



CITY OF SARATOGA SPRINGS

PLANNING BOARD

City Hall - 474 Broadway
Saratoga Springs, New York 12866
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MARK TORPEY, Chair
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HOWARD PINSLEY
JANET CASEY

May 22, 2015

John Franck, Commissioner
Office of Commissioner of Accounts
City Hall - 474 Broadway
Saratoga Springs, New York 12866

RE: Advisory Opinion to the City Council
PB#15.013- Solar Access 6.4.8- Proposed Text Amendment

Dear Commissioner:

Pursuant to your request dated April 10, 2015, the Planning Board considered the City Council's proposed amendment to Zoning Ordinance 6.4.8 Solar Access at its April 22, 2015 and May 13, 2015 meetings:

"Except [for properties located in a Transect-6 Zoning District or] as otherwise provided by this Chapter, no property owner may erect a structure or allow a tree or other flora to cast a shadow upon a solar collector greater than the shadow cast by a hypothetical wall six feet high located along the property line between 8:00 a.m. and 4:00 p.m. Eastern Standard Time from September 21 to March 21.

In addition, any further advice, guidance, alternative language or approaches that the City Planning Board may provide regarding how this might otherwise be revised, such as including other zoning districts would be welcome."

Within the discussion, the Planning Board noted that there are 4 known existing installations within the Transect-6 District:

Downtowner	413 Broadway
Four Seasons	33 Phila Street
Mouzon House	1 York Street
Uncommon Grounds	402 Broadway

The Planning Board agrees that the topic of solar access in the T-6 District is complex and bears consideration of a balance of varied City desires. Perhaps most significant is the district's encouragement of the City's highest land use intensity, which translates into a large portion of site build-out and structure heights up to 70 feet. We note current T-6 District land uses range from surface parking lots to multi-story structures. We feel that this range,

and continued redevelopment, creates a concern for potential future conflicts with this provision.

The proposed amendment removes a significant impediment to the development and redevelopment of the critically important downtown core within the T-6 District. In the absence of the amendment, a property owner could severely inhibit (or perhaps even prohibit) development on his neighbor's property simply by erecting a solar collector.

The Planning Board finds that the proposed revision:

- Is consistent with the Comprehensive Plan
- Is not contrary to the general purposes and intent of the Zoning Ordinance

The Planning Board issues a favorable advisory opinion for the proposed amendment with a 5-2 vote (In favor: Lewis, Van Wagner, Gaba, Pinsley, Bristol; Opposed: Torpey, Casey).

From the discussion, the Board offers two recommendations for the City Council's consideration:

1). Additional neighbor notification

We note that per current City regulations, most solar installations are permitted accessory structures. Typically the only land use board review is with the Design Review for Historic or Architectural Review, where required. While understanding the Design Review Commission's role is limited in purview, we recommend that additional neighbor notification be considered in cases of solar collector installation. This will ensure that adjacent property owners are made aware of a proposed installation and, where applicable, of the potential impact on their property.

2). Provide a comprehensive review and consideration of solar energy provisions within the City's upcoming Unified Development Ordinance (UDO) effort

As the solar energy field and technology continue to evolve, we recognize the complexity of the topic and related provisions within the City's Zoning Ordinance. The Planning Board understands that the comprehensive UDO effort will be underway in the near future. We strongly encourage the incorporation of a comprehensive, thoughtful approach to solar energy for our community and how a balance may successfully be achieved with other expressed City goals such as higher intensity of infill and new development within the City's special development areas, historic preservation, and urban forestry policies.

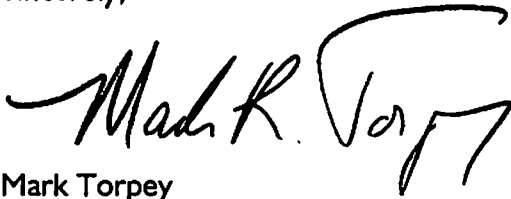
Attached, please find draft minutes from the Planning Board's April 22, 2015 meeting that provide specific discourse on items that the Board feels should be considered within the future UDO effort.

For clarification purposes, the following are procedural steps that must occur prior to City Council action:

- A public hearing by the City Council for this proposed zoning revision.
- Review by the Saratoga County Planning Board (General Municipal Law §239-m)
- Compliance with the State Environmental Quality Review Act (SEQRA) by the City Council including an evaluation of the SEQRA Short Form Part II. The applicant has submitted Part I of the SEQRA Short Form with the application.

If you have any questions regarding the above comments, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Mark R. Torpey". The signature is fluid and cursive, with a large, sweeping flourish over the "y" at the end.

Mark Torpey
Chair

cc: Mayor Yepsen
Commissioner Madigan
Commissioner Mathiesen
Commissioner Scirocco
Kate Maynard, AICP, Principal Planner



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APRIL 22, 2015

Draft Minutes

Advisory opinion from the Planning Board City Council for the proposed Zoning Ordinance Text Amendment Section 6.4.8 Solar Access.

Mark Torpey, Chairman read into the Record a letter from the City Council requesting the Advisory Opinion from the Planning Board for a Zoning Text Amendment Section 6.4.8 Solar Access, specifically noting Commissioner Madigan's requested change as follows: "Except for properties located in a Transect 6 Zoning District, or as otherwise provided by this chapter, no property owner may erect a structure or allow a tree or other flora to cast a shadow upon a solar collector greater than the shadow cast by a hypothetical wall 6 feet high located along the property line between 8AM and 4PM EST from September 21, through March 21." This mentions specifically that what we are being asked to consider is the properties located in a Transect-6 District, and whether that condition applies to a T-6 zone. Any further advice, guidance or approaches that the City Planning Board may provide regarding how this might otherwise be revised such as including other zoning districts may be welcomed. This is the extent of what we received, and I had a chance to see the City Council webcast and hear the discussion they had on the issue. But, that is the only thing I think we have, as a Board, at our disposal to broach the subject. Is that a fair statement, Kate? This is what we have received to date?

Kate Maynard stated that is what we have received to date from the council in terms of their request.

Mark Torpey, Chairman stated okay and the City Council is required, whenever they are considering a change in language in the text of the ordinance to seek PB input on that. I think that's a statutory requirement for the council. So this is why they are coming to us, they need to. This is part of the process. We as a Board have 60 days to respond to this request. The request, I assume being dated April 7, 2015, and the 60 day clock starts at that point. We need to do what we can to respond within 60 days of that. We can ask for an extension if need be, but this is what we are being asked to do. The language in the ordinance has actually been on the books for many, many years. I don't know, Kate, if there's any new information we have?

