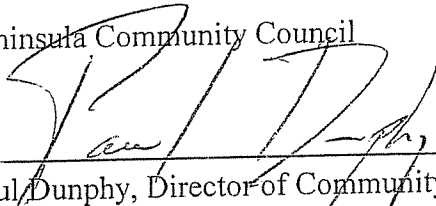




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
May 11, 2009

TO: Peninsula Community Council
SUBMITTED BY: 
Paul Dunphy, Director of Community Development
DATE: April 14, 2009
SUBJECT: Case 01176: South End Area 1 Zoning Standards

INFORMATION REPORT

ORIGIN

February 11, 2008, motion of Peninsula Community Council (item 10.3.2):

MOVED BY Councillor Uteck, seconded by Councillor Fougere, that Peninsula Community Council request a staff report on homeowners near the intersection of Regina Terrace and Beaufort Avenue raising concerns regarding recent development in the area and their proposal for by-law changes which include increasing the minimum property width from 40 feet to 50 feet, and requiring setbacks from the street to be no less than the majority of those on the same side of the street. MOTION PUT AND PASSED

BACKGROUND

This report provides information about the zoning review that occurred pursuant to the Peninsula Community Council's motion. Following their motion, staff consulted with Councillor Uteck and determined that a review of the existing zoning standards would concentrate upon South End Area 1, which includes Regina Terrace and Beaufort Avenue (Map 1). The concern has been that the existing zoning regulations which allow for widespread in-fill development on relatively narrow and small lots, may be inconsistent with the character of the area.

DISCUSSION

Analysis

Much of South End Area 1 is comprised of lots that are generally larger than those found elsewhere on the Halifax Peninsula. The issue in this area is the ability for individual properties to be subdivided into two or more small lots, often with the demolition of an existing house that had generous yards, to be replaced with houses that only meet minimum yard requirements. There are two important factors that allow for the creation of additional lots: (1) lot area requirements; and (2) frontage requirements. In South End Area 1, which is in the R-1 Zone, the minimum lot area requirement is 4,000 square feet and the minimum frontage requirement is 40 feet. Therefore, an existing property needs to have a minimum of *both* 8,000 square feet and 80 feet of frontage in order to be subdivided into two lots.

In responding to the concerns raised in South End Area 1, lot sizes and lot frontages were analysed. Although there are a few instances where subdivision is possible, it was determined that most lots do not have both sufficient lot area and frontage to allow them to be subdivided. This does not mean that no further in-fill development will occur, but that it is unlikely that such development will be widespread.

Public Information Meeting

A public information meeting was held on September 25, 2008 at which there was a presentation of the zoning standards, with an emphasis upon the subdivision possibilities based upon lot sizes and lot frontages that are found in South End Area 1 (Attachment A - PIM Minutes). While the meeting was primarily an exchange of information, there was no strong indication from the public that the zoning requirements should be changed. Therefore, no amendments to the zoning regulations are recommended at this time. Subdivision trends in the area will continue to be monitored and future amendments may be proposed should unforeseen infill development occur. Additionally, further opportunities to consider the appropriate form of infill development and community design standards in this area will be discussed through future community visioning exercises.

BUDGET IMPLICATIONS

The costs to process this application can be accommodated within the proposed C310 operating budget.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

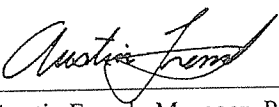
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ATTACHMENTS

Map 1 South End Detailed Area Plan, Area 1 - Location and Zoning
Attachment A Public Information Meeting Minutes

A copy of this report can be obtained online at http://www.halifax.ca/comm_coun/cc.html then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Randa Wheaton, Senior Planner 490-4499
 Richard Harvey, Senior Planner 490-5637

Report Approved by: 
 Austin French, Manager, Planning Services, 490-6717

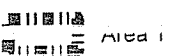


Map 1 - Location and Zoning

South End Detailed Area Plan

Area 1

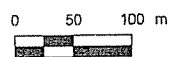
Halifax



Halifax Peninsula
Land Use By-Law Area

Zone

- R-1 Single Family Dwelling
- R-2 General Residential
- R-2A General Residential Conversion
- P Park and Institutional
- U-1 Low-Density University
- WA Water Access



This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Peninsula Land Use By-Law Area

HRM does not guarantee the accuracy of any representation on this plan.

