

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: JULY 16, 2014

CASE NO.: 7/16/2014-2

APPLICANT: TANA PROPERTIES LTD. PARTNERSHIP
40 TEMPLE STREET
NASHUA, NH 03060

LOCATION: 20 REAR INDUSTRIAL DRIVE, 28-20-5, GB

BOARD MEMBERS PRESENT: NEIL DUNN, ACTING CHAIR
JIM TIRABASSI, VOTING MEMBER
JACQUELINE BENARD, VOTING MEMBER
ANNETTE STOLLER, VOTING ALTERNATE
DAVID PAQUETTE, CLERK

REQUEST: VARIANCE TO ALLOW DEVELOPMENT OF A LOT IN THE GATEWAY
BUSINESS DISTRICT WITHOUT FRONTAGE AS REQUIRED BY SECTION
2.7.2.2

PRESENTATION: Case No. 7/16/2014-2 was read into the record with no previous cases listed.

JACKIE BERNARD: Mr. Chairman, I will need to excuse myself due to being an employee of Milton Cat.

NEIL DUNN: I didn't know that.

[Chuckling]

NEIL DUNN: Is this Milton Cat? I didn't see that on the paper anywhere.

DAVID PAQUETTE: It's right there...

NEIL DUNN: Oh...yeah there....just so you will know as an applicant you need three out of five votes to...get approved. We only have four members...we do have...we have another member Jim and so there is a possibility that next month you would have five voting members total...so...by Jackie recusing herself you have to get three out of four. So you will have the option of continuing until next month and hoping that you have all five...five members to vote for you I guess...So you can get three out of five.

GUY 1: We're good.

45 NEIL DUNN: If I haven't confused you yet...

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47 GARY COLLETTE: Doesn't take much...

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49 NEIL DUNN: It doesn't take much for me to get confused either...[chuckling]...so you want to continue than?

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51 GARY COLLETTE: Yes please.

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53 NEIL DUNN: So you...welcome to do a quick scenario if you would like and then go through the five points of

54 law.

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56 GARY COLLETTE: So...my name is Gary Collette...I am with AMEC...we are the engineers for this proposed

57 Milton Cat facility on Industrial Drive. I am with Brad Farrin...he is the corporate facilities manager with...with

58 Milton Cat and...Peter Nash is here also representing Tana Properties. So Milton Cat is proposing a new facility

59 on Industrial Drive...on you existing conditions plan and...and the submitted packet...it shows you the location

60 of the property relative to the airport and industrial drive. So the overall Milton Cat project site is on three

61 separate...currently three separate parcels...lot...lot...I'm sorry lot 17-3 is actually on the frontage of Industrial

62 Drive and...lot 17-4 is...behind that on your existing conditions plan...that lot...17-4 is proposed to be

63 subdivided for Milton Cats use and that eventual lot will be two point four acres but is actually to be part of a

64 forth coming subdivision...is going to be merged with the three point seven acre lot. The lot to the north of

65 there is a...is a public service of New Hampshire rite away that sort of bisects this proposed development and

66 that lot to the north is lot 20-5 which is the subject lot for this...for this variance request. That is a nine point

67 two seven acre parcel. That...that lot is...is going to be...is...is being permitted. We are in the process we have

68 submitted for design review and we are about to submit for Planning Board approval next week...so all of

69 these lots that I am speaking to are a part of this project and are being permitted as one project...the lot to the

70 north...again is...is...the use of that lot...for this development is...continuous the use of the proposed Milton

71 Cat site...the brown areas that you see on the handout that I have given you are proposed equipment storage

72 areas. Milton Cat is...I will let Brad give you the Milton Cat spiel here so you understand what their business

73 operation is...[chuckling]...

74

75 BRAD FARRIN: This is going to be a full services sales and service facility for Caterpillar equipment. We are the

76 authorized Caterpillar dealer for the six states in New England and...and...we...probably if you know Jackie...we

77 have...we do heavy equipment sales and service as well as parts, inventory. We have a fair amount of

78 equipment display equipment for sale and we need storage area for that new equipment as well as for

79 machines that are going to be repaired in our...in our service department. That is where the large outdoor

80 storage requirement comes into play.

81

82 GARY COLLETTE: So again, Milton Cat is...they are entered into a lease agreement with the land owner or the

83 various land owner, Tana Properties being one of them...and...the idea all together...and there is a...a purchase

84 option after two years so the plan is that Milton Cat would exercise that option to purchase this and control

85 the whole parcel under one development...bisected by the...the power line easement.