Kate Maynard, Principal Planner stated I'd be happy to run through a few things that may help guide you as far as content.

Mark Torpey, Chairman stated that would be great. Do you want to provide that now?

Kate Maynard, Principal Planner stated sure. As was mentioned, there is the 60 day window provided for the Board to make an opinion. The scope of the Planning Board review, just to remind you, is to include, but not limited to, whether the proposed zoning revisions are compatible with the Comprehensive Plan, and if they are in line with the general purposes and intent of this chapter. In terms of walking you through this, a little bit of context: Starting at the federal level, as you can imagine, there has been a lot of activity in terms of the increased solar installation, particular to areas you would expect. California has led the charge. There are many states now; NY is one of them, that have really seen an increase in solar energy in terms of installation in recent years. So at the Federal level, just establishing exactly where to start, there is not a common law provision for the protection of solar rights. This is something that's really been handed down to the states, as far as I can tell. So state by state, it varies in how it's treated. NYS is one of 40 states that has a solar access provision; they allow for the consideration of solar easements, but they also leave the option for a solar rights provision to the local level. At the local level here in Saratoga Springs, how we look at things currently is that solar installations are considered to be accessory structures and are permitted in all districts. Review is not triggered unless the use does not meet the accessory use. So for example, a larger installation where it is a primary or principal use. In particular, there would be questions about that. Typically, this is not something the Planning Board currently sees for review in its application. What does occur, in terms of Land Use Board approval, would be any particular variance that's triggered, area requirements, or architectural or historic review with the DRC. And that's in the select areas that the DRC has jurisdiction. So if it's in those parameters, the review is then triggered. I did receive a question about when this was introduced, so we looked at it, and it seems it was put in place in the 1990 Zoning Ordinance. In terms of context, Bob Bristol has shared with us that there were County building activities at least as early as 1970s in terms of installation. An office building, he mentioned had a solar installation placed on one of its buildings in the back wing. That was when we saw some communities start to provide some regulations in regards to solar installation and some of the questions that were arising. In the 90's, when the City actually introduced this item, the language was virtually identical to what is currently in place. In terms of just basic framework, you also asked on Monday where existing solar installations in the T-6 were located. We have 4 locations that currently have solar installations in that district. They include the Downtowner, Four Seasons, Uncommon Grounds, and the Mouzon House. There are examples in other districts, but for the purposes of this item, I wanted to make sure you had that information in regards to solar installations in that particular area. We talked about Monday one thing for the Board to consider is the understanding of the context of different policies and desires that have been stated by the City. So for example, the City to date has shown strong support for energy efficiency, alternative energy with residential and commercial structures. This has been most recently reflected in the draft Comprehensive Plan, which is being considered for adoption by the City Council.

The City is also stressing the desire for infill and development of the concentrated centers of the community. These include the special development areas such as downtown, Weibel Avenue and additional areas. We consistently call out for Downtown to be the most intense center of the community with the highest mix and intensity of uses. The intention of build out and build up in intensity is again something to consider. The building height as you know in the T-6 is considered up to 70 feet. Within our downtown area we have different land use types and intensities. Everything from surface parking lots on upwards to existing or recent development activities at that 70 foot maximum. There is also consideration for looking at the impact of the amendment on existing solar installations in the future. There are 4 existing solar installations which have been provided.

I have just had the opportunity to dig in within a short period of time, there are a number of materials out there with the field still evolving quite rapidly but there are a number of approaches that are being considered by communities and being implemented. Everything from solar access permission of varying type scenarios, solar easements, which for example when a property owner actually secures or provides for the continued ability to have the solar access to collectors. There is everything from incentives to restrictions. Particular restrictions in parts of town. Boulder, Colorado has a very geographically focused approach. They actually vary their approach according to portions of the City. Residential is different from their downtown area. There has been a lot of careful Comprehensive Planning in the field which communities have applied in various ways in terms of what fits that community. To conclude regarding the longer term side of solar energy regulations- we are in the beginning of the process of developing our Unified Development Ordinance which will entail the comprehensive review and substantial update of the Zoning Ordinance and subdivision regulations. This work is to be completed through a grant from NYSERDA. One of the goals the City pledged is sustainability more so throughout our regulations. So we know that we need to look at alternative energy in a comprehensive manner in a way to fit our community's needs, and especially balancing interests. Items such as historic preservation, concentrated development and infill where it contrasts with solar energy, urban forestry and especially the adopted master plan which calls out for large species of trees in all parts of the City are all items which need to be considered from a balanced, comprehensive approach. The framework of that we are expecting within the next 12 months to be completed.

Tom L. Lewis questioned if the Unified Development Ordinance is not the new Comprehensive Plan Committee, or that has nothing to do with that.

Kate Maynard, Principal Planner stated it is taking the Comprehensive Plan policies and looking to implement them within two very important implementation documents.

Tom L. Lewis asked if the Committee Mark Torpey was on was separate from this.

Kate Maynard responded yes.

Mark Torpey, Chairman stated he appreciated Kate putting this information on the record. This is a fairly complicated issue. It is a simple text amendment proposed to us to consider and provide an opinion on but there is a lot to this. I do want to spend

a little bit of time setting the stage and speaking about some of the nuances. I don't want to get crazy about it but put everything out on the table, so we have the ability to make a decision. I feel I would like to share a number of nuances about what this is about and setting the stage going forward. I can do that but if timing for you guys is such that you want to get your points across, I would be open to have you share public comments at this point if you have some ideas to express and then we would obviously engage in conversation as well. Would you like this opportunity to provide some public comment? There are only two people in the audience who would like to speak. Before I allow the public to speak there is one thing to note for the record. Harry Moran is the president of the group Sustainable Saratoga. I am a Board member of Sustainable Saratoga. I wanted to disclose that since I have been publicly criticized for not disclosing for a number of reasons. I have no knowledge of what Harry is going to say or helped him prepare any statements or anything. This is merely a disclosure.

Harry Moran, President of Sustainable Saratoga. We as an organization have two primary sustainability goals. The first is to encourage the use of renewable clean energy, to be sure we are careful stewards of resources, minimize our footprint and the damage to our environment and move us closer to energy independence. The second is we advocate for a built environment in our downtown core that supports the sustainable robust economy and makes the City attractive for the visitors and residents alike. As it has been alluded to, the issue of shading of solar panels in the area by taller buildings is a really good example of how complex it can sometimes be to achieve the desired balance between these two priorities. That said we believe that a win-win scenario can get identified but some time needs to be spent carefully weighing various options. We therefore respectfully request this Board to vote in a time necessary to fully explore this matter. As you know, it has been stated 60 days to provide an Advisory Opinion to the Council. So there is adequate time to give this the attention and consideration it deserves. We have been continuing to research this issue and hope to have some additional comments and perhaps some suggestions very soon. This is something we are very actively working on.

