

**TOWNSHIP OF FRANKLIN  
PLANNING BOARD  
COUNTY OF SOMERSET, NEW JERSEY**

**REGULAR MEETING  
November 7, 2018**

The regular meeting of the Township of Franklin Planning Board was held at 475 DeMott Lane, Somerset, New Jersey and was called to order by Chairman Orsini at 7:30 p.m. The Sunshine Law was read, the Pledge of Allegiance said and the roll was taken as follows:

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**PRESENT:** Councilman Chase (arrived at 7:33 p.m.), Carl Hauck, Alex Kharazi, Robert Mettler, Mustapha Mansaray, Charles Brown, Robert Thomas, Jennifer Rangnow, Godwin Omolola (arrived at 8:00 p.m.) and Chairman Orsini

**ABSENT:** Cecile Maclvor

**ALSO PRESENT:** Mr. James Clarkin, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

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**MINUTES:**

- **Regular Meeting – September 26, 2018**

Mr. Brown made a motion to approve the Minutes as submitted. Mr. Mettler seconded the motion and the roll was called as follows:

**FOR:** Mr. Hauck, Mr. Kharazi, Mr. Mettler, Mr. Brown, Mr. Thomas, Ms. Rangnow and Chairman Orsini

**AGAINST:** None

- **Regular Meeting - October 3, 2018**

Mr. Brown made a motion to approve the Minutes as submitted. Mr. Mettler seconded the motion and the roll was called as follows:

**FOR:** Mr. Hauck, Mr. Mettler and Mr. Thomas

**AGAINST:** None

**RESOLUTIONS:**

- **Vadivelu Dhurgan & Folafunmi Odukoya / PLN-18-00009**

Chairman Orsini made a motion to approve the Resolution as submitted. Mr. Hauck seconded the motion and the roll was called as follows:

FOR: Mr. Hauck, Mr. Kharazi, Mr. Brown, Mr. Thomas, Ms. Rangnow and Chairman Orsini

AGAINST: Mr. Mettler

- **Bridge Acquisitions / PLN-18-00007 (Amended)**

Mr. Healey stated that he had just one suggested amendment to the Resolution. On Page 12, Condition 3, of the Resolution that spoke to the traffic improvements, he suggested that the following sentence be added, "The Developer's Agreement with the Township shall employ a mechanism for determining when the Amazon facility shall be deemed by the Township to be fully operational and the means of reporting and monitoring to be employed necessary to make this determination by the Township".

Mr. Thomas made a motion to approve the Resolution as amended. Mr. Mettler seconded the motion and the roll was called as follows:

FOR: Mr. Hauck, Mr. Mettler and Mr. Thomas

AGAINST: None

**DISCUSSION:**

***Vouchers:***

- **Clarkin & Vignuolo – November Retainer – \$833.33**

Mr. Thomas made a motion to approve the Vouchers as submitted. Mr. Mettler seconded the motion and the roll was called as follows:

FOR: Councilman Chase, Mr. Hauck, Mr. Kharazi, Mr. Mettler, Mr. Mansaray, Mr. Brown, Mr. Thomas, Ms. Rangnow and Chairman Orsini

AGAINST: None

## **PUBLIC COMMENTS:**

Mr. Mettler then opened the meeting to the public for discussion of anything related to Planning that was not the subject of a hearing that evening. Mr. Thomas seconded the motion and all were in favor.

Seeing no one coming forward, Mr. Mettler made a motion to close the public portion of the meeting that evening and Mr. Thomas seconded the motion. All were in favor.

## **HEARINGS:**

- **SOMERSET PROPERTIES / PLN-08-00015**

Mr. Lane Miller, Esq., Attorney, appeared before the Board on behalf of the Applicant, Somerset Properties. Amended Site Plan Approval & Appeal in which the Applicant seeks to construct the same development that was approved in 2008: a one-story 79,725 sq. ft. warehouse building (with 4,300 sq. ft. office space). The Applicant now requires variances from the currently applicable Stream Corridor Protection Ordinance at 415 Weston Canal Road, Somerset; Block 517.01, Lot 8.04, in the M-1 Zone – **CARRIED FROM OCTOBER 17, 2018 – no further notification required.**

