

Town of Indian Trail



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**PLANNING AND DEVELOPMENT DEPARTMENT
BOARD OF ADJUSTMENT MINUTES**

**July 28, 2016
6:30 P.M.**

**1. Call to Order
2. Roll Call**

The following members of the governing body were present:

Board Members: Daniel Takah, Shirley Howe, Christopher Chopelas, Patrick O'Connor, Kat Miller, and John Eigenbrode.

Members Present but not Keith Merritt- Town Attorney

Voting:

Absent: None.

Staff Members: Pam Good-Board Secretary, Rox Burhans-Planning Director, and Julia Zweifel-Planner
Tripp Melton has moved out of district. Seat #1 is now vacant.

3. Swearing in of new members

Daniel Takah was sworn in. Term 7/1/16-6/30/19 Seat #2

Kat Miller was sworn in. Term 7/1/16-6/30/19 Alternate #3

Election of officers

Chair-Daniel Takah

Motion by Member Howe, seconded by Member Chopelas. Vote was unanimous in favor.

Vice Chair-Chris Chopelas

Motion to approve by Chair Takah, seconded by Member O'Connor. Vote was unanimous in favor.

4. Approval of Minutes - May 19, 2016 Motion to approve by Member Howe, seconded by Member Eigenbrode.
Vote was unanimous.

5. Public Hearings-

Pat O'Connor asked to be recused from the first two cases. Member Howe made a motion to recuse Member O'Connor for first two cases on the agenda, seconded by Member Eigenbrode. Vote was unanimous in favor. Member O'Connor was replaced at the dais by Alternate Member Miller.

Member Howe asked if the application must be submitted at least 45 days prior to a Board of Adjustment meeting. Director Burhans answered that it is an administrative guideline. Attorney Keith Merritt verified that it was an administrative guideline in place more for the protection of staff.

Chair Takah read the fairness issues to the seated board members, then swore in the speakers for all cases and staff present for the evening.

a) SUP2016-002- Dog Board, Day Care, Grooming: Applicant is requesting an SUP for an indoor kennel for dogs in an existing building of approximately 12,000 square feet, with a proposed outdoor exercise yard. Property is at 101 Post Office Dr. Applicant: John Kirk

The case was presented by Staff Planner Julia Zweifel. She began the presentation with an overview of the project as well as a site plan showing photos of the site stating that it is currently zoned Regional Business District. She stated that the comprehensive plan would not indicate any change in use. An appraisal report by Morrison Appraisals, LLC was provided to the board members.

Outside Agencies- There were no comments from outside agencies.

Plan Consistency- Staff Zweifel read the following Plan Consistency statement into the record.

The Board must consider whether the proposed use, located within the US-74 Corridor West Village, is consistent with *Goal 1.3.2 Land Use* of the Comprehensive Plan:

A mix of different types of land uses and the avoidance of potential land use conflicts between neighboring properties and surrounding municipalities.

Staff is of the opinion that the use of this property for an animal kennel is in harmony with the Comprehensive Plan because it will be a less intensive use than the surrounding industrial and commercial/retail uses. The proposed conditions of approval will also help minimize any impacts to surrounding property owners by managing the outdoor animal activities. The animal kennel use will provide convenient access to pet-boarding services for residents and business owners within the US HWY 74 Corridor and to surrounding neighborhoods.

Required Findings- Staff Zweifel read the following required findings into the record.

Pursuant to **UDO Chapter 360.080**, the Board of Adjustment, when considering whether to approve an application for a special use permit, review and evaluate the following:

1. Whether the application is complete.

Staff is of the opinion that the application for SUP2016-002 is complete.

2. The Board will consider whether the application complies with all of the applicable requirements of this ordinance.

If conditioned properly, staff is of the opinion that the application for SUP2016-002 complies with applicable requirements of the ordinance and meets the UDO provisions.