Mark Torpey stated if my fellow colleagues will bear with me I just wanted to put a few things out on the record. It is in my opinion a complicated issue, and I think it does warrant a fair amount of conversation. Let me go through my list. I think the first thing Kate brought up was a very important thing to bring up. We are in the process of selecting a contractor to work to develop a Unified Development Ordinance and if you look at the basic elements that we are stressing in that Ordinance the contractor will be looking and focusing on renewable energy and sustainability as a critical part of it. So there is an opportunity through that mechanism to get a lot of good information and not look at this strictly for solar but a broader look at renewables and how they work together. Be it geothermal, solar combined heat and power, there are a lot of different technologies that would qualify as renewables. It seems to me that the Comprehensive look is really something that should be done first, I appreciate the fact that we are being given an opportunity as a Board to weigh in and to provide an Opinion but my feeling is that having that opinion support the further analysis at the UDO level and that development I think would be helpful. I think that they would welcome our comments as a Board as they consider that Ordinance. That is number one. That is going on in parallel to this. I will say

that the specific language that is in the Ordinance is problematic and I wanted to point out a couple of items. As I read through it, the terminology that is used such as solar collector. If you go into the Ordinance's definition section, there is no definition for what a solar collector is. A lot of the other things are spelled out reasonably clearly but there is nothing in there for solar collector. It could be PV which is an electric conversion of sunlight into electricity; it could be thermal energy that is produced to provide hot water. You could argue that passive solar orientation of a building that is just there to capture heat in a passive format qualifies. People will put covers over their swimming pools to provide heat from the sun. There are so many definitions of what a solar collector could be that it warrants some thought in terms of how we articulate this in our recommendation. Maybe better outlining the sandbox around the definition. The whole notion of a six foot high hypothetical wall around the property line in a T-6 zone, there are zero foot setbacks around the entire property, so in essence the building is built to the property line, and there is a minimum requirement in terms of height of two stories. What we are required to do to push in the direction of increased density of mixed-use developments. We have an inherent conflict just by definition the way the thing is structured. Six foot at the property line, with zero foot setbacks and a two story requirement in a T-6. This does not make any sense. Also, if you look through the date that is provided as a window of where we consider this shading, it talks about September through March. Really at the end of the day December 21, is the only day that really matters, which is when the sun is at the lowest elevation in the sky, casts the biggest shadow. So, if we are going to be doing this right that is the design point we look to when we are making the decision. I don't know why it is over a broader time range. So, those are some points I have just relative to the way it is written. It is very problematic from my standpoint. I was glad that Kate mentioned, I didn't realize what the total number of solar installations was for T-6. So, I was glad we actually had a number on it. I think that is helpful. 4 installations, I will say that with respect to the Downtowner Motel which I know quite well, because last year they had some bikes they were doing an experiment with the bikeshare and so I had a chance to meet the proprietor of the Downtowner and talked to her about some of the things she is doing with the hotel. I was really kind of excited, she is not only using the solar thermal panels for saving money, she has solar thermal panels on the roof but she has also built in a marketing program to try to broadcast the fact that her business is green. So, there is more to it in terms of the benefit that is accruing to the Downtowner, in terms of increased potential room sales, and just broadcasting the green emblem that is serving to their advantage. When we are looking at the impact that a decision like this can have it is more than just the cost associated with the lost revenue from reduced natural gas prices or electricity costs. I wanted to make that point. The one thing that we do not have is a complete inventory of all the potential future conflicts where a "short building" considering solar may be located next to a building or lot that is looking to expand vertically, so you have got our 4 existing situations where you have solar installed, you also have a consideration for future installations that may be considering it. This is sort of what I would call a backwards look as well as a forward look as we consider this issue. I do think there are many future conflict areas as we continue to encourage high density mixed use development you are going to see more and more of these conflicts. Small buildings, tall buildings, we are at a state of development that is going to present more and more conflicts. Even though this is the first time this provision has ever been pulled or referenced in any of the

discussions the Planning Board has ever had that I am aware of. With that said, and I appreciate your patience on this I also want to identify a couple of macro level trends in the industry that are I think affecting and should affect how we look at this activity and this particular language. First and foremost there has been an increased propensity for folks to lease systems. This is a brand new concept that Solar City has been pushing for a long time. At this point in time the majority of the systems that are being installed now are actually leased. A third party owns it, they come in and in essence put it on your roof, they provide you power, you agree in essence to purchase the power from them. It is a private company that is making the initial investment. More and more installations are moving in that direction. So, why am I bringing that up? We need to consider the impact of a building going up, its impact on an installation in the future or maybe someone's existing installation. I think personally there is a big difference between if the impact is impacting a private company that made the decision to put those systems in and took that business risk, as opposed to a private homeowner or a business who made that expense on their own and actually owns the system. The impact to them is far greater than if it is a business who is leasing a system. So, that is something I think would be worth considering in our debate. The other trend, thanks to China and Germany is the cost of these systems is coming down significantly. It has been a tremendous decrease in price recently and what that is allowing to have happen is the pay back periods are faster. So, if somebody makes an investment in a solar panel and right now the pay back periods are on the order of let's say 6 years it is a rough justice to it. It used to be 15 years. So it used to be you had to have your system run for 15 years to get your money back. Now, it is 6. So, if somebody puts one in you at least have a shorter period of time where you are potentially in a loss revenue standpoint if somebody blocks your access. So there is that element that is working in that direction to I would say minimize the risk of the asset not providing the economic pay back to justify the investment. Community solar is the third item. Where we have an opportunity, the laws and regulations are not in place yet but they are soon to be in place. They are very close on the horizon. Regardless of your orientation, you can procure and purchase solar power produced from a location nowhere near where you are. So, you have the ability to contractually save money to make the investment but there is no need to put the solar panels on your roof. So, there is that trend as well. I think we need to be aware of that because businesses may not necessarily have to put solar panels on their roofs at this point. If the laws change, there are other options to be green. To convey that green if that is part of their business strategy. The last item on the trends. The building integrated PV market which basically means having your façade of the building and having your windows, having every facet of the structure creating electricity or clean energy those technologies are happening more and more so the trend towards having something on your roof facing south as the only opportunity is becoming less and less important. As the cost has come down for these other technologies. So, there is an ability we can work to try to promote solar in a more holistic fashion throughout the City down the road without having to have the fixed array you were typically thinking about. I do think these things are worth bringing up. I think if we are looking at how to deal with this issue these are important. I wanted to bring up two other items and then I will open it up for discussion. If a business purchases the system and doesn't exercise a lease, and roughly speaking about 40% of businesses and folks spend their own money, they buy it themselves and maybe 60% are actually leasing. This

