



**CITY OF NEWPORT BEACH**  
**COMMUNITY DEVELOPMENT DEPARTMENT**

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Newport Beach, California 92660

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## Memorandum

**To:** Planning Commission  
**From:** Rosalinh Ung, Associate Planner  
**Date:** November 2, 2017  
**Re:** Agenda Item 2 – Ginsberg Residence (PA2016-170)  
Draft Resolutions

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Attached for the Planning Commission review and consideration are the draft resolutions for the proposed Ginsberg Residence. Attachment PC 1 is resolution for approval with findings and conditions. Attachment PC is resolution for denial.

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# **Attachment No. PC 1**

Draft Resolution for Approval

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## RESOLUTION NO. 2069

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING VARIANCE NO. VA2016-005 AND COASTAL DEVELOPMENT PERMIT NO. CD2017-080 TO ALLOW THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE, FOR PROPERTY LOCATED AT 2607 OCEAN BOULEVARD (PA2016-170)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Nicholson Construction on behalf of the Ginsberg Family Trust (“Applicant”), with respect to property located at 2607 Ocean Boulevard, in the City of Newport Beach, and legally described as a portion of Block 0-32 of Corona Del Mar, in the City of Newport Beach, County of Orange, State of California, as per map recorded in Book 3, Pages 41 and 42 of Miscellaneous Maps, in the Office of the County Recorder of said county (“Property”), requesting approval of a coastal development permit and a variance.
2. The Applicant requests a coastal development permit to allow the construction of a new 4,500 square-foot, single-family residence and a 683 square-foot, three-car garage, for a total 5,183 square feet (“Development”) and a variance to allow the Development to:
  - a. Exceed the maximum floor area;
  - b. Encroach 10 feet into the 10-foot rear yard setback along Way Lane;
  - c. Encroach 7 feet into the 10-foot front yard setback along Ocean Boulevard;
  - d. Exceed the 29-foot height limit for an elevator shaft by up to 14 feet and portions of the roof deck guardrail to exceed the 24-foot height limit for a flat roof/guardrail by up to 8 feet; and
  - e. Provide open volume within the required setback areas.
3. The Property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached – 6.0–9.9 DU/AC (RSD-B) and the Coastal Zone is Single-Unit Residential (R-1).
5. A public hearing was held on November 9, 2017, in the Council Chambers at 100 Civic Center Drive, Newport Beach in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the public hearing was given in accordance with the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

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## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15315 under Class 3 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction of limited numbers of new, small structures, including one single-family residence. The proposed project is a new single-family residence located within the R-1 (Single-Unit Residential) Zoning District.

## SECTION 3. REQUIRED FINDINGS.

### Variance

In accordance with NBMC Section 20.52.090(F) (Variances – Findings and Decision), the following findings and facts in support of such findings are set forth:

### Finding:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

### Facts in Support of Finding:

1. The Property is approximately 4,257 square feet in area and slopes from Ocean Boulevard down to Way Lane with approximately a 35-foot grade difference.
2. The Property is shallow with a lot depth ranging from 35 to 53 feet. The lot is also 110 feet wide.
3. The limited lot depth after applying the 10-foot front and rear results in a sloping building pad that would be 15 to 33 feet deep. The standard front and rear setbacks comprise approximately 51 percent of the total lot area.
4. The lot is disproportionately shallow relative to its width resulting in a long and narrow building envelope. The long narrow portion of the lot would allow a maximum building area only 15 feet in width and represents over 65 percent of the total area of the lot.
5. The unusual lot shape and topography of this lot do not generally apply to other properties in the vicinity under the same R-1 zoning classification.