3. If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Chapter 360.030. Such a motion will propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Pursuant to UDO Chapter 360.030, the Board of Adjustment must make the required considerations of public health, safety, and welfare. The Board of Adjustment's authority in the review of this SUP application is broad and the Board may deny or approve with conditions if it concludes, based upon the information submitted at the hearing, that the proposed development will:

- 1. Not materially endanger the public health or safety; and**
- 2. Not substantially injure the value of adjoining or abutting property; and**
- 3. Be in harmony with the area in which it is to be located; and**
- 4. Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.**

Draft Conditions:

If the Board is of the opinion that the above required findings can be made to approve the project, staff recommends the site be subject to the following conditions:

1. All animal boarding/sleeping facilities shall be within the enclosed building; and
2. Open use of the outdoor area by boarded animals shall be limited to daytime hours only; and
3. Outdoor animal activities are limited to the fenced enclosure area; and
4. Bicycle parking UDO requirements shall be provided; and
5. The dumpster shall be screened per UDO requirements; and
6. Fence enclosure that fronts the street shall be screened with shrubbery; and
7. Parking lot shall be striped and ADA compliant; and
8. Any future site improvements that impact parking spaces will be contingent upon applicant ensuring minimum parking is provided pursuant to the UDO; and
9. Business shall comply with relevant Federal, State, and/or County animal welfare/safety regulations; and
10. Any failure to meet these conditions shall be grounds to revoke the Special Use Permit and cease business operations.

Board questions

Chair Takah asked about the time frames in conditions 4-7. Staff Zweifel replied that all conditions must be adhered to prior to occupancy of building. Attorney Keith Merritt verified Staff's answer. Member Miller asked if there are regulations for the number of staff and footage per dog. Also she asked if there are regulations for 24 hour staff. The applicant was asked to address this when he stepped to the podium. Member Howe asked for an explanation of canine grass. Staff Zweifel answered that it was similar to turf, good for cleaning. Member Howe asked if there was outside lighting. Director Burhans replied that he can't speak to lighting that is present today but that the lighting for the daycare that was previously in the building was sufficient. Member Howe asked if the hours of business would be longer. Staff Zweifel answered that the proposed hours of operation would be 9:00am-6:00pm.

Applicant John Kirk of 2868 Beulah Church Rd. Matthews, NC stepped forward to speak. He described canine grass, then stated he didn't believe there is any regulation for 24 hour staffing but his facility will have staff 24 hours/ day. Member Chopelas asked about kennel size regulations. Mr. Kirk replied that he would have kennel sizes for large and small dogs as well as separate playrooms. Member Miller asked what is in a playroom. The applicant replied that it is an open space for the dogs so they aren't locked in their kennels the entire day. Member Miller asked the applicant to describe the training room. The applicant explained that the training room would give folks an opportunity to train with their dogs. Mr. Kirk then stated that the building has lights at the corners and back but none in the parking lot. He also verified the hours of operation as likely 7am-8pm. Member Chopelas asked how dog waste is disposed. Applicant stated the waste can go into dumpsters or can be disposed of by a service; it must be disposed of in a responsible manner. Member Howe asked if it would go into a catch area and possibly be filtered. Mr. Kirk described the manners of cleaning inside and outside.

Worksheets were passed to the board members to complete.

Findings of Fact

1. Whether the application is complete. Motion that it was complete by Member Chopelas, seconded by Member Miller. Vote was unanimous in favor.

2. Whether the application complies with all the applicable requirements of this ordinance.

Motion that it does comply by Member Chopelas, seconded by Member Eigenbrode. Vote was unanimous in favor.

3.If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Chapter 360.030. Such a motion will propose specific findings, based upon the evidence submitted, justifying such a conclusion.

1.Not Materially endanger the public or safety; and

Motion that it does not endanger by Member Howe due to the applicant putting up a fence, outside lighting on the building and the sanitation means in place. Seconded by Member Chopelas. Vote was unanimous in favor.

2. Not substantially injure the value of adjoining or abutting property; and

Motion that it does not injure by Member Howe due to the appraisal report provided. Seconded by Member Chopelas. Vote was unanimous in favor.

