MINUTES
Freeport Board of Appeals
Town Council Chambers
Monday, December 6, 2021
6:30 P.M.

Attending: Chair Shannon Garrity, Chalmers Hardenbergh, Pam Leone, Preston Noon, Phil Wagner, Codes Enforcement Officer Nick Adams and Town Attorney Amy Tchao

Chair Garrity called the meeting to order at 6:30 p.m. and explained the Board's process to members of the public.

Item 1: Minutes of November 1, 2021

MOVED AND SECONDED: To approve the Minutes of November 1, 2021 as written. (Leone & Wagner) **VOTE**: (5 Ayes) (0 Nays)

Item 2: Tabled Matters and Unfinished Business:

Chair Garrity noted the Board would be taking up the variance first and to cover all the bases, she asked if any Board member has a conflict of interest to hear this? There were none voiced. Chair Garrity asked if there were any parties here that would speak and if there are interested parties that would be aggrieved by the Board of Appeals' decisions?

David Silk with the Law Firm of Curtis Thaxter is here with Carter Becker and noted that Matt Cartmell is here as well and they plan to speak. Attorney John Cunningham advised that he is representing the abutters on either side of Mr. Becker's lot.

- To consider a lot area, land area per dwelling unit and shore frontage variance(s) for Carter V. Becker, 0 Shore Drive, Tax Map 5, Lot 96A, Book 33153, Page 170 located in the Medium Density Residential-1 (MDR-1) Zoning District and Shoreland Area (SA). MDR-1 Zoning District requires a fifty thousand (50,000) sq. ft. of lot area, thirty thousand (30,000) sq. ft. of land area per dwelling unit and the SA District requires one hundred fifty (150) feet of shore frontage.

Attorney Silk pointed out that there are four space variances being requested but the agenda has three. While the variance was pending, there is a fourth one which is the present space standards required in the Shoreland Zone that not only that you have 150 feet of frontage along the shore so to speak but for a depth of 100 feet back the normal high-water mark, you maintain that 150 feet so the fourth variance request is to reduce the width requirement for the first 100 feet back from the normal high-water mark from 150 to 100.

Attorney Silk thanked the Board for continuing this matter from November 1. He appreciated that. He is here tonight on behalf of Carter Becker. He has applied for a building permit and it was denied and that is the second item on tonight's agenda. Much of what the Board is going to hear in connection with this variance request is almost nearly identical if not identical, to what the Board will hear on the Administrative Appeal tonight. It is unusual but to avoid repeating, Mr. Becker will stand and give the Board some information to avoid repeating all that information and perhaps avoid having some of these other folks who plan to speak tonight repeat the information. He asked that the evidence the Board hears in connection with the variance appeal also be part of the evidence the Board will hear be part of the Administrative Appeal. He spoke to the Board's Counsel and sometimes administrative bodies will consolidate matters for hearing purposes so you don't have to hear the same thing twice. It is the Board's decision whether to do that or not but, in his mind, it saves the Board from hearing the same information twice. The Administrative Appeal from the building permit is kind of a discrete issue but the Board needs to have the context on how that arose and the variance appeal is relative to whether they can show the four standards have been met. Again, Mr. Becker will walk through the history of the property, location, etc. but all that information is the same information he has here as part of the Administrative Appeal. He asked if the Board wants to approve hearing both matters or at least the evidence simultaneously. He doesn't know what Attorney Tchao wants to do but that would be his request.

Amy Tchao, Town Attorney noted she is assisting the Board on procedural matters. She advised that the Board can consider the common factual background that is the subject of both of these appeals. Obviously, with the variance appeal there are different standards that apply and it is up to the applicant to present evidence on each one but she doesn't feel there is much dispute about the factual background. Rather than have it be repetitive, she feels the Board can take the evidence for both.

Mr. Adams added that he thinks the factual background for the variance information for if the lot is buildable and things like that that are the same but there are several other standards in the permit denial that would not be heard at the variance hearing that would need to be heard for the Administrative Appeal. Attorney Tchao advised that if the standards are different, there is common factual background so we will make sure we handle the standards at each juncture.

Attorney Silk advised that Mr. Becker will walk the Board through the history of the property, the location and what brings us here today. He printed out the slides Mr. Becker will walk the Board through and proceeded to pass them out to the Board.

Mr. Becker thanked the Board for being here tonight. He explained that his spouse, Kathleen Keegan and he currently live on Coach Road in the shadow of 295. Waterfront property has always been of interest and in 2016 they purchased the lot at 0 Shore Drive.

He put an application for a building permit in 2021. He is proposing a modest home of 1,500 square feet in the sub development that came out in 1933/1934 known as the Swan Development. He referred to inside Tab 1 and there are a lot of small lots. He pointed out where 0 Shore Drive is up in a cove and is the first property on Shore Drive. His other abutter is actually on Flying Point Road. In 1933/1934 the lots were in small increments and by today's standards, they are very small. Many lot owners have combined them or purchased multiples. The house he is proposing of 1,500 sq. ft. is about normal for that neighborhood. He has a local builder planning to build it. If you go back to the tax map, it makes it clear in the aerial under Tab 2 and get zoomed in on Tab 3 and you get to see Lot 94 that is on Flying Point Road. His lot is 96-A and 96 is his other abutter. That is where the funny property line happens for 96 and 96-A. He flipped to Page 5 and there are shots in the different direction of the property. Basically, there is an existing driveway from the 40s-50s and a well and it was someone's property back then. Tab 5 shows how small all the lots were. You can see highlighted in yellow Lot 245. There are four lots in that section in yellow and he now has 2 ½ lots. The first lot he had is equivalent to a lot and a half being 100 feet on the top and 50 on the bottom and then he has a full 50-foot swath and half of a medium lot. His neighbor has a lot and a half because they share the middle lot and he thinks it is 247. On Lot 6 in the red circle, you can see a 1953 aerial shot of the cottage of 0 Shore Drive. It does show there is a lot of space there but it is because it is on 11 Shore Drive's property but it hadn't been consummated in a legal description.

Mr. Hardenbergh asked what is 11 Shore Drive because he is confused by all the numbers? Mr. Becker advised that 11 Shore Drive is his abutter to the west and is Lot 96 on the tax map under Tab 3 and Mr. Becker is 96-A on 0 Shore Drive.

Mr. Becker advised that he goes back from grandfathered status to space variance and whichever way it is a building permit that is needed. That is where he is trying to get to. If you go by variance and lot size variance, he has 28,500 sq. ft. and the lot area requirement is 50,000 sq. ft.in 2022. He has 28,500 minimum and the per dwelling unit is 30,000. He is almost there. The shore frontage is 100 but today the minimum is 150. It is an oddly shaped lot and if you come up 40 feet from the shoreline, he has 150 feet but right down at the shoreline he doesn't. His lot is wider than needed. It's 150 feet all upland but is 42 feet down by the water so he needs to ask for a variance. The average on the street waterfront is 2.6 units (using the 50-foot unit) and he has 3 so he is a larger sized lot. It makes his lot special and he is excited to have a nice piece of waterfront.

Mr. Becker referred to Tab 7 for the tax assessing numbers and a lot of time was spent researching to find the history of the place and how we got this funny lot line and how did we follow the original subdivision lines. He skipped on to Tabs 9 and 10 where it shows the Swan Development's individual lots and it shows effectively what they did with the property lines and mislocated property on 248 (11 A Shore Drive) and 247 which was divided in half for 0 Shore Drive and 11 Shore Drive and it shows the 506 sq. ft. cottage. He knows the lot is on is 247 on the Swan Development map. It was mislocated and had a driveway coming across 246 to the cottage. To remedy this 1940s/1950s misplaced cottage, it was remedied in later years to show the division so 247

got split in half, half to one landowner and half to the other. The building then became part of Lot 246 and the building stayed on the lot. The lot got adjusted to make 245/246 larger to encompass the structure. 247 had a cottage on it right next to a 50-foot area. This allowed them 100 feet of road frontage and 100 feet of shore frontage. To him it looks like an amenable division of the property.

Mr. Becker went to Tab 10/11 and he has an aerial photo dated 1972 and the cottage is still there. There is a clear driveway running right through it. There has been a building there for a long time. Going to Tab 11/12 it shows Lot 96-A as being very wide in 1973. 94-A is shown as being narrow and being the equivalent of a lot and a half with 100 on the top and 50 on the bottom. Lot 96 being 50 feet wide full depth. In 1973 there had not been a formal boundary conversion. He looked at the old 1973 tax map where there was a blow up of it. The Town recognized the adverse possession.

In Tab 12/13 there is a blow up of the same thing highlighted in yellow that shows the same division but with the new divided property line. The tax card for 11 Shore Drive in 1979 goes back to some older new dwelling. The second page shows the cottage is on the tax card for 11 Shore Drive so the Town has not acknowledged that the cottage belongs to 0 Shore Drive. Tabs 14/15 shows the new boundaries that changed the lot lines. It was put into the Cumberland County in 1986. The shaded area is the square footage that was added to 0 Shore Drive and reduced from 11 Shore Drive. It shows where the cottage was sitting back in 1986.

In 1987 we have a Board of Appeals where Mr. Charles Kitchen was here asking for a variance to relocate his house 100 feet further from the water and install a new septic system towards the water. The odd shape is in his lot and recorded at this time. Because of the recording of the odd shape, he was here asking for setback reductions so he could have his house. He was 11 Shore Drive.

Mr. Hardenbergh noted that is not the one in Tab 14 and 15. Mr. Becker advised that between 14 and 15 the shaded square is not Mr. Kitchen's but the unshaded section of 246 and half of the non-shaded half of 247 is Mr. Kitchen's. Mr. Becker advised that Mr. Kitchen wanted to move that cottage back from the water and replace his septic system in front of the house towards the water so he relocated his cottage. To get his building envelope, he needed variances for setbacks and they were granted. Between 15 and 16 there are more detailed drawings of what he had in his requests It showed where the new leach field and the new house would be. 8-foot setbacks on the side are what it used to be. He is between 15 and 16 tabs that shows what Charles Kitchen was working with to develop his lot before the Board of Appeals for his variance request with the new lot line between the two. It talks about 84' between his existing well and it talks of a well 105 feet going away from his lot to Lot 97. He had his dimensions in there for his requests and he got his requests and was able to make his property whole and complete. Ms. Garrity asked if the septic system for 11 Shore Drive is on 11 Shore Drive? Mr. Becker advised that the septic is below the old house and the cottage at the top of the bank. It is 100 feet from the shoreline. Mr. Kitchens leapfrogged his house and got the septic in front.

In Tabs 16 and 17, In 2006 11 Shore Drive was back asking for another variance for the mislocated building and was awarded the mislocated building change. Mr. Becker is certain that a lot of these come through with such tight quarters. He had a mislocated front door that was too close to the road and it was granted.

Back in 2006 Owen Haskell made a formal survey of the properties and added a lot of detailed information from the old Swan survey and brought it up to the more technical look of today where they show 0 Shore Drive as the first lot being a lot and a half combined with a 50-foot lot and half of Lot 47 bringing it up to the equivalent of three lots with its 150-foot-wide projection. It is still a funny line between the two. It is not the norm out there. Attorney Silk asked between 1987 when the Kitchen's application showed a 506 sq. ft cottage and in 2006 where the survey shows the Kitchen's relocated house on 11 Shore Drive and doesn't show a cottage anymore on 0 Shore Drive. At some point between that period of time did the cottage or the 506 sq. ft. dwelling you saw in the assessing records back in the 1950s, saw in the 70s and saw in the Kitchen's application, was that cottage removed? Mr. Becker feels the cottage was taken down somewhere after 1987. Attorney Silk asked if there are remnants on 0 Shore Drive today depicting where the cottage was located in all the Kitchens' material they submitted to the Board of Appeals. Mr. Becker advised that it would show that there was something there earlier in the landscaping and tree growth and the old septic system pipe coming out into the gully. The driveway goes right to where it would have been. Attorney Silk asked if the cottage we are talking about is the same cottage in the old photographs and assessing records from the 1950s? Mr. Becker noted that is correct. Attorney Silk asked if it is the one that Mr. Kitchens went to the Board of Appeals back in 1987 and said the reason the lot has this unusual shape is because of the adverse possession created by the location of the cottage? Mr. Becker noted that is correct.

