



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
March 20, 2024**

ATTENDANCE: Drew Gentile, Chairman, Jake Martin, Vice Chair, Doug McAllister, George Rau, Bill Dempster, Alternate, Sharon Schilling, Alternate

EXCUSED: Marc Ohlson, Alternate

OTHERS PRESENT: Madison TV, Amanda Hayford, Kate Young, Land Use Boards Administrator, Matthew Johnson, Esquire, Christopher Boldt, Esquire and other members of the public.

CALL TO ORDER: Gentile, Chairman called the meeting to order at 6:00 pm. Schilling led the reciting of the Pledge of Allegiance.

Gentile asked if anyone was present to speak on **Case #23-23** as it was on the Agenda, approved and continued to June. There was no one present to speak. Gentile questioned Young, Land Use Boards Administrator why was **Case #23-23** still on the Agenda and Public Hearing notice. Young explained that it should not be removed as this case will not be heard until the June meeting and if removed, it may get forgotten. Gentile asked Young if she could add “**(Scheduled to be heard at the June 19, 2024 Public Hearing)** and then it is clear. Young stated she could do this.

Gentile stated he will take the cases by their respective case numbers and start with **Case #23-12**. Gentile asked Robert Boyd if he was here for the Selectmen and Boyd stated he was here tonight for two rolls, as an abutter and as the Code Enforcement Officer for the Town of Madison.

Gentile asked Dempster since he originally recused himself from this case, that he please take a seat in the audience. Gentile stated that Ohlson was not present tonight.

ELEVATION OF ALTERNATES: Gentile elevated Schilling to a full voting member. Gentile stated that there is now a five-member board.

PUBLIC MEETING NOTICE: Notification of this public meeting was posted in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices on March 6, 2024.

PUBLIC HEARING:

Gentile confirmed with Attorney Boldt that he did not need to repeat all the formalities and that the Board is ready to proceed. Attorney Boldt responded that the witnesses are still under oath.

Case #23-12 – Continued (October 18, 2023, November 15, 2023, January 17, 2024 and February 21, 2024) - Appeal from an Administrative Decision from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Andrei and Erica Medeiros, 81 Knight Road, Tax Map 256, Lot 089 to determine whether or not their circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated August 10, 2023 as to Article IV, Section 4.2 of the Town of Madison Zoning Ordinance.

Gentile stated the Board has already checked for a Conflict of Interest but now that Schilling was elevated, he needed to confirm with her she has no Conflict of Interest.

Conflict of Interest: Gentile asked Schilling if she had a Conflict of Interest. She responded that she did not.

Waiver Request: There was no Waiver Request.

Regional Impact: There was none.

Gentile asked Attorney Johnson to restate his case. Attorney Johnson stated that at the first presentation (which was November 15, 2023), it was agreed that he could make his legal argument and it really would apply to each of the cases so he did not have to say the same thing each time and he wanted to make sure they are operating under the same ground rule that legal presentation relative to his legal arguments is applicable to each of the various applications and he stated that we are now on to the facts specific aspects of each use of the property and his legal analysis included in the letter, is in each application which was set for the board. Gentile agreed. (See Attorney Johnson's Factual Background and Legal Analysis as quoted below).

"Factual Background"

1. On July 6, 2022, Andrei and Erica Medeiros (the "Medeiros") became the owners of record for 81 Knight Road, Madison, NH by Warranty Deed from James J. Frati recorded with the Carroll County Registry of Deeds at Book 3678, Page 243.

2. The Medeiros' began renting their property on a short term basis in October 2022.

3. On August 10, 2023, Robert Boyd, Code Enforcement Officer issued the Medeiros a Notice of Violation. The Notice stated that the Medeiros' property was: (1) a non-owner occupied, short term rental; (2) in violation of the Ordinance; and (3) continued use of the property in violation of the Ordinance would result in the Town of Madison commencing legal action in court. The Notice of Violation advised the property owner that they could appeal to this body within thirty (30) days. The Medeiros; have availed themselves of this right. A copy of this Notice entitled Exhibit A is in the Case #23-12.

Legal Analysis

The Board of Selectmen and the Code Enforcement Officer made an error of fact in issuing a Notice of Violation. As will be explained below, the Madison Zoning Ordinance changes cannot be applied to the Medeiros property because they are unconstitutional.

First, the amended "dwelling unit" definition upon with (sic) the Code Enforcement Officer is relying is unconstitutional because of its vagueness, ambiguity, and/or overbreadth. As written, it is unclear what the definition intends to cover. Second home owners as well as seasonal renters could be barred by this new definition from accessing their property in Madison. The revised definition of dwelling unit does not differentiate between owner or rental occupancy. Were this amendment to be valid, an owner of a second home bought after March of 2022 would not be allowed to use his or her property for periods of less than thirty days. This definition is thus void given its complete ambiguity. Officer Boyd's "Notice of Violation" letter claims that the 2022 changes "make it clear that a house that is primarily rented to guests on a short term basis, rather than used as a residence, does not meet the definition of single family house." However, the change to the ordinance does not include the word "rental." Moreover, the Town voted down two proposed amendments directly addressing short-term rentals. Given this set of circumstances, the Town should not base its enforcement actions on ordinance language that is so vague. The Chief Justice of the New Hampshire Supreme Court has cautioned that any ambiguity in a land use regulation should be, in his opinion, construed in favor of protecting private property rights. See Conway v. Kudrick, 2022-0098 (MacDonald, CJ., concurring opinion). Following that guidance should cause this board to reject any

enforcement actions until the Madison Zoning Ordinance is modified to be clear what is restricted and what is not.

Second, the amended Madison Zoning Ordinance violates the substantive due process rights of the Medeiros' and creates a regulatory taking under the New Hampshire and Federal Constitution. Madison lacks the statutory or constitutional authority to restrict a use of their property that the Supreme Court has confirmed is a residential use. Such an action is fundamentally unfair generally and to the Medeiros property in particular. By barring them from using their property for residential short term rentals unless owner-occupied, Madison is depriving them of a recognized fundamental right of property ownership and creating a regulatory taking.

