



## Northwood Board of Selectmen Minutes of February 13, 2018

**Call to Order:** Chairman Wolf called the meeting to order at 6:01 P.M.

**Roll Call:** Chairman Rick Wolf, Selectman Scott Bryer, Selectman Donald Hodgdon, and Acting Town Administrator Sandy Garrett.

**Pledge of Allegiance:** Chairman Wolf led the Pledge of Allegiance

### **Citizen's Forum**

None.

### **Appointments**

a. 6:00 P.M.: Judy Pease

Ms. Garrett: Judy is unable to be here tonight but she has sent a letter. Board agreed they would address later in the meeting.

b. 6:15 P.M.: Larry Cleasby/Personal Attorney and Town Counsel

I am Atty. Bruce Marshall. I came to see you about a year ago with Mr. Cleasby and at that time, we were looking for a building permit. At that time, we presented some of the history as to why we thought he should be granted a building permit to do the improvements for the road. The board of selectmen directed us to go to the zoning board and seek a variance. In seeking that variance and as part of that process, we presented to the zoning board it was noted that we really did not need a variance because town's subdivision regulations permit building permits in a subdivision on a Class VI road as long as they improve the town standards and which actually include DOT rural road standards. Mr. Cleasby previously had provided you with letters from road contractors - even one from an individual that handles Northwood's Class V and Class VI roads and indicated that road had met or exceeded Class V standards not just the rural road standards. Zoning board denied the variance claiming that it was the same as the one previously submitted. We appealed to Superior Court and we have an Order from the court that basically says the zoning board is not the place to go when it comes to Class VI roads. I have a motion pending with the court to clarify. Meanwhile, we wanted to come back to the board of selectmen. I apologize in giving you a little bit of the past history only because when I was here last and you had sent us to the zoning board, we had asked that the submittals to the select board about the improvements to the road be transferred to the zoning board for their records. When we got to Superior Court, the town had to produce the certified records, none of those documents were available. So, I am probably being a little repetitive but we want to make sure that certain things are in the record this time around so that we can move forward.

Atty. Marshall: I have some copies for you of an opinion letter that was sent to the town from town counsel back in 1998 regarding the Cleasby property that Mr. Cleasby used to own further down the road. On the last page in his opinion to the town, the attorney stated that taking comments from the planning board regarding issuance of



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building permits on Class VI road noting that there is some group maintenance responsibility. After that the town did, indeed in 1999, enter into an agreement with Mr. Cleasby – again for the house that he had further down the same road from where he is now. Paragraph five of that agreement, which is also repeated on the second page, stated that Mr. Cleasby will assume full responsibility for the maintenance and repair of Old Pittsfield Road and agreed that it would be at his own expense or at the expense of others, the property similarly located on Old Pittsfield Road and to clear and maintain Old Pittsfield Road of not less than 20 ft. and repair and maintain a travel portion of Old Pittsfield Road in a good and passable condition. As of this day, Mr. Cleasby has not received any notification from the anybody at the town that he has not met that obligation and that the road is in a safe and passable condition and at those widths.

Again, in 2003 after Mr. Cleasby had done some additional work on the road, some issues came out about clarification in respect to the maintenance. So, the town entered into another agreement with Mr. Cleasby regarding the maintenance. In the 2003 agreement, I want to point out that on the second page, paragraph three, the board of selectmen agree that a request by Mr. Cleasby for permission to initiate, undertake and perform any maintenance, construction, re-construction or other road work on Old Pittsfield Road shall not be a reason for permits to be withheld and they shall be acted upon in a timely manner. So, when we get to the end of this tonight, we are going to ask you to determine what else, if anything, the select board thinks needs to be done to this section of the road to improve it to rural road standards as defined by the subdivision regulations because in the past the agreement of 2003, the Board of Selectman agreed they would respond to that for Mr. Cleasby.

