

LEGISLATIVE SUBCOMMITTEE MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS,
CITY HALL, PORTSMOUTH
MONDAY, July 25, 2016 8:30 A.M.

Present: Mayor Blalock, Assistant Mayor Splaine, Councilor Eric Spear, Councilor Dwyer, Jacqueline Cali-Pitts (8:50 am), Peter MacDonald; Rebecca McBeath; Gerald Ward; Laura Pantelakos; Peter Somssich; Pamela Gordon; John P. Bohenko, City Manager; Jane Ferrini, Assistant City Attorney

Others Present: Robert Lister; Peter Rice, Director of Public Works

I. Call to Order

Mayor Blalock opened the meeting at 8:30 am. He asked that the attendees introduce themselves.

II. Approval of June 13, 2016 Minutes

The Mayor stated that motions should come from the City Council's Legislative Subcommittee. Ms. Pantelakos made a motion to approve the minutes, and it was seconded by Councilor Dwyer. The motion to approve the minutes was passed unanimously.

III. Distribution of July 18, 2016 Draft Minutes

The Mayor indicated the Minutes were distributed and action will be taken at the next meeting.

IV. Sound Barriers

City Manager Bohenko said Peter Rice was present to give a history. He stated that representatives from the neighborhoods were also present.

Mr. Rice said this has been a long process for the neighborhoods requesting the barriers. There is a requirement that the local state agency adopt a policy that would allow a stand-alone project for sound abatement. Mr. Rice stated the State Department of Transportation did not have that enabling policy, but the City would like to move that forward. He said they had conversations with a past commissioner and have requested a meeting with a current commissioner. He said they included in the handout a figure that showed the requested sound barriers. Hoping to get the State Department of Transportation to adopt a Type II Policy for noise abatement in the future.

Ms. Pantelakos said it was not the State that put up the barrier. A lady from Atlantic Heights worked on that for 20 years.

City Manager Bohenko said we need to determine if State legislation is needed or just an administrative rule with the Department of Transportation to create that policy.

For further information on the Legislature, draft bills and the Senate and House Calendars, see <http://www.gencourt.state.nh.us>. For information regarding the New Hampshire Municipal Association's Bulletin, see <http://www.nhmunipal.org/LegislativeBulletins>.

Ms. McBeath asked Mr. Rice for clarification about the funding and if it was federal versus state. Mr. Rice said it is part of the federal highway system. He added that the State needed to adopt the policy through the Department of Transportation. City Manager Bohenko said the State had limited resources, and there have been multiple requests throughout the state for these noise barriers.

Councilor Dwyer stated that putting a floor policy forth would give them a wider voice on the issue. She suggested they draft a proposed floor policy legislation that would ask the state to adopt the Title II, and create a line item in the State's capital fund for noise abatement along federal highways.

Assistant Mayor Splaine said he did not think the state would put it into policy, because there are other communities vying for resources. He would suggest in addition to what Councilor Dwyer said, was that we plan to do it locally. It can be done by plastic or recycled rubber, at a lower cost ourselves. He asked City Manager Bohenko to have an item on the agenda to determine costs, timelines, then how would we get the State to pay afterwards.

City Manager Bohenko suggested they take a combination of that plus what Councilor Dwyer said and write to the Governor to say that the City of Portsmouth was willing to provide 50% of the funding. The letter could state that they understand the policy was not in place, but maybe the State would be willing to change the policy to say any community willing to provide a 50% match would be eligible. He added there were a lot of communities that would not be able to come up with that kind of money. That would be a better way to start.

City Manager Bohenko said we could maybe put this on the agenda for the August 15th meeting. He said they would need authorization from the Legislative Subcommittee to send something to the Governor that the Mayor could sign.

Ms. Pantelakos said they asked the Transportation Department years ago to change that policy. She said they had meetings for three months regarding this, and they built a road without any barriers. She thinks the State should pay for it.

Assistant City Attorney Ferrini said there was a motion from Assistant Mayor Splaine, and she did not hear a second.

Councilor Dwyer said she would need to amend the motion before seconding it. The Type II policy would need to be in place because she would not want any obstacles in their way about this being a part of federal highway projects. She wanted to make sure of that. These are federal highways. She would amend the motion to couple those two together.