Third, the amended Madison Zoning Ordinance violates the Medeiros' equal protection rights. The amended Zoning Ordinance affects property so it is subject to intermediate level scrutiny. Madison cannot show that the amended ordinance is substantially related to an important governmental objective. Madison cannot discriminate against owners of property who wish to engage in short term rentals, a recognized residential use, but freely permit long-term rentals. It cannot be a substantial governmental objective to allow long-term rentals at the expense of short-term rentals, especially absent any evidence or proof to support disparate treatment. The Code Enforcement Officer's interpretation deprives the Medeiros' of use of an otherwise proper use of their property and improperly favors hotel, motel and bed-and-breakfast operators by barring their competition. The zoning ordinance should not be used to pick winners and losers in the tourism industry.

Fourth, the amended Madison Zoning Ordinance violates the holding in Britton v. Town of Chester, 134 N.H. 434 (1991). In that case the Supreme Court struck a zoning ordinance that acted to restrict access to affordable housing in Chester. In this case, the Madison Zoning Ordinance definition of "dwelling unit" precludes the creation of affordable housing because the definition is applicable throughout all districts in Madison and the owner-occupied requirement as interpreted by the Code Enforcement Officer undercuts the ability to create meaningful affordable housing."

Gentile asked Attorney Boldt since this is a Public Hearing, does Attorney Johnson need to summarize the legal analysis. Attorney Boldt stated the Board can request Attorney Johnson to do so but the written points are in his letter. Attorney Boldt stated that since the meeting was several months ago, it may be good to have a short summary tonight. Gentile asked Attorney Johnson to summarize the four points in his letter. Attorney Johnson stated he stands by his letter and that he had provided the board with some analysis under the language used in the ordinance and he does not believe that short term rentals are excluded and in fact, is a permitted use under the ordinance and he also stated that he raised some constitutional challenges relative to the taking of the use of his various client's properties which he has also outlined in his letter, which is a two-fold process and the first argument is based on the language in the ordinance itself and second argument is based on some constitutional arguments and the third argument, which depends on the property, is whether they are permitted because of a pre-existing, non-conforming use analysis but this is case specific to different applicants which is not equally applicable across all of the applicants.

Attorney Johnson stated that he believed from his notes on the Medeiros matter, he gave his presentation and the board would have some questions and then open Public Comment and he had one thing additional based on the outcome of the last hearing and he wanted to hand out a sworn statement from the Medeiros which is an attempt to answer some of the questions the board had. Attorney Johnson handed copies to the board which is a sworn statement from his clients stating why they use the property, how they use the property and it contains some of the house rules as well as the covenants that came with property.

Attorney Johnson stated at a prior hearing, there was discussion that people need to do their due diligence and the ordinance changes and that people need to be aware of that and he stated he has a screen shot of the current Town

of Madison's website that states **"If you own a home in Madison that you rent out, short-term or long-term, you may be required under State Law to file a Landlord's Agent Designated Respondent Affidavit form with the Town Clerk's Office. For more information visit the DEPARTMENT tab, Town Clerk, Landlord's Agent Respondent Information."** Attorney Johnson stated there is nothing on the website and if someone were to go to the website to do any due diligence that it does not state that you cannot rent short term. Attorney Johnson further stated that the website suggests that as of today, you can do short term rentals.

Gentile explained that by the Rules of Procedure, the board allowed the applicant to make a statement and Attorney Johnson was not sworn in because he was previously at the last meeting, however, anyone else that wishes to speak to this case, the board will allow them to speak and then there will be two rounds of rebuttals.

Gentile swore in Robert Boyd and Nicholas Borelli.

Martin suggested that the sworn statement submitted for the Medeiros which was provided by through Attorney Johnson should be read aloud. Gentile read the sworn statement aloud (a copy of which is in the file for **Case #23-12**).

Nicholas Borelli, 4 Lakeview Drive – Borelli read aloud his letter dated March 20, 2024, (a copy of which is in the file for **Case #23-12**, together with a copy of the Medeiros recorded mortgage). Borelli stated that in the Medeiros mortgage dated July 8, 2022 it contains a Second Home Rider which states that, the second home rider requires the borrower to keep the property available primarily as a residence for borrowers' personal use and enjoyment for at least one year after the date of the second home rider. Attorney Johnson stated he does not believe the mortgage is relevant.

Robert Boyd, 55 Knight Road (Abutter and Code Enforcement Officer for the Town of Madison) – Boyd stated that at the November meeting, it was brought up that the Zoning Ordinance change in March, 2022 prohibited transient occupancy and this was before the Medeiros bought the home and before they started renting so it was already illegal at that time. Boyd stated as an abutter, and as he stated back in November, it is non-stop every weekend with people staying at the home less than 31 days and so this is transient. Boyd stated that all of the tenants have been rude, obnoxious and inconsiderate of the neighbors with regard to noise, partying, radios, foul language and he cannot enjoy being outside of his house sitting on his deck reading, etc. Boyd further stated that renters had an illegal camp fire which they do not have a permit for. Martin asked Boyd how long he had lived at his address. Boyd stated since 1995.

McAllister asked Boyd if the 1,000 gallon septic tank is valid for a five-bedroom house. Boyd stated he believes it should be 1,250 or bigger. Martin stated the home is advertised as a five-bedroom house.

Gentile asked Attorney Johnson if he wished to respond. He did not.

Gentile swore in Bill Dempster.

Bill Dempster, 57 Doe Drive – Dempster stated he had new information as to timelines to help the board and asked if he could provide the information to the board. Dempster stated he contacted the realtor, David Haine who sold the property to the Medeiros. David Haine gave him some information and timeline on the property and Dempster verified this to the prime MLS, when it was listed starting in April 8, 2022, a contingent was placed on May 5, 2022 and July 8, 2022 was the day the property was sold.

Gentile asked if anyone else wished to speak on this case. No one wished to speak so Gentile stated the board is going to collect their Findings of Fact and he stated he wanted to do this before the board closes the public hearing so there is a chance to correct anything that may be misrepresented because the Findings of Fact from the public is part of the foundation the board makes their decision on and he asked the board members to assist him in collecting the Findings of Fact.

Findings of Fact:

1. The Madison Zoning Ordinance was updated in March, 2022, defining a dwelling unit as one or more rooms arranged, designed, or used for non-transient residential purposes with independent sanitary and cooking facilities, and defining transient occupancy as any period of time up to and including thirty days.
2. The home was purchased in July, 2022.
3. The first rental was in September, 2022.
4. Mr. Bob Boyd, an abutter as well as Madison Code Enforcement Officer, testified that the previous owners lived there for the 24 months before the sale and that the house had never been used for a short-term rental.
5. The house has a 1000 gallon septic tank, presumed to be adequate for approximately four bedrooms, but there is no specific information on the system date or size.
6. The tax card lists the house has having been built in 1990 as a 2 bedroom home, it was sold in July, 2022 as a three bedroom home and offered as a five bedroom rental.
7. Mr. Boyd testified that it is the buyer's responsibility to understand the town's regulations.
8. There were complaints regarding noise and general disturbances.