Mr. Healey's Planning report indicated that there was a change to the Township Stream Corridor Protection Ordinance (Ordinance #4157-16) since the Applicant's 2008 approval, noting that the ordinance had the effect of changing the applicable regulated areas on undeveloped sites located in proximity to streams. In his report, Mr. Healey stated that the Applicant was seeking Amended Site Plan approval to construct the same development that was approved in 2008, a one-story 79,725 sq. ft. warehouse building (with 4,300 sq. ft. office space) with the site layout essentially the same as previously approved. In the petition, the Applicant now required variances from the currently-applicable Stream Corridor Protection Ordinance, as follows:

- **150 ft. required distance from stream channel:** Generally 50+ ft. to proposed retaining wall (proposed along easterly extent of development) with exception of outfall structure located closer to stream.
- **50 ft. required distance from flood hazard area:** Portion of fire access drive from Weston Canal Road within regulated area.
- **1,677 acres of proposed disturbance within regulated stream corridor.**

Mr. Miller explained that the approvals that were given previously had been granted in 2008 and were back before the Board that evening because the project had not been built and because there was a change in the setback requirements regarding the stream and the stream corridor requirements in 2016. He indicated that they were now seeking to obtain new approvals with variances relating to the stream requirements. He then stated that they had reviewed the reports of the Township professionals and would

discuss some of the comments, but indicated that they would generally comply with all of the comments in those reports.

Mr. Mohammed El-Hawwat, Engineer and Principal of MEH Consulting Engineers, 825 Bloomfield Avenue, Suite 106, Verona, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. El-Hawwat then explained to the Board the nature of the Application and variances that they were seeking regarding the proposed construction. He described the property as being comprised of 10.611 wooded acres and located in the M-1 Zone, with other light industrial uses bordering on the east and south side, PSE&G on the west side and Weston Canal Road the north side. He then described the proposed building, indicating that it was going to be 79,725 sq. ft. that included 4,300 sq. ft. of office space. Mr. El-Hawwat testified that the proposal being presented that evening was for the same footprint of the building that was approved in 2008. He then testified that the proposed total impervious coverage was going to be 31.94%, while the ordinance allowed for 60%, and a total building coverage of 17.25% where 50% was allowed. He then told the Board that the total floor area ratio was 0.172 vs. .5 allowed. Mr. El-Hawwat then explained that they were proposing 92 parking spaces, 42 of which would be for future use and would be "banked". He then told the Board that the total number of loading docks was eight (8). He then showed the Board the areas of encroachment on the site plan and entered into the record as Exhibit A-1, a colorized version of the plan, Sheet Y3 – Demolition Plan. He then showed the Board the 150 ft. corridor buffer from the stream (shown in yellow) and the 50 ft. stream corridor buffer from the 100 year flood zone (shown in red). He noted that, combined together, the exhibit showed the disturbed area within the buffer. Mr. El-Hawwat then drew the Board's attention to Sheet Y4, which showed the combined disturbed area of the 100 ft. as well as the 50 ft., which also was submitted with the Application, and marked into the record as Exhibit A-2. Mr. El-Hawwat then told the Board that the area of disturbance was comprised of 1.677 acres. In the design of the building and the improvements, he indicated that they did take the stream corridor into account to try to minimize any impact or need for the variances. He told the Board that they had a retaining wall along the eastern side of the parking lot to minimize any further disturbance within the flood plain. Mr. El-Hawwat added that if he designed the building so that it could comply with the current ordinance, without the requirement of a variance, he testified that he would not be able to design an industrial building that would be feasible or functioning because it would have to be a thin, long and narrow building that was not known in the industry. He added that the building was presently designed at 75 ft. wide x 420 ft. long to accommodate the loading docks.

