to access the Castle--which was incomplete because it did not identify the name of the road. That is the sole item as issue in tonight's hearing. The Board recognizes that Fullam Hill Road is in the Fitzwilliam, not in Rindge, and the Town of Fitzwilliam was not heard.

Jan Goodrich: It may be appropriate for us to withdraw that condition specifying the alternate road. Nancy Carney, Chair of the BOS in Fitzwilliam: We were looking for the alternate road to be identified because Fullam Hill Road may be affected. John Hunt had an agreement with another property owner that he may use it, but we feel if there will be an increase in traffic, we need the alternate road identified. The access preferably will be in Rindge and not Fullam Hill which requires using a right-of-way over someone else's property.

Pat Shuster, 719 Fullam Hill Road: It's our driveway on Fullam Hill that leads back to Hunt Castle. I was disconcerted to see a few years ago that my address was posted on the Hunt Castle directions as an access route. There has been an increase in traffic up and down our driveway ever since. John does have the right of way up and down our driveway, but we want to make sure that his paying guests do not have access to the Castle through our driveway.

Paula Thompson, Town Administrator: John Hunt told the Selectmen that Sauvola Road was the road he advertised to the Castle. Marcia Breckenridge: Were you informed that that was the SOLE road to be used? John Hunt: We said the consensus was that Sauvola Road was the way to go. Our contracts and directions on the Web now only mention Sauvola Road. We don't want to promote the Fitzwilliam entrance because the GIS screws up the directions.



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Keith Griffin: The traffic on Abel Road is far greater than on Sunridge Road: 30-40 cars a day. I only saw about one car on Sunridge. I'm concerned that we're forcing more traffic on an already heavily traveled road.

Attorney Bentley, representing John and Lynda Hunt: When the issue came up of the alternative road, it was our belief that we were talking about Sauvola Drive, not the Fitzwilliam road. We have no problem with specifying Sauvola Drive which is accessed from Abel Road in Rindge. We don't want to hassle our friends in Fitzwilliam, and we never thought the alternative road was Fullam Hill Road.

Joe Hill, MD: We had a memo from Dave DuVernay saying that these are all public roads. The ZBA cannot prohibit people from using a certain road, or require them to use a certain road. So, where does this fit?

Dave DuVernay: You cannot restrict the public's use of any road. What you can do and I think what you did do is direct Mr. Hunt to advertise access only through Sauvola Drive which I understand he's agreed to do and is doing.

Susan Silverman, Fitzwilliam Board of Selectmen: I think it's important to clarify that the road that leads to Fullam Hill Road is a right-of-way, not a regular road. John Hunt: Sauvola Drive is also just a road. Silverman: A private road is different from a right of way, so I would disagree that you can't limit access. The Shuster's deed may specify that that road is only to be used by Mr. Hunt. That road (which is the Shuster's driveway) goes from Fullam Hill to Sunridge.

Breckenridge: If Sauvola Road is used, is the Shuster's right of way still involved? Shuster: Not if Mr. Hunt will not direct paying guests to use it. John Hunt: That's what happened four years ago. It was the request of the Sunridge neighbors to get traffic off the road. We put up their address, and then when they called us up, we took it down. For the last three years, we've given no directions to the customers, just asked them to put the address in their GPS. After this decision, we were not going to introduce Fullam Hill Road. So on our website and contracts, we only mention Sauvola Drive. What's the right answer--should we allow every access, or are we better off trying to appease the Sunridge neighbors? All residents of Fullam Hill Road have signed this petition saying they've never had an issue with access to the Castle. Is there really a traffic problem? Are there really too many people on any of these roads? The only time there are hundreds of cars is the weekend of the Disc Golf Tournament that hosts 80 contestants. This has gone on for 25 years, but it has nothing to do with the rentals. Otherwise, we have taken a count of how many cars are at the Castle (John Hunt held up a spreadsheet). This is how many people visiting us arrive in their car. We don't know how they come and go, but we see that there are not too many cars. We have a list of how many cars are visiting the rental. The renters have fewer cars than we personally own with our family.

David Drouin: The complaint is traffic. John Hunt: But we don't see many cars driving off during the day. Your decision to do this has gotten Fitzwilliam upset because the Sunridge neighbors have an issue with it. We would consider you go with what the Code Enforcement Officer suggests. Drouin: Who lives on Sauvola Drive? Hunt: Lars Sauvola – and using Sauvola Drive, like Fullam Hill, involves going across someone's property. Hunt: I have right of ways over both properties. Any renter of my house is my designee and can use the right of ways.



