

Draft

**PLANNING ADVISORY COMMISSION  
GOODHUE COUNTY, MN  
April 20, 2009 MEETING MINUTES**

The Goodhue County Planning Advisory Commission was called to order at 7:00 p.m. by Chair B. Overby in the Goodhue County Justice Center located at 454 West Sixth Street in Red Wing, Minnesota.

Present: Bernie Overby    Dan Rehtzigel    Tom Webster    Mike Patterson    Richard Bauer  
Suzanne Blue    Howard Stenerson    Larry Olson    Brandon Schafer

Absent:

<sup>1</sup>*Motioned by R. Bauer and seconded by T. Webster to approve the April 20, 2009 agenda. Motion carried 6-0. M. Patterson, B. Schafer, and S. Blue tardy.*

<sup>2</sup>*Motioned by D. Rehtzigel with staff report changes striking mention to K. Rosenquist as noted below and seconded by H. Stenerson to approve the March 16, 2008 minutes. Motion carried 7-0. M. Patterson arrived.*

### **STAFF UPDATES**

**CONFLICT/DISCLOSURE OF INTEREST** – B. Overby stated Carol Lee discussion postponed.

D. Rehtzigel stated K. Rosenquist report had errors as per K. Rosenquist and wanted items stricthen.

H. Stenerson said items still on tape.

M. Wozniak stated verbage is from staff report and she may have stated unfair in last minutes also.

H. Stenerson asked if audio usable later.

M. Wozniak stated often written minutes not all as recorded and obligated for motions, etc.

M. Patterson arrived.

S. Blue arrived.

### **OLD BUSINESS:**

**Zoning Text Amendment – Article 30 (Shoreland Regulations), Section 12 (Sanitary Regulations), Subd. 7 (Sewage Treatment), Paragraph F.**

Attached with this Staff Report are the following:

1. E-mail comments from Beau Kennedy, Water Planner/Wetland's Administrator; Goodhue County SWCD.
2. E-mail comments from Bill Huber, Minnesota DNR Area Hydrologist.
3. Executive Summary Hastings Area Nitrate Study.
4. MPCA 7080 Rules (regarding compliance times)

The County Board has requested that the Planning Advisory Commission review the provision of the County's Shoreland Regulations that stipulates a requirement for compliance inspection of Sub-Surface Sewer Treatment

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Systems (SSTS).

Article 30, Section 12, Subd. 7, Paragraph F, which reads as follows:

***“F. Individual sewage treatment systems on all lots within the Shoreland District shall be inspected for compliance with Section 12 (Sanitary Regulations) of this Article as part of all variance, conditional use, and building permit applications.”***

This request resulted from concerns expressed by Kristi and Bob Rosenquist, property owners in Zumbrota Township. The Rosenquist’ felt that current county policy of requiring a compliance inspection for Sub-Surface Sewer Treatment Systems (SSTS) for parcels in the Shoreland Area (any portion of a parcel) when any zoning or building permit is requested is unfair. They feel that it is unnecessary for the County to impose a requirement beyond the minimum standard mandated by the State of Minnesota and that the current policy goes beyond what is needed to protect water quality. This policy applies if the Sub-Surface Sewer Treatment System (SSTS) is over three years old and/or has not had a compliance inspection within at least five (5) years.

The Following two subparagraphs from the MPCA 7080 explain Compliance criteria in the State of Minnesota;

**Subp. 3. Compliance criteria for new construction.**

An SSTS regulated under a current construction permit is considered compliant if it meets the applicable requirements of parts [7080.2150](#) to [7080.2400](#).

**Subp. 4. This is from the new rules. Compliance criteria for existing systems.**

To be in compliance, an existing SSTS must meet the provisions of this subpart.

A. The SSTS must be protective of public health and safety. A system that is not protective is considered an imminent threat to public health or safety. At a minimum, a system that is an imminent threat to public health or safety is a system with a discharge of sewage or sewage effluent to the ground surface, drainage systems, ditches, or storm water drains or directly to surface water; systems that cause a reoccurring sewage backup into a dwelling or other establishment; systems with electrical hazards; or sewage tanks with unsecured, damaged, or weak maintenance hole covers. A determination of protectiveness for other conditions must be made by a qualified employee inspector or licensed inspection business.