Atty. Marshall: In 2012, Mr. Cleasby had come back to the select board for a building permit and was referred to the zoning board. The zoning board, when they received it, sent a letter to the select board suggesting they come to the zoning meeting so that we can get this cleared up but the select board did not want to participate in that. So, this is the prior attempts of Mr. Cleasby after the board of selectmen had sent him there. Now, the Northwood Development Ordinance has a section 4 b.1 which previously at the direction of the board of selectman Mr. Cleasby had asked for a variance for a portion of that because of the rural road improvements to the Class VI road. In Section 4 b.1, it says: “A Class VI or private road proposal to improve to current town standards as found in the subdivision regulations and for which adequate financial security has been posted with the town upon completion of the improvements is a situation in which you can have a sub-divided buildable lot on which to build a house.” Mr. Cleasby has previously entered into these agreements – one of which has been entered in and been recorded at the Registry of Deeds. He has met every criteria with respect to the related state statutes to assure the town of maintenance requirements. To date, the town has never indicated that he has not maintained the road as the select board determined way back in 1999 which needed to happen in order to have a house on that road. The addition of the second house



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should not change that standard and the town has never come to Mr. Cleasby to notify him that he needed to fix, improve or widen the road. The town has been satisfied with everything to date.

The subdivision regulations that the zoning ordinance refers to, for which I have collected several excerpts which is on the second page of documentation that I have given you, namely, paragraph six notes that: “a subdivision along a Class VI road or any private road shall not be approved unless the applicant upgrades such road to meet the design standards of this regulation and the Town Ordinances.” At the end of that paragraph it notes: “The Class VI road or private road should shall meet the suggested minimum standards for a rural road subdivision street as published by NHDOT, a copy of which is included in the subdivision regulations” and I added that as part of the excerpts from town subdivision regulations.

All that being said, we were before the superior court and I have given you each a copy of that Order that came from that case which you may not have received. On Page 4 of that Order, part of the court’s analysis is that the zoning board had determined that the improvements to the road did not cause material changes to the circumstances and therefore, refused to consider our application. They never even got to what we were talking about. The Court goes on to note that assuming that the alleged improvements have been made – which are the ones that Mr. Cleasby has been talking to the select board about for over a decade – the petition acknowledges that Old Pittsfield Road remains as a Class VI road. To be sure, the zoning board has no authority to reclassify Old Pittsfield Road, that is up to the select board. So, part of my motion to reconsider to the superior court judge indicates that we do not want reclassification because Northwood, unlike a lot of towns’ ordinances note that you can just improve it to rural road standards, not Class V standards, but rural road standards. The Order goes on to note that the zoning board only has certain powers which have to do with determining the classification of a road with a statute inference of RSA 674:41 regarding construction on a Class VI road regarding construction specifically. One can build on a Class VI road provided that the local governing body, which would be the select board after comment by incumbent planning board has voted to authorize the issuance of building permits for the erection of buildings on said Class VI road or portion thereof. That is exactly what the select board did back in 1999 when they approved Mr. Cleasby to build on the road provided he made certain improvements to it. The Order also notes that RSA 674:41 as it relates to the Northwood Ordinance, Section 6b 1 and 3, Part 3 states a Class VI road proposed to be improved to current town standards as far as subdivision regulations and for which the adequate financial security has been posted with the town to insure completion of improvements. The improvements have been done as has been acknowledged on numerous occasions by the select board. The Court says that “read together” meaning the statute and town ordinance, prohibit the petitioner from constructing a single-family residence on a Class VI road without approval for adequate financial security being posted with the Town of Northwood to assure the necessary improvements.



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Again, this would be the select board – not the zoning board. Mr. Cleasby has previously provided that back in 2016. He provided three letters – Phoenix Excavation, Hodgdon & Son and an updated one from Hodgdon & Son. These are the documents which were previously provided to the town and yet, somehow, did not make it into the certified records despite Mr. Cleasby’s request. Phoenix Excavation noted that he inspected the road and failed to find any area of the roadway that is not currently meeting or exceeding Class V specifications - never mind rural road standards. Mr. Bruce Hodgdon, on the second page, related, “as you know, our company has been maintaining or repairing roads for the Town of Northwood and surrounding towns for over 23 years. After further inspection of your roadway, which you stated you spent large amounts of money to build, I feel that it is as good or not better than the beginning section of the Class V road. After inspecting other Class V roads in town with the same traffic flow and wider, I feel that your section is as good or if not better than those.” Mr. Hodgdon is saying that it is meeting or exceeding the Class V standard that this town pays him to maintain elsewhere in the town. Mr. Hodgdon then updated that on January 9, 2018 to add “in my letter of June 4, 2016, I should have added that according to New Hampshire Department of Transportation suggested minimum design standards, rural subdivision street dated 2003, your road meets these standards.” Again, that is Mr. Hodgdon’s comments who the select board has been relying on for years to make sure the Town of Northwood’s roads are being maintained.