Gentile asked for a motion to close the Public Hearing to deliberate on the merits of the case.

Motion by McAllister, seconded by Schilling to close the Public Hearing.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.
The motion passed by a roll vote of **5-0**.

Gentile explained to the public that board is now proceeding with the deliberation and that this is a public meeting and they are welcome to listen but there will be no further contribution from the public.

Gentile stated what he is suggesting to the board is that he is going to provide the board with a statement of argument and procedure. Gentile wants to read the procedure and he is going to make a statement that he believes lists the board's arguments and then he wants the board to consider the testimony of the agent, Attorney Johnson and then consider any testimony that has been provided by the community and then based on the board's Findings of Fact, the board will refine the statement of the board's argument and decide whether to grant or deny the petition.

Gentile stated the first item in the Board's argument is the following: (which is the initial line of argument which was later revised)

1. RSA 674:16 grants the town's legislative body the right to regulate land and building use.
2. That transient rental was permitted prior to March, 2022, is supported by the following points:
 - a. The practice was widely practiced in Madison after the Madison Zoning Ordinance went into effect in 1987 and was legally uncontested.
 - b. The NH Supreme Court in Conway v. Kudrick (May 2023) affirmed that short term vacation rentals were residential use, so that the provisions of Articles 4.2A and 4.6A do not prohibit transient rental in themselves.
3. Working Stiff Partners v. The City of Portsmouth concluded that the Zoning Ordinance clearly prohibited transient rental, and the city was justified in enforcing the prohibition. The point turned on the clarity of the wording prohibiting a specific action.
4. The Town of Madison contends that though some consider rental of a dwelling unit for any period a residential use, the rental for transient periods of 30 days or less is nevertheless explicitly prohibited by the Madison Zoning Ordinance.

Gentile stated that Attorney Johnson presented four arguments of fact that the ordinance is not valid and the board should now go through those four points. Attorney Boldt suggested a point of order and stated that Gentile made his statement as to the argument and Attorney Boldt stated it would be a little cleaner to see if there are any disagreements, any agreements or any revisions to the above language from the board as this was Gentile's language and then it would become the boards. Gentile asked the board for any clarifications, questions, disagreements, additions or subtractions. Schilling stated she had an issue with Gentile's statement as noted above in item #1 in that Gentile mentioned the idea that prior to the March, 2022, that this case deals with homes that are being rented as a short term rental post March, 2022. Schilling believes this is where the board should stay and she does not believe that at this point in time, that this board has a need to try to go through the 1987 to 2022 ordinances and figure out where the town stands on that. Gentile stated that what is important to establish is that the ordinance was established in 2022. Schilling stated that it should read "clarification" of an ordinance established in March, 2022.

Gentile stated the board is now going to go over Attorney Johnson's four points of his Legal Analysis as follows:

Gentile stated that Attorney Johnson's first point of his Legal Analysis states that basically the **amended term "dwelling unit"** is overly vague, not specific and basically is not adequate to specify what was intended. Gentile stated the board could take the position to agree with Attorney Johnson or disagree with him. Martin disagreed as a dwelling unit is exactly what it is, a place to dwell and the ordinance deals with a dwelling unit because that is what you do at a hotel, short term rental, bed and breakfast, you sleep there, you eat there and you bathe there and dwelling unit is the proper term. Martin stated if that is vague, then state law pertaining to motor vehicle law is vague because a rental car is the same as a personally owned vehicle, a car is a car and a house is a house and that is his argument. Gentile stated his argument would be that our definition of dwelling unit is clear enough that the restriction applies clearly to rental because it is inherently obvious from context of the ordinance that we are not restricting an owner's use of the house for a weekend. Gentile stated dwelling unit is not overly vague and that transient and non-transient is quite clear and what a dwelling unit is, is quite clear. The Board was all in agreement.

Gentile stated the second point of Attorney Johnson's Legal Analysis is **that the amended Madison Zoning Ordinance violates the substantive due process rights of the Medeiros' and creates a regulatory taking under the New Hampshire and Federal Constitution.** Gentile stated RSA 674:16 grants the town's legislative body the right to regulate land and buildings. The board was all in agreement.

Gentile stated the third point of Attorney Johnson's Legal Analysis is that the **amended Madison Zoning Ordinance violates the Medeiros' equal protection rights. The amended Zoning Ordinance affects property so it is subject to intermediate level scrutiny. Madison cannot show that the amended ordinance is substantially related to an important governmental objective.** Gentile stated he disagreed because Madison's Master Plan clearly indicates that we are trying to establish a rural residential community and the situation that arose with Airbnb, predates the considerations of the dates of the Master Plan so we cannot expect that specific wording to appear there, however, it is clear that if significant numbers of properties are replaced by short term rentals and shifting them into hotels in areas that were intended to be residences, then the effect of that is on other infrastructure in town, such as education because homes are now short term rentals and families are not living here and that cuts down on the number of children. He further stated that the town's concern over a large number of short term rentals does affect our governmental objectives. Martin agreed but also stated you could argue that the legislative body in the ordinance tasked the town with the objective of enforcing these ordinances. Gentile agreed that would be another argument.

Gentile stated the fourth point of Attorney Johnson's Legal Analysis was that the **amended Madison Zoning Ordinance violates the holding Britton v. Town of Chester, 134 N.H. 434 (1991). In that case, the Supreme Court struck a zoning ordinance that acted to restrict access to affordable housing in Chester. In this case, the Madison Zoning Ordinance definition of a "dwelling unit" precludes the creation of affordable housing because the definition is applicable throughout all districts in Madison and the owner-occupied requirement as interpreted by the Code Enforcement Officer undercuts the ability to create meaningful**

affordable housing. Martin questioned if this relates to Attorney Johnson’s first point. Gentile stated it does to a certain degree. Gentile asked the board for comments. Martin stated if someone is building a house with the intention of renting it short term, Martin believes that undercuts the ability to get some affordable housing as well. Schilling believes this fourth point is a reach because town after town after town across the country would tell you that as short term rentals become more prevalent, then affordable housing goes away and does not necessarily get increased because you have a different element as it is not a residential area anymore and it then becomes more of an area for strictly tourism and becomes more like a hotel area and more like a very transient nature and the demand for that area is much more cyclical and much more dependent on what is going on in the economy, whereas being able to afford a home long term, whether it be a second vacation home or long term to raise a family, is counter to this short term rental.