B. The SSTS must be protective of groundwater. A system that is not protective is considered a system failing to protect groundwater. At a minimum, a system that is failing to protect groundwater is a system that is a seepage pit, cesspool, drywell, leaching pit, or other pit; a system with less than the required vertical separation distance described in items D and E; and a system not abandoned in accordance with part [7080.2500](#). A determination of the threat to groundwater quality for other conditions must be made by a qualified employee or licensed

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inspection business.

C. The SSTS must be operated, meet performance standards, and be managed according to its operating permit.

D. SSTS built after March 31, 1996, or in an SWF area as defined under part [7080.1100](#), subpart 84, shall have a three-foot vertical separation or a vertical separation based on applicable requirements. The local ordinance must not allow more than a 15 percent reduction in the vertical separation distance to account for settling of sand or soil, normal variation of measurements, and interpretations of the limiting layer conditions.

E. SSTS built before April 1, 1996, in areas that are not SWF areas as defined under part [7080.1100](#), subpart 84, must have at least two feet of vertical separation.

F. The vertical separation measurement for items D and E shall be measured outside the area of system influence in an area of similar soil.

This policy has been consistently administered requirement whenever the Shoreland District overlays any portion of a lot. Our preliminary research indicates that this language has not been altered since it was adopted June 4, 1993. Since January 2000, we have required over 584 landowners who applied for any building permit to obtain a septic compliance check. Fifty-three (53)\* have found that they had failing or old septics that needed to be repaired or replaced. Of those 53, seventeen (17) of the septic systems were replaced due to new dwellings. \*This is an approximate number; there was no septic system information available for Shoreland properties in 2006.

Goodhue County citizens have a heightened interest in water quality. This was reinforced during discussions of the Comprehensive Plan update of 2004. Because this has been an important issue in our County, it would be prudent to involve our Water Plan committee in our discussions during the public hearings. Any changes to the wording of our ordinance would also need to be reviewed by Minnesota DNR for conformance with the Shoreland Management Act.

The following are options for revision of Article 30, Section 12, Paragraph F., for the Planning Advisory Commission to consider.

- 1) Sub-Surface Sewage Treatment Systems (SSTS) on ***any part of a lot transected by the Shoreland District*** shall be inspected for compliance with Section 12 of this Article as part of all variance, conditional use, and building permit applications.
- 2) Sub-Surface Sewage Treatment Systems (SSTS) on ***any part of a lot transected by the Shoreland District*** shall be inspected for compliance with Section 12 of this Article as part of all variance, conditional use, and building permit applications, ***if the request adds to the area of a new or existing dwelling, or adds to the septic use of any new or existing structures, or if any part of the SSTS is within the District. A survey showing the location of the SSTS may be required to verify its location relative to the District.***

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- 3) Sub-Surface Sewage Treatment Systems (SSTS) *within the Shoreland District* shall be inspected for compliance with Section 12 of this Article as part of all variance, conditional use, and building permit applications. *A survey showing the location of the SSTS may be required to verify its location relative to the District.*

The first option clarifies our existing practice. The second option clarifies the lots affected but limits the inspection to certain circumstances. The third option only requires inspections if the SSTS is within the Shoreland Management District.

A copy of the Executive Summary of the Hastings Area Nitrate Study Final Report has been included with this staff report. This document sheds some light on the potential impacts from on-site sewer systems and explains the Dakota County Program to administer Septic System Maintenance and Code Enforcement.

Much of Goodhue County has a high susceptibility to groundwater contamination which may provide justification in support of standards beyond “minimum” requirements of State Shoreland Rules. Many Minnesota Counties implement a compliance inspection requirement upon sale of any property. This is not a requirement in Goodhue County at this time. Local governments throughout the State have chosen different strategies to administer standards for on-site sewer systems to ensure protection of water resources. Land Use Management Staff will present additional information on this issue at the March 16, 2009, Planning Advisory Commission Meeting to explore that pro’s and con’s of the current County policy. In addition, the public will have the opportunity to offer comments regarding this issue.