Last week, we did some research and what we are going to be asking for here is that since you have been provided this information before and the town has not inspected this road, we would like the select board’s confirmation that “Yes, at a minimum it meets the rural road standards as provided in your subdivision regulations and also that Mr. Cleasby is mainly responsible for this road from where it is Class V down to the house he previously owned as still required by the recorded document and the two other agreements with the town is responsible for maintaining those standards. Also, because of his prior residence status down the street for which he has a maintenance agreement and the town has already considered whether or not it is safe to get to the house further down the street, that he meets the requirements of the state statute RSA 674:41 already.” We researched some of the town records and we found that this board of selectmen in May 2010 granted an application for a house on a Class VI road. The discussion that the select board had was that they had talked to the building inspector and planning board for homes beyond this lot and there are no safety concerns. There is a home beyond this lot and the town has never raised any safety concerns since Mr. Cleasby has improved the road. Since the planning board did know that there was no legal review of the status of the road; yet, the select board went on to approve the building permit not even having confirmation of what the status of the road was. There was some discussion about the location of the lot and there was a motion to grant the application to build on a Class VI road for the individual that was requesting it as well as an agreement and a release form which was signed by the board of selectmen.



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Mr. Cleasby has provided to the board of selectmen at numerous times proof from town's road maintenance contractor that he meets the requirements in your Zoning Ordinances to be granted a building permit on a Class VI road because he has improved it to rural road standards. He has also provided to the town and the town has accepted it, the maintenance responsibility agreement to maintain the road beyond where he is trying to pull the building permit now. With everything that you have before you, no further action is required by Mr. Cleasby. It is not an issue for the zoning board as the Superior Court correctly eluded to in their decision. Selectman Bryer: There is nothing in their Order that says it should come back to the board of selectmen. Atty. Marshall: No, the Order says that it wasn't a decision for the zoning to make. We are saying what we told the court and the court agreed because of your ordinance stating that building permits are allowed on Class VI roads if they are approved to rural road standards. That is what your own documents state. There is no variance needed. We just need the building permit and where the select board has acknowledged all the improvements to the road, and where you have been provided testimony from your own road maintenance contractor. Selectman Bryer: We do hire people to do work for the town, but that is his opinion which doesn't necessarily mean the road meets the standards. Atty. Marshall: That is why we came in and we would like those confirmations that it does meet the rural road standards as we understood from Mr. Cleasby's past interaction with the select board and the road agent. If not, we would ask the select board to tell us specifically what improvements need to be made so that it can meet the rural road standards. Mr. Cleasby will make those improvements so that he can get the building permit.

Atty. Scott Hogan: I would like to address a few points that Atty. Marshall made. I do not believe that improvement of a Class VI road to rural road standards satisfies the provisions of the Zoning Ordinances. There is nothing in the Zoning Ordinances that permits improvements to that standard. In fact, in connection with the 2011 and 2012 variance application, which was denied after the building inspector denied a building permit because the road had not been improved to Class V standards, the Zoning Board of Adjustment determined that Old Pittsfield Road needed to be improved to Class V standards – not rural road standards. I would also submit that the provisions of the subdivision regulations that Mr. Marshall read to you and provided excerpts to you relates to a subdivision on Class VI road not to building on a Class VI road in the first instance. I would also submit to you that a driveway that provides access to Mr. Cleasby's property is more than 1,200 ft. from the end of the Class V section of Old Pittsfield Road and therefore, could never satisfy the road standards in the subdivision regulations which does not allow for a single point of access 1,000 ft. away from a single point of access and would not allow development. I think it is very clear that a variance is needed or Mr. Cleasby can agree to improve Old Pittsfield Road to Class V standards. He has not proposed to do that. I also believe it is incumbent upon this board to independently assess the condition of Old Pittsfield Road with an engineer that the town is comfortable working with. I am quite sure on any number of occasions when working with subdivision applications, the



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town has its own engineer that could review that application. I believe it is appropriate for an engineer to inspect this road and assess its condition and not rely on antidotal evidence from those not necessarily qualified to make that assessment.