McAllister stated it is hard to see how we went from a situation where a home was rented post March, 2022 for rental rules to affordable housing and to him, it does not sound relevant.

Gentile asked the board to consider if changes are needed to the points of the line of argument. Schilling asked Gentile to go over them again which he did and the revised revisions are as follows:

The revised line of argument:

1. RSA 674:16 grants the town’s legislative body the right to regulate land and building use.
2. The NH Supreme Court in Conway v. Kudrick (May 2023) affirmed that short term Vacation rentals were residential use, so that the provisions of Articles 4.2A and 4.6A might not prohibit vacation rental out of hand.
3. Working Stiff Partners v. The City of Portsmouth concluded that the Zoning Ordinance clearly prohibited transient rental, and the city was justified in enforcing the prohibition. The point turned on the clarity of the wording prohibiting a specific action.
4. The Madison Zoning Ordinance as of March 2022 defines transient usage as 30 days or less and a dwelling unit as “one or more rooms arranged, designed, or used for non-transient residential purposes with independent sanitary and cooking facilities,” allowing the Town restrict transient rental.

Gentile asked the board to consider the arguments that were presented by abutting neighbors and they did not read a lot of it but basically, a lot of the arguments related to infractions of behavior and public order and those things are certainly annoying and one of the reasons is probably why the town enacted to restrict short terms rentals but those things bear directly on the question as to whether or not the rental of the property on a short term basis is legal. Rau agreed and stated this the one point the board needs to stay with. Gentile stated there is other testimony from other people that supported the timeline and that the timeline is not in question and there is no question on any side that the rental property was not used as a short term rental at any time at least within twenty-four months of the sale.

Gentile asked the board for a motion.

Motion by Gentile, seconded by McAllister based on the Findings of Fact, the Board moved to deny **Case #23-12.**

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.
The motion passed by a roll vote of **5-0.**

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-12.**

Gentile did state that since this is an appeal of an administrative decision, the board cannot predict the outcome of individual cases but will have to act consistently with this in other cases. Gentile stated that all other cases,

however, will be affected by the Findings of Fact so you cannot conclude what the outcome of another case may be based on this.

Gentile stated this case is significantly different because there is an appeal based on pre-existing non-conforming use.

Case #23-13 – Continued (October 18, 2023, November 15, 2023, January 17, 2024 and February 21, 2024) - Appeal from an Administrative Decision from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Chad and Brittany Ardizzoni and Aaron and Tiffany Clymer, 13 Lucerne Drive, Tax Map 103, Lot 060 to determine whether or not their circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated August 16, 2023 as to Article IV, Section 4.6A of the Town of Madison Zoning Ordinance.

PUBLIC MEETING NOTICE: Notification of this public meeting was posted in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices on March 6, 2024.

Gentile stated this **Case #23-13** was previously opened

Conflict of Interest: Gentile polled the board and he also asked Schilling if she had a conflict of interest. She responded that she did not.

Waiver Request: There was no Waiver Request.

Regional Impact: There was none.

Gentile asked Attorney Johnson to restate his case. Attorney Johnson stated they touched on this case before and he tried to distill as much as possible of some of the key questions that the board had at the last meeting as there were questions regarding the use of the property both before his clients purchased the property and after his clients purchased it. Attorney Johnson handed out a binder, (a copy of which is in the file for **Case #23-13**) to the board that his client put together which contains key pieces for what he thinks the Zoning Board is looking for as there is data the board had before from Select Real Estate which shows the historical rentals of the property predating the change in the ordinance in March of 2022. Attorney Johnson stated there is also the details of the rental history post his clients purchasing the property to show that it had been consistently used as rental property so there is no issue of abandonment under the grandfathering analysis. Attorney Johnson stated they did address the issue of whether they were aware of any complaints and he knows that would have been addressed before and that the cops had not been called. Attorney Johnson stated again, they have provided rental history before they bought in June of 2022 and after they bought and he also confirmed that his clients, under oath, they do pay Meals and Rooms Tax through the Airbnb platform. Attorney Johnson further stated that the middle part of the binder is the point he made earlier, is if you looked on the Town of Madison’s website for information relative to short term rentals, the website at least suggests that there is nothing precluding short term rentals in the Town of Madison and this is a challenge for parties when doing their due diligence looking at the town website. Attorney Johnson had no comment with regard to the Zoning Ordinance as that was already discussed. He further stated that in the middle of the binder there are some statutory sites as well as a power point his clients put together relative to the rental of the property under their ownership to show that it is has been consistent both pre- ordinance change and post ordinance change.

Gentile stated that the core essence of the challenge is that this house has been consistently used as a short term rental for approximately 60-90 days a year since 2017 and there has been no lapse and Gentile asked Attorney Johnson if this is his core argument. Attorney Johnson stated yes. (See Attorney Johnson’s Factual Background and Legal Analysis as quoted below).

“Factual Background

1. *On June 10, 2022, Chad and Brittany Ardizzoni and Aaron and Tiffany Clymer (the "Owners") became the owners of record for 13 Lucerne Drive, Madison, NH by Warranty Deed of James F. Basile, III and YEsline E. Basile recorded with the Carroll County Registry of Deeds at Book 3673, Page 41.*
2. *The Owners began renting the property on a short term basis in the second half of 2022.*
3. *On August 16, 2023, Robert Boyd, Code Enforcement Officer issued the Owners a Notice of Violation. The Notice stated that the Owners' property was: (1) a non-owner occupied, short term rental; (2) in violation of the Ordinance; and (3) continued use of the property in violation of the Ordinance would result in the Town of Madson commencing legal action in court. The Notice of Violation advised the property owner that they could appeal to this body within 30 days. The Owners have availed themselves of this right. A copy of this Notice entitled Exhibit A is in the Case #23-12.*

Legal Analysis

The Board of Selectmen and the Code Enforcement Officer made an error of fact in issuing a Notice of Violation. As will be explained below, the Madison Zoning Ordinance changes cannot be applied to the Owners' property because they are unconstitutional.