is the ratio. If a business is going to put their own money down on this, this purchase, there are a couple of ways which they can finance this. One way is to actually pay the thing off on their property taxes, it is called PACE financing. Property Assessed Clean Energy. So, if they go through the process, of setting up an account, where they are making a payment and paying off the system through their property taxes it is not that easy to get that liability off your bill, if now you have a building that went up next to you and after a year of your system being now installed and running within a year you have a tall building in essence completely shading your investment and I don't know how we are going to try to reconcile that. My point is it is more than the money that the individual paid; there is a tax implication potentially in terms of how you structured your financing. This is something that needs to be considered. The other way to finance the project is On-Bill Financing with the electrical utility. So, if you have done that, and you now have a building that goes up, blocks the solar access and you are using the savings of that to fund and pay the increase on your utility bill and now you can't make that payment you could be in arrears in your utility bill, people shut your lights off and all that. So, it complicates how we look at this if we want to consider all these things in a holistic fashion. I think to me those are important issues to consider as we debate the issue. I will now open it up.

Howard Pinsley questioned Mark Torpey if he had looked at the paragraph and wanted to re-write altogether. You pointed out parts of it that don't make any sense. Do you think we should be recommending a revised paragraph to the City Council?

Mark Torpey, Chairman stated I don't know, I actually came to the meeting here with a completely open mind to public comment and I don't have a prescribed notion of where this should go. I do think the language is problematic and so it needs to be changed. But I don't have yet proposed language that I can share with you folks as a template or a straw proposal. So, I don't know whether it should be completely accepted as is, with the T-6 exemption. There is some logic to that. I don't know whether it should be revised in terms of the language and I don't think it can be preserved as is without some other significant changes. Maybe not to the language but other understanding of what these other implications mean and being able to deal with them in a more thoughtful way. I am hoping that I can get everybody to agree that the completion of the UDO provides the platform to actually address this in a much more sophisticated way because of all that is going on in the industry. The last thing I want to do, because I do this stuff for a living is to have solar look like it is preventing development that is smart, in the right place, and mixed use and doing all the great things we want because it is a blemish on the industry that I spend a lot of time trying to support. So, I think, it would be helpful for us to work through that other process to get at the right answer as opposed to just coming up right away with our thoughts.

Howard Pinsley asked if Mark Torpey, Chairman thought the UDO is going to supersede this thing altogether?

Mark Torpey, Chairman stated yes.

Howard Pinsley stated it seems we are wasting our time here, if they come up with

new language, and it kills what we are doing here.

Mark Torpey, Chairman stated you are right. The UDO is an attempt to take—and correct me if I am wrong Kate—will take the subdivision regulations, take the existing zoning regulations we have in place, look at the other policy documents that we have in terms of our open space plan, urban forest master plan and unify it into a common document which is no easy task and I still have my doubts if they will be able to pull this off but I am hopeful. Yes, I think they could come up with a set of recommendations that will supersede anything we do as a patch in the interim and I just don't think it is worth it. I think it is better to go through that process but articulate our collective thoughts on what we think is the right thing and give it to them as part of our input in their review of that work.

Tom L. Lewis stated he absolutely agreed with the last thing Mark Torpey said. I mean you just gave me a whole education that I knew nothing about, and incorporating all of those thoughts into the UDO seems to make a whole lot of sense.

But, I think there is an immediate issue here and I have been through enough zoning ordinance updates and comprehensive plan updates. Good luck to having the UDO in 2016. I think right now the City Council has said there is an immediate issue that they feel needs to be answered. I am not against solar; I am not against renewables, who would be. I think I heard that in 1990 that that was put in there for the protection of solar rights it was something somebody here said. I don't think anybody thought back in 1990 well before the downtown became the downtown that it is thought that that would prevent the very thing that Harry and Sustainable Saratoga want, and what we have been hearing for years and years about building up our downtown core, and I am glad that Harry said what he said, and the ordinance in the T-6 the way it is now prevents some things you said Mark are good projects. My guess is, I don't know this, the Downtowner didn't do what they did to prevent something from happening. That would surprise me. But in either case, I am very, very comfortable doing what the Council had asked to make a change now.

I would add that all of your comment should be added into the record whether it is the UDO when they look at actually updating the whole Comprehensive Plan they can take a look at the points you made, they can weigh the pluses and the minuses but also add in there the size of doing what the Council asked altering the T-6, that they also as a separate action consider that in all instances when someone gets a building permit for any alternate energy if it would affect the neighbors, that the neighbors be notified, that seems like a reasonable thing to suggest.

Mark Torpey, Chairman stated that notification could be a good thing but if you accept the the language as proposed, we completely change the way the solar access is written, you may not need to provide that notice.

Tom L. Lewis stated in a T-6 you would not.

Mark Torpey, Chairman stated right.

Tom L. Lewis stated it is the other zones I am suggesting.

Mark Torpey, Chairman stated the timing issue, I don't quite understand. I mentioned before this is the first time this provision has been exercised. Nobody

even knew it was in there to bring it to the forefront. I mean in terms of the discussion, if there is an imminent need to now rectify a situation that has only been incited once, I don't see it.

Howard Pinsley questioned if the other 3 installations are in danger of being blocked by somebody next to them.

Kate Maynard, Principal Planner stated there are no known impediments to their access. All we can say now is that we are seeing more and more applications.

Howard Pinsley questioned if Kate knew of anything immediately affecting the other three.

Kate Maynard, Principal Planner stated no.

Howard Pinsley stated nobody is planning on building anything next to the other 3 installations at this time.

Kate Maynard, Principal Planner stated no other formal applications at this time.

Tom L. Lewis stated except the parking garage.

Mark Torpey, Chairman stated so the Zoning Board obviously made their decision to look at this provision and deny the variance for the project. So obviously that is something that we are well aware of but that is the issue that has brought this thing to the forefront for discussion in the first place.