Mr. Becker pointed out that it is after Mr. Kitchens' new house was going up and approved that the cottage was removed. He does not know the exact dates. He advised that he fell in love with the property, it was a buildable lot by Owen Haskell and his research at the Town Hall, it was a buildable lot with a caveat. He looked at the survey very closely. The building envelope was a curiosity and how to work with the land. There was a caveat saying it is all pending bank stabilization. It had been posted as a non-stable bank by the Maine Geological Survey. That was the only caveat he found. He felt confident that a stabilized bluff could be achieved and the buildable lot would continue on. He bought the property in 2016 for 110,000. It was valued at $161,000 and was credited $50,000 of bank stabilization money. Attorney Silk asked Mr. Becker if he talked to Planning and Codes to try to understand what the issue was with coastal bluffs? Mr. Becker advised that he asked many questions of plenty of people and all answers were leaning towards buildable. He did his due diligence on his questions and feels he did not leave any stone unturned on that. The town felt it was buildable and it was assessed as buildable. Attorney Silk asked him what his belief was when he bought it? Mr. Becker advised that he believed it to be buildable and there were permits being discussed on how to stabilize the bank and that is where he came up with the price offer. It sat on the market for some time but we were in a declining economy. The economy was in a slump.

Mr. Wagner noted that Mr. Becker advised that everyone was talking that the lot was buildable but he knew there were going to be a number of hoops he was going to have to jump through because the lot area was obviously not large enough and was going to need a lot of help. Mr. Becker advised that he did not perceive having to build to 2022 standards because he had a grandfathered non-conforming lot. He only learned about it when he turned in the application. He assumes that all the other lots are under that classification. The 2022 standards were a blindside.

Mr. Becker advised that he is between Tabs 18 and 19 and he has a letter from Nick Adams regarding coastal bluffs. At first, they were going to rip rap the property to bring it to standard but then DEP requested that they not rip rap the property and that we just change classification because there was not a problem with an unstable bank. It was a misclassification and 0 Shore Drive is classified as stable and then the bank as it goes further along to 11 Shore Drive is not classified as stable. DEP advised that the bank should be classified as stable and the Maine Geological Survey came out, looked at it and wrote a letter. Attorney Silk mentioned that before Mr. Becker could submit a building permit, the Town had to amend its map to show that the bluff area part of 0 Shore Drive reflected what the DEP had said that it should be categorized as stable. It took a couple of years for that process to go through and eventually the Town Council passed an amendment to the map that changed the classification for 0 Shore Drive from unstable to stable. Mr. Becker advised that that is correct and now the Town will accept a letter from MGS on stabilization. Attorney Silk stated that Mr. Becker couldn't apply for a building permit until the Town amended the map. Mr. Becker agreed. Attorney Silk asked Mr. Becker if during that process did anyone ever mention that the lot was no longer grandfathered and was no longer buildable because there had been a change in the lot line? Mr. Becker advised that the answer is no. The first time he learned of that was in his application denial. There have been all sorts of research that has gone in and the next item on this agenda is talking about the application that went in.

Attorney Silk asked Mr. Becker how the sketch of his proposed dwelling compares in size and scale with the buildings on Shore Drive. Mr. Becker advised that it is smaller than many, but larger than some. It is appropriate for its sized space. It is about 1,000 sq. ft. on the first floor and about 800 sq. ft. upstairs for two small upstairs dormers. Attorney Silk referred to the denial material from Mr. Adams where he suggested in numerous places, that because of the four items being discussed today, the space variances, he said without a variance on those items he couldn't issue a building permit. He asked if that is right? Mr. Becker advised that it is correct and variances was Mr. Adams' solution. He gave great advice through the process.

Chair Garrity asked Mr. Becker to explain the different box colors between 19 and 20. Mr. Becker explained that it is his own digital survey but close to its thing. He mentioned the large yellow building envelope rectangle. At the top of the page, he has the road starting with a north pin and a northeast pin. There are two squares up in the top corner. The large white one is the leach field for the septic system and the smaller one slightly to the left is the receiving tank for the biometrics for the waste water treatment. The oval

circle around the central square between the road and the building envelope is the impacted area for the leach field. In the building envelope on the left-hand side at an angle is the 1,500 sq. ft. house and it is twisted away from that corner to look out to sea and get a better angle for sun and fit things on the property well. It happens that he was pushing the front away because he was happy not being right up on the bluff. There is also a question of an unstable bank of a neighbor. It makes it within the 75-foot setback of the neighbor because the house was pushed back so that triangle in front, some of it can be removed with a 75-foot setback from the top of the bank of the neighbor so it fell into place and unknowingly answered another question that was asked later on so some luck is there. The house is in light red or pink and the loop driveway is in front of the house with parking on two sides of the house. He has underground utilities. The existing well is just outside the building envelope. The trees removed are red dots and those are mainly because of the septic system and the driveway relocation.

Attorney Silk asked Mr. Becker if he gets the variances requested from the Board, he pointed to an approximate building envelope that allows him to build a house where a lot had a cottage from at least the 1940s to the 1980s. He asked if that is right. Mr. Becker noted that this would be the same building envelope for that using the current setbacks of 20-foot sides, 30-foot front and 75 feet from the highest annual tide These are standard setbacks today in our ordinances. The only one he doesn't have marked is the unstable bluff of the neighbor at that little triangle that would form in the building envelope's lower left-hand corner that would make a small lower angle triangle there.

Attorney Silk asked Mr. Becker to tell him what the last tab is behind Tab 20. Mr. Becker advised that it is his economy. The assessment value of 0 Shore Drive in 2018 was assessed at $209,030. In 2019 it was $161,800. In 2020 it dropped to 21,400 after Mr. Adams determined it was not buildable so the Assessor dropped the value.

Attorney Silk asked if the variances are requested, is Mr. Becker looking for any type of relief from the 75-foot setback from the shore? Mr. Becker mentioned that he will not. Attorney Silk pointed out that Mr. Becker said that the other houses built on Shore Drive on lots are small and initially they only had 50 feet of frontage and were 100 feet deep. Some have been combined so they are now 100 by 100. Attorney Silk mentioned that the lot Mr. Becker has with the adverse possession is actually bigger than some of the houses that were built in this subdivision and Mr. Becker agreed. He has the equivalent of three 50 foot lot units because of its combined shape. Attorney Silk asked if Mr. Becker bought the property so he could put a picnic table and a fire pit on it? Mr. Becker advised that he absolutely did not. He advised that the subdivision has been mostly built out and is on tidal water. There is no deep water. The only deep water you get is at high tide and that leaves in six hours. Mr. Silk asked about privacy. Mr. Becker advised that it is at the beginning of Shore Drive and all traffic goes by it. You would really want a structure to provide your privacy. Mr. Becker has an aerial shot of the property dated 1952 showing a very complete vegetated house lot and driveway so it had been well used for many years. He finds it is interesting how in 1987 and 2006 we didn't ask the owners of the other lots if their lots had become illegal in 1986 and therefore, did not have the space variances needed. Something has happened between 1987 and today and he guesses it is zoning but

this lot has been there since early times and it is alarming to him that it is suddenly changing and not buildable. Attorney Silk asked if looking at the Board of Appeals records from 1987, the Kitchens, the then owners of 11 Shore Drive their lot was not viewed as illegal because the lot line had changed. Mr. Becker read the Minutes but there was no discussion of it. It was not deemed an illegal lot. Attorney Silk pointed out that because of the adverse possession, their lot got smaller. Mr. Becker agreed their lot did get smaller but his lot got bigger and they got variances with a decreasing lot size. He is asking for a lot that has gotten bigger so he is asking for variances and does believe it is a far reach to ask for a building permit.

Mr. Becker mentioned the four factors we should go over and one is that the land will not yield a reasonable return. It has gone from $161,000 when he bought it and he paid $110,000 for it. He converted the bluff to be stable and now it is $21,400. It doesn't seem like a reasonable return. As for unique circumstances on the property, he would say that adverse possession is one that is pretty unique especially of these two lots, 11 Shore Drive and 0 Shore Drive. Adverse possession happened and it was lived with and not documented until 1987 so it had happened back early in time. It makes that property pretty unique that it went that many years with adverse possession and nobody really thought to bother about it. It was documented and the Town straightened out their tax cards and it moved on. It is a unique circumstanced property. Another question to answer is will it not alter the existing character? He reads that as the neighborhood, the neighbors and the Town in general in that area. It is the same driveway that has been there and it is pretty much the same sized setback. The house will be moved further away from the water and closer to the road more to today's standards. The house is similar in size and scale to the neighborhood. The lot is three units and bigger than the average lots. He is moving it back from the flats. It is a residence to be. Mr. Hardenbergh clarified that Mr. Becker is not actually moving the building because there is no building there now. Mr. Becker agreed and noted that the septic system and well are still there and it is a buildable lot. Hardship was not a result taken by Mr. Becker or a prior owner. The hardships were developed a long time ago and they are still rippling through the situation. It is not anything that any of us have created. If he called zoning a hardship, he doesn't know if he would be right or wrong but that has always been changing and that is the life we live in but hardship is definitely there. It was not something made by Mr. Becker or the previous owner.

In conclusion, Mr. Becker thanked the Board for listening to him. He would be happy to answer any questions. It is clear that granting a variance was done in 1987 for 11 Shore Drive and it was done in 2006 and is done regularly. They are not negatively impacting the character with these variances in the neighborhood for any sensitive area. Without a variance he is left with not much at all.

Matt Cartmell noted he actually listed the lot for the Kitchens back in 2016 and came to Town Hall to do due diligence like they always do. He spent time with our former Codes Officer, Fred Reeder and had the DEP out at the site and talked to Owen Haskell the surveyor He was surprised that a building permit was denied because they had done very thorough due diligence. The reason the lot was on the market for so long was because

people didn't want to deal with the shoreland stabilization that the DEP said had to be done. They went through all of that and Mr. Becker was the buyer who looked at it and understood what needed to be done. There was no reason they were led to believe this was not a buildable lot. In his mind the value was in the $160,000 range. Attorney Silk asked Mr. Cartmell if he could see any value in this lot if it is not buildable and someone coming down the road would look at it as a place to buy for using a picnic table and fire pit? As vacant land would it lend itself to someone to buy it as a showpiece to enjoy nature. Mr. Cartmell did not believe that to be so. It is not out at Wolfe Neck point or the end of Lower Flying Point where you are looking out at the ocean. Here you are waiting for your water to come in. The Assessor has clearly said there is no value here and as we stand today, it is not a buildable lot and has gone down to $21,400 in valuation. In looking at this lot where there is evidence of an old 4-inch discharge pipe dumping raw sewage into the ocean, they had a licensed soils engineer and advised he could design a 3-bedroom septic here but he would have to send it to the State because it is in the Shoreland Zone and he would need their approval but he felt it should not be a problem. Mr. Cartmell saw this as an improvement from what happened there. Chair Garrity asked Mr. Cartmell in all his real estate dealings in any town, has he ever come across a purchase knowing that person was going to build or expand on that land and by the time it got to that Board, part of it was denied? Mr. Cartmell replied no, and he has been doing this 15 years. This is the first time he has heard of someone buying a piece of property where they did as much due diligence saying this is a buildable lot and then have it not be. That is not to say there isn't someone out there who says I am going to buy this house and hope I can get before the Board so I can add a deck or something else. They don't take responsibility for that.

Mr. Hardenbergh asked why someone couldn't buy it and put in a boat launch on it and get that steel boat in the water? Mr. Cartmell noted we might be here all night on that one. Attorney Silk advised that you have to have a use in order to have an accessory use. You can't put in things without a dwelling unit. If it is unbuildable, it is unbuildable and it was bought to be used to put in a house. That was the plan and Mr. Becker has paid money to do that. Mr. Becker wanted to hit the elephant in the closet. The Island Rover brought him to the property while looking in the area. It is the only good thing that has come from that rusty beast. He is ecstatic to get a house on that property because he lives in the noise shadow of 95 behind Thai Gardens and the highway noise is a lot of white noise. He works on the water and being on the water all the time is joyful. His spouse has been pushing him to get it done and get in the house. Mr. Cartmell clarified that on this property, if Mr. Becker doesn't have a house, he can't apply for a dock permit. It is another limitation.

