

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, FEBRUARY 16, 2010**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Steve Harris, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Steve Harris, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

**11:31 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 16, 2010** docket.

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**1:00 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A **January 19, 2010** public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2010**

**MOTION: Schweitzer**

I move **approval** of the Tuesday, **January 19, 2010** public hearing minutes.

**SECONDED: Gabriel**

**AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

Briefing by the City Attorney's Office on lobbyist registration, campaign contribution restrictions, multiple seconds, and gift policy (see Attachment A for related material).

**\*This was not an action item.**

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**FILE NUMBER: BDA 090-028**

**BUILDING OFFICIAL'S REPORT:**

Application of Tommy Mann, Winstead, PC, for a special exception to the tree preservation regulations at 1906 Castaway Drive (et al). This property is more fully described as Lots 1-25 and Lots 27-56 in City Block 1064A/6113, Lots 2,5,7,9, and 10 in City Block 1064B/6133, Lots 1-21 in City Block 1064C/6113, Lots 1-23 in City Block 1064D/6113 and Lots 1-10 in City Block 1064E/6113 and is zoned R-5(A) which requires mandatory tree preservation. The applicant proposes to construct a single family residential development and provide an alternate tree mitigation plan for tree preservation which will require a special exception to the tree preservation regulations.

**LOCATION:** 1906 Castaway Drive (et al)

**APPLICANT:** Tommy Mann, Winstead, PC

**REQUEST:**

- A special exception to the tree preservation regulations (in this case, specifically obtaining additional time in which to mitigate protected trees removed on this site) is requested in conjunction with not fully mitigating protected trees removed on a site that is currently being developed as a single family subdivision. (According to the applicant, only 20 of the 130 lots in the subdivision have been sold and developed).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted “Tree Mitigation Plan” and “Tree Mitigation Plan Summary” is required.

Rationale:

- The City of Dallas Chief Arborist supports the request with the condition that the applicant is required to comply with the submitted “Tree Mitigation Plan” and “Tree Mitigation Plan Summary.”
- The applicant has substantiated:
  - how strict compliance with the requirements of this article (The Tree Preservation Regulations) will unreasonably burden the use of the property in that if the special exception is denied, the applicant would be required to plant replacement trees on the subject site prior to the construction of single family homes on the remaining 110 lots in the 130 lot subdivision. This required mitigation (if the applicant’s special exception request were denied) would in turn not allow the buyer of the lot to make design selections and moreover create a situation were required replacement trees would most likely be destroyed during the construction of homes on the undeveloped lots within a time frame (given the current market conditions) that may extend to three years beyond February of 2010; and
  - that the special exception will not adversely affect neighboring property, particularly considering that the applicant has submitted an alternate “Tree Mitigation Plan” and “Tree Mitigation Plan Summary” that fully complies with the Tree Preservation Regulations with one exception: timing of planting replacement trees on the subject site – an exception that would extend the 30 day - 18 month time period to mitigate/plant replacement trees on the subject site from February 12, 2008 to up to 36 months from the date of the Board of Adjustment public hearing in February of 2010; and
  - that the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council.

## **STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

The board may grant a special exception to the tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

## **GENERAL FACTS:**

- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement Regulations apply to all property in the city except for: a) lots smaller than two acres in size that contain single family or duplex uses; and b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the provisions set forth in Chapter 51A.  
The Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with the following requirements:
  1. Quantity. The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured.
  2. Species. A replacement tree must be one of the specific “approved replacement trees” listed, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract.
  3. Location. The replacement trees must be planted on the lot from which the protected tree was removed or seriously injured, except as otherwise allowed by the code as an “alternate method of compliance with tree replacement requirements.” Replacement trees may not be planted within a visibility triangle, a water course, or an existing or proposed street or alley.
  4. Minimum size. A replacement tree must have a caliper of at least two inches.
  5. Timing. Except as otherwise provided in the code, all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees.  
If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official shall

permit the property owner to plant the replacement trees during the six-month period.

If the property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

- For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
- In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.

A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with the tree preservation regulations.

The Dallas Development Code provides the following “alternate methods of compliance with tree replacement requirements” if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured (the “tree removal property”):

1. Donate the replacement tree to the city’s park and recreation department.
  2. Plant the replacement tree on other property in the city that is within one mile of the tree removal property.
  3. Make a payment into the Reforestation Fund.
  4. Grant a conservation easement to the city.
- The applicant has stated on his application that a request has been made for a special exception to Section 51A-10.134(5) to allow more time for the completion of required tree mitigation. A “Tree Mitigation Plan” and “Tree Mitigation Plan Summary” has been submitted stating that 1,236 caliper inches are proposed when 1,234 caliper inches are required, however, that full mitigation will be achieved through phases over a period of 36 months from approval of the special exception request. The applicant has submitted a letter stating that he does not request a deviation from the total mitigation requirement but is only requesting a special exception to allow for a longer period of time to complete mitigation with Phase II of the subdivision.
  - The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a narrative that provided additional details and information about the request.
  - The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
    - The applicant is seeking a special exception to the tree mitigation regulations of Article X. More specifically, the applicant is seeking only an extension of timing for replacement and is not seeking a reduction of the required replacement trees.

