

TOWN OF THORNTON

Zoning Board of Adjustment

Approved on:

ZBA Initials:

Rec'd by Town Clerk on:

Town Clerk Initials:

JMM
10/7/2020
dpm

ZONING BOARD OF ADJUSTMENT MEETING MINUTES

November 23, 2020

WELCOME:

Chairman Joe Monti welcomed the members.

CALL TO ORDER BY CHAIR:

Mr. Monti called the meeting to order at 7:00 p.m. with the Pledge of Allegiance.

ROLL CALL BY CLERK/CHAIRMAN:

Mr. Monti completed the roll call.

The following members were present:

Chairman Joe Monti, Ken Miller, Alan Rawson, Jerry Sobolewski

The following members were present via teleconference: Joan Marshall

Present via teleconference: Chris Boldt, Zoning Board Attorney; Andrew White, Charlotte Hefford, Chris Boldt, Deb Lievens, Elaine Scholtz, Emily Eynon, Emma Wright, Janet Capaul, Jeff Scholtz, Jeremy Duffield, John Maher, Karen Walsh, Kathleen Kelly, Linda Coleman, Marcia King, Mark Correnthi; Real Estate Appraiser, Mark Keller, Ray Newton, Rosanna Yarnell, Russ Roth, Sally Davis, Tim Kelley, Tom Johnson; Structural Engineer with Vertex, Ivan Pagacik; IDK Communications

The following members were absent: Kerrin Randall, Board Assistant

Also Present: Brian Regan, David and Kathleen Kelley, Francis Parisi; Attorney for Vertex, Cher and Cecilia Duffield, Jeanne McCredie, Michael and Rosanna Yarnell, Marty Roth, Elaine Scholtz

REVIEW/APPROVAL OF MINUTES:

1. Upon distribution and review of the meeting minutes of October 22, 2020, the members took the following action:

MOTION: "To accept and approve the Minutes of the Thursday, October 22, 2020 meeting with proposed changes."

Motion: K. Miller

Second: A. Rawson

Discussion: None

Roll Call Vote: 5-YES, 0-NO, 0-Abstained

Motion passes.

UNFINISHED BUSINESS:

Mr. Monti stated that proposed meeting dates were emailed to the Board in the event that this meeting needs to be continued. He stated the dates fall before the Planning Board meeting on December 17, 2020.

Mr. Monti asked the Board for their availability, and the Board decided to meet again on Thursday, December 3, at 7:00 p.m. in the event that this meeting needs a continuance.

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Mr. Monti reviewed the proposed 2020-2021 meeting dates, and the Board agreed to begin future meetings at 6:00 p.m.

MOTION: "To accept and approve the 2020-2021 meeting dates."

Motion: K. Miller

Second: J. Sobolewski

Discussion: None

Roll Call Vote: 5-YES, 0-NO, 0-Abstained

Motion passes.

PUBLIC HEARING:

1. 7:15p.m. CONTINUATION OF APPLICATION/PUBLIC HEARING: Public Hearing on an application filed by property owner, SMA Realty Trust, Michael C. Sununu and James G. Sununu, Trustees [Applicant: Vertex Tower Assets, LLC], for "VARIANCE" as provided under ARTICLE VI SECTION 3, ARTICLE IV TABLE OF USES AND ARTICLE V.B of the Thornton Zoning Ordinance. Proposed construction of a wireless communication facility in the General Residential Zoning District, which will be 176' tall [182' to top of highest appurtenance].

Mr. Parisi stated that since the last meeting, there have been significant changes to the project. He stated that he came away from meetings with both the Zoning and Planning Boards with the impression that the access road was more of a concern than the actual tower. Mr. Parisi stated he has spoken to the landowners and negotiated a new access road on Upper Mad River Road. He stated that it is not a decision that is being taken lightly, as there are significant costs and engineering challenges. Mr. Parisi stated that the road will have to be significantly longer, and there will be wetland crossings. He stated permits will needed and culverts rebuilt.

Mr. Parisi stated the road will be steep, but they will get it to work. He stated the preliminary plans are not ready to submit yet for a site plan approval, but the engineering is being done. He stated there will be many switchbacks, and they will need permits from the New Hampshire Department of Environmental Services (NHDES) and Alteration Of Terrain (AOT) permits to ensure that they will be in compliance regarding the wetlands. Mr. Parisi stated it will be a lot of work and expense.

