

A meeting of the Planning Board for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Town Hall, 351 Reynolds Road, Moreau, NY 12828 on the 25th day of August 2022 at 7:00 pm.

Town of Moreau
Planning Board Meeting
Monday, August 25th, 2022

Planning Board Members Present

John Arnold	Acting Planning Board Chairman
Meredithe Mathias	Planning Board Member
Ann Purdue	Planning Board Member
Mike Shaver	Planning Board Member
Erik Bergman	Planning Board Member
Adam Seybolt	Planning Board Member

Also, present

Jim Martin	Zoning Administrator
Karla Buettner	Attorney for Town of Moreau
Katrina Flexon	Meeting Secretary
Ray Apy	Applicant for Saratoga BioChar Solutions LLC
Andrew Millspaugh	Consultants from Sterling Environmental for Applicant Saratoga BioChar

The meeting was called to order at 7:02pm by Chairperson Arnold

Chairperson Arnold reads ground rules for the meeting prior to beginning business, the rules are read as follows

“ This is not a public hearing. We have had 2 public hearings. The purpose of tonight is to allow the Planning Board to deliberate upon the application. As such, we will not be accepting any public comment.

In order for the Planning Board to properly deliberate and perform its duty, it is imperative that it do so without interruption from the crowd. To the extent possible, please refrain from outbursts, clapping, cheering, booing, or commenting in any manner. We will therefore need you to be courteous and follow these simple courtesies. If we are unable to do so, and after one warning, the chair maintains the discretion to ask the officers to escort you out of the building. We do not want to do this, but we must be able to perform our statutory duty.

No personal attacks on the applicant or its consultants or representatives, town employees or officials, town consultants or other members of the public will be tolerated. The Planning Board will not tolerate discourteous speakers or speakers who denigrate or otherwise make disparaging comments on anyone’s race, ethnicity, or religion. If you do so, you will be escorted out of the building.”

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Saratoga BioChar Solutions LLC
Raymond Apy
2-12 Electric Drive, Moreau Industrial Park
Final Review

Ms. Purdue offers to begin discussion, she brings to the table for consideration the resolution to rescind the prior SEQR determination. She states she was against the original negative declaration due to concerns with being too fast, the Board did not have a consultant to assist them, and they were relying on the DEC permit process to mitigate impacts. She states she has the same kind of objections to the approval with conditions. She states, according to NYS rules and regulations the Board has an opportunity to rescind its prior negative declaration based on new information. Specifically the new information has to do with the quantity of municipal sewage proposed to be imported to the Town, the presence of PFAs in the sewage and the potential contamination of air and water, the health hazards posed by PFAs, the water and waste water requirements for the project, other noxious emissions, such as Nitrogen Dioxide, and other matters set forth in her proposed resolution.

Ms. Purdue reads the Resolution to rescind prior SEQR Determination Saratoga BioChar Solutions, LLC document.

(A copy of such Resolution is attached to these minutes for reference.)

Chairperson Arnold clarifies the motion, to rescind the prior negative declaration issued by the Board based on new information; and to notify the other cooperation agencies and applicant of that rescission and allow the applicant an opportunity to respond.

Ms. Purdue she confirms and adds to retain an independent expert to assist it in a renewed consideration of this project and its impacts warrants a separate discussion.

Chairperson Arnold states there is a motion and asks the Board if there is a second.

Mrs. Mathias states she seconds for discussion purposes.

Chairperson Arnold states the resolution Ms. Purdue brings before the Board is the same one brought up to the Board prior, this would be the third time. He states the reason the Board would consider it now is there's new information the Board did not know the last time it was voted against.

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Ms. Purdue states the last time the resolution was voted against was May 12 and the other time there was no second. She believes the information now is much more substantial.

Chairperson Arnold asks if they need to go through the resolution one by one. He states the first piece of information about the processing of up to 15% of biosolids, he states this was already known by the Board.

Ms. Purdue states she doesn't believe it was known that is was 15%.

Mrs. Mathias states the actual number was presented in the site plan, the 15% was on the applicants website which many factors can play on that number, for example gas prices, agreements. She states the 15% is not an actual, that is with all three phases and if all contracts work out, gas prices aren't 5.00 per gallon.

Ms. Purdue states she thinks the 15%, together with actual number of tons, the sources and where the sewage is coming from it, adds meaningful context.

Chairperson Arnold states they were given a number and were told the source was Casella Organics. He adds he doesn't recall where the supply was coming from by the source but he's not sure that has anything to do with SEQR. The Board knew there would be a regional haul bring in the biosolids from the very first meeting.

Mrs. Mathias states in the application the primary service area includes wastewater treatment plants which may increase or decrease as negotiated arrangements over time. She states right now the source is Mechanicville is it local no but it's certainly the County.

Ms. Purdue states she wonders if the Board really appreciates the magnitude of the municipal sewage that was going to be brought from out of Town to into Town. She states she believes that was lost on the board with the numbers

Mrs. Mathias states yes she understood.

Chairperson Arnold states he was never under a misunderstanding that all the biosolids were coming from the Town of Moreau.

Mr. Shaver states he assumed the biosolids were coming from Saratoga county.

Mr. Martin states one thing he would like to point out to the Board members is all that falls subject to inspection and monitoring, it must be in a certain range no matter where it comes from. Municipal solid waste is consistent regardless of source they have to meet DEC standards for transport. He adds that was made clear in the very beginning.

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Ms. Purdue states it was her sense that when the 15% was associated with the municipal waste coming into the town it made it new information.

Chairperson Arnold asks Ms. Purdue if there is something in this resolution that is decidedly new information.

Ms. Purdue states that the biosolids will contain PFAS and that they will emit PFAS in their air emissions.

Chairperson Arnold states the very first application states the biosolids would contain PFAS and he recalls the applicant stating they would eliminate as much or most of it, but he doesn't recall them ever saying they would get rid of 100%.

Ms. Purdue states the EPA reports published recently stating that the process proposed by the applicant have not been proven to destroy PFAS and it is also concerned with the compounds resulting from breaking PFAS.

Chairperson Arnold states he is not looking at outside articles and the applicant website, he is referring to the site plan application. He states he doesn't see the 15% as new information because the number on the application works out to be that. He is trying to find new information in the resolution.

Ms. Purdue states she recalls very specifically at the March 7th meeting, that they didn't have to worry about PFAS, that it would be destroyed. She states in the air emissions permit dated June 13, the applicant added an entirely new section on PFAS, where the applicant acknowledge that the Biosolids contain PFAS, and they are seeking permission to emit PFAS via the air stack. She adds the applicant said they would destroy them.

Mr. Bergman states the language he recalls hearing from the applicant is that they would destroy PFAS down to a level that is not measurable.

Chairperson Arnold states the fire risks are not new information he recalls them talking about the nitrogen injected into the silos to eliminate oxygen. He knows that because that was one of his own concerns.

Chairperson Arnold states they have already discussed the import of waste from outside the Town of Moreau.

Ms. Purdue states that it will violate the Article 92 of the Town code.

Chairperson Arnold states if they imported materials are deemed hazardous by DEC or EPA.

Ms. Purdue states they will be.

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Chairperson Arnold states when the Board asked DEC about that is they responded that the material they are considering hazardous.

Mrs. Buettner states her professional opinion is that it will not violate the Town code as it is before the Board right now. She states in the future if something else is emitted or if something else changes, that's an enforcement issue.

Ms. Purdue states the opinion Mrs. Buettner is based on assumption that PFAS are not included as a hazardous substance on the list. She states PFAS have different names. She explains there are 11,000 different kinds of PFAS. She states PFOA and PFOS are PFAS and are listed as "hazardous" by the DEC regulations.

Mrs. Buettner states her opinion still stands because with the information before the board today they have not violated a Town law.

Ms. Purdue states the applicant is going to be importing municipal waste that has PFAS, PFOA and PFAS and as such that is a hazardous substance. She states they are on the list.

Mrs. Buettner states PFAS are not on the list. She states this is her opinion for the Board.

Ms. Purdue states DEC had decided there are 4 PFAS substances that are deemed hazardous chemicals. The Board should refer to the regulations which Ms. Purdue offers to share with them.

Chairperson Arnold states what the Board asked DEC was if the municipal waste the applicant has been contracted to bring into the Town of Moreau considered a hazardous material. He states their answer was no.

Ms. Purdue states that is not the question. She states the question is whether the Town Code is violated by bringing in waste that contains hazardous substance. She states in this case it does.

Chairperson Arnold states the 4 items Ms. Purdue listed may be listed as hazardous materials, he explains the Board asked DEC if the material coming in on the trucks would not be deemed hazardous waste. He states at this point they will have to agree to disagree on this point. He adds that the applicant can make biochar out of other materials.

Ms. Purdue states her concerns that with PFAS in particular on a federal and state level, they are having difficulty keeping up.

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Chairperson Arnolds states he's still trying to find some new information otherwise there is no motion.

Mrs. Mathias states the assumption that the project is going to have radioactive material, that is a state requirement in the solid waste to have a plan on that. She states the applicant has said throughout their application that they will not have radiation, but they have to have a plan. She explains the applicant will not be storing any radiated waste, they will have to identify it and remove it.

Ms. Purdue states in the applicant's facility manual they state they will be allowing certain radioactive waste up to a certain limit into the Town.

Mrs. Mathias states radiation is everywhere, she home tested high for radon, and she has a septic tank.

Chairperson Arnold compares the plan the ones milk plants have that test for antibiotics, they are not doing it because they are expecting antibiotics and planning on using them, it's because it could happen. He explains the keep the antibiotics out of the plant, they test every sample at the farm, they test on the truck at the plant. The BioChar applicant states if they tested for radioactive activity they will reseal the truck, move it out of the building and call to have it removed. He states that seems to be standard practicing proceeds to any plant that takes waste.

Chairperson Arnold states to Ms. Purdue that some of the stuff she is bringing forward to the Board doesn't fall under the purview of the site plan application. He asks the Board if there are any other comments or discussion on the motion that is in front of the Board.

Chairperson Arnold asks for a roll call

Results as follows:

Meredithe Mathias	No
Adam Seybolt	No
Erik Bergman	No
Ann Purdue	Yes
Mike Shaver	Yes
John Arnold	No

2 in favor, 4 oppose, motion fails

Chairperson Arnold asks the Board what else they would like to do.

Chairperson Arnold states hearing nothing, the Board does have other resolutions to review tonight.

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Mr. Bergman states the Board has worked on an alternate list of caveats in way of a motion to approve with the following conditions placed in front of the Board.

Mr. Bergman makes a motion to approve site plan with the conditions in front of the Board.

Mr. Seybolt seconds the motion.

Chairperson Arnold states there is a second to the motion.

Mrs. Buettner states the resolution to approve with conditions has been on the Town of Moreau website for over 24 hours, the law requires to put any resolution on the website 24 hours prior to the meeting, the Board is in legal compliance with that law.

Chairperson Arnold states his concern that the public hasn't had a chance to look at the resolutions, he would like the conditions to be read so the public can know what the resolution says.

Mrs. Buettner reads the resolution Saratoga Biochar Solutions LLC site plan application approval with conditions. (A copy of the draft resolution is attached for reference).

Chairperson Arnold asks the Board what comments, questions, and amendments they have on the resolution.

Mrs. Buettner states the resolution was provided to the applicant as well and they have provided comments back. She states the Board needs to clarify how the Board would like the applicant to respond with their comments.

Chairperson Arnold states the applicant will have the opportunity to answer any questions if the Board has any.

Ms. Purdue specifies, in the resolution the Whereas on page 2, she would like mentioned that when the Board first reviewed SEQR and determined there were moderate to large negative impacts, the Board passed a resolution seek the assistance of an independent expert and to direct Mr. Martin to develop the scope of work.

Mrs. Buettner asks the board if they wish her to put that into the resolution.

Ms. Purdue states she would like that information in the resolution.

Chairperson Arnold states it should be on the official record and in the minutes.

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Mrs. Buettner reads her changes to the Board “On December 13, 2021 a resolution was adopted to retain an independent expert and directed the Zoning Administrator to create a scope of work.”

Ms. Purdue states on page 5 of the resolution, during the May 12th meeting a motion for an independent review was seconded and approved. She adds the next two whereas refer to the meeting of May 16th, there was no discussion of BioChar on May 16th. It was on May 12th that it was further indicated for purposes of scope of work, Board members would submit suggestions to Mr. Martin by May 27th.

Mrs. Buettner states that the date is a typo she will correct. She also changed the paragraph and reads the result it to the Board. “Whereas during the course of discussion a resolution was adopted to retain an independent expert to assist the Board in its review for this project.” She indicated that she removed the next Whereas to eliminate the confusion. She also changes the date of *May 25th* to *May 27th*. She asks the Board if they accept this section of the resolution.

The Board confirms.

Ms. Purdue states on page 6, the second to last Whereas she suggests the sentence goes as follows. “Whereas the Planning Board has identified a number of conditions to approval that must be met by the Applicant prior to any application or issuance of a building permit; and certain conditions which must be satisfied thereafter.”

Chairperson Arnold states he is in favor of that correction.

Mrs. Beuttner updates the sentence in the resolution.

Chairperson Arnold asks the Board if there are any comments for any corrections or suggested on the resolution itself starting with number 1.

Mrs. Mathias response with a no.

Chairperson Arnold states if the board is moving through the resolution and a Board Member thinks of something just let him know and they will go back.

Ms. Purdue states she has a comment on number 2. She has a comment regarding the last sentence. “A continuous stack emission monitoring system will be installed, and the results made public monthly or quarterly.” She states her concern that the board doesn’t know what they will be monitoring for, for what purpose and to what expert is the Board going to rely upon.

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Mrs. Buettner states that concern was addressed by the applicant today. She states that is a questions they had as well. They wanted the Board to be more specific as to what they were monitoring.

Chairperson Arnold asks if it would solve the problem if the Board went along with the DEC permitting.

Ms. Purdue states she doesn't think the DEC permitting is adequate.

Chairperson Arnold asks who she would suggest.

Ms. Purdue states she would consult an expert. She would get retention of an expert that would know what is state of the art, for purposes of odor detection and air quality. She refers to her written comments on the proposed resolution, a copy of which had been provided to board members prior to this meeting. (A copy of Ms. Purdue's comments is attached for reference.)

Chairperson Arnold asks the Board if anyone has comments on this.

Mr. Bergman states with regards to continuous staffing and monitoring system it will be installed, and results would be put up monthly or quarterly. He explains where he was going with that is continuous monitoring for the compounds or elements that DEC has stated in their permit.

Mr. Martin asks the applicant how often they are to report to DEC their monitoring findings for their permit.

Mr. Millspaugh responds the permit has continuous monitoring at the air control devices, that continuous monitoring or data logging and that gets reported annually to DEC.

Mr. Martin asks the applicant what does continuously monitoring mean. He asks if he dropped by on a Wednesday afternoon and requested a report of the stack would a report be possible at that moment.

Mr. Millspaugh states there is a difference between stack emissions and monitoring the control devices. He explains they are two different things, he explains what the draft permit requires right now is a stack emissions test during normal operations of the stack emissions for the concentrations to be regulated. He states during that time everything has to be operation as designed and once those submissions are verified all the pollution control equipment has to operate continuous monitoring. He explains all the equipment monitoring is used for the stack emissions which gets longed continuously.

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Chairperson Arnold clarifies with the applicant that they will run the equipment at a particular set up, they will test the stack if it meets requirements they will monitor the equipment at that particular set up.

Mr. Millspaugh confirms.

Chairperson Arnold asks how often the stack is monitored.

Mr. Millspaugh states at the startup of the facility, then annually and then at the discretion of DEC permitting company.

Chairperson Arnold asks why can't there be a monitoring system on the stack that records continuously the stack emissions.

Mr. Millspaugh states that was part of the comments made by the applicant in regard to the condition of monitoring. He states it can be done but they want to be specific of what they are monitoring for.

Mr. Martin states that should be language the board would want to insert, regulated contaminants.

Mr. Bergman to the main regulated contaminants in the air permit, with the caveat that it can be amended as other contaminants become known or stated.

Chairperson Arnold suggests "continuous stack emission monitoring system will be installed and operating to test for the DEC regulated contaminants in the DEC air facility permit."

Mr. Bergman adds that are stated now, and any future regulated contaminants will be added for testing.

Mr. Martin states any future regulated contaminants would be determined by DEC.

Mr. Bergman states the monthly or quarterly results should be updated to the website.

Chairperson Arnold specifies due to the newness of the project he would be more comfortable with a monthly update.

Mrs. Buettner reads the updated resolution sentence as " A continuous stack emission monitoring system will be installed and operated to test for the regulated contaminants stated presently in the air facility permit or any future contaminant as determined by NYSDEC, and the results made public monthly."

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Ms. Purdue asks what if the limit is exceeded.

Chairperson Arnold states it should be reported to DEC.

Ms. Purdue asks then what.

Mr. Martin states then the applicant is in violation of their permit.

Ms. Purdue states that NYSDEC only requires a stack test done annually why would they react to a monthly report.

Chairperson Arnold states if someone contacts DEC with a pollution report they have to act on it.

Mrs. Buettner reads the updates to the resolution “ Any findings of permitted levels shall be reported by SBS to DEC and by the Town to DEC. “

Ms. Purdue states she has a request to add to the resolution that is says there will be no PFAS emitted.

Chairperson Arnold asks the board if there is any discussion on that.

Mr. Bergman states he would leave that to DEC standards.

Mr. Martin states his opinion is to leave it to the DEC contaminants.

Chairperson Arnold states the Board will have to take a vote on the amendment Ms. Purdue has requested.

Ms. Purdue makes a motion to amend the resolution that no PFAS shall be allowed.

Chairperson Arnold asks the Board if there is a second.

There was no second.

Ms. Purdue asks for consideration of more specific language regarding odor and air emissions.

Mrs. Buettner states she is looking at the submission made by Ms. Purdue as asks her what language she suggests putting into the resolution.

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Ms. Purdue states she would propose, on page 8 of her submission which was previously submitted to the Board, paragraph 4 dealing with odor, and paragraph 5 dealing with air emissions.

Ms. Purdue read portions of those sections to the Board. (A copy of Ms. Purdue's submission is attached for reference.)

Chairperson Arnold asks the board if there is a seconds for the amendment that Ms. Purdue has proposed.

No second, motion fails.

Chairperson Arnold asks the Board what comments, questions, and amendments they have on the resolution for number 3. Noise.

Chairperson Arnold asks for clarification on the language "our property boundaries" he clarifies it the property of the applicant.

Mrs. Buettner confirms and adds if the board would like the applicant or its counsel can propose what they would like for the noise, She states its more restrictive than the Board has in the current resolution.

Chairperson Arnold states the Board can do that, but he still has questions on a few things, he reads the existing language in the resolution. "All noise levels from the proposed project will be compliant with chapter 100 noise of the Moreau Town code. The applicant shall conduct continuous noise testing at the outer property boundaries. The noise report will be made monthly or quarterly" He states he would prefer monthly as a correction to the language. He reads the proposed language from the applicant "Town code chapter 100 Pertaining to noise does not include decibel levels to reference or compare to. Thus, we propose that this condition require that SBS conduct an annual noise study at the west property line that abuts Sisson Rd. residential property. Such annual study should be conducted via third-party independent consultant, planned for and in coordination with the town Zoning inspector, with parameters to be developed and agreed upon in advance between the Planning Board and/or the Zoning inspector, and SBS, and shall be based upon available, published and generally accepted standards for such studies."

Chairperson Arnold asks the Board if they have any comments on the proposed language.

Mr. Bergman states if there is going to be a study it should be done more than annually, for different environmental considerations.

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Mr. Martin states especially the noise, he adds he would term the times to conditions. For example a cold winter evening with leaves off is going to find noise travel better than it does on a hot humid day in the summer with leaves on. He adds wind directions is another consideration as well.

Mr. Bergman states he thinks they should do continuous monitoring.

Chairperson Arnold asks if those considerations at the property boundary of the applicants boundary?

Mr. Bergman says yes.

Chairperson Arnold states he doesn't think the boundary line means the beginning of the nearest residential boundary line, he believes it's the property boundary at the edge of the applicant's property boundary line.

Mr. Martin states the Board can specify that in the resolution.

Mr. Bergman states it should be the boundary of the applicant's property, not residential because other businesses are going to locate to the industrial park.

Mr. Martin states the noise study will be the most accurate if it is done at the applicant's boundary line.

Chairperson Arnold asks the Board how they feel about the proposed changes to the resolution condition number 3 noise.

Mr. Bergman states just drop the quarterly in the Board's language.

Chairperson Arnold asks the Board if they are okay with removing the word quarterly from the language.

The Board confirms.

Chairperson Arnold asks the Board what comments, questions, and amendments they have on the resolution for number 4 Odor. He adds this language also contains public notification monthly or quarterly. He asks the Board if they would also like to make this public monthly.

Ms. Purdue asks who is going to make a report and how do you measure effectiveness.

Mrs. Mathias states the applicant is giving the report.

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Chairperson Arnold states he's under the impression there will be monitor of the applicant's ventilation system, this will be a report for the applicant to say that their system is working.

Ms. Purdue states she had similar language for odor that she had proposed for air quality. But specifies obtaining a consultant which will be obtained by an escrow account funded by the applicant.

Chairperson Arnold says most of that lands under " applicant shall install, operate and maintain state of the art odor quality monitoring equipment that will continuously monitor the emissions from the project."

Ms. Purdue states the Board will never know if the equipment being used is state of the art unless there is a consultant. She states she does not know what is state of the art odor monitoring equipment is or looks like.

Chairperson Arnold states DEC and EPA do.

Mr. Martin states the applicants proposed language under number 3 Noise in his opinion is improved language. He states the wording is meant to resolve complaints.

Chairperson Arnold asks the Board if the Board has any comments or changes they would like for number 4, odor.

Ms. Purdue motions to amend the odor section in accordance with the framework that she discussed moments ago which was equivalent to the motion she proposed for air quality.

Chairperson Arnold ask the Board if there is a second from the Board.

No second, motion fails.

Chairperson Arnold asks the Board if there are any other amendments proposed for this particular section.

Mrs. Mathias makes a motion to accept the SBS language, "SBS will be required to replace its operating equipment (with equal to or better, new equipment) when such equipment no longer functions properly or is no longer supported by, or defined as "end of life," by its manufacturer.

Chairperson Arnold asks the Board if there is a second on the motion.

Mr. Bergman seconds the motion.

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Chairperson Arnold asks the Board if there is any further discussion.

Chairperson Arnold asks the Board if all in favor say Aye

Results as follows:

Meredithe Mathias	Aye
Adam Seybolt	Aye
Erik Bergman	Aye
Ann Purdue	Nay
Mike Shaver	Aye
John Arnold	Aye

5 in favor, 1 oppose, motion carries

A motion was made by Mrs. Mathias and seconded by Mr. Bergman to amend the Resolution condition number 4 on odor, to accept the SBS language, “SBS will be required to replace its operating equipment (with equal to or better, new equipment) when such equipment no longer functions properly or is no longer supported by, or defined as “end of life,” by its manufacturer.

Chairperson Arnold asks the Board if there are any further suggests, changes, corrections to condition number 4, odor.

Mrs. Mathias states the applicant had a valid suggestion in their suggestions that the “town representative” be defined, she makes a motion the term be defined as Code Enforcement and or Outside Consultant.

Mr. Martin states the proper term would be Code Enforcement Officer.

Chairperson Arnold say there is a motion is there a second from the Board.

Mr. Bergman seconds the motion.

Chairperson Arnold states the motion is to replace the term Town representative and define it as a code enforcement officer or designated third party. He asks the board if there is any discussion.

Chairperson Arnold asks the Board if all in favor say Aye

Results as follows:

Meredithe Mathias	Aye
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Adam Seybolt	Aye
Erik Bergman	Aye
Ann Purdue	Nay
Mike Shaver	Aye
John Arnold	Aye

5 in favor, 1 oppose, motion carries

A motion was made by Mrs. Mathias to replace the term “Town Representative” and define it as Code Enforcement Officer or designated Third Party. Mr. Bergman seconds the motion.

Mrs. Mathias has another amendment on page 9 she suggests replacing the word “negative impact on” with “degradation of”.

Chairperson Arnold asks the Board if there is a second for the motion.

Mr. Bergman seconds the motion.

Chairperson Arnold asks the Board if there is discussion on this motion, if not all in favor say aye.

Results as follows:

Meredithe Mathias	Aye
Adam Seybolt	Aye
Erik Bergman	Aye
Ann Purdue	Nay
Mike Shaver	Aye
John Arnold	Aye

5 in favor, 1 oppose, motion carries

A motion was made by Mrs. Mathias to replace “negative impact on” with “degradation of” in the resolution under condition 4. Odor paragraph vii, Mr. Bergman seconds the motion.

Chairperson Arnold asks the Board if there are any comments, corrections, amendments for condition 5 Biosolid feed stock composition.

Ms. Purdue has a question on what “forecast elements” means. She reads from the resolution “ to ensure composition is consistent with forecast elements,”

Mrs. Mathias states she thinks of replacing the term “forecast elements” with “within the terms of the solid waste permit.”

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Chairperson Arnold asks if there is a motion on that. He states not hearing any they will move on to condition 6, Transportation.

Chairperson Arnold states under paragraph c in condition 6, transportation he reads, "the route will follow the designated route as determined from the GEIS adopted for the formation of the Moreau Industrial Park." He would like to check with the zoning administrator to see if that language is accurate. He states at some point the route was changes to not go down Bluebird Road due to the school, so he wants confirmation that the language is accurate in the resolution as is.

Mr. Martin confirms the language is accurate.

Mrs. Buettner states she believes the language says the GEIS was adopted for the formation of the Park.

Chairperson Arnold states he rescinds his motion to amend and asks if the board has any other corrections or amendments for discussion. He did mention there was one comment from the applicant that he thought seems reasonable. He reads the proposed condition is to please refer to the NYS idle law which establishes a 5-minute idle limit. He states if NYS has a 5-minute idle law than to him that is reasonable as well.

Ms. Purdue has a general question regarding condition 6 Transportation. She wants to know how compliance is going to be monitored and enforced.

Mr. Bergman states it will be the same way every other compliance is monitored through code enforcement via complaints.

Mrs. Buettner states she took out "no idling shall be permitted" and added "the applicant shall abide the NYS idle law."

Chairperson Arnold replies, he believes the Board has decided not to amend the resolution at all, no idling permits at all on public roads.

Chairperson Arnold states moving onto resolution condition number 7. He reads "applicant shall give prompt written notice of all complaints raised to NYSDEC and the Moreau Building Department. A record of all complaints shall be made available to the public on a quarterly basis." He asks the Board if there are any comments or changes to this condition.

Mrs. Mathias states the applicant had a comment regarding this condition. She suggests specifying in the condition these would be non-odor related complaints and they would be sent to SBS and the building department.

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Chairperson Arnold asks Mrs. Mathias where she wants the language added for condition 7.

Mrs. Mathias suggests a comma then the specification of non-odor

Mrs. Buettner suggests it could say “all non-odor complaints of which it has notice.”

Mrs. Mathias says perfect.

Chairperson Arnold says he likes that and asks the Board if there is anything else for condition number 7.

Chairperson Arnold moves onto condition number 8, he reads “ all requirements set forth in the letter dated June 6, 2022 from Michael Mooney, Town Water Superintendent shall be satisfied before the issuance of a building permit. A record of water use, and wastewater discharge shall be made available to the public on a quarterly basis.”

Ms. Purdue states she has a question regarding the water use and wastewater discharge. She asks what happens in the event that the usage of water exceeds the estimates in the EAF.

Mr. Martin states water bills are structured, they have an allowance of a certain amount and if they go over that then there is a higher rate for use. It’s an incentive to the user to not go over the allotted amount.

Mr. Shaver states they have a commercial rate.

Mr. Martin states yes they have a commercial rate, but the same system applies, if there is overuse then the rate goes up.

Mr. Bergman states it’s something they should rely on the water and wastewater department to determine.

Chairperson Arnold asks the applicant what the status of the Saratoga County Wastewater Treatment sewer district number 1.

Mr. Apy replies that information is with Studio A landscaping, and he will have to check and get back to the Board.

Chairperson Arnold asks the board if there is any further discussion for condition number 8. If not he will move on to number 9. He reads “all fees associated with the

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project shall be paid prior to issuance of a building permit.” He states that is pretty straight forward and no one seems to have any issue with that.

Chairperson Arnold reads condition number 10 “ There shall be a mandatory pre-construction meeting with attendees as determined by the Zoning administrator and Building Department. and sees it as aggregable.

Mr. Shaver states he would like The Fire Department and EMS attending the pre-construction meeting.

Chairperson Arnold agrees

Chairperson Arnold reads condition number 11 “ The final emergency response plan and training schedule will be provided to the Town at the pre-construction meeting.”

Mrs. Mathias states the applicant has a useful add to the condition, she reads the SBS suggestion “ a draft emergency response plan should be required for the pre-construction meeting, with a final plan to be completed prior to the CO issuance. The pre-construction meeting will in part help to define the final draft. Additional collaboration with the county emergency management and the local fire department, and the manufacturers of the equipment, has already been committed to in writing by SBS and will be necessary to complete a final plan.” She explains in her experience there is a final walk through.

Mr. Martin states the SBS comments about a draft is typically how it’s done.

Mrs. Buettner states she changes the resolution language to “ the draft emergency response plan will be provided to the Town at the pre-construction meeting, with a final plan provided to the Town prior to the issuance of a permit.”

Chairperson Arnold agrees and has a question about the emergency response plans. He asks if they are regularly updated.

Mr. Martin states they should be.

Chairperson Arnold asks the Board if they are all okay with the changes.

The Board confirms

Chairperson Arnold moves onto condition number 12, he reads “ The woodchipper utilized by the application shall be limited to an electric drive and shall be only between the hours of 7am and 3pm, Monday through Saturday.” He asks the Board if they have any comments on this.

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Mr. Bergman Suggests the hours of operation be 9am to 3pm, Monday through Friday.

Chairperson Arnold agrees and states that was going to be his request.

Mrs. Buettner states she added no weekends or holidays.

Chairperson Arnold asks the Board if they are okay with that.

The Board agrees.

Chairperson Arnold moves on to condition number 13, “proof of approval from DEC on the final BioChar product shall be provided to the Town.” He asks the Board if there are any comments or corrections.

The Board declines.

Chairperson Arnold moves onto 14, “ There shall be signage posted around the property indicating the contact information for NYSDEC, the Town Building Department, and SBS Hotline.” He asks the Board if they would like more specifics as to where or what.

Mr. Martin states that would be appropriate on property boundaries, facing towards residential properties, at the entrance of the facility and they should be noted on the final site plan as well.

Chairperson Arnold states visible to the public road.

Mr. Martin confirms and notations to the effect that are consistent with other parts of the resolution, like the DEC Hotline number for odor reports, and reference to updating should the contact information change.

Mrs. Buettner reads from the changed language “ The signage shall be located on the property boundary facing the residential properties” “shall be visible from the public road and at the entrance to the facility.” “ The applicant shall update the information on the sign as appropriate.”

Chairperson Arnold asks the Board if they are in agreement with this.

The Board confirms.

Chairperson Arnold moves on to condition 15 “ construction of phases 2 and 3 will be preceded by a meeting with the Planning Board to address any outstanding issues with

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the project. No phase shall proceed if the planning Board determines that: a. applicant is not otherwise in full compliance with the terms of this Resolution; or b. there are other circumstances, including but not limited to, negative impacts on the community from phase 1 or anticipated for phase 2 or 3, that warrant cessation of further construction of the project.” He asks to add to the sentence “ ..phase 1 or anticipated negative impacts for phase 2...”

Mrs. Buettner confirms that can be changed.

Chairperson Arnold addresses the comment from the applicant on 15, “We suggest that any such review be subject to the standards of the final site plan approval resolution conditions, and the NYS DEC facility operating permits.”

Mr. Bergman asks before phase 2 and 3 the applicant will have to come back in front of the Board?

Mrs. Buettner confirms the applicant will have to come back.

Chairperson Arnold asks the applicant what they mean in their language “ Standards”

Mr. Millspaugh explains for example the comment about water, when they come back for phase two it makes it obvious that the water usage was higher than it was on the original site plan. From the basis of the site plan there are terms of the resolution and operating permits. Those would be the standards of compliance for making comparison of phase two and three

Chairperson Arnold states not the procedural standards of final site plan, but the standards of this particular final site plan approval.

Ms. Purdue asks Mr. Millspaugh if the site plan specifies water and wastewater usage.

Mr. Millspaugh states that is in all the documents that make up the project. He adds it’s in the private documents but if it needs to be a note on the front he can make it a note on the front.

Mr. Martin states he agrees with Mr. Millspaugh he believes a notation should be on the plan as well.

Mrs. Buettner asks what is being done.

Mr. Martin explains in regard to the condition for usage of wastewater and water, the notation of water and wastewater generation need to be added to the final site plan. He adds this should be added to the language in paragraph 8.

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Mrs. Buettner reads “ notation of water usage and wastewater usage generation shall be added to final site plan.”

Chairperson Arnold moves to condition number 16, Insurance, He reads the Town resolution condition, “ In addition to general liability insurance, Applicant will maintain an environmental liability policy in the amount of \$1Billion to cover any and all claims (including property damage and personal injury and death) caused by or arising directly or indirectly from its operations, including but not limited to discharge of contaminants in the air, water or ground. Such policy shall be in effect as of the start of construction and remain in effect until end of operation and decommissioning of the project. The policy shall be “occurrence based” and shall not contain either a “sudden and accidental” pollution exclusion or “absolute” pollution exclusion. Policies will be filed with the Planning Board and the Planning Board will be provided with 30 days advance notice of termination or amendment. Failure to maintain such insurance shall entitle the Planning Board to require the project to shut down operations.”

Chairperson Arnold reads the applicants comments “ The stated \$1Billion insurance limit is an arbitrary, capricious, commercially unavailable, and is an impossible condition to meet. Perhaps this was a typo. 1 million to 2 million per claim/occurrence is standard. This condition should reference “pollution liability coverage that is commercially available in New York” and remove reference to “contaminants in the air, water on ground” which is vague and undefined. Such policy coverage should be active within 5 business days just prior to, or coincident with, the start of facility operations.”

Chairperson Arnold asks the Board if anyone would like to comment.

Ms. Purdue states she proposed the language in condition number 16. She explains was taking into account other environmental cases in the country. She states in some cases their incidents from contaminants can range into the hundreds of millions of dollars.

Chairperson Arnold addresses the last line from the Board’s resolution language, he believes it needs to be reworded. He explains the policies are not filed with the Planning Board, The Board doesn’t need notice of termination or amendment. He adds failure to maintain insurance does not allow the Planning Board to shut down operations.

Ms. Purdue asks the Chairperson if the Planning Board is the wrong entity and then who.

Chairperson Arnold suggest the Planning Department should be provided advanced notice.

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Mrs. Buettner states that her legal concern is, this is not a situation where if something happens, the Town is liable. She states the Town has no special liability or special duty. She adds she is not sure the Planning Board has the legal authority to require this. She states the department of financial services is what really governs insurance.

Ms. Purdue states she would prefer to have a risk management expert consult with the Board to explain what is commercially available and what is appropriate of a project of this kind. She explains she is not an expert but under her own research she knows that a 75-million-dollar policy is possible. She does not know of other financial assurance the applicant can provide in the event there are environmental damages. She adds that whatever dollar limit is placed in the language she thinks it should be subject to escalation over the course of time to reflect changes in inflation and CPI.

Mrs. Buettner states her concern stands, she is not sure the Planning Board has the authority to require the applicant to get a specific type of insurance.

Ms. Purdue states the Town may be a beneficiary of the insurance if its property in the Industrial Park is damaged.

Mrs. Buettner states, if the applicant is willing to agree to the language, it is fine.

Ms. Purdue states this is an unusual project, and they might be testing the limits on what is customary, but she believes this is prudent.

Chairperson Arnold asks the applicant for information purposes, do they have intentions to have a general liability policy, and environmental liability policy.

Mr. Apy confirms they intend to have both policies.

Ms. Purdue asks if the applicant can tell the Board what the limits are and what kind of insurance.

Chairperson Arnold asks Mr. Apy what the standard as far as being able to protect the business.

Mr. Apy explains environmental liability will be within the 5-to-10-million-dollar range, liability per occurrence will be between 1 to 2 million.

Chairperson Arnold asks if per occurrence is per person or incident.

Mr. Apy states per incident.

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Mr. Martin states site plan review by a municipal Planning Board for authority to impose insurance, he insists the Board has to look at what's under their authority.

Chairperson Arnold asks if anyone on the Board would like to take any action on resolution condition number 16.

Mr. Bergman states given the option, he would leave it in as a base line.

Chairperson Arnold asks Mrs. Buettner is she thinks the Planning Board can enforce the language in condition 16.

Mrs. Buettner states she does not believe the Board has the authority.

Mr. Bergman makes a motion to remove the language on insurance, on advice of counsel.

Mrs. Mathias seconds the motion.

Chairperson Arnold asks if there is any discussion on the motion.

Mr. Shaver asks why they are removing the language for insurance.

Chairperson Arnold explains the motion is to remove the language for insurance because the Planning Board does not have the authority to enforce the requirement of insurance.

Ms. Purdue states she disagrees with that position and believes the Planning Board may require maintenance of insurance.

Chairperson Arnold asks for a roll call.

Roll call results are as follows:

Mike Shaver	No
Ann Purdue	No
Erik Bergman	Yes
Adam Seybolt	Yes
Meredithe Mathias	Yes
John Arnold	Yes

4 in favor, 2 oppose, motion carries

A motion was made by Mr. Bergman and seconded by Mrs. Mathias to remove the language on insurance in the Resolution condition number 16.

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Chairperson Arnold states number 16 will be struck. He says that brings the Board to the end of the resolution, he asks the Board if there are any other conditions they would like to discuss.

Ms. Purdue states she has another condition that didn't make it into the draft in front of the Board but was circulated in August in her proposed revisions to the draft resolution. She said it has to do with compliance with law in the event there was a change in law with the applicant's operation's and emissions. She states they would comply immediately once the rules were published as opposed to waiting for any grace period.

Chairperson Arnold clarifies that she is referring to if DEC decides to change deem something within the applicants emissions now no longer allowed to be emitted, it is standard for DEC to give them a certain amount of time for compliance, What he's understanding is Ms. Purdue would like a condition the applicant must comply immediately and not get that time period.

Ms. Purdue confirms and explains in some cases compliance isn't required until a permit comes up for renewal. Her concern is if that's the case the renew will not come up for 10 years.

Ms. Purdue reads the specific language she is proposing to add for the resolution " If the NYSDEC, EPA, or any other state, federal, local or regulatory governmental authority adopts rules, regulations or orders following the issuance of or other approvals that might otherwise exempt the applicant from complying with such rules, regulations or orders (for example, by reason of exception that allows preexisting uses) the applicant agrees that they shall conform its facility and operations to comply with such rules, regulations, and orders within 30 days issuance thereof. If applicant needs additional time, the applicant may request the Planning Board grant additional time. The Planning Board may deny or grant such request and may post restrictions or regulations on the applicant's operations, pending compliance from the applicant that the Planning Board deems appropriate in the interest of the community. The applicant shall cease operations in the event that it fails to comply by the applicable deadline established by the Planning Board."

Chairperson Arnold states in the proposed language, he points out the Planning Board has no right to compel the applicant to submit to any other states regulation changes.

Ms. Purdue she clarifies "states." She does not mean any states other than the State of New York.

Chairperson Arnold asks Ms. Purdue to reread it with that language.

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Ms. Purdue reads “If the NYSDE,C EPA or any other New York State”

Chairperson Arnold is satisfied with that correction and moves onto another issue with the language. He says it implies the Planning Board is enforcing in some way.

Ms. Purdue states that applicant may request the Planning Board grant additional time to comply.

Chairperson Arnold asks if this is in the form of a motion.

Ms. Prude confirms it is.

Chairperson Arnold asks the Board if there is a second on the motion.

Mr. Bergman seconds the motion.

Chairperson Arnold asks if there is any discussion.

Mrs. Mathias explains her concern, she says recently the states adopted a change which was in the spring in a midnight hour legislative session. She explains they have not changed any of the regulatory statues yet and its been 6-7 months. She explains as a user of that permit system they do not have any changes yet to comply with. She states she would like the applicant to comply with every foreseeable change but if the state makes a change in the middle of the night, who is watching for that. She states 30 days is a fast timeline, the states might not be caught up by the 30 days. The applicant will not know how to change if the regulations have not been updated. She asks who is going to make the Town of Moreau aware on a consistent basis.

Chairperson Arnold states he is having trouble with the idea that the Planning Board is going to be enforcing this. He states it should go to either the Zoning Administrator or some Town employee that is responsible and tasked with this. He states they are basically superseding the DEC regulation and rules.

Ms. Purdue states they are to the extent that they are asking the applicant to act sooner.

Mr. Bergman adds sooner than their permit would enforce. He offers a compromise, something along the lines that the applicant will look at new regulations as they come out or adopted by DEC regardless of where the permit is in their tenure. The applicant is required to comply with the update.

Mr. Martin states his understanding on how these things work, is as Mrs. Mathias indicated the law is enacted, then there has to be regulations that are propagated to put

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that law in effect. The condition to comply with the new regulation cannot begin at the date of enactment of the law.

Mr. Bergman states from the day of propagation, the applicant should start to do that on that day or a reasonable amount of time.

Mr. Martin asks the board what they see as a reasonable amount of time. He asks Ms. Purdue since she was the author of the language.

Ms. Purdue states the language says 30 days and if they cannot comply within 30 days they come back to the Planning Board.

Mr. Bergman states he is not sure the Planning Board know what is reasonable for a compliance timeframe.

Chairperson Arnold states he does not know if the Planning Board is a reasonable avenue for a compliance office.

Mr. Martin suggests wording the language like the applicant has 30 days to comeback to the Planning Board and request more time. He adds depending on the case the Board could set that period of time for full compliance.

Chairperson Arnold asks Ms. Purdue what she thinks about the language.

Ms. Purdue states it sounds fine.

Mrs. Buettner clarifies the Board is keeping “ If the NYSDEC, EPA or any other state, federal, local or regulatory governmental authority” she explains her concern with this language is if the City of New Paltz decides to adopt something that has nothing to do with the town of Moreau.

Ms. Purdue offers inserting the word “applicable” to qualify the reference to “state, federal, local . . .” She says this is commonly used as well.

Mrs. Buettner asks what makes it applicable.

Ms. Purdue states the project would otherwise have to apply, if not withstanding the grandfather clause.

Mr. Martin states in his opinion it should be limited to one of three agencies: DEC, EPA, or Town of Moreau.

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Chairperson Arnold states it's not fair to ask the applicant to comply with a law that isn't finalized.

Mrs. Buettner reads the revised language " If DEC, EPA, or Town of Moreau adopt regulations following the issuance of permits or other approvals that otherwise exempts the applicant of complying to such regulations for example by reason of exemption of preexisting uses, the applicant agrees that it shall conform its facility and operation to comply with the adopted regulations within 30 days of the effective date of regulations." She states the next part she left in because she was not sure how the Board wanted to move forward. "If applicant needs additional time to comply, applicant may request that the Planning Board grant additional time."

Chairperson Arnold states he thinks that's an oversight position the Planning Board can obtain.

Mrs. Buettner reads "The Planning Board may grant or deny such request and may impose reasonable conditions or restrictions on applicant's operation of the project pending compliance by the applicant." She adds she does not know what "operations pending compliance from the applicant that the Planning board deems appropriate in the interest of the community." Means, she states it's a very vague sentence.

Chairperson Arnold states he took it to mean enforcement.

Mr. Martin states he thinks the language should end at " The Planning Board shall grant or deny the applicants request" and leave it at that.

Ms. Purdue doesn't see the problem with the existing language.

Mr. Bergman asks Mrs. Buettner to read the language one more time.

Mrs. Buettner reads "If applicant needs additional time to comply, applicant may request the Planning Board grant additional time. The Planning Board may deny or grant such request and may impose conditions or restrictions on the applicants operation of the project pending compliance by the applicant as the Planning board deems appropriate in the interest of the community."

Mr. Bergman says he thinks they should leave it as is, he adds he can make sense of that.

Mrs. Mathias agrees.

Mrs. Buettner reads the next sentence " The applicant shall cease operation in the even that it fails to comply by the approval deadline established by the planning board." She asks the Board if they are all set, if so that is the new paragraph 16.

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Chairperson Arnold states that is the newly revised paragraph 16, he asks if all in favor say aye.

Results are as follows:

Mike Shaver	Aye
Ann Purdue	Aye
Erik Bergman	Aye
Adam Seybolt	Aye
Meredithe Mathias	Aye
John Arnold	Aye

6 in favor, none oppose, motion carries

A motion was made by Ms. Purdue and seconded by Mr. Bergman to revise the language in the Resolution condition number 16.

Chairperson Arnold asks the board if there is anything else.

Mr. Martin states if there is no more revisions they can print this newly updated resolution out and give the board paper copies.

Mrs. Buettner states that is appropriate given all the changes, but she requests 5 minutes to go through it to make sure everything is correct beforehand.

Chairperson Arnold asks the Board if they wish to have a printed copy of the updated resolution.

Chairperson Arnold states he would like a printed copy not right now but before he leaves tonight. He asks the board if there is anything else they would like to discuss on the resolution.

Mrs. Buettner states the Board needs to amend the motion because they amended the resolution.

Chairperson Arnold asks Mr. Bergman if he would like to reword the motion to include the amendments. (A copy of the amended resolution is attached for reference).

Mr. Bergman makes a motion to approve the Saratoga BioChar Solutions LLC site plan with the amended resolution.

Chairperson Arnold states there is a motion, is there a second.

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Mr. Seybolt seconds the motion.

Chairperson Arnold asks the Board if there is any discussion.

Mr. Shaver asks to have the motion reread.

Chairperson Arnold states the motion is to approve the site plan.

Mr. Bergman adds with the amended resolution.

Ms. Purdue states her last comment is she does believe this project required a review by experts that could help the board develop conditions for this resolution.

Chairperson Arnold asks if anyone else has anything to discuss.

Chairperson Arnold asks for a roll call.

Roll Call results as follows:

Meredithe Mathias	Yes
Adam Seybolt	Yes
Erik Bergman	Yes
Ann Purdue	No
Mike Shaver	No
John Arnold	Yes

4 in favor, 2 oppose, motion carries

A motion was made by Mr. Bergman and seconded by Mr. Seybolt to approve Saratoga BioChar Solutions LLC final site plan with amended resolution.

Chairperson Arnold asks if there is anything else the Board would like to do.

Mr. Shaver makes a motion to adjourn tonight's meeting.

Mrs. Mathias seconds the motion.

Chairperson Arnold asks the Board if all in favor say Aye.

Results are as follows:

Mike Shaver	Aye
Ann Purdue	Aye

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Erik Bergman	Aye
Adam Seybolt	Aye
Meredithe Mathias	Aye
John Arnold	Aye

6 in favor, none oppose, motion carries

A motion was made by Mr. Shaver and seconded by Mrs. Mathias to adjourn tonight's Planning Board.

Meeting was adjourned at 10:31pm

Respectfully submitted,

Katrina Flexon