

**THESE ARE DRAFT MINUTES UNTIL APPROVED BY THE CITY
COUNCIL
SPECIAL MEETING
CITY COUNCIL CHAMBERS, CITY HALL
29592 ELLENSBURG AVE
GOLD BEACH OR 97444
MONDAY, APRIL 27, 2009 6:15 P.M.
PUBLIC HEARING - APPEAL AT 6:30 P.M.**

CALLED TO ORDER AT 6:15 P.M.:

THE PLEDGE OF ALLEGIANCE:

ROLL CALL:

	<u>PRESENT</u>	<u>ABSENT</u>
Mayor James Wernicke	X	_____
Council Position #1 Sue Johnson	X	_____
Council Position #2 Larry Brennan	X	_____
Council Position #3 Peter Peterson	X	_____
Council Position #4 John Truesdell	X	_____
Council Position #5 David Alexander	X	_____

PUBLIC CONTRACTS AND PURCHASING:

AUTHORIZATION FOR MAYOR TO SIGN PERSONAL SERVICES EMPLOYMENT CONTRACT

MOTION:-> Brennan moved to authorize the Mayor to sign the personal services employment contract for the chief of police, second by Peterson.

Alexander stated that due to his past statements about how he would be voting on anything to do with the matter, he would not be voting for it even though he is in favor of it.

Johnson, Brennan, Peterson and Truesdell voted "AYE", Alexander voted "NAY". VOTE 4 AYES 1 NAY

There was a short break at 6:19 p.m. before the public hearing started at 6:30 P.M.

PUBLIC HEARINGS: Dave Pratt and Jodi Fritts (Planning Department) were in attendance for the public hearing.

PLANNING COMMISSION

APPEAL OF A Planning Commission denial of a request to modify a condition of approval of the Emerald Pacific Subdivision.

MINUTES OF THE PUBLIC HEARING ARE ATTACHED:

CITY OF GOLD BEACH
City Council
Minutes - GBA-0801
April 27, 2009

This record of the hearing is not a transcript; audiotapes are available at the office of the Curry County Public Services, Curry County Courthouse Annex, 94235 Moore Street, P.O. Box 746, Gold Beach, OR 97444.

Council Members Present: Mayor James Wernicke, David Alexander, John Truesdell, Peter Peterson, Larry Brennan, Sue Johnson
Planning Staff: CC Associate Planner Jodi Fritts, and CC Clerk, Diana DeLong

Mayor James Wernicke opened Public Hearing GBA-0801 at 6:30 pm - An appeal of a planning commission decision of a request to modify a condition of approval of the Emerald Pacific Subdivision.

Mayor Wernicke called for conflicts, ex-parte contact, or bias.

Councilor John Truesdell disclosed that he was a member of the City of Gold Beach Planning Commission in April 2008, when the applicant requested a modification of the Commission's earlier condition of approval. He said that he felt that he could be fair and impartial.

Mayor Wernicke asked if there were any challenges from the audience. None heard.

City Planner, Jodi Fritts, read the staff report – an appeal of a Planning Commission decision (denial) of a request to modify a condition of approval of the Emerald Pacific Subdivision. She presented the background history of the original subdivision approval in 2006, and reported that all conditions of that approval were satisfied except Condition #7 (The entrance to Ruby's Way off of Hwy 101 shall be paved to 36' and the motel sign shall be removed prior to final plat approval). Fritts briefly shared the history of the complicated road issues preventing the applicants from obtaining final planning approval for the recording of the final plat. Fritts said that the planning department cannot sign the final plat unless all conditions met. The applicants filed the appeal last May but had spent the last year trying to settle the matter with the neighbors. They felt all avenues to reconcile the issue had been exhausted and were now requesting City Council remove the condition so they can file the plat. Fritts reviewed the supplemental material of information received after the staff report was prepared and before the hearing tonight.

Councilor Sue Johnson asked Fritts to clarify the road(s) in question and commented that Condition #7 referred to Ruby's Way entrance connecting to Hwy 101, when actually, Panorama Drive connected directly to Hwy 101.

Fritts acknowledged the confusion and referred to page B-2 of the meeting packet for clarity, and said that the applicant had widened Ruby's Way but the matter of the sign removal was at issue.

Mayor Wernicke asked Fritts if the entrance road (Panorama Drive) was named prior to the conditions of approval.