Attorney Silk advised that the reason they went through the history of the property is because the Board is looking at hardship and if anything here was self-created. Back in the 1952 property rate card it shows a cottage that at some point was misplaced and was put on another piece of property. It was done long prior to 1952 because if you look at the property rate card, it says that cottage is 45% depreciated as of 1952. A building that is 45% depreciated in 1952 is not brand new. It was built sometime prior to that. It was there until after 1987 because you have the Kitchens' sub surface waste water disposal

application and it shows the close proximity of the cottage to the house the Kitchens wanted to eventually move and got a variance to do so. The hardship here isn't anything anybody did. It was a grandfathered situation but the grandfathering happened long before zoning and that cottage was misplaced back in the 1940s so when the Board looks at hardship, it is important to understand this is not self-created. It has existed for a long time. When this Board granted the Kitchens a variance back in 1987, they didn't meet the space requirements applicable back in 1987. It didn't matter. Their lot was not viewed as illegal and the reason it was not viewed as illegal was because the adverse possession happened a long time ago, prior to 1972. He mentioned the notes they gave the Board from the Minutes says the odd shape of the lot came about because of the placement of two cottages very close to each other and a portion of the lot was later removed by adverse possession. There is no self-created hardship by anyone. When you look at where you can yield a reasonable return, there are a couple of things to look at and it is not all pure economics. There was a huge reduction that the Assessor recognized when you bring a lot valued at $160,000 and drop it to $21,000 and it is shorefront property even though it is mudflats, etc. you are essentially saying it has very little value. When you look at what a reasonable return would be, everybody in the world thought it was a buildable lot and they knew there was an issue with the bluff that was the discount from $160,000 to $110,000. They went ahead and got that done but without a variance, there is no reasonable return on this property. The notion that it could be used for a picnic or things like that, the DEP wrote a letter and the cases in which they look at whether property can be used for picnicking are pieces of property on Fry Island on a lake or pieces of property at the very end of Wolfe Neck or Flying Point where you could stand and look at the ocean and have a picnic there and enjoy a beautiful place. This is an old subdivision with residential lots with neighbors next door. The lot was previously developed although the cottage may have come down in 1987, the old septic system and well are still there and it is in a residential subdivision. It is not a nature preserve or the top of a mountain. He does not think the notion here is viable to say it can be used for picnicking and the fact that an abutter could buy it, that is not value the fact that some abutter might want to buy it and pay something for it. That is not what they are talking about in terms of reasonable rate of return. They are talking about what the market place recognizes for a use, not that an abutter may not want development and would keep it vacant. They are here to ask that the Board grant a variance. This situation arose because of an interpretation that the laws had changed and again, nobody changed any lot. That lot was changed effectively 20 years after the cottage was built sometime prior to 1952 and that is when adverse possession happened. He thanked the Board for their time and attention. He asked that the Board consider and grant the four space variances they asked for.

Attorney Cunningham explained that he represents the owners of 11 Shore Drive, Lot 96 on the tax map immediately to the west of Mr. Becker's lot owned by Michael Dellahunt and Kathy Donnelly and the lot to the east at 272 Lower Flying Point Road, Lot 94 on the tax map owned by Judy Wood and Douglas Sanders. He also is representing a number of other interested parties in the neighborhood but he feels it is best to just name the abutters and he doesn't need to name everybody else. He understands why so many facts came out at once but it strikes him that there are two large issues here. One is the question of

meeting the hardship requirements to get a variance and the other issue of possible grandfathering of the lot. It strikes him that if the lot is grandfathered or not, it is an issue that has to be discussed when approving or not or potentially overturning the CEO's decision on the building permit. With the Board's permission he wanted to save the discussion about that until then and focus on the variance question now which mostly has to do with hardship.

He found it interesting that the witness was asked if he has seen other cases where somebody bought a lot and only afterwards discovered it was not buildable. His answer was no but Attorney Cunningham's answer is yes but without getting into his personal experience, there are at least a half dozen law court cases where the court points out exactly that circumstance. He is looking at the letter from the DEP addressed to the Board dated November 1 of this year and he believes the Board has a copy. As he is sure the Board is aware, when a variance is requested in the Shoreland Zone, DEP has to be notified and given the opportunity to comment. Here is their comment and they speak specifically about undue hardship and the economic return. They mention several cases and Attorney Cunningham could cite a bunch more but as the DEP points out, the reasonable problem of the undue hardship test (quoting the State Supreme Court) is met where strict application of the Zoning Ordinance would result in the practical loss of all beneficial use of the land. These decisions are not based on ever selling the land but if the land can be used and for what purposes. He read from the Twomey case cited and provided a copy to Attorney Silk. In the Twomey case, they are talking about an earlier case called Twigg which was someone else who fell in the same circumstance. They bought a piece of property and felt they could build on it and then found that they couldn't. In Twigg, the property owner sought a variance to construct a residence on waterfront property (same situation) and appealed after it was denied. They held that the evidence did not compel the conclusion the Board heard in not granting the variance because under a reasonable return, the owner failed to establish that the property could only be used for residential purposes and nothing else could be done. In the Twomey's case they failed to carry their burden to demonstrate that the Board was compelled to grant the variance. The fact is that the Board made a decision that the Twomeys enjoy a benefit from a shoreland property.

Attorney Cunningham asked what could the benefit be here? He does not question that anything other than building a house is what Mr. Becker had in mind but that is not the issue. That is not where the hardship comes from. The fact that a landowner can't do what he wanted to do is specifically described by the court as not being the test. The test is are there no uses to which the land could be put? When you look at the table of uses, he is looking at Table I Land Uses in the Shoreland Zone from Freeport's Ordinance. If the only thing Mr. Becker could have done on this property is build a house and he is not allowed to do that, he would probably meet this one of four standards for getting a variance. He suggested looking at some of the other land uses on that table that Mr. Becker would be allowed to use and read them into the public record. He advised that all of those are allowed within the zone that Mr. Becker's property is in. He thinks Mr. Becker fails to meet the standard of demonstrating that there are no other uses available to him and that is the standard. Not whether he can do what he had his heart set on doing,

and not whether he would take a big loss if he were trying to sell the property because he doesn't have to sell the property if he doesn't want to. That is not the test. He doesn't get to do what he wanted or he wouldn't make nearly as much money with allowing people to come and camp there and enjoy a weekend camping out and using the waterfront. Attorney Cunningham knows people that might do that. Would he make as much money as he could make off a house or would he enjoy it as much? Probably not but he is willing to grant that but that is not the test. The test is whether there is anything else allowed.

Attorney Silk just said unbuildable is unbuildable and what he wants the Board to conclude that if Mr. Becker can't build a house there, that's the evidence and there is nothing else that can be done. Freeport's Table of Land Uses says otherwise. There are other things that Mr. Becker could do, maybe not the things he wants but there are other uses. The other issue is the issue of self-created hardship. Mr. Becker phrased that and Attorney Silk did not challenge it as whether the problem was caused by Mr. Becker or the previous owner. It is not the standard in the Ordinance. The standard is whether the problem was caused by any previous owner of the property. In this case the problem arises in two ways. One is that the cottage was built in the wrong area and the parties did not do anything about it until a long time had gone by. The previous owner of Mr. Becker's lot was one of those parties. There was a previous owner that had he or she been on the ball, they could have said to the person building the cottage, wait a minute, you have that located on our land. They therefore contributed to the problem but there is an even more up to date version of where does the problem come from and that is changing the lot. We heard testimony that a bunch of people went and checked and saw there was no problem, this would be a buildable lot. Because of the line of work Attorney Cunningham is in, when he looked at this situation, before the CEO issued a decision, he noticed right away that this lot would face some issues and would probably need variances because previous parties and one of them was the previous owner of Mr. Becker's lot made a decision to create a new lot with a different property description. There are a number of ways a lot gets recognized. What the courts say for court decisions is one thing but what the Town says in its Ordinance is what controls. He asked how you define what a lot is? There could be a deed that describes it. It could be inherited in which case there is a reference perhaps in a will or I inherited it but whoever I inherited it from had a deed so there is a document that defines the lot for us. Adverse possession is a little different. If parties agree between themselves, oh that is really part of your land and maybe we should do something about that, nothing has changed about the lot when they decide that in their minds. He read the definition of lot from the Freeport Ordinance. A lot is a parcel of land having distinct and defined boundaries and described in a deed, plan or similar legal document. The new lot that Mr. Becker owns today did not meet that definition back when the Ordinance was adopted. As of approximately 1985, that is when the two neighbors decided to make a legal document redefining where their boundary line was. By the law of adverse possession each one may have had perfectly valid ownership claims against the other but going by the definition in the Town Ordinance, they hadn't yet made a lot to describe the land Mr. Becker owns today. When that happened, it made a different lot but he is not saying it wasn't for a good reason. It clearly was for what seemed a good reason but it led to a problem. The problem is that it made a new lot and

what happened when the folks went in to see is there a problem here. He believes it was simply an oversight. The basic rule is if the lots within the subdivision were not going to need variances because this has been there a long time except that if you don't check the record to see that the lot changed in 1987, there was a lot of record as of that date which had different boundaries. Now it is a different lot and as required by your definition, it is described in a deed, plan or similar legal document. Before that date the lots were as shown on the original subdivision plan. There is no argument there. After that date Mr. Becker's lot is different and is no longer the lot shown on the original subdivision plan. His point is just that. He is not saying that Mr. Becker did anything wrong, one of his predecessors took an action that in retrospect created or at least facilitated the problem being faced and lead the need for a variance. Therefore, that one of the four standards is also not satisfied. He would prefer to leave any other comments about the lot until we are talking about the building permit.

Mr. Hardenbergh asked if the fact that the building that was on the lot disappeared more than 30 years ago, isn't that an action by the previous owner and therefore, Mr. Becker takes ownership of? Attorney Cunningham noted that that one is a little more complicated and we are jumping ahead so he wanted to stay brief. The question there is if there was a long-standing use that had continued, a cottage with a septic system, etc. and it had stayed in operation, that would be a different kind of grandfathering and that issue has been taken off the table because when you have such a non-conforming use that has been continuing, when it is abandoned and that use stops, the cottage is taken away and there is no longer a septic system in use, that issue comes off the table and there is no grandfathering for it.

Mr. Hardenbergh asked if adverse possession has to be averse to some of the people involved? If everybody agrees to it, it is not really adverse is it? Attorney Cunningham noted he is right. When the action takes place, there has to be an adverse element which doesn't necessarily mean that the parties are antagonistic to each other. It means when the people built the cottage where they built it and they built it partly on to what is Mr. Becker's land, that was a mistake and it would be adverse possession if they thought they had the right to put it there. They thought they were on their own land. If it was done with permission of the previous owner of Mr. Becker's land, then no adverse possession can arise. Permissive use counters the adversity that is required for adverse possession and that is probably not an issue to face but getting back to his claim that the action of the parties played a part in causing the problem that now leads to the need for a variance. There was no court fight as he understands it to have a court declare the boundary was shifted by adverse possession which then would have created a court document that sets the boundary of the property. The parties just agreed between themselves where the boundary ought to be and in this case, it may have had an adverse outcome which is by making their own agreement and rearranging the boundary by their own agreement and drafting a document that did that, that sets the date for when that newly described lot came to be. He knows and agrees with Attorney Silk's saying because he put it in his written materials that the adverse possession takes effect when the requisite amount of time has run. It is not measured by the date on which a court declares it. He makes no argument about that point whatsoever. He does argue that when we are looking at the

definition of a lot in the Town of Freeport, that depends on the date when a written instrument or a plan or other document lays out the boundaries of the lot and before that time, we just don't have the lot and you do have a lot once you have done that. Now you have an older lot of course but you have a different lot when you change the description.

Attorney Silk pointed out that it is ironic for Attorney Cunningham to be here representing 11 Shore Drive. In 1987 after they made their lot smaller, they got a variance and were able to show hardship and without the variance they wouldn't be able to get a reasonable return for their property. His clients would not be sitting in the house they are sitting in today unless this Board had agreed with his client's predecessors that the boundary line adjustment that happened in 1986 or 1987 wasn't a self-created hardship and without it, even though they had an existing house, they couldn't get a reasonable return for their property. The Board has to take what Attorney Cunningham says with a grain of salt because he does not want you to look at the benefits and what happened to his client's predecessors of 11 Shore Drive. He wants you to ignore all that. Besides that, he thinks Attorney Cunningham has made some inaccurate statements. When you look at uses and he gives you a case from Fry Island, you look at actual uses that have happened. On Fry Island the person seeking the variance bought a lakefront property at a foreclosure sale for $3,700. He used it for ten years and then decided he wanted to build something on it. He went in to get a variance and a buildable lot on Fry Island would have been worth a lot more than $3,700. The Board in that case said he had been making actual uses of that property beyond putting a house. The actual uses the applicant had been putting to it means there are other uses the property can be used to. Attorney Cunningham hasn't claimed there has been any actual uses of this property other than as a residential use. There was a cottage there for at least 50 or 60 years and he presents no evidence other than in theory there have been any actual uses made of this property and those actual uses have any value. The test is not in theory, the test is actual and if you look at the other cases, they all looked at what the actual uses of the property. The DEP letter talks about an Eddington case and it is on a prominent point on a lake and the person who bought it knew at the time that it wasn't buildable. They owned it for a period of time and used it for a period of time and then went in and tried to get a variance. We are not looking at uses in the abstract, we are looking at uses in fact. In terms of this property, there is no testimony from anybody that this property has any use for recreational picnic purposes. That is the issue on reasonable return and hardship. Again, he is coming here representing successors to the Kitchens that came in and argued hardship based on adverse possession and this Board found in 1987 that the unique circumstances that arose were due to adverse possession that arose a long time ago. Attorney Cunningham tries to hang his hat on the definition of a lot and concedes that 0 Shore Drive prior to 1972 is when the Town adopted zoning. 0 Shore Drive in fact prior to 1972 included a cottage and the parcel that is now part of 0 Shore Drive. He told the Board that adverse possession happens after the 20-year period ends. The reason Attorney Silk gave the Board assessing records from 1950 shows that the cottage was then 45% depreciated and the reason he showed the Board aerial photos from the 1950s was because that cottage was there a long time. This Board recognized that due to adverse possession that was the unique circumstance of the property and it was not a self-created hardship. In terms of the definition of the lot, Attorney Cunningham ignores a

whole line of lawcourt cases mentioned in the material he supplied. He explained two separate cases. He pointed out that as of 1972 0 Shore Drive is the same as it is today. The only thing that happened was because there was no specific description of the adverse possession parcel that had already been part of 0 Shore Drive in 1972, the parties had to have a description which included the driveway and included the cottage. They had to have a legal description that was created after 1972 but the lot did not change. It was in existence in the same shape as it is today prior to 1972 because of the adverse possession. He provided evidence from another case and explained it. In summary, when you look at uses to determine reasonable return you look at actual uses not uses in theory. In cases that have gone to law court, they look at actual uses. In terms of the definition of a lot, Attorney Cunningham conceded that the adverse possession accrued before 1972 and that is when 0 Shore Drive became what it is today. This parcel actually got bigger because of adverse possession. His client's parcel got smaller.

