

Clearwater, Florida, November 5, 2015

The Board of Adjustment met in regular session in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida on this date with the following members present: Stephen G. Watts, Chairman; Cliff Gephart, Vice-Chairman (late arrival); Alan C. Bomstein; Joe C. Burdette; John Doran; Gregory R. Pierce; and Michael Foley (alternate).

Not Present: Deborah White.

Also present: Chelsea D. Hardy, Assistant County Attorney; Glenn Bailey, Planning Department Zoning Manager; Todd F. Myers, Environmental Code Enforcement Director; other interested individuals; and Jenny Masinovsky, Board Reporter, Deputy Clerk.

### CALL TO ORDER

Chairman Watts called the meeting to order at 9:01 A.M.

### PUBLIC HEARING ITEMS

Due notice having been given to interested persons pursuant to Comprehensive Zoning Ordinance No. 90-1, public hearings were held on the following applications. All persons planning to give testimony were duly sworn by the Deputy Clerk.

- # 1     **APPLICATION OF S. E. COMBINED SERVICES OF FLORIDA, LLC THROUGH KATHERINE E. COLE, ESQUIRE, REPRESENTATIVE, FOR A MODIFICATION TO AN EXISTING SPECIAL EXCEPTION (BA-10-11-15) – GRANTED AS PER STAFF RECOMMENDATION**
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Public hearing was held on the application of S. E. Combined Services of Florida, LLC, through Katherine E. Cole for a modification to an existing special exception to allow the expansion of a funeral home and additional related parking ancillary to the cemetery use, re property located at 2853 and 2859 Sunset Point Road in the unincorporated area of Clearwater (BA-10-11-15).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request, provided the Board is satisfied the

“Standards” of Section 138-238, Division 7 of the Pinellas County Land Development Code have been met. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. Appropriate site plan review.
3. The funeral home expansion and additional parking shall be constructed in substantial conformance with the submitted concept plan.

Katherine E. Cole, Esquire, appeared and indicated that she represents the applicant; whereupon, she pointed out for the record a discrepancy between the requested amount of the expansion area indicated in the application narrative and the amount indicated on the proposed site plan. Responding to query by Mr. Burdette, she clarified that the total requested amount of the expansion area is 2,500 square feet, 1,850 of which the Board approved last year.

No one appeared in response to the Chairman’s call for objectors to the application. Mr. Bomstein questioned the effect of the discrepancy on advertisement of the application; whereupon, noting that there were no objectors, he moved, seconded by Mr. Doran, that the modification to the existing special exception be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

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At this time, 9:04 A.M., Vice-Chairman Gephart entered the meeting.

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# 2 APPLICATION OF SASA AND SIGRID BRATIC FOR A VARIANCE (BA-2-11-15) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Sasa and Sigrid Bratic for a variance to allow an existing 4-foot-high chain link fence and a 6-foot-high wrought iron entrance gate with 7-foot brick columns to remain with a 0-foot front setback, where a 50-foot

front setback is required, re property located at 795 Appaloosa Road, East Lake Tarpon (BA-2-11-15).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The location of the existing fence, entrance gate, and the brick columns is consistent with many other properties along Appaloosa Road. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. Sight distance requirements shall be met.
3. The columns and entrance gate must be moved outside of the 20-foot easement along the front property line unless agreed to in writing by the County.

Sasa Bratic, Tarpon Springs, appeared and indicated that he is seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Foley, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 3 APPLICATION OF AUTO MALL, LLC FOR A VARIANCE (BA-5-11-15) – GRANTED AS PER STAFF RECOMMENDATION; REVIEW OF THE TEMPORARY APPROVAL OF CONDITION NO. 3 (BA-8-5-15) – PERMANENCY GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Auto Mall, LLC through Brett Bunge for a variance to allow for the dispensing (storage and distribution) of alcoholic beverages

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(beer only) within 100 feet of a residential zoning district, where 150 feet is required, re property located at 629 U.S. Alternate Highway 19, Palm Harbor (BA-5-11-15).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The Board approved a similar variance in 2014 for a brewery and taproom at the unit next door and approved an amendment to the conditions of that variance earlier this year. The current request is for the storage and distribution of beer only. Approval of this request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. Approval shall be for the storage and distribution of beer only.

Brett Bunge, Palm Harbor, appeared and indicated that he represents the applicant; whereupon, responding to query by Mr. Pierce, he pointed out the location of the property on the map, and Mr. Bailey noted that it is located next door to Stilt House Brewery.

During brief discussion and in response to queries and comments by the members, Mr. Bailey explained that under the Pinellas County Land Development Code, the meaning of “alcohol dispensing” includes distribution, storage, handling, and dispensing by tap; and that the intent for the property, as specified in Condition No. 2, is storage of beer for Stilt House Brewery and distribution to other facilities; whereupon, he confirmed that there would be no dispensing by tap.

No one appeared in response to the Chairman’s call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Foley, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

Referring to case BA-8-5-15 conditionally approved on May 6, 2015, Mr. Bailey reminded the Board that it is brought back to determine permanency of Condition No. 3,

“Amplified music with open doors shall be allowed until 11 P.M. for a trial period of six months, after which time the Board of Adjustment will determine its ongoing status.” Mr. Bailey related that staff has not received any negative feedback from the neighbors regarding the amplified music or any other aspect of Stilt House Brewery operation.

Samuel Price, Dunedin, appeared and indicated that he represents the applicant.

No one appeared in response to the Chairman’s call for objectors to the application.

In response to queries by Mr. Pierce, Mr. Myers indicated that Code Enforcement has not received any complaints; and that there has been no indication that Sheriff’s deputies, with whom Code Enforcement works closely, have received any complaints; whereupon, Mr. Price pointed out that deputies frequent the area. Mr. Bailey clarified that staff recommended denial of the amplified music at the May 6 hearing prior to the Board’s approval; however, as there have been no issues during the trial period, staff supports making Condition No. 3 permanent, noting that a bonafide restaurant that essentially becomes a bar after kitchen closes would be allowed to have amplified music without a variance.

Following brief discussion, Mr. Pierce stated that although no residential neighbors are present today to object to amplified music, no inquiry was made to determine whether the Sheriff’s Office has received calls for service; thus, he cannot support permanency of the condition.

Responding to query by Mr. Foley, Mr. Price indicated that he is comfortable with all the previously imposed conditions; whereupon, Mr. Bomstein moved, seconded by Mr. Burdette, that the trial period for Condition No. 3 be eliminated, making the variance permanent, as recommended by staff.

Upon call for the vote, the motion carried 6 to 1, with Mr. Pierce dissenting.

# 4 APPLICATION OF RICHARD M. BEKESH THROUGH JAMES D. WILLIAMS, R. A., REPRESENTATIVE, FOR A VARIANCE (BA-7-11-15) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Richard M. Bekesh through James D. Williams for a variance to allow for the construction of an accessory building having a 6-foot side setback and stairs, a/c unit, and lift station controls having a 2-foot side setback

where a 7.5-foot setback is required, re property located at 2858 Darby's Run, East Lake Tarpon (BA-7-11-15).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. Approval of the variance should not adversely affect the adjacent and/or nearby properties since the requested location of the proposed structure and associated appurtenances is on the north side of the property adjacent to a heavily wooded wetland area that will never be developed. Additionally, approval of the variance will prevent the removal of two large mature oak trees that would be necessary if the proposed structure was built at the only available location on site that would meet the required setbacks. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The location of the structure and associated appurtenances shall be consistent with the submitted concept plan.

Richard M. Bekesh, East Lake Tarpon, appeared and indicated that he is seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Foley, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 5 APPLICATION OF ANDREA GILMAN THROUGH WILLIAM BOOTON, REPRESENTATIVE, FOR A VARIANCE (BA-8-11-15) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Andrea Gilman through William Booton for a variance to allow for the construction of an addition to an existing single-family

home having a side setback of 2.1 feet where 7.5 feet are required, re property located at 13189 Clay Avenue in the unincorporated area of Largo (BA-8-11-15).

Mr. Bailey indicated that one letter in support of the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The proposed home addition is in line with the south wall of the existing structure, which predates the Land Development Code and is approximately 2.1 feet from the property line. Therefore, the proposed addition would not encroach into the side setback any further than the existing home. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The location of the proposed addition shall maintain at least a 2.1-foot side setback from the south property line.
3. All other setback requirements shall be met.

William Booton, Madeira Beach, and Andrea Gilman, Largo, appeared in response to the Chairman's call for the applicant; whereupon, responding to query by Mr. Bomstein, Ms. Gilman confirmed that the neighbor residing adjacent to her lot does not object to the variance.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Gephart that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 6 APPLICATION OF MARVIN HILL FOR A VARIANCE (BA-9-11-15) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of Marvin Hill for a variance to allow a screened pool enclosure with an 8.2-foot rear setback from the seawall where a 15-foot

rear setback is required, re property located at 90 South Canal Drive, Palm Harbor (BA-9-11-15).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The submitted engineer's report associated with the permitting requirements for the proposed pool indicates that the integrity of the seawall and its deadmen will not be compromised. No adverse impacts to adjacent properties should occur based on the enclosure's proposed location meeting normal side setback requirements. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The screened pool enclosure shall maintain at least an 8.2-foot setback from the seawall.
3. All other setback requirements shall be met.

Richard Kolb, Palm Harbor, appeared and stated that he is the applicant's neighbor, and responding to query by the Chairman, confirmed that he supports the variance; whereupon, Marvin Hill, Palm Harbor, appeared and indicated that he is seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein noted that the application contains a certification from an engineer relative to the seawall; whereupon, he moved, seconded by Mr. Foley that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 7 APPLICATION OF EDWARD AND TRACY KAMES FOR A VARIANCE (BA-3-11-15) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of Edward and Tracy Kames for a variance to allow a 6-foot-high privacy fence with a 0-foot front setback where a 50-foot front setback is required, re property located at 980 East Lake Drive, East Lake Tarpon (BA-3-11-15).

Mr. Bailey indicated that one letter in objection to the application and one letter of concern were received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The applicant is proposing to construct a 6-foot-high privacy fence in an effort to screen their home/property from impacts associated with farm animals residing on the adjacent property to the north. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits, including a habitat permit regarding any nearby gopher tortoise burrows, and pay any applicable fees.
2. Sight distance requirements shall be met.
3. Approval shall apply along the north property line only.

Edward and Tracy Kames, East Lake Tarpon, provided background information regarding their application, explaining that they need a fence in order to block some of the excessive noise, smell, dirt, and mold created by their neighbors' numerous geese. They displayed photographs and responded to queries by the members, and indicated that although the neighbors own a house on the property, they live in a recreational vehicle (RV); whereupon, Mr. Bailey noted that it is permissible to have as many geese as desired in the Agricultural Estate zoning district, but not permissible to utilize an RV as living quarters.

Responding to query by Mr. Bomstein with regard to a possible gopher tortoise burrow located in the approximate area of the proposed fence, Mr. Kames indicated that their fence would run parallel to and be separated by two feet from their neighbors' fence to avoid any disturbance; and that they were advised by the State that a fence may be built,

as long as it is done manually, ensuring protection of what may be an armadillo hole, and Mr. Bailey indicated that staff recommends a requirement to obtain a habitat permit for any nearby gopher tortoise burrows as a condition for approval of the variance.

No one appeared in response to the Chairman's call for objectors to the application; whereupon, responding to query by Mr. Bomstein, the applicants confirmed that the letter of objection came from the aforementioned neighbors who own geese, Linda and James Parish.

In response to query by Ms. Kames regarding an additional request for an 8-foot rear setback variance, Mr. Burdette indicated that it would have to be applied for separately; whereupon, he moved, seconded by Mr. Foley that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 8 APPLICATION OF STEPHEN NAIMAN AND DIANE NAIMAN FOR A VARIANCE (BA-6-11-15) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Stephen Naiman and Diane Naiman for a variance to allow for the reconstruction of a carport with a 2-foot side setback where a 6-foot side setback is required, re property located at 1436 Ohio Avenue, Palm Harbor (BA-6-11-15).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The original carport existed on the site for many years and was in place at the time neighboring homes were built. The proposed reconstruction of the carport at the same location will therefore not pose any new impacts to adjacent property owners. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.

2. The carport shall maintain at least a 2-foot side setback along the west property line.
3. All other setback requirements shall be met.

Stephen Naiman, Palm Harbor, appeared and indicated that he is seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Foley that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 9 APPLICATION OF DIGIOVANNI PARTNERS, LLC THROUGH STEPHEN O'HARROW, REPRESENTATIVE, FOR A VARIANCE (BA-4-11-15) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Digiovanni Partners, LLC, through Stephen O'Harrow for two setback variances (on Lots 1 and 3 only) to allow for the construction of a single family subdivision (a 5-foot setback from the north property line of Lot 1 and a 5-foot setback from the north and west property lines of Lot 3, where a 20-foot setback is required for both), re property located at 800 Columbia Avenue, Palm Harbor (BA-4-11-15).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The Board approved the same setback requests for proposed Lots 1 and 3 in 2008 (BA-3-2-08); however, construction never commenced due to the downturn in the economy and the variance approval expired. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.

2. Lot 1 shall have a 5-foot setback from the north property line.
3. Lot 3 shall have a 5-foot setback from the north and west property lines.

Stephen O’Harrow, Dunedin, appeared and indicated that he represents the applicant.

No one appeared in response to the Chairman’s call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Foley that the variances be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#10 APPLICATION OF WILLIAM BAUMGART THROUGH ROBERT PERGOLIZZI, REPRESENTATIVE, FOR A VARIANCE (BA-1-11-15) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of William Baumgart through Robert Pergolizzi for a variance to allow for the construction of a single family home at a height of 51 feet to the roofline and a cupola at 67 feet where 45 feet is allowed, and a variance to allow for the construction of a 10-foot-high stone wall with 10-foot 8-inch-high columns having a 10-foot front setback where a 50-foot front setback is required, re property located at 3225 Keystone Road, East Lake Tarpon (BA-1-11-15).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. Approval of the variance for the home’s roofline at 51 feet and the cupola at 67 feet should not adversely affect the adjacent and/or nearby properties since the proposed residence is roughly 564 feet from Keystone Road. There is sufficient land area available (approximately 40 acres) to mitigate the visual impacts of the requested additional height. Approval of the proposed 10-foot-high privacy wall and columns along Keystone Road would allow the continuation of the similar existing wall to the east that was approved by

the Board in 2004 (BA-7-2-04). Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The location of the proposed home shall be consistent with the submitted concept plan.
3. The proposed wall and columns shall maintain a minimum 10-foot front setback from Keystone Road, shall not encroach upon any existing wetlands, and shall maintain a “finished appearance” consistent with the existing wall to the east.
4. All sight distance requirements shall be met.

Robert Pergolizzi, Clearwater, indicated that he represents the applicant, and responding to queries by the members, clarified the locations of the applicant’s current residence, the existing 10-foot wall and its proposed extension, and the former Geiger estate, noting that the applicant’s property does not include the Geiger estate. He related that the applicant plans to build a house on his 40-acre lot; and that the map shows that the proposed setbacks exceed the requirements.

No one appeared in response to the Chairman’s call for objectors to the application.

Following brief discussion regarding the proposed 10-foot wall and the requested height of the roofline, Mr. Bomstein moved, seconded by Mr. Foley that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#11 APPLICATION OF SCHMITZ DEVELOPMENT CO., JOHN SCHMITZ THROUGH SUSAN POISSANT, REPRESENTATIVE, FOR A VARIANCE (BA-11-11-15) – GRANTED WITH MODIFIED CONDITION

Public hearing was held on the application of Schmitz Development Co., John Schmitz through Susan Poissant for a variance to allow for the construction of a commercial building with shared site access and a freestanding sign, both having a 1-foot side setback

where 25-feet is required, and a variance for the placement of a dumpster with a 3-foot rear setback where 25-feet is required when adjacent to a residential zoning district, re property located at 33086 U.S. Highway 19 North, Palm Harbor (BA-11-11-15).

Mr. Bailey indicated that a letter of no objection has been received from the adjacent property owner and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The subject property contains a 100-foot Duke Energy power line easement that inhibits the property's development potential and essentially forces any type of development toward the northeastern portion of the site. Also, based on the proposed location of the building, sign, and the fact that a shared access agreement is in place with the adjacent property to the north, no adverse impact should occur. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. Appropriate site plan review.
3. The proposed building and sign shall maintain a minimum 1-foot side setback to the north property line and the dumpster shall maintain a 3-foot minimum rear setback to the west property line.
4. All other setback requirements shall be met.
5. The shared access agreement with the adjacent property to the north shall be maintained.

Katherine E. Cole, Esquire, appeared and indicated that she represents the applicant; whereupon, she pointed out that a request for an additional 10-foot side setback was not included in the advertisement and inquired if the application could still be approved as is.

Attorney Hardy stated that only advertised items can be heard by the Board; however, upon examining the application, Mr. Bailey indicated that since there is no residential zoning on the side of the additional proposed setback, no variance is required; whereupon, Attorney Hardy confirmed that the application is acceptable as advertised.

No one appeared in response to the Chairman's call for objectors to the application.

During brief discussion and responding to queries by the members, Ms. Cole explained the reasons behind the proposed location of the dumpster and pointed it out on the site plan.

Mr. Bomstein moved, seconded by Mr. Foley that the variance be granted as recommended by staff; whereupon, Attorney Hardy requested that the word "agreement" be removed from Condition No. 5, noting that the Board cannot require that a third-party agreement remain in place.

Mr. Bomstein amended his motion, specifying that the word "agreement" be deleted from Condition No. 5, and upon call for the vote, the motion carried unanimously.

#### UPDATED RULES OF BOARD PROCEDURES

Attorney Hardy indicated that updated Rules of Procedure are included in the agenda package for review and adoption by the Board.

Responding to queries by Mr. Bomstein, Attorney Hardy clarified that four votes constitute a majority for the full seven-member Board, and three votes constitute a majority for the five-member quorum, noting that the voting rules have not been changed in the update.

During brief discussion regarding Article VI, Plot Plan, Attorney Hardy indicated that "site plan" was a term used in the previous rules that was changed to "plot plan," which is required for variances with the understanding that it may later be altered in the site plan, if needed; whereupon, Mr. Bailey confirmed that a plot plan is basically a pencil sketch; and that it is also used for special exceptions.

Mr. Bomstein moved, seconded by Mr. Foley that the updated rules be adopted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

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MISCELLANEOUS DISCUSSION

Attorney Hardy informed the Board that the F&L Towers case was appealed again and is in litigation; whereupon, she requested that members refrain from making any comments to the press.

MINUTES OF OCTOBER 1, 2015 MEETING – APPROVED

Upon motion by Mr. Bomstein, seconded by Mr. Burdette and carried unanimously, the minutes of the meeting of October 1, 2015 were approved.

ADJOURNMENT

At the direction of Chairman Watts, there being no further business, the meeting was adjourned at 9:43 A.M.

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Chairman