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Assistant Mayor Splaine made a motion authorizing the Mayor to send letter to the Governor asking that the Department of Transportation enact a Type II Policy for Noise Barriers with the provision that the local would pay 50% of that cost; and at the same time the City would introduce floor legislation to enact Type II barriers. The motion was seconded by Councilor Dwyer.

Discussion on the motion:

Ms. Pantelakos said once the City of Portsmouth says they will pay 50%, the State would not pay anything. Writing to the Governor right now, the Executive Board would have to okay that. She said she would wait until January to send the letter.

Ms. McBeath said she had two points. She said the Executive Council has large authority. The citizens should have a hand in formulating this. Regarding the amendment to the motion wording, instead of saying we are going to introduce legislation, it should be “we will work with the General Court on legislative initiatives”, so that it’s not Portsmouth’s bill.

Councilor Dwyer said they should put it forward as a floor policy in September to get other communities to have this as an issue, because they would need to build support for it.

City Manager Bohenko suggested the legislative delegation get a meeting with the Commissioner so that they could talk about the Type II. He asked Mr. Somssich if they have been able to meet with the Commissioner. Mr. Somssich said no. Ms. Pantelakos said she could schedule a meeting with the Commissioner. City Manager Bohenko said they should hold off on sending the letters for now until after they meet with the Commissioner, hopefully in August.

Councilor Dwyer said she would like to get a policy in front of the other municipalities so that they did not lose that opportunity, and City Manager Bohenko agreed.

City Manager Bohenko stated the motion to the NH Municipal Association; to require that the New Hampshire Department of Transportation enact Type II Policy for a Noise Abatement wall.

The motion passed unanimously.

Mr. Somssich said residents in Ward 3 said to him there were promises made to Portsmouth by the State, and he was not sure if there was any record of that or if it was urban legend. City Manager Bohenko said it could have been said in a meeting, but it would have needed to be said in a letter. What they would look for would be to minimize every town from coming forward because of the substantial cost.

City Manager Bohenko said they would proceed to put together a floor amendment to the New Hampshire Municipal Association as described; they’ll have a meeting with the Commissioner; then draft the letter after that meeting with the Commissioner.

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Public Comment:

Cliff Lazenby of 303 McKinley Road and Chair of the City-wide Neighborhood Committee said he was happy to see this on the agenda, but he wanted the City to sustain this for a while, as this had been going on for a number of years. There had been some progress in the past, but it was not sustained. He said there are a lot of neighborhoods in Portsmouth that were impacted by this, but also there were a lot of communities in NH that did have sound barriers, even ones that had less traffic than Portsmouth. Portsmouth contributes a lot to the State with the meals and rooms tax.

City Manager Bohenko suggested they get 100 letters to the Governor, as that would be important to gain support, and they would have a better result. Ms. Pantelakos said those letters should go out in January, since there would be a new Governor.

Aaron Garganta of 423 Colonial Drive gave out a packet on the turnpike system to facilitate their conversations with the State Department of Transportation. He said page 2 showed the average volume count per day in the Portsmouth area. He stated that at a 2012 hearing, the Assistant Director of the Department of Transportation was on record as confirming that Portsmouth's location in the State of New Hampshire is the most significant area of traffic in the state with no sound barrier. The 95 corridor was built in 1950. It was two lanes in each direction. In 1972 it was expanded. The Federal Highway Act of 1970 and the Environmental Act of 1969 required that all federal highways receive an assessment for noise abatement and sound barriers

When the highway was built, there were expectations and conversations and there were promises made at the time. The State should be obligated to put up the sound barrier, even if they did not have a Type II policy in place. A Type I bridge was an expansion of the highway system. Mr. Garganta's impression was if there was a will there was a way. They will back up the City, but he thought this is a very political topic.

He reviewed the packets that he gave out. He said there were certain noise levels that required sound barriers. He stated they wanted the State to come back, do that assessment on the City of Portsmouth and provide the City with the sound barriers they were expecting to get. After the 2012 meeting with the Department of Transportation, the State said it should go through the 10 year Capital Plan, but when the 10 year plan came out, there was nothing in there about this. He said he was happy this was being discussed.