3.Be in harmony with the area in which it is to be located; and

Motion that it is in harmony by Member Chopelas because it meets UDO provisions. Seconded by Member Eigenbrode. Vote was unanimous in favor.

4.Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.

Motion that it was in conformity by Member Howe because it is in mixed use land use and avoids conflict between neighbors; also meets the applicable requirements of the UDO as conditioned. Seconded by Member Chopelas. Vote was unanimous in favor.

Applicant Kirk agreed to all conditions.

Motion to approve SUP2016-002 with conditions by Member Chopelas. Seconded by Member Eigenbrode. Vote to approve was unanimous.

- b) **SUP 2016-003 Kindness Kennels:** Applicant is requesting an SUP for an indoor kennel for dogs and cats in an existing building of approximately 4,000 square feet, with a proposed outdoor exercise yard. The property is presently Regional Business District.

The case was presented by Staff Planner Julia Zweifel who began with an overview of the project. The proposed use would be for an indoor animal kennel/boarding facility for dogs and cats, also including daycare and grooming services. Daytime business hours are 7am until 6pm, closing for lunch and kennel maintenance between the hours of noon and 3pm, Monday through Saturday. The business hours on Sunday will be 8am until 11am and 4pm until 6pm. The applicant is proposing an outdoor exercise yard in addition to the indoor kennels.

The 9.32 acre site was developed in 1979. The current owner has owned the property where the proposed use will be located for over six years. The property has been in the same family for more than twenty years. The property contains an existing commercial building of 4,870 square feet, of which the applicant proposes using 3,800 square feet. The remaining square footage of the building will continue to be used as storage for the property owner.

The applicant is proposing to make improvements to the premises as follows:

- Install six foot chain link fence with fabric wind screen for privacy
- Install 7' wide landscaping in front of building and along road frontage
- Install new gravel parking with post and rope parking stalls
- Upfit the building's interior for the new use

Appraisal Report To satisfy the SUP application submittal requirements, an Impact Study was performed on June 20, 2016 by Morrison Appraisal, Inc. The report concludes that the use of the property for a dog kennel is not deemed to injure the value of adjoining or abutting properties.

Outside Agency Comment

There were no comments received from outside agencies.

Plan Consistency- Staff Zweifel read the following into the record: the Board must consider whether the proposed use, located within the US-74 Corridor East Village, is consistent with *Goal 1.3.2 Land Use* of the Comprehensive Plan:

A mix of different types of land uses and the avoidance of potential land use conflicts between neighboring properties and surrounding municipalities.

Staff is of the opinion that the use of this property for an animal kennel is in harmony with the Comprehensive Plan because it will be a less intensive use than the surrounding industrial and commercial/retail uses. The proposed conditions of approval will also help minimize any impacts to surrounding property owners by managing the outdoor animal activities. The animal kennel use will provide convenient access to pet-boarding services for residents and business owners within the US HWY 74 Corridor and to surrounding neighborhoods.

Required Findings

Pursuant to **UDO Chapter 360.080**, the Board of Adjustment, when considering whether to approve an application for a special use permit, review and evaluate the following:

1. Whether the application is complete.

Staff is of the opinion that the application for SUP2016-003 is complete.

2. The Board will consider whether the application complies with all of the applicable requirements of this ordinance.

If conditioned properly, staff is of the opinion that the application for SUP2016-003 complies with applicable requirements of the ordinance and meets the UDO provisions.

3. If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Chapter 360.030. Such a motion will propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Pursuant to UDO Chapter 360.030, the Board of Adjustment must make the required considerations of public health, safety, and welfare. The Board of Adjustment's authority in the review of this SUP application is broad and the Board may deny or approve with conditions if it concludes, based upon the information submitted at the hearing, that the proposed development will:

- 1. Not materially endanger the public health or safety; and**
- 2. Not substantially injure the value of adjoining or abutting property; and**
- 3. Be in harmony with the area in which it is to be located; and**
- 4. Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.**

Draft Conditions- Staff Zweifel read the draft conditions into the record.

