



TOWN of
THOMPSON
ZONING BOARD OF APPEALS

Minutes
May 13, 2014

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Chairman Dan Roy called the meeting to order at 7:15 PM in the Merrill Seney Room at the Town Hall.

Roll Call: A. David Babbitt Peter Baskin Kevin Beno Dan Roy

Ray Faucher, Sr., Leslie Lavallee, and John O'Connell, Alternates
Leslie Lavallee was seated as an alternate. There was a quorum.

Staff Present: John Mahon, ZEO
William St. Onge, Attorney
Tina Fox, Recording Secretary

Public Hearings:

1. **Appeal 14-01** (formerly Appeal 13-02): Lisa Knight, 317 County Home Road, Thompson, Morning Star Farm Pet Resort LLC; Map 109, Block 34, Lot 1-M, R-40. Operating legally under the 2002 variance. Unfounded neighbor's complaint.
Grievance: Limits number of dogs not in variance approval. Imposing would be a financial detriment to business.
 - a. Attorney William McCoy, Heller, Heller & McCoy, 736 Norwich-New London Turnpike, Uncasville, representing Lisa Knight and Morning Star Farm Pet Resort, stated:
 1. This appeal is the subject of an earlier application that was denied by the commission.
 2. The application was denied because a sign for the application was not posted in a timely fashion; nothing else in the minutes indicates another reason for the denial.
 - i. The original application was in response to a letter from Mary Ann Chinatti. It was a notice of violation dated October 17, 2013.
 - ii. Subsequent to the hearing on that matter on Feb 10, 2014, Mary Ann Chinatti notified Morning Star that the appeal was denied and attached minutes of the meeting indicating that noncompliance of regulations was the reason for appeal denial, specifically that the sign was not posted within ten days prior to the meeting.
 - iii. The committee went on to waive fees, and to seek clarification on the matter from council.
 - iv. Attorney McCoy's opinion is that this was not a final decision on the merits, but rather a technical decision relative to the sign issue.
 3. Attorney McCoy mentioned that the statute allowing the board to hear the appeals states that enforcement must be done by the official charged with enforcement, which is the ZEO John Mahon, not Mary Ann Chinatti.
 - i. There was no indication that she was officially made the actual acting zoning enforcement officer.
 - ii. Whether or not she had the authority to issue the original letter needs to be addressed.

- iii. Dan Roy posed the hypothetical question as to who has the authority to enforce when John Mahon is sick/absent.
- iv. Attorney McCoy suggested that the zoning commission must decide what happens in John Mahon's absence.
- 4. Dan Roy noted that he was a board member in 2002, when the original variance was granted, and that the board was skeptical of granting a variance in an R-40 zone in 2002. According to Dan Roy's memory, the limitations were granted verbatim not to exceed 15 dogs.
 - i. Attorney McCoy pointed out that the 2002 variance application did not indicate a limit on the size or amount of kennels. There was a reference in the minutes to the intent of the applicant, but not in the decision of the board or in the application.
 - ii. Attorney McCoy referenced a Supreme Court case (Victor Antara et. al. vs. Madison Zoning Board of Appeals) that, according to his reading, states that a board cannot grant a variance that exceeds what the applicant is asking for. In other words, there has to be something on paper (in the application or board's decision) that limits the granting of the variance.
 - iii. Kevin Beno asked if Attorney McCoy's interpretation was, then, that there was no limit whatsoever as to how many dogs could be on the property.
 - iv. Attorney McCoy responded by stating that as long as the current owner is operating the business under the same conditions as when the variance was granted, then the owner is operating within the law. He then asked current owner Lisa Knight, 317 County Home Road, Thompson, how many dogs were on the property when she was considering buying it.
 - v. Lisa Knight responded that the property had the same amount of kennels when she visited the property as it does now, which is 26, but it would be hard to say how many dogs were on the property at the time.
 - vi. A. David Babbitt asked for clarification as to whether or not the kennels have been expanded since Lisa Knight purchased the property. She replied that they have not added any new kennels since 2007, when the property was purchased.
 - vii. Kevin Beno asked what has changed since 2007 that has now caused a nuisance to the neighbors. Lisa Knight responded that nothing has changed, and she disagrees that there is a nuisance.
 - viii. Attorney McCoy reiterated that a person purchasing the property has to rely on the paperwork they can find to see the limit on the variance, and there is nothing on paper (in the original application or board decision) that limits the property to 10-15 dogs.
 - ix. Raymond Faucher, Sr. asked if there was a recording of the 2002 meeting when the original variance was granted. Dan Roy responded that the tapes cannot be found.
 - x. Kevin Beno asked what the state law says that governs the limit of dogs allowed on the property. Lisa Knight answered that the number of dogs allowed is regulated by the Department of Agriculture. Her property gets inspected twice a year. The inspections are based on the size of the enclosures. The number of dogs allowed is based on the property's capacity: every dog has to have a kennel that they can comfortably sleep in.
 - xi. Raymond Faucher, Sr. asked if there were 26 dogs on the property right now. Lisa Knight replied that there are currently 26 kennels, not 26 dogs and that up to two dogs can be in each kennel.
 - xii. A. David Babbitt asked if the property ever has more than 26 dogs at a time, and Lisa Knight responded in the affirmative.
 - xiii. Kevin Beno asked what the property's max capacity is under state law. Lisa Knight answered that it could be 26 quadrupled (over 100).