86

87 BRAD FARRIN: And we are well into this...this process. We have been in front of the Planning Board

88 twice...bringing them up to speed with where we are. We have already met with the Conservation

89 Commission. We have filed for our AOT permit...we are with the Heritage Commission on the twenty forth
90 and...with the design review comments you know pending, you folks here tonight...our intent is to be back in
91 front of the Planning Board for at least conditional approval in the thirteenth of August so we are...this is well
92 down the road.
93

94 GARY COLLETTE: So the...the existing lot to the north exists as a nonconforming lot. It does not have frontage
95 on a Class V road...the points of law are...the variance will not be contrary to the public interest...the subject
96 lot is currently a nonconforming lot as I stated. Milton Cat proposes to utilize the portions of this lot for the
97 purpose of storage of equipment...the use of that is consistent with the proposed uses relative to the overall
98 Milton Cat development. It shouldn't present any adverse effects on abutting properties or the public interest.
99 The spirit of the ordinance is observed. Conditional use permit is being requested for...from the Planning
100 Board for the outside storage of goods and materials along with dimensional relief to increase the percentage
101 of the storage. The use of this lot is consistent with the overall use; overall project uses and meets the
102 gateway business district zoning objectives. Substantial justice is done. The lot is currently nonconforming
103 with limited options for frontage and limited options in general due to physical constraints. That lot is...if you
104 look at existing conditions plan...is Little Cohas Brook runs through there...and there's...there's buffers
105 associated with...with the brook and with setbacks relative to the associated wetlands. So
106 there's...there's...physical constraints. There's topography issues there so the...the brown areas that you see
107 on that piece are really the areas that we see are can be used for something and that use is the storage of
108 equipment. Values of the surrounding properties are not diminished. Milton Cat's overall business operation is
109 relatively unique to this area however their use fits appropriately within this are of Londonderry. Surrounding
110 areas...include industrial manufacturing warehousing...Milton Cat facilities are well constructed and
111 maintained in an orderly fashion such that surrounding property values are not diminished. Literal
112 enforcement of provisions of the ordinance would result in unnecessary hardship. Owing to special
113 conditions of the property that distinguish it from other properties in the area...the subject lot exists as a
114 nonconforming lot as it is landlocked from a class five road. This characteristic differentiates it from other lost
115 in the area. Granting relief to this property will not weaken the purpose of the ordinance. The proposed use is
116 a reasonable one due to the land lock condition to the property and with the proposed use being contiguous
117 to the proposed overall uses of the overall Milton Cat development. The proposed use is a reasonable and
118 limited use of this property...hope there's any hardship but...[chuckling]...this property doesn't currently have
119 any frontage which is unusual and unique in comparison with other parcels in the gateway business district.
120 But strictly requiring that the lot have frontage, the development of the lot is not reasonable buyable without
121 combining its uses to adjoining parcels.
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123 NEIL DUNN: So...

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125 GARY COLLETTE: Yes...

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127 NEIL DUNN: You're not...associated with the thirty Industrial Drive the next case?
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129 GARY COLLETTE: Thirty...

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131 NEIL DUNN: Is that...is that tied into this one...I...[chuckling]...I guess because I drive by these lots every day I
132 figured is it was twenty and thirty it must be tied together is that...

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GARY COLLETTE: Thirty Industrial Drive...

NEIL DUNN: Well the next case we have is...Ballinger Properties in...

GARY COLLETTE: Our association with that...if it is the one that I think it is...[chuckling]...is that the lot 17-4...

NEIL DUNN: Correct...

GARY COLLETTE: Is a piece that we are carving out...Milton Cats piece is a subdivision associated with that land and the green...the green developed are that...on the handout that I gave you...kind of depicts the piece that we are carving out of that seventeen dash four lot.

NEIL DUNN: Ok so they kind of do tie together although...they are separate...

GARY COLLETTE: Correct...

NEIL DUNN: Being presented separately...

GARY COLLETTE: Correct...and the next case has that the remaining land of lot 17-4, I believe that becomes a lot without frontage...[chuckling]...if I understand correctly.

BRAD FARRIN: Yeah

NEIL DUNN: So...bear...bear with us while we try to catch up with you...[chuckling]...if anyone on the board has any questions at this point I am still trying to get a handle on it.

ANNETTE STOLLER: I have a question...in your piece that you are utilizing now...how many ownerships are there? I lost track while you were listing them. Are there three?

GARY COLLETTE: there are...are three...separate ownerships correct.