Mr. Parisi stated that he wants to make sure before too much work is done that they are moving towards an approval, as he does not want to waste everyone's time. He stated he understands that the Board has a very difficult decision to make, and that he would rather know if they are going to be granted the requests before too much time and money are invested.

Mr. Monti stated that Mr. Pagacik is going to walk through his analysis of where or if there are gaps in coverage. Mr. Monti stated Officer Josh Meyer of the Thornton Police Department was present and asked if he would like to speak.

Officer Meyer stated he sees both sides of the coin, but he can see it being nothing but beneficial. He stated officers have responded to calls up there, and there have been times where they haven't been able to get up there. Officer Meyer stated that cell phones, portable radios, and the computers used in the cruisers have a hard time finding service. He stated there have been a few instances where someone has been there to help, but officers have had to leave incidents in order to get coverage to call out.

Officer Meyer stated that most recently they had an incident where someone had a heart attack and their spouse was unable to call 911 for help. He stated there was also a domestic incident where they had to

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leave the scene to call for assistance. Officer Meyer stated that he sees they tower as a benefit to the community. He stated that the Police Department is short staffed and oftentimes they respond to calls alone; this becomes a safety issue as officers cannot call out for assistance. He stated he can absolutely see both sides of the argument.

Mr. Monti thanked Officer Meyer.

Mr. Monti asked Mr. Parisi if he would be submitting a new application that removes the access road on Treeline Road. Mr. Parisi stated yes.

Mr. Monti asked Mr. Parisi if, based on the engineering and terrain work needed, the tower will be moved over 10 feet and they will no longer need the setback variance. Mr. Parisi stated yes.

Mr. Pagacik stated that he created several figures to illustrate where coverage would potentially be based on numbers. The Board reviewed the figures and Mr. Pagacik summarized the findings:

- Using the existing sites supplied by Vertex and typical cellular parameters there are gaps in Thornton along Routes 49 and Upper Mad River Road.
- The proposed site 170 feet provides coverage to the areas along Route 49, Upper Mad River Road and adjoining roads.
- Lowering the proposed site to 110 feet has minimal impacts to Route 49, Upper Mad River Road and adjoining roads.
- Alternative sites near the proposed locations do not offer the same level of coverage along Route 49 and Upper Mad River Road.

Discussion ensued regarding the frequencies needed for coverage in megahertz (MHz). Mr. Monti asked what frequency public safety uses. Mr. Pagacik stated that emergency services typically use three (3) frequencies; 150 MHz, 450 MHz, 800 MHz. He stated that in rural areas, emergency services typically use 150 MHz.

Mr. Monti stated that Mr. Pagacik's analysis verified Mr. Parisi's submissions in that there are gaps in coverage. Mr. Monti stated at the last meeting, he asked Mr. Parisi for the number of households in Thornton that have no coverage. Mr. Parisi stated he does not have that information.

Mr. Parisi stated that the maps show reliable coverage, and that the degree of coverage will vary based on structures in the area. He stated the presented coverage shows the best that will be available with the given terrain and location of the tower. He stated there will be significant coverage on the roads, but not necessarily in houses. He stated they cannot build close to residences to guarantee coverage in the home, but they are doing the best they can.

Mr. Monti asked Mr. Pagacik about the height analysis, as at the last meeting Mr. Pagacik was asked to find the maximum minimum height could be to get a cell signal. Mr. Monti presented a model that illustrated the heights of where carriers would be on the tower.

Mr. Pagacik stated that he saw cellular degradation begin at 110 feet. He stated there was no degradation between 120 feet and 170 feet, but it is difficult to determine at what height the signal would go down as the tower is designed for five (5) carriers, and currently there is only one (1) interested.

Mr. Monti asked Mr. Parisi who the other 4 (four) carriers could be, besides Verizon. Mr. Parisi stated he believes the other carriers would be AT&T, tMobile/Sprint, US Cellular, and Dish Network.

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Mr. Monti asked Mr. Pagacik if a tower is built for a single (1) carrier, the maximum height needed would be 130 feet; Mr. Pagacik stated yes. Mr. Pagacik stated the proposed tower will be 182 feet in order to accommodate five (5) carriers. Mr. Parisi stated this is correct.