Fritts said that it was, and that it had been platted when the condominiums were built.

Councilor David Alexander asked for road width distances. Fritts referred council to Exhibit H-1 and *Page 4*, of the staff report, which documents the following:

- A: 42' – the width of the entrance off of the Hwy 101 right-of-way
- B: 22.8' – curb-to-curb width at the corner turn
- C: 19' - narrowest width of the current pavement
- D: 35' - from western edge of current pavement to the vegetated bank to the east (west of the Hwy 101 ROW)

Councilor Alexander clarified that according to Condition #7 of the original staff report the entrance only to Ruby's Way be paved to 36', but other areas of the road are not 36'. **Fritts** said that was the issue, they can't pave the portion of road where the sign is located.

Councilor John Truesdell asked if Panorama Drive were a private or public road. **Fritts** responded by saying that Panorama Drive is a private road open to the public, a dedicated public road (meaning anyone can go down it). It does not belong to the city and is not maintained by the city.

Mayor Wernicke called David Koch, Attorney for applicant to the podium.

David Koch, Attorney for Applicant – Koch gave a brief history of his legal experience in municipal claims and land use matters. He said his clients had a condition imposed on them (#7) on property which they do not own and have no control over. All other conditions placed on the development have been completed. The problem with the condition they have not completed is his client doesn't own the Gold Beach Resort sign to be moved or the land to be driven over to connect Panorama Drive with Ruby's Way.

He said that what we have is a public highway (Hwy 101) connected to a private easement road (Panorama Drive) to a public road (Ruby's Way). He continued by saying that Gold Beach LLC have easement rights to use Panorama Drive for access. But the easement terms are limited in regards to the Gold Beach Resort sign. Gold Beach Resort has the right to maintain their sign in the existing location.

Koch informed council of the applicants effort to compromise with the Resort owners including monetary compensation. He explained the most recent offer of \$75,000 to purchase the easement land area in question. He acknowledged the need to widen the road for safety reasons and referred to *Option #4* of his letter, in the supplemental package, for resolution – “The City's Condemnation Authority to acquire Panorama Drive in the interest of public safety under the General Condemnation Procedure Act (ORS Chapter 35).” Referring to page B-3, of the large packet, which showed the strip of land the city could acquire. He offered that same \$75,000.00 to the city (in the form of a bond/escrow) to help pay for the condemnation process and improve the road to meet city road standards. He said that would be the simplest solution and at no cost to the city.

Mayor Wernicke asked Koch if the city could condemn private property for private use. **Koch** replied that it could be condemned for public use, a public right-of-way; a determination in the best interest of the public. He said the record had already been established that the city had an interest in removing the sign. The sign creates confusion, to the traveling public, because the sign is located where it doesn't actually lead patrons to the resort as advertised. Dedicating the road as a public right-of-way, to connect it to an existing public right-of-way, and widening it for public safety reasons; valid public interest concerns that the city would be able to justify in the condemnation.

Mayor Wernicke brought up the possibility of *Quiet Title Action*.

Koch replied that it wasn't possible because of the easement rights for the sign itself. His client's would not be able to widen the road more than a foot where the sign exists.

Mayor Wernicke asked which easement came first, the road or the sign.

Koch said it didn't matter, because the easement was modified and referenced Page C-52, *Termination of Agreement for Easement* – bottom paragraph to maintain and use said existing sign; unless Gold Beach Resort owners reasonably modify that agreement; and they can't be forced to.

Councilor Larry Brennan asked if the entrance to the road from Hwy 101 was 42' wide and if the sign was south of the entry way.

Koch said that it was 42' at the mouth of the road and the sign southwest of the entrance.

Councilor Brennan asked if the remaining portion of the road was widened the road to 36', to planning commission standard, if it wouldn't interfere with the sign.

Koch said if the sign were up by the highway they wouldn't have a problem, but Panorama Drive narrows down to 19-20' at the sign location. (Koch referred to a photo in the supplemental packet for clarity - where a truck was coming out of the driveway.)

Councilor Truesdell asked Koch to clarify that Ruby's Way was previously dedicated to the city, and wondered if the city had accepted it as such.

