

May 3, 2023

APPROVED

1 In attendance at Amherst Town Hall: Arnie Rosenblatt – Chair, Bill Stoughton – Board of
2 Selectmen Ex-Officio, Tracie Adams, Tom Quinn, Tom Silvia (remote), Cynthia Dokmo, and
3 Pam Coughlin (alternate)
4

5 Staff present: Nic Strong, Community Development Director; Kristan Patenaude, Recording
6 Secretary (remote)
7

8 Arnie Rosenblatt called the meeting to order at 7:00pm.
9

10 *Pam Coughlin sat for Chris Yates. Arnie Rosenblatt noted that Tom Silvia was attending on*
11 *Zoom but would not be participating in any votes since there was a quorum present in the Town*
12 *Hall.*
13

14 **PUBLIC HEARINGS:**
15

16 **1. SCENIC ROAD PUBLIC HEARING – EVERSOURCE**

17 In accordance with the NH RSA: 231:158, the Amherst Planning Board will hold a public
18 hearing on Wednesday, March 15, 2023, at 7:00 pm in the Barbara Landry Meeting
19 Room, 2nd floor, Amherst Town Hall, Amherst NH for a scenic road public hearing for
20 the purpose of trimming trees on Chestnut Hill Road.
21

22 *Arnie Rosenblatt recused himself from this item. Tracie Adams sat as Chair.*
23

24 Andrew King, arborist for Eversource Energy, explained that, as part of Eversource’s regularly
25 scheduled maintenance trimming, a portion of Chestnut Hill Road needs to be trimmed to
26 specifications which are 15’ above the electric lines, 8’ on either side, and 10’ below the wires.
27 Limbs considered to be established, or greater than 4”, will not be removed unless in a state of
28 decay or if there are other concerns.
29

30 Pam Coughlin had no questions or comments. Tom Quinn asked if the dimensions for the
31 proposed trimming just described were consistent with normal policy. Andrew King stated that
32 these parameters were used statewide.
33

34 Bill Stoughton thanked the applicant and stated that electric reliability in Town is an issue all are
35 concerned about.
36

37 In response to a question from Cynthia Dokmo, Andrew King stated that no trees are proposed to
38 be removed as part of this project.
39

40 Tracie Adams confirmed three items with the applicant: trees will only be removed or trimmed
41 as necessary for public safety or for those that pose dangers to the power lines; any stone walls
42 moved or changed will be replaced and/or repaired; and any contractors performing work on a
43 property will contact that homeowner prior to the work. Andrew King confirmed this to be the
44 case.

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45
46 There was no public comment at this time.

47
48 **Bill Stoughton moved to close the public hearing. Seconded by Tom Quinn.**
49 **Motion carried unanimously 5-0-0.**

50
51 **Bill Stoughton moved to approve the proposed trimming of trees as requested by**
52 **Eversource on Chestnut Hill Road. Seconded by Tom Quinn.**
53 **Motion carried unanimously 5-0-0.**

54
55 **COMPLETENESS REVIEW OF APPLICATION AND PUBLIC HEARING IF**
56 **APPLICATION IS ACCEPTED AS COMPLETE:**

57
58 **2. CASE #: PZ17205-041323 – Scott & Susan Jacobs O’Connell (Owners) &**
59 **Kali Construction (Applicant), 3 Mack Hill Road, PIN #: 020-029-000 – Subdivision**
60 **Application – Depict a subdivision of land of existing lot 20-29 creating two new**
61 **residential lots to be known as 20-29-1 & 20-29-2 within a larger remainder lot. Zoned**
62 **Residential Rural.**

63
64 *Arnie Rosenblatt retook his seat.*

65
66 Arnie Rosenblatt stated that the Board will first determine completeness of the application. He
67 asked if there are any outstanding items for completeness of the application. Nic Strong
68 explained that there is a waiver request with respect to all studies for this application.

69
70 Bill Stoughton stated that, in the past, on some occasions the Board has granted waivers while
71 reserving the right to require studies once the application is heard.