Mr. Monti asked that Mr. Pagacik verify the following:

- There is a gap in coverage along Route 49 and Upper Mad River Road, as Mr. Parisi had presented.

Mr. Pagacik stated that is correct.

- Of all locations provided, including the proposed site and alternates, the location of choice gives the best coverage.

Mr. Pagacik stated that is correct.

- If a tower is designed for a single carrier, the maximum height needed would be 130 feet.

Mr. Pagacik stated that is correct.

Mr. Monti asked for other questions from Board.

Ms. Marshall asked Mr. Parisi if another balloon test could be done, as the last one was done with leaves on the trees, and now more people are concerned. Mr. Parisi stated he is not opposed to having another balloon test. Mr. Monti stated this will be discussed later in the meeting.

Mr. Monti stated he would read letters in favor of the project before the board and allow for public comment in the affirmative. He stated those in opposition will then be able to express their thoughts with Mr. Parisi then being given the opportunity to answer any more questions.

Mr. Monti read a letter of support from the Campton/Thornton Fire Chief, Daniel Defosses.

Mr. Monti asked for comments from anyone present in the meeting room.

Cher Duffield, Upper Mad River Road, stated she lives in the potential work zone for the tower. She stated she has had six (6) people in her home working remotely without any service issues. Ms. Duffield stated Vertex is in the business of 'tradeoffs.' She stated the tradeoff of getting better coverage for degrading the land. Ms. Duffield stated that once the tower is built, it is there forever. She stated this is not something they want to trade away for. Ms. Duffield stated that Cone Mountain and Welch-Dickey have saved people during the pandemic, as they were able to get outside and go to nature. She stated that people keep encroaching on nature for convenience purposes and no one wants that, as that's what makes Thornton a special place. Ms. Duffield thanked the Board.

Melanie Gulden, Upper Mad River Road, stated that she agrees with everything Ms. Duffield put forth. She stated she also has had no issues with phone usage, and that she agrees that we need to protect nature. Ms. Gulden stated that the safety of police officers, firefighters, EMTs, etc. is very important but there are alternatives to building a cell tower to provide that. She stated in Cape Cod, areas have land line emergency phone boxes that can be utilized as they do not want cell towers there; a similar argument can be made for Thornton. Ms. Gulden stated she is not claiming that she does not support the safety of emergency personnel, but that she does not want something permanent in nature installed. Ms. Gulden thanked the Board.

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Brian Regan, Treeline Road, stated he and his wife are opposed to the tower as their property borders both parcels, the site, and the access road. He stated there is no evidence from Mr. Parisi of the proposed new access on Upper Mad River Road, and that regardless of access, his property value will go down as a result. Mr. Regan stated he believes the Board is leaning towards supporting the efforts of Mr. Parisi, and that it is not their job to do so. Mr. Regan stated the land use is an issue, as Mr. Parisi is claiming a hardship where there is none. He stated that if there is a gap in coverage that needs to be covered, the town will ask for it; it is not needed. Mr. Regan stated the land use is the Board's job to decide if there is a hardship; the rest is up to the Planning Board. He stated it is wrong for the neighborhood and for the town. Mr. Regan thanked the Board.

Kathleen Kelley, Treeline Road, stated in a packet provided to the Board, by her, there is information that shows dropped call statistics and various other pieces of information that discredit claims made by Vertex in regard to coverage areas.

David Kelley, Treeline Road, stated that the access on Treeline Road and the site lot, both abut his property. He stated that when his house is built, the tower will be directly in front of his house and closer to his property line than is allowed. Mr. Kelley stated the balloon test that was done was not accurate, as the pictures taken to show visuals were not from individual properties and therefor could not show where the tower would be visible from. Mr. Kelley stated that he was not informed of the access road on Treeline until October 13, 2020 and it disturbs him that his plans for building a house on a quiet cul-de-sac are gone as their will be construction and interlopers using the access for recreational uses. He stated it is not right and he is opposed to it. Mr. Kelley thanked the Board.

Mr. Monti reiterated that Mr. Parisi has stated that the access will be moved from Treeline Road to Upper Mad River Road, and that a new application will be submitted to reflect this. Mr. Parisi stated this is correct.

Mr. Monti asked for comments from those on Zoom.

