

Village of Cazenovia
Zoning Board of Appeals
July 29, 2009

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Present: Phil Byrnes, Chair; William Keiser; Jerry Munger; Sally Ryan; Howard Hart.

Also present: Ron Fortune.

P. Byrnes called the meeting to order at 7:00 p.m.

Drake Petroleum – XtraMart – Sign Area Variance and Front Yard and Side Yard
10 **Variiances.** This application is for Drake Petroleum Company, Inc., doing business as Xtra
Mart, for an area variance seeking relief from the provisions of section 109(H)(1) of the Village
of Cazenovia Zoning Code, which limits the applicant to one business sign, and prohibits signs
closer to the street than the gasoline dispenser pumps. The applicant seeks the variance to erect a
free standing monument sign, 20 square feet in area, in connection with a proposed new
15 convenience store upon approximately 0.77 acre of land located at the northwest corner of
Albany Street and Sims Lane. The applicant is also seeking relief from the front yard and side
yard setback requirements.

P. Byrnes reopened the public hearing.

Ron Fortune, a representative of Drake Petroleum, was present. He said he had received
20 Planning Board meeting minutes of 5/11/09 where the Board seemed to be in favor of the
proposed monument sign if it did not have the price of gas or other changeable information.
Mr. Fortune continued: We have a market that is based on interior store sales and a market
based on the most favorable brand of gasoline, and at certain times pricing is critical. I would
still like to ask to have pricing on the sign, which may preclude us from having it ever. We are a
25 business entity and any influence we have for selling a product is valuable. It is a different
industry than a restaurant where somebody sits in there for a number of minutes versus a typical
purchase of three minutes. We need that throughput. However we get these people into our site
is how we offset the extra expense of what we have to provide environmental equipment wise,
etc., and maintain it. We have to win in order to do that properly. That being said, whatever this
30 Board feels, that's the way it shall be. I just don't want it not said by me as an agent for this
client. It will hurt us. To what extent for this location, I can't say. We're hoping to get not only
the loyal base that we have that is local who is familiar with our activities, we also want that
drive-by customer because we are not necessarily a destination for that drive-by person, just a
pick up point to get to the next point.

35 P. Byrnes: As far as what is put on the sign, it is not the jurisdiction of this Board. Based on
what the Planning Board has recommended (name only, no pricing or other changeable
information), and the motion carried, if you want to continue that issue with the Planning Board,

you will have to return to the Planning Board to take that up with them. We are here to talk about the front yard and side yard setbacks and the monument sign itself.

40 H. Hart: The Planning Board is in charge of aesthetics, not the ZBA. It is not our decision. I got the Planning Board minutes because I complained that we did not get a letter of recommendation from the Planning Board. The motion, as described in the minutes, is not complete. It is only a one-sentence, two-line motion. In talking with Bill Carr and Jim Stokes, it is my understanding that the bottom panel would be removed and the whole sign would be dropped down two feet
45 where the price is. This needs to go back to the Planning Board. Jim Stokes said, contrary to some of our discussion earlier, that this monument sign simply is not allowed. It is not in the code. They are only allowed one sign. On the other side of that, I think you wanted relief in the placement of that sign. I am prepared to vote in favor of relief, provided we get a sign that is clearly passed by the Planning Board.

50 P. Byrnes: In essence, what you are saying is that this Board tonight could approve a sign, but it would be subject to Planning Board approval. We can approve location and the fact that we would allow the sign, and we are allowed to do that, but aesthetics of the sign must be referred back to the Planning Board. Ron, based on your diagram and the Planning Board minutes, it seems as though you are still of a different opinion than the Planning Board.

55 Mr. Fortune: One of the first things in the workshops was that I presented a problem for the location and that was a freestanding sign. That was a concern for us for the capital improvements we are putting into the location. We have to win. That's where the conversation started. We worked on it and I kept bring up the freestanding sign and I would work with whatever design. This is the design that was used somewhere else. I just brought it in as an
60 illustration of what I would like to see. It seemed like we kept going with it. It might still be an option and it may not. I never changed that sign. I didn't know the process to get through this Board. I will go back and forth—whatever I have to do. It is of value to us. I'm hoping to get signs that have the price. If I can't get the price sign, I understand I would have to go back and fight that case another day. I am seeking permission for a second sign and relief from setback
65 requirements.

P. Byrnes: The code allows 2 square feet for a sign. Physical size has some impact on us. We are looking at the Planning Board's recommendation of the physical dimensions of the sign that they seem to be in favor of. Our motion would be worded in light of the Planning Board's approval. We can give you the side line and front line and say yes we will allow the sign and our
70 motion will be specific to at least physical size that will not exceed a certain size. We need to give dimensions, unless we condition it on the Planning Board's discretion on the size of the sign. H. Hart: I am prepared to talk specifics.

S. Ryan: The code says permitted gasoline station signs shall not be nearer to the street than the gasoline pumps. All ground signs should be at least 10 feet from the street line.

75 P. Byrnes: Based on the angles and everything else, did we determine that your sign was in line with the pumps?

Mr. Fortune: From the street, it is as much as 18 feet off the street line. Another component of this is whether or not we are considered a shopping center where I could have a directory sign. We are saying we need a sign on the building. Also, we are a gas station and we need a
80 freestanding sign for clarity purposes.

P. Byrnes: I talked with Jim Stokes, the Village Attorney, because I had some questions in my mind whether there were two businesses and if one could be considered a directory sign. He said, in essence, no.

Mr. Fortune: I am only allowed one sign because our brand is a brand within the store, the
85 XtraMart brand. We wanted to have that on the building. We don't want to be locked into a brand because of pricing. We don't want a label we can't change without going through a process. In this industry, I don't have the luxury of time that change would demand.

H. Hart: Bill Carr told me what went behind the Planning Board's motion. (H. Hart presented a rendering of a sign.) This has some dimensions on it that are consistent with that. The lower
90 panel is gone with the price on it.

Mr. Fortune: If I have to go back to the Planning Board, I will want XtraMart and then have a brand at the street. I'm not trying to hide what I would be asking for. What we would do with that square footage is let the marketers decide best how to use it. Without the gas price as a message to drivers, the marketers will decide what will get them in. If we were to use the Mobil
95 name, they have a very high following for the credit card. They are not looking at the price. All they know is that they have that Mobil card and their accounting at the end of the month is all nice and clean. Drake has its own brand. Sometimes because of the margins and what it is costing for delivery, they will choose that this site will only do that. It can't afford the costing they have to incur to get the Mobil there with the privileges that Mobil provides with the credit
100 card. We would like the name—still want pricing—but if I restrict it to a labeling out there, I want it where it is left up to a marketer to decide how best to use the square footage. If I can get 20 square feet, that would mean going back to the Planning Board?

W. Keiser: How was their motion worded? P. Byrnes: W. Carr made the motion to recommend approval of the monument sign with the name only and shall not contain the price of gas or other
105 changeable information. A. McDowell seconded the motion. The motion carried.

W. Keiser: It does not specify any dimension. There was no mention of square footage.

P. Byrnes: If you are comfortable with the dimensions of the sign, regardless of what goes on the sign or how it is presented on the sign, we can move on and talk about front line and side line variances and the size of the sign.

110 H. Hart: I still think the size of the sign is the Planning Board's decision.

P. Byrnes: We can say that based on the dimensions on the drawing of the physical sign in its entirety, we would cover ourselves to say we have allowed that size sign and we can word the motion to say that any particulars as to the verbiage and size of the panels go back to the Planning Board.

115 H. Hart: I have no problem with that. I have one or two qualifications further. In Cazenovia, portable sidewalk business signs are permitted in the B-1 district and this is a B-1 district. These signs are only to be displayed during business hours. He could put a sign out every day and he is open 24 hours a day, which means the sign could be there 24 hours a day with pricing on it and that is variable. It cuts right around our code.

120 P. Byrnes: He is allowed that sign.

H. Hart: I am saying that for the monument sign, which is not allowed, he should give up the right for the portable sign if we give him the monument sign.

J. Munger: On what basis are we in a position to make that kind of a decision?

125 H. Hart: I see the monument sign as a sign that is not allowed. Basically, it would be out there as if it were a sidewalk sign.

J. Munger: Are we a body that is trading tit for tat? I don't think that is a function of the Zoning Board of Appeals. We are here to either approve or deny the variances he is requesting. As I understand it, the variance being size and placement.

130 H. Hart: Let me explain it a different way. If there is a solid monument sign out by the sidewalk, as far as I'm concerned, that is the same as a portable sidewalk sign.

J. Munger: What are the dimensions allowed on a sidewalk sign? H. Hart: Not illuminated, not to exceed 8 square feet, with a maximum width not to exceed 2 feet.

135 Mr. Fortune: I don't think they are aware that they can have a sidewalk sign. I would like to see that I am not forfeiting anything. If I knew I could get cigarette or coffee sales and I took that away from the marketer, they would probably shoot me. I'm trying to think it out from my position. It is not a huge sign, but when it is at the street line, it can be the difference between win or lose in paying for some of this stuff.

140 J. Munger: We have an illuminated price sign at the street. I measured the size of the number panels and they were 13 inches high by 9 inches wide. So to get \$2.60⁹ at a width of 9 inches, you're looking at 30 inches. A 2-foot wide sandwich board is not going to be of much use for advertising price. It might be useful to advertise something else like cigarettes.

P. Byrnes: This Board does not have the ability to trade. H. Hart: Jerry has a good point. They have the right to have a sandwich board sign. In addition to that, we are giving them a permanent sign right up on the sidewalk.

145 P. Byrnes: Maybe we should remove the restriction on pricing and changeable stuff, which is not our purview.

H. Hart: I say the whole thing should go back to the Planning Board. We have this loophole that a 24-hour business walks right through. J. Munger: Then the regulations should be changed.

H. Hart: I'm saying that he has that right.

150 S. Ryan: He is not asking for that. P. Byrnes: Howard wants to negotiate that away. The ZBA can't do that.

Mr. Fortune: I have two businesses there, at minimum. I have to win with the convenience store because of the expense of the building, etc. I'm throwing money out because we are spending X number of dollars into that facility because there is a need for it because there is a problem
155 with the building. This facility is tired. The underground tanking and all that costing is a whole other business that goes along with it. The margins on that product will cover the basic cost of that, but I have to win.

P. Byrnes: You pointed out that you have two businesses and that's what I was thinking the other day. But after talking to the Jim Stokes, the Village Attorney, we really would look at this
160 as a convenience store. A convenience store is defined as a retail store generally providing a limited range of packaged food, beverage, and other consumable household merchandise often associated with another principal use such as gasoline service station. So you really do fit that bill and that is what we are looking at. That is why we came back to the point where you are only allowed one sign.

165 Mr. Fortune: At the Planning Board discussion, in looking outside these regulations and into other communities, they understood my point of two signs.

P. Byrnes: At the last meeting, we had indicated that this had been referred to Madison County Planning Department for their remarks. We got them back today. In a nutshell under comments it says: Removal of the old Sunoco pylon sign and replacement with a 2-foot by 7-1/2-foot brick
170 monument freestanding sign encroaching 8 feet into both the required and front and side yard setbacks, but not in the line of sight of outgoing traffic would cause no adverse County or Municipal impact. The proposed sign would likely be an improvement to this Albany Street location. The recommendation is to return for local determination. P. Byrnes: So as far as the County is concerned, they have no issue with that.

175 P. Byrnes: Let's enter into the record Madison County Planning Department's comments; the new application that requests the front and side yard variances; the May 11, 2009, Village

Planning Board minutes that indicate their recommendation for approval of the sign as long as it does not contain the price of gas or other changeable information.

180 J. Munger: I have a general question. Does anybody know the square footage of this sign as compared to the monument sign at KeyBank?

H. Hart: Yes, I took a tape measure over there. The KeyBank sign is 5 feet wide and 6 feet tall to the peak. The peak is 2 feet of decoration.

P. Byrnes: This proposed sign is 6 feet high x 7-1/2 feet wide.

185 W. Keiser: From the sign to the highway is almost 20 feet. Mr. Fortune: From a survey that was done, it is 18 feet 3 inches.

S. Ryan: How is the sign illuminated? Mr. Fortune: At first, I said the sign was internally illuminated. But the drawing shows indirect external lighting.

P. Byrnes: If we look at front and side line relief and the sign itself, I will read for the record what is required of the Board for an area variance: *“The Board may grant an area variance*
 190 *permitting an applicant to deviate from one or more area and/or dimensional standards set forth in these regulations for a use permitted by these regulations in the district in which a lot is located. In making its determination, the Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the*
 195 *Board shall also consider whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; whether the requested area variance is substantial; whether the proposed variance will have an adverse effect or impact on the physical*
 200 *or environmental conditions in the neighborhood or district; and whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance. The Board, in granting of an area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and*
 205 *welfare of the community.”*

P. Byrnes: If we go down through these points, one by one, I will ask the Board. Is there going to be an undesirable change produced in the character of the neighborhood or a detriment to the nearby properties by granting this variance.

210 H. Hart: I say yes. I will come to the same point that it would be basically the same as a permanent sidewalk sign. In essence, it is a substitute for a sidewalk sign. If we give them the monument sign, they still have the right for another sidewalk sign that could be there 24 hours a

day. Drake may be a fine company and it may work out, but when this is sold to another person or company, that is a consideration. So I think it is a detriment to the neighborhood.

215 P. Byrnes: I do not think it is a detriment. If you look across the street at KeyBank, you are looking at the same thing.

H. Hart: Across the street is a little different. There are three businesses there; KeyBank, Harris Cleaners, and business offices all in one location. There is not a single store. The Planning Board said it was called KeyBank Plaza and they asked KeyBank to pull off the term plaza.

220 W. Keiser: I don't see it as a detriment. I think it is incumbent on the Village to rewrite the temporary sidewalk sign code to restrict it to some specific hours or something like that.

S. Ryan: Does the sidewalk sign need to be approved by anybody? H. Hart: No. It is in a B-1 district. S. Ryan: Would it be lighted? H. Hart: It is not allowed to be lighted. S. Ryan: So it could not be seen at night. W. Keiser: If it is not illuminated, it becomes a hazard to pedestrians at night.

225 J. Munger: I don't see this as a detriment. I see this as an improvement. S. Ryan: I agree also.

P. Byrnes: Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.

J. Munger: What does the setback need to be? P. Byrnes: The code says 10 feet front and side yard setback is required.

230 Mr. Fortune: Because I am a unique business, most of my frontage is taken up by that action. The islands are typically closer to the street than this location. We usually want the sign on the lead side, but with the traffic pattern, it doesn't work there. We were asked to have a planting berm to protect the neighborhood. If I put the sign into the basin farther back, I am not improving any sight lines, it is harder for the message to be seen. Because it is a gas station, 235 sometimes it is a split second decision of getting into it. The side yard is a hardship. For me to move it from 2 feet to 10 feet, it would be in the middle of the driving lane and somebody would run into it.

H. Hart: There is no other avenue.

240 P. Byrnes: Whether the requested area variance is substantial. P. Byrnes: Yes, it is substantial in that on the front line it is a variance of 8 feet. It is only a 2-foot variance on the side line.

H. Hart: I agree that it is substantial.

P. Byrnes: Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. I don't think so. W. Keiser: I don't

245 think so either. H. Hart: I do. We don't know what they are actually putting up yet. I presume he has to go back to the Planning Board.

P. Byrnes: As I see it, once we are done here tonight, I think he has to go back to the Planning Board.

250 Mr. Fortune: I did not get here without a recommendation from the Planning Board. They saw constraint of shape and something that matched the building architecture. I kept pushing that I needed this sign. They have shown me in some regard what they are looking for if, in fact, I can have the second sign. They did not want anything on the canopy. There are other alternatives to be out close to the street. They did not want that canopy to be anything but what I presented; white with a molding around the top and nothing up there.

255 P. Byrnes: Whether the alleged difficulty was self-created. P. Byrnes: Based on the business and the need you have, yes, it is a self-created issue.

Mr. Fortune: It is unique because I'm in this business. P. Byrnes: Your business has a need to advertise to the public. Mr. Fortune: I need to have a financial return on this facility.

P. Byrnes: We have done due diligence by going through all the points.

J. Munger: I make a motion to close the public hearing. W. Keiser: I second. All: Aye.

260 P. Byrnes: The public hearing is closed. As a Board, let's talk about what we want to do. We need to be pretty specific in our motion.

H. Hart: I think it needs to go back to the Planning Board.

265 P. Byrnes: The motion needs to say that we grant the front yard and side yard variance. Regarding the sign, the Planning Board recommended approval, but the code does not allow it. The Planning Board approved dimensions in theory. H. Hart: You don't know that. The Planning Board's motion is not clear.

J. Munger: All we have to go on is the Planning Board's motion. H. Hart: I talked to the man who made the motion. J. Munger: That is hearsay.

270 P. Byrnes: Do we want to be specific in our motion to the Planning Board that says based on the drawing that we have reviewed with the dimensions we have reviewed, the sign shall not exceed that physical dimension of the sign. What is on the sign, we don't care about. We would grant the side line and front line variances. Then the applicant needs to be referred back to the Planning Board to determine the specifics of the sign based on their motion. Their motion just says they don't want pricing and changeable information. That's all they talk about in the
275 motion. We don't have anything other than the drawing that we have been presented. I am assuming that is the same drawing the Planning Board had.

Mr. Fortune: I altered the plan for the setback.

P. Byrnes: We can refer to drawing S-7 for the dimensions of the sign. If we limit the sign to those dimensions maximum and Ron decides he wants to downsize it, he can do that.

280 J. Munger: I would not include any stipulation referring it back to the Planning Board. I would simply say that the Zoning Board of Appeals approves the dimensions as referenced on Drawing S-7 and approves the variance for the specific setbacks.

285 H. Hart: I take exception to that because of talking to the person who originated the proposal, and it is not a well made motion by any means, and Jim Stokes' comment about it. We need clarification from the Planning Board of what they approved.

J. Munger: I don't need clarification from the Planning Board. I have in front of me a document that gives the dimensions and we have the setbacks and I'm fine with both of those things. Whether that's what the Planning Board intended or not is immaterial to me.

290 J. Munger proposed a motion which was reworded many times through discussion between the Board members.

H. Hart: It should go in the motion that this should be referred back to the Planning Board so they can review the sign design.

295 Mr. Fortune: I need to get a building permit for this and I need to know specifics. Just for clarity, the Planning Board did not approve the sign. They recommended that the ZBA approve the sign.

P. Byrnes: The only thing we can find in the minutes is a motion in May where they recommend to ZBA that the sign be approved. There was also a motion in February to approve the monument sign. We should send this back to the Planning Board for a clarification of what they have approved.

300 J. Munger: The Planning Board was very clear that they do not want the price and other changeable information on the sign. We don't need to send it back to the Planning Board. I am very happy to approve the sign with the dimensions on the drawing.

305 Mr. Fortune: I would like the option of not going back to the Planning Board. I'm okay with not having pricing so I don't have to go back and have them question square footage and design specifications, etc. I would just be going back and forth between the two Boards. If I choose to change the message, I am restricted to coming back to the Board rather than just going and getting a new building permit for the change.

W. Keiser: Can we make the Planning Board's recommendation as part of our motion? The Planning Board does not want pricing.

310 H. Hart: Ron says he really would like to have price information. There is nothing to prevent him from putting up a sidewalk sign with price information that could be out there 24 hours a day. He would be getting two sidewalk signs if we approve this.

P. Byrnes: Legally he can do that now. If he wants to do it, he can do it.

315 There was more discussion about the wording of the proposed motion that included the Planning Board's recommendation with name only and no gas pricing or other changeable information.

P. Byrnes: What is changeable information? Let's say he is using Sunoco and two years from now he decides to use Mobil. What was the Planning Board's intent by that comment? We don't know.

H. Hart: Let's send it back and find out.

320 P. Byrnes: If we specify in our motion that based on the Planning Board's recommendation of May 11, 2009, it is public record. Whoever wants to argue it can go back and argue it that way. If we make that statement, can you live with that?

H. Hart: It is not clear to me what the Planning Board wanted to do.

325 P. Byrnes: I don't think it is this Board's place to determine what goes on that sign. H. Hart: I could not agree with you more. P. Byrnes: As long as we say that 1) We are going to give you front yard and side yard setbacks, and 2) We are going to give you the sign and the dimensions that shall not exceed the dimensions on the drawing and based on the May 11, 2009, recommendation of the Planning Board. That would cover us.

330 H. Hart: I think we need clarification from the Planning Board of what they mean by price of gas and other changeable information.

S. Ryan: We are questioning the Planning Board's recommendation.

335 H. Hart: They have created a sign that has a 2-foot high panel that they can put anything they want on it, except price. It is not clear to me that is what the Planning Board wanted to do. It is not clear to me that is good for Cazenovia. That station may be there for 50 or 60 years. Why not get it squared away right now?

W. Keiser: If you were specific right now and just left it: Not to contain changeable information. If they put something there this year and they wanted to change it, then who would they be referred to?

340 H. Hart: I think that is a terrible recommendation. If they just got rid of that panel, they don't have to worry about it.

W. Keiser: Then we get back to: Who are we to tell them what they can put on their sign.

P. Byrnes: Then it goes back to the Planning Board.

345 Mr. Fortune: The building permit for the sign would lock me in and force me if there was some
clarity. I want it to be changeable because of brand change or whatever. To just have the lower
sign defeats the purpose, even at a height of 6 feet, because it would be too hard to see. I want it
to be seen. I would want the store on there and the brand of gas on there as a minimum. If the
intent is to drop the sign down and I lose the lower panel, I would like to have both the message
boards there. That square footage is not that big, 2 feet by 5 feet, 10 square feet, at that distance
350 back and at that speed of travel. It is not exorbitant footage. I would like to go back to the
Planning Board and ask to put the price on there and change the brand. If you were to grant the
two items, my building permit could be denied because I did not satisfy requirements. If I go
back to the Planning Board, I see myself coming back to this Board. We are not going to put up
a sign without a building permit. It is too costly to put up a sign in error.

355 H. Hart: Let's get this ironed out ahead of time. P. Byrnes: I think we can grant the variance.
We need to cover the question of how he gets back to the Planning Board.

W. Keiser: Sign content to be referred back to the Planning Board for final approval?

J. Munger: I think it is unnecessary. I agree with Ron. He goes to Bill Carr to get a building
permit. If Bill Carr thinks it is not in keeping with what the Planning Board had in mind, he is
going to tell Ron.

360 H. Hart: Bill Carr is supposed to do what the Planning Board tells him to do. I argue that what
is here is not sufficient.

J. Munger: Our function is to approve a variance for setbacks, the size of the sign, and a second
sign.

365 P. Byrnes: Realistically, that is all we are here for. J. Munger: From that point on, it is up to
Ron.

H. Hart: We can approve it and send it back to the Planning Board and we are done. If we do it
in our formal approval, we are on the record and Ron does not have to worry about any
uncertainty.

370 S. Ryan: Are we sure we are going to like what the Planning Board approves? P. Byrnes: You
can go the Planning Board meeting and voice your opinion. This Board cannot dictate what goes
on that sign.

More discussion was had regarding what the motion should or should not contain and the result
was the following motion.

375 J. Munger made the motion to approve variances for 8 feet of relief on the front line and 8 feet of
relief on the side line. The variance for the second sign is approved. The dimensions of the
monument sign shall not exceed a height of 6 feet and shall not exceed a width of 7 feet 5 inches
and shall not exceed a depth of 2 feet as generally shown on Drake Oil Drawing S-7 revised
7/1/09. The motion was seconded by W. Keiser. A roll call vote was as follows: S. Ryan - aye;
380 J. Munger – aye; W. Keiser – aye; H. Hart – aye; P. Byrnes – aye. The motion carried
unanimously.

Regarding the meeting minutes of June 30, 2009, it was decided to wait until everyone had read
them before any edits were requested or approval given.

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385 The motion was made by J. Munger, seconded by W. Keiser, to adjourn the meeting. The
motion carried.

The meeting was adjourned at 8:36 p.m.

Respectfully submitted,

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Marlene A. Westcott
Recording Secretary