**Discussion:**

M. Wozniak stated updates and options. He noted research on Convaince upon sale compliances in other counties with different ways it is done. These are typically in separate wastewater regulations, ours are within Article 11 of Zoning Ord., but separate from our shoreland regulations. That should be a separate track researched more and decide what role for the county and what resources expended to implement.

M. Wozniak gave staff update on handout for Sewage Summit 3.

M. Wozniak asked what course for tonight.

B. Schafer arrived.

D. Rehtzigel gave update from County Board. Wants it done right and consistent. Questions at last PAC meeting about County Board receptiveness, yes, if done thoughtfully.

S. Blue asked if staff said could staff handle point of sale and is support of board needed.

M. Wozniak said roles would be in a few offices.

S. Blue asked what priorities would be exchanged to do this.

M. Wozniak stated L. Hanni will talk to county board soon of ordinance enforcement challenges. Compliance

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upon sale may become routine in the future, some may be unwilling to comply and those would take up time.

S. Blue likes idea of direction we have to go and money for landowner is arriving at the same time.

B. Overby said citizen of Kenyon Township as example. It cost 267 for a contract or to open a lid and say ok as per conversation.

J. Petersen stated his understanding of that case. Some out of county contractors are role of the dice, staff is careful to check certifications, including how designers write up sheets. They have a price to go by and it averages out.

B. Overby said costs may lead people to walk away from permits.

D. Rehtzigel said state statute requirements.

M. Patterson said no issues with either. In most cases people will get loans and title work will show what is taken care of, and common to see in other areas.

B. Overby gave example.

M. Wozniak said come back later or come back with 2-3 options. Also, direction on implementation and who is responsible for what. What education and lag time until it takes effect also.

H. Stenerson said not opposed to it, concerned about general tax payer to fit the bill and how would sales take the cost. On enforcement end, can a provision not be recorded until compliance attached to deed if possible.

M. Wozniak said most set up for transaction.

M. Patterson said not adding additional staff to enforce this.

M. Wozniak said check with other counties too and see. Like to pass on an option about the shoreland. He explained options from staff report. Number 3 noted as minimum DNR would accept. Number 4 from input of SWCD Board. J. Petersen may have comments. He noted variables and said hard to say 15 years as magic number but as a compromise.

B. Overby said at BOA there were many variances for setbacks prior to regulation changes, but only one for shoreland.

D. Rehtzigel said more out there.

M. Wozniak gave additional examples.

D. Rehtzigel said some projects just give up. Gave Cherry Grove and Wanamingo examples. This has been brewing.

M. Wozniak said most will get compliance done.

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S. Blue said 3 situations. Parcel that touches shoreland, separate are other 2 to improve with landowners, so treated with a committee thoughtfulness. The nuisance situation vs. improvements and on sales. Hopefully CUP's would catch them.

J. Petersen explained building permits won't unless adding a bedroom. Plumbing needs compliant septic.

S. Blue re-stated criteria.

M. Wozniak explained GIS maps (3) from GIS Tech Sarah Schrader.

S. Blue stated government changed notification-floodplain distinctions.

M. Wozniak asked is that about floodplain from FEMA flood insurance rate maps. Shoreland different as per state.

S. Blue asked if ordinary high water line changed.

J. Petersen said new flood insurance maps would show shoreland extending to limits of the floodplain.

M. Wozniak stated he can check definition.

L. Olson asked J. Petersen if septic is older than 5 years would it need compliance.

J. Petersen stated new system good for 5, re-inspection good for 3 years.

L. Olson asked if old system always not good.

J. Petersen said not always.

L. Olson asked if landowner is guilty until proven innocent.

J. Petersen said no, gave example.

L. Olson gave example of shoreland in other distant areas from homes on large properties costing money to landowner. He said he has no problem if system is in the 300 feet of shoreline, but has issue if 1/4 mile away or long ways out.

H. Stenerson gave example of only every 3 years if multiple projects.

M. Wozniak added permits may trigger as well.

B. Overby asked if backhoe again if only 4 years later. Could soils changes that much.

J. Petersen said that was the argument that if 2 people checked off the first time is good vs. problematic to do again if only one signature as per state rule. Generally soils do not change. Staff and designer do multiple portions normally in current operations. Low percentages that change.