I would also just like to bring the board back to what happened in 1998, 1999 and 2003 – that is a long time ago. Standards have changed, and the zoning ordinances have changed. The Zoning Ordinances were specifically amended after the RSA 674:41 agreement was entered into in 1999 to prohibit development on Class VI roads. So, there is no question that agreement document was entered into with respect to the property that Mr. Cleasby then owned prior to the amendments to the Zoning Ordinances; Mr. Cleasby bought the present property after the amendments to the Zoning Ordinances so, he bought that property knowing full well that he needed to bring the road up to Class V standards in order to conduct any other improvements on that road.

I will not burden you with taking up any more of your time. Obviously, I have not had an opportunity to review everything that Atty. Marshall has presented to the board. I would like an appropriate amount of time to provide more substantive comments should the board think it necessary. I would also like to point out that given the current state of the Zoning Ordinances, I do not believe that this board has authority to grant permits under RSA 674:41 with respect to Class VI roads and it is illegal to delegate to a person who is not an employee of the town, the obligation to maintain a public road and a Class VI road is a public road even though the purpose of a Class VI road is to leave it intact.

Thank you for your time.

Selectman Bryer: I suggest we recess to meet with counsel.

Selectman Hodgdon motion for a short recess with counsel. Selectman Bryer seconds motion. Motion carried 3/0.

Board recessed at 6:30 P.M.

Board returned to general meeting at 6:42 P.M.

Chair Wolf: Board will take this matter under advisement and will make a decision in a timely manner.

c. Linda Smith – Re: RSA 674:41 Application

Ms. Smith: I would like to advise the board that Mr. Eric Gundrum who represents the applicant is in the audience should you require any additional information.



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This is an application under RSA 674:41 and is a building application. The applicant first came in August 2017 to the zoning board seeking a number of variances. Originally, there was a camp on this lot at Northwood Lake. There is a road that goes down to it, Pleasant View Avenue which is a private road that was part of the North Shore subdivision and goes back to about 1917 – 1920 when all those little roads were established across the street and this was part of that development. This lot sits approximately 140-150 ft. from Lake Shore Drive which is a state road. What they are looking for is permission to build under that State Statute. They have an approved variance from the zoning board and the process is to now come before the board of selectmen. A couple things I would like to mention is that they have worked with the zoning board and have provided a number of things to the zoning board about which the zoning board had concerns. One thing I do want to mention that as part of the conditional approval by the zoning board is that this structure is to remain seasonal. It is seasonal now and is to remain seasonal which means that it will not be a permanent residence. It does not mean that someone could not come up and go ice fishing, skating, etc. in the winter months. It is not about the time of the year so much as it is not a permanent residence.

Selectman Bryer: You are saying it is seasonal, but what is to prevent them from staying there year-round? I just do not understand if the structure is winterized, what is to prevent them from residing there? Ms. Smith: Because that was part of the testimony that was provided to the zoning board in requesting this variance.

Selectman Bryer: The variance was granted on condition of it being seasonal; so how do you enforce that? Ms. Smith: What it means is that somebody cannot have children in school, register their cars in Northwood or register to vote. These things would indicate that somebody was claiming it as a residence. Selectman Bryer: So how would you enforce that? Ms. Smith: I do not know; I would have to talk to the building inspector. I do not do enforcement.

Selectman Bryer: I think we should take this under advisement and get these questions answered. Ms. Smith: I am only mentioning what the zoning board approved. It really is not relevant, necessarily, to your decision. Your decision is solely on the access to the lot and this was just some background information as to what they approved. The board's decision should be based on the guidelines for issuing permits on private and Class VI roads. The only other thing is that they did a road maintenance agreement that will be recorded at the Registry of Deeds and also, they were able to secure a second access for emergency vehicles that will also be recorded at the Registry via the property beside them which has access through Northwood Beach. There is a cottage there with a right-of-way which comes through there and those individuals have granted the applicant access to this property should Pleasant View Avenue is blocked for any reason.