First, the Owners' property is a pre-existing nonconforming use. It was used for short term rentals historically and after the most recent amendments to the Madison Zoning Ordinance in March of 2022. Because the property always has been used for short term rentals, and that use has not been abandoned, the current owners, are entitled as a matter of law to continue the pre-existing nonconforming use. The Madison Zoning Ordinance expressly recognizes the ability to continue prior nonconforming use at section 1.3(c).

Second, the amended "dwelling unit" definition upon which (sic) the Code Enforcement Officer is relying is unconstitutional because of its vagueness, ambiguity, and/or overbreadth. As written, it is unclear what the definition intends to cover. Second home owners as well as seasonal renters could be barred by this new definition from accessing their property in Madison. The revised definition of dwelling unit does not differentiate between owner or rental occupancy.

Were this amendment to be valid, an owner of a second home bought after March of 2022 would not be allowed to use his or her property for periods of less than thirty days. This definition is thus void given its complete ambiguity. Officer Boyd's "Notice of Violation" letter claims that the 2022 changes "make it clear that a house that is primarily rented to guests on a short term basis, rather than used as a residence, does not meet the definition of single family house." However, the change to the ordinance does not include the word "rental." Moreover, the Town voted down two proposed amendments directly addressing short-term rentals. Given this set of circumstances, the Town should not base its enforcement actions on ordinance language that is so vague. The Chief Justice of the New Hampshire Supreme Court has cautioned that any ambiguity in a land use regulation should be, in his opinion, construed in favor of protecting private property rights. See Conway v. Kudrick, 2022-0098 (MacDonald, CJ., concurring opinion). Following that guidance should cause this board to reject any enforcement actions until the Madison Zoning Ordinance is modified to be clear what is restricted and what is not.

Third, the amended Madison Zoning Ordinance violates the substantive due process rights of the Owners and creates a regulatory taking under the New Hampshire and Federal Constitution. Madison lacks the statutory or constitutional authority to restrict a use of their property that the Supreme Court has confirmed is a residential use. Such an action is fundamentally unfair generally and to the Owners' property in particular. By barring them from using their property for residential short term rentals unless owner-

occupied, Madison is depriving them of a recognized fundamental right of property ownership and creating a regulatory taking.

Fourth, the amended Madison Zoning Ordinance violates the Owners' equal protection rights. The amended Zoning Ordinance affects property so it is subject to intermediate level scrutiny. Madison cannot show that the amended ordinance is substantially related to an important governmental objective. Madison cannot discriminate against owners of property who wish to engage in short term rentals, a recognized residential use, but freely permit long-term rentals. It cannot be a substantial governmental objective to allow long-term rentals at the expense of short-term rentals, especially absent any evidence or proof to support disparate treatment. The Code Enforcement Officer's interpretation deprives the Owners of use of an otherwise proper use of their property and improperly favors hotel, motel and bed-and-breakfast operators by barring their competition. The zoning ordinance should not be used to pick winners and losers in the tourism industry.

Fifth, the amended Madison Zoning Ordinance violates the holding in Britton v. Town of Chester, 134 N.H. 434 (1991). In that case the Supreme Court struck a zoning ordinance that acted to restrict access to affordable housing in Chester. In this case, the Madison Zoning Ordinance definition of "dwelling unit" precludes the creation of affordable housing because the definition is applicable throughout all districts in Madison and the owner-occupied requirement as interpreted by the Code Enforcement Officer undercuts the ability to create meaningful affordable housing."

Gentile asked the board if they had any questions for Attorney Johnson. There were none.

Gentile asked if anyone wished to speak to this case.

Gentile swore in Nicholas Borelli, Karen Dlugosinski and John Cancelarich.

Nicholas Borelli, 4 Lakeview Drive – Borelli stated that when it comes to an ordinance that is existing and the town does not enforce it, it does not mean it has gone away, all it means is that if something has been brought to the attention of town, from that point on, it should follow the ordinance and these ordinances have been here since 1987 and every time anything came up with short term rentals, it was strengthened year after year after year. Gentile asked since 1987 have short term rentals have been illegal. Borelli stated he is saying that there are ordinances in place in certain districts starting from then. Borelli stated that each year ordinances came out that they were strengthened. Borelli stated that in 1987 you had to have Meals and Rooms tax just like today. Gentile stated that the board is currently going off the reading of the ordinance and it says prior to 1987, there was no ordinance and in 1987 there was an ordinance, however, residential usage and short term rentals were not distinguished either in our ordinance nor in practice and an occasional court case, most recently, Conway v. Kudrick. Gentile stated the residential usage and short term rentals were allowed and there was no distinction. Gentile also stated that the board draws the distinction at March, 2022 when the language in our ordinance specifically defined transient. Gentile further stated that there are three periods of time before 1987, between 1987 and March, 2022 and after March, 2022. Borelli stated that is what he is saying that the ordinance only got stronger and the burden of proof is up to the applicants and now they are saying they have information that is going back to 2017 and we have information going back further than that. Gentile asked what information and Borelli stated that the property was not rented. Gentile stated he was trying to understand Borelli's line of argument. Borelli stated what he is trying to say is that we have to take each individual case and as it comes and we may end up going back to earlier times when there were ordinances put in place back in 1990 and 2011. Schilling asked if she could interject as she believes what Borelli is trying to explain is historically, the house was built in 1984 and there currently there is no evidence that the house was rented short term or otherwise from 1984 until 2017 and in 2017 there has been evidence presented by the applicant that the house was rented approximately 60 days a year on an average and they continued to rent post March, 2022 and she believes what Borelli is asking is based on the lack of evidence prior to the 2017 information, that the board consider that

information and consider the fact that historically, this home was not a short term rental but only in the history of the house more recently was it. Borelli stated this is correct and that is what he is trying to say.