- Trigger:  
New construction of a residential subdivision. Tree removal permit issued in conjunction with grading permit on February 12, 2008.
- Deficiencies:  
The property has failed to complete tree replacement per city ordinance, Article X, as required. A total of 1,234 inches were removed from the property in 2008 under a tree removal permit in conjunction with a grading permit to clear the site for pending residential construction.
- Factors for consideration:  
A grading permit was approved for grading of the site to prepare the property of development. A tree removal permit was issued subject to approval of the grading permit.  
The majority of trees that were removed were mesquite. In 2003, the Council determined the mesquite to be protected by the City of Dallas at 12" caliper (to the standard 8" caliper) except within 120 feet of the floodplain.  
The property is in Phase 2 of a two phase development. Phase 1 completed its mitigation by planting more inches than was removed for that development and prior to the time Phase 2 trees were removed. All Phase 2 trees are proposed on site.
- Recommendation
  - Approval, subject to the proposed "Tree Mitigation Plan" and "Tree Mitigation Plan Summary."

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-5(A) (Single family district 5,000 square feet)  
North: R-5(A) (Single family district 5,000 square feet)  
South: R-5(A) (Single family district 5,000 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: City of Grand Prairie

**Land Use:**

The subject site is currently under development as a single family subdivision. The area to the north is developed with single family uses; the area to the east is Mountain Creek Lake; the area to the south is (according to MAPSCO) a park – Mountain Creek Lake Park; and the area to the west is developed with single family uses in the City of Grand Prairie.

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

## **Timeline:**

- Dec. 18, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 21, 2010: The Board Administrator contacted the applicant and emailed him the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, the Sustainable Development Department Project Engineer, and the Assistant City Attorney to the Board.
- Feb. 5, 2010 The applicant submitted additional information to the Board Administrator (see Attachment A).
- Feb. 5, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with C.O.D. visibility requirements."
- Feb. 8, 2010 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

## **STAFF ANALYSIS:**

- The request focuses on obtaining additional time in which to mitigate/plant protected trees removed on this subject site back on the subject site (i.e. trees removed in conjunction with developing a single family development that is currently approximately 15 percent developed). The applicant requests a special exception to the Tree Preservation Regulations that would allow him additional time beyond the

30 days -18 months that the Code requires him to fully mitigate protected trees removed on the site (in this case, by the applicant proposing to plant replacement trees back on the site) from when a tree removal permit was issued on February 12, 2008.

- The applicant has submitted a “Tree Mitigation Plan” and “Tree Mitigation Plan Summary” that does not request a deviation from the total mitigation requirement but does request that the time period in which to fully mitigate/plant replacement trees on the site be extended up to 36 months from the date of the Board of Adjustment public hearing date.
- The City of Dallas Chief Arborist recommends that this request be granted with the condition that the applicant is required to comply with his submitted alternate “Tree Mitigation Plan” and “Tree Mitigation Plan Summary.”
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property (in this case, a site where 20 of the 130 lots have been sold and developed).
  - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees removed on the site by planting them back on the site up to 36 months from the board public hearing date) will not adversely affect neighboring property.
- If the Board chooses to grant this request, and impose the submitted “Tree Mitigation Plan” and “Tree Mitigation Plan Summary” as a condition, the applicant would be required to fully comply with the Tree Preservation Regulations with one exception: timing of planting replacement trees on the subject site – an exception that would extend the 30 day - 18 month time period to mitigate/plant replacement trees on the subject site from February 12, 2008 to full mitigation within 36 months from the date of the Board of Adjustment public hearing in February of 2010.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2010**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 090-028** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted “Tree Mitigation Plan” and “Tree Mitigation Plan Summary” is required.

**SECONDED: Gabriel**

**AYES:** 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 090-022

**BUILDING OFFICIAL’S REPORT:**

Application of Jeff Carpenter for a variance to the side yard setback regulations at 6538 Linden Lane. This property is more fully described as Lot 12 in City Block 10/7445 and is zoned R-16(A) which requires a side yard setback of 10 feet. The applicant proposes to maintain a structure and provide a 5 foot side yard setback which will require a 5 foot variance to the side yard setback regulations.