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Jacqueline Marcott, Route 12 in Fitzwilliam: We hike the back woods that come down Fullam Hill Road. We found the Castle and sit across the pond. The Hunts sent me a map of the trails. I travel by Sunridge Road four times a day, and in 25 years, I haven't seen a spike of any travel at all, and this hasn't created a traffic issue.

Heidi Graff, Sunridge Road: This began a year ago when we told the Hunts there was a tremendous increase of traffic on our road – they were away all last summer. They say they're away when it's rented so I don't know where they've been staying when they've counted the cars. They're willing to house 14 people at Holloway House and more at the Castle. There are hundreds of people over the year coming in the neighborhood having visibility of the 11 houses here.

Goodrich: This hearing is restricted to the access topic. John Hunt: We did put the gates up so that none of the Castle visitors use Sunridge Road except the Holloway House renters. We can lock those gates so Sunridge will be sequestered off.

Donald Pyke, 22 Sunridge Road: I am the first house on the road so I see all the traffic and, yes, there's an increase in cars. The rental has been advertised as 165 Sunridge Road so guests are not going to use another road.

Rick Sirvint: I drove those roads on a Saturday afternoon. Would Fullam Hill Road have more traffic if it was designated? I couldn't get to the Castle because two roads were chained off. I was on Fullam Hill and there was only one car for the 20-25 minutes I was on that road. I would not take my car on Sauvola Road because it's basically a rocky path. There were no cars on Sunridge Road.

Robert Muller (sp?), Fullam Hill Road: I walk my big white dog and the traffic coming out of there is nonexistent. I've worked there 27 years.

Mike, Hunt Castle caretaker: There is less traffic now with the renting than with the Hunts' family– the road being in lousy shape keeps the traffic down.

Maryann Harper: Sitting on a road for 20 minutes or a cursory drive through is not what traffic studies are about. We presented data in our first hearing indicating there was a 75% increase in traffic. That peaks and ebbs, and you can miss it on a Saturday. The gates now stop the though traffic, but I think these decisions should be based on a traffic study.

Mike: I see what's up there for traffic; I'm there every single day of the year and there are fewer cars now. I'm up and down that road more than anyone in that development.

Attorney Bentley: John and Lynda are not asking you to reconsider your decision to restrict the use of Sunridge Road. My understanding is the question is, "What is the alternative road?" We don't care which or both; but we know it's not Sunridge Road. We're happy with Sauvola Road.

Bill Thomas motioned to close testimony. Bill Harper: Sunridge Road is a private road. A deeded right of way over someone's driveway was not meant to support a person's business. If that business didn't generate traffic, we wouldn't be here. The size and scope of what is happening in Sunridge is greater than a bed and breakfast. The driveway they're using now is greater than 1,000 feet. No additional driveways



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could be cut without site plan review. So the ZBA is doing the Planning Board's job now? Mr. Hunt is using a driveway greater than 1,000 feet that hasn't been engineered. DuVernay: Your discussion is beyond the scope of this hearing.

Keith Griffin: If you shut down the access through Fitzwilliam, then we have one point of access.

Goodrich: There are three points of access to the Castle and the Board cannot restrict traffic on any of those. Griffin: So the restriction is voluntary? Drouin: There was no recommendation; it was not clarified what the alternative road was. In no place in those minutes was there a mention of the road name. Griffin: what is the possible outcome of this decision? Goodrich: The Board can remove the condition, it can create a new condition, or amend it.

Fitzwilliam Selectman: If Fullam Hill Road is the access road being used, the Fitzwilliam Planning Board should have been notified so it could weigh in. The Fitzwilliam taxpayers maintain that road and spent a lot of money on it recently. The access to it is the Shuster's driveway. Fullam Hill is a road but the access to it is not. Goodrich: It was my intent to refer to Abel Road. We obviously interpreted it differently. Fitzwilliam: We want you to identify what that alternative road is. Paula Thompson: If it's in Fitzwilliam, we'll need to refer it to the Planning Board.

DuVernay: You can impose a condition on the applicant, John Hunt, to advertise access by a certain road. You cannot restrict public access but you can restrict the advertising. Lynda Hunt: As soon as you made conditions, we changed all the advertising to mention Sauvola Road.

Heidi Graff: I'm not complaining about the traffic on Sunridge this summer because there's a huge difference since the condition was imposed. People are not driving Sunridge now from the Castle.

MOTION: Bill Thomas motioned to move to deliberations and Phil Stenersen seconded. All were in favor.

Drouin: I didn't vote in favor of the initial decision, and this motion is not consistent with it. You decided that renting the Castle was a residential use, so how can you now condition something that you said was an acceptable residential use? If the use was acceptable as-is, how can you modify it? If this condition is not met, what is removed from the Decision? There is no legal relief granted, so what are you conditioning? I don't think you should make a condition--you're trying to condition something you said is an acceptable use.