- xiv. In regards to the missing recording of the 2002 meeting, Raymond Faucher, Sr. asked if there were many other tapes missing. John Mahon explained that a former recording secretary used to record the meetings, and after the recording was no longer necessary for her to complete her notes, she would tape over the recording with another meeting.
 - xv. John O'Connell asked for clarification in regards to the fact that Attorney McCoy implied that the information for the alleged limit on the variance could not be found at the time Lisa Knight purchased the property, yet Mary Ann Chinatti was able to find the information. Attorney McCoy replied that Mary Ann Chinatti interprets the minutes to contain a limitation on the variance, whereas his opinion is that the limitation has to be in the record, meaning the application.
5. Dan Roy asked if anyone in the audience wished to speak. Mary Ann Chinatti stood and stated that when ZEO John Mahon was on leave, the First Selectman asked her to assume the ZEO duties because the town's function could not stop simply because the current ZEO was out on leave. At the October 2013 meeting of the Planning and Zoning Commission, it was brought to the commission's attention that Mary Ann Chinatti was interim ZEO; they did not vote to appoint her, but they did know she was acting as the ZEO and did not have a problem with it. She also stated that she was able to get the paperwork for the past variance in the town clerk's office, as could anyone who wanted the info.
- b. Attorney Ernest Cotnoir, 163 Providence St., Putnam, spoke on behalf of Arlene Lamoureux of 297 County Home Rd., Thompson.
- 1. Attorney Cotnoir reminded the board that Mary Ann Chinatti was the acting ZEO at the time that she issued the cease-and-desist letter to Morning Star Farm Pet Resort/Lisa Knight.
 - i. He argued that while statutes and regulations specify who can issue such an order, Attorney McCoy is engaging in technical hair-splitting.
 - ii. The Planning and Zoning Commission knew Mary Ann Chinatti was acting as ZEO, and it was not without its consent.
 - 2. Both appeals filed by Lisa Knight are in response to the cease-and-desist letter issued by Mary Ann Chinatti. At the very minimum, then, Lisa Knight has submitted to the jurisdiction of the Zoning Board of Appeals.
 - i. If Lisa Knight's opinion was that no appeal was necessary because of lack of authority for Mary Ann Chinatti to issue the cease-and-desist, then why did she file an appeal? If the appeals was just as a place-holder, then Lisa Knight should have informed the commission of what her position was when she made the first appeal.
 - ii. If she had brought up the argument that Mary Ann Chinatti lacked authority to issue the cease-and-desist, it would have made it possible to bring that argument up on appeal with the Superior Court. Now, she is starting her appeal from scratch, having not originally raised the issue during the first appeal.
 - 3. Attorney Cotnoir presented a different interpretation of the Supreme Court case (Antara) that Attorney McCoy brought up. He argued that the court found that conditions do not need to be explicitly stated in an application; conditions on a variance can be stated in the application, or in the minutes or record of decision.
 - i. Anyone looking at the entire public record would have seen the board's decision including the 10-15 dog limit.
 - ii. In addition, the 2002 variance application only talks about using the barn as a kennel, not outside kennels. If you take Attorney McCoy's literal view, then, any outdoor use is not permitted, because it is not in the application.
 - iii. The Antara case does set a precedent making it difficult on purchasers, but the case also says it requires due diligence of buyers, and any buyer could have found those limitations on the variance.

