

**TOWN OF SHELBURNE
Planning Board
Minutes of Meeting
Wednesday, December 19, 2012**

A duly posted meeting of the Shelburne Planning Board was held on Wednesday, December 19, 2012 at the Buckland Shelburne Elementary School for the purpose of Wind Turbine Bylaw Development.

Present: Matt Marchese, Chair
Beth Simmonds, Vice Chair,
Doug Finn, Clerk
John Wheeler,
Briony Angus, Tighe & Bond, Consultant to the Board
Liz Kidder, Administrative Assistant
Deb Countinho, Board of Health

Absent: Chuck Washer

Audience: Eugene Butler, Judi Truesdell, Bob Jaros, Mike Parry

Press: Diane Broncacio

Meeting was called to order at 7:04pm. Matt and the Board introduced themselves and Matt introduced Briony Angus of Tighe & Bond, consultant to the Planning Board.

Motion to approve the minutes of December 12, 2012 as presented was made by John and seconded by Doug. Vote: 3 in favor, 0 opposed, and 1 abstention by Beth who wasn't present at that meeting.

Old Business:

Wind Turbine Moratorium -Presentation of Draft Shelburne Wind Turbine Bylaw by Briony Angus, Tighe & Bond.

Matt thanked Briony for being here again and for forwarding an initial draft, of what will probably be several drafts, of a small wind bylaw. Matt turned the floor over to Briony to present her draft. Matt noted that there were members of the Wind Advisory Committee who were present tonight and he would appreciate Briony pointing out where standards are included and how she picked her initial recommendations.

Briony noted that everything she has put together is subject to change. She reviewed the items she had highlighted in her email about this draft:

Also attached is a draft of the Small Wind Energy System Bylaw, developed based on our discussion at the November 28 meeting. This is a working draft, so there are still some highlights and comments in the document. A summary of the draft bylaw and some discussion points are below:

- This is currently set up as Section 17 of the bylaw just as a placeholder.*
- Small Wind Energy System is defined as anything under 60 kw in capacity.*
- Small wind allowed in all zoning districts.*
- Building Permit required for all Small Wind Energy Systems. Rooftop systems only require a Building Permit.*
- Site Plan Review/Approval from Planning Board (or its equivalent, see "Architectural and Engineering Plans under CRMS bylaw") required for Small Wind Energy Systems that comply with all siting,*

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design and other standards. In the current draft we refer to this process as Site Plan Review (note, currently does not exist in Shelburne).

- *Special Permit issued by Planning Board required for Small Wind Energy Systems that do not comply with siting, design and other standards.*
- *Application requirements are outlined for both processes.*
- *Right now for the Special Permit application requirements for those turbines that do not meet siting/design criteria, it currently says that a variety of additional information/studies must be included in the application, i.e. noise, visual, etc. The draft bylaw could be amended to say that "if requested by the Planning Board, applicant must submit any or all of the following".*
- *Requirements for met towers are covered under "General Requirements" section.*
- *We had discussed having a minimum threshold for very small projects where only a Building Permit would be required. The current draft only allows this for small roof mounted systems. Given that the process and application currently envisioned for Site Plan Review/Approval is not particularly burdensome, I did not define a minimum project that would not require this. We can discuss further.*
- *The current draft bylaw has broad waiver language at the end of the section, instead of specific waiver requirements for specific standards. Currently there is no process outlined for requesting a waiver, we can consider adding one.*
- *I don't believe we discussed whether the Planning Board has thoughts regarding guy-tired towers vs. lattice towers vs. monopole towers. Currently the draft bylaw is silent on this issue, so all would be allowed.*
- *This assumes that the Planning Board must also develop procedures for Site Plan Review/Approval and either adopt its own Special Permit procedures or confirm that the Select Board/ZBA Special Permit procedures currently under review can be used. The draft bylaw language does not reference required fees, as this can be addressed in the procedures.*

In summary under this bylaw, a small turbine that meets basic standards would be allowed by right and only need a building permit. If an application for a wind turbine does not meet those standards, then a special permit process is triggered that would be overseen by the Planning Board as the Special Permit Granting Authority (SPGA).