Breckenridge: I disagree. There was no definition of a business, so we tried to listen to the concerns of the neighbors which seemed to mainly center around the traffic from people they didn't know. So I believe the intent of this Board was that even if we're calling it a residence we would try to address the neighbors' concerns. We didn't realize the implications and we didn't realize that our decision would require the use of a right of way. Drouin: What are you conditioning? You've just agreed with the administrative decision but you haven't granted relief. The landowner was not seeking relief to conduct something, and we agreed. You are conditioning an agreement of the Board of Selectmen. Thomas: We haven't done anything but agree with the Selectmen's original decision. That's all we've done.

Goodrich: The Town's attorney said we may place conditions on their Decision. Drouin: But you're conditioning their private lives. Goodrich: The law allows us to add conditions by statute. Drouin: What



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is there to enforce? You agreed that whatever they're doing now is appropriate. Goodrich: We're not restricting the Hunts' guests from using Sunridge Drive; we've restricted him from advertising using Sunridge Drive.

Phil Stenersen: Is there increased traffic? Yes, but the amount of increase of traffic is not an issue at all compared to what some of these local roads will support. The Castle is a big house with a lot of bedrooms, but we've agreed it's a residential use of the property. The Hunts agreed to do some things to help the neighbors out, and if they were willing to do that, we were willing to go along with that and try to make people as happy as they could be. I also heard our attorney say that we could put more conditions on. Drouin: You can also remove the condition completely, or modify it.

Stenersen: Are you suggesting we remove the conditions "a" and "b" of the Decision entirely? Breckenridge: What should we do according to you? Drouin: Remove condition "a" which is the only condition that's being appealed right now – that all renters accessing by "the alternative road." Goodrich: We can direct the Hunts to market the property to be accessed by a certain road – eliminate "a" and specify the name of the alternative road in the marketing materials, "b". Drouin: That's the cleanest way because we can't restrict how the public accesses the Castle.

The Town of Fitzwilliam asked us to specify the alternative road's name. If all marketing materials have to say Sauvola Road, access would be through the Town of Rindge which answers Fitzwilliam's concerns. We are not restricting anyone from their legal right to use any road. Breckenridge: But you'll be indicating that people should use another right of way to access Sauvola Road. Goodrich: And that landowner had an opportunity to be here tonight.

MOTION Breckenridge motioned that we strike condition "a" which says all rental visitors to the Castle are to access it by the alternative road, and amend condition "b" to substitute "the alternative road" with the words "Sauvola Road" (this wording was later amended to read "Sauvola Drive"). This motion restricts the Hunts' advertising, not the public access. Phil Stenersen seconded.

MOTION: Phil Stenersen motioned to withdraw Jan's motion and move to strike condition "a." Jan Goodrich seconded the motion and all were in favor.

MOTION: Phil Stenersen motioned to amend condition "b" to read "all marketing materials should contain specific directions to the property via Sauvola Drive." Phil amended the motion to say "shall contain" and Jan seconded. Vote: 5-1-0

In favor: Goodrich, Breckenridge, Thomas, Stenersen

Opposed: Drouin

MOTION: Marcia Breckenridge motioned to close deliberations, Drouin seconded and all were in favor.

Keith Griffin: Can we appeal this decision? Drouin: Yes, you have 30 days.



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Case # 1045: Richard Kohlmorgen, 220 Woodbound Road, Rindge, NH. Map 11 / Lot 1-1: Variance application from Article V, Section A of the Rindge Zoning Ordinance to permit earth excavation of approximately 13,500 cubic yards in the Residential / Agricultural zoning district.

Sitting on this case were: Dave Drouin, Marcia Breckenridge, Bill Thomas, Phil Stenersen, Rick Sirvint. Janet Goodrich recused herself due to knowing the applicant. Dave Drouin read the case before the board, and Joe Hill summarized the ordinances. This deals with permitted uses, and there is no permitted excavation in our ordinances.

Paul Grasowicz of Graz Engineering was present with Rick Kohlmorgen. Charlie Eicher: Why is this before the Zoning Board? There's nothing in here that requires a variance for excavation. DuVernay: It's not a permitted use. Eicher: You can excavate if you get a permit from the Planning Board. Drouin: And the Planning Board is not going to issue a permit without a variance. It's permissive zoning; if it's not mentioned, it's not allowed. Eicher: We've got agricultural, residential, and commercial uses. Excavation is not a use; it's a hole. You pick up dirt and move it somewhere else. DuVernay: It's not permitted by zoning; therefore, it's prohibited. Phil Stenersen: Is there any other applicable ordinance? Charlie: Article 3, section E of the Zoning Ordinances. DuVernay: You have to get a variance first to get the permit because it's not a permitted use. The regulation says you cannot issue a permit if it's not permitted. Eicher: It's not permitted in any district; a permit is required from the Planning Board. DuVernay: And you can't get a permit if it's not permitted. Drouin: And you look at what's permitted, and it's not permitted.

