

TOWN OF AMHERST
Zoning Board of Adjustment

February 16, 2021

APPROVED

In attendance: Doug Kirkwood – Chair, Jamie Ramsay – Secretary/Treasurer, Charlie Vars, Danielle Pray, and Tim Kachmar (Alternate).
Staff present: Natasha Kypfer, Town Planner, and Kristan Patenaude, Recording Secretary.

Doug Kirkwood called the meeting to order at 7:04 pm., with the following statement. As Chair of the Amherst Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, as extended by various executive orders, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order.

However, in accordance with the Emergency Order, I am confirming that we are:

Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing Zoom for this electronic meeting.

All members of the Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #312-626-6799 and password 885 1364 0857, or by clicking on the following website address: <https://zoom.us/j/88513640857> that was included in the public notice of this meeting.

Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the Zoning Board of Adjustment at:

www.amherstnh.gov.

Providing a mechanism for the public to alert the public body during the meeting if there are problems with access: If anybody has a problem, please call 603-440-8248.

Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that all votes that are taken during this meeting shall be done by roll call vote.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to- Know law.

Roll call attendance: Doug Kirkwood, Jamie Ramsay, Danielle Pray, Charlie Vars, and Tim Kachmar – all present and alone.

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Doug Kirkwood explained that each case will be opened and then the applicant will have a chance to speak to it. The ZBA will then carry out its business for each case, including asking questions, hearing from the public and abutters, going into private deliberations, and potentially voting.

Tim Kachmar sat for Bob Rowe, in his absence.

NEW BUSINESS:

1. CASE #: PZ13588-0111921-VARIANCE

Unified Development, LLC (Owner) & Promised Land Survey, LLC (Applicant), 70 North Street, PIN #: 003-093-000 – Request for relief from Article IV, Section 4.3, Paragraph C., 2 to subdivide Tax Map 3, Lot 93, 70 North Street, into two, single family residential lots, both having 134.95' of frontage where 200' is required. Zoned Residential Rural.

Jamie Ramsay read and opened the case.

Tim Peloquin, of Promised Land Survey, LLC, and Matt Arel, of Unified Development, LLC, joined the Board.

Jamie Ramsay noted that he has worked closely with Matt Arel in the past through his work as Building Inspector for the Town of Milford. This is a working relationship, and he doesn't believe he needs to recuse himself from this case.

Charlie Vars noted that he has walked this lot with the intent to purchase it in the past and spoke with Matt Arel about it once. He doesn't believe he needs to recuse himself from this case.

Tim Peloquin explained that he is a licensed land surveyor. This property consists of a 9.2-acre lot with total frontage of 269.91'. This application seeks to separate the property into two separate lots, which would each have approximately 134.9' of frontage. By right, the owner could put three duplex lots onto this property without a variance, but the owner is interested in placing single-family homes on the two separate lots in order to fit with the theme of the neighborhood. Both lots, if separated, will be fairly large. The northerly lot has no wetland crossings and will be approximately 3 acres. The southerly lot will be approximately 6 acres and will have two wetlands crossings where the driveway is proposed. Both proposed lots will need variances, as they will have less than the required 200' of frontage.

Tim Peloquin reviewed the variance criteria:

- 1) Many of the lots within this locus (abutting, across street, and nearby) have comparable frontages to our proposal and yet our lot will provide greater areas (over 3 acres plus) and the frontage variance will be relatively unnoticeable to the passer by.

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2) With these lots being larger in size (5.8 and 3.3 acres), the rural character is certainly maintained and promotes conservation and ensures wildlife corridors.

3) Substantial justice is achieved because 2 single-family lots with no further subdivision possibilities on a 9.2-acre lot within the RR Zone is a reasonable and good yield, both to the developer and the Town.

4) These two proposed single-family residential homes to be constructed will be an enhancement to the area/neighborhood and will raise values to abutting and nearby homes.

