



**September 16, 2020 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:00 a.m.
DATE: September 16, 2020
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman John Loos; Acting Director of Parks and Forestry Robin Madden, designee for Commissioner Catherine McCabe; Commissioner Phillip Lubitz; Commissioner John Reiser; Commissioner Bruce Stout; and Commission Chris Shoffner; all participated via online platform and teleconference.

STAFF: Executive Director John Hutchison was present in the Commission conference room; Commission Engineer Joseph Ruggeri, Ms. Colleen Maloney, and Deputy Attorney General Jason Kane participated via online platform and teleconference.

GUESTS: Patricia Kalleser, Superintendent, Delaware and Raritan Canal State Park; Michael Sellar, New Jersey Water Supply Authority (NJWSA); Rikki Massand; Linda Barth, D&R Canal Watch.

Vice-Chairman John Loos announced that this was a monthly meeting of the Delaware and Raritan Canal Commission and that the provisions of the “Senator Byron Baer Open Public Meetings Act” (OPMA) had been complied with in the scheduling of the meeting.

Vice-Chairman Loos announced that the meeting was being taped pursuant to the exception set forth at Section C.(1) of DEP Policy & Procedure 2.85 “Prohibition of Recording in the Workplace” Policy adopted on September 18, 2019.

Administrative Items

Since Commission members were participating via telephonic device pursuant to Article III, Section 4 of the Commission Bylaws, Vice-Chairman Loos directed the Executive Director to take the roll. There being six Commissioners in attendance, the Director indicated that a quorum was present, and that the transaction of Commission business could therefore proceed.

Vice-Chairman Loos confirmed the October 21, 2020 Commission meeting date and stated that given the ongoing public health emergency and declared state of emergency related to the COVID-19 pandemic, the meeting would likely be held by means of online platform and teleconference. Commissioner Lubitz noted it was possible that he would be absent from the October meeting, and would inform the staff when he confirms his schedule.

Minutes

Vice-Chairman Loos asked if there were any comments with respect to the August 19, 2020 meeting minutes. Director Hutchison stated that Acting Director Madden submitted a correction prior to the meeting, noting an incorrect reference to Mr. Mulvan’s office, the correct name of which is the Office of Resource Development (ORD).

Vice-Chairman Loos called for further comment and, hearing none, he called for a motion. Commissioner Stout moved to approve the minutes with the correction requested by Acting Director Madden; the motion was seconded by Commissioner Lubitz. Director Hutchison called the role:

Vice-Chairman Loos	Yes
Acting Director Madden	Yes
Commissioner Reiser	Yes
Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Abstain
Commissioner Palmer	Absent

The motion was approved.

Review Zone Projects

Zone A Projects

19-5509A	769 Millstone-River Road -- Proposed Residential Additions (Montgomery Township)
20-5541A	2 Main Street Mixed Use Development -- Major Modification (South Bound Brook Borough)

Vice-Chairman Loos asked for a motion to approve the Review Zone A projects. Commissioner Stout moved to approve the projects, which motion was seconded by Commissioner Reiser. The Vice-Chairman called for comment from the Commissioners and then the public.

Mr. Massand commented he lived near the 769 Millstone-River Road project, and that he appreciated the review of the project and hopes safety can be addressed. Commissioner Shoffner noted that she was pleased the Commission was considering the 2 Main Street Mixed Use Development -- Major Modification project. The Director called the roll:

Vice-Chairman Loos	Yes
Acting Director Madden	Yes
Commissioner Reiser	Yes

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Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Abstain
Commissioner Palmer	Absent

The motion was approved.

Zone B Projects

19-0139B	Hillsborough Industrial Park/1&3 Jill Court -- Building Expansions (Hillsborough Township)
20-0471B	Montgomery Township -- Proposed Municipal Complex (Montgomery Township)
19-2432B	Affordable Self Storage, Inc. -- Proposed Facility Expansion (West Amwell Township)
20-2441Y	Princeton University -- Solar Array Parking Lots 16, 20 & 23 (Municipality of Princeton)
20-2441BB	Princeton University -- U.S. Route 1/Washington Road Solar Array (West Windsor Township)
20-3478B	Bristol-Myers Squibb -- Nassau Park Pedestrian Connector (West Windsor Township)
20-3568F	Princeton University Art Museum (PUAM) Storage Facility (Plainsboro Township)

Vice-Chairman Loos requested comments or questions on the Zone B projects.

Commissioner Lubitz commented that in regard to DRCC #19-0139B, the Commission should condition the approval of the project upon the applicant's successful completion of the corrections and maintenance activities related to the stormwater basin specified in the September 4, 2020 staff report. Mr. Ruggeri explained that staff routinely requests a maintenance report for projects which propose to use an existing stormwater basin in order to ensure that the basin is functioning properly, and that the appropriate maintenance schedule is adhered to. In the case of this project, Mr. Ruggeri noted that the inspection report found that maintenance activities needed to be addressed, and the applicant stated that the maintenance items would be addressed prior to construction. Commissioner Lubitz requested that the Commissioners condition the approval on the performance of the maintenance activities before construction of the project commenced.

Commissioner Lubitz stated that he found it troubling that the basin related to the project was in a state of disrepair, and that he was interested in the Commission having a discussion at a future date regarding the possibility of instituting a staggered schedule for the periodic inspection of basins, and possibly requiring more frequent inspections and oversight of stormwater basins that have been neglected or found to be in disrepair. Vice-Chairman Loos and Commissioners Reiser and Lubitz discussed the relative benefits and shortcomings of current regulations which direct municipalities to conduct stormwater basin inspections, and the possibility of the Commission augmenting these activities through the use of interns.

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Commissioner Lubitz then offered a motion to approve DRCC #19-0139B with the condition that the applicant shall inform the Commission in writing that the items 1 through 3, inclusive, set forth in the September 4, 2020 Commission staff report and recommended in the 2020 basin inspection report, are completed prior to the commencement of construction. Commissioner Stout seconded the motion. Vice-Chairman Loos called for further comment from the Commissioners and the public. Hearing none, he requested that the Director take a rollcall vote.

The Director called the roll:

Vice-Chairman Loos	Yes
Acting Director Madden	Yes
Commissioner Reiser	Yes
Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Absent

The motion was approved.

Vice-Chairman Loos requested a motion to approve the remaining six Review Zone B projects. Commissioner Stout moved to approve the projects as recommended by the staff, and Commissioner Shoffner seconded the motion. The Vice-Chairman called for discussion from the Commissioners and then the public.

Mr. Massand thanked Commission staff and municipal staff for moving the Montgomery Township Municipal Complex project forward.

The Director then called the roll:

Vice-Chairman Loos	Yes
Acting Director Madden	Yes
Commissioner Reiser	Yes
Commissioner Stout	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Absent

The motion was approved.

Executive Director’s Report

Director Hutchison reported on the workload for the period encompassing August 18 to September 14. During that time, in addition to the 7 projects on the agenda, the staff issued: 20 staff reports for administratively-deficient projects, four jurisdictional determinations; one certificate of approval; and 3 General Permits.

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Mr. Hutchison reported that application fee deposits for the month totaled \$46,650. Total deposits for Fiscal Year 2020, which was extended to September 30, 2020 pursuant to the provisions of P.L. 2020, c. 19 were \$747,158. Using the revised anticipated annual appropriation of \$450,000, the Commission had exceeded is anticipated appropriation by \$297,188.

The Director noted that Commission staff held 10 pre-application meetings from August 19 to September 15. Mr. Hutchison observed that when the number of pre-application meetings, fee collections, and the workload of the staff were considered, the Commission staff had been very busy. Director Hutchison noted that although he had been concerned about a precipitous drop in applications and fee revenues occurring as a result of the COVID-19 pandemic, after six months, this scenario had not materialized.

The Director reported that he attended a meeting on August 19 with Mr. Ruggeri with officials and professionals representing Mercer County to discuss a project to replace the existing terminal at the Trenton-Mercer Airport in Ewing Township, which is located in Commission Review Zone B. He reported that Trenton-Mercer Airport proposes to construct a new, 125,000-square-foot terminal building and associated airport improvements, including new aircraft parking positions and boarding and hold room facilities, reconfigured parking areas and circulation roads, a new terminal parking garage, demolition and relocation of the existing Aircraft Rescue and Firefighting, and the demolition of the existing terminal. The project is likely to have impacts to the Commission-regulated stream corridor, the boundaries of which were established pursuant to a Memorandum of Agreement (MOA) entered into between the Commission and the county in 2011. Due to the proposed area of disturbance and new impervious surface associated with the project, the project would also have stormwater management impacts.

Mr. Hutchison remarked that one of the unforeseen consequences of Tropical Storm Isaias was that the Commission had seen an increase in the number of General Permit No. 2 applications for the installation of stand-by generators, and in many cases LPG tanks to fuel them, for residences within Commission Review Zone A. The Director noted that two of the three general permits approved in August were for the installation of generators, and that three such applications were pending at the moment.

The Director reported that on September 11 he attended a remote meeting organized by Acting Director Madden for the purpose of engaging with local government partners to cross communicate about public access and related concerns arising from the increase in park attendance at Delaware and Raritan Canal State Park. Mr. Hutchison noted that the meeting was helpful and allowed him to better understand the issue and to share information and educational materials.

Mr. Hutchison reported that he uploaded additional meeting minutes to the Commission website. Meeting minutes dating back to 2010 were now available for public review. Mr. Hutchison noted that he became Commission Executive Director, one of his goals was to provide for greater transparency and accessibility to the Commission's records, especially with respect to regulatory and planning documents. He noted that the relaunched website had improved the Commission's ability to make its proceedings known to the general public, and that the Commission's effort in this regard compared favorably to other similar agencies such as the Highlands Council and the Pinelands Commission.

At the request of the Park Service, Mr. Hutchison reported that he posted information on the Commission website relating to upcoming invasive pest control activities to be undertaken within the Delaware and Raritan Canal State Park in the City of Lambertville. The Commission issued a certificate of approval to the Division of Parks and Forestry in 2016 for the removal of *Ailanthus* and Ash trees (DRCC #16-4938) within the Delaware and Raritan Canal State Park. The proposed work in Lambertville was being undertaken pursuant to that approval. Mr. Hutchison noted that Commissioners received a briefing from the State Park Service park service on the situation. He noted that *Ailanthus altissima*, known commonly as “Tree of Heaven,” is a species of tree native to northeast and central China that is considered an invasive species in New Jersey. It is also a vector for the invasive non-native insect the spotted lanternfly. The spotted lanternfly feeds on over 70 different plant species, including fruit trees, ornamental trees, vegetables, herbs and vines. Mr. Hutchison noted that this pest poses a serious threat to New Jersey’s agriculture industry, and to the health of this State’s forests.

Mr. Hutchison noted that the proposed removal of Green and White ash trees in the park was necessary to combat the spread of the emerald ash borer (EAB), an invasive non-native beetle that has killed hundreds of millions of trees in North America. He noted that once an ash tree is infested with EAB, the beetle kills the tree within 3 to 4 years, and 99% of the ash trees die after initial infestation. Ash trees infested with EAB die from the top down and become rapidly brittle, and potentially risk dropping large branches and treetops. The brittleness of the infested trees poses a safety concern for park patrons in heavily-used areas.

Mr. Hutchison expressed the hope that by making information about these activities available on the Commission website, the Commission and the State Park Service could proactively address the concerns of residents in Lambertville who may have seen trees along the multiuse trail marked with orange tape for removal in the Fall, and possibly counteract any false information and/or rumors before they gain currency in that community.

The Director reported that a draft of the Commission/NJDOT Bridge Task Force MOA which addresses concerns expressed by the State Historic Preservation Office has been transmitted to Commissioner Stout and himself. He noted that he and Commissioner Stout held a conference call with Tina Shutz of the New Jersey Department of Transportation (NJDOT) on September 15 to discuss next steps in the adoption of the MOA. These will include final edits, mostly to double-check the list of bridges and for NJDOT staff to replace mile marker designations used in previous drafts -- which are apparently incorrect -- with GPS coordinates. Mr. Hutchison thanked Deputy Attorney General Kane for his assistance in bringing this part of the process to a successful conclusion. Mr. Hutchison expressed the hope that a final version of the MOA would be distributed to the members of the task force, and that a final meeting of the task force could then be held to approve the MOA. After that, the MOA would be submitted to the Commission for approval.

Mr. Hutchison reported that due to the COVID-19 pandemic, the Commission’s janitorial vendor had to be changed. Mrs. Maloney was able to work with ACCSES-NJ to engage a new service provider, the ARC if Mercer County, who had assumed providing service on Mondays and Wednesdays. The new group would do typical cleaning and concentrate on frequently-touched surfaces. He noted that they would employ a new disinfectant for such surfaces.

The Director noted that he would be attending a MS Teams meeting on September 17 with the DEP Division of Budget and Financial Operations to review the Commission's Spending Plan for the first quarter of Fiscal Year 2021. He also reported that the special project overtime rate which is used to compensate the Commission's engineers was raised to \$35.67/hour, which was an increase of \$0.14/hour over the current rate,

The Director noted that there had been follow-up discussions regarding the fate of the East Millstone bridgetender's shelter, the explanation of which he would defer to Superintendent Kallesser.

Commissioner Lubitz discussed the value of creating a virtual "parking lot" for ideas and issues to be collected with consideration to a future revision of the Commission regulations. He stated he would like the Commission to consider adding a noise or sound impact review for projects, including stand-by generator installations. The Director stated the Commission did at one time have noise impact regulations, but that they had not been re-adopted in the 2009 iteration of the regulations.

Commissioner Lubitz asked if the Commission has received an appropriation amount for the FY 2021 nine-month budget. Director Hutchison stated that staff had not received information, but that it was probable that such information would be provided at the budget meeting he was scheduled to attend.

Park Superintendent's Report

Superintendent Kallesser reported with regret that a member of her park maintenance staff had retired.

The Superintendent reported that Ash tree and *Ailanthus altissima* (Tree of Heaven) removal will occur this fall in the vicinity of Lambertville and that park staff was communicating with officials of the City of Lambertville, including the mayor, the city clerk, the business administrator, as well as park and recreation committee members.

Superintendent Kallesser reported that the DEP Division of Parks and Forestry had engaged in internal staff-level discussion regarding the proposed "Bulls Island Preserve" plan to reopen the northern section of the Bulls Island Recreation Area. Acting Director Madden reported that she had briefed the DEP Assistant Commissioner for Natural and Historic Resources Bukowski on the matter, who in turn requested a final internal meeting on the proposal. Acting Director Madden noted that this meeting would be followed by a stakeholder meeting process. Director Madden stated that she anticipated an application to implement the plan to be submitted to the Commission in November.

The Superintendent reported that discussions were on-going related to the disposition of the East Millstone bridgetender's shelter, and that further discussions to arrive at a path forward would need to involve the participation of NJDOT, Somerset County and Franklin Township.

Superintendent Kallesser reported that a Frenchtown-to-Trenton Delaware and Raritan Canal Park clean-up would take place utilizing the services of approximately 150 volunteers. She noted that social distancing would be observed due to the ongoing COVID19 pandemic.

The Superintendent reported that Park Service staff, NJWSA, the Commission, and New Jersey State Park Police personnel were engaged in addressing the issue of encroachments within the park, including the construction of non-permitted docks within the prism of the Delaware and Raritan Canal.

Commissioner Lubitz inquired if any activities to suppress spotted lanternfly had been undertaken at the Bulls Island Recreation Area. He noted that the proliferation of the pest could have negative impacts for the vineyard located across State Highway Route No. 29 from the park. The Superintendent reported that representatives of the U.S. Department of Agriculture had visited the recreation area recently, and that she would inquire about the status of such activities and report them to Director Hutchison.

Vice-Chairman Loos asked the Superintendent for additional information about maintenance staffing to make up for the recent retirement of park personnel. Acting Director Madden responded that although additional staffing had been requested, no new hire requests were moving forward, and that the maintenance staff levels within the Division of Parks and Forestry were as low as they had ever been. The Superintendent noted that additional retirements of Delaware and Raritan Canal State Park maintenance staff were likely in the near future. Commissioner Stout reported, based on discussion with former-Director of Parks and Forestry Glenn, that the Department was considering the implementation of a plan to solicit assistance from non-profit entities to assist with maintenance activities. Acting Director Madden stated that such a program was under review and had not been finalized.

Commissioner Lubitz commended the park staff for the completion of path repairs in the Kingwood portion of the park path following Tropical Storm Isaias.

Commissioner Lubitz also noted he had observed work being done within the park at a Delaware River tubing pick-up spot where tubers exit the river. He asked if any negotiations were taking place with the tubing company. Acting Director Madden responded by stating that she had nothing to report on this issue.

Vice-Chairman Loos requested of Acting Director Madden that the Commission be included in the discussions regarding the fate of the East Millstone bridgetender's shelter.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar reported that the dredging project for the main portion of the Delaware and Raritan Canal in the area known as "Reach No. 5" would conclude during the current week. Mobilization to dredge the area denoted as "Reach No. 6" would commence thereafter. Dredging of the "Reach No. 6" area would occur from September 21 until approximately mid-November, after which time the dredging operations would halt and removal of dredge material would commence.

Mr. Sellar reported that the dredging contractor restored Access Area I, at the Flemer Preserve in Somerset County.

Mr. Sellar reported that the contract for repairs at the Island Farm Weir was awarded and work would commence soon.

Mr. Sellar reported that the surveys of those portions of the Delaware and Raritan Canal that had been treated for Hydrilla revealed no new plant growth. He reported that the herbicide injection continued at a target dosing rate of 3 parts per billion and would continue until a tentative date of September 30.

Mr. Sellar reported that repair work on the western canal embankment repairs in the Borough of

Stockton would begin tentatively in spring/summer of 2021. In addition, he reported that repairs of the embankment from Bulls Island to Prallsville Mills were in the design and permitting phase. He noted that these plans included a tree removal plan, which would allow for better maintenance of the narrow embankment between the Delaware and Raritan Feeder Canal and the Delaware River. Mr. Sellar anticipated that an application for the projects would be submitted to the Commission within the next six months.

Mr. Sellar reported that of the stormwater basins to be repaired in Franklin Township, four were completed with one, at Dellwood Lane, to be completed in the spring of 2021.

Mr. Sellar reported that the Transco pipeline repair project in Ewing Township, Mercer County in the vicinity of Scudder Falls was completed by Transco's contractor in July, and that the project site was restored.

Mr. Sellar reported that the Cedar Grove Brook watershed project had been put out for bid for engineering services.

Old Business

Vice-Chairman Loos asked for Commissioner's comments on the draft priority ranking form developed by Commission staff for the purposes of vetting proposed projects for which the Commission would award remaining mitigation funds deposited in the "PSE&G/D&R Canal Pole Line" mitigation account (#4875-009) collected as compensation for the 2005 PSE&G project to construct a transmission pole in the canal State Park in Franklin Township (DRCC #05-3250).

Director Hutchison stated that staff drafted the priority ranking form, which was loosely modeled on a Green Acres project priority ranking system form, with consideration to the objectives outlined in the Commission's Master Plan. The Commission would review the proposed projects, rank them on a scale, and recommend the highest-ranking projects to be administered by NJDEP/ORD.

Acting Director Madden requested that each question be numbered, and that applicants be required to identify which permits would be required. She asked if the Commission anticipated this would be a reimbursement program. She also recommended that the Commission confer with ORD prior to adopting the form, and noted that applicants should be required to meet the requirements of ORD for items such as reimbursement, payment voucher and receipts. She also asked if there should be a requirement that the applicant obtain any relevant permits prior to the issuance of an award of mitigation monies.

Vice-Chairman Loos suggested that details on administrative management of a project, such as the payment of vouchers and reimbursement process, need not be addressed in the ranking form, but could be addressed at a later time.

Director Hutchison stated that Commissioner Reiser had recommended review of the application by the Office of the Attorney General prior to the Commission meeting, which the Director thought was a very good idea. Vice-Chairman Loos recommended that staff note the comments made by Commissioners, and that the form be revised for consideration at the October meeting, at which time Deputy Attorney General Kane would have had sufficient time to review the document and prepare recommendations for

additional revisions.

Commissioner Lubitz commented that permitting would probably need to follow after a project had been awarded the mitigation money. He also commented that, under Factor #6 of the draft form, an application should be given more points if other financial resources would be contributed to the project, which in turn would result in a greater benefit for the Delaware and Raritan Canal State Park. He also encouraged that the form be revised to award additional points for projects within an area of the park which had received less investment in the past, such as: areas of the canal that are currently piped; the “abandoned” portion of the canal between Bordentown to Trenton; or, for portions of the canal located in an urban setting like the City of Trenton.

Superintendent Kalleser commented that a minimum award amount for a proposed project should be considered in order to avoid a proliferation of very small projects which could place an administrative burden upon departmental staff. Vice-Chairman Loos disagreed with this idea. He noted that a project applicant could propose to install five information kiosks within the park; and, that while such a project may be small and of modest cost, it could nevertheless provide worthwhile benefits.

Acting Director Madden returned to the discussion of the importance of applicants knowing what permits are required and the cost of such permitting. She noted that if an applicant were unable to secure the necessary permits to successfully complete a proposed project, the mitigation grant monies would inevitably be mired in a project that was unachievable. She also noted that any program to award the mitigation monies must include robust accountability and financial controls in order to be successful.

Vice-Chairman Loos agreed that the application should be numbered, and that Factor #6 should reference the ability of the applicant to leverage additional resources for a proposed project. He also stated that the discussion was still open about permits, payment vouchers, and establishing a minimum award amount. He stated he did not think there would be many applications for the mitigation monies, since the project must, pursuant to the stipulation of settlement between the Commission and PSE&G, be located within the Delaware and Raritan Canal State Park. He reiterated his opinion that the potential benefits of relatively small projects would be worth the risks of incurring additional administrative burdens by not establishing a minimum award.

Vice-Chairman Loos then called for comment from the public. Mrs. Barth of D&R Canal Watch stated that some applicants such as a non-profit like D&R Canal Watch would not know what permits were required for a given project, and could not therefore anticipate the costs associated with such permits. She suggested that permitting costs could be incurred by a State agency. Vice-Chairman Loos stated that a project application could include an estimate of associated permitting costs. Mrs. Barth then asked how an entity such as D&R Canal Watch could estimate engineering and construction costs, since they would not be allowed to contact potential bidders such as engineers or construction companies without violating State procurement regulations.

Mr. Sellar corrected this characterization of State procurement policy. He noted that typically when designing a project, a project sponsor can communicate with anyone they need to in order to obtain information to better understand the design of the project, such as construction and sales professionals who possess the requisite professional expertise. The point at which the project bid is sent out, is the point in time at which one cannot contact potential bidders and confer with them on a one-to-one basis.

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After a project is sent out for bids, bidders would submit questions about the project, after which time there would be a process to inform all of the bidders about those questions and the answers given thereto.

Vice-Chairman Loos directed Director Hutchison and the Commission staff to make revisions to the draft document based upon the discussion.

Vice-Chairman Loos then requested a motion to table the discussion until the October meeting. Commissioner Shoffner made the motion, which was seconded by Commissioner Lubitz. The motion was approved unanimously by voice vote.

New Business

No new business.

Public Session

Vice-Chairman Loos invited members of the public to offer comments.

Mrs. Barth questioned Superintendent Kalleser on the number of employees of the Delaware and Raritan Canal State Park who were presently engaged in maintenance activities. Superintendent Kalleser reported there were a total of seven maintenance employees, four of whom were assigned to the Feeder section of the canal, while three were assigned to duties related to the main section of the canal.

Written Public Comments

None.

Executive Session

None.

Adjournment

There being no other business, Vice-Chairman Loos entertained a motion to adjourn. Commissioner Lubitz moved to adjourn the meeting, which was seconded by Commissioner Reiser. Vice-Chairman Loos called for a vote on the motion to adjourn, which was unanimously approved via voice vote.

The meeting adjourned at 11:10 a.m.

Respectfully submitted,



John Hutchison, Secretary