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Selectman Bryer: I think we should take this under advisement and consideration as to how we can enforce seasonal residence. Selectman Hodgdon: I agree and would include the standards of the road.

Ms. Smith: Could I also ask the board for consideration for an additional issue at this time. I know you are going into non-public session following this and I would like to discuss a non-public matter. Selectman Hodgdon: I do not think that the rest of our meeting will be very long.

### **d. Fire Chief Nik Bassett – Non-Public**

Fire Chief Nik Bassett was not present at this time

### **Unfinished Business**

#### **a. Letter/Application Bow Lake Road Bridge Engineers**

Ms. Garrett: I have a letter from NHDOT approving the engineering. At this point, we can proceed and do the scope and negotiate the pricing. Enclosed in your packets is information regarding the actual costs from the engineers.

Selectman Bryer: The DOT has accepted the scope? Ms. Garrett: Not yet, they have accepted us to do that but once they receive it, they have to approve it as well. Selectman Bryer: So, they have accepted the vendor. Did we send them the back-up vendors? Ms. Garrett: We sent them the list of the back-up vendors in the order they requested. Selectman Bryer: My question is: What is the purpose of doing this? Ms. Garrett: So we can negotiate with that engineer. Chair Wolf: If we cannot come to a fair negotiation with our first choice, then we can try to negotiate with the second choice. Board discussed possibility of having a work session to discuss this matter. Selectman Bryer: Let's take the copies home and review them. Board was provided with the paperwork in regard to this matter.

### **New Business**

#### **a. Gulch Mountain Pond Dam**

Ms. Garrett: We have received a letter from DES pertaining to the clean-up of the dam area. We have to send a letter of compliance, which I am working on. Selectman Bryer: Several years ago, we were notified of the deficiencies of that dam. We went to town meeting and we appropriated a sum of money for repairs. So, now they are coming back again? Ms. Garrett: I do not think the repairs were done. The DES came back and did an inspection in .... Selectman Bryer: We asked for money because we had to do repairs. I think you have to do some research on this. Ms. Garrett: I did, but they came back on November 16<sup>th</sup>. Selectman Bryer: I do not think we can



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discuss anything more on this tonight. There should be a file. I would have to go back and look at the warrant articles back about ten years ago when we had a company come in and do work on that dam. We had to get it fixed because there was a timeframe. Ms. Garrett: There is a time constraint on this information. Selectman Hodgdon: Why do we have to fix this dam? Selectman Bryer: Because it is town property. We had to fix it last time. Ms. Garrett: So, here is my dilemma, they came out in 2012 and then in 2016 and there was a deficiency. We need to find those records. I have talked to Steve on the phone and will contact him again once I find those records. Selectman Bryer offered the name of an individual that works on this kind of thing and Ms. Garrett will try to contact her. Selectman Bryer: Is it just debris that is the issue, or stumps or other issues? Ms. Garrett: It is not structural, just maintenance.

### b. Lien Abatement

Ms. Garrett: I have a lien abatement and I will allow board to read the letter. Apparently, there was an error with a check that came back several years ago and it was applied to the wrong account and they cannot undo it and are now asking to abate that. Selectman Bryer: What is the abatement - \$1,335? Ms. Garrett: Yes. Selectman Bryer: What "paperwork" do we have in addition to the check? Ms. Garrett: That is all I have. Selectman Bryer: One of my questions is could we get some documentation when one of the merges took place? Also, would it be possible to have Tax Collector (Judy) at our next meeting to address this? Ms. Garrett: I can put her on the next agenda. Selectman Bryer: Is this something that is time sensitive? Ms. Garrett: I do not think so; it has been quite a few years.