- iv. A condition on the variance is an integral part of the variance; the board would not have granted the variance without that condition.
 - v. The entire application along with applicable records is recorded because all of the paperwork makes up the variance, not just the application.
- 4. The board was really trying to craft a way for the kennel to have a limited use where it's not supposed to be.
- 5. Neither regulations nor statutes give the ZBA the right to appeal its own decisions; that authority lies with the Superior Court. The proper method to challenge this action was to appeal to the Superior Court, not to appeal to the ZBA again.
- c. Attorney William St. Onge spoke as representative for the Zoning Board of Appeals.
 - 1. Attorney St. Onge was of the opinion that the Antara case was unclear, due to footnote number one.
 - i. Both Attorney McCoy's reading of the case and Attorney Cotnoir's reading of the case are correct.
 - ii. Attorney St. Onge was of the opinion that the Supreme Court moved the law in the Antara case.
 - 2. It is clear that we do not have the record that we would like to have of the 2002 meeting.
 - 3. Testimony was given that Mary Ann Chinatti was interim ZEO at the time she issued the cease-and-desist, and that the PZC was aware of that fact.
 - i. Lisa Knight should have raised her problem with Mary Ann Chinatti's authority at the initial hearing.
 - ii. It is hard to make the argument that Mary Ann Chinatti did not have the authority to issue the cease-and-desist considering Lisa Knight responded to the letter, and only brought up her concerns with Mary Ann Chinatti's authority after Lisa Knight's appeal was denied.
 - 4. Lisa Knight's remedy was to take the issue to Superior Court after the ZBA had acted on the matter.
 - i. If it was a final decision, which Attorney McCoy argued against, the Lisa Knight had to appeal to the Superior Court within 15 days. They did not make that appeal, so they are now attempting a second bite at the apple.
 - 5. The general law is clear that if a notice of publication (such as a notice in a newspaper) is not submitted properly, then the person who failed to submit the notice of publication has no power to act.
 - i. The law is also clear that if the notice is to an individual with a certified letter and the letter is not delivered, then the matter is appealable.
 - ii. In this situation, a posted sign was not up for the required time. The law is unclear as to whether or not the posted sign is in the nature of a certified letter to an individual (which would make the matter appealable), or if the posted sign is in the nature of a notice in the newspaper because it is for the benefit of the community (which would make the matter not appealable).
- c. Arlene Lamoureux, 297 County Home Rd., Thompson, mentioned that when Marie O'Brien applied for the variance in 2002, she would have had to send out certified copies to the neighbors, and asked if finding those letters would help to take the place of the missing minutes.
 - 1. Dan Roy stated that finding those certified letters would not help the situation. Attorney St. Onge further stated that the recording of the 2002 meeting cannot be found, but the minutes and application are available.
 - 2. Arlene Lamoureux testified that the noise level from the Morning Star Farm Pet Resort has been out of control the past three years. There was extensive barking on Easter Sunday. The dogs are outside 40 at a time. It is a morality problem. The noise complaints are not unfounded if no one on the board has ever come out to her residence to listen to the noise.