Attorney Boldt asked Gentile if he could ask Borelli a question as he is trying to understand what Borelli is saying. Attorney Boldt asked if Borelli's argument, based off of Schilling is that if there is any window of time after 1987 that is was not rented, but there is a window of time as in this case, from 2017 to present that it is rented somehow controls and he asked Borelli if this is what he is saying. Borelli stated that Schilling hit the nail on the head explaining what Borelli was previously trying to say and again, Borelli stated that since 1987 the ordinance was put in place and every year it got stronger or every other year it gets stronger. Attorney Boldt interjected and stated that ordinances change all the time in this town year by year but the fact that there is a zoning amendment on other passages, other provisions of the ordinance are irrelevant to this issue which is really limited to the clarification that occurred in March, 2022. Attorney Boldt asked Borelli if his position is that there was a zoning amendment that is relevant to dwelling unit short term rental issue some time between 1987 when the original ordinance was put in place and the 2022 amendment that we are dealing with. Borelli stated absolutely. Attorney Boldt asked which ones could you tell us. Borelli stated 4.6 which started in 1990 when Eidelweiss was put together. Borelli stated that Eidelweiss is way stronger and our language is so similar to the Working Stiff Partners v. The City of Portsmouth case and everybody understands that. Attorney Boldt stated it said no commercial which was his recollection. Borelli stated yes, that business is commercial. Attorney Boldt asked Borelli if he has read the Conway v. Kudrick case and Borelli stated yes and everything comes to the language and he stated we are even stronger than Portsmouth and he further stated we also have stronger ordinances here than in Conway. Attorney Boldt confirmed with Borelli he is referring to 4.6 and asked if there are any other passages that the board needs to focus on. Borelli stated there will be some other things that he was not prepared for tonight. Attorney Boldt stated that tonight is the night. Borelli turned the discussion over to John Cancelarich.

John Cancelarich, 108 Eidelweiss Drive - Cancelarich asked if he could give the board his written documents. Gentile asked him to explain his case in a short form to the board first. Cancelarich stated he used the Supreme Court ruling with the Working Stiff Partners v. The City of Portsmouth case to illustrate the similarities to our Madison case and the Madison ordinance he used, he found online was for 2018 and a lot of these terms go backwards and there is a 2012, 1990 and 1987 and specifically looking at Eidelweiss, where this district is, the key points established are and Cancelarich read aloud as follows:

1. Madison's ordinances establishes a "permissive" zoning intended to prohibit all uses that are not expressly permitted.
2. When a definition is defined it must be used and if not defined, use common language and important definitions are:
 - a. MOTEL – A building or series of buildings in which lodging is offered for compensation.
 - b. COMMERCIAL USE – Any use involving in part or in whole the sale of merchandise, materials, or services.
 - c. BUSINESS is mentioned (not defined) and he stated he did exactly what the Supreme Court did and used Webster's Third New International Dictionary and defines "business" as dealings or transactions, especially of an economic nature.

Cancelarich further stated that they argue that the property usage is short terms rentals and it remains a "dwelling unit" where is it mentioned once and residential, it says residential purpose is only mentioned twice in our ordinance and it is also mentioned under Eidelweiss for a dwelling unit residential purpose cannot be used for residential purpose. Gentile asked Cancelarich to clarify what he just said. Cancelarich stated there are only two spots in the ordinance where is says residential purpose and the first one is in the Eidelweiss section and he stated dwelling unit and the second one under accessory unit where it says you cannot use it for residential purpose for

Eidelweiss people. Cancelarich further stated if you look at the definition, they are saying it is a dwelling unit residential purpose but as a structure, it is a house but in principle it is, its use fits more the mold of a MOTEL, COMMERCIAL & BUSINESS USE. In its true form, short term rentals are buildings in which lodging is offered for compensation by economic transactions and the client pays for the service of easily booking and staying at the short term rental and the client finally pays for the service of cleaning the short term rental and services is compensation.

Cancelarich further stated that strictly in 4.6A it states businesses and commercial use is not allowed and it has been based on the past also. Gentile understood what Cancelarich is arguing effectively is the minority opinion of the justice in Conway v. Kudrick and Gentile stated a majority opinion is what we have to follow and the majority opinion is, that residential usage in short term rentals were meshed together and a short term rental is not a business use. Cancelarich argued that you need to use our definition and if we are saying that you cannot do commercial use and we say you cannot use businesses in our district, you need to use our definition and not their definition and that is where the confusion is and it defines exactly what it means and that fits the mold of what short term rentals are in our district. Cancelarich stated that Attorney Johnson is cherry-picking residential purpose and not using the full definition of 4.6.

Cancelarich stated that one should not construe the Madison Zoning Ordinance to lead to an absurd result and Attorney Johnson has mentioned second homeowners cannot stay at their place for 30 days and/or long-term renters who become residents are not allowed. Cancelarich stated that Attorney Johnson is trying to confuse the board. Cancelarich also wanted to emphasize that because the ordinance is not unconstitutionally vague merely because it could have been drafted with greater precision or the wording does not precisely match one of the standards you are looking for, they say that exactly. Cancelarich stated that the Supreme Court states that the Zoning Board of Adjustment findings need to be reasonably based judgement. Cancelarich stated if you look at residential use, there is no separation, but there is by 4.6 and a short term rental is a business based on common use and it is commercial use based on our definitions and it fits into what a motel is and that is not allowed in our district and this dates back to prior ordinances. Cancelarich further stated that in conclusion, it is reasonable to determine that short term rental use is similar in use and molds to motels, commercial use and businesses and therefore, are prohibited in the Eidelweiss Residential District. Cancelarich also stated in the Conway v. Kudrick case they said this is specific to Conway and they are trying to generalize it here and you need to use the words in the ordinance in order to effectively understand what people want here. Cancelarich stated that lastly, he had comments from Section 2.1E, last sentence says **“failure by the Selectmen to not initial enforcement under the ordinance will not constitute a waiver of the town’s right to take such action.”** Cancelarich stated there is no backlog and you cannot say because we let it go, we cannot ban them now and 2.1 in our ordinance covers us for that which says, once again, **“failure by the Selectmen to not initial enforcement under the ordinance will not constitute a waiver of the town’s right to take such action.”**