### c. Acceptance of Minutes – January 23, 2018 and January 30, 2018

**Selectman Hodgdon motion to approve January 23, 2018 Minutes. Chair Wolf seconds motion. Motion carried 2/0. Selectman Bryer abstains.**

**Selectman Hodgdon motion to approve January 30, 2018 Minutes. Selectman Bryer seconds motion. Motion carried 3/0.**

### d. Process Various Assessing Forms and Applications

**Selectman Bryer motion to approve certification of yield tax from April 1, 2017 to March 31, 2018. Selectman Hodgdon seconds motion. Motion carried 3/0.**

### e. Approval of Manifest(s)

**Selectman Bryer motion to approve Payroll Check Manifest P28-2017 changing year to 2018 in the amount of \$48,469.80. Selectman Hodgdon seconds motion. Motion carried 3/0.**



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### f. Approval of Purchase Orders

**Selectman Bryer motion to approve \$90 reimbursement to Gary Garnett for six-month cell phone bill at \$50 per month out of the Cable Expendable Trust Fund. Selectman Hodgdon seconds motion. Motion carried 3/0.**

**Selectman Bryer motion to approve purchase order for Dave Allain for 2018 ground point soil monitoring and testing of the lagoon for \$9,000. Selectman Hodgdon seconds motion. Motion carried 3/0.**

Ms. Garrett: I spoke with Dave Allain the other day on the phone and he has spoken with Tim Swett at the DES about the possibility of the lagoon being closed down. He said he has a good feeling and he will work with DES so we can renew that permit for another nine years.

### g. Miscellaneous Signatures/Approvals

Ms. Garrett: I have completed the Plodzik and Sanderson questionnaire that Board requested I fill out.

**Selectman Bryer motion to authorize Chair Wolf to sign document. Selectman Hodgdon seconds motion. Motion carried 3/0.**

## VI. Reports

None

## VII. Citizen Form

None.

## VIII. Non-Public Session RSA 91-A:3, II (b and c)

**Selectman Bryer motion to go into Non-Public Session per RSA 91-A:3, II (b & c). Selectman Hodgdon seconds motion. Motion carried 3/0.**

### Roll Call:

**Chair Wolf                    Yes**  
**Selectman Bryer        Yes**  
**Selectman Hodgdon Yes**

Board went into Non-Public Session at 7:10 P.M.



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**Selectman Hodgdon motion to return to Public Session. Selectman Bryer seconds motion. Motion carried 3/0.**

**Roll Call:**

**Chair Wolf                    Yes**  
**Selectman Bryer        Yes**  
**Selectman Hodgdon Yes**

Board returned to Public Session at 7:59 P.M.

**Selectman Bryer motion to seal the Non-Public Minutes of February 13, 2018. Selectman Hodgdon seconds motion. Motion carried 3/0.**

**Roll Call:**

**Chair Wolf                    Yes**  
**Selectman Bryer        Yes**  
**Selectman Hodgdon Yes**

**OTHER**

**Selectman Bryer motion to approve abatement 17-191718 due to hardship in the amount of \$124.34. Selectman Hodgdon seconds motion. Motion carried 3/0.**

**Selectman Bryer motion to approve abatement Invoice No. 17-272988 due to hardship in the amount of \$1,403.50. Selectman Hodgdon seconds motion. Motion carried 3/0.**

**Selectman Bryer motion to approve hiring Kate LaFond, Auburn, NH for the position of Town Administration at Grade 19, Step 8 (\$58,548) pending successful Federal and State FDI fingerprint background check. Selectman Hodgdon seconds motion. After Discussion: Motion carried 3/0.**

Selectman Hodgdon: I just hope everything works out and that hopefully by next meeting we will have the background check back. This has been in the works for a while. Selectman Bryer: It is my understanding that background checks take a little longer by the State and Federal agencies. For the record, I would not proceed without a background check. Selectman Hodgdon: I agree and hopefully we can have everything in place soon. Chair Wolf: I would just like to say we put a lot of thought into this and looked at several people. Hopefully, we have found a good fit for the town. I think we are going to be moving forward in a good direction.



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### **Adjournment**

**Selectman Hodgdon motion to adjourn. Selectman Bryer seconds motion.  
Motion carries 3/0.**

Meeting adjourned at 8:03 P.M.

Respectfully Submitted,

Delores Fritz  
Municipal Secretary