Nick Adams, Codes Enforcement Officer had a couple of points of clarity. He agrees with Attorney Cunningham about the definition of a lot. That is very clear in the Zoning Ordinance and has been that same way since 1976 when the Zoning Ordinance was adopted. There were comments made by Attorney Silk and Mr. Becker that nobody was aware of these concerns. That is an inaccurate statement. There were several e-mails and letters sent out from his office explaining to them that he had three concerns with the lot while we were in litigation on another issue. The three concerns were the unstable bluff and that the lot may have been merged together and the lot line amendment in 1986 created a new lot and in his opinion was not a buildable lot but he needed more information on that and did not make any finding. There is information in the record and he can provide it to the Board if needed. There were several conversations prior to the building permit being applied for. As for assessing records, the Assessor is going to assess what is on the property whether it is legal or not in his opinion. It happens daily. People build things without permits. A lot of time is because they were told they can't do it and they go and build them afterwards. Then they go to sell the property or try to sell it and realize they have all these illegal violations and things like that. This comes up on a regular basis so he suggested that the Board keep assessing away from zoning. What the Assessor does has nothing to do with what the Zoning Board of Appeal does. He does not know what the property was assessed at but thinks there are some tax maps and some tax records missing here and he doesn't know exactly why but he believes when the Kitchens owned all the property together, they merged the lots together for assessing purposes. He believes the Kitchens came in and asked that it all be merged together probably for a lower tax bill or maybe they thought it was all merged together or maybe they got legal advice. He is not sure. That being said, moving forward prior to 2015, The Kitchens were trying to sell it and it is his understanding that they could not get a hold of Fred Reeder. He was nearing retirement age but Mr. Adams does not know why. They got Mike Morse from DEP to come down to the site with Matt Cartmell and that is when that letter came in provided by Attorney Silk about if it is a legal lot of record. They did not address the lot issue. They just addressed that it was all in the same ownership or not. Mr. Adams didn't get into that because he did not know if it was or not. There was question when people were buying the lot that it could have been merged and there could have been issues with it anyway. They were very correct on the unstable bluff issue. It was unstable

prior to Mr. Becker buying it. He did go and get it reassessed and reclassified. We had to go through the process which took several years which is a very accurate statement. He was told that the lot was retained by the Kitchens (it is probably hearsay at this point) when they sold 11 Shore Drive, they retained the land and used that land as a launch of some sort to get to their property on Bustin's Island. He knows there are a lot of questions about uses and he will get to the point of a use Attorney Cunningham brought up. There is actually a technicality in the Zoning Ordinance if you go through 507 G Table I. This lot is not in any of those three shoreland zoning districts. The three shoreland zoning districts listed in that table are stream protection, marine waterfront and resource protection. There is a portion of the lot that is in resource protection that is in the Coastal Flood Plain but this lot is not actually in the Shoreland area so the actual uses would now go to the underlining district which would be the Medium Density Residential I so the Board should look at those uses which is single family, two family mobile home, agriculture, agritourism, timber harvesting and then there is subdivision and a bunch of commercial uses and stuff like that. There are uses but that table is being corrected but it just isn't written correctly right now.

Mr. Adams went back to the question and noted this is the first time he looked into it. Attorney Silk said several times that the building in 1952 was depreciated by 45%. Well general rule of thumb in Shoreland Zoning and Zoning, when something is depreciated more than 50% of market value by any reason, you have basically lost your right to rebuild certain things. The whole point of the Zoning Ordinance is to create a town into separate zoning districts recognizing there are non-conformities within the town but it allows non-conformities to stay. You can alter them by certain provisions in the Zoning Ordinance that allow you to but ultimately what the ordinance is trying to do is dissolve non-conformities and bring them into compliance with what the Legislative body adopted. In speaking of the variance, he does not have any comment. His office is fine if it gets granted or whatever it is. He is here to talk about the permit denial. Chair Garrity asked what year Mr. Adams started here and what year did Fred Reeder retire? Mr. Adams advised that he started here in 2017.

Attorney Tchao asked about Table I on page 38 Land Uses in 507 and asked about the underlying district that applies here. Mr. Adams advised that the underlying district is MDR-I but there is a small portion of the lot in Resource Protection. It is only in there because of Flood Plain. She asked what percentage of the lot is covered in RP? Mr. Adams noted it is the first 2 feet and maybe 10 feet in elevation to the top of the bank.

Chair Garrity asked if any Board members have questions for anybody who has testified so far? Ms. Leone wanted to provide her usual standard comment. Sometimes people perceive that the Zoning Board is a Board of Precedent. She stated that we are not that Board in the 1980s that made that decision. Any time a case comes before a Zoning Board, it is taken at that time and there is nothing in a previous decision that pushes us or claims us to make a decision that comports with the previous decision. She thinks sometimes there is a misperception that there is somehow a precedent on the Zoning Board but every Zoning Board is completely separate from the last decision they made a

year ago. She wants people to understand we are hearing this as it is today and there is no bearing of the decision that was made in the 1980s.

Mr. Hardenbergh had a question. Parties referred to the finding that adverse possession existed in 1987. That is a finding of the Board of Appeals. Now, is Ms. Leone saying that is or is not usable as a Finding of Fact? Ms. Leone noted she would question using it as a fact. They perceived it at that point of time but that doesn't mean we are compelled to perceive the evidence in the same way that they do.

Chair Garrity opened the public portion of the meeting. She asked if anybody in the public would like to speak. Ms. Garrity instructed the Secretary to be sure to include the letter from Jeffrey Kalinich, Assistant Shoreland Zoning Coordinator, Bureau of Land Resources into the public record. There were no public comments provided.

Chair Garrity closed the public portion of the meeting.
She explained that the Board needs to decide if the testimony provided confirms or denies the four things. Her personal opinion is that she does not have a problem with Nos. 2 and 3 - the need for a variance is due to the unique circumstance of the property and not to the general condition of the neighborhood and that based on the pictures and information presented, granting the variance will not alter the essential character of the locality. She feels the discussion is really around No. 1, can the land in question yield a reasonable return and No. 4-D that the hardship is not a result of action taken by the applicant or the prior owner.

Mr. Hardenbergh differed on 3-C. We heard a statement that the proposed building is in keeping with other buildings in the neighborhood. He doesn't want to accept that because it is just an insertion. He would have liked to have seen facts showing ten buildings in the neighborhood looking like they are the same size and other facts like that.

Attorney Tchao suggested taking No. 3 so we can all be aware where the discussion is. If the variance were granted, it would not alter the character of the locality. She heard Mr. Hardenbergh say he doesn't think the applicant has met their burden of showing that the building in this area would alter the character of the locality. He clarified that he has not heard any facts about the character of the locality.

Attorney Tchao advised that there are four standards here and we all know that each and every one has to be met in order for the variance to be granted. She requested that the Board discuss each one so she can frame the facts and draft up a decision for the Board.

Ms. Leone feels that the presentation focused on the other issue. She advised that normally we look at that particular one when we look at plans for the house. We look at pictures of what the neighbors have, that type of thing. She thinks the reason the presentation chose not to focus on that is because that is not the big issue. She sees a little sketch in here and maybe there are some plans but no presentation that really drew our attention to that criteria. She feels it is not the criteria that is the major issue here. She agrees it is the easy one and we would agree that we have seen enough but normally we

rely on the people presenting or making their case to really go into a lot of detail about what they are proposing to build and how it comports with the neighborhood. Again, the fact that none of the presenters chose to focus on that is probably why we are not going to focus on that as well. They focused on the other criteria and those are the more critical criteria. She thinks it would have been easy to focus on that one but it is not the big issue.

Attorney Tchao asked if the Board could take a moment and focus on No. 2. She asked if the Board feels the same that there was not a lot of focus on that or can you make some findings on the fact we have a unique circumstance here?

Mr. Hardenbergh advised that he does not see adverse possession as a unique circumstance which is what Mr. Becker said himself was a unique circumstance. He sees that it is the unique circumstance of the property itself that requires a variance. Attorney Tchao clarified that the resulting shape of the lot was created by the adverse possession line. Mr. Hardenbergh agreed.

Attorney Tchao asked if there is consensus that because of the shape of the lot and whether the adverse possession line caused it to have its shape, id the current shape of the lot something that is a unique circumstance that requires the variance? It is not common with the general conditions of the neighborhood. She acknowledged a few nods. Chair Garrity added that she feels like the property, however it got there, if we don't include the part that it is unique, especially when you throw in the shoreland and you do all of that, it is really hard to put things into our Zoning Rules with those unique circumstances. She doesn't have shoreland and doesn't have to deal with it at her house, so she thinks when you have to take in those additional circumstances and we all know that the high-water mark and where that matters has changed over the years. She is sure that the shoreland distance changed between 2016 and 2021 and where we can place things. Regulations have changed because of the unique location of the property. Mr. Wagner asked if they have? Chair Garrity did not know but asked Mr. Adams when the shoreland rules changed as far as setbacks and high-water marks? Mr. Adams explained that the setbacks changed from the normal high-water line of the coastal wetland to the highest annual tide and the unstable bluff in 2009. The State changed it in 2005 but the Town didn't change it until 2009. Ms. Leone pointed out that that predates the sale of the property. Mr. Adams advised that the Board can see that in the second page of the Zoning Ordinance dated July 1, 2009 where we were required to change our Zoning Ordinance to be consistent with the Chapter 1,000.

Chair Garrity asked if she is hearing that the two she didn't think the Board needed to discuss and we would agree that they were met, they are not, and the Board won't even have to talk about the hard ones? Ms. Leone noted that the Board always talks about all four. Ms. Garrity mentioned that the Board might find none of the four to be true.

Ms. Leone is feeling that this is an unusual case anyway. Attorney Tchao suggested moving on to another problem and the Board can circle back if she needs a little more information on one of the other standards. Chair Garrity referred to A-I, the land in question cannot yield a reasonable return unless the variance is granted. Mr. Hardenbergh

feels the need for a legal brief about this. He has heard the arguments on either side about what a use is and he cannot personally reach a decision himself. Mr. Wagner finds it hard to believe that slapping a picnic table on a piece of property is reasonable and someone would expect that that is all you would have to do to get enjoyment out of that land and get some return. He asked for an example of something that is actually reasonable. Mr. Hardenbergh noted it is not the picnic table, it is the aquaculture and agriculture. Mr. Wagner agreed. Chair Garrity asked if it is just the MDR-I? Mr. Adams explained that that is the underlying zone. Chair Garrity listed single-family dwellings, two-family dwellings, mobile homes, agriculture, agrotourism activity and timber harvesting. She does not disagree with Mr. Wagner. She has been on this Board previously and has always been told exactly what Attorney Cunningham said and the courts have also said about placing a picnic table on the land in question. She agrees it sounds ridiculous. Mr. Wagner feels it falls into how the Board interprets this and he thinks they are wrong.