If the Board is of the opinion that the above required findings can be made to approve the project, staff recommends the site be subject to the following conditions:

1. All animal boarding/sleeping facilities shall be within the enclosed building; and
2. Open use of the outdoor area by boarded animals shall be limited to daytime hours only; and
3. Outdoor animal activities are limited to the fence enclosure area; and
4. Bicycle parking meeting UDO requirements shall be provided; and
5. The dumpster shall be screened meeting UDO requirements; and
6. The parking lot for the use shall be post and rope parking stalls and shall include ADA compliant space; and
7. The debris and junk accumulated adjacent to the building shall be cleaned up; and
8. Fence enclosure shall be vinyl PVC material; and
9. The fence enclosure fronting the street shall be screened with shrubbery; and
10. Business shall comply with relevant Federal, State, and/or County animal welfare/safety regulations
11. Any failure to meet these conditions shall be grounds to revoke the Special Use Permit and cease business operations.

Questions for Staff-

Member Chopelas asked for Staff to clarify a portion of the site as well as the entrance to the building. Staff Zweifel clarified that the area was divided by an existing fence and located the entrance to the building.

Member Miller asked if there was an inside layout of the building available? How many pets? Staff Zweifel replied that it was not submitted with the application. Member Miller asked about the fencing. Staff Zweifel verified that it was one of the conditions. Member Miller mentioned that traffic will back up in the area. Director Burhans added that the present use would be less traffic intensive than previous uses. Chair Takah asked about the residential home 240 feet away, asking for verification that they were notified. Staff Zweifel replied that area residents were notified and no responses were received from them. Member Howe asked if the applicant was going to put down canine grass. Staff Zweifel answered that the applicant is not proposing to use it. She spoke about future post and rope parking as well as planned landscaping. Member Howe asked about the lighting; are there motion detection lights? Staff Zweifel answered that the applicant could answer that question. Member Howe stated that she was still interested in motion lights. Member Chopelas asked about another portion of the property and what would prevent persons from entering that area. Staff Zweifel answered that existing fencing would prevent that from happening.

Applicant Richard O'Connell at 5200 Moss Cove Court, Monroe, NC stepped to the podium. He replied to the question about entrances to the building. He showed additional entrances. Member Miller asked if the applicant had an inside plan for the building. The applicant replied that he only has what he drafted and isn't complete. Attorney Merritt stated that the board can't require applicants to show the interior plans at this time. Member Miller asked how many animals would potentially be housed in the building. The applicant replied that it could be approximately 60 animals. He also boards for rescue groups that will be in isolation rooms for 10 days to 2 weeks. The applicant stated that he has been in this business for 5 years. He then questioned the board about the requirement of a vinyl fence, requesting that use of other material for a fence for his facility. The applicant presented a picture of his proposed fencing to the board. The board examined it and entered it in the record as exhibit 1. Chair Takah asked staff to comment to types of fencing needed.

Director Burhans stated that type of fencing was largely an aesthetic issue as drivers on Wesley Chapel Road can view it as well as for consistency between the two kennel applications. Also the UDO requires any chain link fencing to be vinyl coated. Member Howe asked about lighting. The applicant showed present lighting and stated that if required, he would put in additional lighting. Member Howe would like to see motion light/additional lighting.

Member Miller expressed her concern with potential accidents if the entrance isn't well light. Attorney Merritt asked staff to clarify what is required in UDO for lighting. Director Burhans answered that when reusing existing older buildings, generally no additional lighting is required. County inspector would be the one to require additional lighting if needed.

Patsy Conklin who lives adjacent to property stated that she is interested in a good fence. She also stated that vinyl fencing would be good. She stated that she had questions about smell and noisy animals. The applicant replied that state law requires kennels be cleaned twice a day; he cleans three times a day. He doesn't require appointments to view his kennel, as he felt it is always clean.

A question arose about which type of fencing to approve. Chair Takah said that if the board decides the present conditions are acceptable, vinyl fence would be required. Attorney Merritt stated that the board must decide conditions of approval tonight. Attorney Merritt also reiterated that the fencing around the entire perimeter must have vinyl if the board votes to accept the conditions as written.