DuVernay: I only recommended having a hearing. The applicant wants to excavate two small sites, about 39,000sf. Grasowicz: One plan was attached to the variance application. The smaller yard is 4,000 cubic yards. Another area has about 9,500 cubic yards of proposed material to be excavated there. We'd start at the high area of one of those two spots, and we're grading down to the lower area and we're creating a long, flat area vs. the flat area that's there now. One is higher and one is shallower with not much depth. Both sites are located away from Woodbound Road and the residents.

Rick Sirvint: What is the purpose of this excavation? Grasowicz: To sell the nice fine gravel sand. The Conservation Commission said there was another sand bank that wasn't reclaimed that needs to be pursued. Breckenridge: Who reclaims the property? Grasowicz: Is someone going to say that reclamation is needed? The Kohlmorgens bought the property without it having been reclaimed. I think this pit might have been used a long time. Reclamation is part of a plan for excavation now. It's an abandoned excavation. We wouldn't need a variance if it had been grandfathered. It never got reclaimed and the property changed hands, so it's an abandoned excavation.

Drouin: Richard Mellor is here from the ConComm. Mellor: I spent an hour reading old minutes; I did not find the original plans. But we did find that Peck and the Brummers owned the property and in 1983 they obtained a permit for that gravel pit. And in 1985 that had expired and ConComm revisited the site. Subsequently, there was a state notice of violation because there was too much taken out, but in '86 the conditions of that notice were met. In 1990, the state said all pits should be reclaimed. ConComm conducted a public hearing in '91 to make good the abandoned and current pits. This is an outstanding issue. And this variance and the pit go with the land forever. That could be the domain of the Planning Board when it gets to the permit for the gravel. But the intent of our ConComm report is that it's still an unreclaimed pit and an open sore because it allows water to enter. The Planning Board can make a



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determination on whether to pursue the unreclaimed pit or not. They will have to consult with legal counsel.

Rick Sirvint: How long will the pit excavation be? Grasowicz: Bob Van Dyke is the potential excavator. The material is not going to be removed and then moved and stored somewhere. It could be used for a septic or other construction – you could run 30 loads a day – 10 trips if they're close. Only one pit will be worked at a time.

Sirvint: So how many trucks will it take to remove 13,500 cubic yards. Grasowicz: About 750 truck loads. Rick: it's temporary activity, so when does it end? Stenersen: It's totally market-driven and location-driven. You have pits in Jaffrey that Jaffrey would use. DuVernay: All these things will be considered by the Planning Board. Drouin: We do consider impact on the neighborhood.

MOTION: Joe Hill motioned to go into deliberative session, Marcia Breckenridge seconded, and all were in favor.

**1. The variance use would not be contrary to the public interest because:**

It would not alter the character of the neighborhood and it would not threaten the public health, safety or welfare.

Vote: Y (All) N:

**2. Granting the variance would do substantial justice because:**

It would benefit the public to have sand available for purchase, it is far enough off the road so as not to cause distraction to the residents, and there is no gain to the general public by refusing this variance.

Vote: Y (All) N:

**3. The variance would be consistent with the spirit and intent of the Rindge Zoning Ordinance because:**

It would seem to be consistent with past use and the other small, isolated gravel pits in town.

Vote: Y (All) N:

**4. Granting the variance would not diminish surrounding property values because:**

This property has already been used for gravel excavation, and once the gravel operation is complete and the pit is reclaimed, the land will revert to an approved contour.

Vote: Y (All) N:

**5. Special conditions do exist on the property that distinguish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship.**

The 45-acre parcel includes an existing pit and only one acre is proposed for excavation. That acre includes knobs that would lend themselves to being leveled and the land is buffered from the road since the road since the frontage is narrow and there is greater backland.



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Vote: Y (All) N:

**5a. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision(s) and the specific application of the provision(s) to the property because:**

Vote: Y (All) N:

AND

**5b: The proposed use would be a reasonable one because: (same as 5a)**

Vote: Y (All) N:

**The Variance was granted because: the five criteria** all the conditions were met  
Bill Thomas motioned to grant the variance with the recommendation that the Planning Board consider the Conservation Commission’s August 23, 2012 site report. Marcia Breckenridge seconded.