Andrew White, Tamarack Road, stated that if you have cable and Wi-Fi at your home, there is availability to make phone calls via those avenues. He stated he sent a letter of opposition to the Planning and Zoning Boards and included a link to a news article that he asked that the Board review it. Mr. White stated that technology is moving forward quickly and that the Board should consider that the tower may become obsolete in the near future. Mr. White thanked the Board.

Jeremy Duffield, Upper Mad River Road, stated that he is opposed to the tower and would like to remind the board that they got a memorandum with 30 signatures of those opposed and would hope that the Board reviews it carefully. He stated that he has not once heard the document referenced, and it is from those who are supposedly in need of the coverage but are opposed to the tower. Mr. Duffield stated that his background for Zoom is Cone Mountain, and if a cell tower gets put up, people will only see it and not the mountains that they come here to see. He stated he questions the need for coverage in the area if those who live in the area do not request it. Mr. Duffield stated that there are alternatives for public safety signals, as slim VHF antennae can be put up in the area rather than a large tower.

Mr. Duffield stated that the Sugar Run Association was developed with restrictive covenants in 1968 specifically to limit the use of the land; not to be used commercially. Mr. Duffield stated that he does not understand why this is getting traction with the Board if those who supposedly need it do not want it.

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Mr. Monti clarified that restrictive covenants apply to a subdivision only. Mr. Monti asked if the site lot in question is part of the subdivision. Mr. Duffield state it is not, but the tower will be visible from the subdivision and lots within it will be used for access to the tower. Mr. Duffield thanked the Board.

Sally Davis, Sugar Run, stated that that Mr. Parisi made a reference to the Town Master Plan of 2013 regarding technology. She stated she thought town was doing a survey of coverage that is applicable to this area. Ms. Davis stated the master plan justification used by Mr. Parisi is out of date.

Mr. Monti stated that the survey Ms. Davis is referencing is being done by the Town of Thornton Broadband Committee to see who in town has broadband access, and how they obtain it. He stated there is a map that shows the results of this survey at Town Hall, and that it is not related to the issue at hand.

Ms. Davis stated it is related, as calls can be made via Wi-Fi if there is no cellular coverage. Ms. Davis asked where Upper Mad River Road was on that coverage map. Mr. Monti stated high speed broadband is available in that area. Ms. Davis stated she has submitted a letter of opposition, and that she does not support the tower.

Russ Roth, Sugar Run, stated that he has heard that Sugar Run has bad service and that they need it. He stated he has lived here for 30 years and for the last eight (8) years he has had a security system that is accessed via a cellular provider and there's never been a problem connecting. Mr. Roth stated if he has had reliable service for eight (8) years he would like to see proof of a need for service. He stated he is opposed to the tower and that he sees it as a need for the few people that travel up to Waterville Valley and that they are doing fine without it. Mr. Roth thanked the Board.

Emma Wright, Sugar Run, stated she is in opposition to the tower. She stated she is a runner and has run the roads multiple times in multiple locations and has never had a cell phone issue. Ms. Wright stated she does not see a perceived need for coverage. Ms. Wright thanked the Board.

Rosanna Yarnell, High Brook Road, stated she agrees with her neighbors and is opposed to the tower. She stated she is a mile up the road and does not see a need for it. Ms. Yarnell thanked the Board.

Elaine Scholtz, Cone Ridge Road, stated she and her husband have been in Thornton for 20 years and they do not have cell phone issues. She stated they are opposed to the tower and think it will spoil the landscape and does not serve purpose of need in this area. Ms. Scholtz thanked the Board.

Charlie King, Cold Springs Road, *(via Mr. Boldt, as Mr. King could not be heard by the Board via Zoom; other participants on Zoom could hear Mr. King)* stated that he and his wife, Marcia, are opposed to the tower.

Ray Newton, Meadow Way, stated he agrees with all his neighbors and is opposed to the tower. Mr. Newton thanked the Board.

Emily Eynon, Sugar Run, stated that she has lived in the neighborhood for seven (7) years and never had an issue with cell coverage. She stated she is sympathetic to the concerns of the emergency services in certain areas but there are less impactful alternatives that can be used; municipal broadband as some communities in Vermont have been using and Bristol, NH was asking for it. Ms. Eynon thanked the Board.