ANNETTE STOLLER: Ok...thank you.

BRAD FARRIN: No Ballinger...

GARY COLLETTE: Ballinger...Tana and Five N.

BRAD FARRIN: 5N...

GARY COLLETTE: Correct?

BRAD FARRIN: Yeah...well...there are two.

177 [Chuckling]

178
179 MORGAN HOLLIS: Mr. Chairman my name is Morgan Hollis I am attorney at Gottesman and Hollis in Nashua
180 and I am here on the next case but I also represent the owners of the property Mr. Nash is one of the
181 principles of the owner. This particular parcel is not under the same ownership as the next case but it is
182 affiliated ownership. But it is the next case is the lower...below the public service company, this case involves
183 the lot above the public service.

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185 NEIL DUN: Ok, thank you. And that is where I was trying to get a handle on...

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187 MORGAN HOLLIS: Yes...

188
189 NEIL DUNN: What we are looking at here although you described it...you know you guys understand it a whole
190 lot better than we do...at this point and...[chuckling]...

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192 MORGAN HOLLIS: The important part, you're going to hear my case...but the important question that you
193 want answered is the entirety of the parcel is being used by Milton Cat. The lower part is going to be created
194 with a subdivision of some of lot four to create a bigger lot three which will now be worked in conjunction
195 with the subject property that you are talking about and this subject property...it currently has no...frontage
196 and it probably wouldn't function well under the ordinance as a separate developed lot. Their point is it is
197 being developed in conjunction with the lower parcel. The lower parcel is going to be enlarged by a future
198 subdivision providing you grant a variance. So...the key here is that this piece is not being asked to be
199 developed as a separate parcel but as a parcel in an overall campus setting. I hope...I hope that answers the
200 question.

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202 NEIL DUN: No...it helps give clarity but it still leaves me some questions for the applicant on this one so thank
203 you Attorney Hollis...how's everyone doing on this?

204
205 DAVID PAQUETTE: So the piece that we are talking about is the...based on the map you are looking at using
206 just for a storage area...it doesn't look like there is going to be any actually customer in and out of this
207 particular area?

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209 GARY COLLETTE: Correct.

210
211 DAVID PAQUETTE: It's just Milton Cat employees and storage...I'm ok.

212
213 NEIL DUNN: So...so Richard...is that development of a lot are they paving there...if it is a lot next door and the
214 landlord...owner lets them store stuff there is that development?

215
216 RICHARD CANUEL: Oh it is...is development of the lot in conjunction with development of...of the lower parcel
217 which is...would be required to have site plan approval from the Planning Board to allow that display area but
218 one of the important things about the gateway business district is it allows the Planning Board that flexibility
219 to allow that outside storage. It is part of the site plan approval it would need that variance because they
220 essentially are developing that lot.

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NEIL DUNN: Okay and that's...yeah...hat is a little different getting into the new gateway and also looking at it as an empty lot that they might buy later so...to develop a lot in a gateway...without frontage. So they develop it and they don't have frontage if he doesn't buy it in two years after his period than there's simply a lot that still doesn't have frontage. Ok...I got it...[chuckling]...is that correct?

RICHARD CANUEL: The lot doesn't have frontage now and it won't have frontage...

NEIL DUNN: Yeah no...I know...I just...how we doing?...[chuckling]...

DAVID PAQUETTE: I think we're...

RICHARD CANUEL: Simply because it involves a subdivision...subdivide to create that lot. That it is required to have frontage by our ordinance.

NEIL DUNN: Right...

ANNETTE STOLLER: Yeah

NEIL DUNN: And so that if they want to isolate it even more when the sale goes through that it is really no different than where it is now other than it's been subdivided.

ANNETTE STOLLER: Just to clarify if I may...that portion is going to be primarily used for storage but not exclusively...is that correct?

GARY COLLETTE: At this stage in the game it is primarily...it is about the only thing we can do there. Out of those nine acres you...like Gary said...those two brown areas you see as storage...are really the only highland areas that can be developed. The rest is either wetlands or setbacks or the brook...so it is really the only...only area of those...of that whole nine acres that can be developed is what we are showing there for storage.

ANNETTE STOLLER: You can put an engine in there...

NEIL DUNN: Any other questions from the board? At this time we will go out to the audience anyone who would like to speak in favor of this application please come forward. Seeing none, anyone speaking against or with questions please come up and state your name and address and speak into the microphone please...

DENISE SOUTHMAYD: Hi...Denise Southmayd, Sandy Brook Lane...all the equipment that you are going to be storing in those lot, are they going to have fuel and oil in them? And you're going to be near wetlands and a brook.

