

SAN MATEO



LOCAL AGENCY FORMATION COMMISSION

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Action Minutes San Mateo Local Agency Formation Commission Meeting January 20, 2021

Chair Slocum called the Wednesday, January 20, 2021 meeting of the Local Agency Formation Commission (LAFCo) to order at 2:30 pm via Zoom in accordance with Executive Order N-29-20 and N-33-20 due to COVID 19.

He noted that the Alternate City position was currently vacant and welcomed Commissioner Harvey Rarback as the newly appointed regular city member. He also thanked Commissioner Cosgrove for his chairmanship during LAFCo's transition to remote meetings.

1. Roll Call

Members Present: Commissioners Ann Draper, Ric Lohman, Kati Martin (Alternate) Harvey Rarback, Don Horsley, Vice Chair Mike O'Neill, Chair Warren Slocum.

Members Absent: Commissioner Joshua Cosgrove

Alternate Commissioners Jim O'Neill was also present in the audience.

Staff Present: Martha Poyatos, Executive Officer
Rob Bartoli, Management Analyst
Timothy Fox, Legal Counsel
Angela Montes Cardenas, Commission Clerk
Janneth Lujan, Planning Commission Secretary

2. Consent Agenda

a. Approval of Action Minutes: November 18, 2020

b. LAFCo File No. 20-09 – Proposed annexation of 4 Navajo Place, Portola Valley (APN 077-300-130) to West Bay Sanitary District

Commission Action: Commissioner Horsley moved to approve the consent agenda and Commissioner O'Neill seconded the motion which passed unanimously by roll call vote.

COMMISSIONERS: WARREN SLOCUM, CHAIR, COUNTY ▪ MIKE O'NEILL, VICE CHAIR, CITY ▪ HARVEY RARBACK, CITY ▪ DON HORSLEY, COUNTY
▪ JOSHUA COSGROVE, SPECIAL DISTRICT ▪ RIC LOHMAN, SPECIAL DISTRICT ▪ ANN DRAPER, PUBLIC

ALTERNATES: KATI MARTIN, SPECIAL DISTRICT ▪ DIANA REDDY, CITY ▪ JAMES O'NEILL, PUBLIC ▪ DAVE PINE, COUNTY

STAFF: MARTHA POYATOS, EXECUTIVE OFFICER ▪ TIMOTHY FOX, LEGAL COUNSEL ▪ ROB BARTOLI, MANAGEMENT ANALYST ▪ ANGELA MONTES, COMMISSION CLERK

(Ayes: Commissioners Draper, Rarback, Horsley, Lohman, Martin, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

3. Public Comment for Items Not on the Agenda

No written or oral comments from the public.

4. Applications Received and Not Certified as Complete and Ready for Hearing

a. LAFCo File No. 20-10 – Proposed annexation of APNs 046-032-030, 046-032-040, 046-032-080, 046-032-090, and associated right-of-way to the City of Belmont and detachment from the Belmont Highway Lighting District

Ms. Poyatos gave a brief update to the Commission. She said that Lafco is required to place applications that are not submitted by the city or district on the agenda, in case the city or district wants to submit a resolution opposing the annexation. She added that the City of Belmont has indicated support for the annexation.

5. Adoption of Sphere of Influence for the San Mateo Resource Conservation District (SMRCD)

Mr. Bartoli referred to the staff report dated January 13, 2021. He noted that at the previous LAFCo meeting, the Commission reviewed the preliminary sphere of influence (SOI). He summarized the existing boundaries of the SMRCD and the coterminous SOI which include territory in the western portion of the County from the San Francisco to the Santa Cruz county lines.

He explained that over time the District has transformed from soil conservation to a resource conservation district with a much broader mission than originally created under its enabling legislation. He noted that a number of excluded areas receive benefits from actions that are taken by the District, such as land improvements and water quality efforts, noting that the Municipal Service Review (MSR) identified these pockets in several maps.

Mr. Bartoli said that once amended, the SOI could be implemented by LAFCo processing an annexation application submitted by resolution of the SMRCD Board of Directors. He noted that annexation would result in a transfer of property tax to support District services and administration. He stated that annexations of inhabited areas would be subject to registered voter protest and possibly an election.

He said that the portions LAFCo is proposing to be included in the SOI are areas of the City of Pacifica, unincorporated Mid-coast (including El Granada, Miramar, Montara, Moss Beach

and Princeton), portions of the City of Half Moon Bay, and portions of the unincorporated South Coast (including Dearborn Park, La Honda, Loma Mar, Pescadero, Pescadero Creek County Park, Portola Redwoods State Park, and South Skyline). He said that SMRCD is collaborating on projects that are both within and outside of its boundaries and that these projects and actions are funded through grants and contracts and not directly through the use of property tax at this time. He noted that if property tax is augmented by future annexations the District has indicated these funds would be used for administrative activities that are typically not funded through grants.

Mr. Bartoli stated that inclusion of such areas would be consistent with boundaries of the watershed flowing to the Pacific Ocean. He also said that inclusion of these areas would better align the sphere of influence of the district with services that occur on an ongoing basis.

He said that SMRCD has requested that the sphere of influence of the District be expanded beyond what LAFCo staff has proposed. He explained that the District requested the area along Skyline Boulevard, which includes the San Francisco Public Utilities Commission watershed lands, the lands between Skyline Blvd. and Highway 280 which also encompasses the Town of Portola Valley. He said that the District has stated that this would more accurately represent the District service area and provisions of services and an appropriate scale enabling the district to pursue an extended stable funding base.

Mr. Bartoli noted that the San Francisco Public Utilities Commission (SFPUC) and MidPeninsula Open Space District lands are publicly owned and exempt from property tax and if annexed to the District they would not contribute additional property tax revenue. He said that it is also likely that any annexation of the lands along Skyline Blvd. and Highway 280 would be considered inhabited and would be subject to registered voter protest and possibly an election.

He continued that in review of the projects outside the Districts existing boundaries over the last 15 years, the majority were either on SFPUC lands or in areas of low property tax value. He said that a portion of these projects also included technical assistance to equestrian operations in the town of Woodside. He said that for these reasons, LAFCo staff is not recommending inclusion of these lands at this time.

Mr. Bartoli summarized the required SOI determinations including proposed land uses in the area, capacity of the District to provide service, and social and economic interests and noted that the vast majority of land in the District is rural, agricultural, or open space and population growth is limited. He stated that demands for the District's service to address

on-going need for watershed and soil conservation will continue and there are no Disadvantaged Unincorporated Communities within the District boundaries.

He concluded that staff recommends adoption of the recommended Sphere of Influence Determinations for the San Mateo Resource Conservation District, and the amended Sphere of Influence for San Mateo Resource Conservation District as proposed by LAFCo staff or as proposed by the District.

SMRCD General Manager, Kellyx Nelson, provided an overview of the District in the context of the proposed Sphere of Influence. She said that SMRCD is a “boots-on-the-ground” agency that uses a very diverse program set including, technical assistance, project implementation, trusted broker, outreach and education and financial assistance. Ms. Nelson said that the District’s unique role in conservation is that they are the only entity that was created in statute for the purpose of helping people help the land and best manage their natural resources. She continued that the District works as local hubs for conservation and as liaison across diverse agencies.

Ms. Nelson said that in the last fiscal year for every dollar of property tax the district leveraged \$149 in funding that went to services for its constituents. She noted that property tax dollars received do not go toward direct services, as those funds are used for administrative purposes. She added that the vast majority of District funding is state and federal funds and funding is also brought into the District through partnership with the USDA. She stated that the vast majority of funding coming to the District is used for direct services. She noted that the District lacks the fiscal stability and without a more stable funding base the District’s administrative base is constrained.

Ms. Nelson stated that updating the SOI is based on accurately representing where the District provides services and where those benefits accrue. She said another reason is the ability to bring grants, contracts and other resources to areas within the SOI. She added that it would also provide deeper bench to recruit board members and the stability resulting from enabling the District to pursue an expanded and stable funding base.

Ms. Nelson said the criteria for the areas that the District proposed for inclusion are based on need and opportunity as well as accuracy and appropriate scale. Referencing a map that shows the current versus proposed boundary, she noted that in the 1930s when conservation districts were seen largely as a farm services agency, residential areas were essentially excluded. She said this happened without an understanding of where we would be in the future in terms of watershed, water pollution, water resources, endangered species, fire and more. She said the District’s proposal included the largely forested areas

along Skyline that capture the headwaters which are a priority for endangered species.

Ms. Nelson shared a map illustrating work the District has completed on areas that are currently not included in District boundaries. She noted that the map does not depict areas that are anticipated or proposed for work. She shared several slides highlighting demonstrated need for district services. Including maps regarding wildfire risk, wildlife habitat, and watershed in the Bay Area.

She noted that Resource Conservation Districts are the entities created by the State of California to work across land ownership to accomplish conservation priorities and the District was formed in San Mateo County to offset the impacts of development.

SMRCD Director, TJ Glauthier, thanked LAFCo staff for their work on the District's Municipal Service Review (MSR) and for conducting the SOI. He said they appreciate the recommendation provided by staff to include the previously excluded areas on the coast side as it would be representative of the work they do today versus what the District did 60 years ago. He encouraged the Commission to consider the broader SOI determination that would include the properties between Skyline and 280.

Chairman Slocum opened and closed the public hearing. No comments were received.

Commissioner Draper said she learned a lot from the presentation and was in favor of adopting the SOI as proposed by the District, which includes additional territory along Skyline Blvd. She noted the importance of providing technical assistance to agencies and property owners and added that it is really important to include the whole of those areas in the opportunity to receive technical assistance.

Commissioner Horsley stated that while being on the Board of Supervisors he has worked with Ms. Nelson on a variety of projects in his Supervisorial district. He said the SMRCD is an underappreciated and under resourced agency that does phenomenally good work. He said he is supportive of the recommendations to expand the SOI as recommended by the District and eventually incorporate those areas into the District.

Commissioner Lohman agreed with the comments made by Commissioner Draper about integrating protection for everything as a coordinated effort versus having multiple agencies. He said that one major problem post-pandemic will be water conservation and protection of watersheds. He said that if the District would be of help for that he would be in favor of the expanded SOI.

Commissioner Martin agreed with Commissioners Lohman and Draper. She said as a resident of Half Moon Bay she is aware of extraordinary work the District has done.

Commissioner Rarback said that the District has done incredible work. He noted that the maps presented by Ms. Nelson show how the area between Skyline and 280 is really essential in regard to resources in our County. He said he is in favor of expanding the SOI as proposed by the District.

Vice Chair O'Neill said that he is in support of expanding the District. He asked for clarification on what the issue is with LAFCo not supporting the proposed District areas.

Ms. Poyatos responded that one of the driving factors was that the majority of the territory is not assessed and would not generate revenue for the District. She also said that the District is authorized to provide services outside boundaries. She noted that from what Ms. Nelson presented in regard to watersheds and evolving needs related to climate change staff would support the expanded sphere.

Commissioner O'Neill said he would support the recommendations from the District.

Chairman Slocum said that he is supportive of recommendation of the District.

Commissioner Horsley made a motion to adopt the updated SOI for the San Mateo Resource Conservation District with additional territory as proposed by the District. Commissioner Draper seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Draper, Rarback, Horsley, Lohman, Martin, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

6. Update on Potential Municipal Service Review for East Palo Alto Sanitary District, West Bay Sanitary District, and City of East Palo Alto

Ms. Poyatos provided an overview of the boundaries of the East Palo Alto Sanitary District, West Bay Sanitary District and the City of East Palo Alto noting that the East Palo Alto Sanitary District (EPASD) includes the majority of East Palo Alto and a small portion of Menlo Park, West Bay Sanitary District (WBSD) also serves East Palo Alto, west of Highway 101. She added that certain projects under consideration by the City of East Palo Alto are within the boundaries of both districts. She said that both districts are independently governed special districts with boards elected by voters in the districts.

Ms. Poyatos referred to staff report dated January 13 summarizing that at the October 21 meeting the Commission considered a report regarding a request that LAFCo initiate an MSR for EPASD, WBSD, and the City of East Palo Alto to assess the finances, infrastructure and governance. She stated that at the October LAFCo meeting, the Commission approved preparation of a consultant prepared MSR conditioned upon the developers funding the

preparation so as to not affect the completion of the work program. She said that staff was directed to prepare a request for proposals (RFP) for MSR covering the EPASD, WBSD and the City of East Palo Alto and to move forward with the MSR with two conditions. She said the first condition was preparation of the MSR conditioned upon developers funding not just the cost of the MSR but also cost for preparing RFP. Second condition was that the developers and the City of East Palo Alto and EPASD be given the opportunity to pursue mediation and an agreement on capital improvement cost methodology required for issuance of the will serve letter to for City approved projects before issuing the RFP. She noted that two developers with approved projects but do not yet have will serve letters, Sobrato and MidPen Housing, have indicated that their efforts for mediation and methodology for cost sharing were to no avail.

Ms. Poyatos noted that since the agenda packet for this meeting was released LAFCo received a one letter provided by the EPASD General Manager from SR Diversified commenting on supplemental cost sharing proposal for the City approved projects, a table labeled rate scenario, and a letter from EPASD to Holland & Knight, representing Sobrato and MidPen Housing dated March 10, 2020. She also noted that LAFCo received a letter from EPASD Board Member Dennis Scherzer dated January 18, 2021. The City of East Palo Alto also resent their letter from October and indicated their support for preparation of the MSR has not changed.

She said that the reason for requesting a prioritized MSR is the inability of the developers to obtain will serve letters for sewer service as well as cost sharing plans on capital improvements to serve the projects. She added that LAFCo staff has been contacted by a third developer, The Emerson Collective, regarding their proposed developments at 2535 Pulgas Avenue, which is an office building, and a 52 acre site proposed for office, residential, research and development and recreational uses. She said this project is within the boundaries of both EPASD and WBSD.

Ms. Poyatos stated that the scope of an MSR is contained in Government Code Section 56430, which includes seven areas of determination, as well as those in local LAFCo policy. She concluded that the record of meetings and correspondence indicate an inability of the parties to agree on a path forward on how new development can be provided sewer service. She noted that while the EPASD asserts that they have no role in the City's land use, the City and the District share the same constituency and rate payers and it is in the best interest of this shared constituency that the MSR be prepared to provide third party assessment of sewer infrastructure, service capacity and transparency to inform the City council, the EPASD board and the developers and rate payers on a path forward.

Chairman Slocum opened public comment.

Akin Okupe, EPASD General Manager, informed the Commission that the problem the District is dealing with is who is going to pay for the upgrade to the sewer system. He said the background of the problem is that Sobrato Organization purchased a property that used to discharge 1,000 gallons per day to the District's collection system and they plan to replace the property with a high-rise building that is going to discharge 20,000 gallons per day into the collection system. He said this is going to be a huge impact on the collection system and that the system does not have the capacity for this project. He stated that the existing pipe is in very good condition, and that it can last for another 10-15 years. He noted that based on industry practice, when a developer wants to build a project they include a plan to upgrade the collection system. Mr. Okupe expressed concern about the accuracy of the CEQA document and the idea that the existing rate payers would be responsible to pay for the infrastructure improvements through increased sewer rates.

Patrick Heisinger, City of East Palo Alto Assistant City Manager stated that the City's position cited in their letter has not changed. He noted that there is an affordable housing development that is fully entitled and ready and the City purchased the property in 2009 and has invested \$24 million into the project. He noted that in addition to trying to help advance several other development projects, the Council is looking forward to advance critical affordable housing initiatives. Mr. Heisinger stated he wanted to clarify for the record about the City keeping EPASD informed on development in the City. He said they have documented in public numerous times where the environmental impact reports have been sent to the EPASD. He noted that there is a sitting sanitary district Board Member that was on the city strategic plan for the general plans. He concluded that they are at an impasse.

Tim Steele, Senior VP of Sobrato Organization, suggested that LAFCo was not the venue to negotiate for sewer will serve letters. He noted that there are several other developers who are frustrated with the EPASD permit process. Mr. Steele said their request is not to have LAFCo negotiate these transactions and step in the middle and mediate, but that LAFCo should move forward with the MSR, which should be an impartial study. He said that the cost to LAFCo is zero as the development projects have indicated they would pay for the cost of the MSR. He added that they are not expecting the City to participate in payment as they all want to pay for it out of private dollars rather than public.

EPASD Board Director Dennis Scherzer stated that one of their problems is that the City has a lot of projects planned and they are not synchronized. He said the Sobrato II project would empty into the Donohoe street line, but now upstream there's a proposed apartment complex with 444 units, with 100,000 gallons of effluent per day. He said there was also another project downstream and these have not been coordinated. Director Scherzer expressed concern about the environmental documents (EIRS) for City projects. He stated that the EIRs were probably received by the District but questioned why the District wasn't

included in the preparation. He said their reports were based on a lack of information. He noted that in terms of the Emerson Collaborative straddling the boundary line, it looks like there would have to be an annexation to WBSD. He questioned why the developer and the City haven't raised concerns with WBSD, including the need to build a bigger pump station in anticipation of what was in the general plan. He said EPASD is in fine shape to serve the people they represent. He cited an excerpt from the California Constitution, Article 13b Section 6 regarding how fees are charged for development and what fees can be used for and noted that as Board members they uphold the Constitution.

Jeff Poetsch, President of Ravenswood Shores Business District located in East Palo Alto stated that they represent about 80% of the property owners in the Ravenswood area. He indicated that in prior discussions with the EPASD and Business District Directors there was nothing that addressed a reason not to do the MSR. He said it would be informative to the City and District and he would hope that the MSR could move forward to benefit the community of East Palo Alto.

Chairman Slocum closed public comment.

Commissioner Draper said that after reading all the materials she is in favor of doing an MSR as shown in the recommended action. She said that during the 1980s she was the planning officer for the City of Sunnyvale at the time when the City had to implement a sewer moratorium. She said during this time she was involved in how the sanitary sewer system planning had to include not only existing development, but also for expansion. She said the City also had restrictions as the District has described and yet they were able to plan not only for existing people but also for the future. She said she also worked for the City of Fremont where she was involved in a big revision of its general plan and they needed to work with their utility district and sanitary district to make sure they had the capacities in service, pipes and line surges. She said that all the information she read does not line up with her past experience. She concluded that to answer these questions, an MSR should be conducted and she supports the staff recommendation.

Commissioner Horsley stated that he worked with Dennis Scherzer in 1993 in East Palo Alto and that he was really helpful and influential at that time and that it's good to hear from him. He said he supports the MSR because it's pretty clear that there's an impasse between the agencies. He stated that the information could help them make a decision to move forward.

Commissioner Lohman began by stating that he does not want his comments construed as being against the MSR, instead his comments are directed at the impasse. He said that to him the problem comes down to who's going to pay for this expansion. He referred to a letter received from Mr. John Reiner from Kennedy Jenks who has been retained by

Sobrato. He said they have been consultants on projects in his district. He noted that the letter repeats the Sobrato organization's opinions. He said that he does not feel there is conflict of interest in the fact that he knows the consulting group. He said that when he first joined LAFCo he was told that though he represents the special districts in the county he should think and vote as a County citizen and he said his comments are in that vein. He said that the application and verbiage he's seen in the discussion is an attack on the EPASD. He said this is a danerous precedent for San Mateo County and all its residents because all the residents in this County are served by multiple special districts.

Commissioner Lohman noted that he has served on special districts for over 15 years and not once has a commercial or residential project been proposed to have current rate payers pick up infrastructure cost. He stated that on this project the City and the developers have laid blame on the current impasse on the EPASD, they state that EPASD never attended a city planning and is now trying to block the project. He said that Mr. Okupe responded correctly and he believes that special districts are not planning agencies. He said that development planning is the job of the cities and counties, noting these are all represented on LAFCo. Commissioner Lohman said that as Mr. Okupe stated that District responsibility is to receive an application, do a complete engineering study of the project, its effect on the current infrastructure, and the cost of the project. The District would then discuss with the applicant how it intends to pay costs, and the special district takes no action until approved application is submitted. He stated that in his own district this same process is adhered to and is established in formal procedures. He said that often the first time a special district reviews an application is the when reviewing an EIR. He said that in responding to an EIR the District iterates all the items he mentioned. He stated that the City of East Palo Alto and the developers have requested an accelerated MSR, his concerns with this request is the implied threat that goes along with it. The implication for EPASD is that if they don't yield the demand and pass the development costs on to their rate payers, the applicants will press to dissolve or merge the district out of existence. He said this is a grievous misuse of LAFCo's MSR process. He said that the applicants are demanding the special district break its procedures and possibly go against California laws that describe the operation of special districts.

Commissioner Lohman said that since the MSR will move forward he would formally request that five items be added to the RFP: 1) review of CA state laws that define special districts and the actions that they can take concerning applications 2) legality of developer passing project costs onto existing customers 3) a document from the developer who's applying for this to list all the projects they know where applicants have successfully passed their costs on to the existing special district customers 4) analysis of other projects across San Mateo County special districts and the procedures for cost assignment to projects 5) comments from WBSD on how they will be distribute costs for projects.

Commissioner Rarback stated that when East Palo Alto was incorporated the decision to not include a sanitary district or sanitary service narrowly lost and had it won he believes we would not be here today. He said that the proposal for an accelerated MSR makes eminent sense, we really need a comprehensive solution to providing services to find out who does what and who pays for what. He indicated agreement that an accelerated MSR needs to pass to get movement that is needed between the various agencies.

Vice Chair O'Neill began by stating that he is in favor of moving the MSR forward and more information is appropriate for anybody to make a decision to move forward. He said he spoke to Ms. Poyatos and she confirmed the last MSR for EPASD was about 11 years ago. He said the entire County has changed in 11 years and an area such as East Palo Alto has had significant amount of changes. He said that in regard to Commissioner Lohman, he does support inclusion of items 1 and 2 in the RFP. He noted that it would be good to have a non-partial judgement analysis as to what the Constitution says and what the law is. He said he would like to see the MSR move forward with or without the amendments.

Chairman Slocum began by stating that he has been associated with work in East Palo Alto since its incorporation. He said he agrees with Commissioner O'Neill's comment about more information being helpful for everybody. He noted that the MSR would be in the best interest of East Palo Alto and its surrounding communities. He indicated his support of the accelerated MSR.

Commissioner Draper added that as previously stated, she worked for an agency that needed to look at existing and future development potential and they figured out how to finance it with the same restrictions so there are models out there to show how these things are put together. She added that when she read the material it did not include the possibilities that other agencies have used to allow for this growth. She also noted that in the agencies where she worked, the sanitary district did not wait for a proposal to come in, rather it had a plan to look to the future.

Commissioner Horsley moved to direct staff to produce and issue a request for proposals for a municipal service review for East Palo Alto Sanitary District, West Bay Sanitary District and the City of East Palo Alto upon receipt of a deposit in the amount of \$2,800. Vice Chair O'Neill seconded.

Commissioner Lohman requested for formal addition to the MSR RFP: 1) investigate legal ramifications 2) survey to special districts on whether developers are requesting the agency pick up all the costs or creative solutions.

Commissioner Martin noted that she never considered an MSR as a threat to the operation of a special district but rather a third-party evaluation.

Commissioner Rarback stated that he is not in favor of exploring legality and ramification of the MSR within the context of the RFP.

Commissioner Horsley restated his motion to direct staff to produce and issue a Request for Proposals for a Municipal Service Review for East Palo Alto Sanitary District, West Bay Sanitary District, and City of East Palo Alto upon receipt of a deposit in the amount of \$2,800. Vice Chair Mike O'Neill seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Draper, Rarback, Horsley, Lohman, Martin, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

7. Legislative and Policy Committee

a. Legislative Report

Mr. Bartoli stated that CALAFCO is now tracking 3 bills that have been introduced in 2021. He referred to staff report attachments including summaries of the 2020 California State Assembly – Local Government Committee and the California State Senate – Senate Committee on Governance & Finance. He said that due to the focus on the response to Covid-19, only one bill, AB 3312, affected LAFCo's and this was the bill specific to an annexation to the City of Merced.

Chairman Slocum opened and closed the public hearing. No comments were received.

8. Commissioner/Staff Reports

Commissioner Horsley said he appreciated the presentation from Ms. Nelson on the Resource Conservation District and all that they do. He noted that looking at the conflict between EPASD, he hopes that they are able to shed light on a solution for the City of East Palo Alto.

Commissioner Rarback, shared that he is delighted to be part of LAFCo and pledged to do his best for the entire County.

9. Adjournment

Chair Slocum adjourned the meeting at 3:45 p.m.