

**RECORD OF REGULAR MEETING
ELLSWORTH CITY COUNCIL**

DATE: DECEMBER 19, 2016

TIME: 7:00 PM

PLACE: ELLSWORTH CITY HALL COUNCIL CHAMBERS

**CITY COUNCIL PRESENT: BEATHEM, BLANCHETTE, CROSTHWAITE,
FORTIER, HUDSON, AND PHILLIPS.**

CITY COUNCIL ABSENT: MOORE

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, MICKI
SUMPTER, MICHELE GAGNON, MICHAEL HANGGE, RICHARD TUPPER,
GARY SAUNDERS, KEN WORDEN, AND MANY MEMBERS FROM THE ON
CALL/FULL TIME FIRE DEPARTMENT.**

Call to Order.

Chairman Phillips called the regular meeting of the Ellsworth City Council to order at 7:00 PM.

Pledge of Allegiance.

All stood for the pledge of allegiance.

Rules of Order.

The meeting was conducted under Robert's Rules of Order and other rules adopted at the November 14, 2016 Annual Organizational Meeting of the Ellsworth City Council. After being recognized by the Chairman, a person may speak not more than three (3) minutes on any one item on the agenda. In addition, the person may speak not more than two (2) minutes in rebuttal.

Adoption of minutes from the following meeting (s) of the Ellsworth City Council:

- *November 14, 2016 Special Council Meeting.*
- *November 14, 2016 Organizational Meeting.*
- *November 21, 2016 Regular Council Meeting.*

On a motion by Fortier, seconded by Beathem, it was unanimously

RESOLVED to approve adoption of minutes from the following meetings of the Ellsworth City Council: November 14, 2016 Special Council Meeting, November 14, 2016 Organizational Meeting, November 21, 2016 Regular Council Meeting as presented.

City Manager's Report.

City Manager David Cole stated the Christmas Party would be held on Friday, December 23, 2016 at noontime and invited all Councilors to stop by.

Committee Reports.

Call to Order.

Pledge of Allegiance.

Rules of Order.

Approved - Adoption of minutes from the following meetings: November 14, 2016 Special Council Meeting, November 14, 2016 Organizational Meeting, November 21, 2016 Regular Council Meeting as presented.

City Manager's Report.

Committee Reports.

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➤ *Recreation Commission:* Councilor Fortier stated the Recreation Commission met and discussed different projects. Preparations started for creating the Fiscal 2018 budget. There has been some damage at Demeyer Fields particularly to a light pole; different solutions are being explored at this time. Winter Carnival will be held in February, plans are being discussed for this event. The ice skating rink has started to be built and should be completed sometime shortly after the holidays.

Citizens' Comments.

There were no citizens' comments this month.

Presentation of Awards.

Alex DePrenger, for 5 years of service as a paid on-call firefighter with the Ellsworth Fire Department.

Alex DePrenger was present to accept his service award from Chairman Phillips on behalf of the Ellsworth citizens.

Stephen Kirby, for 5 years of service as a paid on-call firefighter with the Ellsworth Fire Department.

Stephen Kirby was present to accept his service award from Chairman Phillips on behalf of the Ellsworth citizens.

UNFINISHED BUSINESS

There were no items under unfinished business this month.

CONSENT AGENDA

CONSENT AGENDA: All items with an asterisk () are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which event, the item will be removed from the Consent Agenda and considered in its normal sequence on the*

Citizens' Comments.

**Presentation of Awards.
A. DePrenger – Five years of service with the Ellsworth Fire Department.**

S. Kirby – Five years of service with the Ellsworth Fire Department.

Unfinished Business.

Consent Agenda.

Approved - Consent agenda as presented this evening.

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Agenda.

*Council Order #121601, Appointment of the City Clerk as the Registrar of Voters,
with a term to expire on January 1, 2019.*

**Council Order
#121601, Registrar of
Voters appointment.**

*Council Order #121602, Request of the City of Ellsworth Housing Authority for
confirmation of the appointment of David Remick as a tenant representative to the
Ellsworth Housing Authority Board with a term to expire of January 1, 2021.*

**Council Order
#121602, D. Remick
Tenant Rep term to
expire 1/1/2021.**

*Council Order #121603, Request of the Deputy Treasurer/Tax Collector to accept
payments on tax acquired time share units per the attached spreadsheet and to
authorize the City Manager to release said properties through Municipal Quit-
Claim Deeds.*

**Council Order
#121603, Quit-claim
deed timeshare units.**

See attachment # 1 for a complete list of timeshare units sold during the previous
month.

On a motion by Blanchette, seconded by Beathem, it was unanimously

RESOLVED to approve the consent agenda as presented this evening.

NEW BUSINESS

New Business.

*Public hearing and action on the following applications for new and/or renewal on
the following licenses:*

*Finelli's of Maine Inc., 12 Downeast Highway, for renewal of a City Class C
License (Victualer/Liquor) and renewal of a State Restaurant Liquor License (Malt
and Vinous).*

**Approved - Finelli's
of Maine Inc., 12
Downeast Highway,
for renewal of a City
Class C License
(Victualer/Liquor)
and renewal of a
State Restaurant
Liquor License (Malt**

The staff reports the premises are in compliance with required codes and
ordinances necessary to issue the requested licenses.

Public hearing was opened.

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There were no comments.

Public hearing was closed.

On a motion by Beathem, seconded by Blanchette, it was unanimously

RESOLVED to approve the request of Finelli's of Maine Inc., 12 Downeast Highway, for renewal of a City Class C License (Victualer/Liquor) and renewal of a State Restaurant Liquor License (Malt and Vinous).

Ellsworth CI, LLC d/b/a Ellsworth Comfort Inn, 130 High Street, for renewal of a City Lodging License.

The staff reports the premises are in compliance with required codes and ordinances necessary to issue the requested licenses.

Public hearing was opened.

There were no comments.

Public hearing was closed.

On a motion by Crosthwaite, seconded by Fortier, it was unanimously

RESOLVED to approve the request of Ellsworth CI, LLC d/b/a Ellsworth Comfort Inn, 130 High Street, for renewal of a City Lodging License.

Troy A. Adams d/b/a Jaspers Restaurant & Motel, 200 High Street, for a Lodging House License (only), this is a reclassification from the existing City Class A License (Victualer, Liquor, Amusement and Lodging).

The staff reports the premises are in compliance with required codes and ordinances necessary to issue the requested licenses.

Public hearing was opened.

and Vinous).

**Approved -
Ellsworth CI, LLC
d/b/a Ellsworth
Comfort Inn, 130
High Street, for
renewal of a City
Lodging License.**

**Approved - Troy A.
Adams d/b/a Jaspers
Restaurant & Motel,
200 High Street, for a
Lodging House
License (only), this is
a reclassification
from the existing
City Class A License**

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There were no comments.

Public hearing was closed.

On a motion by Beathem, seconded by Blanchette, it was unanimously

RESOLVED to approve the request of Troy A. Adams d/b/a Jaspers Restaurant & Motel, 200 High Street, for a Lodging House License (only), this is a reclassification from the existing City Class A License (Victualer, Liquor, Amusement and Lodging).

Council Order #121604, Request of the Fire Chief to purchase three (3) Scott Self Contained Breathing Apparatus, and one (1) Scott RIT (Rapid Intervention Team) pack.

Richard Tupper, Fire Chief explained this is a budgeted request. Tupper originally budgeted for four (4) Self Contained Breathing Apparatus (SCBA), the request tonight is to purchase three (3) SCBA units and one (1) Rapid Intervention Team pack (RIT). The reason for this adjustment is currently there is one RIT pack on the Rescue Truck and there is an identified need to have one on the Engine as well. Tupper explained the Rescue Truck does not always go to the same calls as the Engine, having an additional RIT pack would ensure one was available at all calls. A RIT pack is a little less expensive than a SCBA unit; thus there are adequate budgeted funds to make this purchase. See attachment #2 for a complete copy of the request along with the quote from Fire Tech & Safety of New England, Inc. Tupper explained currently the Department has 26 SCBA units on the trucks, 8 spare units (saved out through the replacement program) and 1 RIT pack. The 8 spare units are stored in house to re-service trucks after a call while the SCBA units used on that call are cleaned, disinfected, and dried. The age of the units vary due to the replacement program however remain within their useful life span.

On a motion by Fortier, seconded by Beathem, it was

RESOLVED to approve Council Order #121604, to purchase three (3) Scott Self Contained Breathing Apparatus, and one (1) Scott RIT (Rapid Intervention Team) pack from Fire Tech & Safety for \$18,950.00 (\$15,600.00 for three (3) SCBA and \$3,350.00 for one (1) RIT pack) from the Fire Department budget

**(Victualer, Liquor,
Amusement and
Lodging).**

**Approved - Council
Order #121604, to
purchase three (3)
Scott Self Contained
Breathing
Apparatus, and one
(1) Scott RIT (Rapid
Intervention Team)
pack from Fire Tech
& Safety for
\$18,950.00
(\$15,600.00 for three
(3) SCBA and
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Fire Department
budget 210-53006
SCBA.**

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210-53006 SCBA.

Before a vote was taken on the above motion, Councilor Crosthwaite inquired if the funds were available within Account #210-53006. Tupper confirmed the funds were available to cover the requested expense. Councilor Fortier noted during the Fiscal Year 2017 budget workshops this expense was taken out of the Capital Improvement Budget and placed within the Department Operating Budget as it is a yearly reoccurring expense.

**A final vote was taken on the above motion with all members voting
unanimously in favor.**

*Public hearing and discussion on the proposed enactment of an ordinance entitled
Recreational Marijuana Prohibition Ordinance.*

Chairman Phillips explained this item was before the Council this evening as a result of the citizens of Maine voting to authorize the sale of recreational marijuana. At this time there are questions concerning where the various products and services would be appropriate within the City and how this would be determined and regulated. There are still questions and uncertainties in regards to how the State of Maine Legislature will impact the law once it is completed. The request for a recount has been recalled as of today; the Governor may sign this concept into law very shortly. In closing Phillips stated since the Council is not positive of what they will see for laws, how the Municipalities will be allowed to deal with the new laws, as well as a product that is fairly new; the Council has a proposed Recreational Marijuana Prohibition Ordinance before them tonight for public comment. Michele Gagnon, City Planner presented the information contained in attachment #3, made up of a cover letter, proposed ordinance entitled Recreational Marijuana Prohibition Ordinance and **Section 1. 7 MRSA c. 417** Chapter 417 Marijuana Legalization Act. Gagnon explained the following three things are exempted from the proposed Ordinance: personal use, medical marijuana under that particular Act, and the proposed Recreational Marijuana Prohibition Ordinance which contains a two year sunset clause. The proposed Ordinance would be effective for two years unless the Council takes some other type of action before that date. If the Council decided to not take any other action during the two year window, the Ordinance would expire after two years. Phillips stated this Ordinance does not take permanent action, it only allows time for the

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Council to find out what the new laws will be.

Public hearing opened.

Joseph Lusardi, Executive Director of Maine Organic Therapy spoke on behalf of Maine Organic Therapy and the 1,500 patients they serve. He provided his perspective on what he believes will happen by the enactment of the new law. The State of Maine Governor has stated he does not want to operate two programs. It is possible that the Governor will repeal the Medical Marijuana Act. Lusardi believes this will be the demise of his business; they have been operating in Ellsworth for the past six years. They have not had one incident during that time. Maine Organic Therapy has tried to donate \$1,000 a month to different charities within this Community, and have given out over 500 turkeys at Thanksgiving to the needy. He would like to continue this practice. Lusardi believes if this proposed Ordinance is approved tonight the Council will be putting him out of business, putting the 1,500 patients out to the streets/black market, and will be creating a vacuum for a black market within this Community. He felt the Prohibition Ordinance would cause drug deals to take place in the parking lots of Ellsworth. Lusardi asked the Council to table this item and allow him to bring the Council more information and speak to them on the ramifications of passing this Ordinance. He felt rushing to this decision was unsafe. There is currently emergency legislation being considered to enact rules to allow the medical dispensaries to immediately start serving the adult use market. By allowing this operation it alleviates the black market crime he feels will unleash on this Community. By allowing the medical dispensaries to sell this product it will bring in tax revenues to the City immediately instead of to drug dealers. Lusardi feels this emergency legislation has a good chance of passing.

Councilor Fortier stated within the proposed Ordinance Section 5, Exempt from the Prohibition is personal use marijuana and medical use marijuana; therefore the proposed Ordinance will not negatively impact Lusardi's business, Maine Organic Therapy. Lusardi disagreed with Fortier because currently a patient would be required to spend \$200 to receive a recommendation from a physician to use his facility if Lusardi is correct and Governor LePage changes the program to cause patients to be absorbed into this new recreational market there would be no incentive for patients to use the medical dispensaries and pay the \$200 fee. Lusardi believes the State does not want to operate two programs, forcing the

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1,500 patients to purchase their medication through this new entity. He further feels over the next year the medical marijuana program will disappear completely with the State of Maine not funding it causing dispensaries to be dissolved into the new entity. Fortier felt the City was not directly impacting Maine Organic Therapy; however, actions by the Governor may negatively impact the business. Phillips stated the City of Ellsworth does not have any control over what the State of Maine and Governor LePage does; however, the Council is concerned about what happens within the City and is attempting to gain some time so that an intelligent plan can be created to deal with the new laws. Phillips stated the associated businesses that come with this new product are of concern to the City such as the clubs and other forms of distribution centers. He recognized the fears addressed by Lusardi and reiterated the City cannot control what the State of Maine does to the existing program. Fortier stated the proposed Ordinance may actually be helping Lusardi. Councilor Hudson added the reason the Council approached this topic in this way was not only to protect the medical dispensary operation but to prevent the creation of businesses without a set of licensing regulations as designed by the State of Maine. The Council would not be able to act on or regulate store fronts that might appear in the City for distribution of recreational marijuana. The proposed Ordinance was designed to provide the City with the tools to stop companies that might want to come to the City and open a store front until the City is ready for this new type of business. Before the City can design a plan for this new type of business the State of Maine will need to provide the rules for licensing these new establishments. Hudson stated a prohibition sounds final; however, this is only a way of stopping all action until the facts, guidelines, and licensing information is received on how to move forward. She reiterated this proposed Ordinance is effective for two years with a sunset provision. If the necessary information comes out and the Council decides to take a different course of action they can repeal this Ordinance. The Council is not obligated to wait the two years before they create a new Ordinance to control this type of business. Hudson stated the Governor could not end the Medical Marijuana Program until there are rules in place for the Recreational Marijuana Program. This proposed Ordinance only protects the City until the rules are designed for the recreational sale of marijuana. Councilor Crosthwaite questioned Lusardi on his statements from the April Council meeting where he indicated he may not have any part of the sale of recreational marijuana. At that meeting Lusardi was not in favor of this new law as it was written and was hoping the initiative would fail. Crosthwaite inquired what caused Lusardi to change his mind

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on selling recreational marijuana. Now Lusardi believes the Medical Marijuana Program will be gone and it is his responsibility on behalf of the 1,500 patients to find an alternative place for them to get their medicine rather than back on the streets as they previously had to do. He also stated he needed to protect his business because he will be out of business along with the 1,500 patients that will be on the street. Crosthwaite said the possibility might exist once the medical side is gone; the new laws/regulations may allow the emphasis to be switched to the recreational sale of marijuana. These details have not been determined yet. Lusardi is hopeful the emergency legislation will be passed allowing the medical dispensaries to immediately start selling recreational marijuana. The information that is being presented as part of the emergency legislation shows the medical dispensaries currently have the infrastructure in place, are already highly regulated, and the State trusts the licensed facilities based on their past performance. There are 8 licensed medical marijuana dispensaries in Maine. The proposed Ordinance also protects the City from marijuana lounges opening within sections of the City that may not be a good fit for that type of use.

David Legere voiced a concern with the two year timeline. He recognized this timeline could be revisited prior to the expiration date. Legere was more in favor of a 6 month moratorium to allow time for the details to be worked out, then review the situation and decide at that point whether to extend the moratorium or not. Phillips explained there are certain limitations on enacting moratoriums. A moratorium would be in effect for 180 days with the possibility of extending it for another 180 days; however, at this point there are no rules in place to use while making decisions on how to create an ordinance. Therefore, the allowable timeline for a moratorium may expire before anything could be written. Phillips recognized that two years seemed like a long time; however, once the laws and regulations are known it will likely be revisited much sooner than two years.

Steven Joy, Ellsworth resident provided a recap of the April Council meeting when the zone change was approved for medical marijuana dispensaries. Joy shared some pieces of the Bill as it is written and discussed the manufacturing and retail portions which already take place in Ellsworth with regards to other materials. He felt the Bill was already written very specific regarding what can and cannot be done. Joy felt the rule making process at the State level would take 6-9 months on a Bill that is already very specific, therefore two years for the expiration of the Prohibition Ordinance seems excessive. Joy was proposing the Council take one

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year to study, read, and develop an ordinance that makes sense without just stating the Council will take two years to even begin the process. Phillips explained the two years is only an end date, it does not mean the Council will wait two years to start the process. Joy agreed the Council needs to take time to fully understand and develop an ordinance; however, would like to see a shorter window than two years.

Tara Young stated a two year moratorium (prohibition ordinance) was a good start. She would rather not see recreational marijuana in Maine; certainly not in this community. She feels medical marijuana is a separate issue and would like to see the two uses kept separate in the future. Young was mostly concerned with the retail products, which resemble various candies, getting into schools and the hands of children. She was also concerned with the public health issues associated with people smoking the product similar to those documented with cigarette smoke. In her opinion there will be more costs associated with the products than the small amount of revenue received from taxes. The proposed tax rate in Maine will be less than half of that in Colorado.

Debra Porter a registered nurse and realtor spoke on both the health and business concerns behind this proposed Ordinance. She was opposed to the moratorium (prohibition ordinance) and she challenged the Councilors to research this topic. Porter conducted her own research while she was in Colorado this past spring. She visited 9 shops while there and noticed a customer cannot enter the shops without first being buzzed in. Customers must provide a drivers license (they took a photocopy of both sides of the license) before they are permitted to enter the shop. Only a few customers are allowed in the store at a time to ask questions or look at products. Porter asked the owners of the shops what they saw as business potentials. At first there were some municipalities with moratoriums in place while others did not enact moratoriums. Municipalities without moratoriums started to benefit from the extra tax revenues, were seeing the real estate tax rates decrease as well as sales tax increase through the sale of recreational marijuana. Economically, municipalities with moratoriums started to realize that it made more sense to terminate those moratoriums. Porter felt the City should not approve the Prohibition Ordinance and they should move forward with the State of Maine. If the City makes it illegal, the shops will locate in surrounding towns which will reap the financial benefits. Porter would like to see Ellsworth's property taxes go down. Hudson stated unfortunately there will not be a local sales tax benefit or excise tax benefit allowed in Maine, the sales tax revenue will only be captured by

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the State.

Public hearing closed.

Fortier stated following the State vote to legalize the sale of recreational marijuana he has been opposed to prohibiting the sale of recreational marijuana within Ellsworth. However, he has been convinced to support approving the proposed ordinance so that the licensing can be done right. Fortier will be pushing for this issue to be resolved prior to the two year deadline following the release of the final rules and laws while ensuring due diligence is completed. The approved ordinance needs to be written to stand up within the Court System, be effective with police enforcement powers and benefit the entire community. Hudson stated she was concerned how the two year prohibition would appear to the public; however, without rules from the State of Maine there is no way the Council can responsibly issue licenses, and allow this type of business in Ellsworth. This is a short term only way for the City to protect the staff from business inquires and the community from the mass creation of new businesses without the legal guidelines and tools to address them. Councilor Beathem stated this process needs time to allow citizens to express their thoughts and concerns to the Council before decisions are made. He did not feel waiting for all the rules to be in place was necessary before the public hearings could be held on some of the decisions that need to be made. For example, the question needs to be answered where citizens would like to see clubs located in relation to the future vision for the City of Ellsworth. Beathem did not see the process taking two years to complete. Crosthwaite stated the Ellsworth voters voted against this topic by approximately 8%, although the citizens of Maine approved the measure by a small margin. He stated he would not support something the citizens of Ellsworth have already told him they are not in favor of in spite of how the rest of Maine voted. Crosthwaite did not feel the Council should be concerned with the possibility of retail businesses opening in surrounding towns. He would like to see as much time as necessary taken to complete this project right or opt out completely. Councilor Blanchette noted there is a new Legislature coming in and he would like to wait for the rules to be developed before making a decision. He is in support of approving the proposed ordinance.

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*Council Order #121605, Request to enact the ordinance entitled Recreational
Marijuana Prohibition Ordinance.*

See attachment #3 for a cover letter, the proposed ordinance entitled Recreational
Marijuana Prohibition Ordinance and **Section 1. 7 MRSA c. 417** Chapter 417
Marijuana Legalization Act.

On a motion by Crosthwaite, seconded by Blanchette, it was

**RESOLVED to approve Council Order #121605, to enact an ordinance entitled
Recreational Marijuana Prohibition Ordinance with the amendment to Section 7
to read Sunset Provision. This Ordinance automatically expires two (2) years
after the effective date unless it is repealed or reauthorized by the City Council.
See attachment #3A for the final copy of the Ordinance reflecting the amended
language.**

Before a vote was taken Beathem requested a clarification on the sunset clause. He
would like it to specifically say sunset clause is two years; that will fall two days
after the December meeting in 2018. The way it reads currently is a little vague.
Fortier clarified the language further by stating in Section 7 of the proposed
Ordinance (attachment #3) it has the word “within” two years. Fortier would like
to take out the word “within” and add the word “in” two years from adoption. The
word “within” is the word that should not be included. Fortier felt it should read
“in” two years. Beathem stated that was correct. Gagnon asked if Fortier would
consider adding the following language to the above motion, and include the
effective date language as provided by Beathem so that it is clear when the
ordinance becomes effective. This would narrow down when the two year window
starts. Beathem stated the effective date is already listed in the ordinance as
today’s date.

Fortier offered the following friendly amendment: amend Section 7 of the
proposed ordinance removing the word “within” from the first sentence. The
sentence will read: This ordinance automatically expires in two years, (Fortier than
corrected the friendly amendment to “expires two years after the effective date
unless it is repealed or reauthorized by the City Council”.

Crosthwaite accepted and Blanchette seconded the friendly amendment.

**Approve Council
Order #121605, to
enact an ordinance
entitled Recreational
Marijuana
Prohibition
Ordinance with the
amendment to
Section 7 to read
Sunset Provision.
This Ordinance
automatically expires
two (2) years after
the effective date
unless it is repealed
or reauthorized by
the City Council.
See attachment #3A
for the final copy of
the Ordinance
reflecting the
amended language.**

**RECORD OF REGULAR MEETING
ELLSWORTH CITY COUNCIL**

DATE: DECEMBER 19, 2016

TIME: 7:00 PM

PLACE: ELLSWORTH CITY HALL COUNCIL CHAMBERS

**CITY COUNCIL PRESENT: BEATHEM, BLANCHETTE, CROSTHWAITE,
FORTIER, HUDSON, AND PHILLIPS.**

CITY COUNCIL ABSENT: MOORE

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, MICKI
SUMPTER, MICHELE GAGNON, MICHAEL HANGGE, RICHARD TUPPER,
GARY SAUNDERS, KEN WORDEN, AND MANY MEMBERS FROM THE ON
CALL/FULL TIME FIRE DEPARTMENT.**

Fortier stated the reason behind the amendment is “within” is not specific, now there is a definitive date on the calendar

All members voted unanimously in favor of the amended motion as stated above.

Adjournment.

On a motion by Beathem seconded by Crosthwaite, it was unanimously

RESOLVED to approve adjournment at 7:55 PM.

A TRUE COPY

**ATTEST: _____
HEIDI-NOËL GRINDLE**

**Approved -
Adjournment at 7:55
PM.**