Vote: Y (All) 5-0 N:

Case #1046: Dayton and Dianne Duncan, PO Box 835, Walpole NH. Property 24 Beach Avenue, Rindge, NH. Map 45, Lot 97: Variance application from Article IV, Section B-2 of the Rindge Zoning Ordinance to allow reconstruction of a single family dwelling on the present footprint which does not meet the 50-foot right of way setback that is required if rebuilding does not commence within one year of demolition.

Sitting on this case were: Dave Drouin, Marcia Breckenridge, Bill Thomas, Phil Stenersen, Janet Goodrich. Rick Sirvint read the case before the board, and Joe Hill summarized the ordinances.

Dayton Duncan: The property is in the Woodmere section on the south shore of Lake Contocook, which was originally laid out in a grid – almost any dwelling is automatically within 50’ of a right of way. The house we bought is more than 15’ away from abutters, more than 50’ from lake shore, but like other dwellings is closer than 50’ to those paper roads. None of them are rights of ways in use. There’s no traffic on the one this is closest to. We decided that the best thing to do is demolish it and rebuild it on the current footprint. We first were encouraged to talk with Chief Donovan who is eager for us to donate the house this fall to the Town and they and possibly the Police Department will conduct some safety exercises and burn it down. We aren’t sure whether under our current regulations if we built within a year we would not need to come before you, but if it goes longer than that, we would have to get a variance. If we got a variance and build over a year from now, we’ll have the assurance that we won’t have a burned-down house and be unable to build on the existing footprint. I would doubt that the burning and the construction would be started, done, and finished within a year.

Joe Hill: So you’re asking for a variance from the one-year construction time limit. Drouin: He’s asking for an extension of the grandfathered period for building on that footprint. Dayton just wants more time.



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Hill: A variance goes with the land in perpetuity. If he sells the land, it still has the variance but that still locks the construction into the footprint. The Board agreed.

MOTION: Bill Thomas motioned to close deliberation, Marcia Breckenridge seconded, all in favor.

**1. The variance use would not be contrary to the public interest because:**

Extending the time frame for building in this case does not alter the character of the neighborhood or threaten the public's health, safety, or welfare.

Vote: Y (All) N:

**2. Granting the variance would do substantial justice because:**

There is no loss to the general public in granting this variance and the date of reconstruction will be variable.

Vote: Y (All) 5-0 N:

**3. The variance would be consistent with the spirit and intent of the Rindge Zoning Ordinance because:**

The delay in rebuilding will have no effect on the public health, safety, and welfare or the character of the neighborhood.

Vote: Y (All) N:

**4. Granting the variance would not diminish surrounding property values because:**

The delay in rebuilding will not affect the property values.

Vote: Y (All) N:

**5. Special conditions do exist on the property that distinguish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship.**

Vote: Y (All) N:

**5a. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision(s) and the specific application of the provision(s) to the property because:**

The surrounding properties have similar conditions and there's no fair reason to deny the variance because it's not an unplanned demolition that would require immediate reconstruction. Moreover, it's reasonable to build again within the same footprint.

Vote: Y (All) N:

AND

**5b: The proposed use would be a reasonable one because: (same as 5a)**

(same as 5a)

Vote: Y (All) N:



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### **The Variance was granted because:**

Marcia Breckenridge motioned to grant the variance because all five criteria have been met, Dave Drouin seconded, and all were in favor.

Vote: Y (All) N:

Forbes Farmer is interested in being appointed as an alternate to the Board of Adjustment.

David Drouin motioned to appoint Forbes Farmer as an alternate to the BOA, Marcia Breckenridge seconded, and all were in favor.

Jan Goodrich reviewed the Board's financials as of July, 2012.

Rule of Procedure change: It was proposed that the Board act on them within 30 days. "All appeals for rehearing must be acted upon and a decision rendered at either a public meeting or public hearing within 30 days of receipt." Jan Goodrich will check on this and the discussion will resume at a later meeting.

Joe Hill and Marcia Breckenridge were the chosen reviewers for the applications received by Tuesday, September 4th:

Dave Drouin motioned to accept the minutes of June 26, 2012, Jan Goodrich seconded, and all were in favor. Joe Hill mentioned that the July 5<sup>th</sup> minutes should insert who's sitting on each case, individually. Dave Drouin motioned to accept the minutes of July 5<sup>th</sup> with that change, Jan Goodrich seconded, and all were in favor.

Joe Hill motioned to adjourn at 10:07, Phil Stenersen seconded., and all were in favor.

*Minutes respectfully submitted by:*

Linda Stonehill, Clerk