Tom L. Lewis stated (that action) would think reasonably precipitated what the Council did.

Mark Torpey, Chairman stated correct.

Diapo Pedinotti, owner of the Mouzon House. So we did have an engineer prove that a building could be built in the parking lot that did not block our solar panels. We paid a lot of money to have them look at it and they proved that something could be built there. We also applied and you can find this if you go back through the City archives so it was mentioned at a ZBA meeting in 2011 that we were going for solar panels. This is such a thinly veiled attempt for the City Center to say okay we went through all the channels. The Zoning Board said no, we are not going to give you this variance. So, now, it is like okay, let's just go ahead and change the code now and let's do that without any thought because we have to rush this through. The most interesting thing is the City Center has refused to change the design. They have stood fast with that exact design and they have refused to change it.

Howard Pinsley stated ok we understand where you are coming from. But you have to keep in mind that we do have a lawyer here if we agree to the few words that they have in there, Transect 6 is accepted, would there be any way that that would be retroactive. I have no way of knowing that maybe the lawyer does.

Tony Izzo, Assistant City Attorney stated it is really a separate question, whether or not the applicant in the case you are talking about—the City Center Authority—could come back to the Zoning Board with an identical application, or it has to be changed in some substantial way that would allow them to do that. This is a question I would like to do some research on before I give you a definitive answer, since this is a significant question. I can tell you one thing, that this ordinance, you can keep it separate and apart from that application. The Zoning Board in reviewing that application, I can tell you in the 29 years I have been working with the Zoning Board I don't recall a variance application for this section ever before this last one. It has sparked a lot of discussion and a lot of inquiries as to the operation of the section itself separate and apart from the application itself. Everything from the way the language reads it doesn't mean that if an individual has a tree growing in their yard and the tree is so high the neighbor installs a solar collector, the tree grows to a larger height, would they have to cut part of the tree down to comply. I pointed out to the Board that this ordinance actually verbatim reads that it prohibits an individual from blocking his or her own solar collector, literally. So, it is the language of the ordinance itself is maybe ripe for discussion, regardless of the impact it would have on the application that you are talking about. I don't know the answer to your question.

Tom L. Lewis stated just to answer what Tony said in his 29 years and I am not an attorney, but my guess is being around and use for over 2 decades that if the council adopts what is in front of us then it means neither the City Center nor any other developer is violating the law, and so they could build what they could build and Mark made a very interesting point, which I am impressed that you could even figure that out. If this actually happens and the City Center garage gets built and has a negative impact financially and there is a way the Mouzon House can actually recoup their investment that would be terrific.

Mark Torpey, Chairman stated there is nothing in the provision that allows that, no there is nothing in there, so I am leading the discussion in that direction to understand that, depending on what we decide to do, that there are financial implications to people who would be affected that in my opinion need to be corrected somehow. If they go through the process, they put in solar panels, and a building next to them gets built that obscures that view, my opinion is there needs to be some degree of remuneration for that and you can debate how you calculate that. I was just trying to express that. But, I want to get back to what Howard just said because he asked a very specific question is this retroactive, I think Kate may have talked with Mark Schachtner on that and may have some thoughts.

Kate Maynard, as I stated at Monday's workshop, I did have a brief conversation with Mark Schachner about could this be retroactive, is this moving forward only, his short answer was that within the legislative authority of the Council, in their amendment of any language that really rests within that jurisdiction.

Howard Pinsley stated so the Council could do it.

Mark Torpey, Chairman stated correct. So, we are in a situation, where the Council could—if we just say ok the language looks great, you guys just have at it. In

essence they could make the provision retroactive so that it would deal with, there would not be any time limit, and it would be retroactive.

Tom L. Lewis asked Tony Izzo, even if this Board were to not agree this does not force a super majority on the Council is that correct Tony. This Board only has an advisory role. Even if this Board unanimously said no we think everything should remain the way it is they could vote however they want anyway, and not force a super majority.

Tony Izzo stated I think you are correct.

Clifford Van Wagner stated it is a non binding Advisory Opinion.

Tony Izzo stated I do not think it forfeits what is required to override anything because it is just an Advisory Opinion.

Tom L. Lewis stated that is correct. So again my difficulty is not specific to the Mouzon House although it is a consequence, is that the way the law is written because it is not addressing all the good points that you made. It is not addressing those points which are legitimate points, which under the UDO, I think they should look at that because there really is a balancing act there. But, the way it is written now is it is protecting the solar rights. It is removing the property rights of everybody around them and in the T-6 given the way growth has been over the past 15 years and the pleasant unanimity within the community for the way downtown has been built, from east to west to north and south. I think what the Council is asking for is very reasonable in the T-6 and I am very supportive and I am comfortable in making that motion.

Mark Torpey, Chairman stated we have seen one instance where this provision has created agita since 1990. We have a situation where a long time has passed, where we have one instance where this has been an issue. We have got a number of installations which exist now, that don't seem to be in jeopardy of having that issue arise to create a conflict. We have a Unified Development Ordinance that is being moved forward. At this point I don't understand the rush. It makes no sense to me to make any substantive change to a zoning ordinance even how minute it may appear in terms of the actual language as proposed based on one project over that period of time creating this. It doesn't bring the issue to the forefront that needs to be addressed right now.

Tom L. Lewis stated but that is not what a majority of the City Council believes. And in many instances you have seen me very consistent. The legislative body, they are the lawmakers. We are interpreters of a certain amount of stuff. So the City Council does not agree with what you said but I bet you they would agree when they get to actually pinning down the UDO. I bet they will take everything you said into serious consideration.

Mark Torpey, Chairman stated I think what the City Council agreed to do with a 3-2 vote was to seek an Advisory Opinion from the Planning Board. They do not have a preconceived notion as to whether that language is exactly what they want. They are asking for our opinion on that and it is not even just the opinion of the specific

language that is written in there; they ask us to consider the last sentence that other issues, other concerns, other districts, and that takes some time.

Howard Pinsley stated we are not going to get into all the other districts tonight.

Mark Torpey, Chairman stated right and I don't think we should get into the T-6. Howard Pinsley stated I don't think we should be paying attention to what the UDO might be doing either because if they wanted us to wait for the UDO they would not have sent this to us.

Mark Torpey, Chairman stated no I personally think we have a responsibility to the City Council, the way I see it to provide them some guidance as to how to approach the broader issue. I agree they gave us specific language to consider. My recommendation is that it is too complicated to give them a definitive answer even in the interim because there is nothing pressing to force us to make a decision because there are no issues with the other projects.