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H. Stenerson said we have to decide who this applies to. He asked about DNR draft.

M. Wozniak said whatever we do has to conform with these rules, with some small variation allowed.

H. Stenerson explained draft also states sale of property along with permit compliance measures, or wait and amend later.

B. Overby asked about specific differences between state and county. Is County stricter.

M. Wozniak said state only mandates within 300 foot proper, were as we say any part of the property touches shoreland it needs compliance review.

H. Stenerson said grey area is any permit; home vs. outbuilding or Ag. Building, or only structures that use the system.

M. Wozniak said what they want is a trigger to get non-compliant systems into compliance as drive.

H. Stenerson said not to burden every three years for what is not necessary.

B. Overby said we can not be less stringent than state. What option is most like state.

M. Wozniak said number 3 would satisfy minimum state expectations as per Bill Huber, DNR waters. Permits should trigger compliance if in area in shoreland, those outside areas up to county.

B. Overby said boils down to what state says.

S. Blue said systems on shoreland district.

M. Wozniak said under option 3, Rosenquist would not need inspection.

H. Stenerson said how often required.

J. Petersen said problematic for decent diagrams of locations of septic systems, may need equipment to find old sites. Many houses set close to water.

H. Stenerson asked do they go by system or were house is.

D. Rechtzigel said about survey also, take out survey and add measurement inspection, and only survey if arguments arise.

S. Blue said good idea. We have fallen away from site specific permitting. Use of the word survey may not be good.

D. Rechtzigel said survey in 20 years may be interpreted different by future boards.

S. Blue said at least a drawing.

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M. Wozniak gave variance example to build near a property line as certificate of survey uses. He noted driveway example contested at Cannon River Winery also.

D. Rehtzigel said if they lie, building inspectors find later, shut down project. Survey if dispute arises.

T. Webster said it seems to have gone from point of sale discussion to now find a way to option 4; asked for relation to map of options.

M. Wozniak explained difference on option 3 to option 4.

T. Webster asked about the 708 on the map in shoreland.

B. Overby re-stated 3 vs. 4.

T. Webster said not inspect less than 708. Other option inspecting 1300 or so. Other question puzzling, property owners do not want to address, what is it about hiding septic or taking responsibilities. Think owners have a responsibility to their system. Maybe some don't know about system, should know. Still need a mechanism to update septic.

B. Overby asked for clarity on 3 vs. 4. after furthermore verbage.

M. Wozniak stated option 4 came from SWCD concern for water quality. No magic to over 15 years but lack of records give cause for logical reviews.

D. Rehtzigel said T. Webster point good if seen one way, but his point is, instead of hitting only same 1201 over and over, the point of sale is better to see all septic county-wide as sale of property. Some do want to hide their septic.

M. Wozniak gave Heitman CUP example.

H. Stenerson leans the same way, have to meet state standards, 3 does that, sit down with Ordinance later with Point of sale update later. In fairness, lets have state requirement 3. Another thought instead of survey, catch-all phrase if septic not found.

M. Wozniak said we want to verify location of the system and write it up accordingly.

M. Patterson has no problem with county wide point of sale, much less objection when the money is there to do it. In terms of the shoreland, would we pass on option.

***Motioned by M. Patterson, seconded by H. Stenerson, to approve option 3 striking word survey and insert compliance check.....***

B. Overby said if not found, or no verification .....

***M.P. said insert measurement inspection and if dispute arise about an inspection Compliance check required. Seconded by H. Stenerson.***

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S. Blue likes 4 better, alright with 3.