17.1 Purpose section: The consensus of the Board was that this purpose statement was adequate.

17.2 Applicability: The Board felt this was straight forward but would be changed if the 60 KW of rated capacity was changed during the review process.

17.3 Definitions: Beth noted that there is now a definition of building inspector which is not currently in the Shelburne Zoning Bylaws. Matt noted that we may need to update our use table relative to the definition of building inspector.

In response to a query from the audience, Matt noted that most of the audience were members of the wind advisory committee and they could ask questions along with the Planning Board during Briony 's presentation as long as time allowed.

Bob Jaros asked how the size of a small wind energy system had been determined. Matt noted that it had been discussed during past meetings with Briony. Briony explained that 60 KW is often used in other small scale wind bylaws and it was necessary to come up with initial figures just to get a draft developed and it

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can change in future drafts after additional study of what is appropriate for Shelburne. Bob also asked that there is a limit of how many turbines could be put up on one site. Briony noted that the intent was that the cumulative capacity would be 60 KW and she will tighten up this language in her next draft.

Mike Parry raised the issue of the Planning Board taking on the role of the SPGA which he finds unusual for this board and that he was told before that it hadn't been discussed with the ZBA. Mike noted that there was a reference to the fact the Planning Board is an elected body and the ZBA is appointed by the selectboard.

Matt reviewed what had been discussed at the last meeting when this question was also raised. Since the Planning Board is currently going through the process of developing this bylaw, this board will be up to speed on the nuances of the bylaw if an application is submitted right after the moratorium is lifted. In addition, the Board will then be able to evaluate firsthand how well the bylaw is working as an effective tool for the town. If difficulties arise during implementation, the Planning Board will be able to make recommendations to town meeting to improve the bylaw based upon their experience of implementing the special permit process.

Matt emphasized for the record, that in no way was he suggesting that the ZBA does not have the qualifications to act as the SPGA on any issue. He pointed out that Shelburne is unique from other towns in that often the planning boards typically deal with the larger and more contentious issues that require special permits. Matt noted he wants to be on the record that he does not consider this a slight on the ZBA. Historically, when the ZBA needs clarification on a section of the bylaw, they seek that input from the Planning Board. Therefore he felt that regarding the specifics of wind, the Planning Board will have a better handle on understanding the nuances of the bylaw, be able to respond more quickly to an application if there is one in the near future, and would be able to see firsthand where the bylaw may need modifying and tweaking after implementing it for the first time. Mike asked if the Planning Board has ever gone through the special permit process before. Mike said it seems odd to him that in this one instance, the Planning Board has taken on the SPGA responsibility. Matt said that the town will vote on who the SPGA will be for the wind bylaw; the Planning Board will make its recommendation. In his four years on the board, wind has been the largest and most contentious issue.

Matt noted that at past meetings, Mike has made comments on an issue of conflict of interest among current planning board members. Since the board is elected, once a year the residents have the option of making a change on the board. Matt noted that during all of last year's meetings regarding the wind turbine proposal, he never saw an appearance of conflict of interest demonstrated by any member of the board during discussions or votes. Following discussions with the State Ethics Commission, one member has recused himself, and two others have filed all the appropriate paperwork with the Town Clerk as recommended by the commission. Matt feels very good about the work of the Planning Board and feels they acted very fairly throughout the process last year. As far as identifying the Planning Board as the SPGA in the draft, we may disagree but in the end it will be up to Town Meeting to vote on it and determine which board will be the SPGA for wind projects. The concept of the Planning Board being the SPGA is not strange or unusual and is consistent with state law. Matt noted he is sure this question will be raised again.

Matt asked for thoughts from the rest of the Board. Doug agreed with Matt. John said he is not sure how he feels but recognizes this is a first draft that will have to go through public hearings and in the end it will have to get a 2/3rds vote at Town meeting. He is sure there will be consultations with the ZBA.

17.4 General Requirements:

17.4.2 Site Plan Review. Beth asked-- if they meet all the requirements does it mean they will automatically be approved by the building inspector? Briony noted that the site plan review is to prove that they meet all the minimum standards. If this bylaw is passed, then the Planning Board will have to

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develop site plan review procedures. Matt noted that this is much like what the ZBA process does and would require a meeting with a site plan review as part of it. The application process is developed by each board and does not have to be voted on by Town Meeting. Briony noted that when we look at site plans on page 5, it would be good to coordinate the procedures with what is in the bylaw.

Briony noted that within this draft bylaw there are three sections of standards: general, design, and environmental/safety. She asked if there are any other standards that she should be covering. Briony noted that there are some feedback loops within the bylaw. For example on noise, it may not be required up front, but if there is a complaint, a noise study could be required in 17.5.1. In looking at the Height standard there was a question regarding the “10 feet from the elevation of the foundation...” and Briony agreed and said she would rethink that number. Beth noted that these numbers are just place holders at this time.

17.4.3 Special Permit: this section applies if an applicant does not meet just one standard. This brought up the questions of waivers and Briony noted that in **17.12** that is a general waiver option. The language in 17.12 Waiver of Compliance –is general boilerplate language. Briony noted that other bylaws would include waiver standards after each section. Matt asked if she could include the waiver language/standards after each section so that Shelburne can decide if it is appropriate for our town or not.

Briony noted that such language and standards are not necessarily that specific. Briony said that as written in this draft, not meeting one of the standards takes an applicant into the special permit process. Are you going to indicate that one standard is more important than another? She thinks the language may be a combination of general and specific language such as “a special permit may be waived if.....”. She noted that this draft does not set up a process for a waiver and that most bylaws have a simple process—an applicant submits a letter about why they can’t meet a standard and the board responds. Beth asked if there are any other waiver processes in our bylaws. Briony reviewed the cell tower bylaw waiver process and Liz noted there is a waiver process in the new ZBA special permit procedures.

Bob Jaros noted there is nothing in this bylaw draft about impact guidelines, only construction standards. Briony said it was the decision of the board to approach it this way in the first round. This draft relies on the enforcement by the building inspector and is intending to address small turbines. Dr. Jaros noted that for large turbines, health impacts are becoming a major issue. He noted that once a facility is built, it is really hard to get them taken removed if there is a problem. He noted that the wind advisory committee may find that with small scale there aren’t any health impacts. Matt noted with a smaller wind turbine, enforcement has to be mitigated through the building inspector at the cost of the applicant/owner. Matt agreed that it is harder to take down large turbines. We are presently looking at small scale wind systems—the farmer who wants a turbine. Matt agreed that we are interested in finding out if there are potential impacts for small wind systems.

Briony asked what technical studies the Board may want to include pertinent to small wind. Matt said the setbacks and turbine size are going to be researched as this bylaw is developed.

Gene Butler suggested that we don’t even look at rooftop installations, they are just too costly from a structural engineering point of view. In regards to height, in one area the height might be okay while in another are you would need a higher machine in order to get enough energy. To get a special permit is one of those things that an applicant will have to put a lot of time and energy into. He would suggest the wind advisory committee and the Planning Board will really need about a year to study all aspects of the information needed to develop standards for the bylaw. We are lucky to have two turbines close by that can be studied. He hopes the committee and Board will take the time to study all of these concerns for the bylaw.

Mike noted he has been researching small scale turbines and their potential impacts. He recently read that since a small scale turbine was smaller the blade was turning much faster and therefore could cause greater flicker issues. Gene Butler said that turbines use induction motors and turn at the same rpm no matter the size of the machine.

17.4.4 Rooftop Wine Energy Facilities: currently set up as needing only a building permit. She will change the height. Matt asked if there are any other towns which have examples on rooftops relative to height? Briony said she would look into this.

17.4.6 Compliance with Laws, Ordinances and Regulations: this is fairly standard language requiring an applicant to comply with all other regulations. Matt noted this was important in terms of BOH regulations.

17.4.7 Utility Notification: the purpose of this section is to provide proof to the Planning Board that the project is doable from the Utility perspective before going through the process. How does the board want to receive this evidence? Matt suggested that this be included as part of the pre-application conference and that we should start a list of what the Board will be asking for at that meeting.

Gene Butler suggested that with increasing use of solar, we may want to address co-generation. Matt noted that the Board is also going to be working on a solar bylaw and this bylaw is focused on wind but will keep that thought as we work through both bylaws.

17.4.8 Proof of Liability Insurance: this requirement could be in the building permit application as well as asked for at the pre-application conference. Matt noted he would check with the FRCOG's building Inspector to see if they have any other examples of how they deal with wind turbines through their building permit process.

17.5 General Siting Standards:

17.5.1 Height – Briony will fix the rooftop standard.

Matt asked Briony to get the board information with regards to the size of the actual turbine and the height in order to determine what the capacity would be so that the Board has a way of looking at what the height standards should be.

17.5.2 Setbacks –Matt asked if there are other examples of setbacks that are more than 1.5 times the total height. Both Briony and Beth noted other distances in examples from other towns. Matt asked Briony to make a note on her next draft that there are other options. Matt would also appreciate having a setback standard for an inhabited structure.

17.5.3 Noise: this section refers to the Mass DEP regulations and Briony will send us a copy of the noise policy referred to in this section. Dr. Jaros asked if he could get a copy and it was agreed that copies of any new reference documents would be sent out to the wind advisory committee by John Wheeler.

17.6 Design Standards:

17.6.1 Appearance, Color and Finish and 17.6.2 Lighting: standard industry language and descriptions.

17.6.3 Signage: this section defers to our existing town bylaw. Matt asked how this would refer to a private residence and John noted that it would be an option if they want to put up a sign and if they do, they have to be in compliance with the our regular bylaw.

17.7 Safety and Environmental Standards

17.7.1 Unauthorized Access – basically this is to keep kids from having access to the turbines.

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17.7.2 Land clearing and Soil Erosion: it was noted that Briony should change the term “ordinance” to “bylaw”. Briony asked if the Planning Board wants to address situations such as whether someone wants to clear 20 acres for land clearing. The consensus was no.

17.8 Monitoring and Maintenance:

Matt asked to have it noted that the building inspector is the enforcer on monitoring and maintenance. Briony asked about whether there is a town bylaw on condition of property and Beth noted it was a town bylaw not a zoning bylaw. Briony will put in a reference that this is to be enforced by the Building Inspector. Beth asked if there are specific required maintenance procedures for the turbines. It was noted, that a maintenance schedule would be suggested by a manufacturer of the turbine.

Bob Jaros suggested replacing “good” with “working”. Briony agreed that good condition was not an adequate term but that working was limited as well. Briony will consider other options to the term “good condition”.

Matt recommended a list of each situation that is to be enforced by the building inspector at the end or the beginning of the bylaw. If they are out of compliance, there needs to be a stipulation that they have to comply and pay for any studies required by the building inspector. Briony said she would review her draft with that in mind rather than saying it over and over again.

17.9 Abandonment or Decommissioning:

17.9.1 Removal requirements: Briony noted that she used one year based upon other bylaw examples. Matt noted that with whatever number we include, it will be up to the owner to prove that it hasn't been abandoned.

17.10 Permit Process, Requirements & Enforcement

17.10.1 Building Permit:

17.10.2 Site Plan Review: This site plan review is a process to allow an applicant to demonstrate compliance. Matt related it to ANR reviews during which the Planning Board can explain to an applicant that they are not in compliance. Beth questioned calling it a “site plan review” but likes the process. Briony noted that it is the standard term used in most bylaws for this process.

17.10.2.1 Application Requirements:

- Briony noted the plans do not required a stamp or a survey which seems reasonable for a small turbine.
- The description of the site plan was written with the intent of making it cost less than \$20,000.
- Any turbine installed today would come with information from the designer and therefore the information would be readily available to the applicant.
- #7 “tower” and” tower foundation” will be clarified to both “the tower and the tower foundation.”

The board has the discretion to determine what information is needed to evaluate a project. Briony noted that the Board could make it more restrictive and require a stamp on the plans.

Briony asked if we wanted to lean towards asking for more general or more specific and detailed information from the applicant. Matt noted we want to vet these applications and make sure they meet the requirements and therefore he was leaning towards being more specific.

Judi Truesdell questioned whether we want this level of detail in the bylaw or include it in the special permit procedures which the Board could change if it doesn't work without going to Town Meeting. Briony said she had mirrored the requirements listed in the cell tower bylaw. Matt said he wants to consider Judi's

point about putting the specifics in the special permit procedures and just reference an application process in the bylaw. Briony noted that every single bylaw has some description of what goes into an application. Matt asked Briony to look into a planning justification for this. Matt said that he would like the listing complete up front and then if necessary dial it back. Doug noted that if he wanted to put up a windmill he wouldn't go through this process. Beth wants the ability to use some common sense but if it is a tight situation we need to have the ability to act; John agreed. Briony is going to consider how to word it so that the planning board gets the information they need but it isn't so onerous to a landowner. She will also research relative zoning case law. Matt noted we will still want substance in the applications whether it is in the bylaw or the special permit procedures.

17.10.2.2 Procedure: – Briony will check to see if there are legal deadlines related to site plan reviews-- as there are for Special permits.

17.10.3 Special Permits: for those applications that do not meet one or more requirements. Matt asked Briony to refer to waiver language here as well.

17.10.3.1 Application Requirements: Briony will take the language currently under site plan review and consolidate it into the 17.10.3.1. Items "C" through "E" are all additional information.

C Photos and D visualizations: Briony suggested selecting 3 to 6 sight lines from local landmarks as a starting point. This is standard boilerplate language from other bylaws.

E. Noise Study: specific companies have the software to stimulate noise impacts based upon ambient noise information they collect on site.

F. Shadow and Flicker Analysis: Beth asked if an applicant doesn't hit all the standards do they have to do all the studies. Briony said language can be included that could give the Planning Board the discretion to waive some of the specific technical studies. Briony noted that applicants should be the one requesting a waiver and they should explain why they need to have a waiver from the board.

Mike noted that in regards to the shadow or flicker analysis half of the equation had been left out--other bylaws include that the applicant has the burden to prove their system will not exceed 30 or more hours of flicker. He referred to the BRPC model bylaw and Briony said she could add it in. Matt noted that the BRPC is model for large scale systems. Mike noted the current language doesn't set a standard and Briony agreed. Matt asked if we should have a standard for flicker. Briony said you can certainly stipulate a shadow flicker and that 30 hour is the industry standard right now, whether you agree or not. Matt suggested that if it should be a standard then we should put it with the standards. Briony will put it in the general siting standards.

G. Avian and Bat Species Analysis: Briony noted it is unusual to have this analysis in a small scale bylaw. Beth said if the wind advisory committee looks into avian and bat issues and finds that it doesn't apply to small wind systems, then we can leave this part out of the application process.

Matt asked Briony to make notes in her next draft pointing out those standards that usually only apply to large scale wind systems rather than small scale.

H. Any other drawings or materials deemed necessary by the planning board at the pre-application meeting. This section provides flexibility for the board to respond to special circumstances.

17.10.3.3 Special Permit Approval Criteria Briony included fairly standard language and asked if the Board wanted to make any changes relative to the specifics in Shelburne. Briony was asked to also

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reference the regular criteria for special permit in the town's bylaw, compare the two and consider any changes she might recommend. Briony suggested the board consider the criteria/language they will want to reference as the basis for issuing or denying a permit.

17.10.3.4 Independent Consultants: this section references MGL Chapter 44 section 53G which is the legal basis for requiring the applicant to pay for the independent consultants.

17.10.4 Expiration: Matt wondered if we should add a time frame on the permit and the consensus was not to.

17.10.5 Violations: Matt asked if there has to be some process to make a determination that a facility is not in compliance? She is going to work on the language in this section.

Bob Jaros asked if the turbine is turned off while they are determining if it is in compliance. He recognized it could be a double edged sword, and there could be a problem of frivolous complaints. He asked what is the building inspector supposed to do. Briony suggested getting the input of the FRCOG building inspectors. Liz also suggested talking to Deb Countinho about this section since she often works with the Building Inspector on Board of Health complaints.

17.10.7 Penalties: Briony noted this is standard language.

17.11 Modifications: what process or action would trigger the need for new additional review? Briony will take a crack at modifying this language so it is less vague.

17.12 Waiver of Compliance: Briony will be more specific in her next draft as to the things you can waive and she will add appropriate language about the process, such as submitting a separate letter.

17.13 Severability: Briony noted this is standard bylaw language and she will change "ordinance" to "bylaw".

Judi asked if a project only went through site plan review did that mean there is no public hearing about the application. Briony said there is a public hearing under the site plan review. Briony noted under 17.10.2.2 it was presumed that the site plan review procedures would include a public hearing. Dr. Jaros noted that if they meet the criteria than the Planning Board would have to approve the project. Judi said that the point of a public hearing is for people to point out how it doesn't meet the standards.

Briony said that it is not standard site plan review language to include a public hearing in the bylaw, it is usually in the procedures. There is broader discretion to turn down a project under the special permit process. Briony said she could add language about a public hearing under site plan review.

Gene butler asked if we had to meet the other state standards on wind, and Matt said yes.

Matt noted the next Planning Board meeting is January 9 and asked Briony to send her next draft to Liz by the 7th at the latest, the 4th would be even better. Briony said she will also send other materials such as the noise regulations and the guide on capacity and height.

Matt thanked Briony very much for all of her efforts. Matt said he is going to talk to the FRCOG and try to figure out a grant for the new year that would allow the Board to have additional assistance from Briony as the review of this draft bylaw continues.

Wind Advisory Committee: John has contacted everyone who had been invited to serve and there are eight members plus John. John reported that Nancy Albertson and Ken Eisenstein have had other commitments come up. Bev couldn't make it tonight to swear in the committee but she is in communication with each member and will swear them in at Town Hall. John will be talking with committee members about when they can meet, trying to find out what night or nights will work best.

Matt noted the purpose of the committee was to do fact finding for the Board, and asked board members if there were any suggestions for specific areas for the committee to start researching.

Beth said she would like to hear how the numbers we are putting in as place holders in the bylaw would really apply in a real world situation. She would like to go to small towns and see what their experiences have been with small wind and compare their numbers to the numbers we are using. What towns do have small wind? What do we know about them? What are the setbacks? What are the successes? Where there any problems?

John said noise was a major concern and determining the concrete numbers to use for setbacks, height, etc., and flicker seems to be a concern.

Doug noted we need to determine what constitutes large versus small, give the board the charge to determine what the numbers should be. John noted the current numbers are place holders and these need to be addressed. John asked if the 60 kilowatt makes sense for businesses, residences, or farms? Doug suggested talking to people who have installed small turbines and ask for a tour. Gene Butler said there is one at a high school in Nantucket, there a some in the harbor near Boston. Judi asked if the FRCOG has a list. Mike Parry said he has a list of small turbines. Dr. Jaros asked if we are really looking into size rather than function. Are we looking at small businesses with turbines or residences? Dr. Jaros suggested we consider what we are trying to achieve?

Matt noted that the language for the wind moratorium included the term "premises use" which works for solar but not necessarily for wind. If you read what was passed at town meeting, the term premises use is more broad, and it seems to be trying to do two things; the premises can use the energy as well as sell some back to the grid. The board is trying to allow for both purposes which could apply to an individual farm or a larger facility. Matt agrees with Beth that it would be helpful to look at other towns. The language the town passed seems to allow for 51% or more of the energy produced to go back to the grid.

Matt asked if any of the committee members had suggestions on where they would like to start. Mike suggested that the committee should sit down and brainstorm. Matt would like to have our January meeting be a joint meeting with the wind advisory committee to have this discussion together; have a good group discussion and develop a direction. Matt said to the degree we can get a quorum of both boards together we can have a productive discussion. Liz reminded the board that any submittals for ATM need to be in by the beginning of April.

The wind advisory committee members will try to contact Bev and get sworn in and receive their Open Meeting Law information. John Wheeler will coordinate with the group to try to get a quorum for Jan 9th.

Community Energy Strategies Pilot Program:

Matt met with the Selectboard regarding the Community Energy Strategies Pilot Program regional grant application and received their letter of approval. The application is moving forward with the FRCOG preparing it for submittal.

Other Business not reasonably foreseen 48 hours prior to the meeting: none presented.

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Mail: Two notices of public hearings from the Town of Deerfield were read.

Public Comments: none presented.

Schedule next meeting: Wednesday January 9, 2013 for both a regular and a joint meeting with the wind advisory committee.

A motion to adjourn was made by Matt seconded Beth. Vote: 4 in favor, 0 opposed, and 0 abstentions.

The meeting was adjourned at 10:09pm.

Respectfully submitted by,

Liz Kidder
Administrative Assistant

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