Tom L. Lewis stated I think the City Council thinks there is an issue.

Howard Pinsley stated they didn't ask us to wait.

Mark Torpey, Chairman stated they didn't ask us to wait and they also didn't necessarily ask us to make a decision that definitively says okay this is what will work in the interim within the 60 days either.

Tom L. Lewis stated no I think they did ask us for that.

Howard Pinsley stated I think they did ask us for that too because if they wanted us to wait for something else they wouldn't have asked us for an opinion now.

Tom L. Lewis asked how some of the other Board members feel.

Tony Izzo, Assistant City Attorney stated just to update the information and advice I tried to give you, let me make sure I understand the question. It is not the Advisory Opinion of this Board that triggers a forfeit stall. If there is a protest of a proposed amendment, should the Council propose an amendment and that amendment is protested by a stated number of adjacent property owners that can trigger a forfeit stall. That is Zoning Ordinance amendment 10.4.8. It is the protest of a given threshold of adjacent property owners that does that.

Tom L. Lewis stated it is 20%.

Tony Izzo stated that is correct.

Howard Pinsley stated that would be everybody in the Transect-6 zone wouldn't it.

Tom L. Lewis stated no, no, no. It would be the immediate neighbors.

Clifford Van Wagner stated he heard Tony say earlier that even the applicant can have an issue with their own building blocking access to solar panels.

Tony Izzo stated that's the way the language reads right now.

Clifford Van Wagner stated I am still offended that the solar panels were put up without the benefit of a building permit. And to a certain extent their high building blocks the solar panels that are on their low building. So, that's an issue. Way back in the beginning, Mark is the expert no doubt on solar panels and energy and your calculation that you gave to us was that this solar panel would save the applicant about \$100.00 a year. So, I don't think we are talking about a ton of money here. I think that these solar panels were put up to do just this and another point in the past when the City Council has given us a request for an Advisory Opinion, we have gotten very strict advice from Mark Schachner, from staff, from Tony Izzo to answer the question. Not expound on what we might think they want to hear or how we think we should expand the Advisory Opinion. The letter has asked us to do a review of does the T-6 belong in this zoning ordinance. And by the way if you wish to make further suggestions or recommendations you can do that. I agree with Tom, I think we have been asked really a simple question. Advisory Opinions usually break down to a simple question. If you cut away there is a question and there is an answer. The answer to this is yes or no. I think that this UDO is a fine tool, I thought that the Comprehensive Plan Review was a fine tool and that has been going on for over two years now almost and nothing has happened with that. In light of the fact that we have an application that is in front of you and now the rules want to be changed, I think for future use this UDO which will take no doubt one to two years, like Tom said maybe 2016. Use that in the future. We have been asked a simple question for this Advisory Opinion. I think we should answer the simple question.

Mark Torpey, Chairman stated do you mind if I jump in. I think it could be perceived as a simple question. But there is definitely not a simple answer. I think in addition if you read what is being requested, it said specifically, "in addition further advice, guidance, alternative language or approaches that the Planning Board may provide regarding how this might otherwise be revised such as including other zoning districts would be welcomed." They are opening the door, they are broaching the subject, I think with some recognition that it's a complicated issue so it is not in my opinion interpreted as just T-6 exempt and black or white, yes, no. I just think this requires much more consideration.

Clifford Van Wagner stated it could be T-6 exempt, and then the Planning Board recommends that when this UDO report is completed and finalized that all the zones are addressed that the City Council look at it. Kick it back to the Planning Board for an Advisory Opinion and then you open up the box.

Tom L. Lewis stated the first thing I said Mark was you gave me an education. I had no idea the depth and the different areas there are and one of the first things I said was I think all your notes should be included in the motion I am going to make at some point after the discussion is done. Because it is that complex of an answer but in terms of what is happening in 2015 in April, I am very comfortable in moving the recommendation to changing the T-6 and as a separate additional suggestion that at the same time they give notification in the other T zones, when someone does this and a very serious and thoughtful examination should be given as part of the UDO addressing everything so that, I mean there will be so many things they are going to

deal with in that UDO. There are so many things that can go into the Comprehensive Plan, and then so many things following up in the Zoning Ordinance. These things take years. So, I am not disagreeing with a single thing that you said. You are knowledgeable; I am a zero in that area. But I believe everything that you said and the technology is moving so fast and is getting so much more efficient that all those things should be incorporated in that UDO. But in April of 2015, there is an issue the Council thought serious enough to ask us about. It was a split vote, so there are three people on there who thought this was serious.

Mark Torpey, Chairman stated so I mean feel free to weigh in.

Dan Gaba stated we keep saying simple question, complex question, no there are so many pieces and parts to it. I break this down for myself as follows. If somebody had found some language in the code and said you can't build a building that will impede horse traffic industry. We would look at it and say that is ridiculous, so we have to change it. So, taking any other applications that are on the table, there is nothing the Mouzon House is it. There is nothing on the table. This came to us for an Advisory Opinion and we said would a solar panel hold a developer hostage on a one story building, for building a building or planting a tree. That tree can cast a shadow. What if it was a pocket park and someone decided to take the park down and want to plant 150 foot elms, what would we do with the solar panels. For me I look at it in real simple terms. With nothing else on the table how would we address that language.

Janet Casey stated I am going to jump on what you said because I like the first part of what you said—it is exactly what I am thinking—but I swing the other way with it. I agree entirely with Dan that whatever happened with the Mouzon House is irrelevant. This is a legitimate question. A question of how to balance these competing interests of the City is a legitimate question. Regardless of how it came to us, regardless of what application was the instigator of this question. For me, if we found this without any applicant being involved, how would we respond? It is exactly how I would approach this question. But my answer would be different from Dan's. I am persuaded by Mark's deconstruction of the language here and I do language for a living. It troubles me to simply change one piece of this language to swing in the other direction while we acknowledge, we freely acknowledge, that there are all sorts of problems with the way that this was written. That strikes me as throwing good money after bad, for lack of a better metaphor. Putting a band aid on the problem instead of actually addressing the problem at hand which is how to balance these competing interests. So, I would take how Dan began but I would end with where Mark is.

Dan Gaba stated the only problem is that is not the question we are being asked. We all agree that there are so many other pieces and parts that need to be looked at, instead that is not the question we are being asked and that is as complex as you can make it. We are being asked a question but to get into all the other zones, that is really complex. We are being asked how it affects T-6. In a T-6 zone we are having a roundabout conversation, we are all sharing ideas. The question is, is it contrary to the Comprehensive Plan to have a provision that could essentially end development, let's say that everybody put a solar panel on their roof next month. That means that development downtown would cease, it stops, because there is

nothing that can be built without affecting the neighbor with this provision.

Tom L. Lewis stated that is a great point.

Clifford Van Wagner stated it "sterilizes" projects; that is a zoning term.

Tom L. Lewis stated also, it is Mark who I view as an expert. It is his very expertise that shows the complexity. We are not going to solve this in 60 days.

Janet Casey stated she agrees we are not going solve this in 60 days.

Clifford Van Wagner stated, as I stated at the workshop, any small buildings on Broadway, in a T-6 zone, such as Harvey Fox's jewelry store. A two story building. If he wants to go up five stories he could not there is a solar panel on Uncommon Grounds, they sterilized it. And that is what I think Dan is saying. If we are to look at this with no other plan on the table would we as a Board say – number 1 it is in direct conflict with the Comp plan which says build 70 feet on Broadway and keep everything lower on the outskirts. So that is in direct conflict with that. If you just go down Broadway and look at all those buildings that could be affected by this.

Tom L. Lewis stated when you weigh the benefit and the cost the taking away of rights here is so much more than the advantage of the energy in the downtown district. Just my opinion. I will bet there is a way that you guys who know how that works will find some balance in the T-6 that will work.

Dan Gaba stated one of the things which I jotted down—and I am not going to get into what we would recommend—but if someone builds a building next to you and it interferes with your solar panels, so is there a potential for having language in there that they agree to co-locate solar panels on the competing structure so as not to remove the solar. I am a firm believer in solar and I think the technology is coming around in terms of what we are looking at and what we will have to look at; is it in direct conflict with the chapter and intent of the T-6? Absolutely. It completely advises against this. If you read it, it encompasses business, cultural, entertainment concentration in the City of Saratoga Springs. T-6 consists of the downtown area, a shadow or build-to line, smaller blocks, widest range of building scales, interior blocks, front to back, side to side as high as you can so, to have a provision that then would in fact limit any height of a building that could be built in the downtown area is contrary to the long term planning, long term comprehensive plan.

Mark Torpey, Chairman stated, I said that at the very beginning. If you look at the way the language is written, basically in the T-6 zone with zero setback, 2 floor requirement by definition, it is inconsistent; the language is wrong. It has to change. And, I think it is for us to determine what the best change should be. My feeling is that this one provision provided as the proposed change is insufficient to address the issue in a holistic fashion. I don't think that there are any pressing projects that are pushing this to the forefront other than the City Center Parking Garage. Everything that I have been taught in terms of being a member of the Comprehensive Plan Committee as part of it you don't make changes based on one project. Especially when it comes down to the ordinance. This is not even comprehensive plan language you are talking about. This is where the rubber meets the road and it

affects the decisions of a lot of projects potentially down the road.

Howard Pinsley stated this is your own premise here because what Dan is saying is you are telling other projects they cannot continue because somebody might put solar panels on the roof next door.

Mark Torpey, Chairman stated I am not saying that at all. I am not sure.

Howard Pinsley stated, reading into what you are saying, it is about the other projects, and this is the problem you have. I agree with one thing: very quickly, this whole paragraph, Tony said the same thing, it is ridiculous. We have known that since we first read it. We are not lawyers here. We are not able to re-write this thing properly. If it needs to be rewritten I agree with these guys.

Dan Gaba stated, in the Advisory Opinion we are asked about one change to the language in the code. I am not speaking for the entire Board but merely as a suggestion—that what this Board says not be all answers to the solar provision.

Tom L. Lewis stated my motion is specifically to approve that language. And the second thing is about notification in the T-6 zones and the third thing is I would like to incorporate all of Mark's notes with a comment that this is a very complex balancing act between energy savings and development rights. All that information should be incorporated into the UDO, which I think will take a long time to figure out. In the mean time the City Council has sent us the paragraph which I have just made a motion and I am waiting for a second and there can be more discussion.

Bob Bristol stated first of all this is not a brand new issue. If you look to our bigger neighbors to the South in New York City, they have been dealing with day lighting, zoning for at least the last 20 years. They have not come any closer to solving it than we have. Because the fact is they have one of the best people in the world, Michael Quarter, handling the writing of that ordinance in New York City. Dealing with something they call day lighting. Didn't relate to energy or anything like that. Where do we throw shadows and so that history of getting there and that knowledge exists.

Tom L. Lewis stated that is a great point. If you think about it New York City must have to solve this thing. They must have all kinds of ordinances.

Bob Bristol stated it is what we said in the beginning this is a very complex issue. I know where all the stuff came from in the beginning because back in the 70's when the solar panels were put on the County Building my office designed it and that was really if you go back and look in 1974 there was something called the oil embargo or something like that going on that caused a great deal of energy concerns and that is where all of that action came from across the country. We just started initiating that and solar panels were one of the proposed solutions at that point.

Janet Casey asked if she could make a suggestion for another possibility here. Part of the problem here may be that the language that is being proposed here presents us with only an either/or. Is there another way to write this so that it just doesn't say

"except for properties located in the T-6" but excepts properties located in a T-6 that, perhaps have some other kind of set of requirements that they have to meet or satisfy, to show that they have some kind of concern about some of these issues? Do you know what I mean? The language is so black and white; can we propose some other kind of language that would open things up in the T-6 district? That would not absolutely say that you could never do this but that would also acknowledge that you expect any such project to be seriously alert to something like solar panels on a neighboring building.

Tom L. Lewis stated, Janet this is a serious answer I am going to give you to a serious question. I am not that smart, because he just proved to me how complex and how many levels there are. So, for where we are, in April of 2015, I really don't think that there is a way of accomplishing that. However, again for the third time, I think Mark's notes should be included and I think at some point the Council is going to have a vote and Mark and anyone else, my guess is, will go to the public hearing and make a point and then ultimately the Council is going to vote up or down. So, there is a motion on the table, to be seconded and time for more discussion.

Mark Torpey, Chairman asked if there is any additional discussion. Does anyone in the audience wish to speak on this application, in terms of what you heard in terms of this discussion?

Kate Maynard, Principal Planner questioned Tom L. Lewis with regards to his motion and notification. I have thought about this more since our conversation on Monday, so, one thought is how things are working out in the context of our process. So, keeping in mind, any notification right now is only triggered typically with the DRC review architectural, historical review. Their view is very limited to historic, architectural features. So, just to be clear, it is not a situation of saying yes or no to an application based on neighbors' objections.