- i. John Mahon mentioned that he did go out to the area and park his vehicle to listen to the noise. There was not anything egregious going on.
- d. Brielle Robbins is an employee of Lisa Knight's at the Pet Resort. She stated that the dogs do not bark in the crazy manner that the complaints describe. They act like all dogs and bark at squirrels and cars. They go outside when they need to.
- e. Brenda Aimes, South Shore Rd., Thompson, brings her dogs to the Pet Resort. She testified that dogs bark when someone comes up the drive, but after she gets out of the car, she never hears dogs barking anymore.
- f. Gary J. Gomes, 39 Pasay Rd., North Grosvenor Dale, boards his dog at the Pet Resort. He stated that the dogs bark every now and then, but that it is not a problem. He asked: if the business has been there since 2007, why are complaints being brought up now all of a sudden?
 1. Dan Roy explained that the problem is apparently the noise level of the dogs. When the variance was granted in 2002, there had never been a complaint; the first complaint occurred in 2013. That is how the board found out there was a problem.
 2. Gary Gomes mentioned that there is a house adjacent to the Pet Resort, and that neighbor is not complaining. He further mentioned that there is only about 6 months of the year that the dogs can go outside due to weather conditions. In addition, the number of dogs, in his opinion, has not changed, and there are about 20 dogs at the Pet Resort at most when he is there.
- g. Theresa Lardner, 307 Thompson Rd., Thompson, recently moved to Thompson and boards a dog at the Pet Resort. She asked that if she is coming to Thompson and wants to buy property, and there is nothing in the decision that a variance has any restrictions on it, how is she, as the purchaser, supposed to know that she must look to the minutes of every meeting that the property was discussed during.
 1. Dan Roy assured that the board is on top of that sort of thing these days, and asked if she hears dogs barking all day. Theresa Lardner answered that she does not hear a lot of barking.
- h. Kevin Beno asked Lisa Knight if the neighbors have complained to her personally, to which she responded that they had. He further asked if she had done anything to change the noise, or if there is anything she could do in the future.
 1. Lisa Knight replied that at first she tried to sympathize with the neighbors who were complaining, but says that the current complaints are unreasonable. There is a new complaint about dogs barking at 5:30 am, but she never puts dogs out that early.
- i. Peter Baskin confirmed with Lisa Knight that the state comes twice a year to the Pet Resort, that the state gives written reports, and that Lisa Knight received passing grades. He then asked if the overnight dogs are in the building, and if the building was close, to which Lisa Knight replied in the affirmative to both questions.
 1. Lisa Knight further explained that the dogs go out in periods throughout the day. Peter Baskin asked if the dogs are inside all night, and Lisa Knight responded that the dogs are never put out past 10:00 pm.
 2. Peter Baskin asked how many employees Lisa Knight employs at the Pet Resort, to which she answered that she has 3 employees. Peter Baskin noted that it would be nearly impossible to keep track of 100 dogs with that number of employees.
- j. Attorney McCoy noted that the minutes from the March 2002 meeting when the variance was granted referenced 10-15 dogs. But after that, the minutes state that David Kress had a concern about the maximum amount of dogs at a single time. The variance applicant, Marie O'Brien, said that the state had guidelines to regulate the maximum amount of dogs allowed on the property.
 1. Raymond Faucher, Sr. asked how many dogs the license from the state covers.

2. Attorney McCoy reiterated that the maximum is a moving number, determined by more than one factor, such as the size of the kennels and the dogs. He further reiterated that the minutes from the 2002 meeting reflect that the applicant informed the board that the maximum amount of dogs allowed was determined by the state.
 3. Kevin Beno posited that the commission likely did not know that meant the maximum could be 100 dogs, or they would not have granted the variance.
- k. Attorney McCoy wanted to address the fact that Lisa Knight filed an appeal even though she is now arguing that Mary Ann Chinatti did not have the authority to issue the cease-and-desist.
1. He stated that the October 17, 2013 letter informed Lisa Knight that if she disagreed with the decision, she had the right to appeal. That is why she appealed. Furthermore, Lisa Knight was not represented by council then, so she did not know there was a procedural problem.
 2. Attorney McCoy also was not sure if the First Selectman had the authority to appoint an interim ZEO, or if that authority lied with the PZC.
- l. Attorney McCoy reiterated that he does not think the board previously made a final decision on the matter. The board alluded to the fact that their denial was based on the improper signage, but then stated that the matter was going to be referred to Attorney St. Onge for clarification. If the decision had been final, the matter would not have been passed on to an attorney. Lisa Knight is here today because there needs to be a final decision. He also noted that ZEO John Mahon has still not weighed-in on the issue at hand.
1. John Mahon mentioned that he has not weighed-in on the issue because he was asked not to by Mary Ann Chinatti.
- m. Peter Baskin asked how many dogs are at the Pet Resort on average over a period of time during the day.
1. Lisa Knight responded with an estimate on the number of dogs the Pet Resort had today. She stated that there were 3 dogs staying overnight, 12 dogs were boarded during the day, 5 came in for grooming, and that she raises some dogs on the property, for a final estimate of 50-55. She also noted that on a busy day, such as the 4th of July, the number is probably double.
 2. Peter Baskin asked what happens on the property between the hours of 10:00 am and 3:00 pm, when the Pet Resort is closed. Lisa Knight responded that the Pet Resort is closed to the public, but that she lives on the property. She further stated that when you are at the Pet Resort, the dogs bark at new people, not employees.
- n. Mary Ann Chinatti addressed the issue as to why John Mahon did not weigh-in at the last meeting. She stated that this action was started by her in the fall of 2013, and it was halfway through when John Mahon got back from his leave. She asked him not to weigh-in and told him that she would finish the action so as not to be confusing.
- o. Debbie Perry, 319 County Home Rd., Thompson, lives in front of and shares a driveway with the Pet Resort. She stated that she leaves for work between 4:45 am and 5:15 am, and when she does, you can hear dogs barking. She said it does not bother her because she is leaving for work, but that there is a problem. She also mentioned that there is traffic on the shared driveway all the time, and there is a problem with the dogs barking, especially in the summertime.
- p. Leonard Genest, 653 Liberty Highway, Putnam, lives near the Pet Resort, about 700 feet away through the woods. He stated that he does hear the dogs barking, and that he would not want to see more than what is there now. He said it is true that you only hear them six months out of the year, but those are the same six months that he wants to sit in his backyard during the summer. He says he puts up with the way the noise is now, but he would not want it to be any worse.
- q. **A. David Babbitt moved and Kevin Beno seconded the motion to close the public hearing. The motion carried unanimously.**

- r. Kevin Beno asked if any members of the board had been out to the site. A. David Babbitt mentioned that he is near the area frequently at a nearby gold course. He does hear barking regularly. The noise is pretty consistent throughout the day and whenever there is traffic, the dogs can be heard barking.
 - s. Peter Baskin wanted to know if the board could set a dog limitation. Dan Roy believed that only state law could set the maximum number of dogs. In addition, he felt that the board did set the limitation in 2002 when the variance came up, but apparently there are some loopholes. Raymond Faucher, Sr. stated that the board could still set a limitation.
 - t. Peter Baskin asked John Mahon how many times he had been out to the site. John Mahon responded that he had been out to the site four to five times over the period of a couple of years, but that it was possible that he just went during quiet periods.
 - u. Kevin Beno thought it would be reasonable to put off the vote for a month.
 - v. **A. David Babbitt moved and Kevin Beno seconded the motion to delay decision for a period of one month to have the opportunity to visit the location and determine what was going on. The motion carried unanimously.**
2. **Variance 14-01:** Allison C. Dodds, 54 Chase Road, Thompson, Map 105, Block 34, Lot 14. To allow construction of a horse barn that is less than 150 feet from property lines.
Reason: Parcel of land predated zoning laws. Sufficient land for construction and support of horse, but configuration lot does not meet current 150 feet requirements.
- a. John Mahon stated that the application could not go forward. The application was not complete. There was supposed to be a sign up for 14 days, which did not happen.
 - b. George Dodds, 54 Chase Road, Thompson, confirmed that the sign was not up for 14 days, but that it is now, and that he complied with everything else that he was supposed to do.
 - c. Raymond Faucher, Sr. asked when the sign was up. George Dodds responded that it was put up the previous Wednesday.
 - d. George Dodds mentioned that the application for variance on the town website says nothing about a sign requirement. He then explained that he has an issue with a blind horse and is trying to build a barn as quickly as possible for the horse.
 - e. Dan Roy felt that if the board allowed the application to continue, it would set a precedent and put pressure on the board in the future.
 - f. Peter Baskin asked if there was anywhere to temporarily place the horse now, to which George Dodds responded that a blind horse needs a barn that can adequately handle the horse's needs.
 - g. **A. David Babbitt moved and Kevin Beno seconded the motion to delay decision by one month. The motion carried unanimously.**

Approval of Minutes

1. **Kevin Beno moved and Leslie Lavallee seconded the motion to accept the minutes of the April 14, 2014 meeting as presented.**
- | | | |
|------------------------|--------------------------|------------------|
| A. David Babbitt – Yes | Peter Baskin – Abstained | Kevin Beno – Yes |
| Leslie Lavallee – Yes | Dan Roy- Yes | |
- The motion carried.**

Correspondence

- 1. Sent via e-mail
- 2. Sent via regular mail
 - a. Agenda: Zoning Board of Appeals, May 12, 2014.
 - b. Minutes: Zoning Board of Appeals, April 14, 2014.
 - c. Minutes: Planning and Zoning Commission, April 28, 2014.
 - d. Financial Report: April 2014.
 - e. ZEO Activity Report: April.
- 3. Other correspondence

Applications and Appeals

1. **Variance 14-02:** Rodney Brooks, 42 Center St., Thompson, Map 116/Block14/Lot 4. Side yard setback reduction for septic system replacement and well.
Reason: Septic system failing; need additional land and well.
 - a. **Kevin Beno moved and Peter Baskin seconded the motion to accept the variance application; the motion carried unanimously.** This will be on the June 9, 2014 agenda.
2. **Variance 14-03:** Richard Mead, 685 Thompson Rd., Thompson, Map 122/Block 19/Lot 2 for property at 685-687 Thompson Rd.
Reason: Side yard setback deficiency; location of existing grandfathered buildings.
 - a. **Kevin Beno moved and Leslie Lavallee seconded the motion to accept the variance application; the motion carried unanimously.** This will be on the June 9, 2014 agenda.
3. **Variance 14-04:** Richard Partridge,
 - a. Dan Roy noted that he had been told the applicant's last name was written incorrectly on the agenda as Northridge, instead of Partridge.
 - b. There was no description of what the applicant was asking for on the agenda or on the original application. John Mahon stated that there was an updated application. It was found and read aloud for the board.
 - c. Dan Roy informed the applicant that he would need an official survey to go on record, rather than the informal hand drawn map of the property that applicant originally submitted. He clarified that the application could be accepted as is, but to move forward at the next meeting, the applicant would need an official survey.
 - d. Applicant asked where he would be able to get an official survey, and he was advised that he would need to contact a surveyor, who could be found in a phone book or online.
 - e. **A. David Babbitt moved and Kevin Beno seconded the motion to accept the variance application with the understanding that a full survey be presented at the June 9, 2014 meeting; the motion carried unanimously.** This will be on the June 9, 2014 agenda.

Applications and Appeals Received after Agenda Posted: None**Old Business: None****New Business:**

1. Upcoming ZBA Lecture
 - a. Dan Roy informed the board that he was notified via email from Mary Ann Chinatti of an opportunity to attend a ZBA lecture given by an attorney in Woodstock, CT.
 - b. Mary Ann Chinatti clarified that she thought it would be conducted by Attorney Robertson and Cole, that it would be a ZBA procedures type of work shop, and that there would be a fee. The sponsor is looking for participants to contribute money to make up that fee.
 - c. Dan Roy stated that the fee would be about \$150, and that he was unclear who would be responsible for the fee.
 - d. Mary Ann Chinatti mentioned that the fee could come out of the meetings and workshop line item in the ZBA budget rather than out of pocket.
 - e. Dan Roy clarified that the decision to attend the workshop would be strictly up to the individual. If anyone was interested in attending, Dan Roy would like them to notify him so that Mary Ann could follow through.
 - f. Mary Ann Chinatti volunteered to send out an email directly to each member with more details within the next few days.
2. New Recording Secretary
 - a. Dan Roy welcomed and introduced the new ZBA recording secretary, Tina Fox.

3. David Kress Absence

- a. Kevin Beno mentioned that David Kress informed him he may not be able to attend ZBA meetings for some time. Kevin got the feeling that it could be for an extended period of time. David Kress wanted Kevin to convey to the board that if David Kress needed to be replaced due to his extended absence, he would understand.
- b. Dan Roy acknowledged the information, but made clear that he does not want to see David Kress be replaced yet. He would like to give David time to iron out any scheduling problems he might be having.

4. Potential Walk-Through

- a. Raymond Faucher Sr. suggested members might want to visit the kennel sire for a walk-through of the property, which was discussed earlier in the meeting. It was decided that a group walk-through could not be scheduled, but if anyone wanted to visit the location individually before the next meeting, that would be fine.

Citizens' Comments: None

Commissioners' comments: None

Future Meetings

1. The next meeting will be held Monday, June 9, 2014 at 7 PM in the Merrill Seney Room, Town Hall.

Adjournment

1. **Kevin Beno moved and Leslie Lavallee seconded the motion to adjourn; the motion carried unanimously.**
2. Chairman Roy adjourned the meeting at 9:03 PM.

Tina Fox
Recording Secretary