Karen Walsh, Upper Mad River Road, stated she is strongly opposed to the tower, as she lives across the street from the site property. Ms. Walsh thanked the Board.

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Mark Keller, Treeline Road, *(via Mr. Boldt, as Mr. Keller could not be heard by the Board via Zoom; other participants on Zoom could hear Mr. Keller)* stated that he is in opposition to the tower.

John Maher, Tamarack Road, stated that both he and his wife are opposed to the project. He stated it seems as though there are three (3) people in favor of it; one will benefit financially and the police and fire departments that claim it is needed for public safety. Mr. Maher asked if the police and/or fire department had any data showing incidents where they could not respond due to lack of coverage.

Mr. Monti stated that Officer Meyer, earlier in the meeting, cited incidents where such situations arose. Officer Meyer stated that the concern is not physically responding to a scene when an incident is occurring, but rather they cannot call for assistance if needed.

Mr. Maher stated that there should be documentation somewhere that shows specific times when communication between officers and dispatch were not available. He stated the whole justification of the tower for public safety, but there is no evidence of that.

Mr. Miller stepped off the Board at 9:06 p.m. for the remainder of the meeting.

Ken Miller, Thornton Chief of Police, stated that he has been out around Sugar Run and not been able to communicate with anybody. He stated there was a man who died of a heart attack and his wife could not call 911 without leaving her house to find a signal. He stated this was documented, and that several other instances have been documented. Chief Miller stated that he speaks from experience where there have been times he could not call anyone using any of his devices (cell phone, radio, computer) while up in the area in question.

Chief Miller stated that there are numerous patrols around Sugar Run and Upper Mad River Road, and when someone cannot call in any way for assistance, it puts the officers in danger, and it puts the public at risk. He stated there is a need for it. He stated that those who have coverage up there have stated their opposition, but there are many others who do not have coverage. Chief Miller stated he understands the want for the land to remain natural, but he stated he felt the need to step off the Board to address the public safety issue. He stated there is absolutely a need for coverage up in the area.

Mr. Monti thanked Chief Miller.

Mr. Maher asked if the Town of Thornton had investigated alternatives for public safety services, as opposed to a 170-foot tower. He asked if there was a less intrusive way to help emergency services. Mr. Monti suggested that Mr. Maher send a letter to the Board of Selectmen with those questions, as the Zoning Board does not have the ability to answer that. Mr. Maher thanked the Board.

Mr. Monti read letters of opposition from Richard and Kathleen Virtus, Tamarack Road; Barry and Deborah Brownstein, Berry Knoll; Deborah Lievens, Beaver Path; Andrew and Tracy White, Tamarack Road; Ross Hamlin, Highbrook Road; Cher Duffield, Upper Mad River Road; James and Melanie Gulden, Upper Mad River Road; Alexis Eynon, Upper Mad River Road; Sally Davis, Sugar Run; David and Kathleen Kelley. Mr. Monti stated that all letters were not in favor of the tower.

Tim Kelley, Treeline Road, *(via Mr. Boldt, as Dr. Kelley could not be heard by the Board via Zoom; other participants on Zoom could hear Dr. Kelley)* stated that he has practiced as a wilderness medicine provider, and is sympathetic to the public safety issues, but is opposed to the tower as there are alternatives that can be used for mountain rescues and emergency services.

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Mr. Monti stated that Mr. Parisi will have the opportunity to respond.

Mr. Parisi stated that Bristol, NH was very aggressive in getting municipal broadband; they obtained grants and made it happen. He stated the Town of Bristol called Vertex and asked that a cell tower be built in town. Mr. Parisi stated that if the Town of Thornton would like a reference, they should contact Town Manager of Bristol, Nick Coates who will be able to discuss the process from the town perspective.

Mr. Parisi stated that there is a concern with an ulterior motive in the location of the proposed tower. Mr. Parisi stated that he has never met with the landowners of the site lot. He stated that Vertex sent out letters to landowners asking if they would be interested, and the lot owners in question were the only ones to respond.

Mr. Parisi stated, regarding the tower becoming obsolete, Vertex does not think this is the case. He stated that the tower will be more valuable in the future. Mr. Parisi stated that Vertex will post a bond in the amount that will be needed to remove the tower if necessary, and that this bond is good for the lifetime of the tower if it does become obsolete.