Ms. Paisley from 265 Colonial Drive spoke about how the road has changed and grown to a large size. She has been fighting this for 40 years. Her neighbor's backyard abuts the breakdown lane of 95. She went to Concord 20 years ago about the gas transfer station which was across the street from them, but she was told that the State did not have the money to do anything about it. The area has declined.

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V. Hotel Occupancy Fee

Mayor Blalock asked for a motion to suspend the rules because former Mayor Lister was present to speak about the enabling legislation to allow the City to charge a hotel fee. So moved by Assistant Mayor Splaine, and it was seconded by Councilor Spear.

Assistant City Attorney Ferrini said they had a floor policy that they would be discussing which would allow cities and towns to generate some source of money. Mayor Lister was present and was involved in this issue. Those pieces of legislation did not pass, but he wanted to help the Committee move forward with some research. City Manager Bohenko said this started with the Meals and Rooms Tax. Portsmouth only receives on a population basis, so they receive the proportional share that other towns may get, even though Portsmouth has 140 restaurants and 2,300 hotel rooms. That is why the City was interested in pursuing this legislation to raise additional revenues.

Ms. Pantelakos said she put that bill on, and made the mistake of putting it in early. She did not get a notice when it did go to committee.

Mr. Lister said he has not given up on this yet. This had nothing to do with the Meals and Rooms Tax. He referred to a \$2.00 'Destination Fee' that he was charged. It would be something paid by the tourists, not the hotels, on the order of a \$1.00 per night. He speculated what that money might be used for. It could be for beautification of the City, advertising, fireworks, or other things that would welcome tourists. He proposed they look at some form of destination charge to pay for activities that happen in the City. They would have to work with the Chamber of Commerce. It would not be a tax. It would be a fee that the tourists would pay when they stayed in the hotels.

Councilor Dwyer asked about Woodstock destination charges and how they justified that. Mr. Lister asked Woodstock where the money would go. He said that the charge was voluntary and people could opt out of paying the fee. According to the Chamber of Commerce, people can opt out, but they did not. Hotels can also opt out, but they do not opt out.

The Mayor said they have a Chamber of Commerce fee, but we would be looking at it from a more broad perspective, where it could involve public safety. He said they would like to use it as an example.

Mr. Lister said it was an area they wanted to attract people to. One way to do that might be the number of flowers in the town. The town was safe and inviting, and the tourists were paying for that.

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Assistant Mayor Splaine said volunteerism was a good thing. He said they could also find an initiative to see if the hotels could do this on a volunteer basis, and if this was allowed by the State. It should be made clear that hotels and restaurants get a benefit, so this can be a win, win. Maybe City Manager Bohenko can initiate this on the city level, he said. City Manager Bohenko did not think there would be a prohibition because other New Hampshire communities were doing this, especially since it was on a volunteer basis. City Manager Bohenko said they would discuss this.

Councilor Dwyer said they should explore the voluntary fee in addition to what Assistant Mayor Splaine proposed. Assistant Mayor Splaine seconded the motion.

Mr. Somssich said they needed funds to mitigate the impact. Residents needed to know they were not doing things just for tourists.

Ms. Gordon asked about the fee and how it would be advertised. Mr. Lister said it would be advertised on the bill, as to what it was and what it paid for.

Ms. Gordon asked what the argument would be for Portsmouth needing more money, because she has been asked that by constituents. City Manager Bohenko said there was a need for more police, fire department services, and public works. He said that Public Works crews were working 24/7 now. This would not be needed for non-tourist towns. He added that fighting fires in hotels was different than fighting fires in houses. There were restaurant inspections that needed to be done. They have done an analysis as did Hampton, and the State is getting \$25 million from the City in revenue.

Councilor Dwyer said the City was generating money that was going to other towns. Such legislation would mean more to other communities than it would to Portsmouth. City Manager Bohenko said other towns needed to look for places to raise revenue.

Mr. Lister stated this would provide an opportunity to provide relief to the taxpayers.

Ms. Pantelakos said she liked the voluntary part of it. But in New Hampshire this can be stopped, so she thought a piece of legislation would be better. She was leery of things done at the state level.