Attorney Tchao noted the framework says where a strict application of the Zoning Ordinance would result in the practical loss of all beneficial use of the land. That is where the portion of the undue hardship test is met so the Board has to look at whether there is a practical loss of all beneficial use of the land? While that may not be residential, she asked what other uses this lot could be used for? Mr. Hardenbergh advised that in terms of housing, we have no testimony about whether other uses can or cannot be made of this property? Really, we just have the picnic table. It doesn't address other uses.

Attorney Tchao thinks the Board has to look at the underlying uses other than residential that are allowed in this zone and make a finding based on what you think and know of this lot and whether the lot could be reasonably used for any of those uses. Mr. Hardenbergh asked if the Board can make a finding without any evidence before us? Attorney Tchao noted that the Board knows the capacity and it is the burden of the applicant to put in evidence. If there is no evidence, the Board can interpret the Ordinance based on what you heard and make a reasonable determination about whether this lot based on what you heard about this lot, its orientation, where it is located related to the tides, etc. and whether it can be used for these other uses that were listed.

Ms. Leone has a question for Mr. Adamas. She knows you can't have a dock because it is an accessory use, if you don't have the house, you can't have a dock but can you access the water? Could you have stairs down to the water on the bank that is stable? She mentioned the Fry Island example and asked if you can access the water without actually building on the lot?

Mr. Adams clarified the dock situation. The reason why the dock, pier, wharf or similar structure is only allowed as an accessory use because it is only mentioned once in the Zoning Ordinance as a permitted use. It is only a permitted use in the Island District. The Town took the view that you can't just put a dock on any piece of land other than in the Island District so you can get access to it. As for getting access to the water, he walked down to the water through the property but in order to get a set of stairs on that property, you would need a building permit. As the Board is aware, there is a pending building permit that he is saying the lot is not buildable. In order to get a set of stairs, you would

need to apply for a building permit. Ms. Leone noted that that is what she thought but wanted it clarified. Mr. Hardenbergh asked if a building permit has to be on some type of structure? Could it be just a set of stairs? Mr. Adams advised that a set of stairs is a structure and the Ordinance requires a permit. This will hinge on the next appeal.

Chair Garrity pointed out that someone asked about aquaculture and it is not a sub category of agriculture or agrotourism in our Ordinance. She referred to Page 11. Attorney Tchao asked if there is a Land Use Table for MDR? Mr. Adams replied no. It can be found in the actual district which is 404, page 62. After reading the Ordinance, she agreed it is not a subset. Mr. Adams advised that aquaculture is found in the Table 507.b.1.for marine waterfront in the RR-I

Mr. Hardenbergh advised that he wants to move on to the Appeal because if this is not a buildable lot and there is no structure at all permitted there, it could not yield a reasonable return. Mr. Adams advised that aquaculture is an allowed use in the RR-I District subject to Coastal Waters approval as well. Chair Garrity explained to Mr. Hardenbergh that the applicant asked that the Board separate them out and look at the variance separate and then determine the appeal. Mr. Hardenbergh asked if the Board has to abide by the applicant's request? Chair Garrity advised that the Board has at this point.

Attorney Tchao asked if there could be some discussion on the self-created hardship. Chair Garrity read, the hardship is not the result of action taken by the applicant or prior owner. Mr. Hardenbergh asked if a prior owner took the building down, so he can't grandfather the building in there if he has that right. It seems to him that it is action taken by a prior owner. Chair Garrity pointed out that the Board does not know if a prior owner took the building down or a storm came in and took it down. Ms. Leone noted that the building was not replaced so it is a high argument for saying even if a storm took it down, nobody bothered to replace it. Inaction is action in certain circumstances. Chair Garrity asked Ms. Leone to explain how that changes it for her if there are remnants of that building still there? She added that the building was 500 sq. ft. as opposed to 1,500 sq. ft. Mr. Hardenbergh mentioned that he doesn't know what Mr. Becker plans to do but if the building is put in the same footprint, he would be okay with that.

Mr. Wagner mentioned that hardship is always going to be the result of an action by an applicant to replace something. There is no way to get around that so the Board has to interpret it loosely unless it was an act of God and has fallen off the face of the earth. Pretty much any action that has been taken was done by a previous owner. He does not get too tied up with that one. Ms. Leone advised that she said what she perceived. She would have a hard time supporting that particular one. She believes the hardship is self-created. She added that she feels there is good reason that this property was not developed and built upon as the neighboring properties were over the past 20-30 years. That is a testimony of why she perceives that.

Attorney Tchao mentioned the cottage was built in the wrong place and no one did anything about it for a while. It was eventually built creating this funny line but disappeared. Attorney Tchao mentioned she would still like to hear more about the no

reasonable return. She is hearing a little bit of difference on the self-created hardship. She heard Pam saying she felt this was self-created and it is an odd circumstance maybe it wasn't created by Mr. Becker but if you go all the way back, you end up with this history. Chair Garrity agrees that she does not believe Mr. Becker had anything to do with this and tends to agree with Mr. Wagner on this one. She is sure something happened at some point but people didn't know. She does not know the history of this subdivision but she knows enough people whose buddies got together and bought a bunch of land and built cabins and put pipes into the water. They went there for decades and didn't realize they were doing anything wrong. All of a sudden, it went to be sold or something happened and then it came about, oh by the way, you can't do all that. She thinks at some point you can't be held liable for actions of people generations before you.

Mr. Noon agreed with Ms. Leone and Mr. Hardenbergh mentioned he is as well. Attorney Tchao mentioned for now, she has 3 to 2 on that one which is okay. She suggested going back to reasonable return.

Mr. Noon pointed out in a hypothetical situation, if there is already a driveway there, he could back in an Airstream (Airbnb) and make the property taxes in three weekends. It is low hanging fruit. Attorney Tchao clarified that a mobile home is an accepted use. Mr. Noon added that it doesn't have to be an Airstream. It is much nicer than a picnic table and a firepit. It has a roof. Ms. Leone added that is something being done all along the coast right now. Mr. Wagner mentioned you could spend $550 a night in Kennebunkport in a tent. Chair Garrity agreed with both sides. This is a tough one for her because she totally agrees with Mr. Wagner that it is ridiculous but she has been told many times that if you can do anything then you can do anything. She would probably tend to vote with Mr. Noon. Attorney Tchao noted it is 4 to 1.

Attorney Tchao suggested going back to the other two but she has a sense where the Board is leaning. 2 is the unique circumstances of the property. She asked if there is any more movement on that? Mr. Hardenbergh feels there are unique circumstances. Ms. Leone agreed and there was agreement across the Board. Attorney Tchao suggested discussing whether the granting of a variance would alter the essential character of the locality, residential area, tight lots, 1930 Subdivision. Ms. Leone finds this one interesting because when the Board looks at that particular aspect, her experience with that is we do listen to abutters when it comes to that issue. We have a clear message from abutters tonight. Mr. Wagner added that it is a modest house proposed for that neighborhood and will not overwhelm the neighborhood by any stretch of the imagination so he does not see that it will alter the essential character of it. Ms. Leone clarified that that is the only place we pull the abutters statements and having some weight. She agrees with Mr. Wagner but has not spent any time looking at the plan but would not expect it to be the issue but the Board does pay attention to abutters. Chair Garrity advised that she agrees with Mr. Wagner. All the other house that come to this Board are 70,000 sq. ft. and plan to use up every inch of their comfortable property line and it needs to be 40 feet tall. She has been on the Lower Flying Point Road and thinks for that particular area, that is an appropriately sized house and she doesn't think it is a real issue but she does hear that the abutters have a lot of concern in general with the

application. As for the house, she wishes all the houses that come to the Board are this size. Ms. Leone concurs with that observation for sure. Mr. Noon added that it comes back to what Mr. Hardenbergh said, there was not a lot of proof provided by the applicant. Attorney Tchao added that she has Pam, Chalmers and Preston saying the applicant has not met his burden of proof.

On self-created hardship, Attorney Tchao has Chalmers, Pam and Preston saying that the hardship was self-created and Shannon and Phil were not moved buy that. She mentioned we haven't taken a vote but there is a lot of movement in here which is okay but she has by 3 to 2 she has three of these tests not being met. If the Board wants to do this before moving on to the next appeal, she asked that the Board let her go back and write this as a draft, not take a vote tonight but she is hearing a consensus based on the way these votes are coming in a straw poll, by 3 to 2 three of these standards that would need to be met to grant the variance are not met. She will come back and write her decision in a draft that way and the Board would get to review it and if she is wrong, the Board will correct her. That is when the Board will vote. She asked if this seems like a process for everyone? Mr. Wagner advised that he will not be here for the next few months. Chair Garrity asked Mr. Adams to look at meeting time slots might be available in December before Mr. Wagner is on the slopes. She noted that the Board has the authority to call a special meeting. After a discussion, it was decided that the next meeting would be held on a morning in December.

Attorney Silk pointed out that his client, has asked to withdraw his variance application at this time. He feels there may some additional information that would make a difference to some Board members that is not part of the record here. It is not a mandatory appeal from a denial of a building permit. Attorney Tchao advised that that means if the Board is feeling robust, it could move on tonight with the Administrative Appeal. Board members concurred.

Chair Garrity requested a 5-Minute break at 9:16 p.m. At 9:22 p.m. Chair Garrity called the meeting back to order. She noted that the Variance has been withdrawn. We are now going to move to Item 2.

- To consider an administrative appeal of a building permit denial for Carter V. Becker, 0 Shore Drive, Tax Map 5, Lot 96A, Book 33153, Page 170.

To formalize this, Chair Garrity asked if there is anybody on the Board that can't hear this application. Chair Garrity asked if there were any parties here that would speak and if there are interested parties that would be aggrieved by the Codes Enforcement Officer's decision? She presumes Mr. Becker, Attorney Silk and Attorney Cunningham will be speaking and they agreed. Mr. Adams mentioned he plans to speak as well.

Attorney Silk mentioned that he thinks everything the Board has heard tonight is included so he will not repeat this. He noted that the Administrative Appeal included not just the appeal from Mr. Adams' determination that the lot was no longer non-conforming but he also denied the building appeal based on not having adequate information of whether the 75-foot setback from the neighbor's bluff and he was not clear whether the tree canopy

standard was met or not. Those two issues, the issue of the 75-foot setback from the neighbor's canopy and whether a certain percentage of trees are being removed and whether canopy cover is exempt. If the lot is grandfathered, they would then submit additional information to Mr. Adams to show moving the building 75 feet. They would deal appropriately with the trees and canopy. He would like to let the Board deal with the issue of whether it is grandfathered. If the Board finds that it is, at that point he will go back to Mr. Adams with supplemental information and not have to have the Board count trees tonight. It is already 9:30. The issue of whether the lots have merged or not, they have submitted the Registry Records and the chain of title. The standard in Maine is whether there is an identical interest in the chain of title for lot mergers to happen. They submitted a letter from the DEP and the attorneys from back in 1916 that submitted it to the DEP. Mr. Adams has said that he does not know for sure whether they merged or not. This is a Denovo Appeal by the way. They are not deferring to Mr. Adams. This is the Board deciding from scratch. He has given the Board all the information and all the deeds and indexing information. He can walk the Board through it and literally show that there has never been identical owner interest of 11 Shore Drive and 0 Shore Drive. If the Board wants, he will go through that at the end of the day he got exercise in going through that information. Mr. Adams stood up here a half hour ago and said he wasn't sure. Attorney Silk submits to the Board that if it goes through page by page and looks at the identities of the parties at any given time, for 11 Shore Drive and 0 Shore Drive, from 1972 forward there was never an identity of common interest. That may be an issue to defer as well because to him the heart of the issue today is whether the lot lost its non-conforming status. Given the lateness of the hour, he suggested the Board take up that issue tonight and we can continue this but just take up tonight the issue of whether it is grandfathered or not. If the Board finds that it isn't, they will deal with that. If the Board finds that it is grandfathered, it may be that we go back with Mr. Adams and sit down and review the schedule to show him what he thinks they can show and deal with the 75-foot setback from the neighbor's bluff and revise the drawing and move it a little bit or give the Board the information you need as well as for the trees. He feels this is the best practical way to proceed given the lateness of the hour. Assuming the Board proceeds on that basis, he will address the issue again. The Board has heard from Counsel for the abutters and the Board will hear from him the disposition of his position. The Board has in the records the fact that there was a lot that existed as of 1972 and is the lot that is there today. There are law court cases that say adverse possession ends when the 20-year period runs. The Board has the Board of Appeals decision that says the odd shape of the lot occurred because of adverse possession that happened sometime ago. The reasons he put into the records a picture of a cottage dated 1952 is to show 20 years prior to 1972, the cottage is there. It was there in the 70s, the 80s and was shown on the owners of 11 Shore Drive subsurface waste water application in 1987 so we get down to really no factual dispute. In fact, it was conceded that the adverse possession period ends after 20 years even if you don't' have a court decree. Someone can say you are right; I don't want to go and pay a lawyer to have to agree with you. I agree with you, it is your cottage, I should have said something but I didn't. It was a mistake, whatever. We don't know what happened back in 1949 or 1959 but we do have the Board of Appeals decision in 1987 that says that is what happened. In his book it is pretty good information as to what happened. The Board of Appeals said so back in 1987. The legal question is the Codes Enforcement Officer said a new lot was created in