Cancelarich handed out his letter to the Chairman as well as his undated letter to the Madison Zoning Board of Adjustment, (copy of which is in the file for **Case #23-13**). He explained to the board that he took the Working Stiff Partners v. The City of Portsmouth case and put Madison’s terms in it and he left the full Supreme Court’s ruling as is and he put Madison’s Zoning Ordinance information in boxes so you can see how identical it is and how they went through the process. Attorney Johnson objected to the admission of the document and stated you cannot take a Supreme Court case and add different terms to it and this is not appropriate for an exhibit. Attorney Boldt stated that unfortunately, the answer is it depends and if it is a simple page that is clear and you are taking a passage and adding some language and it is not being represented that this is a copy of the Opinion, starting with the first and going to the last and we are changing language like that.... Cancelarich interjected and stated he put Madison’s language in boxes for comparison purposes only. Attorney Boldt instructed Cancelarich to give a copy to Attorney Johnson. Attorney Johnson stated it is the exact court case with changed words and he has an issue with changing a Supreme Court decision. Attorney Johnson has no issue if Cancelarich wants to submit a summary with his argument that he wants to give the Zoning Board, that is fine, but this is a court case that is now changed and Attorney Johnson is fearful that someone down the road is going to ask what is this. Attorney Boldt asked to see the document. Attorney Boldt stated Cancelarich inserted text boxes. Cancelarich stated he did not

alter anything or the flow of the actual Supreme Court Opinion. Attorney Johnson stated you cannot take a Supreme Court case about something and then put new facts in it and Cancelarich can make an argument which he did and that is fine, but Attorney Johnson clearly stated he did not agree with this and the board can do what they want. Attorney Boldt stated that it is what it is. Martin asked if the board can still read the Supreme Court judgment in full unaltered. Attorney Boldt stated he does not know if Cancelarich has deleted anything so he stated he would take it as a creation of Cancelarich and it is his created exhibit and it is not the Supreme Court case and he used the Supreme Court case to create an exhibit and Attorney Boldt does not think the board will get confused as they have the Working Stiff Partners v. The City of Portsmouth case. Attorney Boldt told Attorney Johnson that he can argue why Cancelarich is wrong in all of his conclusions but the court tells us all the time, **“if I am going to let it in Mr. Boldt, I am going to give it the weight it deserves”** which sometimes is nothing and sometimes it is powerful. Cancelarich stated what he did was put in a box and completely separated the Madison language. Cancelarich stated anything in the boxes is his and anything else is the Supreme Court Opinion.

Cancelarich submitted copies of his letter addressed to the Madison Zoning Board of Adjustment dated March 14, 2024 together with a copy of the Supreme Court’s Opinion, Working Stiff Partners v. The City of Portsmouth to the board (copy of which is in the file for **Case #23-13**).

Gentile stated Attorney Johnson’s objection had been noted to the form of the particular piece and the board will take that into consideration. Gentile stated that Cancelarich has argued just as the town has argued, that by changing the wording in March of 2022, actually, we had sufficient wording since 1987 which prohibited the use of short term rentals, at least in Eidelweiss. Cancelarich corrected Gentile and it was 1990. Cancelarich stated he did not have access to the 1990 ordinance so he used what was online on the Madison website which is the ordinance from 2018. Gentile stated that the applicants have been operating since 2017 and if 2018 was the first evidence we have, then Cancelarich’s argument is valid and we still have a year before that. Cancelarich stated he could not ask for a continuance but asked if he could come back and bring the ordinance from 2012 to show the board what that is. Attorney Boldt stated that for the record, he does have a copy of the 2015 ordinance as well as the 2018 and 2022. Schilling reviewed 4.6 in the 2015 ordinance and read aloud the following:

“It shall be primarily a district of single-family residences and accessory buildings. One dwelling unit shall be the maximum allowable on any one lot and in any one building. Other permitted uses include home occupations, churches and public buildings. Business, commercial enterprises and agricultural uses are prohibited.”

Schilling stated she does not believe from the 2015 to 2018 and 2018 to 2022 there has been any change in 4.6A. Cancelarich stated that is correct. Gentile stated also relevant would be things like definitions of business, motel, etc. Cancelarich stated that “business” was never defined. Schilling confirmed “business” is not defined in the 2015 ordinance.

Schilling read aloud the following from the 2015 ordinance:

“MOTEL – A building or series of buildings in which lodging is offered for compensation, with direct independent access to and adjoining parking for each rental unit.” Schilling also stated this is also in the 2022 ordinance and it has not changed. Cancelarich stated the above is a better definition than going by residential purpose and the above definition fits that mold, commercial business and motel.

Attorney Johnson stated with the Conway v. Kudrick case yes, it related to the Zoning Ordinance and the Supreme Court made a general statement that using a property and how you decided whether it is commercial or residential is how the property is used and the court said the property for a residential use, which is short term rental, does not convert it into a commercial use. Attorney Johnson also noted that the entire reason we are here doing these administrative appeals is that the Town of Madison, through their Code Enforcement Officer, initiated these actions and cease and desist only predicated on the change in the Zoning Ordinance in March of 2022 and to Attorney Johnson’s knowledge, there were not any enforcement actions or any argument that the town had the ability to take any enforcement actions until the Zoning Ordinance was changed in March of 2022 and to that

point, if the Town of Madison already prohibited by the language of its Zoning Ordinance, short term rentals, there would really be no reason to have an amended ordinance to prohibit short term rentals and he believes the logic falls in on itself and he also thinks it is somewhat secondary to the issue before the Zoning Board, particularly for this appeal when there is five years of use. Attorney Johnson further stated so whether the use is pre-existing, his clients purchased the property and going forward so whether the prior owners did not comply with the property or whether his clients did not comply with the property, it is all then still a pre-existing continuing use of the property and allowed so if it changed at some point, he does not believe it alters the analysis particularly for this case.

Robert Boyd, 55 Knight Road – Boyd stated they are arguing residential use and he understands the court decisions and the arguments and he personally believes there is a difference in residential use between a homeowner living in their home or a long-term rental person or family living there versus residential use for profit and he believes there is a difference.

Karen Dlugosinski, 70 Mount Washington Drive – Dlugosinski stated she had documents from Kathy Koziel and Koziel has submitted these documents prior to the hearing and Dlugosinski read a letter dated January 17, 2024 aloud (a copy of which is in the file for **Case #23-13**). She also read aloud an email dated December 30, 2023 from Michael Stagliano, prior owner (a copy of which is in the file for **Case #23-13**).

Bill Dempster, 57 Doe Drive – Dempster stated he had in his possession, the 1990 Zoning Ordinance. Attorney Boldt stated the board would need the original ordinance of 1990. Dempster stated he believed this was a copy of the original ordinance. Attorney Johnson objected and stated if we are going back to actual ordinances, he wants the real ordinance from town hall. Attorney Johnson stated he does not object if the board looks at the 1990 ordinance if they want to look at it but we should have a copy that we actually are assured is the 1990 ordinance. Attorney Boldt stated the concept is here say and we want to make sure we are relying on the correct evidence. Attorney Boldt asked Dempster if his point for this document is that it has the same language for Eidelweiss for 4.6. Dempster stated yes.