Mayor Blalock said they were looking for ways to address costs.

Ms. Cali Pitts said she would want to look further, and it was a gray area. She thought it was a great idea, but said they would need to look at what that fee was, and she would want to know more about it. She said it sounded more like a tax when you talk about fire and police.

City Manager Bohenko said it would go through the Chamber, and it would be about beautification. He said that was different from the enabling legislation to allow cities and towns to raise more revenue in the face of property tax being very high in this state.

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Assistant City Attorney Ferrini said there were two bills last session that went forward for hotel occupancy fees, one in the Senate and one in the House, and the representatives did make that comment in conversation, and that tax issue was raised. At the last meeting she was asked to report back on creating a Betterment District, and there was a universe of statutes related to betterments but there was no statute that was absolutely on point that would allow the city to do what it wants to do. The closest by analogy was the village district statute but that on its face it did not apply because of the residency factor for the village district petition is what causes concern, noting that there is a statute that applies laws for towns to cities.

Councilor Dwyer asked for clarification about betterment districts and whether different business could be assessed differently. City Manager Bohenko said it could not and in some towns it could be streetlights, for example. Assistant City Attorney Ferrini said the assessment was determined by the actual border or perimeter.

Ms. Pantelakos said this enabling legislation will go in the House this coming year. She asked if this was constitutional, and the answer was yes, because it is a fee, not a tax.

Councilor Spear said when he thought about the needs in the City for what they do for tourism, and in thinking of the improvements that needed to be made in Prescott Park as an example, he said there was enough of a need on the expenditure side to justify a fee that they would not have to get into the back and forth about tax vs. fee regarding Police and Fire. He would support that.

Ms. Pantelakos asked about funding for Prescott Park. City Manager Bohenko said we now have a budget where they show what comes in for all the sources for Prescott Park, and all the money going in for capital projects.

VI. Discussion of NHMA Legislative Policy Recommendations attached (“Policies”)

Assistant City Attorney Ferrini said the Legislative Subcommittee reviewed the Policies last week. They will be getting input from the representatives on the issues. Then the Subcommittee will then vote on Policies to recommend to the City Council to support going forward at the NHMA meeting of its members in September. She said the floor policies discussed at the meeting that day needed to be submitted to NHMA by the deadline of August 13th for that meeting.

Policy #1 on Page 1 regarding the Police Standards. There were two issues that arose last session. The first was funding from fines and violations. The second was whether those monies should be in the General Fund or not.

Laura Pantelakos said they did have money from fines, but everyone kept dipping into that for something else. She said they all have to understand that Police and Fish and Game were all trained and that training helps because they did not have the liabilities as before. She added they cannot do without that training.

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Councilor Dwyer asked Laura Pantelakos about her perspective and also if the penalty revenues should be supplemented with sources such as an insurance surcharge, motor vehicle registration.

Ms. Pantelakos said at this point she did not know what they had decided. The Legislature raised the funds, so young officers would not give a ticket to a person with three kids in the back seat because who has a tail light out. She encouraged that they say they will do what they can to help.

Assistant City Attorney Ferrini asked if there were questions about Policy 1, Page 1 # 1 a-f.

Ms. McBeath asked if they were voting on this that day. City Manager Bohenko said the City Council Legislative Subcommittee will vote on it, but they just wanted input that day.

Councilor Dwyer said every municipality at the September conference has one vote on each of the policies. She discussed an action; a priority; or a standing policy. She said it was really an advocacy tool. If there were some they were opposed to, they would vote that way. They would abstain on the ones meant for towns. She said our Legislative Committee will vote on what to recommend to the Council. Councilor Dwyer will bring those policies to the New Hampshire Municipal Association.

Assistant City Attorney Ferrini said if the discussion was closed, this Committee would make recommendations to the City Council. The Mayor said they were looking for extra input.

Councilor Dwyer said she would support all the items on Page 1 # 1 a-f.

Assistant City Attorney Ferrini said the next item # 2 on bottom of page 1: that became law, and they did not have to discuss it.