Mr. Parisi stated that in addition to the computer models that were generated to show coverage areas, they also provided drive test data where signals were measured from various places in the area. He stated that people claim that they do not need it, but there will be a point where they will need it. Mr. Parisi stated that police and fire need coverage, and they want to provide that.

Mr. Parisi stated that the higher up on the roads you go, there is better coverage than in the valleys and down low; the proposed tower will provide for both high and low elevations.

Mr. Parisi stated that he reviewed the memorandum submitted by the Kelleys and there is a lot of misinformation. He stated that safety concerns in the memorandum are no more of a concern than a residential home.

Mr. Parisi stated there is really no effect on property values, as appraisers look at hard numbers and not what a house can sell for, as a real estate agent will. He stated he has an appraiser on Zoom if there are any questions for him.

Mr. Kelley stated that there is a bias in hearing from the applicant's appraiser. Mr. Monti and Mr. Boldt both stated that Mr. Kelley is out of order. Mr. Monti stated that the applicant can bring in whomever they wish the speak on their behalf.

Mark Correnthi, certified residential appraiser out of Hollis, NH, stated that he has reviewed all the information submitted and he understands the concern of the residents. He stated that it is his understanding that the proposed site is a quarter mile into the woods with the nearest property being almost one (1) mile away. Mr. Correnthi stated that in his experience, if you cannot see it, hear it, or smell it, it will not impact property value. He stated he understands that people have an opinion on that, as it is a natural concern to have when change is proposed in a neighborhood. Mr. Monti thanked Mr. Correnthi.

Mr. Parisi asked what the next steps are procedurally. Mr. Monti stated that an updated application would need to be amended to remove the access on Treeline Road and resubmitted.

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Mr. Parisi stated that they stand by the lattice tower design, as it is more accommodating and easier to construct. He stated that if the variance for the lattice tower is not granted, they will resubmit with a monopole tower.

Mr. Monti asked for any repose to Mr. Parisi's statements.

Mr. Regan stated that Bristol, NH has their own concerns that are vastly different from those of Thornton. He stated that the property owners are not even involved and do not live in Thornton, therefore they cannot know the negative impact a tower will have.

Ms. Kelley stated she hopes there is a way for everyone to find a middle ground, but she is opposed to the tower project as it is being presented. She stated that she is concerned that there is a concern with the tower being lit, as jets fly over.

Mr. Duffield stated he strongly disagrees with the appraiser, as the tower will be visible from his house and will absolutely have an impact on his property value. He stated that if there is such a great concern with communications for first responders, then the Zoning Board needs to dismiss this tower and look into alternatives for the emergency services.

Mr. Monti stated that an amended application must be submitted that states exactly where it is that the access and tower will be built. Mr. Parisi stated he understands.

Ms. Marshall stated that an additional balloon test would be beneficial as visibility is a major concern.

Mr. Monti asked if another balloon test could be done. Mr. Parisi stated yes, and proposed that the balloon go up on Monday, November 30, 2020 from 8:00 a.m. to 11:00 a.m. He stated he will post this on his website and inform Ms. Randall to post on the Town Website and to inform the Board.

MOTION: "To continue the Public Hearing on an application filed by property owner, SMA Realty Trust, Michael C. Sununu and James G. Sununu, Trustees [Applicant: Vertex Tower Assets, LLC], for "VARIANCE" as provided under ARTICLE VI SECTION 3, ARTICLE IV TABLE OF USES AND ARTICLE V.B of the Thornton Zoning Ordinance. Proposed construction of a wireless communication facility in the General Residential Zoning District, which will be 176' tall [182' to top of highest appurtenance] at the Thursday, December 3 at 7:15 p.m."

Motion: A. Rawson

Second: J. Sobolewski

Discussion: None

Roll Call Vote: 4 - YES, 0- NO, 0- Abstained

Motion passes.

New Business

None

ADJOURNMENT:

9:46 p.m. MOTION: "To adjourn."

Motion: J. Sobolewski

Second: A. Rawson

Roll Call Vote: 4 - YES, 0- NO, 0- Abstained

16 Merrill Access Road
Thornton, NH 03285
603-726-8168
pbzbasistant@thorntonnh.org

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Discussion: None
Motion Passes.

Respectfully submitted,

Kerrin Randall
Zoning Board Assistant