GARY COLLETTE: There...there will be...will be...

NEIL DUNN: Um...

265 GARY COLLETTE: You got to direct them...
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267 DENISE SOUTHMAYD: Oh...oh sorry...
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269 NEIL DUN: No it's ok...it is just so that...
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271 DENISE SOUTHMAYD: Yup...
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273 NEIL DUNN: We don't have a conversation and sometimes they can get out of control. So you're concerned
274 again I'm sorry...
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276 DENISE SOUTHMAYD: Would be if the equipment being stored is going to have fuel in it and large equipment
277 carries a fair amount of fuel, oil...what if...it leaks you have the Cohas Brook and wetlands.
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279 NEIL DUNN: Mm-hmm.
280
281 DENISE SOUTHMAYD: Is it going to be stored on a tar surface or just grass? Is there going to be something
282 under the tar for barrier in case there is a problem...
283
284 NEIL DUNN: If the applicant would like to address those issues and then we might also talk to Richard a bit on
285 that for clarity but go ahead.
286
287 GARY COLLETTE: Yeah so...there will be equipment stored there...machines...earth moving machines if you
288 will...from a best management practice standpoint and standard operating procedure standpoint...Milton Cat
289 doesn't put leaky equipment out in their yards. Anything that's leaking or...or discharging any fuels
290 or...or...or...hydraulics or whatever would get brought to the shop and...and...handled appropriate. Just from a
291 standard operating procedure it doesn't happen. It is...the same question was raised at the Conservation
292 Commission and as part of our next submission for Planning Board we are going to submit our best
293 management practices and standard operating procedure regarding those concerns. We have done other
294 facilities in aquifer zones...and the same concerns were raised and we have addressed them with...sort of our
295 Milton Cats best management practices in handling that situation.
296
297 NEIL DUNN: Richard do we have any regulations that specify how these standard operating procedures...or
298 best practices or...if...you know they have to put a big bucket under them every night...
299
300 RICHARD CANUE: [Chuckling]...no...that's something that's actually addressed by the State best management
301 practices you know for storage of fuel and equipment...that nature...and you know also I might add that you
302 know that the variance request has really nothing to do with the storage of equipment...the variance request
303 is simply for the subdivision of a lot without frontage so the storage of equipment is something that will be
304 addressed by the Planning Board.
305
306 NEIL DUN: No...and...and the only reason I brought it up is because the lot subdivision or...whatever the actual
307 variance request is for...they brought up the storage of equipment that brought out a concern for them so
308 that's why I bring it up. I realize we are at but...

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GARY COLLETTE: And I...we always like to correlate this in terms of you know a large parking lot like a Wal Mart parking lot...this is not...not very different really. You have vehicles with fluids and gasoline...this is the same kind of idea where that discharge is...is got that potential but you know we manage it probably better than a...a Wal Mart parking lot...[chuckling]...

DENISE SOUTHMAYD: So in other words that question is not under your prevue it is under another agencies prevue?

NEIL DUNN: Yes...it is really more of a Planning Board concern and design standards and they would be involved in that I...I do appreciate your concern and because they mentioned they are storing equipment that is fair for us to consider when we are trying to decide but...but it is really outside our prevue but those are great questions and I think they are good things to know.

DENISE SOUTHMAYD: Thank you.

NEIL DUNN: Thank you. Anybody else wishing to speak against or with questions?

JACKIE BERNARD: I would like to speak as a resident...in the Town of Londonderry. My name is Jackie Bernard at 10 Spring Road, Londonderry New Hampshire. I...I was previously a small business owner for twenty two years in the city of Manchester. I did heavy equip...heavy trucks and automotive repair. We also had a body shop and a towing facility. The storage of vehicles and the repair of...we were not a brand new car dealership and the reason why I am speaking this evening is to help clarify what Milton Cat is. I have been an employee of theirs for ten years now. They are a heavy equipment new construction dealer. They do have some used units of earth moving equipment but they are a new...machinery equipment dealer. That is the majority of their operation. Of all the regulations that I had to follow as an automotive and truck repair center in the city of Manchester and a body shop...the Milton Cat standards are of the highest in the industry. This is not junkyard...this is top notch...this is new equipment...and there...environmentally reasonable on all aspects. That is all I have ever seen, the ten years that I have been there. Thank you.

DAVID PAQUETTE: And that was one of my questions as well the...the equipment storage areas in this area...is it new equipment or old equipment. I think that question has been answer predominantly...new equipment will be stored there.

NEIL DUNN: To Richards point though we are only voting on the sub lot...

DAVID PAQUETTE: You're right...you're right...

NEIL DUNN: I...I entertained it because you know...but anyways...

DAVID PAQUETTE: Ok...

NEIL DUNN: That's fine. Anybody else wishing to speak against or with questions? I will bring it back to the board...any thoughts or questions for the applicant? Well thank you very much we will go into deliberation.

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[Talking among one another]

NEIL DUNN: Alright...ok so if we look at would not be contrary to the public interest...anybody have thoughts on that?

JIM TIRABASSI: Let's see...

DAVID PAQUETTE: I don't think it would...would...would not be contrary to the public interest...it is not really changing much...it's a piece of land...

JIM TIRABASSI: the land has no value it has no future use...it doesn't impact anything negatively...

NEIL DUNN: Ok...it is really just for changing the lot size I guess...huh...

DAVID PAQUETTE: And so all they are requesting is that they are able to develop this lot.

NEIL DUNN: Yeah...

DAVID PAQUETTE: Without having frontage...

NEIL DUNN: There is no real change of prevue...

DAVID PAQUETTE: Maybe mowing a couple of trees and storing some equipment there...but...with the further development of the lot south of it I think...

NEIL DUNN: The lot is currently nonconforming...ok number two the spirit of the ordinance is observed...any thoughts on that?

DAVID PAQUETTE: I think we are ok.

NEIL DUNN: The Planning Board will be doing a conditional use permit...for the storage o outside storage things...oh...ok...would do substantial justice...number three...the lot is currently nonconforming limited options for frontage and limited future options in general...So I guess that doesn't do anything there.

ANNETTE STOLLER: Well it would foster the growth of business.

NEIL DUNN: Sure...yeah...surrounding properties would not be diminished from my point of view...what did he say...[chuckling]...he agreed alright...the special conditions of the property where it is land locked not on a classified road anyways so there is no change in characteristics...ok so...it is reasonable based on the gateway and the Planning Board review...I guess the only...thing is comments and suggestions do we...

DAVID PAQUETTE: I feel like we should restrict this to this one business plan...

397 NEIL DUNN: Or to...
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399 ANNETTE STOLLER: For this purpose...
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401 NEIL DUNN: The Planning...Planning Board...I guess they have to yeah...it either sunsets if they don't go there
402 or the Planning Board has to approve it...how did we do that last time.
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404 DAVID PAQUETTE: Yeah that's a good question...what did we do for...
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406 NEIL DUNN: Richard if you could maybe help us with this. Often times we...we make a contingent on Planning
407 Board approval if this project doesn't go through with that...that is fine to say...contingent upon final approval
408 from Planning Board...
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410 RICHARD CANUEL: And I would recommend that you do that of course.
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412 NEIL DUNN: And...and for this project so I guess do we relate it to this project or just the Planning Board
413 approval cover that I guess...I don't want to make it...
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415 RICHARD CANUEL: I would tie it into...a condition...conditional upon site plan approval.
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417 NEIL DUNN: Ok. Thank you, Richard.
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419 DAVID PAQUETTE: Conditional upon site plan approval...alright...
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421 NEIL DUNN: Any other thoughts or discussion from the board?
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423 ANNETTE STOLLER: That takes care of almost everything.
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425 NEIL DUNN: I would entertain a motion.
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427 DAVID PAQUETTE: Mr. Chairman, I would like to raise a motion in regards...to approve case 7/16/2014-2 base
428 that all five points are met and with a condition...with a restriction of...with a condition on site plan approval.
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430 NEIL DUNN: Do I have a second?
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432 ANNETTE STOLLER: Second.
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434 NEIL DUNN: Those in favor...?
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436 NEIL DUNN: Aye.
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438 JIM TIRABASSI: Aye.
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440 ANNETTE STOLLER: Aye.

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DAVID PAQUETTE: Aye.

NEIL DUNN: Those opposed...?

[No response in opposition]

RESULT: THE MOTION TO GRANT CASE NO. 7/16/2014-2 WITH RESTRICTIONS WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,



DAVID PAQUETTE, CLERK

TYPED AND TRANSCRIBED BY KIRBY WADE, EXECUTIVE ASSISTANT

APPROVED AUGUST 20, 2014 WITH A MOTION MADE BY DAVID PAQUETTE, SECONDED BY JIM TIRABASSI AND APPROVED 4-0-1 WITH JIM SMITH ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.