In addressing the Township Planner's report, Mr. El-Hawwat noted that comment #1 indicated that the Applicant had positioned and sized the building and associated improvements so as to minimize disturbance to the stream, with the exception of the storm water outfall. Mr. El-Hawwat then indicated the area of the storm water outfall on Exhibit A-2. He noted that they had already filed with the NJDEP to gain approval, but that they had not yet finished their review. He did state that in a recent meeting with the NJDEP after the plan submission, they did want the Applicant to move the discharge area away from the buffer area, which he testified that they were working on at that

point, which would minimize the disturbance there. Mr. El-Hawwat then told the Board that the original approval included a detention basin, but were requested by the NJDEP to change that into an infiltration basin to recharge the aquifer and add a small detention basin to take care of the runoff in the front parking area as well as another small detention basin to take care of the area that they could not bring back to the basin because it was too low. Before that goes to the stream, they also wanted to see some sort of recharge small basin as well. Mr. El-Hawwat then indicated that if the NJDEP follows through on their current thought process, it would involve another 1,200 ft. (+/-) of disturbance and the possible elimination of the storm water discharge. Mr. El-Hawwat indicated that the tree replacement calculations noted in item #4 of the Planner's report could change as a result of the storm water changes being proposed by the NJDEP.

Chairman Orsini then indicated that regardless of what the NJDEP recommends for storm water management, they would still be responsible for providing compensation to the Township's Tree Replacement calculation. Mr. Miller stated that they were prepared to comply with the requirements of the Township.

Mr. El-Hawwat then drew the Board's attention to the CME Engineering report, stating that the number of acres of disturbed area in items #2 and #4 and #7 in their report could change based upon the NJDEP recommendations. He did indicate that they would be able to provide a current copy of the NJDEP General Permit #11. In discussing item #6 in the report, Mr. El-Hawwat asked that a professional engineer from his office be allowed to provide and submit CAD-generated data files as opposed to a licensed land surveyor since they already had that information in their offices.

Mr. El-Hawwat then provided the official address of the site as 415 Weston Canal Road, Somerset, NJ 08873, as requested in item #16 of the Township Engineer's office.

Other than those discussed, Mr. El-Hawwat indicated that they would be able to comply with all other comments in the professional reports.

Mr. Hauck then asked Mr. El-Hawwat if they had done perc tests on the site, and Mr. El-Hawwat answered in the affirmative. They then discussed the possible changes suggested by the NJDEP and how it would affect the number of trees needed to be removed from the site. Mr. El-Hawwat indicated that it might affect 5-6 additional trees on the site. Mr. Hauck then discussed requirements of the water department, and Mr. El-Hawwat testified that they would comply with all requirements.

Councilman Chase then opened a discussion regarding the location of the trash enclosure. Mr. El-Hawwat discussed the location of the trash enclosure near the retaining wall and how that location would be the easiest way for the truck to pick it up. A discussion ensued regarding the type of plants located along the perimeter of the building. Mr. El-Hawwat stated that the Delaware & Raritan Canal Commission (DRCC) required additional landscape buffering to the canal. Mr. El-Hawwat indicated that he could ask the DRCC about the type of species of plant used in that area, asking if they

would be able to keep what naturally was growing there now. A discussion ensued among the Board.

Mr. Healey asked if there were any comments from the DRCC and County that might change the site plan. Mr. El-Hawwat indicated that there was an existing utility pole right in front of the new driveway and asked the County if it could be relocated. He then told the Board that the County asked them to provide a letter from PSE&G that they would relocate the utility pole, which Mr. El-Hawwat stated that they were finally able to obtain. He told the Board that the DRCC comments were on hold until they got the final approval from the NJDEP. Mr. Healey then asked Mr. El-Hawwat to summarize again the nature of the possible changes that might be made to the storm water management system for their edification.