Koch responded that he understood that it was accepted as a city street when the original plat was drawn for eight lots (later modified to the current lot configuration) and understood that Ruby's Way was a public right-of-way. He continued by saying that he disagreed with Fritts, and that Panorama Drive (where it crosses the Gold Beach Resort property) was not a public right-of-way, at this point, but a private road and not a publicly dedicated road.

Mayor Wernicke referenced agreement C-43, *Paragraph 4*, and asked if it was still valid or set aside in a later agreement.

Koch said that the maintenance agreement was not set aside and didn't affect the easement agreements. The road maintenance agreement is simply to allocate the cost of maintenance and forming improvements. He continued by referencing #4 in that document, and the underlined section, "and that in no event should said road be allowed to fall below minimum access standards of the City of Gold Beach for commercial property.", is a standard that parties can use in compelling other parties for costs for maintenance and improvement.

Councilor Brennan referenced agreement Page C-17 and asked if the deed was valid. **Koch** said he thought it terminated in a later agreement and referred to the *Affidavit of Robert Reed* Page E-1 to help clarify.

Fritts addressed the council and audience clarifying that the matter was an appeal to modify Condition #7 only—not the entire subdivision application. Those requesting to be speak should address the appeal of Condition #7 only.

Councilor Truesdell asked Fritts to clarify if Ruby’s Way had been accepted and now considered to be a city street.

Fritts replied that to her knowledge no, the plat was recorded for the previous Driftwood Shores Subdivision. The Plat was recorded with Ruby’s Way on it and it was her understanding that the city had not yet gone through the process to accept it. She had spoken to public works and they agreed it had not been accepted. It is a public road dedicated for public use but not a city street at this point.

Mayor Wernicke opened **Public Testimony at 7:10 pm.**, limiting speaking time to 5 minutes per speaker and called the first speaker.

PUBLIC TESTIMONY

Dan Hauser, Owner Lot 3, Driftwood Shores the issue is having a direct impact on his, and his parents (who own Lot 2) investments. He said as owner of lot 3 he has given easements to the developers and the hotel folks to try to work with them to get this property built. He said he felt that it would be an incredible addition to Gold Beach and a gem to the community. The sign seems to be a problem and asked council to work with the folks to resolve the matter.

Doug Yates, Board of Directors for Ocean Panorama Condominium shared his concerns about public road safety in the development of the road. He said that all avenues had not been exhausted in resolving the issue and the Board of Directors had not met with developers. He requested that Council hold developers to the highest standards.

Mayor Wernicke asked if he was concerned about the traffic through parking lot of the condominium complex.

Yates said he was, and that people come through very fast, they have a gate but keep it open for fire access.

Mayor Wernicke asked if speed bumps would be helpful in slowing down the traffic.

Yates said he didn’t want anything to diminish their access to their condominiums.

Monroe Glass-Ocean Panorama Condominiums #9 said three owners have a perpetual easement together. No one got all three together at one time. He said he didn’t want too much traffic, and from his condominium has a view of unsightly stem-walls. He would like to see it stay a private road.

Councilor Johnson asked him who the three owners were.

Glass said the owners of Ocean Panorama Condominiums, Gold Beach Resort and Chives.

Wade Abke, 10th Street shared his concerns for safety getting on and off Hwy 101 from Panorama Drive and asked if there would be a stop sign at the new intersection. He said it should remain as it is and safety should be first.

Daniel Oh (on behalf of the owners) Gold Beach Resort read portions of the letter submitted in the supplemental package.

Mayor Wernicke asked if they were against the widening of the road to 36'.

Oh said for safety reasons, they were not, but do not want the conditions dropped.

Mayor Wernicke asked if they were opposed to moving the sign.

Oh said he thought the sign was fine where it was, and that was their property, business and to their benefit.

Mayor Wernicke responded by asking him if the sign prevents them from widening the road, what would they expect them to do.

Oh suggested they find an alternate route, getting a pathway or something and would have to discuss it with the owners.

Mayor Wernicke asked Oh if he was correct in what he thought to be the Oh's position – they don't mind widening the road but don't want to take the sign taken down to do that; so they can't widen the road.

Oh replied that he was correct and hoped that they could find another solution.

Councilor Truesdell – suggested to Oh that considering the Resort support the safety issues and the road widening, if the sign could be moved south a number of feet (at no cost to you) which would allow the widening of the road (and sign visibility to northbound traffic) would that satisfy their requirements. He went on by saying that having good visibility of the sign, seems like a win-win situation, and asked Oh if he agreed.

