

## SEYMOUR PLANNING AND ZONING COMMISSION

Public Hearing Minutes

6:30pm November 14th, 2019

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TOWN CLERK'S OFFICE

Members Present: Joe Ziehl, Jamie Brennan, Joe Niezelski, Walter Birdsell, Tom Lavranchuk, Leon Sloat

Others Present: Jim Baldwin, Mike Marganski, Kieth Rosenfeld, Bryan Nesteriak and members of the public

Continuation of Bladen's Ridge

### 1. Call to Order

Joe Ziehl, the Chair, called the meeting to order at 6:29.

### 2. Pledge of Allegiance

All stood and recited the Pledge of allegiance.

### 3. Seating of Alternates

The Chair asked for a motion to seat the alternate (Leon Sloat). Motion was made by Joe Niezelski. Motion was seconded by the Chair.

2-2

Joe Ziehl- yes   Joe Niezelski- yes   Jamie Brennan- no   Walter Birdsell- no

The Chair suggested that the Staff outline their questions first before the applicants address the Commission, if that works for the applicant.

Bryan Nesteriak, the Town Engineer, stated that they had a meeting with the applicants representatives, most of the meeting had to do with specific site plan items. He put together a letter and submitted it to the land use department, that does not have to do specifically with what is on the agenda tonight, which, is the text change they are proposing. Nesteriak's comments on the text change have not really changed since last public hearing and that was, outside of Mr. Rosenfeld's comments, he was just worried about building height, building density and building separation. In his opinion, when it comes to the building height, he is more comfortable with a 15-foot separation for each 15 feet of height. The density is something the Commission needs to consider, they just reduced the density and the applicant is now proposing a little less than this, but none the less it is something the Commission should consider. Building separation- there is a 15-foot separation but in Nesteriak's opinion, he is more comfortable with a 25-foot separation. Other than that, things such as landscaping and road design need to be considered.

The Chair stated that Mr. Rosenfeld really needs to comment on the letter that was sent and dated November 8<sup>th</sup>. The Chair wanted to make sure that this letter is a part of the record.

Keith Rosenfeld, the Town Planner, stated that he would read to the Commission his report that he gave to the applicants Counsel and then the applicant will respond back.

Walter Birdsell asked if they all had a copy of the letter from Mr. Rosenfeld.

The Chair responded that no, but they would all have to get one after.

Tom Lavranchuk walked in.

Walter Birdsell stated that he thought they should all have a copy before they start.

The applicants Counsel handed out copies of the November 8<sup>th</sup> letter.

Rosenfeld stated that the memo he is reading was originally sent to Jim Baldwin, the Land Use Director, concerning Bladen's Ridge and it was written on November 7<sup>th</sup>. They are comments from the previous meeting. He read the memo into the record.

These are comments in order to align the proposed AHZ with acceptable multi-family design elements and that was what the goal was in order to put the applicant more on the track of.

Walter Birdsell stated that it was very hard to digest what was just said without having a copy of what Mr. Rosenfeld just said in front of the Commission members. He asked for a copy right now.

The Chair stated that he would like the applicant to go through the staff's responses and highlight where there is agreement and disagreement. After that, we will open it up to all Commissioners to ask questions.

Lisa Feinberg stated that starting with building height they incorporate the requested building height, they proposed a max building height of 45 feet, Mr. Rosenfeld asked instead that they incorporate a maximum of 3 capitol stories, which they have done. Mr. Rosenfeld asked that they measure building height from average grade to the top of the roof. This is more restrictive than the regulations for the Town are, currently the definition of building height in our regulations allow you to measure to the midpoint of the roof, this definition will force them to measure to the highest point of the roof which they have agreed to do as well. Also on building height, they were asked to incorporate a maximum height per accessory structure, 25 feet measured the same way and the applicant was agreeable to that too. Rear yard setback was asked to be increase from 35 feet to 75 feet which is in the multifamily zone, after conversation with staff as to how it would be measured, they have agreed to do this as well. The paved travel lane, they were asked to provide a standard, a minimum of 10 feet unobstructed of paved travel lane and they have agreed to this. Also with this they were asked to include a requirement of conformance with the Town of Seymour subdivision regulations, the standards for construction of Town Roads and they have not incorporated that standard. One of reasons they have not incorporated this standard is because there is actually a conflict between the

zoning regulations and the standards within the subdivision regulations, and this conflict would apply to their site as well. An example is the 10-foot minimum paved travel lane in the subdivision regulations, the minimum is a 30-foot width. There is a maximum road grade of 12 to 14 percent in the zoning regulations and in the subdivision regulations its 10% percent. So, the subdivision regulations are more restrictive and they cannot conform to that. The maximum road grade has been incorporated the 12% maximum except they are allowed 14% for distances not less than 100 feet, they do not need that but they have incorporated the same language that is in the MF regulations. Parking was asked to prohibit parallel parking on the site and also incorporated a 20-foot set back from the property line, they have agreed to the 20-foot setback but they have not agreed to the 20-foot setback but not the parking prohibition. If you look at the site plan, it would become very evident why, there is a significant amount of parking along the roadway in parallel spaces. If they were to eliminate they would not have sufficient parking to support the development including the 28 affordable housing units. Feinberg did want to note that in most cases there is 24-foot clear unobstructed travel way, even with the parallel parking, so there is plenty of room for emergency vehicles to get by, the only place where they have 15 feet is on a one way but there is still significant space for an emergency vehicle to get through. The storm water management was asked to incorporate language that requires onsite detention and they have done that. They were asked to add a landscape buffer of at least 15 feet on rear and side yards whenever it was adjacent to any residential zone, and they have agreed to incorporate that.

To summarize they have agreed to everything except no parallel parking and the requirement for roads to conform to the subdivision regulations.

The Chair asked if this was Mr. Rosenfeld's understanding as well.

Rosenfeld stated yes.

The Chair asked Mr. Rosenfeld on his thoughts on the 2 things the applicant is not willing to do.

Rosenfeld stated that in many communities those construction standards are for both private and public roads and are just meshed together in the regulations. He stated that he would like the applicant to comment on their thoughts and they should conform to one or the other, and since this is a private road and they have asked for a 10-foot travel lane with the slopes and features of a private lane then that comment is probably mute at this point. As to the parallel parking, Rosenfeld thinks that this will probably be a site plan issue that the emergency services people will have to look into and determine if it is a safe situation. The multifamily housing does allow for parallel parking to occur but it really should be determined if it is good or bad as it relates to the site plan itself. So, he wants to defer the question back to the applicant and to the emergency services people for the review.

The Chair asked if Rosenfeld has heard any comments from the Fire Marshal about this issue.

Rosenfeld stated that as he understands the regulations are just at the minimum level and it not necessarily something that would be approved by the Fire Marshal's office. Even with the language that is put into the regulations now, at the end of the day public safety is going to overrule anything.

Feinberg stated that she did bring a copy of a revised text amendment just to memorialize everything, as well as a chart comparing the Multifamily Garden Apartment regulations to the revised AHZ.

The Chair asked Rosenfeld if they were now in agreement with the applicant on the paved travel lane.

Rosenfeld responded yes.

The Chair asked Feinberg since we have given the applicant one concession, could they give us the other.

Feinberg responded that no they could not agree to the no parallel parking.

Rosenfeld stated that the Commission could decide if they are in agreement to make a decision.

The Chair stated that he was just trying to do this by agreement.

Rosenfeld reminded them that he needs to defer to the public safety people about this issue when the site plan is created.

The Chair stated that he would like the Commissioners to comment and ask any questions to staff or the applicant.

Commissioner Jamie Brennan asked if the applicant has looked at traffic and if it will affect 67 or downtown.

Rosenfeld said yes there is a traffic study that is included in the packet.

Jamie said yes but this pertained to the area around there instead of the intersection area, 67, and the downtown area.

Rosenfeld stated that they have not received any other studies or reports from the applicant.

The Chair reminded Jamie Brennan that that is site plan specific.

Commissioner Jamie Brennan also asked if they have incorporated approval from municipal oversight commissions if they have the infrastructure in place at this time to handle the extra capacity for fire and the extra sewer lines.

Rosenfeld responded that as staff they look at that during the site plan stage, not the text and zone change.

Commissioner Jamie Brennan stated that in the text they incorporate in there "at the time of application must submit oversight for approvals by"

Rosenfeld stated that he believes they will get all the site plan approvals at the time of the site plan application.

Commissioner Jamie Brennan stated that he believes that he would rather see it now rather than later because if we assume it will get done assume stands for "Ass out of you and me". Walter Birdsell stated that he agreed with what Brennan was saying and would also like to see it now rather than later.

Lisa Feinberg stated that the water company will not give you a will-serve until you have plans developed to a certain level that is close to construction drawings and that is more than they have at the time of a text change or even a site plan application.

Commissioner Brennan asked even if they know the number of units which is 99, they still cannot get the approval of the company.

Feinberg responded that it is 90 units, but no that is not sufficient amount of information for the water company. She said she can promise that they will not get a building permit unless there is capacity for the water.

John Paul Garcia, the building engineer for this project, stated they have met with the WPCA and they must go back before them. They have given their application to their engineer for review and their preliminary comment was that there is more than sufficient capacity in the existing line. The water authority has a complete set of drawings for preliminary review but as Lisa said most of the time don't even want to see it until it is reviewed by all the Commissions because they don't want to waste their time in doing a study and a pressure test on a project that is not going to move forward. The preliminary results were that there should be sufficient capacity in the lines to service the proposal that they have given them and they have made a formal application and given them a set of plans, but for the most part the authorities such as the state DEEP they don't want to see it until it has been reviewed by the Commission. Yes, they have talked to the WPCA and the water authority and the preliminary indications are they have a sufficient capacity in the lines, and there is another meeting on the 4<sup>th</sup> to keep the process moving.

Commissioner Jamie Brennan said if they had some site plans they should look at the snow storage and things like that from the authorities.

John Paul Garcia stated that none of the authorities want to look at it until it is approved and as Lisa said they cannot get a building permit unless it is all approved, so if there isn't sufficient capacity they will have to put in pumps do maintenance.

Commissioner Brennan stated that he has spoke with Jim and Jim knows what those lines are, but if they have looked at that stuff we need to write it in because the Commission does not want to approve something and have it come back.

John Paul Garcia stated that this is still the zone/text change and they still have to go to site plan review.

Lisa Feinberg stated that sort of prevision does not exist in the regulations for any other sort of multifamily development so she believes these things get worked out in connection with the site plan.

Commissioner Brennan stated that they are revising the town's regulations on a regular basis these days and that is why he is trying to get something to put down in writing because he has not even been given a complete full copy of the regulations.

Walter Birdsell asks if the whole project is based on affordable housing, how can they do that when there is only 24 units of affordable housing and 90 units in total? He stated that if they want affordable housing, put 2 or 3 family housing in the area not a 90-unit complex that will ruin the whole neighborhood. They should either be affordable housing or not. The bottom line is money on their end and the applicant is not thinking about the people in the neighborhood. If its zoned for multifamily housing, they should have it stay that way.

Lisa Feinberg stated that she respects his opinion but the project conforms to the statutory requirements for affordable family housing.

Tom Lavranchuk asked what one thing was on the map and Lisa stated that it was just the retaining wall.

Commissioner Birdsell asked if she had a response to his remarks.

Lisa Feinberg stated that she did respond, the project conforms to the statutory requirements for affordable family housing, 30% of the units are affordable at less than 80% of the state median income and it will be deed restricted that way for 40 years.

Commissioner Birdsell stated that it doesn't benefit the town whatsoever.

Feinberg stated that she has a list of municipal benefits that she passed out.

Commissioner Birdsell stated that he did not care about any of these benefits, he only cared about the people.

The Chair stopped the Commission to remind them that they all need to let one person speak at a time. He asked Feinberg to elaborate on the municipal benefits.

Feinberg stated that these are mainly economic benefits that will come in with this project if it is approved all around.

- Site change application fee
- Site plan application fee
- Building permit fee
- Sewer connection fee
- Estimated \$400,000 a year in property taxes

Commissioner Birdsell stated that none of these things benefitted the town's people in the room right now at all and asked if Feinberg cared about them.

Feinberg stated this was an unfair assumption.

Commissioner Birdsell stated these people live there year-round and deal with the Callahan House, Cogwell behind them, the road is terrible, and they have big problems. He understands the town is going to get some money, however, these are the people are not going to benefit from anything.

The Chair stated that this is not the appropriate time to discuss, he understands what Birdsell is saying, however the site plan application will be a better time to discuss this.

Commissioner Birdsell stated that it isn't, it is public hearing and this is the time they should discuss, so that the public hears their comments.

The Chair asked if Birdsell had any other comments.

Commissioner Birdsell stated at this time no, but he might have more.

Jim Baldwin told the Chair that it might be wise to refer to Counsel right now on the text and zone change that they are listening to.

Attorney Pat Sullivan reminded the commission that what they are talking about right now isn't site specific even though it is designed for this property and the applicant wants to put this project up on this property, this is not for site specific analysis because right now they are talking about the text change. Right now is in connection to affordable housing application, so the Commission should be sensitive to the changes that would be made in connection to public safety and things of that nature, but it isn't site specific at this time. The project is going to be subject to all site approvals, whether they are state or local approvals, they are all going to be subject to that. She understands that this is a hotly contested issue, but right now what they are talking about is not site specific it just has to do with the regulations. The Commission

should be looking at the regulations and deciding if there are things in there that go against the public's health and safety, but not in regard to this particular project.

The Chair agreed with what counsel stated and reminded them in December is when there will be times for site specific questions.

Commissioner Birdsell said this is the reason why the people come to the public hearing, to hear what the commissioners have to say on this subject. He has been sitting on this Commission for a long time and he knows how it works, these people will not get a fair say.

Tom Lavranchuk stated that if you took the affordable housing portion out of it, this site would be left with roughly 63 units for the project, so no matter what this site is getting developed, either it is going to be 60 units or 90 units and that is what this Commission is trying to decide here.

The Chair agreed and stated that they discussed this last meeting, in fact as the regulations stand right now, before any of the regulations happen, they can put 60 units in with no questions asked.

#### 4. Public Comment

Attorney Pat Sullivan stated that she did not believe anyone has seen the actual regulations that have been amended, Attorney Feinberg stated that she had it, so maybe it was a good idea for people to look at it while they go up to speak.

Commissioner Birdsell stated that if the applicant has anymore paperwork they should just hand it out now so they do not have to continue to ask. The applicant agreed and did so.

The Chair wanted to open up to public comment. He asked for anyone in favor of the project. Seeing no one, he called up anyone opposed to the application.

Sarah Castro from 10 Spring Street read her letter into the record and presented signatures in opposition to the project.

Cynthia Zukus from 270 Pearl Street stated that she understands that tonight's discussion is between the lesser of two evils, multi-family verses affordable housing. She read the definitions of both, stating that going to AFZ housing it helps the developer get approval as well as a significant tax deduction. If the board turns down the affordable housing, the developers will appeal it and take it to the courts. By taking it to the courts, by doing this any stipulations that the landowners or Commission put in, will be lost, so hopefully something can be decided here at the public hearing so it is not lost in a very expensive court session. She also stated that a big issue is the size of the development, it was approved originally for the 64 units but that does not mean that they should be able to add more units because they changed it to affordable housing to add up to 90 units. Affordable housing means that up to 30 or 40% of the units



should be affordable. This would still include the 64 units and 30% of those units should be affordable. This would bring the 11 units down to the recommended units to 7 to 5 which would make more sense. She understands that it is all a business, and it makes them money, but it doesn't really make the Town of Seymour more money. Medical, fire, police and sewer are just a few things that will be affected and cost the town money. The constant sewer usage is going to use so much water and the current sewer pipes will not be able to sustain it. If this development is downgraded, it would work for the community, but not if it is this big. The town of Seymour built the senior housing on Smith and Walnut Street and it was fine until affordable housing got involved and now the police and the fire are all involved and it causes a lot of problems.

Michael Gerentano from 36 Smith street reminded the Commission that this is the last part of the process in which they can stop the development from happening. He stated he runs a business and that there are small portions where this will benefit the town of Seymour. He works for a business and they don't look for small portions that will benefit the company, they look for large jobs that will have a continuing positive economic effect on the community. The money that is going to come in from this project will be a one-time thing, the taxes will not help because the amount of people this will bring in will just burden the town. He understands these are not zone change specific issues, but this is the last part where you can stop the project from happening. Right now, if they cannot change the R18 zoning they cannot get the entrance and they cannot build the project.

The Chair stated to avoid court, they have to have neither the town's people or the applicant appeal. If one party appeals to Court and court rules that the state of CT laws were not upheld in the decision, they will overturn it and the applicant will be able to build it anyways. The Commission is in a position unfortunately to follow the laws of the state, so that the people in towns will not be able to appeal. As long as the applicant shows, that they are right the Commission cannot turn it down.

Chris Calkins from 19 Spring Street asked the chair if the proposal gets denied to combine the 2 properties, and the 60 properties go ahead to be developed, can the other piece of property continue to be developed at a separate time?

The Chair stated that the applicant owns them and he can develop as they wish.

Sarah Calkins from 19 Spring Street asked what would have to happen to go back to the 64 unit and have that percentage be affordable housing and can we discuss that with the developers.

The Chair stated that the applicant's counsel will answer that question later. He also reminded the people that after the hearing is closed tonight and when the Commission discusses all of this, the people are welcomed to join and listen but they will not be permitted to stand up and talk at the hearing. He urged the people to stand up and say what they would like because they will not take any more info from the public.

Helen Knapp from 13 Spring Street stated that she agrees with the other comments and that she opposes the development. She believes they have a very nice quiet neighborhood and that this will not benefit it. She also wants to know why overnight a yellow line came through the road and what it means. All of the people on the road back out of their driveway, and if there are 2 or 3 bedrooms per unit which will bring in a lot of cars and it will not fit.

Doug Mylon from 3 Spring Street stated that he and his wife has lived there for 43 years. He stated that this project will create a chaotic feeling in the neighborhood. He says he feels this way and everyone else in the area does too.

Christopher Calkins from 19 Spring Street stated that no one has sidewalks, and currently he can walk down the street safely, but with this development there will be so many cars he probably will not be able to walk down the road safely. Other people on the side of Pearl have sidewalks, but they do not. When this development comes in he will not be able to safely walk down the road with his children and will be forced to take them out of the neighborhood in order to play outside.

Walter Birdsell stated that when he thinks of this project, he thinks of Olsen Drive in Ansonia and all the buildings of affordable housing. This project here in the small area will creating many problems. Downsizing it might help, but 90 units will not work. He asked the commissioners if they have all visited the area and stated that they cannot be expected to make a decision if they have never visited the area.

The applicant addressed the Commission and the public. Lisa Feinberg stated that she couldn't say if they can downsize but from a regulation perspective there really is no reason to increase the minimum density. If this is the standard, there should be no reason to downsize unless there is a public safety hazard that they can find. She believed Sarah asked about deed restricting the affordability for a period of time, which is would be deed restricted for the next 40 years. There is a new traffic study being done and that will be available to the neighborhood as well, they plan to submit a new study to the Commission and it will be available to the neighborhood as well. The WPCA will be reviewing the sewer system, the infrastructure will all be brand new and the drainage will be modified to go down the street instead of across. They continued the meeting with IWC a few days last month and will be back before them on the 25<sup>th</sup> of November. They will be consulting with DEEP as John Paul mentioned earlier, they will be giving their final approval on the storm drainage. In terms of the noise impact on children, the noise will be about the same as if they are building 63 units or 90 units.

The Chair asked how long the project would take.

Lisa responded the construction will take a year in total. She is happy to discuss the ascetics with the neighbors and the architect would say they have designed an attractive building and a robust landscaping plan that will come along with the site plan. In terms of taxing the municipal resources, there are many studies that were done that state single-family homes are more taxing on the water supply than multifamily. It is more sustainable approach to density, which is

why it is more affordable. To answer the question about developing on separate sites of the properties, theoretically yes that could be done. In terms of the local sidewalks, that could be addressed with the local Selectman. She also submitted a letter that demonstrates that the standard parking they have is appropriate.

Walter Birdsell stated that a resident asked him to address the applicant and ask whom would be living in these affordable housing units, would they be citizens of the U.S. or would they be illegal.

Feinberg stated that she was not positive how to respond to this question but there will be applications and background checks done, and all people would be welcomed.

Far Right asked the residents that were present today to raise their hands if they were opposed to the text change, not if they were opposed to the project. Almost all hands of the public were raised.

Jamie Brennan asked if the internal roads would include sidewalks and could it be included in Spring Street to try and seek some median ground.

Feinberg stated that she was happy to discuss that with her client but that's more of a site plan question.

Tom Lavranchuk asked Counsel if they deny the text change if they could still move ahead with this.

Counsel responded that they could move forward with the affordable housing and the site plan review without a text change. They can still move ahead with this even if they deny the text change but if the town have a regulation in place, they will have to conform their project to the regulation. That is why the terms of the regulations would be important, if the regulations stated terms that you would accept, not only on this property but every property that might be available, then the projects come in and will conform to that. The projects can always come in without a regulation under the affordable housing statute, basically it is a density bonus for developers.

The Chair stated this was precisely why they opened this as second half of the hearing, by seeing where the applicant is, where the Commission is, where the public is, and discuss and negotiate get favorable terms for both sides.

Walter Birdsell stated that the Commission would not be in this spot if it were not for the staff. On Route 34 they want multifamily housing, Jamie and himself said no, but they approved it in August. Birdsell puts it on the fault of the staff for letting these things get this far.

Counsel stated from the perspective of affordable housing it makes no difference whatever regulations you have in affect now, unless you can come up with a written health and safety

reason why you cannot approve a project, you can deny it, go to court, and spend hundreds of thousands of dollars defending it and then lose. It does not have anything to do with what the rest of the zoning is in town unless there is a public safety issue.

Tom Lavranchuk said the zoning changes that were made was the only public hearing that he has been to where most of the answers were favorable, which was not so much the Board. This is about the recent changes to the garden apartment zone change. There were many people who were encouraging economic development in town.

Attorney Pat Sullivan stated that if any of the Commission members wanted to put in a decision that would be related to a denial, it would have to be in the record before you close the public hearing. The statute is remedial; its purpose is to assist property owners in overcoming local zoning regulations, statute requires the Commission to state its reason and analysis in writing, Commission in its denial and resolution must discuss with reference to the record how each of the reasons for denial satisfies the criteria stated in the statute. The statute eliminates the traditional judicial deference to Commission factual findings and regulatory interpretations for all types of Planning and Zoning applications including zone changes, and regarding the statutory criteria and for substantial public interest in health and safety (this is the only reason that will be upheld on appeal). Therefore, the Commissioners need this information in the record and you must write the denial as if you are speaking to the judge. This must be said aloud and be placed into the record. Commission has to identify the type of harm that will allegedly result from approval of the application and the probability of that harm. These are the ground rules if an appeal is taken. If this Board comes to a denial there needs to be a basis for defending that is in the record.

The Chair responded that now this comes to the question, what does the Board have by way of evidence that there is a threat to the public health and safety. He asked if there was any other evidence that the Commissioners would like to put into the record for a legitimate threat to the public safety. He asked counsel if they can approve with modifications, but can they approve without knowing the modifications.

Attorney Pat Sullivan replied that yes, but she suggests that if they are going to make a change to a regulation, they give the applicant the opportunity to see whether it is something they can agree to or not. Once the Commission gets into the portion of the hearing where they cannot have input from the applicant or the public, you deny yourself the opportunity to ask "if we ask this instead could this work". The thing with a zone change is that if this lands in other spaces, will it be a public hazard there.

The Chair asked if they could continue the hearing since they cannot make these decisions today because it would make sense to draft a motion, share it with counsel, come back and have a discussion and then make a decision. He believes it's worth investing time so that any changes are made.

Walter Birdsell said he agreed.

Tom Lavranchuk asked if they could work on building an area for children to play.

Lisa Feinberg stated that she was more than willing to allow that and would send it in writing to staff if need be.

Walter Birdsell asked if there was any possibility of downsizing a little.

Feinberg stated that she has heard from the neighborhood and that is something she will discuss with her client.

Tom Lavranchuk asked them to add street lighting to the sidewalks and the storm drainage on the road is not good so they should continue to look at that over the next month.

Walter Birdsell recommended that they should add an area for children to play in otherwise the children will get into trouble.

Feinberg agreed she would look into the concerns.

Jim Baldwin mentioned that to add to Commissioner Birdsell's comment, that falls under the units per acre or the density figure, which should be a standard throughout the town instead of something site specific.

Feinberg stated that just to clarify, that is a regulation that could apply to any MF zone and a portion of the R18 but it needs to be coupled with a zone change. It would not be automatically applied to every zone change. If there are any other comments that come up staff can absolutely communicate with the applicant over the next month.

The Chair stated that they would continue at 6:30pm Thursday December 12<sup>th</sup>.

Submitted by,

Malia McCool