Assistant City Attorney Ferrini read the building plans on top of next page for discussion as item #3, page 2, including certain building plans as exceptions to Right to Know. Councilor Spear said they had concerns. Ms. Cali Pitts said she was concerned. She said they should leave that alone, and she would not support that.

Assistant Mayor Splaine made a motion to oppose item #3, and Councilor Dwyer seconded. The motion passed unanimously.

Assistant City Attorney Ferrini mentioned page 2, item 4 regarding EMT licensing, and the Mayor said they should discuss only the ones that were troubling.

Assistant City Attorney Ferrini discussed the next item 5, page 2, Electronic Poll Books. Councilor Dwyer wanted to hear from Mr. Ward on this issue. Councilor Dwyer said the City Clerk would be able to keep track electronically who has come to appear to vote, so they would know in different wards and they would have a central record immediately, rather than have to go through the books.

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Councilor Spear said this was different from electronic ballots. The Secretary of State was uncomfortable with this. Councilor Dwyer said 44 states were now doing this. Ms. Cali Pitts asked if the people checking voters in would have to learn to use a computer and a database. Councilor Dwyer said they would have to look at a screen. Ms. Cali Pitts asked if they would be altering the master list and if people would be provided with computers. Assistant Mayor Splaine said some concerns were raised by the Secretary of State, it was a question of how much you can rely on it not being hacked. It was going to take the Legislative Committees hours of discussion. They cannot take a position on it just yet, as they did not know. Councilor Spear said in reading the words, it would enable the use of electronic poll books. He would support this because it was a step in the right direction.

Ms. Gordon said this information would be shared with the state and asked for clarification on who this would be shared with. Councilor Dwyer said it was for the City Clerk.

Ms. Pantelakos said they should support anything that enables in legislation. The Mayor said they used to use paper credit cards, and it was like that leap. It may eventually become safer. Ms. McBeath said if it would save time for our clerk she would support it. Assistant Mayor Splaine said he would vote against the enabling. He reminded them that the credit card numbers get hacked. The Secretary of State office knew what they are doing in protecting credibility. He would not like to see the City of Portsmouth support this. He did not know why the City Council would support it. Ms. Gordon asked if they can see what the other 44 states issues were. Mr. Ward said he thought this would happen eventually, and enabling legislation made sense. But he thought the current system would not work and that was what the Secretary of State issue was. He thought other states invested more in their systems than New Hampshire did.

Councilor Spear moved to support this policy on electronic poll books, and it was seconded by Councilor Dwyer. The motion passed, with Assistant Mayor Splaine opposed.

Assistant City Attorney Ferrini said what was needed to go the City Council, was any floor policies that they recommended and whether the Committee supported the policies. She said they had until the September meeting so they can flag any Policy issues later.

There were no issues regarding item #6 on page 2, Municipal Welfare Fraud Penalties.

Item #7 on page 2 was discussed, allowing municipalities to recover cost or reproducing documents under right to know. Assistant City Attorney Ferrini stated she did not believe the Committee supported legislation last session. Further discussion of the policy ensued. Assistant Mayor Splaine made a motion not to support which was not seconded.

Councilor Dwyer thought it would be useful for the Council to discuss Right to Know costs. It has cost the taxpayers a huge amount of money when records have been requested with no specifics requested, and then the information was not picked up. Towns are being plagued by nuisance requests. This would be something for a larger debate. People can have the records, but if this was costing \$20,000-\$30,000 per year it should be discussed.

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Assistant Mayor Splaine said it should go on the City Council agenda. He said they did not need to take a position “for” this. The City does not have to dictate to the state.

City Manager Bohenko wanted to reiterate that Councilor Dwyer will be a delegate to the Municipal Association. She will be one vote at this group. This is giving some authority to Councilor Dwyer on how to vote on these amendments. Once it is voted, the City is bound to support this as a group, as the City is part of the New Hampshire Municipal Association. Once you get past the first few pages they try to whittle down to just a few agenda items. He said they were not talking about any pending legislation that was going to go forward tomorrow. They need to get to the floor amendments, and that was where they get to push as a community.

Ms. Cali Pitts asked if they can charge for records and if they did. City Manager Bohenko said that electronic version charges were unclear, but they can charge for hard copy. If they have a large amount of information, they will put it on the website.

Assistant City Attorney Ferrini said what needed to be decided were the floor policies. She suggested that the Right to Know issue go to a later City Council meeting.

VII. Discussion of floor policies for City Council approval and submission to NHMA

Assistant City Attorney Ferrini said they previously discussed a ‘Betterment District’. There were three floor policies that needed to be discussed:

1. Defining Air BnB short term rentals as a home business.
2. Accessory dwelling units not being used for short term rentals.
3. Accessory dwelling units subject to design review by historic districts.

She said those were three potential floor policies that the Committee discussed, and we need to get a proposal moving forward to the City Council at its next meeting.

City Manager Bohenko clarified that these were not bills but just policies for the NH Municipal Association so to move forward on. Councilor Dwyer said that they will be voted on to see if other municipalities would support them..

Assistant City Attorney Ferrini said at the Committee’s last meeting it discussed requesting the enabling legislative on page 7, item #14 from a standing policy to a priority. Page 7, item #14 was read into the record:

To see if NHMA will SUPPORT creation of enabling legislation that allows cities and towns to create local revenue sources to meet the unique needs of each community in order to help offset the overreliance on the property tax in order to help defray the cost of municipal services, infrastructure improvements and capital needs.

Councilor Dwyer said after all the municipalities vote on these actions at the conference, NHMA would open the floor to debate to relabel any policies that survive.

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Assistant Mayor Splaine asked if there were five standing policies. Assistant City Attorney Ferrini said there were the two that they already discussed, the noise abatement, the hotel occupancy, then the three they just discussed: 1. the definition of the Air BnB, 2. prohibiting ADUs from being used for short term rentals; and 3. ADUs being subject to review from a historic district.

Councilor Dwyer addressed policy 3 said design review was allowed if they lived in the Historic District. Ms. McBeath said the issue was the aesthetic piece. Councilor Dwyer said at the Planning Board meeting, neighbors testified that these not be short term turnover Air BnBs. Councilor Dwyer said they can talk to the Council about whether it be 30 days or some other threshold.

Assistant City Attorney Ferrini mentioned next was defining Air BnB short term rentals as a home business. Councilor Dwyer said by defining it as a home occupation, you cannot just do that everywhere without some special review or exception. Portsmouth and Somersworth are taking an aggressive look at fire inspection for apartment buildings. While the home occupation might not do that, it would allow things to be in certain districts, or at least people would come to the Board of Adjustment to allow for public input. Ms. McBeath said she was concerned that the home occupancy limited to one. She wants to make sure a home office would not prevent having an Air BnB. If the statute allowed only one business, she was concerned about the limitation. Councilor Dwyer said there were two classifications in their zoning: a home occupation 1 and a home occupation 2, depending on a variety of things.

Ms. Gordon said she was confused about the Air BnB legislation last session, and asked for clarification about what will be proposed to the Commission on Air Bnb or go forward separately as a new policy. Councilor Dwyer said the idea was to get something parallel. Assistant City Attorney Ferrini stated that Commission had not yet been established or formed. She said were in communication with the NHMA to get other towns to participate in that commission and the first meeting will likely be the end of August with a report out date of November 1, 2106. The members have not yet been appointed.

Assistant City Attorney Ferrini said there were two corrections to the Legislative Policy Recommendations. On Page 6, item #12: should be "OPPOSE" and not "support". On Page 11, item # 21 it should say "To see if NHMA will OPPOSE", not "support".

Legislative Subcommittee to vote on NHMA Legislative Policy Recommendations to support and recommend to the City Council.

Assistant Mayor Splaine moved to bring the floor policies forward to the City Council. Councilor Dwyer seconded, and the motion passed unanimously.

VIII. Discussion for next meeting

The next meeting will be held on August 22, 2016 at 8:30 am in the Council Chambers. For this committee with the delegates.

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The Subcommittee will meet on August 15th with a tentative time of 6:00 pm.

IX. Miscellaneous/Unfinished Business

Nothing to report.

X. Adjournment

Mayor Blalock closed the meeting at 10:30 a.m.

Respectfully submitted,

Marian Steimke,
Acting Secretary for the Legislative Subcommittee

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