Findings of Fact

1. Whether the application is complete.

Motion to approve by Member Chopelas per staff's recommendation. Seconded by Member Eigenbrode. Vote was unanimous in favor.

2. Whether the application complies with all the applicable requirements of this ordinance.

Motion that it does comply if conditioned properly by Member Chopelas. Seconded by Member Howe. Vote was unanimous in favor.

3. If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Chapter 360.030. Such a motion will propose specific findings, based upon the evidence submitted, justifying such a conclusion.

1. Not materially endanger the public health or safety; and

Motion that it does not endanger by Member Chopelas due to appropriate fencing, lighting, and waste disposal. Seconded by Member Miller. Vote was unanimous in favor.

2. Not substantially injure the value of adjoining or abutting property; and

Motion that it does not substantially injure by Member Eigenbrode due to the appraisal report. Seconded by Member Chopelas. Vote was unanimous in favor.

3. Be in harmony with the area in which it is to be located; and

Motion that it was in harmony if the draft conditions are met by Member Miller. Seconded by Member Eigenbrode. Vote was unanimous in favor.

4. Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.

Motion that it is in general conformity by Member Eigenbrode due to its conformity with RBD and mixed use. Seconded by Member Chopelas. Vote was unanimous in favor.

Applicant O'Connell agreed to all conditions.

Motion to approve SUP2016-003 by Member Chopelas as conditioned by staff. Seconded by Member Eigenbrode. Vote to approve was unanimous.

Member O'Connor returned to the dais for case #3. Alternate Member Miller returned to her seat in the audience.

Speakers for the third case that had arrived later in the meeting were sworn in.

c) **SUP2016-004 SUP2016-004 Black Label Tattoo Co.:** Applicant is requesting an SUP for a tattoo parlor use in an existing tenant suite within the Indian Trail Village Shopping Center (14015 Independence Boulevard).

Planning Director Rox Burhans presented the case to the board. He began with an overview of the proposed site and also spoke of the adjacent land uses. Then Director Burhans proceeded to give the board information about services offered.

The appraisal report prepared by Morrison Appraisal, Inc. provided findings that the operation of a tattoo parlor will not substantially injure the value of the abutting or adjoining residential and commercial properties.

Outside Agency Comments

- **Union County Sheriff's Office:** No comments.
- **Union County Fire Marshal:** No comments
- **Union County Environmental Health:** Environmental Health will conduct inspections to ensure health guidelines are met and will require licenses for each artist.

Comprehensive Plan Consistency

The subject property is located within the US 74 West Corridor of the Comprehensive Plan. The subject property is designated for mixed use development. Based on analysis of this use, staff is of the opinion that the proposed use is consistent with the intent of this corridor as follows:

- **Land Use and Housing Goal 1 and Economic Development Goal 1:** The subject property is located within an existing shopping center which is occupied by a variety of commercial uses. Properly conditioned, the proposed use is appropriate for this location in that its operational characteristics are similar to other commercial use within the US 74 West Corridor and impacts to adjacent commercial and residential uses are anticipated to be minimal. The addition of a new business establishment will also help further create a more balanced tax base and expand employment opportunities.

Under **UDO Section 360.080**, the Board of Adjustment, when considering whether to approve an application for a special use permit, shall review and evaluate the following:

1. **Whether the application is complete.**
Staff is of the opinion that the application for SUP2016-004 is complete.
2. **The Board will consider whether the application complies with all of the applicable requirements of this ordinance.**
As per the stated conditions of this special use permit, staff is of the opinion that SUP 2016-004 is in compliance with the requirements set forth by the Unified Development Ordinance (UDO).
3. **If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Section 360.030.** Such a motion will propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Under **UDO Section 360.030**, the Board of Adjustment must make these required considerations of public health, safety, and welfare. The Board of Adjustment's authority in the review of this Special Use Permit application is broad and the Board may approve with conditions if it concludes, based upon the information submitted at the hearing, that the proposed development will:

1. **Not materially endanger the public health or safety; and**
2. **Not substantially injure the value of adjoining or abutting property; and**
3. **Be in harmony with the area in which it is to be located; and**
4. **Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.**

Draft Conditions- Staff Burhans read the draft conditions into the record.