5a) As stated, these lots as proposed are larger in size (5.8 and 3.3 acres), and full development of this site would require further engineering and yield greater density (3 duplex lots or 6 units); a copy of Conceptual Plan for Development by Granite Engineering in October of 2020 can be submitted, herewith, if required or requested, to see the proposed development within a need for variance; our client, in good faith, is looking for a simpler 2-lot single-family residential subdivision which better fits the neighborhood, and larger lots promote more conservation; so as we see it a hardship inherent in the land is the fact that this large 9.2 acre lot is not zoned consistently with the surrounding neighbors, and this is a hardship not to subdivide as presented here as the best use for our client, the neighborhood, and the Town.

In response to a question from Danielle Pray, Tim Peloquin stated that this lot has existed in this configuration since about 1983. At the widest part, the lot measures approximately 300'. The northerly lot has approximately 2.16 buildable acres, minus steep slopes, wetlands, etc. The southerly lot has approximately 2.104 buildable acres.

Doug Kirkwood asked the applicant to review criteria #5, that there is no fair and substantial relationship between the ordinance and the application. Tim Peloquin stated that there are many smaller lots along North Street. This lot is larger and has more frontage than most others along the street. It is unique in its area and its irregular shape. These are special, distinguishing features of the property.

In response to a question from Doug Kirkwood, Tim Peloquin stated that the proposed dwelling on the northerly lot would probably sit towards the front of the lot. The proposed dwelling on the southerly lot would probably sit on top of the middle knoll of the site.

Public Comment:

Mark Suhre, 67 North Street, joined the Board.

In response to a question from Mark Suhre, Tim Peloquin stated that the proposed dwellings on the lots would sit no closer than 50' to the right of way. The dwellings would most likely sit approximately 150' off the road.

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Ruthanne Suhre, 67 North Street, stated that she would prefer to see only one house built on this property, in order to keep with the consistent spacing of houses along North Street. She explained that she would rather not see two driveways on this lot.

Tim Peloquin explained that the owner has the legal right to build more than two single-family residences on this lot, if he so chose. Matt Arel agreed that he believes two proposed single-family homes is better in keeping with the neighborhood, than the three duplexes that could fit on the property.

Mark Suhre noted that putting three duplexes on this lot seems like a threat. He would rather keep the population density in this part of Amherst down, as opposed to what is found down the other side of the street in Milford.

Tim Kachmar noted that the acreage minimum for this Residential/Rural Zone is two acres. Both of these lots, if separated, would be greater than the two-acre minimum.

Patricia Sipos, 68 North Street, agreed with her neighbors. She believes that the proposed driveways would be too close together and change the aesthetic of the neighborhood. She explained that driving down North Street toward Amherst gives a different feel than the Milford end of the street where houses begin to get closer together. She values her privacy and would like for this lot to keep the required 200' frontage.

2. CASE #: PZ13589-011921 –VARIANCE

Paulo Caetano (Owner & Applicant), 6A Clark Island Road, PIN #: 008-108-000 – Request for relief from Article IV, Section 4.3, Paragraph D.1 to construct an addition within the 50' front setback. Zoned Residential Rural.

Jamie Ramsay read and opened the case.

George Chadwick, PE, of Bedford Design Consultants, Inc., joined the Board, representing applicant Paul Caetano.

George Chadwick explained that Paul Caetano is proposing to put a small addition on his home. This property is unique in that it sits on a peninsula in the Lake. The existing home is about 15.4' away from the lot line. The applicant is looking to square off the corner of his house, a reduction (i.e., additional encroachment) of about 7/10'. The proposed addition will run along the southern side of the house and be approximately 5' wide and run about 6' to the west. A portion of the existing home is located in the Shoreland Protection District. The Shoreland Impact Permit is included in the packet. He noted that a new septic system will also be constructed on the property and a permit has already been obtained for this as well. The new septic system is currently being built. No trees will be cut as part of this project.

In response to a question from Doug Kirkwood, George Chadwick explained that the southern lot line of his client's property does go through an existing garage on an adjacent lot.

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George Chadwick stated that his client has been in discussions with the adjacent lot's owner, but that he can't divulge the resolution of these discussions. He explained that the existing house was built in the 1970's, but that the lot has been in existence for over 100 years. Like many camp lots, some of the lot lines may have moved around over time.

Doug Kirkwood stated that this lot line issue needs to be resolved, as the existing garage currently sits in the middle of two lots. George Chadwick stated that he believes the land in question belongs to his client and agreed that this issue needs to be sorted out.

George Chadwick reviewed the variance criteria:

- 1) The addition will only alter the front setback non-conformance by 0.7 feet. The ordinance allows for expansion of nonconforming setbacks per Section 3.2.D, as long as the alterations do not increase the degree of non-compliance. We understand that the addition does increase the non-conformance by 1.4%, but the closest home is several thousand feet away, which is heavily wooded, or across the lake. 87 square feet of the addition will occur within the 50-foot shoreland reference line established by NHDES. The project has obtained the necessary NHDES Shoreland Permit for this increase. There will be a decrease of 625 square feet of impervious surface by removing the pavement at the end of the driveway. With the construction of the 305 square foot addition, the net decrease in impervious surface is 320 square feet. There is no additional impervious surface or asphalt proposed as part of the expansion. The applicant is installing a Clean Solutions septic system which will greatly improve the environment. The addition will not alter any abutter's view of the lake. The addition will not affect the character of the neighborhood. No additional traffic, health, or life safety issues are created by the addition.
- 2) The purpose of the ordinance is to promote the public health, safety, and welfare, one way that this is accomplished is by grouping similar uses and imposes size regulations. The residential/rural zoning regulations for a new subdivision are reasonable. But for these camp lots created over 100 years ago, they are not. Many lots in this area cannot meet these regulations due to their small size. Due to the size and shape of the existing parcel, the structure currently does not meet the structure setbacks. By allowing the expansion of the home, you would not be threatening the spirit and intent of the Ordinance and the Town's Master Plan. The expansion of this camp size parcel in a residential manner is not contrary to the public health, safety, and welfare.
- 3) To be substantially just, the applicant's loss must not be outweighed by the benefit provided to the public by the restriction. Continuing to allow the parcel to be developed in a residential manner that is consistent with the neighborhood will benefit the public. History has shown that expansions of parcels on the lake have improved the area and reduced impact to the environment by providing improved

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septic treatment and decreased direct stormwater discharge by reducing the impervious cover on the lot. The lot was established well before zoning and the home was constructed in 1970. Mr. Caetano intends to improve the home while meeting current building standards. The hardship to the applicant will far outweigh the benefit to the public considering the Baboosic Lake neighborhood, if the variance is not granted.

- 4) The applicant plans on investing a great deal of money to improve his home. A new Clean Solutions septic system will be constructed. There will be a decrease in lot coverage. Mr. Caetano will be removing 625 square feet of pavement to accommodate the 305 square foot addition. The project does and will comply with NHDES and Amherst Building Codes. Granting the variance will not violate the basic objective or alter the essential character of the neighborhood by allowing the decreased setback.

- 5) The purpose of the ordinance is to promote public health, safety, and welfare. There are similar uses and dimensional violations in the Baboosic Lake area. The property is unique in its surroundings due to its size, shape, and location. The setback request does not alter the public health, safety, or welfare. There is no fair and substantial reason to prohibit this request.

In response to a question from Doug Kirkwood, George Chadwick stated that he cannot speak to the use of the existing garage on the adjacent lot, but he believes it is for storage, as cars are usually parked outside on the property.

In response to a question from Charlie Vars, George Chadwick stated that, even if the lot line change with the adjacent lot was not an issue, his client would still need to come before the Board for a front setback variance due to the slight non-conformance issue.

In response to a question from Danielle Pray, George Chadwick agreed that the 7/10' difference converts to approximately 9".

Natasha Kypfer noted that there were no hands raised for public comment at this time.

Tim Kachmar moved to enter deliberations. Charlie Vars seconded.

Roll Call: Jamie Ramsay – aye; Tim Kachmar – aye; Charlie Vars – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

CASE #: PZ13588-0111921:

Jamie Ramsay moved no regional impact. Charlie Vars seconded.

Roll Call: Jamie Ramsay – aye; Tim Kachmar – aye; Charlie Vars – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Discussion:

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Natasha Kypfer noted, per an earlier question from Danielle Pray, that proposed duplexes in Town need to go through the Planned Residential Development (PRD) process, via the Planning Board. A Conditional Use Permit (CUP) granted by the Planning Board could allow for multi-unit structures.

Charlie Vars noted that the applicant could put in a 50-60' sections of road along his lot line, with a cul de sac. The applicant would be entitled to two lots with 200' frontage along that road. This is another way that the applicant could develop this lot, but this would come at a hardship to the applicant, and also on the lot itself.

1. The Variance will not be contrary to the public interest.

- J. Ramsay – true, this proposal does not impede on the health, safety or welfare of abutters or residents of the Town, in general.
- D. Pray – true, there is no indication that allowing a variance for less frontage for these two proposed lots deals at all with the public health, safety, or welfare.
- T. Kachmar – true, nothing in this proposal is detrimental to the public health, safety, or welfare.
- C. Vars – true, it would be more detrimental to the Town and neighbors to develop this lot in other ways. The proposal will be hardly noticeable at all because all of the lots on North Street have similar or less frontages.
- D. Kirkwood – true, the proposal will feel less crowded than other types of dense housing that could be built on this lot.

5 True

2. The Variance is consistent with the spirit and the intent of the Ordinance

- D. Pray – true, the ordinance is in place to avoid congestion. The proposal is located in a zone with minimum 2-acre zoning; this helps to take care of any concern with congestion and density.
- T. Kachmar – true.
- C. Vars – true, this proposal will have no negative effect on the public health, safety, or welfare, and will help to maintain the character of the neighborhood.
- J. Ramsay – true, North Street is unusual in that the street is partially located in Amherst and partially located in Milford. This property is surrounded by Milford properties, which have a much smaller minimum lot size than Amherst lots. The spirit of the ordinance is observed because the proposal will not diminish the openness of this part of the street.
- D. Kirkwood – true, the Board looks to consider the public health, safety, and welfare, but it doesn't only consider these items in looking at the spirit of the ordinance. In this case, the spirit of the ordinance is observed because the proposed project has a low impact on the housing density of this area. The proposal also preserves the rural character of the Town by spreading the proposed buildings out on the lots.

5 True

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3. Substantial justice is done.

- T. Kachmar – true, the benefit to the applicant is not outweighed by hardship to the public.
- C. Vars – true, the proposed is a reasonable use of the property. The applicant could put higher density units on this site. The proposed is a good yield for both the owner and the Town.
- J. Ramsay – true, the applicant does intend to develop the site to its full use, but in a low-impact manner. The applicant is proposing only two homes, where he could be proposing much greater density. Substantial justice is done to all parties. As this is an open piece of land, the owner has a right to request a variance of the Board.
- D. Pray – true.
- D. Kirkwood – true.

5 True

4. The values of the surrounding properties will not be diminished.

- J. Ramsay – true, North Street goes from being very high density at one end, in Milford, to being more rural at the other, in Amherst. The proposal will fit in with this end of Town and will be newer than surrounding properties, thus either maintaining the value of surrounding properties or improving it.
- D. Pray – true, the applicant has shown that the surrounding property values will not be diminished. The lot will retain a lot of its open characteristic, with significant amounts of open space proposed. This will bring up the value of surrounding properties, not diminish them.
- T. Kachmar – true.
- C. Vars – true, the type and size of the proposed units to be built will be as large as, if not larger than, surrounding properties, thus not diminishing their value.
- D. Kirkwood – true, property values are a subjective assessment.

5 True

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- C. Vars – true, this property has special considerations. The applicant could put a road with a cul de sac in this space. The proposed use is reasonable.
- D. Pray – true, the Board can grant relief without frustrating the general purpose of this ordinance (public health, safety, and welfare). Due to the nature of this property, the shape of it is wider and the only variance needed is for frontage. Two proposed houses are reasonable on this property, as the applicant is not looking to build on less than two acres, as required by the zone.
- J. Ramsay – true, the special conditions of this site involve the frontage. There is plenty of room for the two proposed houses in the building envelope that will not encumber the properties. The two driveways may flare out to a width of about 16-20' but will generally be about 10-12' wide. This will also not encumber the properties.

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The proposed driveways will look like any two other neighboring driveways on this street. The proposed use will fit right in.

- T. Kachmar – true, this is a very wooded area. The proposed houses will be set back on the lots in order to maintain the rural feel of this neighborhood.
- D. Kirkwood – true. The proposed use is a reasonable one. There is a relationship between the general purpose of the ordinance and maintaining the rural character of the Town.

5 True

The Chair stated that the application, as it passed all of the tests, is granted.

CASE #: PZ13589-011921:

Charlie Vars moved no regional impact. Jamie Ramsay seconded.

Roll Call: Jamie Ramsay – aye; Charlie Vars – aye; Tim Kachmar – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

1. The Variance will not be contrary to the public interest.

- T. Kachmar – true, the granting of this variance is not contrary to the public interest. The request is only reducing the setback by a couple of inches. The other proposed improvements are more impactful for the environment and the lake. The encroachment of approximately 9” to the property line is not detrimental to the public health, safety, or welfare.
- C. Vars – true, the proposed addition will not alter abutters’ views of the lake. It will not affect the character of the neighborhood. He does have a concern about the garage on the adjacent lot and the lot line issue with this applicant.
- J. Ramsay – true, the proposed addition and further encroachment of approximately 9” are a non-issue in terms of the public health, safety, and welfare.
- D. Pray – true, the proposed 9” encroachment does not impact the public health, safety, or welfare, and does not alter the character of the neighborhood.
- D. Kirkwood – true. He noted that the existing garage and lot line adjustment issue needs to be dealt with but is not in this Board’s jurisdiction.

5 True

2. The Variance is consistent with the spirit and the intent of the Ordinance

- C. Vars – true, the proposal is consistent with the spirit and intent of the Ordinance.
- J. Ramsay – true, the proposal does not impact the spirit of the ordinance. The additional 9” encroachment does not change anything for the owner or other abutters.
- D. Pray – true, this proposed 9” encroachment does not impact the spirit and intent of the ordinance.
- T. Kachmar – true, the spirit of the ordinance is not impacted by this variance request. Abutters are far enough away from this proposal to not notice the change.
- D. Kirkwood – true.

5 True

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3. Substantial justice is done.

- J. Ramsay – true, the applicant is within his reasonable right to improve the corner of his house and add space. The 9” will not be noticed.
- D. Pray – true, the Board didn’t hear any testimony as to the harm the proposal will cause to the public or abutters. The benefit to the applicant outweighs the possible harm, that was not commented on, to the public. The applicant has the right to use his property and make it more enjoyable.
- T. Kachmar – true.
- C. Vars – true, the lot was established well before zoning. The reduced impact on the environment and newly proposed septic system add to the substantial justice of the proposal.
- D. Kirkwood – true.

5 True

4. The values of the surrounding properties will not be diminished.

- T. Kachmar – true, abutter property values are not diminished by the granting of this variance.
- D. Pray – true, the applicant has demonstrated that improvements to the house and area will not diminish the surrounding property values.
- J. Ramsay – true.
- C. Vars – true, the value of surrounding properties will be raised due to this proposal.
- D. Kirkwood – true, granting the variance will accommodate a small change to the house, and will improve the symmetry of the house; this will thus raise the value of surrounding properties.

5 True

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- D. Pray – true, this property is very unique in that it sits on a peninsula and is surrounded on all sides, except for where the proposed addition is located. Granting the variance will not frustrate the public health, safety, or welfare. The proposed purpose is reasonable and is minimal in scope.
- J. Ramsay – true, there are very few properties around the Lake that do not contain hardships. This type of hardship is a classic example of what the relief from the restrictions is for. Granting the variance is an easy cure for this hardship.
- C. Vars – true, this proposal is one of the smaller requests that the Board has seen from around the Lake.
- T. Kachmar – true.
- D. Kirkwood – true. The proposed use is a reasonable one.

5 True

The Chair stated that the application, as it passed all of the tests, is granted.

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Jamie Ramsay moved to exit deliberations. Danielle Pray seconded.

Roll Call: Jamie Ramsay – aye; Tim Kachmar – aye; Charlie Vars – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.

Doug Kirkwood requested a brief recess.

Meeting resumed after roughly 5 minutes pass.

OTHER BUSINESS:

1. Minutes: December 15, 2020

Jamie Ramsay moved to approve the meeting minutes of December 15, 2020, as amended [Line 396, replace “considerations” with “conditions;” Consider changing Kristan Patenaude’s title from “Minute taker” to “Recording Secretary.”] Charlie Vars seconded.

Roll Call: Jamie Ramsay – aye; Tim Kachmar – abstain; Charlie Vars – aye; Danielle Pray – aye; and Doug Kirkwood - aye. 4-0-1; motion carried.

2. Any Other Business

Doug Kirkwood brought up meeting packets, “what gets sent out”, and staff reports.

In response to a question from Doug Kirkwood, Natasha Kypfer explained that the Governor’s Order information is required to be read at the beginning of any Town Board/Commission meeting.

The Board discussed updating the language on the application form to reflect the language as it appears in the RSA.

Doug Kirkwood stated that he believes the Staff Report regurgitates a lot of information from the ordinance, which isn’t needed. Natasha Kypfer disagreed. She explained that, as Town Staff, her job is to be unbiased, and follow common planning rules through the Staff Report. Her duty is to present the applicant’s information to the public and abutters, as well as the Board.

Danielle Pray agreed that it is important to have this information available, as the Staff Report is read by different audiences than just the Board.

In response to a question from Doug Kirkwood, Natasha Kypfer stated that she updates the Town website for every Board/Commission meeting with all of the applicant’s documents and the Staff Report. As a courtesy, she also sends out a copy of the Staff Report and an agenda to each applicant and/or their agent a week prior to the meeting.

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Doug Kirkwood stated that he would agree to disagree about the content of the Staff Report. He respects that common planning practices are being followed. He has been dealing with the Town practices for the past 45 years, and these Staff Reports are a change to him. He does not like that the Report tells the Board how to proceed with each application and the options available. He believes that the Report tries to tell the Board how to do its job.

Natasha Kypfer disagreed. She stated that the Staff Report is unbiased and that options are listed at the end of each application for the Board to review, but that does not equate to telling the Board how to rule.

Tim Kachmar stated that he believes the Staff Reports are very helpful to new members coming onto the Board.

**Tim Kachmar moved to adjourn the meeting at 9:23pm. Danielle Pray seconded.
Roll Call: Jamie Ramsay – aye; Tim Kachmar – aye; Charlie Vars – aye; Danielle Pray – aye; and Doug Kirkwood - aye. Motion carried unanimously.**

Respectfully submitted,
Kristan Patenaude

Minutes approved: March 23, 2021