

# **Minutes**

## **Clark County Board of Zoning Appeals**

Regular Meeting ~ 2:00 pm.  
Thursday, September 23, 2021

Springview Government Center  
3130 East Main Street  
Springfield, Ohio 45505

Jerri Chairperson, Chairperson of the Clark County Board of Zoning Appeals, called the meeting to order at 2:00 pm. and asked for the Roll Call.

Present For Roll Call: Mrs. Jerri Taylor, Mr. Paul Hazlett, Ms. Sandy Forstrom, Mr. Tom Duffee and Ms. Greta Wilt.

Absent For Roll Call: Mr. Rick Smith.

Also in Attendance: Mr. Allan Neimayer and Mrs. Jennifer Tuttle of Clark County Community & Economic Development.

Chairperson Taylor explained how the meeting will be conducted.

Chairperson Taylor asked if there are any comments regarding the minutes. Hearing none, she asked for a motion.

### **Approval of the August 26, 2021 Minutes**

Motion by Mr. Hazlett seconded by Mr. Duffee, to **Approve** the minutes as corrected listing Ms. Wilt and Ms. Forstrom as absent.

**VOTE: Yes:** Mr. Hazlett, Mr. Duffee and Mrs. Taylor.

**No:** None.

**Abstain:** Ms. Wilt and Ms. Forstrom.

***Motion carried.***

Ms. Forstrom will be a voting member.

Chairperson Taylor asked Staff to present the first case.

### **Case #BZA-2021-26 ~ Property Owner/Applicant: Phillip Bennett ~ Location: 4819 Merrimont Ave., Moorefield Twp. ~ Request: Variance to Section 805.02.011 to install an 8 ft. tall fence in the side & rear yard.**

Mr. Allan Neimayer, Senior Planner, stated the subject property is located at 4819 Merrimont Ave. in Moorefield Twp. and consists of 0.25± acres. The property is currently zoned R-2A (Medium Density Single-Family Residence District). The Applicant has filed this variance request to install an 8 ft. tall fence in the rear and side yard for privacy around the pool due to the elevation of the property: "Our yard falls 3.5 feet to the rear from sidewalk around pool. So to gain privacy an 8 foot fence is needed". Mr. Neimayer reviewed slides of zoning and land use of the subject area. Mr. Neimayer then reviewed Zoning Regulations Section 805.02: a fence or wall in the side or rear yard shall not exceed six (6) feet in height.

Mr. Neimayer summarized two letters from surrounding property owners. One sent in favor of the request by Michael Mattimore, 4811 Merrimont Avenue, and one in opposition by Brandon Fultz, 4825 Chippendale Drive.

Hearing no questions for Staff, Chairperson Taylor opened this portion of the public hearing at 2:05 pm. and asked if anyone would like to speak in favor of the case.

Phillip Bennett, Applicant, 4819 Merrimont Ave., was sworn in. Mr. Bennett stated that the whole street slopes. The neighbors to the left, right and rear have no issues. The house to the right is up about 3 feet higher. Mr. Bennett showed pictures to the Board. From our neighbors deck you can see strait into our pool. We would like privacy for our pool.

Chairperson Taylor asked the Applicant what the height of his current fence is. The Applicant replied, it is about 12 feet from our rear property line and it is 6 feet in height. He stated, "When you stand on the concrete you have about 3 and one-half feet of your body showing with a 6 foot fence.

Mr. Hazlett stated this is a topographic issues. He stated it appears the Applicant is just trying to get privacy. He asked if the fence would be all the way down close to ground level so nothing can crawl underneath it. The Applicant responded yes.

Chairperson Taylor asked about stair stepping the fence. The Applicant responded we thought that through but the way the ground falls off on the left the neighbor would see us from his family room. The neighbor to the right would look down on us also. His property drains into mine.

Ms. Taylor asked if fill dirt could be used. The Applicant responded it would change the drainage.

Mr. Hazlett asked how long have you lived there. The Applicant responded about 9 years. And the neighborhood behind you? The Applicant responded about a year. Mr. Hazlett then asked, and they have had no issues? The Applicant responded no.

Ms. Forstrom asked about vegetation in the rear. The Applicant responded no. The neighbor has some bushes on their property.

