



## *Planning & Zoning*

Agendas & Minutes

### MINUTES OF THE REGULAR MEETING OF NOVEMBER 30, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 30, 2006 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of November 16, 2006 as amended and the Minutes of November 20, 2006 as circulated.

### OLD BUSINESS

**C/U #1669** – application of **DAVID A. PETERSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for auto restoration to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 2.223 acres, more or less, lying northeast of Woods Lane, a private road, 411.5 feet southeast of Route 9 and 1,600 feet southwest of Road 474 (Dukes Lumber Road).

The Commission discussed this application, which has been deferred since November 16, 2006.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

**C/U #1718** – application of **ARTESIAN WATER COMPANY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a regional sewer treatment facility to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 8.91 acres, more or less, lying southeast of West Barrier Reef Boulevard, 600 feet northeast of Crocodile Cove within Heron Bay Subdivision, which is southwest of Hopkins Road (Road 286).

The Commission discussed this application, which has been deferred since November 16, 2006.

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Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1718 for Artesian Water Company, Inc. for a regional wastewater treatment facility to be located within the Heron Bay Subdivision, based upon the record and for the following reasons:

1. Artesian Wastewater Management, Inc., a division of Artesian Water Company, Inc., has contracted with the Heron Bay Development to collect, treat and dispose of sanitary sewage from the Heron Bay Community. The area exists and engineering designs have been performed and indicate that the wastewater treatment plant is capable of expansion to treat up to 400,000 gallons per day.
2. There is no County or other available public sanitary waste disposal facility providing for the adequate collection, treatment and disposal of sanitary waste to service this area.
3. Artesian Wastewater Management, Inc. has been issued a Certificate of Public Convenience and Necessity to serve the area.
4. The application is appropriate at the subject site because it is in an area of residential development where central sewer is not otherwise available.
5. The granting of this application is the expansion of a pre-existing approved use, will provide a waste treatment facility that will adequately and safely serve multiple communities, and will not harm the environment.
6. The expansion requested will promote the health and safety of the residents of the communities served as well as nearby residents.
7. The waste treatment facility will provide services more efficiently and safely than other alternatives.
8. This recommendation of approval is subject to the following conditions:
  1. All improvements for collection, treatment and disposal of sanitary waste shall be constructed and maintained in accordance with the requirements of DNREC, the Sussex County Engineering Department, and any other governmental agency with jurisdiction over the use of the site, or any modification there to.

2. The expansion of the site for sanitary wastewater treatment and the use of rapid infiltration beds are subject to all other applicable laws, ordinances, rules and regulations.
3. The facilities and infrastructure shall be designed to comply with County specifications.
4. The facilities and infrastructure will be designed and built to County specifications so that if in the future the County provides public sewer, the project will be capable of immediate connection.
5. Treated wastewater from the other developments will be returned by the sanitary waste treatment at Heron Bay to the developments for final disposal. Each development is responsible for the disposal of their own treated effluent.

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6. Treated wastewater from other developments will not be dispersed/disposed of by the Rapid Infiltration Basins at Heron Bay. The Rapid Infiltration Basins at Heron Bay are to be used solely for the disposal of treated wastewater from Heron Bay.
7. The final site plan shall be subject to review, and approval by the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

**Subdivision #2004-42** – application of **COLBY COX, INTEGRITY HOMES, II, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 180.33 acres into 360 lots (Cluster Development), located north of Road 88 (Cave Neck Road), 1,380 feet east of Road 261 (Dairy Farm Road).

Mr. Abbott advised the Commission that this application received preliminary approval on February 17, 2005 and that the Commission granted a one-year time extension on July 6, 2006; that the final record plan complies with the subdivision ordinance, that 360 lots are proposed; and that all agency approval have been received.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the record plan as a final. Motion carried 5 – 0.

#### PUBLIC HEARINGS

Mr. Robertson explained how the public hearings would be processed.

**C/U #1670** – application of **PHILLIP D. MURRAY AND BECKY L. MURRAY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for auto repair and parts sales to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 2.08 acres, more or less, lying at the southeast corner of the intersection of Route 26 and Road 415B.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the present Level of Service “C” of Route 26 and the present Level of Service “A” of Road 415A will not change as a result of this application.

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The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fallsington sandy loam and Pocomoke sandy loam which have severe limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that both soil types are considered of Statewide Importance, Prime Farmland and Hydric; that there are no storm flood hazard areas or tax ditches affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Phillip Murray was present and stated in his presentation and in response to questions raised by the Commission that he proposes to sell new parts and do installation of parts on 4-wheel drive vehicles; that he lives behind the site; that the parts are 4-wheel drive accessories; that there will not be any vehicle sales; that there will be no dismantling of vehicles; that he may have 4 employees; that business hours will be from 8:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to Noon on Saturdays with no Sunday hours; that parts removed from vehicles will be returned to the owners of the vehicles; that he would like to have a sign on the building; that an automotive repair shop exist within approximately 1-mile from the site up Route 26; that there will be no long term storage of vehicles; that there should be no environmental concerns since all parts to be installed are new accessories; and that all work will be performed in-doors.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Gordy stated that he would move that the Commission recommend approval of C/U #1670 for an auto repair and new parts sales based on the record made at the public hearing and for the following reasons:

1. The described Conditional Use will not have an adverse impact on the surrounding area.
2. The Conditional Use will have a benefit for the area, which utilizes 4-wheel drive vehicles.
3. This recommendation of approval is subject to the following conditions:
  1. The building shall be no larger than 40-feet by 120-feet.
  2. All entrances shall be subject to DelDOT approval.
  3. Days and hours of operation will be Monday through Friday from 8:00 a.m. to 5:00 p.m., and Saturday from 8:00 a.m. to 12:00 Noon. There shall be no Sunday hours.
  4. Vehicles shall not be offered for sale from the site.
  5. Only new parts may be sold.

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6. One unlighted wall sign, not exceed 4-feet by 8-feet may be displayed on the building.
7. There shall be no storage of used parts.
8. Vehicles must be immediately removed after repairs are completed.
9. There shall be no storage of vehicles.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

**C/U #1671** - application of **COMPASS POINT ASSOCIATES, L.L.C.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a land surveying office to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.20 acres, more or less, lying north of Route 9, 540 feet east of Route 254 and 700 feet west of Route 5 at Harbeson.

The Commission found that prior to the meeting the Applicant had provided an Exhibit Booklet and that the Exhibit Booklet contained a description of Compass Point Associates, LLC, the Partners and the Personnel; a site plan; tax maps of the area; a tax map showing business, commercial, industrial and conditional uses in the area of Harbeson; aerial maps of the area; a listing of past uses on the site; a copy of a septic permit for the site; and a statement on the hours of operation for the business.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the present Level of Service “E” of Route 9 at this location will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on this site are mapped as Evesboro loamy sand which has slight

limitations for development; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that Evesboro soils are considered of Statewide Importance and Hydric in small depressions; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Eugene Bayard, Attorney, was present with May Walsh, Managing Partner, Peter Lowenstein, Surveyor, and Harry Lambros and that they stated in their presentations and in response to questions raised by the Commission that several business, commercial, industrial and Conditional Uses exists in the area of Harbeson; that a dwelling exist on the site; that the trend of the area is growing toward commercial and business uses; that there should be no negative impact on the area, property values or traffic; that when they contracted to purchase the site they were told that it was zoned

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commercial and that they later found out that it was not commercial; that they have a septic permit and a well permit; that historically the site has been utilized for a dwelling, a bed and breakfast, antique sales, computer sales and service, and produce sales; that they propose to create a paved parking area to the rear of the building; that they do not have a lot of customer traffic at the site; that there may be 4 clients per week at the site; that they meet most of their clients on the clients' property; that they would like to erect a pole building for storage; that they would like to erect an unlighted sign at the entrance to the site; that business hours would be from 7:30 a.m. to 5:00 p.m. Monday through Friday with some occasional Saturday hours, with no Sunday hours; and that they would share the entrance with the adjoining parcel.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1671, the application of Compass Point Associates, LLC, for a land surveying office, based upon the record and for the following reasons:

1. The property has been used for a variety of other conditional use type purposes over the years, including a bed and breakfast, a produce stand, and antique sales.
2. The nature of the business should have limited impact on neighboring properties and traffic.
3. Given the nature of the business, i.e. office with limited public traffic, there are no restrictions proposed on the hours of operations.
4. The application is appropriate at the subject site because it is in an area of other nearby conditional use and commercial zonings.
5. Proposed parking is not located in the front yard setback. Instead it is located to the rear of the property.

6. This recommendation of approval is subject to the following conditions:
  1. One unlighted sign, no larger than 32 square feet on each side may be permitted. The location of the sign is to be shown on the site plan.
  2. Any stormwater management ponds that might be required shall be located to the rear of the property.
  3. The entrance shall be subject to DelDOT approval.
  4. The Final Site Plan shall be subject to approval by the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

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**C/U #1672** – application of **SADDLEBROOK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an office (sales center) to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 1.08 acres, more or less, lying at the northwest corner of the intersection of Route 9 and Route 30 at Gravel Hill.

This application was withdrawn on October 27, 2006.

**Subdivision #2005-78** – application of **DELMARVA WOODLANDS ALLIANCE, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Indian River Hundred, Sussex County, by dividing 215.23 acres into 226 lots, (Cluster Development), located north and south of Road 280, 2,900 feet east of Road 292.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on May 24, 2006; that on November 27, 2006 the applicants submitted an Exhibit Booklet, a revised preliminary plan and a letter addressing the items referenced in Subsection 99-9C of the Subdivision Code; that a letter in opposition to this application has been received from the Citizens Coalition; and that they will all be a part of the record for this application.

Jim Fuqua; Attorney, Mark Chura and Merritt Burke of Delmarva Woodlands Alliance, L.L.C., Doug Warner of Element Design and Steve Smailer of Duffield Associates were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the project is known as Coolspring Meadows; that 226 single-family lots are proposed; that the site contains 215 acres and is located on the north and south side of Stockley Road; that 193 acres of the site is zoned AR-1 and that 21 acres are zone GR; that AR-1 zoning permits 2 lots per acre and GR zoning permits 4 lots per acre; that a total of 473 lots are permitted; that the proposed density is 1

lot per acre; that the density is less than what is permitted by the zoning and cluster ordinances; that this application was filed prior to the cluster ordinance being amended; that 7,500 square foot lots are permitted; that the smallest lot in this project is 9,925 square feet and the average lot size is 10,867 square feet; that the project has been designed to preserve open space; that active and passive open space is provided; that 145 acres or 67% of the site is open space; that the project contains two different parcels; that Glatfelter Pulpwood Company owned the parcel on the north side and timbered it; that there is a DP & L easement on the west side of the northern tract and it does not impact any of the proposed lots; that there are 22 acres of federal wetlands on the site and the wetlands are not impacted; that there is a 50-foot buffer from all wetlands proposed; that none of the individual lots contains any wetlands; that 141 acres of the site is wooded; that the applicants will preserve as many mature trees as possible; that there will be restrictive covenants governing tree removal; that the wetlands have been delineated by a

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qualified professional; that Orth – Rodgers has prepared a traffic impact study and the applicants will comply with all recommendations made by DelDOT; that a Phase 1 Environmental Assessment has been completed and no endangered or rare species were found to be on the site; that Tidewater Utilities will provide central water and sewer to the site and will operate the wastewater treatment plant; that DNREC has issued a septic feasibility statement; that utilities and services will be provided by Delaware Electric Cooperative, Verizon, and Comcast; that the site is in the fire protection district of the Milton Fire Department; that the site is located in the Cape Henlopen School District; that there are 3 access points to the site; that a 40-foot minimum buffer will be provided along all fronts of the site; that sidewalks will be provided on at least one side of all streets; that recreational amenities will include a tot lot, multi-purpose games courts and small pocket parks; that there is room for a bus shelter along Stockley Road; that the wastewater treatment plant will be located on the northern side of the project; that the storm water management design will utilize wet ponds or infiltration system and will utilize Best Management Practices; that they acknowledge drainage concerns along Coolspring Road; that the project will have streetlights; that the wooded areas will be preserved; that the design of the project complies with the Cluster Ordinance requirements; that manufactured homes will not be permitted on any of the lots; that there are not any lots proposed in the GR zoning; that buffers will be provided; that a homeowners' association will be established; that the items referenced in Subsection 99-9C of the Subdivision Ordinance have been addressed and are referenced in the Exhibit Booklet; that the applicants feel that this design is superior to a standard subdivision in that the rear of all lots adjoin open space; that the developers have met with some of the area residents; that the letter submitted by the Citizens Coalition is an opinion and not legal standards; that the purpose of the Low Density Area allows for single-family lots; that the minimum square footage for the dwellings will be 1,250 square feet of heated area; that the restrictive covenants have not yet been finalized; that a majority of the open space contains wooded areas and wetlands; that walking trails can be placed throughout the project; that a tot lot could be provided on the southern portion of the project also; that

the spray irrigation would be directed to the wooded areas; that DNREC can inspect the site if they choose to do so; that the smallest buffer proposed is 40-feet; that a phasing plan has not been completed at this time; and submitted proposed conditions of approval and findings of fact into the record.

The Commission found that no parties appeared in support of this application.

The Commission found that Luther Leighton, Mark Lashere, Carole Sangis, Chuck Burton, John Doufler, Tiffany Derrickson, Mike Tappan, Henry Glowiak, Sharon Anderson, Betty Street, and Lynn Shugart, all area residents, were present in opposition to this application and stated that there are 26 farms or farmettes in the area; that the smallest lots in the area are at least 1 acre; that the project will cause wildlife to be impacted; that the roads in the area cannot handle additional traffic; that farm equipment

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and bicyclist use the roads in the area; that residents ride horses along the shoulders of the roads; that the area is productive for farming; that they have safety concerns for small children in the area; that the project will change the character of the area; that there are drainage problems in the area; that the wetlands will be negatively impacted; that a majority of the agencies commenting on the plan had negative comments; that the project will cause a loss of trees or farmland; that there are already too many large developments being built in the area; that the developers won't live in the project; that the developers build inferior homes; that the project will be a burden on the infrastructure; that this one and other projects designed by the developers are poorly designed; that the proposed wastewater treatment plant is located in an area that is always wet; that the project is located in a Level 4 based on the State's Strategies Map; that the site is located in a low density area; that there are agricultural uses in the area; that there will be negative impacts to agricultural operations; that there are over 5,000 new lots within a 5 mile radius of the site; that the cumulative impacts to the area need to be considered; that new development should be in character with what is already in the area; that the project does not fit in with the community; and submitted a petition with 60 signatures opposed to this application.

The Commission found by a show of hands that there were 26 people present in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

**Subdivision #2005-79** - application of **PARADISE PROPERTY** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 84.27 acres into 169 lots, (Environmentally Sensitive

Developing District Overlay Zone), located south of Road 336, 4,300 feet southwest of Road 335A and north of Pepper Creek.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on May 24, 2006; that the applicants submitted an Exhibit Booklet on November 22, 2006; and that both of these will be made a part of the record for this application.

Gene Bayard; Attorney, Jeff Franz; Developer, and Ken Christenbury; P.E. with Axiom Engineering were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the project is located off of Piney Neck Road; that the project will not cause any negative impacts to property values in the area; that the site contains no rare flora or flona and there are no known endangered

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or rare species on the site; that the site contains 2 forested areas; that there are 13 acres of tidal wetlands on the site; that the wetlands have been delineated and they are awaiting a jurisdictional determination from the Army Corps of Engineers; that none of the lots contain any wetlands; that the developers have meet with the State through the PLUS process and has addressed their comments and concerns; that sidewalks and trails will be provided throughout the project; that streetlights will be provided; that an easement for a multi-modal path has been provided along Piney Neck Road; that the State does not object to the proposed project; that the project will provide over 3 miles of sidewalks; that the recreational amenities will include a swimming pool, clubhouse, game courts and a tot lot; that there is room for a bus shelter along Piney Neck Road; that the sellers will continue to reside on the side; that there is a buffer greater than 30 feet around the entire project; that trees will be planted where lots back up to each other; that none of the lots are located in wetlands; that an application for a boat ramp will be filed with the State; that no marina or docking is proposed; that the developers will maintain 75% of the wooded area on the site; that Tidewater Utilities will provide central sewer and water, but the developer understands that Artesian, Tidewater and the County are still discussing the method of serving this area; that ground water recharge will be maximized; that the project will utilize Best Management Practices; that the area is developing; that the project will not have any negative impacts to schools, public buildings or transportation; that DelDOT did not require a traffic impact study to be performed; that there are two other large developments approved in the immediate area; that the soils on the site are suitable for septic; that the project complies with the Land Use Plan and the cluster ordinance; that the design meets all ordinances and regulations; that Tidewater Utilities holds a CPCN for the area; that a homeowners' association will be established; that the out parcels will be served by the subdivision streets; that the streets will be private and built to county specifications; and that the Sussex County Engineering Department has no objections to the project based on Mr. Izzo's letter dated November 30, 2006.

The Commission found that no one appeared in support of this application.

Jane Tribbitt, Brian Hitchens and Joan Thompson were present in opposition to this application and stated that they own homes in the area; that they do not want their ingress/egress removed or relocated; that the project will create additional noise and traffic to an already impacted area; that there is a bald eagle nesting in the area; that dredging would be required to install a boat ramp; that there are fish kills in the summer months; that red sun fish have been found in the area; that there are conflicts between developments and agriculture; that the project will negatively impact emergency response times; that traffic is a problem on Piney Neck Road; and that Piney Neck Road is not a safe road since there are no shoulders or markings located on it.

At the conclusion of the public hearings, the Commission discussed this application.

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Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to defer action and to leave the record open until the special meeting of January 18, 2007 in reference to the sewer issue between the County, Artesian and Tidewater. Motion carried 5 – 0.

**Subdivision #2005-80** – application of **JOHN SCHULTIES AND ALTON E. MAST** to consider the Subdivision of land in an AR-1 Agricultural Residential District and a GR General Residential District in Cedar Creek Hundred, Sussex County, by dividing 20.00 acres into 15 lots, located west of Road 225 (Greentop Road), 2,900 feet northwest of Road 225-D.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of June 21, 2006 will be made a part of the record for this application.

John Schulties; Developer, and Byron Jefferson, P.E. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 16 lots are proposed; that all of the lots will be at least 0.75-acres with on-site septic systems and wells; that there is a small area of wetlands on the site; that none of the lots contain any wetlands; that no open space is proposed; that the septic feasibility statement has been issued by DNREC; that sidewalks and streetlights are not proposed due to the size of the lots; that the streets will be private and built to County standards; that a homeowners' association will be established; that the applicant will build the homes; that the dwellings will be entry level type homes; that the homes will range in size from 1,200 to 1,400 square feet with attached garages; and that the applicant has been a builder for over 15 years.

Lee Chaney was present and advised the Commission that he supports the application; that he operates a borrow pit on the adjoining parcel; that the pit operates 6 days per week; and that he would like future residents to be aware of the borrow pit operation through deed restrictions.

The Commission found that no one appeared in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action. Motion carried 5 – 0.

#### ADDITIONAL BUSINESS

Mr. Lank reminded the Commission that the next regular meeting will be held December 7, 2006 at 6:00 p.m.

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There was a consensus of the Commission to have the special meeting for January on January 18, 2007 at 3:00 p.m. to review Old Business and Other Business items.

Meeting adjourned at 9:00 p.m.