Gentile stated the board was now going to collect the Findings of Fact.

Gentile swore in Chad Ardizonni.

Findings of Fact:

1. The Madison Zoning Ordinance was updated in March, 2022, defining a dwelling unit as one or more rooms arranged, designed, or used for non-transient residential purposes with independent sanitary and cooking facilities, and defining transient occupancy as any period of time up to and including thirty days.
2. There is solid evidence presented that the house has been in continuous use as a short-term rental since July, 2017.
3. There was no lapse in usage as a result of the sale and purchase.
4. The relevance of the March, 2022 date as a baseline to determine potential grandfathering is contested by abutters and residents.
5. The language of article 4.6 of the Madison Zoning Ordinance (which presumably goes back to 1990, and is attested in the 2015 version of the Madison Zoning Ordinance, predating the first rental) supported by the definitions in the Madison Zoning Ordinance of “motel,” “commercial use,” and the normal understanding of “business” as defined by Webster do not permit short term rentals.
6. The original owner of the home testified in writing, that he built the home in 1985 and sold it in 2015 without ever having rented it.
7. There was an apparent increase in rental days under the new owner.
8. The current owner first rented the home in August, 2022.

John Cancelarich, 70 Mount Washington Drive – Cancelarich stated they have mentioned 4.6 and there is also 2.3 which he read aloud and this is reemphasizing the permissive use statement and the last article is important to this is the 2.1E, last sentence which Attorney Bold read aloud as follows:

“Failure by the Selectmen to not initiate enforcement under This Ordinance will not constitute a waiver of the Town’s right to take such action.”

Chad Ardizonni, 13 Lucerne Drive - Ardizonni stated the numbers the board is looking at the renting of 78 days in 2023 was a higher number, but the actual number of rental days was higher in 2017 at seven days a month because it was only rented for half the year and the most was rented in 2017. Ardizonni also stated that their mortgage is a second home mortgage so they can only rent a certain number of days per year because it is not a business and we are not permitted for renting the house. Gentile asked what the number of days are. Ardizonni stated it is 180 days because they have a residential mortgage and not a commercial mortgage.

Gentile swore in Jay Buckley.

Jay Buckley, 58 Eidelweiss Drive - Buckley stated he had a question about the process and the applicant that the board just heard before his speaking and that the applicant was denied by a decision of the Selectmen about having a short term rental and Buckley asked if the board could read the letter and the reason in the zoning why the applicant was denied, so can make sure he understands. Gentile read aloud the Notice of Violation dated August 16, 2023 from Robert Boyd, Code Enforcement Officer (a copy of which is in the file for **Case #23-13**). Buckley asked if the violation was the starting to rent the home as a short term rental after March 8, 2022 when the definition of dwelling unit was put in place. Gentile stated that he is not sure how Boyd selected those or how he was given names, but the applicant was identified as to renting after March of 2022. Buckley stated the Findings of Fact should be related to whether the rental history existed prior to March 8, 2022 and continued after the zoning change to dwelling unit. Gentile stated they have stated March of 2022 was the change of the ordinance and secondly, that we have evidence from 2017 that there was continuous short term rental. Buckley asked from the applicant. Gentile stated no, from the previous owner, however, that establishes a pre-existing use and this current owner then began his rental in August of 2022 which was after the March, 2022 which is probably why the applicant got caught in the net.

Gentile asked for a motion to close the Public Hearing to deliberate on the merits of the case.

Motion by Martin, seconded by McAllister to close the Public Hearing to deliberate on the merits of the case.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.
The motion passed by a roll vote of **5-0**.

Motion by McAllister, seconded by Schilling based upon the Findings of Fact, the board moved to deny **Case #23-13**.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.
The motion passed by a roll vote of **5-0**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-13**.

Gentile stated the board was taking a break as 8:50 pm. The board reconvened at 9:00 pm.

Gentile read aloud the case numbers and names that are associated with Attorney Johnson’s request to continue the following cases:

Case #23-14 for Ryan Finn & Grace Harrigan
Case #23-15 for Keith & Alison Kellerman
Case #23-16 for Monica Maria McMillian & Laura Thompson
Case #23-17 for Seamus & Kayla Walsh-O'Brien
Case #23-18 for Matthew Petti & Jennifer Swift
Case #23-19 for Brian Burns
Case #23-20 for Corey, Jade & Cynthia Franklin
Case #23-22 for Kaylin Deschenes & Kalene Kouch
Case #23-24 for David and Julie Keiselbach
Case #23-25 for Rishi Saxena and Abhishek Sahai

Motion by Gentile, seconded by McAllister to continue **Case #23-14, Case #23-15, Case #23-16, Case #23-17, Case #23-18, Case #23-19, Case #23-20 and Case #23-22 and Case #23-24 and Case #23-25** as requested by Attorney Johnson to April 17, 2024 at 6:00 pm to be held at the Madison Town Hall, Lower-Level meeting room.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.
The motion passed by a roll vote of **5-0**.

Gentile stated that the board will need to vote for officers at the April 17, 2024 meeting. Gentile stated if Dempster and Schilling wanted to be moved from alternates to full members that this can be done in April and that Jennifer Skaife who will be joining the board will be an alternate.

APPROVAL OF DRAFT MINUTES:

January 9, 2024 Minutes:

Motion by Schilling, seconded by McAllister to approve the January 9, 2024 minutes as written.

The motion passed by a vote of **3-0**.

January 17, 2024 Minutes:

Discussion: There was a change on Page 4, fourth paragraph, second line, remove “to the”.

Motion by Rau, seconded by Martin to approve the January 17, 2024 minutes as amended.

The motion passed by a voter of **5-0**.

February 21, 2023 Minutes:

Discussion: There was a change on Page 3, first paragraph, second line to now read “the wetlands survey” and remove “and it”.

Motion by Gentile, seconded by McAllister to approve the February 21, 2024 minutes as amended.

The motion passed by a vote of **5-0**.

ADMINISTRATION: Young had nothing to report.

ADJOURNMENT: **Motion** by Schilling, seconded by Martin to adjourn the meeting at 9:20 pm.

The motion passed by a vote of **5-0**.

The next Public Hearing of the Zoning Board of Adjustment will be held on April 17, 2024 at 6:00 pm at the Madison the Madison Town Hall, Lower-Lever meeting room.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator