

**MINUTES OF REGULAR MEETING  
OLDHAM COUNTY  
PLANNING AND ZONING COMMISSION  
Tuesday, July 26, 2022**

At 9:00a.m., local time on the above date, this meeting of the Oldham County Planning and Zoning Commission, hereinafter called the Commission, was called to order in the Courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky, by Chairman Kevin Jeffries.

Other Commission members present were:

Iva Davis  
William Douglas  
Thomas Elder  
Joe Ender

John Falvey  
Sam Finney  
Ed Hafling  
Berry Hampton

Greg King  
Katie Nasser

Commissioners Bob Klingenfus, Sue Ann Jones and Suzy Walser were absent.

Others present and sworn in were Planning and Development Services Director Jim Urban, Assistant Director Amy Alvey, Senior Planner Ryan Fischer, Oldham County Engineer Jim Silliman, LaGrange Fire & Rescue Department Chief Jim Sitzler and Major Keith Smith. Attorney John Carter was present for the meeting and Administrative Assistant Christy Edgar was the Secretary for the meeting.

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**Approval of Minutes –**

Motion was made by Commissioner Hafling and seconded by Commissioner King to approve the minutes as submitted June 28, 2022, with the following corrections:

**Corrections:**

- Page 14: Replace: “specially with specifically” and limited to the issue of water.
- Page 14: Replace “values with valve” in question.

Minutes approved by voice vote.

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**Secretary Christy Edgar called and read Docket PZ-22-021:**

Application has been filed by Sunanza, Inc. for the approval of a Preliminary Subdivision Plan with Waiver (Section 270-060, Part 6, Capacity Standards Fire Protection Standards-Fire Flow) for 49 lots on approximately 183 acres to be known as Old Sligo Farm Estates. The property is located at the 5400 Block of Old Sligo Road, LaGrange. The zoning is AG-1 Agricultural District & CO-1 Conservation District. **(Continued from June 28, 2022)**

**1. Introduction of the application by staff and questions by the Commission:**

Assistant Director, Amy Alvey, presented the following:

- Reviewed the additional documentation provided by applicant and opposition. (see Exhibit A, dated July 26, 2022)

## **2. Presentation by the applicant or representative and others in support of the application:**

Attorney Cliff Ashburner, Dinsmore & Shohl, LLP 101 South 5<sup>th</sup> Street, Suite 2500, Louisville, KY was present and spoke on behalf of the applicant:

- Presented a PowerPoint which gave an overview of the prior hearing information (see Exhibit B, Applicant).
- On July 15, 2022 Henry County Water District provided a letter stating that they will not allow fire hydrants on their system which changed the path of fire protection for the subdivision.
- Gave an overview of the tariff for Henry County Water District and Section 7.3, Items F and G of the Oldham County Subdivision Regulations.
- Now that Henry County Water will not allow fire hydrants the fire protection plan had to be updated which now includes sprinklers for each home and cisterns were increased from 40,000 to 50,000 gallons.
- Reviewed the fire hydrant ordinance to show that it also allows for alternative compliance.
- Additional measures were added to plan to ensure compliance with Comprehensive Zoning Ordinance, Subdivision Regulations and Fire Hydrant Ordinance.

Phil Gambrell, Prism Engineering & Design Group LLC., 2309 Watterson Trail Louisville, KY, was present and sworn in prior to presenting the following:

- Reviewed Section 7.3, Items F and G of the Oldham County Subdivision Regulations which requires 500 GPM and 20 PSI.
- Summary of Tetra Tech hydraulic analysis which showed the system has current capacity to deliver a maximum flow greater than 500 GPM to the development if the elevation of all flushing valves is at an elevation of 838 feet or less and PVR #1 or both PVRs are bypassed.
- Only seven lots have areas above elevation of 838 feet but the elevation at the street where the flushing valve would be located would be at 838 feet or below.
- 95% of the development is below the 838 feet elevation.
- Explained GRW hydraulic analysis submitted by the Opposition, which used the elevation of 845 feet as a worst-case scenario. The flow was still over 500 GPM but had a residual pressure less than 20 PSI.

Kevin Parson, Landmark Sprinkler, 11540 Blankenbaker Access, Suite 103, Louisville, KY, was present and sworn in prior to presenting the following:

- Reviewed NFPA Standards (see Exhibit B, Applicant PowerPoint) which requires 500 GPM for a home with automatic sprinklers.
- NFPA requires 60,000 gallons if no sprinklers or 30,000 gallons if there are sprinklers.

Ron Ritchie, National Fire Sprinkler Association, 3311 Dover Court, Lafayette, IN, was present and sworn in prior to presenting the following:

- Provided his professional background.
- Gave an overview of how residential fire sprinkler systems work and that NFPA allows for alternative compliance.

- Home fire sprinklers are designed to help protect the high risk (small children and the elderly) to allow them extra time to get out of the home which is typically less than two minutes. A fire sprinkler can control a fire in 1-1 ½ minutes.
- Only the sprinkler that is closest to the fire will activate and are connected to the household water supply.

Attorney Ashburner stated the following:

- NFPA 1142 requirement states that you must have 1,000 gallons per minute for an hour if you don't have sprinklers. If you do have sprinklers, you must have 500 gallons per minute for an hour so basically NFPA requires 60,000 gallons of water if no sprinklers and 30,000 gallons of water if sprinklers are present.
- The proposed plan has two 50,000-gallon cisterns, or 100,000 gallons of water ready for firefighting purposes which is three times the minimum required when the homes are sprinkled.
- Explained how fires are fought when fire hydrants are not present by using tanker trucks.
- Proposed fire mitigation plan for the proposed development meets and exceeds the requirements.

### **3. Presentation by the opposition or representative and others opposing the application:**

Attorney Jon Baker, Wyatt, Tarrant & Combs, 400 West Market Street, Louisville, KY, was present and spoke on behalf of Rollo & Peabody Fox:

- Gave history of why the docket was continued which was to allow for additional water flow and pressure studies.
- Believes that since the prior waiver was withdrawn by the applicant at the June meeting that a new waiver should be applied for as well as other waivers of the subdivision regulations and is unaware of any waivers being requested at the current meeting.
- Reviewed the Tetra Tech and GRW reports (see Exhibit C, Opposition PowerPoint).
- GRW report supports Henry County Water's decision to not allow fire hydrants on the water lines because of the drop in water pressure during a fire.
- Reviewed the goals and objectives of the Comprehensive Plan, specifically LU-1-3-1 that encourages development in areas of existing infrastructure before moving into less developed areas of County.
- Reviewed Sections 5.2, 7.7 and 7.3 of the Subdivision Regulations regarding subdivision design, water supply and fire protection standards.

Trish Henrion, 1309 Park Shore Road, LaGrange, KY, was present and sworn in prior to speaking in opposition:

- Has reached out to the Public Service Commission regarding water pressure requirements and verification of the tariff to confirm fire hydrants are not allowed on Henry County Water lines.
- Also spoke with the Kentucky Division of Water to ask what issues could arise if both valves were open to get fire flow. The response was that the lines may not be able to withstand the increased pressure and could burst.
- The rules say fire hydrants are required within 400 feet of the home and the cisterns are not within the 400 feet rule.

- The subdivision is a want, not a need and does not meet the intent of the AG-1 zoning district.
- Taking a chance that the cistern system will be maintained and in working order when needed for a fire.

Peabody Fox, 4701 Tobacco Road, LaGrange, KY, was present and sworn in prior to presenting:

- Agrees with Mrs. Henrion's comments.
- Cisterns and home sprinkler systems evolved in the absence of having fire hydrants with required flow.
- No governing body to do proper inspections on sprinkler systems or to ensure proper maintenance is being performed.
- Provided article showing 93% of sprinklers fail due to human error (see Exhibit D, Opposition).

Rollo Fox, 4701 Tobacco Road, LaGrange, KY, was present and sworn in prior to presenting:

- Discussed the Pendleton Kentucky barn fire that occurred in July 2022, which was in the Henry County Water District that took six different departments six hours to put out under the relay system using tanker trucks because of no fire hydrants. The fire took the lives of 11 horses.
- Cisterns are a bad idea as the same process of relaying water would have to occur in the proposed subdivision and the services being provided are beyond what normally occurs in Oldham County, therefore the development should be denied.

Chairman Jeffries called for a recess break at 10:12 AM.

Chairman Jeffries called the meeting back in session at 10:22 AM.

#### **4. Presentation by the LaGrange Fire Department & Henry County Water District:**

Keith Morris, Chief Operating Officer, Henry County Water District, 8955 Main Street, Campbellsburg, KY was present and sworn in prior to presenting the following:

- The hydraulic analysis indicates that Henry County Water District can provide adequate pressure and flow during peak demands, while using the PRVs.
- Hydraulic analysis results that the system can deliver a maximum flow greater than 500 GPM if the elevation of all flushing valves is 838 feet or less. In order to provide this flow, one or both PRVs must be bypassed.

Attorney J.D. Theiss, Theiss Law Offices, PLLC, 209 North First Street, LaGrange, KY, was present and spoke on behalf of LaGrange Fire Protection District:

- The letter submitted to the Planning Commission from LFPD was written prior to the knowledge of Henry County Water prohibiting fire hydrant connections on their water line.
- Since receiving that information, the two cisterns located at each of the subdivision entrance will need to be increased in size and agrees that residential fire suppression systems should be required if the Commission approves the development.
- The design of the cisterns will require fire department approval.

#### **5. Rebuttal evidence and Cross Examination by the Applicant:**

Attorney Ashburner: Did Henry County Water Board have the updated information of the Tetra Tech analysis or the GRW study before they made their decision on no fire hydrants?

- Keith Morris: The decision was solely based on the district's tariff. The Tetra Tech report was given to the board at the meeting.

Attorney Ashburner: How do you address fires in the Henry County Water District?

- LaGrange Fire Chief Sitzler: A tanker and engine from each of the LaGrange Fire stations along with Ballardsville Fire Department will respond as there is a mutual aid agreement. Westport will most likely respond with a tanker as well. The proposed subdivision will be treated the same as other homes in the area where fire hydrants are not present. If the fire requires more water than currently on the engine fighting the fire, a dump tank will be placed and the tankers will transport water to the dump tanks to feed the engine fighting the fire. LFPD would prefer to have hydrants in the subdivision but if Henry County Water has said no, LFPD will need increased cistern size and the homes to be sprinkled.

Attorney Ashburner: What is the average response time to a fire from the time of the call to the time of putting water on the Fire and does the proximity of the cisterns help?

- LaGrange Fire Chief Sitzler: Currently does not have a 24/7 crew. Part-time staff works from 6am to 6pm, Monday thru Friday and Ballardsville is the same. Volunteer staff responds to call on the off hours and normally has a truck leaving the station to respond within five minutes of the dispatch and depending on the location of the fire in the fifty square miles of service area would determine the arrival time. The cisterns will be beneficial to the subdivision and other homes in the area as they can be used as a fill site rather than going to Station 2 on Highway 42 to fill the tankers.

Attorney Ashburner: The barn fire in Pendleton, was it built with residential fire-retardant materials and was the barn equipped with fire sprinklers?

- Rollo Fox: I do not know the answer to either one of those questions.

Attorney Ashburner: The article you showed on the projector related to failure of sprinkler systems, do you know if that is commercial or residential sprinkler systems?

- Peabody Fox: I do not know the answer.

Attorney Ashburner stated the following:

- The article provided by Mrs. Fox is for commercial buildings and not for residential homes.
- The development is complying with the county zoning ordinance, subdivision regulations and the fire protection ordinance by having alternative compliance methods such as cisterns and fire sprinklers which is being provided for the proposed development.
- By providing the cisterns and the homes being sprinkled, the development will have three times the required water supply per NFPA standards. If the homes were not sprinkled the development would still have 40,000 gallons of excess water supply.
- Stated the attributes of Section 7.7 of the Subdivision Regulations.
- Regarding the need for a waiver, because the regulations allow for alternate compliance methods, and that is what is being provided by having cisterns and sprinklers, we are asking to be allowed to use those to meet the fire protection standard which are more than adequate.

## **6. Rebuttal evidence and Cross Examination by the Opposition:**

Attorney Baker: Will the sprinkler systems be hooked up to Henry County Water or hooked up to the cisterns?

- Ron Ritchie: The sprinkler will be hooked to the water main.

Attorney Baker: Will the sprinkler system heads be placed throughout the home including the second floor?

- Ron Ritchie: The sprinkler system head produces a pattern that is higher on the walls. There are 3 different types of sprinkler systems; NFPA13 which are commercial base which is throughout the entire structure including the attic, 13R is for residential apartment that is less than 4 stories and 13D is only required to put the sprinkler system heads in the rooms that are high risk fire rooms.

Attorney Baker: Which sprinkler system would this development be required to have?

- Ron Ritchie: NFPA 13D

Attorney Baker: What is the fill rate of the cistern?

- Ron Ritchie: Automatically refills so it will keep up with the amount that is coming from the tank.
- Kevin Pearson: It will be filled using the water pressure that is on site.

Attorney Baker: Do we know when the cistern is being filled what happens to the residual water pressure?

- Kevin Pearson: It will be filled continuously and not have much effect on the residual water pressure.
- Ron Ritchie: If the cistern is 50,000 gallons and the fire department is pulling 1,500 gallons to fill tanks it would take many trips to cause the cistern to empty.
- Chief Sitzler: The fire department will have excess of 10,000 gallons of water coming to the scene on existing trucks. Can fill all the tankers 5 times on one cistern. Using both cisterns the tankers can fill 10 times, which is a lot of water to fight a fire.

Attorney Baker: How long does it take to deplete the water source from the tankers to where you need to go and refill from the cisterns? How long does it take to hook up and fill from the cisterns?

- Chief Sitzler: Will designate one pumper at the cisterns and when tankers arrive the pumper will fill the tanker in 4 minutes or less and do not see it as a problem.

Attorney Baker: In regards to response time, what happens in the middle of winter at 2am or 3am?

- Chief Sitzler: You do the best you can. At nighttime the fire department depends on volunteers and how far away the fire is from the station determines the response time.

Attorney Baker stated the following:

- The opposition's stance on this proposal is that we have outpaced where the County's infrastructure and services are.
- Subdivision should be a ministerial act by meeting subdivision requirements but now there are multiple waivers on the table to pass this development.

- Based on all the testimony and evidence that has been provided it is just not the right time for this land to be developed into a 49-lot subdivision.

Mark Gardner, 4727 Tobacco Road, LaGrange, KY, was present and sworn in prior to asking questions:

Do you intend for sprinklers to be in barns and outbuildings in this development?

- Attorney Ashburner: Right now, only putting sprinklers in the homes.

Mr. Gardner stated that at the time of the Pendleton barn fire his water pressure dropped to zero and was unable to fill his water tanks for his horses as he is on the same water line and it was a significant impact to the neighbors.

Jon Ames, 5510 Old Sligo Road, LaGrange, KY, was present and sworn in prior to asking questions: How long will it take to fill the cisterns and what will the water pressure be while filling the cisterns to the current residents in the area?

- Keith Morris: Does not know the answer and should ask the applicant's engineer. The water district does have questions, if the development gets approved, of how the cistern will be metered, maintenance, etc. and will have to work with their engineers on the details.
- Phil Gambrell, Prism Engineering: It is going to vary depending upon what demand is on the line at the time. If during peak hours it will be limited to the size of pipe going into the fill valve which has not been determined at this time.

Jon Ames: What stage of the project will the cisterns be installed?

- Phil Gambrell: Cistern at the Old Sligo Road entrance will be built immediately. The second cistern will be shortly after that because that entrance (Hwy 42) will be used as the construction entrance and cisterns will be installed during the entrance construction process.

## **7. Questioning of the applicant and those opposed to the application by the Commission:**

Does the alternative method of sprinklers and cisterns satisfy the fire department for this development?

- Chief Sitzler: Yes, I am satisfied with it and wish all the homes in the area had sprinkler systems.

Are you satisfied with not having any fire hydrants in the development?

- Chief Sitzler: The fire department can get by with the cisterns and sprinkler systems. We would like to have the hydrants but since the development is in the Henry County Water District I am okay with no fire hydrants.

Does the fire department have standing operational procedures on residential property?

- Chief Sitzler: No
- Attorney Theiss: The waiver that the fire department was initially asked to address was related to the water flow with the subdivision using fire hydrants and two, 40,000-gallon cisterns. Between getting the letter on July 15th and today, fire sprinklers and increased cisterns size was put on the table. When Chief Sitzler responded with his letter it was without knowledge of the sprinkler system.

- Major Keith Smith, Fire Marshall: There is no responsibility put on the fire department for residential sprinkler systems regarding inspection of the systems. The homeowner must contract with a private company to perform their inspection as well as maintenance. LFRD does review plans for commercial projects that are required to have sprinklers. The fire department encourages residential owners to get yearly inspections.

How would the initial plan for sprinkling residential structures be reviewed and/or approved? Would it be on the fire department or with the building inspector?

- Major Smith: I have only had the opportunity to be involved in a residential sprinkler system review on one occasion. It would be the responsibility of the building permit/inspection department. Residential sprinkler systems are not monitored by the fire department.

Since the Oldham County portion of the subdivision is not putting in fire hydrants is that the same for the Henry County portion?

- Keith Morris, Henry County Water: No fire hydrants will be installed in any Henry County subdivision.

Do other subdivisions in Henry County have cisterns?

- Keith Morris: No, this development would be the first subdivision with a cistern in Henry County.

Has there been an interlocal agreement established between Oldham County Fiscal Court and Henry County Fiscal Court regarding the collection of the stormwater tax?

- Jim Silliman, Oldham County Engineer: No, not yet. It was discussed as a proposed binding element at the last hearing.

How would you implement the binding element?

- Director Urban: An interlocal agreement between Henry & Oldham County regarding storm water management shall be executed.

How do we enforce mitigating post-construction run off in another county if the stormwater basins are being regionalized in another county?

- Jim Silliman: A more detailed draft agreement would be signed between the developer and the county and then turned over to the HOA but the details would have to be worked out.
- Attorney John Carter: We have no jurisdiction over Henry County unless there is an interlocal agreement.
- Director Urban: The second binding element, which the applicant suggested, would be that the HOA would be responsible for collecting the fee for the Henry County lots regarding stormwater.

How would the fees be collected?

- Director Urban: The binding element states it would be the HOA and if Henry County wants to pick up the fee, then the interlocal agreement would be established. We never had these discussions because we do not have an approved development plan. If it is approved then we would approach both Henry & Oldham County Fiscal Court to come to an interlocal agreement.

Wouldn't the binding elements need to be agreed upon between those two courts?



- Jim Silliman: The binding elements would have to be agreed upon before the development can proceed.

Is the waiver still on the table or has it been taken off the table?

- Director Urban: In his opinion the initial waiver for fire flow is still on the table, either approve it, deny it or dispense with it. Believes it should be dispensed because we are told there are no fire hydrants. No other waiver is required because the development is within the regulation because it allows a mitigation alternative. We should not apply a waiver to something that is allowed within the regulations. Asked for confirmation from Attorney Carter.
- Attorney Carter: I agree with that. The question is either have fire hydrants with adequate flow or the fire department approves the mitigation. Then the board decides if they are satisfied with the mitigation.

Just for clarification there are no waivers needed right now?

- Director Urban: That is correct.

## **8. Final statement of the Opposition:**

Attorney Baker stated the following:

- Have more questions now than previously due to the addition of sprinklers such as who will inspect them, how often will they be inspected and the same questions pertain to the cisterns.
- How can we be ensured that the mitigation plan will function properly?
- Waivers should be on the table because no documentation has been provided that fire flow is achievable. Section 7.7 of the Subdivision Regulations is not being met as it requires water service which includes fire hydrants. Section 7.7 does not have a mitigation plan option and is not being met.
- There are questions as to whether there is adequate infrastructure to serve this subdivision.

Thomas Henrion 1309 Parkshore Road, LaGrange, KY, was present and sworn in prior to stating the following:

- More issues than water service with this development and sprinkler systems are not the silver bullet.
- Sprinkler systems cost around \$1.35 per square foot on new construction so 1% to 2% of construction cost but they often fail because of the water pipes being congested, lines freezing, etc.