Finding:

*B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

1. The strict application of development standards including setbacks, floor area limit, building height and open volume to this constrained lot result in a buildable area of 1,910 square feet and new residence of approximately 2,865 square feet in size. This is significantly diminished compared to other properties in the vicinity and same zone that have an average of 5,500 to 6,500 square feet in size.
2. The condition of the Property directly impacts the allowable floor area for the lot, and the ability to comply with open volume and setback requirements. The site constraints create challenges to design a residence of comparable height and position to other properties along Way Lane without providing relief from these code standards.
3. The extreme variation in grade creates the further hardship for compliance in the 29-foot height limit as it relates to the elevator and guardrail to a roof top deck designed to be below the top of Ocean boulevard curb height limit.

Finding:

*C. Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

1. Without granting the variance request, the Property owner could only build 2,865 square-foot residence that is substantially smaller than what could be constructed on a typical rectangular R-1 lots in Corona del Mar.
2. When comparing the subject lot with other Way Lane bluff lots that are in the same zone, the other lots can accommodate larger with homes floor areas well above 5,000 square feet on average.

Finding:

*D. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Fact in Support of Finding:

Approval of the variance request allows the Property owner to develop a 5,183 square-foot residence that is comparable in size, height, and setback yard encroachments with other lots along Way Lane that are identically zoned.

Finding:

*E. Granting of the variance will not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

Facts in Support of Finding:

1. The proposed residence will not adversely impact public views from Ocean Boulevard because it complies with the top of curb height restriction and would not interfere with neighborhood compatibility, private views, and privacy with the neighboring and abutting properties.
2. The proposed setbacks will not affect the flow of light or air to adjoining residential properties as adequate separation is provided since there are no adjacent properties along the Property lines for which the encroachments are requested.
3. The existing garage setback encroachments have not proven detrimental and the new residence would improve the existing encroachments by removing any encroachments into Way Lane. The City's Traffic Engineer has reviewed and approved the proposed design including the proposed encroachments within the Way Lane setback and garage locations and access to Way Lane. Vehicular access to the project can be accommodated as proposed and it would not pose an undue hazard to access along Way Lane.
4. The new residence has been designed with articulation and modulation so it will not impact privacy for the abutting properties beyond that of the existing residence because the design complies with the setback along the east Property line where there is an abutting residence and the primary common living spaces are oriented toward the west of the Property where no residence is located.
5. The requested height deviation would not create visual impacts to the adjacent properties and obstruct any public views from Ocean Boulevard. With exception for the elevator shaft and portion of deck guardrail, the entire residence complies with the building height requirement. The granting of the variance will not adversely impact public views from Ocean Boulevard because the proposed structure complies with the top of curb height restriction.
6. To minimize disruption caused by demolition and construction to the nearby residents, the applicant has submitted a construction management plan that has been reviewed and approved by the City's Public Works Department thereby ensuring no impact public access in the vicinity and to maintain street/emergency access during construction.



Finding:

*F. Granting of the variance will not be in conflict with the intent and purpose of this section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

1. Granting the variance request would not increase the density beyond what is planned for the area, and will not result in additional traffic, parking, or demand for other services; and will not adversely impact the designated public views from Ocean Boulevard as it adheres to the top-of-curb height restrictions.
2. The proposed variance request provides similar setbacks for the property consistent with the existing development pattern along Way Lane that presently encroaches within setbacks.
3. Due to the site topography, narrow shape of the Property and top of curb height limit, the requested setback encroachments, buildable area for development based on the proposed setbacks to yield a comparable floor area, deviation on the location of open volume areas and height limit exceptions are appropriate for the Property.
4. The Property is not located within a specific plan area.

Coastal Development Permit

In accordance with NBMC Section 21.52.015 (F) (Coastal Development Permits - Findings and Decision), the following findings and facts in support of such findings as set forth:

Finding:

*A. Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The proposed design, bulk, and scale of the Development is consistent with the existing single-family neighborhood pattern of development and expected future development.
2. The Property is located in an area known for the potential of seismic activity and liquefaction and is required to comply with the California Building Code ("CBC") and City's Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
3. Pursuant to NBMC Section 21.35.050, due to the Development containing more than 75 percent of impervious surface area and hillside development on a slope greater than

15 percent, a Water Quality and Hydrology Plan (“WQHP”) is required. The WQHP has been reviewed and approved by the City’s Building Division.

4. With the granting of the requested variance, the proposed Development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation granted by the variance is 5,183 square feet and the proposed floor area is 5,183 square feet.
  - b. The proposed Development complies with the required setbacks, as approved by this variance, which are 3 feet along front setback on Ocean Boulevard; 0 feet along rear property line on Way Lane; and 4 feet along the west and east Property lines.
  - c. The entirety of the home, with the exception of the elevator shaft and a small portion of a roof deck guardrail is less than 29 feet, measured from established grade. Additionally, the entire structure is below the curb line of Ocean Boulevard, as required for development on the Bluff side of Ocean Boulevard.
  - d. As the proposed Development includes more than 4,000 square feet of livable floor area, a three-car garage is required. The proposed Development provides a three-car garage.
  - e. A minimum of 518 square feet of open volume area is required and the proposed residence includes 648 square feet of open volume area provided.
5. Proposed landscaping complies with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought tolerant and prohibits invasive species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.

Finding:

*B. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Fact in Support of Finding:

1. The existing residential lot does not currently provide nor inhibit public coastal access. The Property is more than 200 feet from the nearest public beach and the proposed Development will remain a residential lot. The Development will not impact public access to local coastal resources and is not located between the sea or shoreline and the nearest public road.

2. The new residence would be constructed at a height below the adjacent curb line of Ocean Boulevard, as required by Code, thereby protecting any views from this public road and maintaining visual access to this coastal resource. Since there are no pedestrian access ways on the Bluff side of Ocean Boulevard, visual access would be preserved for vehicular access. Pedestrian visual access on the land side of Ocean Boulevard would not be affected.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby approves Variance No. VA2016-005 and Coastal Development Permit No. CD2017-080, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. The Variance action shall become final and effective 14 days following the date this Resolution was adopted, unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
3. The Coastal Development Permit action shall become final and effective 14 days following the date this resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with NBMC Section 21.64.035 and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 9<sup>th</sup> DAY OF NOVEMBER 2017.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Peter Koetting, Chairman

BY: \_\_\_\_\_  
Erik Weigand, Secretary

## EXHIBIT "A"

### CONDITIONS OF APPROVAL

*(Project-specific conditions are in italics)*

#### **PLANNING**

1. The Development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the City's Building Division and field sets of plans prior to issuance of the building permits.
5. Prior to the issuance of a building permit, the Applicant shall submit a final landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the City's Planning Division.
6. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
7. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the City's Planning Division.
8. Prior to issuance of a building permit, the Applicant shall submit to the City's Planning Division an additional copy of the approved architectural plans for inclusion in the application file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Variance and Coastal Development Permit application.

9. Prior to issuance of a building permit, the approved Construction Pollution Prevention Plan (“CPPP”) and Water Quality and Hydrology Plan (“WQMP”) shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CPPP and WQMP and any changes could require separate review and approval by the City’s Building Division.
10. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
11. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
12. Best Management Practices (“BMPs”) and Good Housekeeping Practices (“GHPs”) shall be implemented prior to and throughout the duration of construction activity as designated in the CPPP.
13. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
14. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.
15. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
16. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
17. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of NBMC Title 20 Planning and Zoning.
18. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses

(including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Ginsberg Residence including, but not limited to, Variance No. VA2016-005 and Coastal Development Permit No. CD2017-080. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Public Works Conditions**

19. The proposed project shall extend the City sidewalk from the existing terminus to the area adjacent to the existing guardrail per City Standard STD-180-L.
20. The proposed walkway, stairs, guardrails, retaining walls (to support walkway and landings only), landing, drain lines and landscaping within the Ocean Boulevard public right-of-way shall require approval by the City Council. If approved by City Council, an encroachment agreement between the City and property owner shall be required.
21. All proposed landscaping within the Ocean Boulevard right of way shall be reviewed and approved by City's Municipal Operations Department, General Services Division and City's Public Works Department. Proposed landscaping shall be installed and maintained by the Property owner. Landscaping within the public right-of-way shall be low-growing ground cover or shrubs limited to 36-inch high maximum.
22. Reconstruct all damaged concrete sidewalk panels, curb and gutter along the Ocean Boulevard and Way Lane frontages shall be determined by the City's Public Works Department.
23. No structural encroachments, including but not limited to, retaining walls (for residence), caissons, tiebacks shall be permitted within the public right of way.
24. No staging/storage of materials shall be permitted within the public right-of-way.
25. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the City's Public Works Inspector.

# **Attachment No. PC 2**

## Draft Resolution for Denial

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## RESOLUTION NO. 2069

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DENYING VARIANCE NO. VA2016-005 AND COASTAL DEVELOPMENT PERMIT NO. CD2017-080 TO ALLOW THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE, FOR PROPERTY LOCATED AT 2607 OCEAN BOULEVARD (PA2016-170)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Nicholson Construction on behalf of the Ginsberg Family Trust, (“Applicant”) with respect to property located at 2607 Ocean Boulevard, in the City of Newport Beach, and legally described as a portion of Block 0-32 of Corona Del Mar, in the City of Newport Beach, County of Orange, State of California, as per map recorded in Book 3, Pages 41 and 42 of Miscellaneous Maps, in the Office of the County Recorder of said county (“Property”), requesting approval of a coastal development permit and a variance.
2. The Applicant requests a coastal development permit to allow the construction of a new 4,500 square-foot, single-family residence and a 683 square-foot, three-car garage, for a total of 5,183 square feet (“Development”) and a variance to allow the Development to:
  - a. Exceed the maximum floor area;
  - b. Encroach 10 feet into the 10-foot rear yard setback along Way Lane,
  - c. Encroach 7 feet into the 10-foot front yard setback along Ocean Boulevard;
  - d. Exceed the 29-foot height limit for an elevator shaft by up to 14 feet and portions of the roof deck guardrail to exceed the 24-foot height limit for a flat roof/guardrail by up to 8 feet; and
  - e. Provide open volume within the required setback areas.
3. The Property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached – 6.0–9.9 DU/AC (RSD-B) and the Coastal Zone is Single-Unit Residential (R-1).
5. A public hearing was held on November 09, 2017, in the Council Chambers at 100 Civic Center Drive, Newport Beach in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the public hearing was given in accordance with the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

## SECTION 3. REQUIRED FINDINGS.

### Variance

The Planning Commission may approve a variance application only after making each of the required findings set forth in NBMC Section 20.52.090(F) (Variances – Findings and Decision). In this case, the Planning Commission was unable to make the required findings for the following reasons:

1. The Planning Commission determined, in this case, that the proposed Variance for the Development is not consistent with the legislative intent of Title 20 of the NBMC and that findings required by Section 20.52.090 are not supported in this case. The Development may prove detrimental to the community.
2. The design, location, size and characteristics of the Development are not compatible with the single-family residences in the vicinity. The development may result in negative impacts to residents in the vicinity and would not be compatible with the enjoyment of the nearby residential properties.

### Coastal Development Permit

The Planning Commission may approve a coastal development permit application only after making each of the required findings set forth in NBMC Section 21.52.015 (F) (Findings and Decision). In this case, the Planning Commission was unable to make the required findings for the following reasons:

1. The proposed residence does not conform to all applicable residential development standards as the Development does not comply with floor area limitation, setbacks, height and open volume requirements.

## SECTION 4. DECISION.

### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby denies Variance No. VA2016-005 and Coastal Development Permit No. CD2017-080.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the

Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 9<sup>th</sup> DAY OF NOVEMBER, 2017.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Peter Koetting, Chairman

BY: \_\_\_\_\_  
Erik Weigand, Secretary