Mr. Robert Freud, Planner employed with Dynamic Engineering, 1904 Main Street, Lake Como, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Freud testified that he had reviewed the report prepared by Township Planner, Mr. Mark Healey. He then discussed the variances being requested and the need for them, stating that the Application met all of the bulk criteria set forth in the M-1 Zone. Mr. Freud then discussed the variance required due to the ordinance, adopted in June of 2016, with regard to stream corridor preservation. Mr. Freud testified that he agreed with Mr. El-Hawwat's testimony that he designed the building in such a way as to minimize the disturbance and encroachment. He then spoke of the five (5) primary tests that were outlined in the ordinance when evaluating whether or not those conditions were satisfied. The first he detailed was that it would prove to result in a particular hardship and that the building could not be located outside the undisturbed areas. Mr. Freud testified that the engineer's testimony and the exhibits clearly indicated that it would be a hardship to try to design an industrial building in the M-1 Zone and that any conforming proposal would end up with an unsuitable building for that type of use. He noted that building coverages were designed below the 50% allowable in the zone and impervious coverage was well below the 60% allowable, along with the use of retaining walls, minimizing the impacts on the stream corridor. He then told the Board that the Application was designed to minimize the extent of disturbance within the undisturbed areas with the employment of methods to minimize the amount of tree removal, grading and fill within the stream corridor and employ sedimentation and erosion control measures. Mr. Freud then testified that the building had been pushed as far west as possible on the site, up to the setback line, to keep it away from the stream corridor, employing the use of banking of parking spaces to minimize impervious coverage as well as the construction of a retaining wall along the eastern portion of the site. Referencing Mr. El-Hawwat's earlier testimony, Mr. Freud stated that they would be employing erosion control measures and storm water management measures as defined by the NJDEP as well as the DRCC. Thirdly, the disturbance to the undisturbed area was eliminated, where possible, and minimized where not possible to eliminate, thereby reducing the size of the project. He added that the project was designed by the site engineer to minimize the intensity of development on the site to a point where it was suitable for the use. Next, areas of temporary vegetation would be replanted with indigenous and non-invasive types of vegetation and

that the Applicant had provided a landscape plan as well as a soil and sediment control plan that included detailed plantings according to Township, Soil Conservation District and DRCC standards. Finally, Mr. Freud indicated that a condition of any waiver was that submission of proofs of permits from the NJDEP and DRCC would be provided. He then discussed how the Application would be looked at, from 1) a C-1 Hardship variance perspective due to the subject lot being a long, narrow lot and encumbered along the entire eastern lot line by the Randolph Brook, the flood hazard area and the stream corridor buffer which limited the usable space and the ability to provide a development that was entirely outside of that area. The second perspective of the variance could be a C-2 variance where it can be viewed by looking at the positive and negative criteria. Mr. Freud then pointed to the positive criteria, noting that the project met all the bulk standards throughout the M-1 Zone, and that any alteration of the development would result in a building structure that would not be practical for an industrial use that the M-1 Zone promoted. He then brought the Board's attention to how the purposes of the Municipal Land Use Law (MLUL) would be advanced through the Application, including structures designed above the flood elevation to minimize impacts to those areas and include a fire access roadway for public safety and emergency vehicle access. Mr. Freud then testified that the Application met the goals of the master Plan and the zone plan by providing industrial space within the M-1 Zone along Weston Canal Road along Rte. 287. He then discussed the negative criteria, noting that the impacts to the stream corridor were being mitigated through the use of walls to limit the encroachment into that area by shifting the development as far west as possible, possible elimination of the GP-11 outfall to the stream and compliance with NJDEP and DRCC standards. He then discussed the suitability of the project on the subject property.

Mr. Clarkin, Board Attorney, asked Mr. Freud his opinion on whether and how the benefits to Franklin Township substantially outweigh any negatives, and Mr. Freud rephrased his testimony to answer that question.

Chairman Orsini made a motion to open the meeting to the public for questions and comments. Mr. Mettler seconded the motion and all were in favor. Seeing no one coming forward, Mr. Mettler made a motion to close the meeting to the public. Mr. Thomas seconded the motion and all were in favor.

Mr. Miller then gave his closing statement and thanked the Board for their consideration.

Mr. Brown made a motion to approve the Application with Variances. Mr. Clarkin added some conditions, as follows: Should the NJDEP approval result in a revision to the site plan deemed by the staff to be material, then the Applicant would be required to return before the Board. Secondly, he stated that the meter pits that Mr. Hauck referenced were also a voluntary condition and included in the approval. Mr. Omolola seconded the motion and the roll was called as follows:

FOR: Councilman Chase, Mr. Hauck, Mr. Kharazi, Mr. Mettler, Mr. Mansaray, Mr. Brown, Mr. Thomas, Ms. Rangnow and Chairman Orsini

AGAINST: None

- **SAMIR SHEHATA & COCO CHEN / PLN-18-00002**

Mr. George Pressler, Esq., Attorney, appeared before the Board on behalf of the Applicant, Samir Shehata & Coco Chen. Mr. Pressler indicated that they were before the Board that evening to obtain Minor Subdivision approval in which the Applicant wanted to remove the existing home and accessory structures, subdivide property into two lots and create two lots with two single family homes at 48 Kossuth Street; Block 176, Lot 15.01, in an R-7 Zone - **CARRIED FROM JULY 11, 2018 – notifications required.**

Mr. Healey's Planning report indicated that the Applicant was seeking to subdivide the site into two lots, as follows:

- **Proposed Lot 15.02** – 6,682 sq. ft. in size with 66.82 ft. of frontage.
- **Proposed Lot 15.03** – 6,683 sq. ft. in size with 66.83 ft. of frontage.

The existing home and accessory structures will be demolished and a new single family home would be constructed on each lot – they would both be served by public sewer and public water.

Variances required are:

- **Lot Area:** 7,500 sq. ft. minimum required – 6,682 sq. ft. proposed (Lot 15.02).
- **Lot Area:** 7,500 sq. ft. minimum required – 6,683 sq. ft. proposed (Lot 15.03).
- **Lot Frontage:** 75 ft. required – 66.82 ft. proposed (Lot 15.02)
- **Lot Frontage:** 75 ft. required – 66.83 proposed (Lot 15.03).

Mr. Pressler then gave his opening comments, reiterating the variances required.

Mr. John Hansen, Engineer & Planner employed with Engineering & Land Planner Associated, 140 West Main Street, Highbridge, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Hansen entered into the record as Exhibit A-1, dated 11/6/18, an aerial photograph of the site. He discussed what was shown on the exhibit, noting that the single family home and accessory structures on the site were less than aesthetically pleasing at the moment and surrounding by fencing that was in disrepair. He pointed out that homes in the area were generally a certain size, with a footprint of 1,000 to 1,000 sq. ft. that was fairly consistent throughout the neighborhood. He did tell the Board that there were different styles of homes (Craftsmans, Cape Cods, Bi-Levels, etc.). He then entered into the record as Exhibit A-2, dated 11/6/18, an enlarged copy of the Township tax map. Mr. Hansen stated that in utilizing the exhibit,



he wanted to show the Board how the subject property related to the other properties in the neighborhood that happen to be sub-standard with respect to lot area in the zone. He noted that most of the substandard lots were comprised of 5,000 sq. ft. lots (50 x 100), less than the 7,500 sq. ft. that was required in the R-7 Zone. He then showed the Board some lots in the zone that were approximately 3,500 sq. ft. lots with a home built on them and were functioning fine. Mr. Hansen then referred to a board with the plans that were submitted with the Application, Sheet 3 of 5, the Site Grading, Utility and Soil Erosion and Sediment Control Plan. He noted that the plan was to remove all the structures on the property, including a pool, carport, house in disrepair, the sheds, etc., and sub-divide the property into two (2) equally-sized lots, but just short of the 7,500 sq. ft. requirement for the zone. Mr. Hansen then explained to the Board that each lot would be developed with a single family home that was consistent with the size and the shape of those already existing in the neighborhood (32 ft. x 32 ft. homes) plus a one-car garage. He then showed plans for the homes that were submitted with the Application and displayed the architectural plans of the proposed homes that he described as in the transitional/colonial style and were compatible to what was in the neighborhood.

Mr. Healey then asked if the architectural plans were submitted by Chris Blake on 9/10/18., which was part of the plans that were submitted in the Board's packet. Mr. Hansen also concurred.

Mr. Hansen, after reviewing the zoning ordinances and Master Plan of the Township, stated that he felt the variances they were seeking could be granted under the C-2 criteria if one or more purposes of the Municipal Land Use Law (MLUL) were met and that they showed that there was no substantial detriment to the zone plan, the zoning ordinance or public good. In his opinion, Mr. Hansen stated that he felt that the general welfare would be advanced and a desirable visual environment would be created by designing conventional lots that were consistent and compatible with the surrounding area, which would then allow buildings that were consistent and compatible to be constructed. That, and in accordance with the storm water management that was proposed and along with landscaping and buffering that would be included in connection with the Application, Mr. Hansen felt that it promoted an enhanced visual environment as well as promoted adequate light, air and open space. He added that by removing the existing structures they would be able to conform to the setbacks of the existing properties and the R-7 Zone. Mr. Hansen then addressed the negative criteria, stating that he did not feel that there were any substantial negative criteria resulting from the proposal. He also testified that he didn't believe that the zoning ordinance or zone plan would be impaired and that it was consistent with what was included in the Master Plan by being redeveloped by in-fill properties.