With no more questions for the Applicant, Chairperson Taylor asked if anyone else would like to speak in favor of the case. Hearing none, she then asked if anyone wanted to speak in opposition of this case. Hearing none Chairperson Taylor closed this portion of the public hearing at 2:12 pm. and asked for Board discussion

### Findings of Facts Discussion:

Ms. Wilt stated given the slope and difference in elevation, this should be approved.

Mr. Duffee stated the Applicant put a lot of stock in privacy provided by the fence, but this is a safety issue to prevent kids. For the record I do not agree with fences over 6 feet. But due to topographic issues, I am ok with this.

Chairperson Taylor stated I am not sure you can expect full privacy with neighbors that close to you. I see it for safety, not sure you can expect full privacy though.

Mr. Hazlett stated it is a safety issue. If the ground is three feet higher, it could promote an opportunity for kids to get over the fence. For safety, it is practical to go a couple feet higher.

Mrs. Forstrom stated I would be okay with eight feet in the back because it does look down so far and six feet on the sides.

Chairperson Taylor stated safety is something we always keep in mind. But the Applicant is not talking about safety he is talking about privacy. He is in a neighborhood with close neighbors. Privacy is not a realistic expectation.

Mr. Hazlett stated I see your point.

With no further discussion, Chairperson Taylor asked for a motion.

**Action on Case #BZA-2021-26 ~ Property Owner/Applicant: Phillip Bennett ~ Location: 4819 Merrimont Ave., Moorefield Twp. ~ Request: Variance to Section 805.02.011 to install an 8 ft. tall fence in the side & rear yard.**

Motion by Mr. Hazlett, seconded by Ms. Wilt, to **Approve** the Variance request as presented.

Mr. Duffee requested that we amend the motion to an eight (8) feet fence in the rear and six (6) feet on the sides.

Mr. Hazlett withdrew his motion.

New Motion by Mr. Hazlett, seconded by Mr. Duffee, to **Approve** the Variance with six (6) ft. in side and eight (8) ft. in rear.

**VOTE: Yes:** Mr. Hazlett, Mr. Duffee, Ms. Forstrom and Ms. Wilt.

**No:** None.

***Motion carried.***

Chairperson Taylor asked Staff to present the next case.

**Case #BZA-2021-27 ~ Property Owner/Applicant: Speedway LLC ~ Agent: Jonathan Woche ~ Location: 5050 & 5100 Urbana Rd., Moorefield Twp. ~ Request: Variance to allow a total gross sign area over 300 sq. ft., additional, larger and taller directional signage, and to allow two free standing signs.**

Mr. Neimayer stated the subject property is located at 5050 & 5100 Urbana Rd. in Moorefield Twp. and consists of 4.47± acres. The property is currently zoned B-3 (General Business District). The Applicant is redeveloping the existing Speedway Station & Convenience Store. Because zoning regulations limit the overall size/sq. ft. of signage to 300 sq. ft., and the number of free-standing signs allowed by a business to one, the Applicant has filed this variance request. Mr. Neimayer reviewed slides of zoning and land use of the subject area. The county engineer is still reviewing the site plan for access. Mr. Neimayer reviewed signage regulations and compared to the proposed signage on the site plan.

Ms. Forstrom asked about the signage on the other lot. Mr. Neimayer explained it is currently on a separate parcel. The proposed redevelopment would be to combine these two parcels.

Ms. Forstrom asked about signs L and K. Mr. Neimayer explained there are two access points on Moorefield Road, one for trucks and one as an exit for auto traffic. On Urbana Road there will be 2 access points: one you come in for the auto fuel canopy and one for trucks that are already on Urbana Road.

Mr. Duffee stated if you take the directional signage out, the 70 sq. ft., that leaves 470 square feet.

Ms. Forstrom asked if there are any electronic message display signs. Mr. Neimayer responded fuel pricing on the freestanding sign is usually done electronically.

Hearing no further questions for Staff, Chairperson Taylor opened this portion of the public hearing at 2:33 pm. and asked if anyone would like to speak in favor of the case.

Johnathan Woche, Applicant, 5721 Dragon Way, Suite 300, Cincinnati, Ohio, was sworn in. Mr. Woche stated that he is a Planner with McBride Dale Clarion and is representing Speedway. Brad Gross, Construction Department Manager with Speedway, is also present. Mr. Woche apologized for the complex variance request. There is already a Speedway on the corner parcel with a fuel canopy in the front. We are just asking that you let that same condition to continue for functionality. A couple things to consider, a fuel canopy behind the store would cause a circulation issue for access as well as functionality for customers. It would be detrimental to adjoining properties for the fuel canopy to be behind the store. The design we propose, that resembles the design there today, puts the activity in the front of the store where it should be. I would argue and say by denying the variance request would have a detrimental impact by putting our auto fuel canopy behind the store.

The Applicant explained we are asking for multiple sign variances, but they build on each other. If you take the 69 square feet of directional signage out that leaves 471 sq. ft. We do feel this is a unique situation. We have multiple structures on site: auto fuel canopy in the front, and truck fuel canopy to the rear. He reviewed the site plan explaining the multiple structures warrants more signage. The current store has multiple signs. We are asking for approval for the freestanding sign, one per street frontage. The Applicant showed a picture to the Board of where the signs would be. We do not feel that having just one sign on Urbana Road would have visibility to our customers for this corner lot. Due to a very wide right-of-way, it would not be possible for us to put a sign close to the intersection that could potentially be seen from both directions. So we were forced to separate them. That would be a hardship on us. Once we are able to combine parcels, it will be necessary for the two freestanding signs. The Applicant explained there are currently three freestanding signs out there today including the fitness center. In our opinion this will not change the character of the area by approving this variance. It will be going from three signs down to two and the character will remain the same.

The Applicant then explained the directional signage. We are asking for a 5 sq. ft. auto sign on Urbana Rd that says "Auto Entrance". We would have two 32 sq. ft. truck signs. Those are needed to direct truck traffic. You cannot see a 2 sq. ft. or 5 sq. ft. sign from a truck. It is needed for safety circulation.

Chairperson Taylor asked about the access. The Applicant explained the right-in right-out on Urbana Road. The Moorefield Road access will allow both directions. This site plan is based on input from the County Engineer's Office.

Ms. Forstrom asked for more clarification on the sign locations. The Applicant explained it is labeled based on the way you enter Moorefield Road or Urbana Road.

Ms. Wilt asked do you need a freestanding sign on Moorefield Road. The Applicant responded yes to see the fuel prices, east to west. If you denied the request, the Urbana Road sign will be the only sign with fuel prices. He explained that is why he feels there are two signs there now.

With no more questions for the Applicant, Chairperson Taylor asked if anyone else would like to speak in favor of the case. Hearing none, she then asked if anyone wanted to speak in opposition to this case. Hearing none Chairperson Taylor closed this portion of the public hearing at 2:45 pm. and asked for Board discussion.

Findings of Facts Discussion:

Chairperson Taylor stated this will double in size and offer more services. The scope allows the need for increased signage. I believe directional signage is imperative. I also like that the semis have an entrance and exit for safety.

Mr. Duffee stated I believe directional signage is desirable and they are not illuminated. It is just a significant variance and I am concerned about the overall square footage of signage.

Mr. Hazlett stated the issue we deal with the most is the corner lot. I am ok with the two signs. People need to be able to see the gas prices both ways.

Mr. Duffee pointed out they could reduce other signs to reduce the overall square footage.

Ms. Forstrom stated the lot is quite narrow, and a for a corner lot it is a lot of signage. For safety reasons, you cannot get rid of the directional signs. The two freestanding signs are an issue. I am not sure there is a way to reduce the signs.

Ms. Wilt stated they are very well laid out for safety. I have no issues with the two free standing signs.

Chairperson Taylor re-opened the public portion of the hearing at 2:54 pm.

The Applicant stated that we are not sure how to redesign with one freestanding sign. We can remove two canopy signs that would reduce the overall request. We would remove the northern signs on the canopy. They are the least visible. That would reduce the square footage down to 412.75 square feet. That is still a variance but we are going from 170 square feet over down to 113 square feet over. I would offer that to the Board considering we feel it is vital to have the two free standing signs.

Mr. Duffee asked the Applicant if he could make the same reduction to the Truck Canopy. The Applicant replied, no. We feel it is important to have. Mr. Duffee stated he understands branding, but everyone knows it is Speedway. I do understand pricing, but everyone knows it is Speedway.

Chairperson Taylor closed the public portion of the hearing at 3:00 pm. and asked for Board Discussion.

Mr. Hazlett stated it is a substantial reduction to consider. Chairperson Taylor stated the pricing signs would remain.

Ms. Forstrom stated she appreciated the reduction of the two signs is good.

Ms. Wilt stated taking of signs E and G she would approve.

Chairperson Taylor stated that the character will be altered, the request is substantial. There is not housing nearby, no affecting services, looked at other ways to alleviate with possible solutions, there are some irregularities to the lot. It is a good compromise.

Hearing no further questions or comments from the Board, Chairperson Taylor asked for a separate motion on each variance request.

**Action on Case #BZA-2021-27 ~ Property Owner/Applicant: Speedway LLC ~ Agent: Jonathan Woher ~ Location: 5050 & 5100 Urbana Rd., Moorefield Twp. Request: Variance to allow a total gross sign area over 300 sq. ft., additional, larger and taller directional signage, and to allow two free standing signs.**

1. Motion by Mr. Hazlett, seconded by Mrs. Forstrom, to **Approve** the Variance request 601.02 (to \*\*\*).

**VOTE: Yes:** Mr. Hazlett, Mrs. Forstrom, Mr. Duffee and Ms. Wilt.

**No:** None.

***Motion carried.***

2. Motion by Ms. Wilt, seconded by Mr. Hazlett, to **Approve** the Variance request 602.03.01 (to \*\*\*).

**VOTE: Yes:** Ms. Wilt, Mr. Hazlett, Ms. Forstrom and Ms. Wilt.

**No:** Mr. Duffee.

***Motion carried.***

3. Motion by Mr. Duffee, seconded by Mr. Hazlett to **Approve** the Variance request 602.03.03. (to \*\*\*).

**VOTE: Yes:** Mr. Hazlett, Ms. Forstrom and Ms. Wilt.

**No:** Mr. Duffee.

***Motion carried.***

4. Motion by Ms. Forstrom, seconded by Mr. Hazlett to **Approve** the Variance request 802.05 (to \*\*\*).

**VOTE: Yes:** Ms. Forstrom, Mr. Hazlett, Mr. Duffee and Ms. Wilt.

**No:** None.

***Motion carried.***

Chairperson Taylor asked Staff to present the next case.

**Case #BZA-2021-28 ~ Property Owner/Applicant: Peter Catanzaro ~ Agent: Justin Hasting  
Location: 494 Newlove Rd., Harmony Twp. Request: Variance to Section 808.06.07 to allow a  
pond on a parcel less than 5.0 acres.**

Mr. Neimayer stated the subject property is located at 494 Newlove Rd. in Harmony Twp. and consists of 4.59 acres. The property is currently zoned A-1 (Agricultural District). The Applicant would like to build a pond on the property, and because the property is less than 5.0 acres, has filed this variance request. Mr. Neimayer reviewed Section 808.06 where ponds shall not be located closer than twenty-five (25) feet from any lot lines and where applicable, they shall not be located closer than seventy-five (75) feet from a road right-of-way or easement located on any parcel. In addition, they shall meet current Clark County Combined Health District on-site utilities horizontal isolation distances for private water systems and sewage disposal systems. Ponds should not present a contamination hazard to groundwater or local drinking water sources. A site approval, from the Clark County Combined Health District, is required prior to approval of plans for pond construction. They shall not restrict or block existing or future surface and/or sub-surface drainage systems. No pond shall be located on a parcel less than five (5) acres in size. Mr. Neimayer noted the soils on the property. There was history on the property with Harmony Township. He noted in the Clark Soil and Water Conservation letter they recommend the Applicant hire an engineer to design the pond. Harmony Township had stated the same thing: must be private engineer designed, not just soil and water. Mr. Neimayer stated he received emails from Ken Montgomery, 523 Newlove Road, Scott Hennigan, 557 New Love Road and Michelle Orvetc, 488 New Love, all in support.

Mr. Hazlett asked if the County Engineer's Office had any issues. Mr. Neimayer responded he received no communication from them.

Mr. Duffee asked about the surrounding owners. Mr. Neimayer showed the area on the GIS Map.

Chairperson Taylor asked if it was the old apple orchard. Mr. Neimayer responded he does not know the history on it.

Ms. Forstrom asked where the drainage issues are. Mr. Neimayer deferred to Jereme Best, Clark Soil and Water Conservation.

Chairperson Taylor asked if it was going to be in front of the house. Mr. Neimayer responded yes. She noted the property has been a swampy area for 20 years.

Chairperson Taylor opened the public portion of the hearing at 3:19 pm. and asked if the Applicant would like to speak.

Peter Catanzaro, Applicant, 494 Newlove Rd was sworn in. Mr. Catanzaro stated that the house is almost three years old. It holds some water down by the road. He added that we put some dirt in there and the township put a stop work order against me. I took some dirt out to please them in hopes they would take the lawsuit off of me. There is roughly six inches of water in there. I want to clean it up to have a front yard. The Applicant stated the water would not flood the road. If it exceeds the pond, the water would go through the culvert I put on my property.

Chairperson Taylor asked do you think the pond would alleviate the swamp area? The Applicant responded yes. But the township does not want me to do anything with the area. I do not know if it will hold water. I started talking with Clark Soil and Water Conservation and hopefully that will work.

Chairperson Taylor adds, so the issue is a proposed pond on 5 acres, 4.5 acres is not off too much. Whether they want you to dig or not is not our issue. We are simply looking to approve a pond on a lot less than 5 acres.

Ms. Forstrom referred to Clark Soil and Water Conservation's letter. Per their recommendation, she asked the Applicant would you put an easement in to the neighboring property to the south? The Applicant responded no we were just going to do it. That is my aunt's property.

Mr. Hazlett asked if the culvert is in for the overflow. The Applicant responded yes.

Ms. Wilt asked how far from the right-of-way? The Applicant responded it is 75 feet from the road right-of-way.

Mr. Duffee asked was the plan done by Soil and Water. The Applicant responded yes.

Jeremy Best, Clark Soil and Water Conservation, was sworn in. Mr. Best stated that the original plan was drawn up for a possible solution during the lawsuit between the township and the homeowner. The plan called to move the culvert under the road one foot. There have been two or three different scenarios to help the drainage in this area. It needs something in the road right-of-way from the township. The water is being pushed onto the south towards his aunt's property. We are not opposed to the property owner putting in a pond. But there needs to be cooperation between the downstream land owner and the township. In the original pond proposal, he said there was going to be some excavation work done through his aunt's property, but then the Applicant was not allowed on her property to put that drain in. There is a fix here. It is just about who wants to pay for it

Chairperson Taylor asked is there any reason why this pond should be a definite no? Mr. Best responded it is going to submerge the road side culvert that is existing there now. And it would affect your downstream neighbor. There needs to be an overflow for the pond, there needs to be an outlet for the drainage. Mr. Best stated the elevation for the culvert does not seek positive drainage for a long distance.

Mr. Duffee asked if the lawsuit was still active. Mr. Best responded no.

Mr. Duffee asked what else can be done. Mr. Best responded he needs an outlet. I would recommend a drainage easement.

Mr. Hazlett asked, there is no other way to drain. Mr. Best responded it could be a road ditch or pipe.

Ms. Wilt asked about the pond design and is there a contract with an engineer? Mr. Best responded legally Soil and Water cannot approve it. He stated we can provide recommendations. The county Engineers Office has seen these plans and they will not sign off on it. It would need to be a private engineer.

Mr. Best noted the issue is not (the property being) 5 acres or more. This property still lacks an adequate drainage outlet for the pond.

Chris Simpson, Clark Soil and Water Conservation, was sworn in. Mr. Simpson stated that the main concern is the culvert along Newlove Road. It needs to be elevated at least one foot so we have a lot better drainage. This is a good opportunity to look at the big picture. This is old rural drainage for a

suburban area. The pond is the best thing. There needs to be a better outlet. There are going to be more houses built.

Ms. Forstrom asked who is responsible for the culvert. Mr. Simpson responded the township.

With no more questions, Chairperson Taylor asked if anyone else would like to speak in favor of the case. Hearing none, she then asked if anyone wanted to speak in opposition to this case. Hearing none Chairperson Taylor closed this portion of the public hearing at 3:37 pm. and asked for Board Deliberation.

Chairperson Taylor explained that the Board is here today to either approve or not approve a pond on a lot with less than 5 acres is that correct? Mr. Neimayer responded it is still a question of whether or not it can be done. Which it will go through our zoning certificate process to make sure it meets the setback requirements. I would suggest per Clark Soil and Water recommendation and the Township Trustees recommendations, that an outside Engineer design the pond.

Ms. Wilt stated she would like an engineered plan and concerned about the pond fitting on the property.

Ms. Forstrom stated I could approve it because of the zoning certificate requirements .

Mr. Hazlett stated I would like to Table this case because it is the safer thing to do. We are trying to control something that has been there for years. I just do not know that there is a good solution for that area.

Chairperson Taylor re-opened the public portion of the hearing at 3:43 pm.

Mr. Duffee asked the Applicant are you going to contact an engineer. The Applicant responded yes. We are willing to do that and clean it. Mr. Duffee stated the Township Trustees would like you to have an engineer's design. The Applicant responded if the plans we have are not good enough then yes. I just do not understand why it cannot be approved the way it is. We are just trying to clean up the front of the property. We are collecting everyone's water in the neighborhood.

Chairperson Taylor stated we understand that is your goal. If we Table this and give you six months, you may have a chance to look at other resources and with that you may get more cooperation from the Township Trustees. She stated she understands you are doing the best with the situation.

Cortney Catanzaro, Applicant, 494 Newlove Rd. was sworn in. Mrs. Catanzaro stated the main concern is why their drawings are not good enough if we have an outlet. How far are we supposed to let this go? We have engineered drawing and those are not good enough. Chairperson Taylor responded we are only looking at whether you can construct a pond on less than five acres. Why they are doing that, I am sure they have their reasons but we cannot answer that for them. We want to give you every opportunity to resolve this issue. I am well aware of this area and what you are trying to do and we want to give you every opportunity to do that.

Mr. Neimayer added the concern is with an acceptable outlet for the pond. If an engineered is hired to get that figured out, and get back with the Township Trustee's and get them on board, then we have a solution for this.

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## **Clark County Board of Zoning Appeals**

Mrs. Catanzaro asked, if it is a drainage issue for the whole road do we contact of all our neighbors for this brand new drainage system? Mr. Neimayer responded it is a township road so that is who you would speak with. Mrs. Catanzaro stated they will not speak to us.

Mr. Catanzaro asked about the drainage outlet. Mr. Hazlett responded it sounds like there is an issue with the Township. Our only issue here today is the zoning, the five acres. Mr. Catanzaro responded I do not know what engineered drawings are going to do other than cost me more money.

Mr. Duffee added we are not the experts. We have a recommendation from Soil and Water & from the Township trustees to have an outside engineer's design. We are not engineers we cannot give our expertise on the matter.

Ms. Forstrom stated storm water should be kept on your own property. Maybe you can get an easement.

Chairperson asked about an easement for the water. Mr. Neimayer stated the easement stays with the property.

Chris Simpson stated the plans prepared by Clark Soil & Water Conservation are based off of the existing culvert being elevated a foot. We do not have the authority to do that. He explained we are not certified engineers. Our plans were prepared to try and find a solution. If the culvert is not elevated you cannot back water up. The big drainage picture is an issue.

Chairperson Taylor stated I think we should Table this to give the Applicant more time.

Chairperson Taylor closed the public portion of the hearing at 3:56 pm. and asked for a motion.

**Action on Case #BZA-2021-28 ~ Property Owner/Applicant: Peter Catanzaro ~ Agent: Justin Hasting ~ Location: 494 Newlove Rd., Harmony Twp. ~ Request: Variance to Section 808.06.07 to allow a pond on a parcel less than 5.0 acres.**

Motion by Mr. Hazlett, seconded by Ms. Wilt, to **Table** the Variance request for up to six (6) months for more information from a private engineer and coordination with Harmony Township.

**VOTE: Yes:** Mr. Hazlett, Ms. Wilt, Ms. Forstrom and Mr. Duffee.

**No:** None.

***Motion carried.***

### **Staff Comments**

Mr. Neimayer stated the next scheduled meetings are October 28 and November 18, 2021.

# ***Minutes***

## ***Clark County Board of Zoning Appeals***

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### **Adjournment**

Motion by Ms. Wilt, seconded by Mr. Duffee, to Adjourn.

**VOTE: Motion carried unanimously.**

The meeting was adjourned at 3:58 pm.

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Mrs. Jerri Taylor, Chairperson