**LOCATION:** 6538 Linden Lane

**APPLICANT:** Jeff Carpenter

**REQUEST:**

- A variance to the side yard setback regulations of 5’ is requested in conjunction with obtaining a final building permit on a recently constructed two-story single family home, a portion of which is located in the site’s western 10’ side yard setback.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Although the site slopes southward from Linden Lane to a creek bed, is irregular in shape, is (according to the application) 0.3 acres or approximately 13,000 square feet in area (which is slightly less than the 16,000 square feet of most lots in R-16(A) zoning), and has a “7.5’ esm’t” that runs the course of the site along its southern boundary, the applicant has not substantiated how any/some/all of these features results in being unable to develop the subject site/parcel of land in a manner commensurate with development found on other R-16(A) zoned lots. On the contrary, the submitted site plan shows a 15’ 4 ½” side yard setback on the east a distance which would allow the exact same building footprint of the existing house to have been shifted eastward 5’ out of/ and in compliance with the site’s western side

yard setback while simultaneously being located out of/ and in compliance with the site's 10' eastern side yard setback.

- The applicant has not substantiated how the house on the subject site is proportionate to or of similar size/scale as other homes in R-16(A) zoning, or how the physical features of the subject site precluded him from being able to comply with the development standards in the Dallas Development Code including the side yard setbacks.

### **STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

### **GENERAL FACTS:**

- The minimum side yard setback on an R-16(A) zoned lot is 10 feet. The applicant has submitted a survey plat indicating a structure that is located as close as 5' from the site's western side property line (or 5' into the required 10' side yard setback).
- According to calculations taken by the Board Administrator from the submitted survey plat, the area of the structure that is be located in the site's western 10' side yard setback is approximately 100 square feet (or approximately 2 percent) of the approximately 5,400 square foot building footprint. According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure that is be located in the site's western 10' side yard setback is approximately 100 square feet (or approximately 2 percent) of the approximately 5,200 square foot building footprint. (Submitted floors plans show that the area of the home in the side yard setback is a portion of the master suite shower, w/c, and closet on the first floor, and a portion of the bath, tub, and w/c of "bedroom #4 on the second floor).
- The site slopes southward from Linden Lane to a creek bed, is irregular in shape (103' on the north, 116' on the south, 157' on the east, and 130' on the west), and is (according to the application) 0.3 acres (or approximately 13,000 square feet) in area. The site is zoned R-16(A) where lots a typically 16,000 square feet in area.

The site plan/survey plat indicates a “7.5’ esm’t” that runs the course of the site along its southern boundary.

- According to DCAD records, the property is developed with the following:
  - a single family structure built in 2008 with 5,064 square feet of living area, and 5,388 square feet of total area;
  - a 569 square foot attached garage;
  - a 300 square foot attached garage;
  - a 483 square foot outbuilding;
  - a pool; and
  - a 324 square foot outbuilding.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A and B). This information included an “explanation” of the request and related exhibits, and a site plan.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: R-16(A) (Single family district 16,000 square feet)  
North: R-16(A) (Single family district 16,000 square feet)  
South: R-16(A) (Single family district 16,000 square feet)  
East: R-16(A) (Single family district 16,000 square feet)  
West: R-16(A) (Single family district 16,000 square feet)

#### **Land Use:**

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

#### **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

#### **Timeline:**

October 14, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 21, 2010: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 28, 2010 The applicant submitted additional information to the Board Administrator (see Attachment A).

Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, the Sustainable Development Department Project Engineer, and the Assistant City Attorney to the Board.

Feb. 5, 2010 The applicant submitted additional information to the Board Administrator (see Attachment B).

Feb. 5, 2010 A petition signed by nine neighbors/owners in opposition to the application was submitted to staff (see Attachment C).

**STAFF ANALYSIS:**

- This request focuses on obtaining a final building permit on a recently constructed two-story single family home structure, a portion of which is located in the site's western 10' side yard setback.
- The submitted survey plat and site plan indicate that approximately 100 square feet (or approximately 2 percent) of the approximately 5,200 – 5,400 square foot building footprint is located in the 10' side yard setback.
- The site slopes southward from Linden Lane to a creek bed, is irregular in shape (103' on the north, 116' on the south, 157' on the east, and 130' on the west), and is (according to the application) 0.3 acres (or approximately 13,000 square feet) in area. The site is zoned R-16(A) where lots a typically 16,000 square feet in area. The site plan/survey plat indicates a "7.5' esm't" that runs the course of the site along its southern boundary.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) (Single family) zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) (Single family) zoning classification.
- If the Board were to grant the side yard variance of 5', imposing a condition whereby the applicant must comply with the submitted site plan, the structure encroaching into this setback would be limited to that shown on the site plan which in this case is a portion of an existing single family home that is located as close as 5' from the western side property line or as much as 5' into this 10' side yard setback.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2010**

APPEARING IN FAVOR: Jeff Carpenter, P.O. Box 2711, Keller, TX

APPEARING IN OPPOSITION: Robert Cohen, 211 N. Records # 450, Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-022**, on application of Jeff Carpenter, **deny** the side yard setback variance requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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MOTION: **Schweitzer**

I move to adjourn this meeting.

SECOND: **Gabriel**

AYES: 5– Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**1:11 P.M.** - Board Meeting adjourned for **February 16, 2010.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.