1987 because there was something new recorded in the Registry of Deeds with a different description and it didn't meet the minimum lot standards. Therefore, that rendered the existing lot as non-conforming. He has already said to the Board that there is no definition in the Ordinance of what a new lot is. In a Maine Supreme Court case that says a new lot comes into existence after the creation of an Ordinance. Here the lot that existed in 1972 is the lot that was already modified by adverse possession. The fact that they did not effectuate an actual description of that which they would need if they ever went to sell it. You can't just say I am going to sell you my land plus the adverse possession piece. Title companies won't insure that and banks won't finance it. If you have that and your tried to sell it, even Attorney Cunningham would admit this. It would be really hard to sell a piece of property that says you have these two lots plus a piece of my neighbor's property that they conceded and agreed that I own by adverse possession. It wouldn't happen. The adverse protection happened a long time ago. They had to come up with a description if the Kitchens were going to refinance and build the house they built in 1987.The fact that they came up with a legal description in 1987 doesn't change the fact that the adverse possession was effective and has modified these lots by 1972. He read the Board the Lewis decision and the Coliquin decision that recognizes that when you acquire title by adverse possession, it is as a deed and as if a deed had been given to you. The lot that existed in 1972 is no different than the lot that was shown in 1987 to the Board of Appeals and it is no different than the lot that was shown to Mr. Adams as part of a building permit application in 2021. That is the rub and he asked that the Board take up that issue first and then we can address it at another time perhaps at an earlier hour and the other three issues whether there is a lot merger, whether the tree canopy issue can be resolved and the 75-foot setback. If the Board wants to get into those, he would be happy to do that but that is his suggestion on how to proceed tonight given the hour.

Chair Garrity pointed out that the tree canopy and the location of the building are things that could be further discussions down the line and are not specific to if this lot is buildable. It is where you have chosen to place the house and what you need to do. That may come back before us for something but she doesn't think it relates to the specific appeal. Attorney Tchao asked for copies of the Lewis and Coliquin decisions and Attorney Silk offered to provide them for her.

Mr. Hardenbergh wanted to be clear and asked Attorney Silk to provide the evidence showing that the 20-year period ended before 1972? Attorney Silk agreed and explained that it is because looking at the Board of Appeals' notation in their 1987 decision, he highlighted a sentence or two. Mr. Hardenbergh thought Attorney Silk referred to pictures and Attorney Silk explained where they could be found in the packet he provided. Mr. Hardenbergh noted the pictures are from 1953 and the picture is the evidence of the cottage and adverse possession started in 1953 and expired after 1972 so 20 years have not run by 1972, only 19 years have.

Attorney Silk pointed to the picture of the cottage circled in red. Mr. Hardenbergh noted that that picture says 1953 so adverse possession started in 1953 and expired after 1972. Attorney Silk says the Board has the decision of the Board of Appeals in 1987 that says the unique shape of the lot came about from adverse possession that happened sometime

ago. Adversity usually arises when you take some action to occupy someone else's land. Here the adverse possession is noted by the Board of Appeals with the cottage being placed on property of someone else. Usually, the adversity starts when you build the structure. If you build something with permission, it can't ripen into adversity down the road so if he builds a shed on your property and it stays there for a long time, it starts from when he built the shed. The reason he is showing the Board photos from the Assessing records is because he wants to show you the cottage that is the same size and dimension described in the Assessing records and had been there a long time. It was there prior to 1972 and prior to 1952. The Board of Appeals recognized that the odd shape of the lot occurred because of the adverse possession that occurred sometime ago. That is what they said. The odd shape of the lot came about because of the placement of two cottages right close to each other. They don't have to go to court to resolve adverse possession claim. When this 503 sq. ft. cottage was placed next to the other one, that is what created and led to the change in the lot at 0 Shore Drive. He is saying that as of 1972, adverse possession had ripened. Even Attorney Cunningham said that happened. He does not contest that the effectiveness of adverse possession happened prior to 1972. His point is that the legal description in the Registry of Deeds was changed after that date so technically, there was a change in the lot and that is the same position that the Codes Enforcement Officer takes. Attorney Silk's point is he is conceding that the adverse possession ripened before 1972 as the pictures indicate, the placement of the cottage happened more than 20 years prior to 1972. In 1987 the Board of Appeals noted that the adverse possession occurred due to the placement of the cottages very close to each other. To him there is no factual issue that the adverse possession ripened prior to 1972 but it becomes a legal issue whether in 1972, what was 0 Shore Drive? Did it or did it not include the adverse possession portion that had been occupied and acquired by adverse possession by that time. He offered to give him two cases that he mentioned but it is very clear that you do not need a judge. You do not need a piece of paper. After a 20-year run, it is the existence of those facts that then vests title of that property in the person who possesses the property. It is the existence of those facts. His view is that the lot as it existed when zoning was adopted, is the same lot today. The fact that they had to come up with a description of the adverse possession piece came about because at some point someone wanted to sell something and you can't sell a piece of property with a deed description that says Lot 246 and 247 and that portion of Lot 245 that I adversely possessed. You can't do that. You have to come up with a description. That is the issue as he sees it and is the conclusion he draws. To him it is not a factual issue. It is a legal issue. What is the lot at the time of the adoption of the Ordinance? What is it and did this lot change? He thanked the Board and noted he would give Attorney Tchao the two cases she requested.

Attorney Cunningham explained that Attorney Silk has put some words in his mouth and some he agrees with and some he doesn't. He wanted to take a stab at it. He thinks there are two issues here. The first one the Board has essentially asked how do we know adverse possession has taken place and if so, when? What do we know about it and what is our evidence? He asked the Board to please remember that the burden is on the applicant to satisfy you with appropriate evidence. If you feel uncertain about an issue, the applicant is failing. The applicant has to show the Board what it needs to know. The Board asked him earlier about the nature of adverse possession. Attorney Silk just said as a personal matter

that neither he or Attorney Cunningham know the details of the adverse possession or said words to that effect. He agrees and also neither does the Board. The Board has no way of knowing that adverse possession took place here. There are two versions of this story and how do you know which one is true? Version A, someone mistakenly built a cottage on someone else's land. The other person never said, that is okay, that is all right and you can keep it there until later on when I might ask you to tear it down but until then you can go ahead and leave it there. That is Version A of the story.

Version B has the same facts. They never talked about it and after 20 years had gone by it came to their attention and they then decided to do something about it. In Version A, there can be no adverse possession. In Version B there could be an adverse possession but not necessarily. Having a structure there without permission is not the only requirement for adverse possession. There are 7 or 8 requirements and they all have to be met. The point has been made that the parties decided to do something about this when they thought there may be a sale of the land. Of course, they had to do something. Being a Title Attorney, he can tell the Board that the Maine standards of title are such that a Title Examiner cannot rely on the validity of adverse possession taken unless there is court confirmation on it. The reason for that is there are so many factors so he cannot rely on that but if the parties enter into agreement to set the boundary where they think the adverse possession should take place. He can rely on their agreement but that is a different thing. By the way, in both of the court cases we were talking about, the court had found that adverse possession occurred but made the point that if the court finds that adverse possession occurred, and the court decision written in 1980 says that the adverse possession ripened in the period from 1950 to 1970, then that is when the adverse possession takes effect in 1970 not in 1980 when the court writes its decision. That is what the cases say. They don't have an argument on that. When there has been no court finding that adverse possession actually took place, what are we relying on and what is he and other Title Examiners not allowed to rely on? The parties' supposition that adverse possession had taken place. They never took it to a court and if they were to offer it up for a sale just as noted before, the other lawyer wouldn't rely on it and the bank's lawyers wouldn't rely on it and the buyer wouldn't rely on it. You would need a court confirmation or the parties reach a private agreement to reset their boundaries which we will rely on but that is a different thing. Let's assume that these parties are utterly convinced that the adverse possession took place. Let's say they are utterly convinced that it took place before the Ordinance was adopted in 1972. Now again, there is not anything in the record that tells you that but let's assume the parties were convinced of that but they never did decide to put anything in writing so they come to the Code Enforcement Officer who makes a decision and then comes to the Board. The Board says wait a minute, we can't tell that you met the lot size requirement, the setback requirements or a few other requirements. You say you don't have to worry about that. The boundaries have changed here by adverse possession and is the Board going to say, okay that is good enough. Tell us where it is and we will go with that. That isn't fair. You are going to look for that written document that sets where the boundary lines are. You heard repeatedly that there was absolutely no change in the lot that was created by the ripening of adverse possession and the lot that got written down in 1987. He asked how any of us can possibly know that that is true and that the parties just didn't make a mistake? If they had been averse to one another, and fought about it in court, the court might have decided

that the line (by the way once you get by adverse possession is what you actually possessed.) It doesn't include where you think the land ought to be. If you put a cottage on a parcel and you adversely possessed it, you don't get land that is big enough to be a legal lot. That is not how it works. You get what you actually possessed. How do we know what they actually possessed? We know they decided what they wanted the boundary line to do and made a reasonable rational boundary line but how do we know that was actually where the adverse possession was? We don't. He asked the Board to let him pause at a hypothetical that he wants to make absolutely clear. He is not suggesting that this happened in this case. He is offering it so the Board should not rely on what is in people's heads about where an adverse possession line was set. Let's assume you had some parties who wanted to divide the land a little differently than what the Ordinance would allow. He is frequently asked if there is a way to do something and get around the rules. He always says of course, we can't get around the rules.

Somebody says what are we going to do? I know what let's do. Let's tell everybody that you have been adversely possessing my land and we will write it up and put the boundary line where we think it belongs. Even though no court has said that adverse possession happened, adverse possession doesn't happen just because the parties decide it has happened. Adverse possession happens because certain legal factors have taken place over a sufficient length of time and only a court can make that decision. Parties can decide not to go to court and make a private agreement on where their boundary lines should be but that is their private agreement. That doesn't get backdated. Adverse possession will get backdated if in fact adverse possession occurred. When he says backdated, adverse possession will be found to have occurred when the appropriate time period ran out under the appropriate circumstances. The Board does not know if that happened here. You don't know if the parties made an agreement between themselves or if in fact, they had a council of retired judges that came in and looked over their land and said here is what we would have found because here is what we see on the face of the earth. We don't know that. What he is willing to presume is they in good faith thought they were doing the right thing and he is not suggesting otherwise. He is just saying that it is not possible for the Board to rely on that. The one piece of evidence the Board has is that a previous Board of Appeals said that the shape of the lot was a result of adverse possession. Is it possible that what they really meant was the shape of the lot is because of what the parties did thinking there had been adverse possession? Could that be what the previous Board thought? Could that be what the parties thought? He thinks so but he does not know so. If the Board does not know so, he doesn't think that is what you should be relying on. There are various reasons why another Board could have made another decision at another time and that is why each Board decides for itself what is going on. It is a complicated issue but it makes a heck of a difference to other people who want to know and rely on written records and that is why your Ordinance says that a lot comes into existence when there is a written document, a deed, a plan or some other kind of written document. It is not just in the heads of the parties because in this case in 1987, the parties wrote a line where they thought it was. Could it have gone one foot in another direction? Maybe. Could it have gone two feet differently? Were they trying very hard to draw the line so they could get the best zoning result? Maybe not but is that their goal or were they simply trying to find out what had been possessed and no more, no less, just where the possession line is. Where is the possession line? That

is why you have courts decide this. Testimony comes in. Did you have a fence, did you have people using this section of the land and excluding others? We don't know any of that and the cases don't say you can rely on the parties' decision that there was adverse possession. When adverse possession occurs, and a court has made that finding so we can rely on it, it does not need to be backed up by a deed. That finding itself is evidence of the title but it is the finding of a court. It is not the decision of private parties that we think there was adverse possession and he doesn't mean to be insulting, but he often deals with people that come and talk to him about adverse possession and they don't really understand its rules. That is not a flaw, it is a reality. There are technical legal requirements and we don't have any way of knowing that the parties in this case knew about those requirements and were observing them scrupulously and made the same decision that a court would have made. We don't know that an in the absence of knowing that, he doesn't see how the Board could rely on that for saying that the newly created lot they described in 1987 is exactly and precisely the same as a previous lot that may have existed by adverse possession and we don't really know just because they said it. There were no questions for Attorney Cunningham.

Mr. Adams advised that he does not object to pushing on to the 75-foot setback off the unstable bluff, and the tree cutting canopy. There is another one that is a major issue and it is the sub surface waste water disposal system that does not have a permit and has been denied by the State. He does not object to pushing that off to a later date while discussing the lot issue. Chair Garrity thanked him for clarifying. She missed that part.

Mr. Adams didn't get into the adverse possession because adverse possession is not a zoning issue. It has never been a zoning issue since day one since he has been doing this. You go to the definitions in the Zoning Ordinance that this Board will be reviewing as. As Attorney Cunningham has said and he has been saying clearly since the beginning and he has several letters here that the definition goes by the actual Town's definition. A lot of record is what the Municipality says is a lot of record. It is not what the Statute or somebody else thinks it is. The Board has to go to Freeport's Ordinance that is adopted by the Legislative body and what that Legislative body adopts that. He believes the Town adopted the Zoning Ordinance in 1976. Full land zoning and subdivision came in in 1971 but 1976 is when he is aware of that the Zoning Ordinance was adopted and the definition of lot has not changed since 1976. Attorney Silk has said there is no new definition of a new lot. Well, since 1976 if you go into Section 201.A, it says no new lot shall be created unless you are in conformance with all standards of this Ordinance. He does not believe the Board needs a definition to go to the definition of lots and what the law said in a legal document recorded in the deed, plan, etc. On a daily basis he gets deeds from Title Companies and real estate attorneys that do not understand land use. They don't understand land use in subdivisions point blank. He does snot know why because real estate has been around for 300 years and zoning has been around for 50. He does not know but when you put different lots laid out in a deed, those are all separate lots you are creating in a deed. You need to put something in there that this is a merged lot or this was what it was or something else but if you start laying out different lots in a deed, they are all separate lots for zoning purposes. Now they could all be merged for subdivision purposes and other instances but the plain language in the deed is what you are creating. It happens a lot and he understands

that maybe things moved a little differently back in the 80s and 90s but the Ordinance is the same and he has said this and he sees several letters going back. He thinks the issue of the merger and why it came up in 2015 is because the Kitchens merged their land together. They came to the Town to request that the land be merged together. The only thing he can guess is that they didn't want to have two tax bills and he is assuming the Assessor didn't get a deed to merge them together but they merged them together and then wanted to sell them and they wanted to know if the remaining lot was a buildable lot. This happens all the time because they don't want to pay taxes on a separate lot but then once they sell one, they say I want to get all the money to sell it. It happens quite a bit and there was actually a court case that happened in Scarborough years ago where the Assessors no longer can do that because it shouldn't be done that way.

Mr. Adams thinks what he put in his letter is pretty clear that a new lot was created in '86 and he doesn't think the adverse possession argument never came up until the appeal came but was never part of his record. From day one he has said it is a newly created lot. There are several arguments in here previously that never came up with adverse possession. That came up only when it came to the Board. He agrees that if there was a legal document from the court that said this is where the line is and this is the lot, by definition or the definition in our Ordinance says it is on a deed, a plan or other legal document. He could make reference to a legal document from the court pretty simple. There are some exceptions to that like a divorce decree or something else that doesn't comply with zoning, that would be an issue and there are cases about that. As far as adverse possession, if there was something that said it reasonably, he thinks probably anybody would have said there was not a property issue with a buildable lot. If anyone has questions, they should feel free to ask him but it really is the Board's decision at this point. The Board has more evidence than he has ever had so whatever the Board decides he is fine with it.

Chair Garrity asked when the Kitchens combined the land? Mr. Adams noted it is his understanding that they had their land combined. They came to the Assessor and asked to combine their land. They owned both Lot 11 and Lot 0, but if the Board looks at the Tax Map in 2004, it is only Lot 96. He did not go through the title because he is not a Title Company but there is a Charles E. Kitchen and a Charles A Kitchen so they are saying it never got merged together but he is not 100% sure that is true or not but they asked for it to be merged. It happens all the time and that is where he was going. Probably the reason it came up was when they went to sell the property. They probably came in and asked if they could unmerge these lots that we now have only one tax bill. He is just assuming because it all predates him.

Attorney Silk pointed out that the Ordinance changed and the language Mr. Adams is referring to in the Ordinance today that says in 201-A no new lots shall be created. That language, no new lot shall be created was not in the 1986 Ordinance. He had the 1986 Ordinance and the section in 201-A. He noted it is not in there. The language Mr. Adams is referring to was not added until after 1987 or 1986. It was added as part of the adoption of the 2008 ordinance. He had the 2008 Ordinance that the Board has a copy of. The notion that forever since 1986 Freeport has had a prohibition on creating new lots that didn't comply or what was said in 2008 was not true. He had a copy for the record. There was no

prohibition back in 1987 on no new lots shall be created unless they are conforming with the ordinance but that is beside the point. In terms of assessing records and if people on the tax bill had the same name, Mr. Adams said earlier, he does not go by assessing records but for purposes of lot mergers, he wants the Board to go by assessing records. He does not think that assessing records decide whether a lot has merged or not if you look into the chain of title and see if there is any common identity of owners. There aren't any. The issue more importantly is the notion of adverse possession. Attorney Cunningham changed his tune a bit. He asked the Board to remember in 1987 his clients, predecessors and interests came to get a variance. If this had been an illegal lot because of the change of the lot line, their deed description changed in 1986 too. His clients' predecessors would have had an illegal lot in 1986. That means in 1987 it wouldn't have gotten a variance. Their lot became smaller. If the policy of eliminating non-conforming uses makes any sense, if you intentionally after zoning is adopted, make your lot smaller, that is an example of a self-created hardship. You decided to make your lot smaller so the notion you can't rely upon what is in the Board of Appeals' Minutes and Findings from 1987, that somehow that is speculation and we don't know. To him it is pretty credible evidence that in 1987 this Board made a finding of fact that the unusual shape of 0 Shore Drive came about because of the placement of the cottages that happened long prior to 1976. He is not making that up. Relative to Mr. Adams' point that he didn't hear about this until the appeal was filed, he didn't get the assessing records. They had to go and get the assessing records and even had to do a freedom of information request to get access to the old Appeals hearings. They didn't think they had to go through all of this in order to show that this lot was a buildable lot because it is listed the same today as it did in 1972. He apologized to Mr. Adams that he didn't have that information. They never expected they would be down this road. They had to go through boxes of storage to get it and had to get the Board of Appeals decision. The test in front of a Board of Appeals, you are not a court of law. There is no requirement for people to come to agreement for adverse possession. They have to go to court. It is absurd and only encourages litigation. The Board has the best evidence there is. You have the Board of Appeals decision in their own minutes where the Chair said the unusual shape of the lot came about because of the placement of the cottages a long time ago. His point is, certainly based on this information, he and Attorney Cunningham can tell the Board what they advise clients but it doesn't make any difference. It doesn't matter. What matters if what the Board has in front of you and he didn't write the Board of Appeals' decision. It was your predecessors and they are telling the world in the minutes that that is what happened. When you write your minutes and adopt them, aren't you telling the what happened when you did what you did? What happened to them in the reality of that time and was reflected in the minutes was that they recognized the unique shape of that lot arose because of the placement of the two cottages side by side that happened sometime ago. He gave the Board information that showed that those cottages were located where they were for a long time. These predecessors were members of the Board and their minutes. He did not make it up. It is there in the minutes as for what happened.

In summary the definition that Mr. Adams is relying on, no new lots shall be created was not in the Ordinance in 1986/1987. He gave the Board that information. Second, the reality is when the Ordinance was adopted, the cottage was there and the driveway was there. It was reflected that that was where the driveway was and that is where the cottage was. He

respectfully submitted Mr. Adams erred because there was no change in lot between 1976 and today.

Attorney Cunningham believed that with some of the things Attorney Silk said, a brief rebuttal is called for. First and most particularly, the Board mentioned earlier that you as a Board have to interpret the Ordinance in ways that makes sense sometimes. It gives you a certain amount of leeway as it should. Attorney Silk seems to have suggested that if an ordinance sets rules that apply to lots but doesn't say you have to follow them, and you can't create a lot that breaks the rules and, therefore, what does that mean? That you can go ahead and just make lots? It doesn't matter, the fact that later on the words were specifically added to say, of course you can't create a lot that breaks the rules in the ordinance. It hardly needs saying. He has accused him of changing his tune, of perhaps misstating about his clients who own 11 Shore Drive. He did not represent them at that time. He does not know what went on but he can tell you this. A perfectly good maxim that he thinks you live by are that two wrongs do not make a right. If a previous board made a mistake, he is not saying that they did, you don't make things better saying we will go ahead and make the same mistake. You look at the materials for yourself and make your own decision. That is the way it ought to be. You don't know what facts were presented to the Board in the past when No. 11 was involved. You don't know what they were looking at or the evidence they had, at least he doesn't think you know all of it. He is not sure the Board wants to get into that. The big thing missing is yes, he says things like we don't know the answer to that and the reason he says that is because it is the applicant's burden to establish to your satisfaction that the evidence is in front of you that you need in order to make the decision you need to make. He presumes that is what the Board is looking for and he submits that a fair amount of that evidence is lacking and you are being asked to make assumptions.

Mr. Adams noted that if the Board reads the language, you will read in it that you can't use the land in non-conformance with the Ordinance. If you go into the definitions, it has the exact same definition and he can get from the Town Clerk an attested copy going back to 1976 if we need it. He can get the whole Ordinance if that is what the Board requests. He doesn't think it really matters because the definition of a lot has not changed. They keep going back to 1987 that the Board made a finding. The Board did not make a finding. They keep going to the minutes. Minutes are not a legal document that the Board takes. There should be a Variance Certificate, Findings of Fact and all this other information. Minutes should contain the motions. What is discussed at the meeting is not the actual legal finding document of the Board. That argument comes up to him all the time, that something was said in the minutes. That doesn't bother him. Stuff happens in the meetings all the time. What was said in the minutes should not be admissible for this situation. Going back to the point if they did make a mistake in 1987, should this Board do the same thing? No, if Mr. Adams had to do that, we would just continue down the same rat hole. If the ordinance says something, we need to go by the ordinance. If we don't agree with what is in the ordinance, the greatest part of this is that we can change it. It is a living document and can be changed at any point. He had a decision based on the evidence he had at the time and now the Board has to make a decision based on the evidence they have.

Attorney Silk pointed out that the Board in 1987 viewed this as not creating a legal lot. If the 1986 boundary line adjustment was a change in lot because it reduced the size of 11 Shore Drive and if you have a non-conforming lot and reduce it, you are making it less non-conforming and you are changing the lot lines. There is some suggestion here that two wrongs do not make a right. In 1987 whoever the Codes Enforcement Officer thought it was. They did not see this as a change in lot that occurred after the adoption of the zone. They said the odd shape of the lot for 11 Shore Drive and 0 Shore Drive came about because of the close placement of the cottages that happened a long time ago. In trying to reconcile the two together, that is because there was no change in the lot. It was changed a long time ago. Attorney Cunningham talks about common sense. That is how the Codes Enforcement Officer and the Board read the ordinance back in 1987. He does not think there was a lot of information given to this Board or how much weight you want to give on what your fellow Board members did. The minutes are the basis for the motion that was granted and the reason it was granted. It is not like some idyll comment picked up during the meeting. It is actually set forth as the basis for what they did. He appreciates the Board willing to listen.

Attorney Tchao asked Mr. Adams if this lot was created in 1986, we have the May 1986 version of the ordinance that doesn't have the "no new lot shall be created" language in it. She noted she has the full ordinance here and the definition of a lot remains the same. If this lot had been created in 1986 by deed, would it had been a buildable lot then or would it have been substandard? Mr. Adams advised that in his letter to Attorney Silk two years ago, he said that it did not comply with the 1986 space standards and did not comply with the Maine Shoreland Zoning Act which is another title 38 and did not comply with the MDR-I standards in 1986. Attorney Tchao asked if we have the date in 1986, was it before May or after? Mr. Hardenbergh advised that the scheme that was recorded in the Registry of Deeds was date August 7, 1986.

Attorney Silk had one last point to make. The policy of zoning is to eliminate non-conformities. If someone has a non-conforming lot and they get additional land, they don't lose in cases in other jurisdictions that say, when you have an existing non-conforming lot and you acquire more land to make your lot bigger but not enough to meet the minimum lot size, you don't lose your non-conforming status. There is no Maine case on point. There is some policy language from the Maine Municipal Association that is in his appeal letter but he wants to make sure the Board understands the policy is to eliminate non-conformities but if someone in Freeport has a non-conforming lot and you acquire some land, the notion that you would then become an illegal lot because you acquired more land is totally against what zoning is all about.

Mr. Adams pointed out that that is not an accurate statement. Attorney Cunningham disagrees with what Attorney Silk has just said. He apologized but didn't remember the name of the case that came out about a year ago. The State Supreme Court said very specifically, one of the chief purposes of zoning is to eliminate non-conformities. Therefore, when interpreting the Zoning Ordinance, the interpretation that will cause a non-conformity to be done away with is the preferred interpretation. Therefore, if the rule says the lot as it was created is grandfathered if it doesn't change and someone changes it by

making it bigger, if you interpret that to say, if you change the lot in any way even to make it bigger, you lose your non-conformity. That interpretation is what the law court said you should do. You should take the interpretation that causes non-conformities to go away.

Chair Garrity opened the public portion. She is guessing there are no other letters. Mr. Adams advised that there are no others. Chair Garrity closed the public portion and opened the discussion amongst the Board.

Chair Garrity asked Attorney Tchao is the finding as simple as the Board finds on the evidence that we uphold Mr. Adams' appeal? Is that what we have to come to? Attorney Tchao noted that she would like discussion by the Board interpreting your ordinance. Do you think there is enough factual evidence in the record to suggest that adverse possession ripened prior to zoning coming into Freeport? That is one factual finding that may or not be relevant to you. Even if you do find that, the question is what do you do with that legally? She thinks they can discuss that. She thinks there is no dispute in the law. It is true that adverse possession ripens when it ripens in a 20-year period but she thinks there is something to be said for when a tree falls in the middle of the woods, how do you know it has fallen? There is that issue that the Board has to struggle with. She has some thoughts about it but tends to like to hear the Board discuss what you heard and what you think?

Mr. Hardenbergh thinks that the preponderance of the evidence does say adverse possession did ripen and agrees that the evidence is not what he would like but if the Zoning Ordinance came into effect in 1976 and we have a picture of a building on the lot in 1953, the 20-year period ran before Zoning came into effect and, therefore, adverse possession ripened. Our predecessors in 1987 relied on that information to make their statement about it. Mr. Wagner noted he is surprised because Mr. Hardenbergh actually got him to look at it again and thought he was going to be on his side but here we go again. He was kind of on the fence but started digging through that again. Two aerial photos are not a true story for him. Yes, there is a building definitely in one of them but he is not sure there is a building or just a driveway in the second one but there is no way to tell from that if any discussion had been had or if it had been had. He can only see one building in the aerial photo anyway so there isn't two to argue. He has no idea when that happened. Ms. Leone agrees that it is not clear and whatever the Board did in 1987 and what that Codes Officer did is not anything we have to follow here. To her, zoning does evolve and our job evolves with the zoning and that we get greater clarification by the cases we see and by the laws that change. She frankly does not have evidence to say that she could say it is a lot of record. Mr. Wagner noted he is not certain what the Board had for information in 1987 and if it was better or worse than what we have in front of us. Ms. Leone agreed.

Attorney Tchao noted she liked the way Ms. Leone phrased that she did not believe this was a lot of record when Freeport's Ordinance went into effect. She heard the applicant say that this lot is the same lot that has always been in effect. She asked if that is true under the Ordinance? You are the Board that interprets your ordinance and you might want to look at the definition of a lot and have a discussion on whether it was a lot of record. Chair Garrity advised that that was going to be her question because she wasn't quite sure what Ms. Leone was saying that she didn't think it was a lot of record until 1986. Ms. Leone

feels it didn't get addressed. The biggest gap here for her is that it didn't get addressed. The Board in 1986/1987 made certain assumptions but we have no record of grounds for their assumption and she doesn't know that we can make the same assumptions today. They made a decision for whatever reason they made a decision. They had a Codes Officer that interpreted the ordinance in a certain way and gave them information and like Mr. Adams said, if you just look at minutes, you are not going to know. When we actually write up the final product and you are the Chair, you have to sign it and only the Chair gets to see the final product of what we do here in terms of what it looks like written up and filed. She likes to make decisions based on evidence and in some ways when we struggled with the previous issue, we knew we had evidence under each one of them that we could look at and cite. She does not see it here. She doesn't see anything that will compel her to agree that it is a lot of record. It is very hazy and just because a previous Board made a decision, she does not see that as grounds for making a major decision saying this is not a new lot. It is a standing lot of record.

Mr. Noon wanted to say that our minutes are much more thorough and clearer. There are a lot of facts here going through the history of the Kitchens. He is surprised with Nelson Larkins. He comes in and appears and disappears in one paragraph. Somehow, he was connected. It is curious but that is neither here nor there. He personally would bet that no one really knew in the 70s or early 80s where the lot lines were because there are so many houses there. He feels the Swan picture is something for the books.

Mr. Wagner advised that he has no grasp on when or how adverse possession happens. He is a little less certain on it being a lot. It has always been treated as one and the Town of Freeport has been taxing it as a lot and expected something to be built on it. Ms. Leone pointed out it was a lot but the issue is did it change as a lot? If it changed as a lot and became a new lot, then that becomes the issue. If it had remained a non-conforming lot and that was clear but she does not see any evidence that it was clear. Mr. Hardenbergh added that there was some evidence but just not enough. Ms. Leone noted she read everything Mr. Adams has written up about it initially and tonight. She just doesn't see that we have enough evidence that it meets the criteria that no, it is not a new lot.

Attorney Tchao asked as an interpretation question, was a new lot created after 1976 and a lot is defined as a parcel of land having distinct and defined boundaries and described in a deed, plan or similar legal document? Mr. Wagner noted it is not for that description. Mr. Hardenbergh pointed out that that was post the ripening of the Quit Claim Deed. Attorney Tchao advised that that law has been on the books since 1976. Mr. Hardenbergh mentioned that the ripening of the Quit Claim Deed is evidence that shows it was by 1973 anyway. Attorney Tchao noted he is saying that if adverse possession ripened, it was actually fixed in a legal document in 1986 even though it ripened earlier. Mr. Hardenbergh agreed. She asked if it had distinct and defined boundaries that were described in a deed, plan or similar legal document at the time that zoning went into effect? Is that the question? Mr. Hardenbergh replied that it is not the question in his mind. That would be if they came in after 1976, there is no distinct boundary here.

Chair Garrity asked if it is fair to say that every house existed in Freeport in 1976 had a deed or some sort of legal documentation? Attorney Tchao added or located on a subdivision plan? Chair Garrity advised that we may not know that but when zoning went into effect, was it taken into consideration? She asked if there is a house sitting out there that has literally been passed down in a family over and over again that does not have a deed defined somewhere and have not done work to it so it hasn't come before here. Ms. Leone added that it would have to be registered with the Town for taxation purposes. Chair Garrity asked if somebody goes and checks there is a deed for it just because we collect taxes on it? Mr. Wagner suspects it is only when the property changes hands. Chair Garrity added that if they set it up in a trust, we might not know. Chair Garrity does believe in some people's mind this is absolutely the lot that is being presented to us. I don't have the evidence to say that prior to 1986 it was on a legal deed, plan or similar legal document and she is also saying they only got caught because they tried to sell it. There are dozens of those sitting out there that we don't know about because it hasn't been sold and maybe they will come before us.

Attorney Tchao asked who else agrees that you don't have a lot described in a deed, plan or similar document as of 1976. You only have it as of 1986. Does everybody agree with that or should there be more discussion about that point? Mr. Hardenbergh agreed with that. Attorney Tchao noted the Board is interpreting the ordinance that the definition of lot is not met in 1976 as this lot is oddly shaped. This odd shaped lot had boundaries described in 1986. Chair Garrity clarified that she does not have evidence to tell her that. Ms. Leone agreed. She does not see sufficient evidence. Attorney Tchao asked if it is because the evidence is hazy? Ms. Leone added that is exactly correct. Attorney Tchao asked other Board members for their input. Chair Garrity advised that based on the definition she does not have evidence that it was in some legal form of documentation prior to 1976 and also believe based on evidence that a whole lot of people believe it was a lot but there was no legal backing of that information. Mr. Noon advised that he is in that camp. Mr. Hardenbergh is in the camp that says it got caught because they sold it. He believes it was a qualified lot in 1976 but we don't have a legal document that says that.

Attorney Tchao mentioned the Board heard some policy language about non-conformities being eliminated. Does that weigh into your decision that this was a new lot that was created in 1986 even though it became larger? The law does say that non-conformities should be eliminated as swiftly as justice requires and you should interpret your ordinances to eliminate non-conformities and liberally construe your ordinance language to get rid of non-conformities and narrowly construe your ordinance to allow non-conformities to continue. Ms. Leone pointed out that from that track and the idea is to get rid of non-conformities, you would be creating a new lot. That is the goal of reducing non-conformities but it doesn't mean that the lot that was created will meet the criteria of this particular Codes Officer. Attorney Tchao mentioned the point is that even if it gets bigger, if it is still substandard, it is still a non-conformity and it is a new lot to boot. That is the piece that gets Ms. Leone that it is a new lot to boot.

Chair Garrity disagreed with Ms. Leone on that point. Not taking the lot piece out, the definition and legal piece, especially when we are dealing with these really small areas

along the coast, if we can make a structure on them more conforming by moving it like what 11 Shore did taking out all the specific requirements but where Mr. Becker placed his house in his drawings and all that stuff aside, it was far enough away from the water, she is always for making things more conforming and support those kinds of decision. She wishes that 500 sq. ft. house was there because he could build another one. Let's pretend it was, if he wanted to move it further away from the water, she would be in favor of that even though it is a slam dunk for him to build it where it was according to the Ordinance. From her perspective, making something more conforming is always good or less non-conforming.

Attorney Tchao went back to the minutes and the predecessor Board referencing the odd shape of the lot and the placement of the two cottages close together. A portion of the lot was removed by adverse possession. She asked if the Board feels that is adequate evidence or insufficient evidence? Ms. Leone thinks that inadvertently without discussing the specifics of creating a new lot, they inadvertently did it but what their reasons were, who knows? She does not think they were focusing on that aspect when the 1987 decision was made. No one was thinking: are we going to create a new lot and what is that going to mean if someone wants to buy it? From her understanding of the minutes, she doesn't think that got addressed. They inadvertently did it but it doesn't matter. We are dealing with the result whether they intended it or not. Mr. Wagner feels two sentences of minutes without any backing evidence is insufficient. Chair Garrity pointed out that that is how it was done back then. Attorney Tchao noted she is hearing a trend that evidence is insufficient to support adverse possession based on these minutes and two photos don't' make a finding of adverse possession. There are all sorts of elements of adverse possession and she asked if we have all of them met? We have the summary finding by a predecessor Board and she is hearing that some Board members are not compelled by that so that is one trend she is hearing. The other trend she is hearing is that even if you could find the adverse possession here, the definition of lot. The language says it has to be described in a deed, plan or other similar legal document which the Board also does not have in 1976. She heard the majority of you felt that way. She asked if anyone has any more to say? There were no comments provided.

Chair Garrity mentioned that if this was a regular hearing in the past, she might say to the applicant we are going to uphold Mr. Adams' findings but it also sounds like if we had more evidence, some things might be different. In a typical variance, she would say would you like us to table this? We also know that in January we might hit the possibility of us not having a quorum.

Attorney Tchao noted the public hearing has been closed and asked if there is a good reason to take new evidence? Chair Garrity advised no.

Attorney Tchao mentioned there were other issues that Mr. Adams had in his letter that the Board might not get to if you are finding this is not a grandfathered non-conforming lot because the decision would be to uphold Mr. Adams' decision on the grandfathering and all those other pieces don't need to be reached. If that is where the Board thinks it is, she still would like to have with the Board's indulgence, written findings of fact and conclusions to support your decision. She feels she has a pretty good idea of where the

Board is heading but it is late for her to draft them now and make you sit here to vote and sign them. She asked if we could find a morning in December and give her about a week, she could draft up the draft decision and then we would come back and the public hearing is still closed but the Board would be in deliberations. You could decide to tweak and then ultimately take it to a vote and sign it. That is the procedure she would recommend.
She asked if it made sense? Chair Garrity asked if Monday the 20th of December would work and the Board agreed. Mr. Adams mentioned that it appears this room is available. Everyone was good for an 8 a.m. start.

Item 3: Public Hearings:

- None

Item 4: Adjournment

MOVED AND SECONDED: To adjourn the meeting at 10:50 p.m. (Leone & Hardenbergh) **VOTE:** (5 Ayes) () Nays)

Respectfully submitted,

Sharon Coffin, Recording Secretary