M. Patterson said number 4 puts pas on younger systems than 15 years, it is hard and fast and makes staff easier.

B. Schafer said what about word inspection; who is that 20 years from now if reading ordinance. What better word.

B. Overby asked if system location not verified.

M. Wozniak gave difficult example. Landmarks for GPS or by applicant to verify later.

***M. Patterson said by friendly amendment strike measurement inspection and insert site map.***

H. Stenerson asked if strike addition phrase.

M. Patterson said no, 3<sup>rd</sup> party needed to check in that situation.

M. Wozniak said now scribble site map examples already appear on building permit applications just so to understand.

***H. Stenerson 2<sup>nd</sup> amendment change.***

D. Rehtzigel said option 4 to S. Blue the distance situations come up again. It is not consistent.

***B. Overby called for vote. Motion by M. Patterson to approve option 3 striking the word “survey” and insert “site map” and with and if dispute arise about an inspection compliance check required. Motion carried 9-0.***

S. Blue asked for question about statistics from previous report.

D. Rehtzigel said success rate low.

S. Blue had nagging concern, had we not talked about this, she would not have thought about age of her own system. That may be normal. Education important. Also, until a few years ago we accepted subdivision with shared septic. Some of them do not want to know. County will pull into Compliance things those people have not thought about.

M. Wozniak said a lot of mound systems in the county also.

T. Webster noted minutes reflect we will come back to point of sale revisited in Ordinance updates later.

B. Overby stated we are stricter with the new number 3 now also.

H. Stenerson asked if point of sale ordinance would PAC have jurisdiction or County Board delegates to Environmental Health directly.

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M. Wozniak mentioned many counties have separate wastewater ord, it does not have to be in zoning.

**Discussion of Possible Zoning Text Amendments (Closed Hearing): All remaining items Tabled.**

This item has been placed on the agenda in order to provide an opportunity for the Planning Advisory Commission to discuss several possible text amendments to the Zoning Ordinance. The following items will be included as part of the discussion:

- **Building Permit Provisions:** Article 2, Section 4, Subd. 1, reads as follows. “Permits shall not be required if said erection, enlarging or structural alternation is considered non-structural and the cost is valued under one thousand (1000) dollars.” The County Building Official has been utilizing the Building Code as a basis for determining what type of work is subject to issuance of a permit. Subd. 1 is an antiquated provision and should be amended to come in line with current practices. Revised language will be presented at the March 16, PAC Meeting when this item is discussed. It may be useful to make further revisions to Section 4, as well in order to make the Zoning Ordinance better reflect current administrative practices of the Land Use Management Department.
- **Interim Use Permit References:** Now that Goodhue County has begun to utilize Interim Use Permits it would be appropriate to reference this land use regulatory tool in the Zoning Ordinance. Staff will present draft language to incorporate appropriate references to “Interim Use Permits” into the Zoning Ordinance.
- **Special Events:** As a result of the experience of processing the CUP to allow special events at the Cannon River Winery Warsaw Township Vineyard Property it has become obvious that better regulations to govern such activities would be helpful. Wineries and vineyards are by no means the only land uses that may be interested in hosting “special events”. Staff will present some options for regulating special events in order to generate some discussion on this issue.
- **Wineries:** Recent experience processing the CUP for the Vasa Vineyard and Winery has made evident the need for Goodhue County to establish clear standards for regulating this type of land use. Staff has had contact with several other property owners who have expressed varying levels of interest in establishing wineries. Staff will present some specific examples of standards for regulating wineries.

Staff may use this opportunity to seek guidance and direction from the PAC on other matter of ordinance interpretation that may not require amendment of the zoning ordinance text.

**Discussion:**

M. Wozniak explained order of discussion items and staff intent to address one at a time. Special Events firstly. He noted Cherry Grove airpark without years of oversight. He noted Ronfest in Goodhue Township last year during RNC convention. Pachyderm studios fire camp in Cannon Falls Township upcoming in May. Greg Karoe motorcycle event upcoming in Zumbrota Township in October. Interim use permits for one time may be a good tool. Staff reviewed other counties; found regulations in Sheburne County as example. Definition of special events from other found source.

D. Rehtzigel said difference is the vineyard wants 12 events forever. Good intentions on paper by staff could have bad results. Has opinions to leave airpark alone. Not comfortable with language yet.

M. Wozniak said language may come back for exact ideas.

S. Blue added examples to leave alone.

M. Patterson ticked by report if read wrong and said most aggregious document in last 8 years.

H. Stenerson said intent not after that. Instead of writing up wineries specific and leading to other things. Have some type of language that addresses things that compliments or as accessory to agricultural use of lands.