## **9. Final statement of the Applicant:**

Attorney Ashburner stated the following:

- Many questions have been asked but not enough evidence from the opposition and decision should be based off of evidence presented by staff or presented at the hearings.
- Proposed plan meets minimum lot size, exceeds minimum county setbacks as they have reflected L'Esprit's setbacks on the plan and adopted their use restrictions as well.
- No issues regarding roads and/or septic systems based off testimony from County Engineer, KYTC letter and Oldham County Health Department.

- Stormwater system will be located in Henry County, which is the most logical place, but be designed to Oldham County standards and agrees to collect the stormwater fees and remit them to Oldham County.
- Response time for fires will be one minute because the homes will have sprinklers and will activate to suppress the fire regardless if a professional fire fighter or volunteer is dispatched or if they come from LaGrange or Ballardsville.
- Agrees to a binding element that a deed restriction will be added that each home must have an annual fire sprinkler inspection to ensure the continued operation of the system.
- County regulations allow for alternate methods of compliance and have provided documentation and evidence of those compliances methods which provides 160% onsite water requirement without sprinklers and more than three times the coverage with sprinklers.
- Asked the Commission to follow the regulations and approve the subdivision.

## **END OF PUBLIC HEARING**

### **FINDINGS AND DECISIONS PZ-22-021 Old Sligo Farm Estates 5400 Block of Old Sligo Road, LaGrange Preliminary Subdivision Plan**

Motion was made by Commissioner Hampton and seconded by Commissioner Elder to approve the Preliminary Subdivision Plan with the attached binding elements because the Preliminary Subdivision Plan meets all the Oldham County Subdivision Regulations and Zoning Ordinance requirements.

#### **Binding Elements included in the motion:**

1. The approval applies only to the plan presented at the June 28, 2022 and July 26, 2022 Oldham County Planning Commission public hearing.
2. There shall be no subdivision of any lot into a greater number of lots without review by the Oldham County Planning Commission.
3. The cumulative phasing plan shall limit the number of dwelling units to 17 per year beginning with the first record plat.
4. Lots 1, 2, 5, 6, 7 and 8 shall have shared driveways unless otherwise approved by KYTC.
5. The preliminary plan must comply with all established federal, state and county ordinances and requirements at the time of construction plan approval.
6. The homeowner's association shall maintain the cistern system.
7. A self-monitoring system to assure the cistern is always full must be included.
8. An interlocal agreement between Henry and Oldham County Fiscal Court regarding stormwater management shall be executed.
9. The homeowner's association will be responsible for collecting and for paying the Oldham County stormwater fee for Henry County lots.
10. Detention basins must be in open space and not part of individual lots.
11. Lot 76 and 20 shall be revised to meet minimum lot width as presented in applicant's exhibits and approved revised preliminary subdivision plan submitted to the file within 30 days.
12. The cistern design, maintenance and metering must be approved by the Henry County Water District during subdivision construction plan approval.

13. All residential structures must install sprinklers in compliance with NFPA standards.
14. Annual inspections of the sprinkler system shall be conducted and this requirement shall be in the deed restrictions.

Attorney Ashburner stated the applicant agrees to the binding elements as read.

**The vote was as follows:**

**YES:** Commissioners Davis, Elder, Falvey and Hampton.  
**NO:** Commissioner Douglas, Ender, Finney, Hafling, King and Nasser.  
**ABSTAIN:** None  
**ABSENT:** Commissioners Klingenfus, Jones and Walser.

**Motion failed on a vote of 4-6.**

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Motion was made by Commissioner King and seconded by Commissioner Ender to deny the Preliminary Subdivision Plan for 5400 Block of Old Sligo Road, Docket PZ-22-021 based upon the evidence and testimony presented because it falls short of the subdivision regulations, particularly fire flow and suppression.

**The vote was as follows:**

**YES:** Commissioner Douglas, Ender, Finney, Hafling, King and Nasser.  
**NO:** Commissioners Davis, Elder, Falvey and Hampton.  
**ABSTAIN:** None  
**ABSENT:** Commissioners Klingenfus, Jones and Walser.

**Motion approved on a vote of 6-4.**

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There being no further business, the Planning Commission meeting adjourned at 11:45 AM.

The next regular meeting will be Tuesday, August 26, 2022, at 9:00 a.m. in the courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky.

Approved:

Respectfully Submitted:

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Kevin Jeffries, Chairman

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Christy Edgar, Secretary