72
73 **Bill Stoughton moved to grant the waivers requested to the subdivision regulations**
74 **for preparation of the studies because the Board has determined that specific**
75 **circumstances relative to the subdivision or site plan indicate the waiver will**
76 **properly carry out the spirit and the intent of the regulations; noting, however, that**
77 **the Board reserves the right to request any or all of the studies, in the event it**
78 **determines it necessary, upon hearing the application. Seconded by Cynthia Dokmo.**
79 **Motion carried unanimously 5-0-0.**

80
81 **Bill Stoughton moved to accept the application as complete, subject to the waiver**
82 **language previously agreed upon. Seconded by Cynthia Dokmo.**
83 **Motion carried unanimously 5-0-0.**

84
85 Arnie Rosenblatt opened the hearing. He explained that there will first be a presentation by the
86 applicant. The Board will then have an opportunity to ask questions and make comments. The
87 Board will then hear from abutters or other interested parties. The Board can then act, as it deems
88 fit.

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89
90 Sam Ingram, Meridian Land Services, explained that the proposal is for a subdivision of existing
91 Lot 20-29. This property is approximately 12.5 acres in size and there is currently an agricultural
92 operation on the property. The applicants are looking to subdivide off two separate lots, creating
93 three lots in total. The two lots proposed to be created are located along Manchester Road and
94 Mack Hill Road, and will each be roughly two acres, leaving the remaining lot at approximately
95 8.3 acres in size. All of the properties are serviced by Pennichuck Water and private onsite septic
96 systems. Sam Ingram explained that the staff report discussed the separation of the back lot, the
97 remaining 8.3-acre parcel. The frontage along Mack Hill Road has a separation between it and
98 the intersection of Mack Hill Road and Manchester Road of less than 500'. There is another
99 section of frontage along Mack Hill Road further north that is more than 500'. Also to be
100 discussed is the current operation of a horse farm on remaining Lot 20-29. Test pits were dug on
101 the property, all of which deemed the area suitable for development. There is also a minimal
102 sized wetland pocket delineated on the property, as shown on the plan.
103

104 Arnie Rosenblatt asked Nic Strong to detail the items from the staff report. Nic Strong explained
105 that Bill Stoughton pointed out that the recently adopted changes to the reduced frontage
106 ordinance includes a section regarding access to be provided to a reduced frontage lot. One of the
107 requirements is that access must be more than 500' from an intersection and this application does
108 not comply with that. Additionally, there is an existing horse-riding academy on the property.
109 Her research traced this business back to 2002, but she could not find any approvals for site plan
110 under the zoning ordinance that was adopted in 1998 for equestrian facilities and events. She is
111 interested in learning if the business existed prior to 2002 or prior to the adoption of the
112 ordinance in 1998, in order to determine if the requirements for a site plan now would be
113 applicable.
114

115 Tom Quinn asked if there is 200' of frontage on both sides of the road for proposed Lot 20-29-1.
116 Sam Ingram explained that the property line at the corner of Mack Hill and Manchester Roads
117 had a curve length of 112'. If that is split in half, there would be 200' of frontage on both Mack
118 Hill Road and Manchester Road.
119

120 Tom Quinn stated that, regarding the requested waivers from studies, it might be good to
121 complete a drainage analysis, given the proximity of these sites to the already impaired Beaver
122 Brook. It will be important to see how these sites are proposed to drain. Sam Ingram noted that
123 nothing is currently proposed to be built on these lots. This application is only for subdivision of
124 the land.
125

126 Tom Quinn noted that he would like to hear from other departments in Town on this item.
127

128 Bill Stoughton asked if an equestrian operation was operated on this site at the time that the
129 ordinance was passed. Sam Ingram stated that he is unclear on this item. He asked the applicant
130 to address this. Susan O'Connell, applicant, stated that she needs to be able to subdivide her land
131 in order to continue living at this property. She bought the property in 2007 from an owner who

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132 was running Tempus Fugit Farm at the time. She is unclear what the property owner prior to that
133 one was doing with the land but has been trying to find out.

134
135 Bill Stoughton asked if the existing pool house has a 25' setback from the proposed lot line. Sam
136 Ingram stated that this is unclear, but he would work to place dimensions on the plan.

137
138 Bill Stoughton stated that, regarding the reduced frontage issue, the concern is access to the lot.
139 He asked if the other potential access area further up Mack Hill Road could be used for the
140 existing lot. Sam Ingram stated that the existing driveway is proposed to remain in place and be
141 the main access point. Bill Stoughton stated that this subdivision will create a new reduced
142 frontage lot, existing Lot 20-29. In doing so, this lot must comply with the ordinance, and it does
143 not appear to, as it is not located more than 500' from an intersection. Thus, under the current
144 plan, this lot would not qualify as a reduced frontage lot. The applicant could seek a variance or
145 could redesign the plan to allow for this frontage. Also, as noted in the staff report, driveway
146 locations for the proposed lots will need to be shown on the plan, to make sure that there is
147 appropriate visibility. Bill Stoughton noted that he would suggest a condition that the applicant
148 comply with the stormwater regulations.

149
150 Bill Stoughton encouraged the applicant to consider underground utilities for this project, both
151 for the rural aesthetic of the area and for public safety.

152
153 Cynthia Dokmo echoed Bill Stoughton's comment regarding driveway locations for the new lots.

154
155 Tracie Adams asked if the applicant had any concerns with the items listed for the plan review in
156 the staff report. Sam Ingram reviewed the items in the staff report that will be addressed on the
157 plan. Regarding a drill hole symbol on the plan, that was not a monument symbol for the
158 boundary; it was for a measuring point that was taken by survey crews. Minor corrections of the
159 abutters list can be addressed. The driveway locations can be added to the plan. A statement of
160 suitability for the land development can be submitted, as the lots have been proven out, test pits
161 dug, and setbacks identified. Note #11 regarding the bounds can easily be modified. The Tax
162 Collector information will be provided. Any waivers granted will be added to the final plans.
163 Regarding debris containers for construction sites, information can be added to the plan that
164 during construction a container will be onsite. Pennichuck Water is available for the site and a
165 statement to this effect will be added to the plan. Finally, State subdivision approval is pending at
166 this time.

167
168 Arnie Rosenblatt asked if it is the applicant's view, that as defined under the Town's ordinances,
169 the property currently is an equestrian facility. If it is, he asked if the facility is appropriate to be
170 operating now or if it was grandfathered in because there was previously an equestrian facility on
171 these grounds as of 1998. He asked if the equestrian facility satisfied the requirements for an
172 equestrian facility as defined in the Amherst ordinance. Also, he asked what this change will
173 have on whether or not the property continues to be operated as an equestrian facility, within the
174 definition of satisfying the Amherst ordinance. Sam Ingram stated that it was the applicant's
175 belief that the equestrian use was essentially grandfathered in with the current property. He will

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176 review this and provide the Board with information regarding the changes to the property related
177 to the subdivision and how that affects the current use. Susan O'Connell stated that she would
178 also fill in the Board as to how the model for her business may be changing in the future.

179
180 Tom Grella stated that he has been an abutter to this property since 1966. Every person who has
181 ever lived on that property has owned animals. As far as he can remember, it was always used
182 for a riding academy. He noted that another property just to the east was required to install
183 underground utilities and did so with no issue.

184
185 Reed Panasiti, 11 Mack Hill Road, asked if the applicant is planning to use the area north of the
186 driveway for frontage, as he believes this is the right of way between his house and the next
187 house. When he purchased his property, he was told there that that strip would be his property,
188 while allowing a right of way for the applicant onto the property. Sam Ingram stated that he
189 would look into this item.

190
191 Reed Panasiti noted that these properties are located in the Historic District. He asked if units
192 built on the subdivided lots would be subject to certain types of building construction, as being in
193 the Historic District. Nic Strong stated that any buildings would have to comply with the Historic
194 District regulations.

195
196 The Board discussed a date to continue this item to. There was discussion regarding if the
197 applicant would need to go before the Zoning Board of Adjustment (ZBA) for a variance request
198 first. Bill Stoughton stated that he would like the ZBA to decide on a variance first, in deference
199 to them and to not place pressure on either board.