Oh said they would have to think about it.

Councilor Johnson asked him about their losing business as stated in their letter. She asked how they had lost business.

Oh said they relied on tourism, people want to come to the beach to see the ocean, the construction is discouraging our regulars from returning and it is hurting their business.

Councilor Johnson asked if they were opposed to the development no matter what happens to the road.

Oh said he wondered if there were restrictions to comply with the neighbors and said he realized that it's their property but they should comply with the neighbors and city on building heights.

Naomi Oh, Owner Gold Beach Resort said they wanted to cooperate and would like to work with them in the proper way. She wants to know what kind of building is going to be there and how dangerous the road might be. She said they can't just say ok to anything they want to do and hired a lawyer to talk to them. Negotiation was just dropped and then heard they appealed it. They are willing to work with them if they do it properly, and they have had business loss because of the construction. She continued by saying that they want to be happy residents and proud of Gold Beach. If the council drops the condition, the danger is still there and nothing will change. Finally, just because they didn't want to negotiate with us doesn't mean council has to drop the condition.

Tamie White, Manger Gold Beach Resort – responded regarding the question of business loss. She said the construction work blocks the view, creates trash and the condition left is the only tool that they have left to negotiate to make changes like picking up the garbage, making the stonewall more attractive and different things that would make it better for their guests; which would encourage them to stay longer in Gold Beach. She continued by saying that the sign could be moved and the road could be widened but we need to have some benefit from it as well, not just houses that block our view

Councilor Alexander asked Ms. White if they would agree to moving the sign and widening the road.

Naomi Oh, Owner Gold Beach Resort commented that Tamie White would have to talk to them about that.

John E. Mirande, Condo Owner - Ocean Panorama Condominiums said that he supported the Oh's and the Condominium Association and likes the view and the slow pace. He hopes there won't be too much traffic and the right decision is made.

Councilor Alexander asked him how he felt about speed bumps to slow traffic.

Mirande said he supports the association and safety. Keep it beautiful - no change.

Cindy Swan, Owner Ireland's/Gold Beach Inn shared her view of developers and asked council to limit building heights to 18' or lower, on the lower ocean land, and encouraged clustering of homes to avoid straight line development.

Mayor Wernicke reminded Swan that the issue was about the widening of the road only.

Swan asked the mayor if the applicants had met all conditions except for #7.

Mayor Wernicke said they had.

Swan asked if there were any more requirements if #7 were met.

Mayor Wernicke replied that all requirements would be satisfied for the subdivision.

Daniel Oh asked what height they would be building to.

Fritts responded that in commercial/residential zones the city has a maximum height of 35' and until the city changes the zoning ordinance she can't disallow heights for some and not for others. She also offered that she hasn't seen any building plans, so she can't tell them what will be built. When plans are submitted she will make sure they don't exceed the 35' maximum allowed. The commercial zone allows buildings to 35'.

Councilor Johnson asked if a variance could change that.

Fritts responded that the Zoning Ordinance would have to be changed, for example, *all lands west of hwy 101 shall have a 25' height restriction*. Fritts continued by saying that the lots could sit vacant for a long time and she couldn't say when or what would be built until building plans were submitted. She said she understood and recognized the emotional issue but she couldn't change what governed their approvals.

Councilor Truesdell clarified that buildings can't exceed 35' but could be less than that.

Fritts said he was correct and clarified that the 35' was from grade level; not filling in the vegetation zone.

Cindy Swan, Ireland's/Gold Beach Inn – wanted to know if they kept the Condition #7, and couldn't meet condition #7, they couldn't build their subdivision.

Mayor Wernicke reiterated that if they can't meet condition #7 they can't file the final plat.

Fritts interjected that if they can't file the plat, they can't sell the lots.

Swan said she was happy about Condition #7 then, because it created a pause so the developers couldn't build 35' walled condominiums that would block the ocean views, and if they did, people would stop coming to Gold Beach and the city would lose its vitality and uniqueness.

Mayor Wernicke reminded Swan what the hearing issue was and asked her to save unrelated remarks for another time. He told her that the council could not arbitrarily change the law at this point in time.

Swan commented that they don't want any change and by keeping Condition #7 they can't do their subdivision.

Don Swan Ireland's/Gold Beach Inn said that the Oh's would be put out of business. If they are allowed to put a 35' condo wall it's going to destroy the way the ocean looks for them; there is no benefit to this town. He spoke about condition #7 and said that the mistake made by the developers was not getting approval for the road prior to construction, and they should have negotiated like a man before putting one dollar down there. He asked council not to reward them for their mistakes, and told them to make them negotiate a deal with the parties involved; and if the council didn't know what they planned to build to vote no.

John Spicer Esq., Representing Tony Contway (neighboring Property Owner) concerned if condemnation for private development was used, he felt it would be a dangerous precedent.

REBUTTAL

David Koch, Attorney for Applicant commented that developers built Gold Beach Resort and the Condominiums and felt the Council could understand why the applicants have been unable to negotiate with the neighbors, to meet condition #7, because they see it as a tool they can use to blackmail his clients and kill the project. Gold Beach Resort owners say they want to work with us and be good neighbors and are worried about the impact to their business. He continued by saying that we can apologize, but have offered more than that land was worth because we wanted to compensate them for that loss. We talked to them about making the landscape wall prettier but we couldn't give them enough, we received no response with the latest \$75,000.000 offer. He went on to say that it's not a planned unit development so there are no building plans. They are individual lots, each lot owner would submit a building plan, and as long as they met setbacks and building/height requirements, could be built upon. He said that there won't be a 35' Condominium wall because they have side-yard setbacks and a beach easement down the center of the property, a visual clearance point towards the ocean. Continuing, this development is less intensive, not nearly as large as the properties on either side. He commented to council that if this is truly a safety issue, then condemn the property; and they will bank-roll the process. Otherwise, remove the condition so they file the final plat. He said he would like to see the road widened for safety reasons and the sign could be moved so it could still be seen.

Monroe Glass said the developers have never tried to negotiate with Ocean Panorama Condominium Association; one meeting with 3 board members was all. They would have to come before the full board about the easement that's all they are asking.

Dan Hauser commented that it's a safety issue first and that it's evident that the council isn't going to please everybody regarding color, height etc. If there is a safety issue fix it.

Koch said the reason they didn't meet with the full board of the condominium association is because it doesn't run across their property. They are a user of the easement but don't own the property. He said that it's not their sign that has to be moved and we weren't proposing that all three pay for it. The developer was always going to pay for the development of the road. There was a comment that they did not have legal access before coming to the council, Gold Beach, LLC has legal access.

It all comes down to the sign,

Mayor Wernicke Closed Public Testimony at 8:01 pm

Councilor Johnson clarified the issue by reading from the staff report V. Conclusion Page 6, (top of page)" Staff has consulted with legal Counsel. There are two options: 1) the applicants must comply with the condition or, 2) the Planning Commission may remove the condition in order for the applicants to record their plat. She asked Fritts if that is what it boiled down to, and the sign is the reason they can't widen the road.

Fritts replied that to reasonably widen the road the sign must be relocated.

Councilor Johnson commented that she felt that further negotiations weren't going to help. And can see the importance of the sign; that stops it period.

Fritts responded that several lots on the south end of town that have remained vacant and perceived as public use areas. She continued that property owners have the right to develop their land and construction isn't perpetual.

Councilor Johnson asked if the developers knew about the road situation.

Fritts said the argument went back to the previous property owners. When the current owners came in to develop their subdivision (not a planned unit development) the applicant's believed that they could work it out with the neighbor.

Councilor Truesdell said the applicant didn't have control of the land to satisfy Condition #7 and the condition was poorly written. He continued by saying that it is clear that many of the objections use Condition #7 as a tool, to control a subdivision, which was not the intent of the condition but would bring the road(s) into compliance with city standards. However, if the road remains private the 36' width is mute because it's a private road and not a public owned city street. Another thing to look at besides condemnation which he felt uncomfortable about, would be to consider leaving Panorama Drive as a private road and not accept Ruby's way as a public street; leaving it as a private road (if they wish) and not a city concern.

Councilor Alexander clarified the position, to either uphold Condition #7 or not.

Fritts commented that the applicants need to file their plat, had spent a tremendous amount of money installing utilities and developing the subdivision, and felt they deserved a decision one way or the other.

Councilor Alexander clarified the Council's ability to modify the condition.

Fritts reiterated that was correct.

Councilor Brennan asked Jodi if they could approve filing the plat with no building allowed until Condition #7 met.

Fritts said she didn't know and would have to ask legal council. She offered that they could continue the hearing to allow time to gather the information if they wished to.

Councilor Johnson asked if they file the plat could they then begin building.

Fritts said that at this point they can't even sell the lots.

Councilor Peter Peterson said he did not want to pursue condemnation.

Mayor Wernicke had concerns about those using Condition #7 as a tool to stop development.

Councilor Truesdell commented that *Condition #7* is useful only if Panorama Drive becomes a city street.

Fritts said the original intent was it become a city street and public works and planning wanted city road standards met. However, there are private roads in the city that don't meet city standards.

Councilor Truesdell asked if it met private road standards.

Fritts said it did and exceeds those standards.

Councilor Truesdell asked **Fritts** if they could eliminate Condition #7 with Ruby's Way and Panorama Drive not be accepted by the City as city streets.

Fritts said yes, and they could add verbiage that if at some later date they wanted to dedicate it, it would have to be brought up to city road standards.

Councilor Alexander asked if there would be access for emergency/non-emergency and utilities vehicles to that private road.

Fritts said they would, unless it was gated, but the condominium association said here tonight that they don't close theirs for fire & rescue purposes.

Mayor Wernicke asked if there was ample access for the vehicles.

Fritts said there was.

Councilor Johnson considered safety issues and wondered about a traffic study.

Fritts gave the history of Chives (aka The Beach House Restaurant/Bar) saying the traffic existing at that time was much more than what exists today. She said that ODOT was contacted and was informed it there wasn't enough traffic to warrant a traffic study.

Discussion ensued regarding 42' apron and motion verbiage.

Councilor Johnson asked Fritts if leaving Panorama Drive as a private road was considered by the planning commission or developers.

Fritts said the hope of the Planning Commission was to find a resolution with surrounding property owners and advised those involved to come to a consensus.

Councilor Truesdell was interested in knowing if the resolution discussed would interest the developer.

Fritts offered that a similar resolution was suggested in Option #1 in the letter submitted by the applicant's attorney (in the supplemental packet).

Motion

Councilor John Truesdell made a motion that City Council eliminate Condition #7 with the understanding that Panorama Drive, Ruby's Way and Emerson Circle will not be accepted as city streets until they all meet city standards.

Councilor David Alexander seconded the motion.

Discussion:

Councilor Johnson acknowledged the difficulties in making a decision.

Councilor Truesdell commented that the developers have tried to comply but do not own the land, making it an invalid condition, and if a reduction were allowed, then the city would accept a road that didn't meet code. Truesdell continued by saying that we can't make someone comply with something on someone else's property.

Councilor Alexander agreed with Councilor Johnson regarding the decision difficulties, but felt sufficient time had lapsed for reasonable people to come to some agreement; if they had chosen to be reasonable. And, now it's come to City Council to make that decision.

Mayor Wernicke asked if there were further comments from council. None heard.

Note: Digital recorder malfunction - the following not recorded:

Mayor Wernicke called the vote:

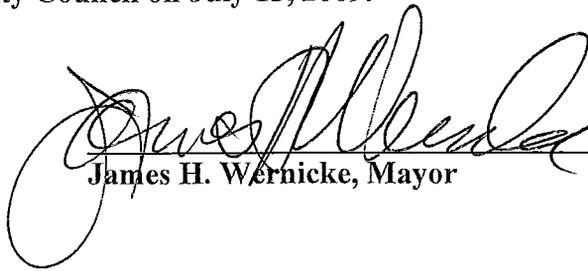
Councilor David Alexander	Aye
Councilor John Truesdell	Aye
Councilor Peter Peterson	Nay
Councilor Larry Brennan	Aye
Councilor Johnson	Aye

Mayor called vote 4 to 1 - Motion Carried

Fritts instructed to prepare the final order for approval at the next City Council meeting.

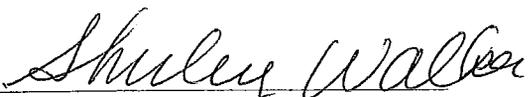
Mayor Wernicke called adjournment 8:34 pm

Passed by the Gold Beach City Council on July 13, 2009.



James H. Wernicke, Mayor

ATTEST:



Shirley Walker, Recorder