M. Wozniak said staff needs help to say what we should be concerned about. Some trigger Environmental health concerns, some do not.

S. Blue said good to be brought forward not wanting to go after small things, Inconsistency by PAC so far. We have tried a lot of things. She gave motor cross example vs. wedding example. Forgot to ask practical pieces for CUP in performance criteria questions. A standard set of questions to address practical situations can fly or not based on that, and if it is appropriate for neighbors. PAC may have been inconsistent.

R. Bauer said have existing laws regulate with noise issues, etc.

S. Blue added criteria already exists.

B. Overby said 12 wedding would be special events, some definition someplace.

B. Overby gave separate examples as inconsistent.

H. Stenerson interpreted different uses.

D. Rechtzigel explained why Cherry Grove should be let go and not told to staff due to fears of government ruining good thing. Said property owners may choose to not get CUP and just do things.

K. Moriarty asked D. Rechtzigel if he supported that.

D. Rechtzigel said he meant he did not support regulating once a year events.

M. Wozniak asked what is the balance.

B. Overby said D. Rechtzigel point well taken. Should category be made, or handled one by one.

S. Blue said CUP's in past a lot for things like this. Said CUP list of criteria so neighbors could comment, as read per ordinance. Practical reviews in the past. Is support there for public health and safety.

B. Schafer said this is about problems in the past 12 months, same neighbors would complain if their proposals had to get permits, room would not be big enough, staff can take care of situations as they come up.

M. Wozniak gave Pachyderm fire camp example.

H. Stenerson asked about neighbors against neighbors. Is it possible to use ordinances against neighbors.

M. Wozniak said can interpret things as permissable, things not spoken to would or could technically be forbidden.

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D. Rehtzigel gave private party examples. Avenues to address in complaint format, not wanting to create new level of Bureaucracy.

H. Stenerson gave Lions Club example in the past, that health inspection found problems. List of criteria for events for the public.

M. Wozniak said that was a concern.

J. Petersen gave Ronstock example from summer 2008 in Goodhue Township.

T. Webster asked how did it end up.

J. Petersen explained standards addressed after abrasive landowner communicated with.

T. Webster said from this discussion at this time of year maybe a news reminder would be good with criteria. More care taken after past problems. A few reminders in the public newspapers may clear up things ahead of time.

D. Rehtzigel said sometimes rules like 21 days of food vending apply like in sports; yet coming from the state fair length. What is more worisome.

S. Blue said true for one time things.

D. Rehtzigel said maybe by complaint basis.

S. Blue said about re-occurring events.

M. Wozniak said winery ordinance coming due to expanding industry.

H. Stenrson said vineyards want more. That will require more.

M. Patterson said tools in place already as law enforcement, Env. Health, etc. Stressed not in favor of special events ordinance at all.

M. Wozniak said public relations as per T. Webster comments has merit.

H. Stenrsen said not to use the words special events for wineriss.

M. Wozniak gave update on legal conference attended with L.Hanni dealing with interim use permitting.

***Moved by L. Olson seconded by T. Webster to adjourn the April 20, 2009 Planning Advisory Commission meeting at 9:15 p.m. Motion carried 9-0.***

Respectfully Submitted,

Kelly Moriarty  
Recording Secretary

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MOTIONS

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<sup>1</sup> APPROVE April 20, 2009 agenda. Motion carried 6-0.

<sup>2</sup> APPROVE the March 16, 2009 minutes, striking language regarding K. Rosenquist. Motion carried 7-0.

<sup>3</sup> APPROVE the Motion by M. Patterson, with friendly amendment, seconded by H. Stenerson, to approve Zoning Ordinance Text Amendment for Shorleand to Option 3 with strike of the word Survey with insertion of the words site map and completed last sentence with and if dispute arise about an inspection compliance check required. Motion carried 9-0.

<sup>4</sup> APPROVE the Motion by L. Olson seconded by T. Webster to adjourn the April 20, 2009 Planning Advisory Commission meeting at 9:15 p.m. Motion carried 9-0.