Attachment A
Public Information Meeting
Case 01176
September 25, 2008

In attendance: Councillor Uteck
Richard Harvey, Senior Planner
Randa Wheaton, Senior Planner
Gail Harnish, Planning Services

Call to order

Councillor Uteck called the public information meeting (PIM) to order at approximately 7:00 p.m. in Halifax Hall. In response to some concerns brought to her from residents of Beaufort Avenue and Regina Terrace about infill development this summer, she started an application in July of this year. We sat down and started to look at the scope and type of complaints on the Northwest Arm. We are here tonight to hear your concerns. Tonight they are looking at the Peninsula South area but she thought it was a broader based issue.

Councillor Uteck indicated some of the questions we are looking for feedback on are:

- do you need changes on the Peninsula or should we keep the status quo?
- would you like to see some changes?
- are the changes reasonable?

Councillor Uteck advised a report will be tabled with Peninsula Community Council with a recommendation. Any changes to the Municipal Planning Strategy (MPS) or Land Use By-law (LUB) will require a public hearing.

Overview of planning process

Mr. Richard Harvey indicated tonight we will give you an overview of what we have in our MPS and LUB for South End Area 1. This is just one area in the South End where there is some infilling occurring, but we thought this would be a good place to start.

Mr. Harvey advised the area is generally to the west of Robie Street, to the east of Northwest Arm into the South End past Beaufort Avenue. It does not include Dalplex or the lots that front on South Street but includes the area just below.

Mr. Harvey reviewed the existing regulations, using visuals:

- all the area is within a R-1 zone which allows for single family homes
- minimum lot size of 4000 sq.ft.
- requirement for 40' of frontage along a street. Several years ago that was changed to 50' for Oakland Avenue - it is 40' for the rest of the South End.
- 15' front yard setback requirement

- side yard setback - 10% of the width of the lot to a maximum of 6'
- 20' rear yard setback requirement
- maximum lot coverage of 35%
- there are gross floor area requirements which are intended to prevent houses that are out of character with their surroundings. They were introduced in 2006 in response to the establishment of "quasi-rooming houses".
- maximum height requirement of 35'

Mr. Harvey presented a visual example of an infill and how it would have to meet the various LUB requirements.

Mr. Harvey presented lot characteristics, using visuals. He showed lots in the range of 4000 to 7999 sq.ft. which would not be able to be subdivided, lots in the range of 8000 to 11,999 sq.ft. which would be able to be subdivided into two lots, lots in the range of 12,000 to 15,999 sq.ft., and lots over 16,000 sq.ft. Even if you happen to have a larger lot size, you would not necessarily be able to subdivide it if you cannot meet the frontage requirements.

Northern end of Area 1:

- there is an abundance of lots in the 4000 to 7999 square foot range
- there is a fairly uniform front yard setback of 15' - some are less because they are older homes
- we generally see frontage of 40' or less
- because of the frontage requirements, there is very little opportunity for infill development

Oakland Road - Regina Terrace:

- all the houses do not line up
- there is a mix of lot sizes
- the houses have a varied front yard setback
- there is some opportunity, not a lot, for infill development

South side of Regina Terrace:

- many of the lots fall into a lot size character where, by way of lot size, they could be subdivided but they do not have the frontage so they cannot be subdivided

Core area from Belmont Road down:

- more of a uniform lot pattern
- most of the lots are between 4000 sq.ft and just over 8000 sq.ft
- there is a uniform front yard of generally 14-20'
- frontages range between 50-60'
- there is very limited opportunity for infill development

Mr. Harvey advised there are two street classifications for this area. There are standard streets such as Rockcliffe Street. What does not show up are streets such as Marlborough Avenue. There is an ability to subdivide on those street even though they are not to the same standard as other public streets.

West of the Rail Corridor:

- there are varied lot sizes
- you generally have lots extending down towards the Northwest Arm
- there is varied frontage which is typically greater than 50'
- there is some opportunity for infill development in this area

Mr. Harvey noted there are situations where there are new cul de sacs which many people were not expecting, but they did meet the requirements of the LUB.

Mr. Harvey reviewed possible actions:

- increase the front yard setback requirements
- increase the frontage requirements similar to Oakland Road
- increase the minimum lot size requirement
- maintain the status quo

Mr. Harvey noted this is a fairly stable area but there is change occurring.

Questions and comments

An individual said she moved to a property on South Street forty-five years ago. Three of them had the land surveyed. Mr. Moore passed away twenty years ago. The people building the new home took her fence away without asking her permission. They also cut down her trees without permission and built a fence 2' within the side of her fence.

Mr. Harvey advised our zoning by-laws would not help her in that regard. It would be a civil matter for which she would have rights through the courts. Both parties would have to provide surveys to indicate where their property boundaries are.

The individual said they built the fence on the boundary and these people, without telling her, pulled out her fence and built a new one 2' on her side. Why should she have to hire somebody to fight for her land!

Mr. Harvey indicated staff would provide her with some advice based on our experiences after the meeting.

Ms. Rosemary-Nichols indicated she was a member of the Regina Beaufort Residents Association which was formed as a result of the infill on the corner of Beaufort Avenue and Regina Terrace. She

said she would support the first three possible actions as it relates to Regina Terrace. There are a number of residents on that street who have concern about all those things in relation to potential development. They are concerned about the risk of a developer purchasing two neighbouring lots. Given the current frontage requirements, there is an opportunity with two neighbouring lots to build three properties where there are currently two.

Ms. Nichols noted when they were talking to the development officer about the property going up on Regina Terrace, it was their understanding there is a difference between the Zone 1 requirement for front yard setback and that is 15' compared to Zone 2 where it is the average of the neighbouring properties.

Mr. Harvey stated there are some areas on the Peninsula where an averaging is taken. They look at the front yards and where there is no majority, you can calculate the minimum on either side. That is something we can look at. In the instance of Regina Terrace though, there is such a difference in the range of setbacks and some of the houses are way at the back of the lot.

Ms. Nichols noted that even if you took it from either side, the concern they had with the infilled house was that it was so anomalous to everything around it but it met the letter of the requirements.

Mr. Howard Epstein questioned if there was any development agreement overlay for any piece of property in the area we are looking at. Is it possible for an owner to seek a development agreement in that area?

Mr. Harvey advised in any area of the Peninsula, you can apply for a lot modification by way of a development agreement which is a public process in which you would look at the appropriateness of the lot.

Mr. Epstein questioned if he was talking about the same kind of development agreement that is available for large scale developments in other parts of the City.

Mr. Harvey responded it would be considered by a different policy. If you cannot meet some of the lot requirements, there is an ability to apply for a lot modification.

Mr. Epstein indicated the main thrust of the Regional Plan from what he saw was increased intensification in the urban core area. He asked if the City has turned its mind to that for this area and what kind of instrument it is thinking about using.

Mr. Harvey responded we have not turned our minds to it. Protecting the neighbourhood character is also stressed in the Regional Plan. They will have to look at the balance between the two when that type of exercise takes place.

Councillor Uteck commented most people who move into that area do not realize there are covenants which, for example, address whether or not you can have a fence or a clothes line. The covenants go with the property deed. In supporting the Regional Plan, she expected area neighbourhood plans

to come very quickly but that is not happening. We seem to be stuck in HRMbyDesign. It is meetings like this which will have to happen. She felt this is the start. Density on the Peninsula is fine but we need to have responsible density and responsible infilling which is why we are here tonight.

Mr. Kurt Lutes referenced the maximum footprint of the house in relation to the lot size. He understood there was some maximum and perhaps that is something that can be considered. There are a lot of houses coming in and houses being redeveloped which are being built very large and have appendages such as heat pumps. Is there a maximum footprint of the house in relation to the footprint? He understood there is some ability to have a green roof. If you put sod on a roof, does it count in that maximum footprint?

Ms. Wheaton advised there is currently a maximum lot coverage requirement of 35%. A green roof is simply a green roof which would not be counted as anything but a roof. It will not remove you from the 35% lot coverage requirement.

Ms. Nichols said she understood people are allowed to seek variances. Given the concerns a number of people have regarding large buildings, what percentage of infills are being permitted through variances?

Councillor Uteck responded that since implementing the gross floor area requirements, they have cut down on the number of quasi-rooming houses. Where she has run a fowl is when families of single parents want to get together. Generally if you are a large family moving in or a blended family, we will give you the extra room. Those are the type of variances they are getting on the Peninsula.

Ms. Nichols referenced the replacement houses built on Waterloo where she believed they received a variance.

Councillor Uteck indicated they were looking to raise the ceiling height in the basement. The individual home schooled six children. They came to Council and received a variance. There has been some controversy. Two premises were demolished to build one single home.

Mr. Lutes questioned if abutting properties find out that a variance is being considered.

Mr. Wheaton responded yes, indicating property owners within 30 m of the property in question are notified before a decision is made.

Mr. Alan Ruffman indicated they do give notice to people within 30 m but when it goes before Community Council, only those people who live within the notification area can speak, which is contrary to other planning matters such as rezonings. He suggested there needs to be a change to the *Municipal Government Act* so that a wider variety of people can speak such as citizen groups.

Mr. Ray Klein commented as a residential homeowner he pretty much had two minds about this. As someone who lives on Oakland Road, he noticed quite a bit of infilling. To a degree it looks like things are becoming denser. After we live with the changes for awhile, we stop noticing them.

However, as a homeowner he felt changes to the rules after he purchased his home are a bit unfair. He did not think the rules are bad if we live by them. Perhaps they should have been a bit stricter with the variances that have been approved. The one occurrence that quite a few people are aware of is the rather large house on the Arm at the foot of the Oakland Road extension. It is a lovely house and belongs in San Diego Hills but is out of character for this area. If it was a variance hearing, the entire City of Halifax could have been present since the Oakland Road extension belongs to all of them. In fact, that particular piece of public land has been severely damaged by that house.

Councillor Uteck stated no variance was required in that instance. It was as-of-right development. The property owner in question has to restore what he damaged on the Oakland Road dock. He is in negotiation with HRM, herself, and the neighbourhood. They started the reconstruction but at this point they are not giving him an easement.

Mr. Leonard Preyra commented it was his recollection the whole City was opposed to it but it happened anyways. He referenced the rules established along the Northwest Arm where you can only subdivide your property for recreational purposes.

Mr. Nick Moryto said he was a defender of the status quo. He purchased land from HRM adjacent to him so that he could subdivide. Let's get more families downtown where we need them and increase the tax assessment. Nobody can argue about the quality of the homes. It is great for the local economy. They complain about the declining enrollment in their schools particularly in the downtown because they have to consolidate schools for their kids.

Mr. Hugh Pullen referenced the large house at the foot of Oakland Road. He recalled the first public meeting where this was discussed and he asked for a variance in the private right-of-way down to the dock. He believed the agreement was that in return for getting access to public land he wanted that little sliver and had to replace the public access to the dock and replace it to better than what was there already. Is that still the case?

Councillor Uteck advised the deal is off the table. It is in the hands of the lawyers. She wanted the dock restored. He will have to plant the trees regardless. They are stuck with the old steps rails. If it has to move 3' over, she would be looking for \$150,000 to get what they need. The dock will still be 4' from where his boathouse will be. Nothing has been decided at this point. Right now he has to restore the trees and we have to argue about the stepway.

Mr. Pullen indicated several years ago they put in a plug in to re-institute the Oakland Road ferry. HRM has a park at the Dingle where people could take the ferry and get a bus. He thought they should try it again.

Mr. Pullen questioned if it is feasible in the improved by-law to describe the concept of the neighbourhood. Essentially people are here to make sure their neighbourhood does not change. That is why they want to live here in the first place. When you get change and noise in the neighbourhood, that is what turns the neighbours off.

Mr. Harvey responded no. When you start to say we have these intentions and we try to write what we think it should be and the development officer tries to regulate it, you might or might not get it. We all like to know what the minimum rules are that we have to abide by. It is a tough thing to do. On the street where he lived, someone put up a brick house which really looked out of place for about four months but now he did not notice it any more.

Councillor Uteck referenced two student houses on Young Avenue as an example of a concept in the neighbourhood. She found it absolutely stunning that fifteen students would live in a house on Young Avenue. In terms of the ferry, the residents of District 13 worked on that project for three years and she would be willing to retry it with another group.

Ms. Nichols asked for clarification in terms of the current rules in the Zone 1 area for in-law suites. On Regina Terrace, there have been three houses constructed including the most recent one and they all have in-law suites with separate entrances. When the new house was put up for sale, they were advertising it as having an in-law suite. Given the potential to have them as rental units, she was looking for clarification.

Mr. Harvey responded our Land Use Compliance Officers would be interested in hearing about them as they would not be in keeping with the existing regulations for the area. He could not remember the exact date, but you can create secondary dwelling units within a dwelling, but as soon as your house has been enlarged since that date, you cannot do it. A new house can only be a single family home.

Mr. Jack Hallisey referenced an example of a house with an attached garage being modified so that the garage is now a living area or a playroom, so there is no longer any provision for parking on that lot so they are then forced to use street parking or finding another space in the neighbourhood. Is there any rules regarding this kind of situation?

Mr. Harvey referenced the gross floor area requirements and indicated we would have to look at it on an individual basis.

Mr. Ruffman referenced the areas on the map shown in brown fronting on the Northwest Arm, and questioned whether there are any individual property lines in there or is it a private neighbourhood owned by a separate corporation.

Mr. Harvey responded there are individual properties. They are generally long lots.

Mr. Ruffman indicated on Beaufort Avenue they are advertising four dwellings which look like they are on tiny lots.

Mr. Harvey noted they would have to meet all the requirements of the LUB. There is a different way of calculating frontage on cul de sacs. He understood permits have been issued for the subdivision in question.

Mr. Ruffman indicated there should be another map developed which would identify property ownership. In particular, he would want to flag lots owned by developers interested in subdividing.

Mr. Preyra referenced the property on Oakland Road and indicated when he first got elected there was an application to subdivide that lot and he was told it needed a special act of legislature to change it and it was denied.

Councillor Uteck noted the special legislation in question had to do with pre-confederate lots. She understood it was denied.

Mr. Owen Carrigan stated he would like to support the three possibilities shown earlier on the board. It is hard to quantify it but it has to do with the requirements. One of the major problems homeowners run into is dated rules and regulations. Somebody comes in and wants a variance and get around the rules. The people wanting the variances get to start the process and they are the ones who have to go and fight it. He felt it should be the other way around. If somebody wants to ask for some changes, the burden should be heavily on them to run through the mill long before the residents have to get up in arms and come to public meetings and try to stop something.

Mr. Harvey noted they have to remember they do not see the permits that are turned down. A lot of development happens in the City everyday. As part of the process that we have, in terms of what is reasonable, we do have variance provisions, but that is not the majority of situations. The majority of the time, permits are issued or refused.

Mr. Carrigan stated it is the exceptions that cause the problem.

Mr. Harvey indicated he was at the last Council meeting where somebody was looking for a variance but it was refused. There have been other situations where somebody is not able to meet the regulations but if you looked at the site and the surroundings and it is not out of character, it should be okay.

Mr. Klein said he wished to thank the planners for a very good presentation on what the areas look like and what the rules are. He thought one of the things the map told them is they would be okay if they stuck with the rules. It is the variances that are the problem.

Councillor Uteck indicated they do not know until staff notifies them that there is a modification hearing. She thought that was a fair process. She got herself into a lot of hot water for an instance on Jubilee Road where she felt it was her duty to let them know somebody applied for a demolition permit. She walked a fine line. The developer and the residents have rights. She encouraged that people wanting to do a variance should get their neighbours on side. The times they overturned staff is when they got the agreement of their neighbourhood.

Mr. Matthew Simms asked if the development in his back yard was given a variance. It was responded no.

Mr. Simms noted it was said by staff that the calculation is different for a cul de sac. The house is supposed to be four storeys high with an elevated garage and has a driveway and a bit of a side yard. It has been sitting there for a year now and there is a lot of crime going on. It is blocked off now and the police show up each week.

Mr. Harvey noted that was a specific instance. You hope that somebody has some responsibility to introduce themselves which is not happening and is unfortunate. He understood the development in question met all the requirements of the LUB and that there were no variances.

An individual referenced an earlier comment about a home being used to home school children and indicated they are now using their mailing address for their activities at a church. She asked if they are home schooling.

Councillor Uteck responded yes, and pointed out they have been forewarned they will be prosecuted if they violate the land use by-law. If a neighbour complains, we have to investigate. We have to take people at their word. They reviewed the file with Legal. They met with them and told them what they could not do and they agreed they were not doing that and the property is used for a mailing address for activities elsewhere.

Mr. Ruffman referenced the boundary and noted Dalhousie has been quite firm that the boundary of their campus is South Street and they have not made any move in the past eight to ten years to purchase more properties. He asked if any consideration was given to extending that area in colour to the centre of South Street so that the houses facing South Street on the south side of South Street to the Arm would have the same rules applied as this area, or is there an intention on the south side of South Street to become a much higher development. They would not want to see it look like it does at the back of Pepperall Street. Do we see South Street as a residential street as we do now?

Councillor Uteck advised the rules were changed in the U-1 zone in 2002. She encouraged that members of the public bordering on Dalhousie attend a meeting being held on October 8th. Dalhousie is coming up with a new master plan and is adjusting uses on campus.

Mr. Ruffman recommended that the south side of South Street be encompassed in this area and firm steps to keep R-1 and R-2 uses, especially on the west end towards the Arm.

Mr. Carrington questioned what the height restrictions are on Dalhousie buildings.

Mr. Harvey responded there is a transition of height at the peripheral of their campus. It starts at 50'. There is plan policy in place now that talks about that.

Phil Pacey, President of Heritage Trust of Nova Scotia, noted the Heritage Trust did not discuss this topic but they are concerned about the demolition of some of the really fine houses in this neighbourhood. A number of them that are not registered heritage properties are under threat. Many of the houses have been protected by the zoning but people are discovering there are some weaknesses. This is a good exercise.

Mr. Pacey commented he thought the problem we have before us tonight is that zoning was done in a cookie cutter sort of style so that the rules for R-1 (ie., 40' frontage, etc.) are the same across the entire Peninsula which may not be appropriate. The individual areas have been developed quite differently. Some areas are developed with small lot sizes and some areas have larger lots. He was on the committee when the rules for Oakland Road were changed because they recognized it was different. The neighbours asked to have the frontage increased to 50' and it was very widely supported. Similar things happened elsewhere in the city. There are places where the front yard setback is different and it is done on the basis of the average of the properties on the street. That is to take into account the special nature of the individual area. It is a good thing to be able to reflect the prevailing character of the neighbourhood. One individual commented infill is good and has a lot of advantages but it is sad to see some of the really fine houses that may deserve to be a heritage property come down because the rules allow them to be replaced by several small buildings.

Mr. Preyra indicated his office was on the corner of South Street and Inglis Street and that he had to apply for special permission to have an office there. If Council cannot give a variance or special permission, then a house like that might have to come down because no one was living in it. He was wondering if it might not be such a bad idea to save some of these houses by allowing those kind of exemptions. They tore down a beautiful house a couple of door down from him on Young Avenue.

Councillor Uteck indicated in the instance of Young Avenue, the developer had a concept for a link house. What you could have seen was two larger homes. To do so, would have meant an MPS amendment which would have meant eighteen months which he felt was too long. We allowed some of the larger homes to be converted into three condominiums, knowing people were closing off rooms. She even offered to go to the neighbourhood for a variance and see if perhaps the community would give them a fourth condominium if they saved the buildings but his mind was made up.

Councillor Uteck thanked everyone for attending. It is not just inside this boundary. She was hearing it everyday. We will have internal discussion. Infill is not the big bad evil. It is the type and sometimes the quality and quantity.

Ms. Beverly Miller indicated she lived on South Street and is in the Peninsula Centre detailed plan. She thought there might be some wisdom in changing that boundary to include them in the South End detailed plan simply because they back onto properties that are in this particular area. What happens on her property has a huge effect on her neighbour's line to the rear. She encouraged they redraw the boundary to include that right-of-way of houses on South Street.

Ms. Wheaton responded she thought that was something they would probably deal with when they get to visioning. Right now we are not looking at changing boundaries but working within the boundaries that we have. It is something we will keep in mind when they do the visioning exercises.

Adjournment

The meeting adjourned at approximately 8:30 p.m.