

ORDINANCE NO. 93-1008

AN ORDINANCE AMENDING TITLE 17: ZONING, CHAPTER 17.06: ZONING DISTRICT CLASSIFICATIONS, 17.06.020, CLASSIFICATION OF ZONING DISTRICTS; AND, BY ADDING A NEW CHAPTER 17.49: WR WATER RESOURCES OVERLAY DISTRICT, OF THE OREGON CITY MUNICIPAL CODE, 1991

OREGON CITY ORDAINS AS FOLLOWS:

Section 1. That Title 17: ZONING, Chapter 17.06: CLASSIFICATION OF ZONING DISTRICTS, of the Oregon City Municipal Code, 1991, is hereby amended to add the following:

R-6/MH	single-family manufactured home dwelling district
TC	tourist commercial district

A special overlay district shall be added to be known as:

WR	water resources overlay district
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Section 2. That Title 17: ZONING, of the Oregon City Municipal Code, 1991, be and the same is hereby amended by adding Chapter 17.49: WATER RESOURCES OVERLAY DISTRICT, to read as follows:

Chapter 17.49

WR WATER RESOURCES OVERLAY DISTRICT

Sections:

17.49.010	Purpose.
17.49.020	Definitions.
17.49.030	Development Review Process.
17.49.040	Permitted Uses.
17.49.050	Dimensional Standards.
17.49.060	Water Resources Report.
17.49.070	Determination of Transition Area.
17.49.080	Standards for Development Within and Adjoining Impact Areas.
17.49.090	Compliance with Federal and State Requirements.
17.49.100	Residential Density Transfers.
17.49.110	Conflicts.

17.49.010 Purpose. The purpose of this overlay district is to conserve and protect inventoried wetlands, water courses and water areas, and associated natural resources and water resource values, while allowing appropriate development in a manner that is harmonious with and sensitive to the natural landscape character of these water resources and compatible with water resource values.

17.49.020 Definitions. For the purpose of this chapter, the following definitions are applicable:

"Development" means a building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access.

"Hydric soils" means a soil that is saturated, flooded or ponded for a significant period (usually a week or more) during the growing season to develop anaerobic conditions in the upper part.

"Impact area" includes both the area encompassing a water resource and the transition area surrounding the water resource.

"Riparian area" means that area between a water area or water course and the top of its banks, plus the area extending outward 15 feet from the top of each bank.

"Transition area" means those lands adjacent to a water resource that provide a buffer for the water resource which helps to maintain and protect the quality and integrity of the resource and associated wildlife habitat. The size of the transition area shall be presumed to extend 50 feet, measured horizontally, from the boundary of the water resource, but may vary according to the slope and erosion potential of the land and its suitability as wildlife habitat.

"Water area" means a lake, pond, lagoon, or other natural body of stationery or slow moving water.

"Water resources" means water areas, water courses and wetlands.

"Water course" means a river, stream, or creek, and its perennial and seasonal tributaries, together with the channel occupied by such running water. The boundaries of the water course include all lands to the mean high water mark.

"Water resource values" includes values associated with the water resource and with other natural resources located within the transition area of a water resource. These values include anchoring of shorelines and stream banks; dissipation of the erosive forces of stormwater; maintenance and improvement of water quality; provision of domestic supplies of water; provision of food, water, cover, breeding, nesting, resting, wintering or migration areas for wildlife; provision of spawning, rearing, feeding or migration areas for fish; provision of recreation, scenery, open space and view points; recharge and discharge of groundwater; retention of soils and stabilization of slopes; storage, conveyance, and desynchronization of stormwater; trapping and filtration of sediment from stormwater.

"Wetlands" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

"Wildlife habitat" means (1) forested land; (2) riparian area; or (3) any other areas designated as wildlife habitat in the City's Comprehensive Plan.

17.49.030 Development Review Process.

A. The standards contained in this Chapter shall apply to any application for a development permit or a land use or limited land use permit involving property within 100 feet of a water area, water course or wetland, as shown on the water resources inventory of the City or Clackamas County. These standards are in addition to any other applicable standards of the Municipal Code.

1. Applications for subdivisions, partitions and planned developments shall demonstrate compliance with these standards as part of the review proceedings for those developments.

2. Applications for development other than that described in Paragraph 1 of this section shall demonstrate compliance with these standards as part of design review or such other land use review as is required by the Municipal Code, whichever occurs first. Where the matter arises within the context of design review, the Planning Division shall forward the matter to the Planning Commission for review at a public hearing.

17.49.040 Permitted Uses. Uses permitted in the underlying zoning district designated for the property may be permitted as provided herein.

17.49.050 Dimensional Standards. Dimensional standards shall be the same as in the underlying zone.

17.49.060 Water Resources Report.

A. Where development is proposed for property subject to the requirements of this ordinance, the applicant shall submit a water resources report. The report shall include the following information:

1. A scaled drawing delineating the boundaries of all water resources on or within 100 feet of the property and their associated transition areas. Where the resource extends to adjoining properties, the drawing shall identify the resource location to a distance 100 feet from the property line. Where the water resources includes wetlands, the delineation shall be performed in accordance with the most recent Federal Manual for Identifying and Delineating Jurisdictional Wetlands and any subsequent amendments thereto.

2. A description of topographical, soil, and vegetative conditions in the impact area and on lands within the subject property that are within 50 feet of the impact area.

3. An analysis of the adverse impacts the proposed development may have on the water resource and its associated impact area. This discussion shall take into account relevant natural features and characteristics of the impact area, including soils, bank stability, slopes of lands abutting the water resource, hazards of flooding, large trees and wooded features. The discussion shall identify fish and wildlife resources that utilize or inhabit the impact area in the course of a year and the impact of the proposed development on water resource values.

4. An analysis of the impacts the proposed development will have on the water quality of affected water resources, taking into account relevant natural features and characteristics of the impact area.

5. An analysis of measures which feasibly can be taken to reduce or mitigate the impact of the proposed development on affected water resources and their transition areas, including proposed drainage and erosion control measures, and an analysis of the effectiveness of these measures.

B. The water resources report shall be performed by one or more qualified professionals including a wetlands biologist or hydrologist.

17.49.070 Determination of Transition Area.

A. The transition area for wetlands shall extend 50 feet from the boundary of the wetland. The transition area for water areas and water courses shall be presumed to extend 50 feet from the boundary of the water resource unless otherwise demonstrated in accordance with the requirements of this section.

B. For water areas and water courses, the Planning Commission may decrease or increase the size of the transition area on a case-by-case basis as follows:

1. The Planning Commission may decrease the size of the transition area to 25 feet from the boundary of the water resource if:

- a. The slope of the transition area is predominantly 10 percent or less;
and
- b. Soils in the transition area are not described in the US Soil Conservation Service publication Soil Survey for Clackamas County as having high erosion potential
and
- c. The reduction in the transition area would not cause a reduction in wildlife habitat.

2. The Planning Commission may decrease the size of the transition area to 35 feet from the boundary of the water resource if:

- a. The slope of the transition land is predominantly 15 percent or less;
and
- b. Soils in the transition area are not described in the US Soil Conservation Service publication Soil Survey for Clackamas County as having high erosion potential
and
- c. The reduction in the transition area would not cause a reduction in wildlife habitat.

3. The Planning Commission shall increase the size of the transition area to 75 feet from the boundary of the water resource if the slope of the transition area is predominantly greater than 25 percent.

4. The Planning Commission shall increase the size of the transition area to 100 feet from the boundary of the water resource if the slope of the transition area is predominantly greater than 35 percent.

17.49.080 Standards for Development Within and Adjoining Impact Areas.

A. Except as otherwise provided in this section, no development shall be permitted within a water resource.

1. Development may be allowed within a wetland only upon demonstration by an applicant that failure to permit development within the wetland area would otherwise deprive the property owner of all economically beneficial use of the property. Where this showing is made on residentially zoned land, development shall be limited to one single family residence. Development approved under this ordinance shall be subject to compliance with the development standards of this ordinance. Development approved under this ordinance shall not relieve an applicant of any responsibility under federal, state or other authority to obtain permits that may also be required as a precondition to development on the wetland.

2. Roads, utility services, and other necessary public facilities and services may be located across, on or under water resources only upon demonstration by an applicant that the water resource cannot reasonably be avoided. Where improvements are justified, the Planning Commission shall impose measures to minimize the adverse impacts of the improvement on the affected water resources and restore the area to natural conditions. These measures may include, but need not be limited to:

- a. Bridges over water courses.
- b. Variances to road width standards, to allow narrower streets where they cross the water resource.
- c. Erosion control and water quality control measures.
- d. Replanting of trees and other vegetation.
- e. Restoration measures to repair damage to the water resource and its transition area.
- f. Prohibiting development during wet weather seasons, such as from November 1 through April 30.

B. Except as otherwise provided in this section, no development shall be permitted within the transition area of a water resource. Development may be permitted within a transition area only upon demonstration by an applicant that the transition area cannot reasonably be avoided. The applicant shall demonstrate:

1. Reasons lands outside the transition area cannot reasonably accommodate the development; and
2. That development within the transition area has been minimized.

C. Subject to the standards set forth in subsection E of this section, water-related and water-dependent uses permitted in the underlying zone shall be allowed along the shorelines of and upon:

1. The Willamette River; and
2. Parker's Lagoon.

D. The following low-impact uses are permitted within a water resource area or its transition area to the extent they are not prohibited by any other ordinance or law and provided they are conducted using best management practices.

1. Conservation or preservation of soil, water, vegetation, fish, and other wildlife.
2. Outdoor recreational activities, including fishing, hiking, birdwatching, boating, swimming, canoeing and bicycling.
3. The harvesting of wild crops in a manner that is not injurious to the natural reproduction of such crops and provided that the harvesting does not require tilling of soils, planting of crops or alteration of the water resource by changing existing topography, water conditions or water sources.
4. Existing and ongoing agricultural activities.
5. The maintenance of drainage ditches.
6. Education, scientific research, and use of nature trails.
7. Navigation aids, boundary markers, and boat mooring buoys.
8. Site investigative work necessary for land use applications, such as surveys, soil logs, percolation tests, wetland delineation tests, and other related activities. In every case, the impacts shall be minimized and disturbed areas shall be immediately restored.
9. Normal maintenance and repair of existing serviceable structures, facilities or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility or improved area and does not include the construction of a maintenance road.
10. Minor modifications of existing serviceable structures where modification does not adversely impact water resource functions.

E. Development permitted within a water resource or its transition area shall be designed and constructed to preserve and maintain the integrity of the water resource, its transition area, and existing natural features, biological systems and water resource values. To achieve this purpose, development within an impact area shall comply with the following standards:

1. The minimum separation distance necessary to maintain or improve upon existing water quality shall be the required setback for buildings or structures proposed alongside any water course. This distance shall be determined as part of the water resource report, but it shall not exceed 150 feet.
2. Development within 50 feet of a wetland shall be designed to:
 - a. Preserve functions of groundwater recharge, water storage, turbidity reduction, nutrient filtration, biological and botanical production, and protective habitat cover.
 - b. Provide compatibility with the continued performance of wetland functions, including conservation of soil, vegetation, water, fish and wildlife.
 - c. Maintain the runoff coefficient and erosion equilibrium for lands bordering the wetland substantially the same as if such lands were undeveloped. Prior construction, elevated pedestrian boardwalks, semi-impervious surfacing, bridging of natural drainageways, and retention of natural vegetation in areas not intended for buildings and roads are recommended design methods.

3. Land within the transition area may be contoured, landscaped or altered only to the extent such modifications are necessary to provide necessary public facilities and services, or to prevent erosion, runoff of hazardous materials or pollutants into the adjoining water resource. Where modifications are required, the applicant shall submit, and the City Engineer in consultation with Planning staff, shall review and approve prior to the commencement of any construction, a construction management plan including:

- a. Areas where existing topography and vegetation is to be left undisturbed.
- b. Site contouring, including existing and proposed grades.
- c. Excavations and fills, including types of fill materials.
- d. Restoration measures to repair damage to the area.

4. All stormwater shall be collected on-site and passed through a treatment facility, such as a detention/composting facility or filter as approved by the City Engineer in consultation with Planning staff, prior to being discharged into the impact area.

5. All parking, loading, maneuvering and outdoor storage areas shall be set back at least 10 feet from the transition area boundary. The setback area shall be landscaped with native plant materials typical of the vegetation in that area.

6. Exterior lighting shall be placed, shaded or screened to avoid shining directly onto the impact area.

7. Trees and other plant materials within the impact area shall be retained wherever possible. No trees or plant material shall be removed except upon prior demonstration by an applicant that removal cannot reasonably be avoided. All trees over 6 inch caliper that must be removed shall be replaced on a two-to-one basis by trees of the same or similar species that are native to the area and are at least 2 inches in caliper.

a. Prior to commencement of any clearing or construction, the applicant shall submit for Planning Division review and approval, a tree plan which shall:

- 1. Identify the location, species and size of each tree to be removed, and the reasons why removal cannot reasonably be avoided.
- 2. Identify the location, species and size of each tree to be planted.
- 3. Provide for the maintenance of each tree to be planted for a period of not less than two years, and for the replacement of any such tree which does not survive for two years.

b. The Planning Division shall approve the tree plan only upon determining that it is consistent with the intent and purpose of this ordinance and that the trees proposed for removal must necessarily be removed to allow reasonable opportunity for site development. To the extent the tree plan would unnecessarily remove trees, it shall be denied.

8. All construction and site alteration shall be in conformance with a detailed drainage and grading plan reviewed and approved by the City Engineer in consultation with Planning staff.

E. For each one foot in height above 25 feet, a set back of one foot from the transition area boundary shall be maintained.

F. The appropriate review authority may attach such conditions as it deems necessary to satisfy the standards of this ordinance. These conditions may include limitations on the size, shape and location of structures and associated facilities.

17.49.090 Compliance With Federal and State Requirements.

A. If the proposed development requires the approval of any other governmental agency, such as the Division of State Lands or the U.S. Army Corps of Engineers, the applicant shall make application for such approval prior to or simultaneously with the submittal of its development application to the City Engineer. The Planning Division shall coordinate City approvals with those of other agencies to the extent necessary and feasible. Any permit issued by the City of Oregon City pursuant to this ordinance shall not become valid until other agency approvals have been obtained or those agencies indicate that such approvals are not required.

B. The requirements of this Chapter apply only to water resources identified in the water resource inventories of the City and Clackamas County. If, in the course of a development review, evidence suggests that the property in question may contain a wetland that is not on the City or County inventory, the provisions of this Chapter shall not apply. However, the omission shall not excuse the applicant from satisfying any state and federal wetland requirements which are otherwise applicable. Those requirements apply in addition to, and apart from, the requirements of the City's Comprehensive Plan and Municipal Code.

17.49.100 Residential Density Transfers.

A. Lands within an impact area shall be considered "unbuildable" for purposes of compliance with Statewide Planning goal 10, Housing. Notwithstanding the underlying zoning designation, any residential development that occurs within the transition area shall not exceed a density of one unit per acre for each unit after the initial unit.

B. Where an applicant proposes to locate development within an impact area, no density transfer shall be allowed. However, this prohibition shall not apply to the extent the development consists of:

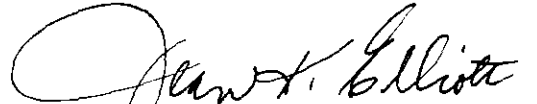
1. Roads, utility services, or other necessary public facilities or utilities for which the applicant has demonstrated that the impact area cannot reasonably be avoided;
2. Parcels or lots created as tracts not available for development; or
3. Low impact uses identified by this ordinance as permitted within an impact area.

C. The City shall allow for the transfer of residential density from the transition area onto other residentially-zoned portions of the parcel or contiguous parcels held in common ownership on a one-to-one basis, based on the underlying zone, provided that no development is located within the impact area as described in subsection B of this section.

D. A density transfer under this provision shall not authorize any type of residential dwelling other than those permitted by the underlying zone. For sites over two acres in size, the density transfer shall require development under the planned development procedures provisions of Oregon City Municipal Code, Chapter 17.64.

17.49.110 Conflicts. In the event a requirement of this section conflicts with requirements in Chapter 16, Subdivisions, or Chapter 17, Zoning, of the Municipal Code, the requirements of this section shall control.

Read first time at a regular meeting of the City Commission held this 18th day of August, 1993, and the foregoing ordinance was finally enacted by the City Commission on the 18th day of August, 1993.


JEAN K. ELLIOTT, City Recorder

ATTESTED this 18th day of August, 1993


DANIEL W. FOWLER, Mayor

ORDINANCE NO. 93-1008

Effective Date: September 17, 1993



CITY OF OREGON CITY

INCORPORATED 1844

COMMISSION REPORT

TO THE HONORABLE MAYOR AND COMMISSIONERS

FOR AGENDA

DATED

August 18, 1993

Page 1 of 2

Subject: Creation of a New Overlay District
For Water Resources - Public Hearing

Report No. 93-175

If approved, proposed Ordinance No. 93-1008,
an Ordinance Amending Title 17, Chapter 17.06.020
Classification of Zoning Districts, and Adding a
New Chapter 49 to Zoning, of the Municipal Code, 1991

On the August 18, 1993 City Commission agenda is a proposal to add a new overlay district to the Zoning Ordinance. The new overlay district is to be designated "WR", Water Resources Overlay District. This overlay district would protect all water resources which are defined as water areas, water courses, and wetland.

The proposal is summarized as follows:

1. The Code provisions would provide protection of water resources through a development review process. The process would be similar to the current quasi-judicial process used for a Conditional Use permit.
2. Development would not be allowed in a water resource except upon demonstration of all economically beneficial use of the property. The provisions also outline how land within the transition area is to be treated so that the integrity of the water resource is maintained.
3. A residential density transfer can be considered by the Planning Commission during the review process for those developments that do not located within the transition area.
4. Coordination between state and federal agencies is a component of this ordinance.

On March 11, 1993, the Planning Commission held a public hearing to consider the proposal. After public testimony the Commission continued the public hearing to allow for additional revisions to the Water Resources proposals. The public hearing was continued to March 23, 1993. After additional public testimony the Planning Commission voted to recommend the zoning ordinance provision to the City Commission for review.

Attached for Commission review are the following documents:

1. Planning Commission minutes from March 11, 1993.
2. Proposed Ordinance No. 93-1008



CITY OF OREGON CITY

INCORPORATED 1844

COMMISSION REPORT

TO THE HONORABLE MAYOR AND COMMISSIONERS

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2 of 2

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Notice of proposed Ordinance No. 93-1008 has been posted at City Hall, 320 Warner-Milne Road, Courthouse, 807 Main Street; and Senior Center, 615 Fifth Street, by direction of the Deputy City Recorder. It is recommended that the first and second readings be approved for final enactment to become effective April 30, 1993.

9-17


CHARLES LEESON
City Manager

attach.

cc - Denyse McGriff, Principal Planner

It was moved by Winklesky, seconded by Mattsson, to approve the sidewalk (amended to be a pedestrian accessway) condition as required in SP89-26.

Roll call: Shaw, Aye; Winklesky, Aye; Mattsson, Aye; Woolsey, Aye.

Shaw suggests asphalt be used to construct the pedestrian accessway.

Public Hearing - Wetlands Ordinance

The City Attorney was requested to announce the rules governing a public hearing. Greenfield explained this is unnecessary because this is a legislative action. McGriff reported that 2/3 of the site visits have been completed; there is a problem area in the vicinity of South Rose Road and the northern portion of the area that has been developed as part of the Oaktree Subdivision. A report is to be generated from the field notes for presentation to the Planning Commission. Mattsson inquired about wildlife habitat, noting it was not found in the proposed ordinance. It was stated that only inventory can be protected, unless an amendment is made to the inventory.

A break was called at 8:40 p.m.; the meeting was reconvened at 8:50 p.m.

Mark Greenfield reviewed the draft Comprehensive Plan Text Amendment for Water Resources wording for Planning Commission members and remaining audience. Chair Woolsey thanked staff for their hard work on this ordinance.

Walter Whitney, 19605 River Road, Space 103, Gladstone, stated he is a member of an environmental group in Gladstone (Gladlands) and asked that he be considered if there is another public hearing on this matter.

Malcolm Smith, 18907 Deer Lane, inquired where an inventory of wetlands can be obtained. The Division of State Lands will provide a wetlands inventory for \$4.50.

Bill Green, 1202 Fourth Street, requested to be placed on record as being in attendance and wishes notification of any future meetings.

James Dalton, 13879 S. Holcomb, talked about the former log storage site in the vicinity of I-205 and Washington Street. He would like to have this site placed on the inventory area because it seems to be a potential area for ducks. It was noted that Abernethy Creek and Newell Creek have fish migration. Mr. Dalton requested additional public education on dumping of waste near waterways.

Sha Spady, 17855 Alden Street, brought documentation for distribution and referred to defining terms in her report. She took credit for horizontal measurements, requesting that be included. Ms. Spady talked about a buffer zone for beaver; stated Western pond turtles have been sighted in the Newell Creek Area, indicating her belief that these turtles are a rare species, and requesting protection of the Newell Creek area. Spady indicated there was no mention made of a water shed; however, she believes Newell Creek is an "in

tact" water shed at this time. She talked about ESEE; OAR Division 16 - 660.16.000 requesting opportunity for citizens to bring information to the Planning Commission for inclusion in this ordinance.

Doug Cottam, 17330 S. E. Evelyn Street, Clackamas, is a Wildlife Biologist and indicated that Newell Creek Should be included as fish migration stream. The ESEE Society deals with angling, instead of hunting which is prohibited within the City limits. He stated an excellent job has been done on the proposed ordinance. Transition should be a minimum of 50 feet to protect water quality, not wildlife in an urban area, and he would like to see an automatic buffer.

Lynn Mattee, provided 2 addresses; 737 SE 30th, Portland, and 1413 SE Hawthorne, Portland 97214; stated a very good job was done and is impressed with details. She has brought mitigation information, and noted that she has spent over \$40.00 on information provided for Planning Commissioners, but it is her understanding the Commissioners did not receive the information. She wanted the Commissioners to receive the information and resents the fact that only McGriff, and no one else, receives the materials. Greenfield noted Goal 5 is a process role to make informed choices. Ms. Mattee requested the record remain open; that we are in the 8th year of drought, and cautions that the resource must be given the benefit of drought. She further commented that the impact reparian definitions are not quite right. It was noted that Goal 5 is a big problem - Wetlands is only one portion that needs to be addressed. Ms. Mattee requested the surrounding areas outside the 50 feet be looked at because other resources may require protection; then provided density ordinance wording to Greenfield that is believed to be less intrusive. She also requested written notice; was advised this is legislative action which does not require notice.

Tina Monnacle, 14180 S. Beemer Way, stated 2 concerns; is opposed to review for delineated and believes areas under 3 acres do not appear on the map and are an oversight. There should be a buffer zone allowing for special species requirement.

John "Jack" Brown, PO Box 1195, Tualatin, requested continuation because he believes this is a good ordinance - getting better. He wishes to place his comments in writing and will have complete by March 23. He prepared written comments for this hearing and was disappointed to learn of the numerous changes that have been made that caused his comments to be irrelevant.

Hannah Johnson, 1108 Fourth Street, stated she has owned property for 47 years and believes she has a right to speak. The Washington Street "roller coaster" is of concern to Mrs. Johnson who believes it should be improved before "company" comes. Mrs. Johnson requested the City to be more "watchful", stating she believes Newell Creek is a pristine creek and environmentally beautiful.

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Greenfield whether there is any guidance from the Commission for his re-write. A need to do more to protect trees was voiced. This should not be a Newell Creek ordinance. It was noted Portland has a farm/forest designation with a 2 acre minimum. Woolsey asked if it is possible to include Newell Creek conditions; Shaw wondered how to start a Newell Creek ordinance. City Code 17.68.010 was referenced as requiring an official proposal. Shaw would like to get something in place soon.

Staff was directed to proceed to develop an ordinance to protect Newell Creek Canyon.

It was moved by Shaw, seconded by Winklesky, to continue the wetlands ordinance to the regularly scheduled meeting on March 23. UNANIMOUS APPROVAL

There being no further business, the meeting was adjourned at 10:55 p.m.

Respectfully submitted,