Mr. Pressler then interjected by saying that they were also requesting a waiver for sidewalks since there were no sidewalks in the area. Mr. Hansen then referred back to Exhibit A-1, showing that there were no sidewalks on their side of the street in the aerial photograph.

Chairman Orsini then asked if Mr. Hansen reviewed the Township Engineer's report. He answered in the affirmative and that he felt that they could comply with all comments in the report. Mr. Hansen also indicated that he reviewed the Township Planner's report and could comply with all of those comments as well. He then told the Board that they had a Delaware & Raritan Canal Commission (DRCC) exemption.

Councilman Chase asked Mr. Hansen why he had to take down the 30" oak tree on the property since it did not appear to be on the footprint of the proposed homes. Mr. Hansen felt that when constructing the new home, the canopy and root system of the 30" tree would be within the foundation area.

Chairman Orsini then stated that he felt that street trees would be a requirement. Mr. Hansen stated that they did propose street trees on the plan.

Mr. Healey then opened a discussion regarding the architectural plans of the proposed homes on the site. He indicated that the plans that were being presented as part of the testimony that evening should be the exact homes that end up being built and should be a condition of any approval. A discussion ensued.

Mr. Clarkin then asked what sheet of the submission paperwork was the Tax Map on that was being shown in Exhibit A-2. Mr. Hansen stated that it was not the entire tax map and that it didn't have a sheet number referenced on it. Mr. Hansen then testified that he took his analysis out approximately 300 ft. from the subject property. Mr. Clarkin then asked if the Applicant had any opportunity to purchase any additional property to make the lots conforming or less non-conforming. Mr. Hansen indicated that there was no property to purchase to the north based upon the location of the building and driveway structures, but could not necessarily speak to the property to the south. Mr. Hansen did testify that the lot to the south of the subject property was of similar size (13,365 sq. ft.) and some other lots in the area that were greater than the minimum, but still not as large as the subject property. Mr. Clarkin then asked Mr. Hansen if he could testify that the benefits to the Township substantially outweigh any detriments. Mr. Hansen testified that he believed that the benefits substantially outweigh the detriments in that by creating the subdivision, they were creating a conforming streetscape that would be a benefit to the travelling public and to the neighboring homeowners. He indicated that he felt that the property would either sit untouched in its present condition or that a very large home would be built there that was inconsistent with those in the neighborhood.

Mr. Mettler made a motion to open the meeting to the public for questions or comments. Mr. Omolola seconded the motion and all were in favor. Seeing no one coming forward, Mr. Mettler made a motion that the public portion of the meeting be closed. The motion was seconded and all were in favor.

Mr. Kharazi made a motion to approve the Application with Variances. Mr. Thomas added that the Applicant needs to construct the home design and size that was made part of the architectural plans. Mr. Kharazi amended his motion to include Mr. Thomas'

statement. Mr. Clarkin then suggested that they also include that the Applicant preserve the 30" oak tree, if possible, and that the Applicant build the same style and size of the home substantially as it was depicted and testified to during the hearing or they would have to return to the Board. Additionally, the approval was given for a waiver to provide sidewalks, but required the Applicant to provide payment in lieu. Mr. Kharazi once again amended his motion. Mr. Omolola seconded the motion and the roll was called as follows:

FOR: Councilman Chase, Mr. Hauck, Mr. Kharazi, Mr. Mettler, Mr. Mansaray,  
Mr. Brown, Mr. Thomas, Ms. Rangnow and Chairman Orsini

AGAINST: None

### **COMMITTEE REPORTS**

No reports were discussed.

### **WORKSESSION/NEW BUSINESS:**

There was no work session or new business discussed.

### **EXECUTIVE SESSION:**

The Board did not enter into an Executive Session that evening.

### **ADJOURNMENT:**

Vice Chair MacIvor made a motion to adjourn the regular meeting at 8:40 p.m. Mr. Mettler seconded the motion and all were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
November 26, 2018