Tom L. Lewis stated the only reason I am saying it is because when someone puts up solar panels they are restricting someone else's property rights.

Kate Maynard, Principal Planner, stated understood.

Tom L. Lewis stated so that is why it is a suggestion that the Council looks at the other T zones whether it warrants notification to neighbors when someone does this. Because it affects their rights. It is the same way when there is a subdivision there is the requirement that the neighbors are notified because it may affect their property.

Kate Maynard, Principal Planner stated I know where you are coming from. I want to make sure you understand that the DRC has limited jurisdiction. So if people came out and stated I don't want this placed on the adjacent property that I own because it is going to limit my property rights DRC doesn't necessarily have the ability to say no to an application because of that perceived impact on someone's property.

Tom L. Lewis questioned who does have authority to protect the neighbor's rights.

Tony Izzo stated the Zoning Board oddly enough in granting an variance has to consider "impact on the neighbors"—a term probably brought up to encompass the situation you are talking about. In a practical sense your guess is as good as mine.

Clifford Van Wagner stated but you do not have to solve that now. This is a recommendation. We are not looking to solve it. Tom is making this as some additional verbiage in his motion.

Tom L. Lewis stated they should take a look at the fact that now this has come to the forefront, after 25 years that oh gee, I never thought of how it affects other people. At least they should be able to weigh in. I am not looking to further complicate it by making someone put some solar panels and they have to go the Planning Board. That would be a way. I think we have enough applicants but that is up to the Council and the ordinance. I mean they are reviewing the whole Comp Plan, Zoning Ordinance and the UDO. Who is driving the UDO NYSERDA?

Mark Torpey, Chairman stated the Unified Development Ordinance is awarded a contract under what is called the Cleaner Greener program which is administered by NYSERDA. The City won an award, the objective of the award is to develop this Unified Development Ordinance and select a contractor.

Tom L. Lewis stated so NYSERDA funds some of this.

Mark Torpey, Chairman stated \$200,000.

Tom L. Lewis stated that is great.

Mark Torpey, Chairman stated Harry would you like to speak.

Harry Moran, Sustainable Saratoga stated you have a lot of good points obviously. The language effectively, practically eliminates any possibility of property owners wanting to own and develop solar when they are the owners of the solar panels. The language we are talking about would make it such that any property owner in T-6 it would be illogical for them to do this.

Tom L. Lewis questioned why this would be this case? Why would that be if there are no big buildings around them then why wouldn't they do it?

Mark Torpey, Chairman stated I was trying to broach the nuance of your question with my comments because there is a difference in terms of if you have a small building and you have a vacant lot next to you with the potential to go up, right, that small business there has the option to put solar on even now knowing that potentially a larger building can get built. If they go with the leasing option, the company that does that is at risk financially for that or the business owner does that it is a different set of risks to the property owner. The discussion of the risks associated with putting solar is difficult.

Dan Gaba stated he agrees with that but what we are talking about is guidance in other areas, which is too complex to get into now. The T-6 zone is the business

district. That is the highest density. You make business decisions down there. People decide to put businesses in. If I put a coffee shop in next to a coffee shop, if I invest my money and fail, similarly if I put solar panels on your one story building in a T-6 district knowing that your building could be 70 feet high. You are making a business decision knowing that the person next door could build a building 70 feet high and impede my solar panels, this is a business decision to make not that he is prohibited from building a 70 foot high building it is just that he decided to put them on a one story building. I think that is where I am wrestling with it. I don't want to impede the solar panels but yet any of the taller buildings downtown anybody and everybody can put solar panels on those buildings. If you decide on a one or two story building next to a vacant lot that is the risk that you take in putting a tenant in there, a business or whatever you decide to do in that building.

Tom L. Lewis stated this is not saying that you cannot put up solar panels. Is it fair to say that you can call for a vote Mr. Chairman?

Mark Torpey, Chairman asked if Mr. Moran would like to finish his thoughts. Harry Moran, Sustainable Saratoga stated in general what we strive to do is to incentivize property owners to do things that not only benefit themselves and their businesses but also benefit the community and the environment. So, I think something that makes that more difficult is not in the long term interest to do that. Clearly to me this has that effect, not the desired effect. But we want property owners who are thinking ahead, not just thinking about themselves but taking steps that benefit the greater good. We want that. So I just ask you all to think about that as well.

Mark Torpey, Chairman asked if there was any other discussion. So, I am not sure how the votes are going to play out but I wanted to ask a technical question in terms of a minority report assuming that there might be a dissent on this. What is the process for this?

Tony Izzo, Assistant City Attorney stated this is a new concept for me. Traditionally, the minority report comes out during the discussion period and the individuals who do not feel a particular way get on the record or in the record permanently during the discussion period. I have to confess the idea of a separate minority decision is something that is a new concept for me. A minority report is what you decide it should be. My point is that for a minority report to get into the record during the discussion period.

Bob Bristol, Vice Chairman questioned Tony Izzo and stated lets think of the Supreme Court. When the minority opinion of the court comes out it isn't just on the majority side.

Tony Izzo, Assistant City Attorney stated it is a dissenting opinion.

Bob Bristol, Vice Chairman stated so there is a methodology we use.

Tony Izzo, Assistant City Attorney stated I don't know of any reason why a Board could not do that. My point is that it is not the way that I have seen it done for a long time. However, now I am seeing it done.

Mark Torpey, Chairman stated we have a motion on the table and I respect that. It is getting late and we have beaten this thing to death for this evening. So, what I would like, I think you have acknowledged that we would acknowledge points that were made in terms of our discussion.

Tom L. Lewis stated absolutely.

Mark Torpey, Chairman stated, that reinforces the complexity of this and would go along with our recommendation in terms of your motion.

Tom L. Lewis stated I am comfortable with that.

Dan Gaba stated we all agree to point out to the City Council that this is a complex issue and this is a non binding recommendation just for the Council's consideration and up to them for final decision. Ultimately it is their decision.

Howard Pinsley seconded the motion.

Mark Torpey asked Lindsey to poll the Board.

VOTE:

Mark Torpey, Chairman, opposed; Bob Bristol, Vice Chairman, in favor; Tom L. Lewis, in favor;

Clifford Van Wagner, in favor; Dan Gaba, in favor; Howard Pinsley, in favor; Janet Casey, opposed.

MOTION PASSES: 5-2