1. The use shall operate in compliance with all State of North Carolina, Union County, and Town of Indian Trail requirements for tattoo parlors and body piercing establishments.
2. The applicant shall provide the Town with a copy of the Union County Environmental Health Department license for each employee prior to commencing business operations.
3. No alcohol is to be served or consumed on site.
4. Body piercing shall be limited to the following areas of the body: head, torso/abdomen area, arms and legs. Piercing of the groin or genital areas of the body is prohibited.
5. Any failure to meet these conditions shall be grounds to revoke Special Use Permit and cease of business operations.

Questions

Member Howe asked staff if they received any responses from other tenants in the shopping center. Director Burhans replied that staff had received no communications back from those being contacted. Member Howe asked how alcohol consumption is controlled. Director Burhans answered that it is normally if Town staff or the Sheriff’s office receives complaints from other tenants or customers in the facility. Member Chopelas asked about draft condition #2, if/when employee turnover occurs, will that condition continue. Director Burhans stated that the intent was to get the permits of all employees upon initially opening the business. Member Howe stated that she is opposed to the business making appointments for any time of day. Member O’Connor asked which 6 days will they be open. Director Burhans businesses in the center are usually open 7 days. This business has not established set days yet. Member O’Connor expressed concern about loitering.

Kevin Gordon of 3300 Chancellor Ln. Monroe, NC, artist for the Black Label Tattoo Co. stated that appointment time is more for customers coming in late morning, not for late night appointments. Applicant

Bryan Taylor of 1180 Tomberlin Rd, Monroe, NC addressed the concern of loitering stating they are professionals as other businesses. Member Howe asked about knowledge of age. Mr. Taylor replied the customer must show ID, they scan and check ID. Member Chopelas asked how many artists would be employed. The applicant replied that Mr. Gordon is the main artist, and that they hope to grow from that.

Jess Perry of Walt Perry Realty, spoke about the applicant doing a thorough job in convincing him that he had a thorough knowledge of his business and would be a good addition to the leased shops in the shopping center. Mr. Gordon is a well known tattoo artist with 10 years experience. Other tenants of the shopping center gave positive feedback for the tattoo business to lease their property.

Comment [gc1]: Pam I would clarify what this means. Who was convincing whom of what?

Findings of Fact

1. **Whether the application is complete.**
Motion that it is complete by Member Eigenbrode, seconded by Member O’Connor. Vote was unanimous in favor.
2. **The Board will consider whether the application complies with all of the applicable requirements of this ordinance.**
Based on staff’s report, Member Chopelas made a motion the application complies, seconded by Member Eigenbrode. Vote was unanimous in favor.

3. **If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Section 360.030.**

1. Not materially endanger the public health or safety; and

Motion that it does not endanger by Member Chopelas due to state licensing and county inspection. Seconded by Member Eigenbrode. Vote was unanimous in favor.

2. Not substantially injure the value of adjoining or abutting property; and

Motion that it did not injure due to the appraisal report by Member Eigenbrode, seconded by member Chopelas. Vote was unanimous in favor.

3. Be in harmony with the area in which it is to be located; and

Motion that it was in harmony by Member O'Connor due to the fact it was in conformity of the Town of Indian Trail, seconded by Member Chopelas. Vote was unanimous in favor.

4. Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.

Motion that it was in general conformity as conditioned by Member Eigenbrode, seconded by Member Chopelas. Vote was unanimous in favor.

| Applicant Bryan Taylor agreed to the conditions.

Motion to approve SUP2016-004 with conditions by Member Eigenbrode, seconded by Member Chopelas. Vote to approve was unanimous.

Other Business- none.

Adjournment

Motion to adjourn by Member Chopelas, seconded by Member O'Connor. Vote to adjourn was unanimous. Meeting adjourned at 9:05pm

Chairman:

Date: _____

Secretary:
