



## TANEY COUNTY PLANNING COMMISSION

P. O. Box 383 • Forsyth, Missouri 65653

Phone: 417 546-7225 / 7226 • Fax: 417 546-6861

website: [www.taneycounty.org](http://www.taneycounty.org)

**AGENDA**  
**TANEY COUNTY BOARD OF ADJUSTMENT**  
**WEDNESDAY, FEBRUARY 15, 2017, 6:00 P.M.**  
**COUNTY COMMISSION HEARING ROOM**  
**TANEY COUNTY COURTHOUSE**

Call to Order:

*Establishment of Quorum*

*Election of 2017 Officers*

*Explanation of Request for Reconsideration Hearing*

*Governing Statutes*

New Business:

*Request for Reconsideration, Emerald Pointe LLC*

*Discussion and decision whether to rehear Appeal on March 15, 2017*

Review and Action:

*Minutes, January 2017*

Old Business:

*Tentative*

Adjournment.



# TANEY COUNTY BOARD OF ADJUSTMENT REQUEST FOR RECONSIDERATION STAFF REPORT

**MEETING DATE:** February 15, 2017

**CASE NUMBER:** 2016-0002A

**APPLICANT:** Emerald Pointe, LLC – Shane Naugher

**REPRESENTATIVES:** Vincent O’Flaherty, Attorney  
Bruce Menke

**LOCATION:** The subject property is the road rights-of-way within the Final Plat of Emerald Point Phase XII; located near the southwest intersection of State Highway 265 and Hill Haven Road, Hollister, MO; Oliver Township; Section 36, Township 22, Range 22.

**REQUEST:** The representative Vincent F. O’Flaherty is seeking an appeal to rehear the Board of Adjustments non-decision on the appeal hearing January 18, 2017 on the appeal of the Stop Work Order on all on-going road construction activities within the Emerald Pointe Subdivision Phase VII, until such time that a form of security is provided to Taney County that is in compliance with the provisions of both RSMo. 64.825 and Article 8, Section 6 of the Taney County Subdivision Regulations.

## **BACKGROUND and SITE HISTORY:**

On December 20, 1993 the Taney County Planning Commission approved Division III Permit # 1993-0225, granting conceptual approval of a multi-use residential development on approximately 604 acres. Over the next eighteen (18) years, the developer (Gary Snadon) sought Planning Commission approval for additional Division III Permits for each phase of this residential subdivision.

On July 26, 1994 a contractual agreement was executed between Gary & Patsy Snadon and the Taney County Planning Commission, referenced as a Performance Guarantee. This Performance Guarantee was to act as the security ensuring the construction of improvements within the Emerald Pointe Subdivision; such as streets, water sewer and utility services. Mr. & Mrs. Snadon placed 37,500 shares of stock of in a privately held company (Roark Club, Inc.) in escrow to serve as the infrastructure security in question. This original Performance Guarantee was signed by Gary & Patsy Snadon, the Acting

Planning Administrator, John Soutee and the Escrow Agent, Marvin Motley. The initial Performance Guarantee was to either be mutual terminated by the Parties (Mr. & Mrs. Snadon and Taney County Planning) or would expire in five (5) years from the date of the execution (July 26, 1999).

On September 27, 1999 the Performance Guarantee was amended allowing for the extension of the agreement for a period of ten (10) years from the initial execution. This extended the agreement through July 26, 2004. This amendment was signed by the Mr. & Mrs. Snadon and also the Acting Planning Administrator, Robert C. Hall.

On May 19, 2008 the Planning Commission approved Division III Permit # 2008-0029, approving a request by Emerald Pointe, LLC to plat fifty (50) acres more or less into 160 residential lots, as Phase XII of the Emerald Pointe Subdivision.

On September 17, 2008 Gary & Patsy Snadon signed a Second Amendment to Performance Guarantee. However, the second amendment to the original agreement was not signed or accepted by a representative of Taney County. The intent of this second amendment was to extend the period of the agreement to the July 26, 2009. However, an agreement is only binding upon all parties with the proper execution of an agreement by all parties.

On September 18, 2008 the Final Plat of Emerald Point Phase XII was signed by the Planning Administrator and filed with the Recorder of Deeds office.

On February 22, 2016 Bruce Menke provided the Taney County Planning Department office with a PDF copy of a Third Amendment to the Performance Guarantee. However, once again, the third amendment to the original agreement was not signed or accepted by a representative of Taney County. The intent of this second amendment was to extend the period of the agreement for five (5) years from July 26, 2014 (July 26, 2019). As stated previously, an agreement is only binding upon all parties with the proper execution of an agreement by all parties.

On May 4, 2016 the Planning Administrator wrote a letter to Mr. Menke indicating that the most recent amendment was not signed or accepted by a representative of Taney County. The letter further indicted that both the Taney County Subdivision Regulations and the Missouri Revised Statutes spell out in great detail the forms of security for infrastructure improvements that may be accepted by the Planning Commission on behalf of the County Commission. Simply put, a security based upon stock in a private company is not acceptable to the County, pursuant to both the provisions of Missouri Revised Statutes (RSMo 64.820) and also Article 8, Section 6 of the Taney County Subdivision Regulations.

After several months and no response from the representatives from Emerald Point, LLC, on August 9, 2016 the Planning Administrator sent a Notice of Violation to the representative. This Notice of Violation requested that the developer provide a form of security to Taney County in compliance with the provisions of both RSMo. 64.825 and also Article 8, Section 6 of the Taney County Subdivision Regulations.

Following the sending of the Notice of Violation, representatives from Taney County met with and corresponded with representatives from Emerald Point, LLC, at various times throughout August, September and October. The written correspondence has been included in the Board of Adjustment Packet.

On September 21, 2016, after discovering that construction was continuing on the roadways within Phase XII of the Emerald Pointe Subdivision without the provision a valid security to Taney County, the Planning Administrator issued a Stop Work Order for any road construction activities within the Emerald Point Subdivision.

Now Emerald Pointe, LLC – Shane Naugher is appealing said Stop Work Order. This appeal application was originally scheduled to be heard by the Board of Adjustment on December 21, 2016. However, the applicant requested to postpone the hearing until January 21, 2017, in order to ensure that all parties representing the applicant are able to attend the public hearing.

**GENERAL DESCRIPTION:**

The subject property is the road rights-of-way within Phase XII of the Emerald Pointe Subdivision.

**REVIEW:**

The representative Vincent F. O’Flaherty is seeking an appeal to rehear the Board of Adjustments non-decision on the appeal hearing January 18, 2017 on the appeal of the Stop Work Order on all on-going road construction activities within the Emerald Pointe Subdivision Phase VII, until such time that a form of security is provided to Taney County that is in compliance with the provisions of both RSMo. 64.825 and Article 8, Section 6 of the Taney County Subdivision Regulations.

Article XIII. VOTING.

- a. Each Board of Adjustment member shall be entitled to one vote on all issues presented to the Board of Adjustment. It shall require the concurring vote of at least three (3) members of the Board of Adjustment to constitute a decision of the Board of Adjustment

On January 18, 2017 a motion to approve the appeal of the Planning Administrator’s Stop Work Order issued on September 21, 2016 for the road construction in Phase XII was made and seconded with the following changes to the Staff Recommendations: #2 be removed and #3 be modified to allow acceptance of an estimate be presented to the Planning Staff by Tom Boyce for the Itemized Cost Estimate. With three (3) of the four (4) Board members present the vote was two ayes and one nay. The appeal was not approved. The Stop Work Order will not be removed.



## **STATUTORY REQUIREMENTS OF APPROVAL OF AN APPEAL:**

Per the requirements of the Missouri Revised Statutes the Board of Adjustment shall have the following powers and it shall be its duty:

To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official in the enforcement of the county zoning regulations;

In exercising the above powers, the board may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may take such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

Any owners, lessees or tenants of buildings, structures or land jointly or severally aggrieved by any decision of the board of adjustment or of the county commission, respectively, under the provisions of sections 64.845 to 64.880, or board, commission or other public official, may present to the circuit court of the county in which the property affected is located, a petition, duly verified, stating that the decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief therefrom. Upon the presentation of the petition the court shall allow a writ of certiorari directed to the board of adjustment or the county commission, respectively, of the action taken and data and records acted upon, and may appoint a referee to take additional evidence in the case. The court may reverse or affirm or may modify the decision brought up for review. After entry of judgment in the circuit court in the action in review, any party to the cause may prosecute an appeal to the appellate court having jurisdiction in the same manner now or hereafter provided by law for appeals from other judgments of the circuit court in civil cases.

### **BOARD OF ADJUSTMENT OF TANEY COUNTY MISSOURI -BYLAWS-**

#### **ARTICLE XVI. APPEALS TO DECISIONS MADE BY THE BOARD.**

- a. Any interested party may, in writing and delivered to the Secretary of the Board within seven (7) days of the posting of the Board's decision in the office of the administrator (or the Board), request that the Board reconsider on the record any decision which adversely affects such party. Requests for Reconsideration will be heard at the next regularly scheduled Board of Adjustment meeting. The Board shall not grant a party's Request for Reconsideration if that party did not appear at the original hearing and does not demonstrate that substantial injustice would result as a refusal to grant such Reconsideration request. Granting of the Request for Reconsideration

shall act as a nullification of the Board's previous decision.

- b. Any interested party aggrieved by a decision of the Board may request a rehearing . The request for rehearing shall be in writing and within seven (7) days or the posting of the Board's decision in the office of the Secretary of the Board. Rehearing Requests shall be heard at the next regularly scheduled Board of Adjustment meeting. The Board shall not grant such request for rehearing to any party who did not appear at the original hearing and who cannot demonstrate that there is new evidence that was not in existence at the time of the original hearing or was not available to the person making the request because another interested party had prevented the discovery of such evidence and because such evidence could not have been discovered by the party making the request through diligent efforts on his/her part. The decision of the Board to grant such request for rehearing shall act as a nullification of the Board's previous order, and the Board shall direct the Administrator to have the appropriate notices given for the rehearing .

**LAW OFFICES OF VINCENT F. O'FLAHERTY,  
ATTORNEY, LLC**

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VINCENT F. O'FLAHERTY  
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"fortuna leval foribus"

January 24, 2017

Taney County Board of Adjustment  
P.O. Box 383  
Forsyth, Missouri 65653

Rc: Emerald Pointe, LLC Appeal of Issuance of Stop Work Order  
Case No: 2016-0002A

Dear Sirs:

Please let this letter serve as the Reconsideration Request of Emerald Pointe, LLC to the Board action and decision taken after public hearing on January 18, 2017 denying Emerald Pointe's appeal of the issuance of a Stop Work Order issued on September 21, 2016. This request is made pursuant to Bylaw ARTICLE XVI (a) permitting requests for reconsideration of decisions made by the Board. Emerald Pointe requests that this Reconsideration Request be heard on Wednesday February 15, 2017 at the next Board meeting. In support of this request Emerald Pointe states as follows.

We understand that the Bylaws of the Board of Adjustment at ARTICLE XIII VOTING state:

- a. Each Board of Adjustment member shall be entitled to one vote on all issues presented to the Board of Adjustment. It shall require the concurring vote of at least three (3) members of the Board of Adjustment to constitute a decision of the Board of Adjustment. (Emphasis added)

The plain and ordinary meaning of "concurring vote" is one in which three or more members agree. In other words, the three or more members must agree to either deny or grant an applicant's appeal or request. If a three member board votes 2-1 to approve an application or appeal, under the Bylaws the three members have not all "concurred" in their vote and the appeal is neither granted nor denied. In order to deny the appeal all three members must vote in favor of denying the appeal.

At the hearing on January 18, 2017, the three member board voted 2 to 1 in favor of approving Emerald Pointe's appeal with special requirements as made by way of an amended motion. The Commission staff incorrectly announced that Emerald Pointe's appeal thereby

failed and was denied. This announcement was procedurally incorrect under Bylaw ARTICLE XIII (a). Instead, what staff should have done is announce that three or more board members had not "concurred" in any action and as a result Emerald Pointe's application and appeal pertaining to the Stop Work Order of September 21, 2016 should have been tabled and continued to the next hearing. Until three or more board members have "concurred" on the action to take, then Emerald Pointe's appeal of the Stop Work Order is still pending before the Board of Adjustment.

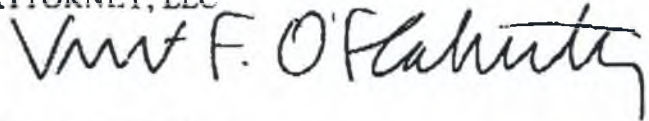
Pursuant to Bylaw ARTICLE XVI (a) Emerald Pointe hereby seeks reconsideration of the decision of staff and the Board made on January 18, 2017. Emerald Pointe requests that the Board reconsider on the record the decision made on January 18, 2017 which adversely affects Emerald Pointe. Emerald Pointe is being adversely affected by the Stop Work Order because no construction can be performed at Phase 12 or anywhere else at Emerald Pointe while the Stop Work Order remains in place. The fact that three or more members did not "concur" on January 18, 2017 to deny Emerald Pointe's appeal of the Stop Work Order means substantial injustice will result if staff and the Board do not grant this Reconsideration Request. Emerald Pointe requests that this Reconsideration Request be heard at the next Board of Adjustment hearing on Wednesday February 15, 2017.

In the alternative, Emerald Pointe requests a rehearing under Bylaw ARTICLE XVI (b) of its appeal of the Stop Work Order. Emerald Pointe requests that the rehearing be heard on February 15, 2017.

Thank you for consideration of these requests. Please contact the undersigned if you have any questions or require additional information.

Very truly yours,

LAW OFFICES OF VINCENT F. O'FLAHERTY,  
ATTORNEY, LLC



Vincent F. O'Flaherty

VFO:ed



Posted 01/24/2017

**TANEY COUNTY BOARD OF ADJUSTMENT**  
**APPEAL OF PLANNING COMMISSION STOP WORK ORDER DATED**  
**SEPTEMBER 21, 2016**  
**PROJECT: ROAD CONSTRUCTION EMERALD POINTE PHASE XII**  
**APPLICANT: EMERALD POINTE, LLC**  
**REPRESENTATIVE: VINCENT O'FLAHERTY**  
**BOARD OF ADJUSTMENT CASE NUMBER 2016-0002A JANUARY 18, 2017**

On January 18, 2017 a motion to approve the appeal of the Planning Administrator's Stop Work Order issued on September 21, 2016 for the road construction in Phase XII was made and seconded with the following changes to the Staff Recommendations: #2 be removed and #3 be modified to allow acceptance of an estimate be presented to the Planning Staff by Tom Boyce for the Itemized Cost Estimate. With three (3) of the four (4) Board members present the vote was two ayes and one nay. The appeal was not approved. The Stop Work Order will not be removed.

Staff recommendations made with the motion had the motion passed were:

**STAFF RECOMMENDATIONS:**

If the Taney County Board of Adjustment approves the appeal of the Planning Administrator's Stop Work Order issued for all on-going road construction activities within the Emerald Pointe Subdivision, the following requirements shall apply, unless revised by the Board:

1. The Stop Work Order issued for all on-going road construction activities with the Emerald Pointe Subdivision shall be released in writing by the Planning Administrator.
2. The applicant shall submit **Engineering Construction Plans** for the streets and storm sewers within Phase XII of the Emerald Pointe Subdivision to the Taney County Road & Bridge Department.
3. Once the Engineering Construction Plans have been reviewed and approved by the Taney County Road & Bridge Department, the applicant shall submit an **Itemized Cost Estimate** for the improvements in question to the Taney County Planning Department office.
4. Once the Itemized Cost Estimate has been reviewed and approved by the Planning Department office, in conjunction with the Road & Bridge Department,

the applicant shall then submit a **Performance bond** from a qualified insurance or bonding company, an **Irrevocable Letter of Credit** from a certified lending institution or **cash bond** in an amount sufficient to pay the estimated cost of the required improvements plus ten percent (10%)

5. Compliance with all of the other provisions of the Taney County Development Guidance Code.
5. The Decision of Record shall be filed with the Taney County Recorder of Deeds Office within 120 days or the approval shall expire (Chapter 7.3.4 Taney County Development Guidance Code).

#### Taney County Board of Adjustment Bylaws

#### Article XIII. VOTING.

- a. Each Board of Adjustment member shall be entitled to one vote on all issues presented to the Board of Adjustment. It shall require the concurring vote of at least three (3) members of the Board of Adjustment to constitute a decision of the Board of Adjustment

#### ***The following summarizes the Findings of Fact and Conclusions of Law of the Taney County Board of Adjustment:***

The Board based its decision upon the requirements of Missouri Revised State Statutes and the Board of Adjustment Bylaws, which grant the Board the power to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official in the enforcement of the county zoning regulations. The Board did **not** find, beyond a reasonable doubt, that there was an error of law that had been committed by the Taney County Planning Commission to approve the appeal of the September 21, 2016 STOP WORK ORDER for Emerald Pointe, LLC Phase XII.

Per the provisions of the Board of Adjustment Bylaws, any interested party may, in writing and delivered to the Secretary of the Board within seven (7) days of the posting of the Board's decision in the office of the administrator (or the Board); request that the Board reconsider on the record any decision which adversely affects such party. Requests for Reconsideration will be heard at the next regularly scheduled Board of Adjustment meeting. The Board shall not grant a party's Request for Reconsideration if that party did not appear at the original hearing and does not demonstrate that substantial injustice would result as a refusal to grant such Reconsideration request. Granting of the Request for Reconsideration shall act as a nullification of the Board's previous decision.

Per the provisions of the Board of Adjustment Bylaws, any interested party aggrieved by a decision of the Board may request a rehearing. The request for rehearing shall be in writing and within seven (7) days of the posting of the Board's decision in the office of the Secretary of the Board. Rehearing Requests shall be heard at the next regularly scheduled Board of Adjustment meeting. The Board shall not grant such request for rehearing to any party who did not appear at the original hearing and who cannot demonstrate that there is new evidence that was not in existence at the time of the original hearing or was not available to the person making the request because another interested party had prevented the discovery of such evidence and because such evidence could not have been discovered by the party making the request through diligent efforts on his/her part. The decision of the Board to grant such request for rehearing shall act as a nullification of the Board's previous order, and the Board shall direct the Administrator to have the appropriate notices given for the rehearing.

Per the provisions of RSMo 64.870, "Any owners, lessees or tenants of buildings, structures or land jointly or severally aggrieved by any decision of the board of adjustment or of the county commission, respectively, under the provisions of sections 64.845 to 64.880, or board, commission or other public official, may present to the circuit court of the county in which the property affected is located, a petition, duly verified, stating that the decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief there from. Upon the presentation of the petition the court shall allow a writ of certiorari directed to the board of adjustment or the county commission, respectively, of the action taken and data and records acted upon, and may appoint a referee to take additional evidence in the case. The court may reverse or affirm or may modify the decision brought up for review. After entry of judgment in the circuit court in the action in review, any party to the cause may prosecute an appeal to the appellate court having jurisdiction in the same manner now or hereafter provided by law for appeals from other judgments of the circuit court in civil cases."



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### **MINUTES TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, JANUARY 18, 2017, 6:00 P.M. COUNTY COMMISSION HEARING ROOM TANEY COUNTY COURTHOUSE**

#### Call to Order:

Chairman Dan Boone called the meeting to order and established a quorum with three members present. They were: Dan Boone, Howard Kitchen, and Tony Mullen. Staff present: Bob Atchley and Bonita Kisse-Souttee.

The statutes which govern the Board of Adjustment were read by Mr. Atchley and the speakers sworn in before the hearing.

A motion was made by Mr. Mullen to table the election of officers until a full board is present. Seconded by Mr. Kitchen. The vote to table election of officers was unanimous.

Mr. Atchley read a statement explaining the public hearing procedures and placed the Taney County Development Guidance Code into evidence as Exhibit A, the staff report as Exhibit B, and the staff files including all pertinent information as Exhibit C, the Board of Adjustment bylaws as Exhibit D.

Mr. Boone explained that since only three members were present the applicant could choose to postpone until a full board is present. Legal counsel for the applicant stated that they would choose to proceed.

#### Public Hearing:

Emerald Pointe, LLC – Appeal; a request by Shane Naugher, and Bruce Menke, represented by legal counsel Vincent O’Flaherty to appeal the Planning Administrator’s decision to place a stop work order on all on-going road construction activities within the Emerald Pointe Subdivision, until such time that a form of security is provided to Taney County that is in compliance with the provisions of both RSMo. 64.825 and Article 8, Section 6 of the Taney County Subdivision Regulations. Mr. Atchley read the staff report and presented pictures and a video of the site.

Ken Bell who is a property owner representing the homeowners in Emerald Pointe shared a summary of the interactions between them and the applicants. The applicant stated at that time, he wanted to turn over all responsibilities to the homeowners because he didn’t have the money to finish the requirements of the



County road standards. The property owners association told him that by law he was responsible to them not the other way around. The property owners would like the Board to uphold the requirements of the Code to protect them.

Steve Prock, who lives at Emerald Pointe, explained that the developer had not met most of the County Requirements throughout the development, and would like the Board to uphold the regulations. He pointed out that procedure as he understands it would be the developer must post the bond before construction begins and if he doesn't construct according to standards the bond must be used.

Vince O'Flaherty, legal counsel for the applicant addressed the Board regarding granting the appeal and why it should be granted. He stated that this is a private subdivision and that Taney County has no public road responsibility in his opinion. He addressed four topics, history of Emerald Pointe, negotiations with staff, issues, and the proposed resolution of the problem. He stated that the statutes in place at the time that the bond was posted that pledging stock was acceptable. His argument was that no regulations were violated which were in place at the time grading took place and no one objected to any work being done at the time. A meeting took place with Mr. Atchley in August regarding road construction and bonding. Mr. O'Flaherty stated that until that time the applicant didn't know he needed engineered drawings, and that by then it would have been futile. He quoted from the road standards which state that gated communities should be treated differently and that it suggests or encourages a developer to construct according to county standards. Bankers for the applicant were present to report that Emerald Pointe has sufficient funds to finish the roads in the Phase 12 section. Mr. O'Flaherty asked that the stop work order be rescinded, the bond accepted, and current roads be approved. He explained how by not receiving approval the harm that would cause the applicant. In his opinion Mr. Naugher is trying to do the right thing.

After discussion Mr. Boone asked the county legal counsel if staff could hold the applicant to the rules and regulations of the County. Mr. Cotty stated that staff could certainly do that. They are public roads and that makes them susceptible to the regulations and statutes in his opinion. He explained why a performance bond is needed, and where the flaw in the request lies. Mr. Boone asked Mr. Tom Boyce who is the contractor for the project, if he is able to proceed with construction and how much work yet needed to be done. Mr. Boyce answered the questions and reported that these roads were being done just like the other roads in the subdivision. He stated that work needed to be completed to keep the soil from eroding, but would not be up to county standards. Mr. Boone asked the board if they were prepared to make a decision at this meeting. Mr. Kitchen made a motion based upon the proposed decision of record to grant the appeal only if staff recommendations are included. Mr. Boone seconded. Discussion followed regarding slope. Mr. Kitchen stated that history shows that a proper bond should be posted. Mr. Boone stated that he trusts the contractor and the bankers. Mr. Mullins pointed out that the road standards are for everyone's protection and asked



Mr. Boyce if he thought the slopes of the roads were safe. Mr. Boyce stated that it was not an ideal situation, but he had seen roads constructed that steep but it would not be his choice. He stated that now it is impossible to reconstruct the roads after they had been constructed to this point. If the applicant can't proceed he can't afford to go back and redo them in Mr. Boyce's opinion. After discussion Mr. Kitchen amended his motion to include the cost estimate to be done by Mr. Boyce and remove item two in the proposed decision of record. Mr. Boone seconded. The vote was two ayes and one nay with Mr. Mullen voting nay. The appeal was not approved with only three members present. The stop work order will not be removed.

#### Review and Action:

Minutes, December 2016; with no additions or corrections a motion was made by Mr. Kitchen to approve the minutes as written. Seconded by Mr. Mullen. The vote to approve the minutes was unanimous.

#### Old and New Business:

Mr. Atchley announced to the Board that he has turned in his resignation and this is his last meeting. There are no requests for February at this time. Discussion followed regarding the applicants next option.

#### Adjournment:

With no other business on the agenda for January 18, 2017 the meeting adjourned at 7:09 p.m.