200
201 **Tracie Adams moved to continue CASE #: PZ17205-041323 for 3 Mack Hill Road to**
202 **June 21, 2023, 7pm at Town Hall. Seconded by Cynthia Dokmo.**
203 **Motion carried unanimously 5-0-0.**

204
205 **CONCEPTUAL CONSULTATION:**

206
207 **3. CASE #: PZ12164-121619 – MIGRELA and GAM Realty Trust (Owners) &**
208 **MIGRELA Realty Trust (Applicant), Carlson Manor, 153-159 Hollis Road, PIN #s:**
209 **Tax Map 1, Lots 8 & 8-2, Tax Map 2, Lots 7, 7A, 7B, 3-1 & 3-2 – Subdivision & Non-**
210 **Residential Site Plan. Proposed 54-unit condominium style development. Zoned**
211 ***Residential Rural.***

212
213 Arnie Rosenblatt read the case. He noted that this is an application that was grandfathered under
214 the, now defunct, Innovative Integrated Housing Ordinance (IIHO). The previous application
215 was denied by the Planning Board, then brought to the Housing Court, and then brought to the
216 New Hampshire Supreme Court which remanded this to the Planning Board. Accordingly, the
217 Board is now addressing it based on the remand from the Court under the IIHO. This is a
218 conceptual discussion only, meaning that an application is not in hand, and nothing said by the
219 Board tonight is binding. This is an opportunity for the applicant to make a brief presentation and

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220 hear comments from the Planning Board. There will not be public discussion, as there is
221 normally not in these conceptual discussions.
222

223 Chad Branon, Fieldstone Land Consultants, explained that this project was last before the Board
224 in April 2021. This project consists of three properties totaling approximately 32 acres. The
225 permitting on this project began in 2017 under the IIHO. The project was approved under a
226 Conditional Use Permit (CUP) for up to 54 units. During a fairly lengthy final review process, a
227 number of revisions were made to the plans, addressing concerns of the Board, abutters, and the
228 general public. The project was also reviewed by Keach Nordstrom, the Town's consulting
229 Engineer, at the time. The intention at this time is to resubmit the plans for a conceptual
230 discussion with the Board in hopes of moving forward. At the last hearing before the Board, the
231 applicant reduced the number of units to 49 to address comments regarding the proposed
232 orientation of homes and driveways on the site. An updated phasing plan was also submitted at
233 that time. A submission of materials showing those items is planned to be submitted to the
234 Board.
235

236 Andy Prolman, Prunier & Prolman, explained that one of the concerns from years ago regarding
237 this project dealt with the condominium declaration and how different types of housing on this
238 project were going to be distinguished. There are three types of housing units proposed through
239 this project, 65+ housing units, rental units, and market rate units to be owned by individuals.
240 The declaration provided to the Board at that time was a generic condominium declaration and
241 did not contain language distinguishing between the types of units. He stated that he believes he
242 can draft a declaration that will satisfy the previous concerns of the Board. In the end, this
243 property will be one lot and there will need to be some master control. Within that there could be
244 one or two sub condominium controls, so that the 65+ units are managed on their own and
245 cannot be interfered with by the other units, and vice versa.
246

247 Tracie Adams stated that she would like to hear from the School District regarding its thoughts
248 on the proposed phasing of this project. Chad Branon explained that a fiscal impact report was
249 previously submitted for this project. Tracie Adams stated that she would like to hear from the
250 school regarding the likelihood that this development would impact its ability to care for children
251 that would be coming into the school from this project.
252

253 Tracie Adams asked if there are any additional concerns regarding traffic, as this was a previous
254 concern of the Board. She asked if any additional developments have been constructed nearby
255 that might impact this as well. Chad Branon stated that he is unaware if other developments have
256 been constructed since this was previously before the Board. He noted that the application will
257 have to renew the previous DOT permits, which will address traffic. His recollection of the
258 traffic report was that there was plenty of capacity, and the intersections were safe. The applicant
259 can revisit this item and gather more information.
260

261 Tracie Adams stated that she would like the Board to further discuss Note #7 on the plan at a
262 later date.
263

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264 Cynthia Dokmo explained that one of the Board's concerns in the past was regarding federal
265 laws for elderly housing with regard to this project. There was some concern about the legality of
266 mixing elderly housing with the other units. Attorney Prolman stated that he is not aware of any
267 prohibitions that would prevent a mix of uses. His proposed declaration for separating the
268 condominium declaration dedicated just to the 65+ units should help address any concerns. He
269 noted that there is a conflict between the IHO ordinance, which allows density bonuses for 65+
270 units, and State and federal law, which uses the age of 62+. This dynamic will need to be solved.
271 He stated that he believes this project will be in compliance with state and federal law.

272
273 Cynthia Dokmo stated that she voted against this project previously because she believes it
274 proposes too many houses on the 31 acres of land. If this is all buildable, by right, a traditional
275 subdivision would have 15 houses, and this proposal is for three times that many. Her concern is
276 that this is too many houses for the land. She stated that she believes there is also a freshwater
277 spring or something unique to the property. Chad Branon noted that the site is within the
278 Pennichuck Watershed which is an exemplary aquifer. There is a cold waterbody running
279 through the site.

280
281 Bill Stoughton stated that there is a water feature on the property which feeds one of the last
282 remaining cold-water streams in this part of the State which supports trout. The Board previously
283 had a long discussion with the applicant about stormwater features and the applicant made some
284 very significant changes to the plan, including removing one or two units so that a stormwater
285 infiltration feature could be located some distance from that tributary. This was a concern for the
286 Amherst Conservation Commission. Chad Branon agreed that the plan originally had a
287 stormwater basin, which mitigated a good portion of the development, located very close to the
288 wetland that runs through the center of the property. Upon hearing concerns, the applicant
289 removed some density proposed in this area and created a rehabilitation plan to revegetate the
290 buffer parallel to that sensitive area.

291
292 Bill Stoughton asked if changes are proposed to the plan at this point. Chad Branon stated that
293 the applicant plans to pick up where he left off. This project is less dense than several nearby
294 developments and was already approved up-to a certain density. The applicant submitted studies
295 and a design that supported 54 units and agreed to reduce this down to 49 units.

296
297 Bill Stoughton stated that he is encouraged by Attorney Prolman's thoughts on how to structure
298 the condominium documents. The concern was compliance with federal law, both with respect to
299 having an identifiable community for the elderly and implementing other requirements such as
300 restricting occupancy of the 62+/65+ units. The 62+ versus 65+ issue is complicated.

301
302 Tom Quinn stated that his concern is that this application violates Section 4.17 of the Planned
303 Residential Development (PRD) ordinance in a number of ways. Most specifically, the PRD
304 allows for "somewhat greater density" than is allowed under conventional zoning, and 300%+
305 greater density is not "somewhat greater," in his mind.

306

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307 Arnie Rosenblatt noted that this application is being submitted under the IIHO, not the PRD
308 ordinance. The IIHO is a distinct ordinance.

309

310 Arnie Rosenblatt stated that the applicant should work with the Office of Community
311 Development with regard to the timing of the application.

312

313 **OTHER BUSINESS:**

314

315 **4.** Driveway discussion Map 8 Lots 83-14 & 83-15, 32 -36 Old Manchester
316 Road. *Continued from April 5, 2023.*

317

318 Arnie Rosenblatt explained that this was an issue with respect to a driveway proposal, where
319 concerns were raised by Department Heads. The Board discussed whether it would affirm the
320 Department Head recommendations and ultimately voted to hear from the Department Heads to
321 determine whether the written comments were consistent with their actual feelings on the topic.

322

323 Cynthia Dokmo explained that she believed that the Department Heads have no alternative in
324 this case than to say no and send it to the Planning Board for review. If the Board affirms the
325 decision of the Department Heads, these lots cannot be built on and they have been lots of record
326 since 1975. She would like to be assured that the Department Heads' concerns are realistic, and
327 that this proposal poses a real and significant threat to the public, as the owners may face the fact
328 that they are unable to develop these properties at all.

329

330 Eric Slosek, DPW Director, stated that he and Fire Chief Conley met with Meridian Land
331 Services regarding this item. The DPW occasionally receives waiver requests for a change or
332 variance in a driveway grade from the regulations. In this case, the waiver request is essentially
333 double what the regulation requirement is of 8%. In consultation with Chief Conley, the DPW
334 believes that this does pose a risk to not only the residents themselves, but emergency responders
335 in inclement weather. A 15% grade is considered a steep slope. The regulations state that the
336 DPW Director may waive any of the design requirements for driveways so long as such waiver
337 does not result in a likelihood of injury to the public health, safety, or welfare. Due to the steep
338 grade proposed, Eric Slosek stated that he cannot say that this will not possibly injure someone
339 or be at risk to the public health, safety, or welfare. Therefore, he felt it appropriate for his office
340 to deny the waiver request and have it brought to the Board for further review.

341

342 Matt Conley, Fire Chief, stated that his concern about the proposed grade deals with the safety
343 and well-being of the property owners and anyone who has to access the driveways. A 16%
344 grade is an incredibly steep slope for emergency personnel access with an apparatus,
345 jeopardizing the safety of personnel and vehicles. Also, if the Department is delayed by
346 accessing this area, then it is not fulfilling its obligation to protect and serve the public.

347

348 Eric Slosek stated that he and Chief Conley empathize with the property owner and do not take
349 lightly to denying a waiver request that could potentially lead to the property owners not being

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350 able to use the property for the desired purpose. Reviewing the regulation, the proposed grade,
351 and the potential likelihood for injury, led to clear answers from the Departments.
352

353 **Bill Stoughton moved to affirm the decision of the DPW Director and Fire Chief and**
354 **deny the driveway permit. Seconded by Tom Quinn.**
355 **Motion carried unanimously 5-0-0.**
356

357 **5. ERZ discussion**
358

359 Nic Strong explained that the Board previously had questions regarding the ERZ discussion. She
360 sent these to a representative at the Department of Business and Economic Affairs (BEA) and
361 provided the Board with the answers received and a PowerPoint presentation from the BEA. The
362 BEA is seeking approval from the Town whether or not to renew these zones. Bill Stoughton
363 noted that the statute states that this will be signed by the Board of Selectmen. Arnie Rosenblatt
364 stated that the Planning Board could make a recommendation on this item to the Board of
365 Selectmen.
366

367 **Cynthia Dokmo moved to recommend to the Board of Selectmen that the ERZ zones**
368 **are renewed, as previously designated for the following areas: Route 101 ERZ,**
369 **Route 101A ERZ, Meeting Place ERZ, and LaBelle Winery ERZ. Seconded by**
370 **Tracie Adams.**
371 **Motion carried unanimously 4-0-1 [B. Stoughton abstained].**
372

373 **6. Lot Consolidation Approval -Cricket Corner Road, Map 4 Lots 122-2 & 122-3**
374

375 Nic Strong explained that these two lots were part of the Vonderosa subdivision of Map 4 Lot
376 122. One person bought both the lots and wishes to consolidate them which, by law, the Planning
377 Board is required to consider. Nothing about the construction of the driveway, the need for
378 inspections, the sight distance, etc., is changed. The only difference is that there will be one
379 house instead of two houses at the end of the driveway.
380

381 **Tracie Adams moved to approve the lot consolidation/voluntary lot merger**
382 **application for Dwight Weatherhead Trust, Dwight Weatherhead Trustee, to merge**
383 **Map 4 Lots 122-2 and 122-3 for municipal regulation and taxation purposes. No**
384 **such merged parcels shall hereafter be separately transferred without subdivision**
385 **approval. Payment for recording the lot consolidation/voluntary lot merger form at**
386 **the Hillsborough County Registry of Deeds shall be made by the applicant.**
387 **Seconded by Bill Stoughton.**
388 **Motion carried unanimously 5-0-0.**
389

390 **7. Minutes: April 19, 2023**
391

392 **Tracie Adams moved to approve the meeting minutes of April 19, 2023, as**
393 **presented. Seconded by Cynthia Dokmo.**

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394 **Motion carried unanimously 3-0-2 [P. Coughlin, T. Quinn abstaining].**

395

396 **8. Any other business that may come before the Board.**

397

398 Tracie Adams stated that the Master Plan Steering Committee met last night for the last time.
399 The group reviewed the story map and was pleased. The Board thanked Tracie Adams and the
400 Committee for its work.

401

402 **Bill Stoughton moved to adjourn the meeting at 8:20pm. Seconded by Cynthia**
403 **Dokmo.**

404 **Motion carried unanimously 5-0-0.**

405

406

407 Respectfully submitted,

408 Kristan Patenaude

409

410 Minutes approved: May 17, 2023