

NEWINGTON PLANNING BOARD MEETING

Minutes

Monday, September 11, 2006 @ 6:30 P.M.

- 1. Call to Order:** Denis Hebert, Vice Chair Person called to order the meeting at 6:38 P. M.

Present: Denis Hebert, Jack Pare, Vincent Frank, John Frink, Chris Cross, Peggy Lamson, Gail Klanchesser, and Tom Morgan, Town Planner.

Not Present: Sandy Hislop Chair Person, and Cosmos Iocovozzi

Guests: Dennis Kost, Fox Run Mal; Richard Talbot, Westinghouse Electric; Philip Pastan, The Richmond, Co., Inc.; Ken Linseman, Kane Co.; Don Rhodes, Norway Plains Assoc.; John Tretter, NPD; Robert Murphy, Wadleigh Storr; David George, WD Partners; Parker Harrington, Texas Roadhouse; Rick Stern, Mr. Pelech, Dotty Watson, Gail Pare, Barbara McDonald, Greg Kirsch and David Choate, RE Broker and Charlie Smart, Building Inspector.

- 2. Minutes of the meeting of August 28th**

Received minutes at the meeting and suggested putting this off until after the meeting or placed on next weeks agenda.

- 3. Correspondence**

Denis suggested going through package. Texas Roadhouse has forwarded some letters from Utilities and NHDOT. Received a letter from Newington HDC to Greg Kirsch regarding the deRochemont House; a memorandum from the Building Inspector regarding Storage Trailer Regulations; a letter from Robert Upton another Hydro applicant and received some information on the DOTS Public Hearing to discuss proposed alterations to the Spaulding Turnpike from Exit 1 through 6, including the Little Bay Bridges in the Town of Newington and the City of Dover. The meeting will be held on September 21st and it's important to be there. Received a letter from Denis to Michael Haberski relative to the contents of the site plan application. Received a Memo from Michael Desrochers, P.E., Project Manager of Texas Roadhouse, and 11 pages of comments regarding Texas Roadhouse Restaurant Site Plan Submission. Received a Technical Memorandum re Proposed Restaurant and Retail Development, Newington, NH, Traffic Peer Review from Peter J. Vasiliou, P.E., PTOE, and a letter from Westinghouse requesting asphaltting parking lot on Newington Tax Map 20, Lot 3. Also received Notice of Public Informational Meeting regarding plans to relocate and renovate the Louis C. deRochemont House on September 28 at 7:00 P.M. They are eligible for the National Register and one of the procedures is to have a public meeting.

4. **Old Business: Sign definitions**

Tom: Charlie Smart, the Building Inspector, is before the Board to try to get some guidance from the PB in interpreting the sign ordinance and is seeking some direction. Discussion on signs ensued Tom read Article 2, Page 7 under *Sign: "Any device, structure, banner, fixture, placard, or painted surface: A) Which uses graphics, symbols, and/or written copy to advertise or identify any establishment, product, goods, service, or activity."* Tom: You could make a strict interpretation and include all these lights and sign. Denis' concern is light pollution. Jack gave his views on the signs/formula. Tom: The formula is based on the size of the building. Denis: Lighting is an issue, we asked for a lighting plan and it did not show up in their plan when we asked for it and they need to come back and see the Board and whether or not the Board wants to act upon it at that point. Denis: Put lighting aside, other than the trim and need to consider what's going on. You have 2 things. You need to consider the Logo; it looks like popcorn and the Regal Cinemas Stadium 15 décor behind that. Even if we don't like it, we have allowed people to be creative. Denis went on to discuss the signage/footage. Charlie: Take the largest rectangle (or two can be used) that encompasses all the words. Denis Kost: His concern is he wants to be able to go back to the Regal people and tell them what they have to do to fix this and make it a go. The other thing is these things have been painstakingly planned over a very long period of time and to change them now would be very difficult. Denis: This was discussed previously. Denis Kost: What should he tell Regal people to make this a go? Tom: How does the rest of the Board feel? Vincent: From what he can see all of this is cosmetic (neon lighting not used to light things up just used as a cosmetic effect and don't see any reason why the Board has to be concerned about the fact that this never showed. He's done a lot of this type work and it's all-cosmetic. The only thing he can see as far as Regal Cinemas and Regal 15 is a problem, but the majority is cosmetic. Discussion ensued. Tom and Charlie will be checking this out. "Sale" is a freebee if you draw a rectangle around "Sale". Charlie: At some point, it might be good for the Board to come up with a sign plan. Denis: Charlie, you have a very good point there. How do we put that into the ordinance Tom? Tom: That's something you can do at a Public Hearing. Denis: Let's do that at the next Public Hearing. Tom: He's trying to bring this to closure. Tom: Charlie and I have enough feedback for the signage. Tom's other question for the Board is; Do you want us to call Regal in before the PB again to review their lights? Denis: Yes! Tom: Anyone else have any opinions? Tom will contact Regal tomorrow and bring them back before the PB. Charlie and Tom will carefully measure the logo and the lettering. Discussion ensued. Denis: The PB needs to go back and revisit what was signed. Denis: asked Tom to put this on the Agenda for the PB next work session, Pending Business.

5. Public Hearings:

A) *Access to Smokey bones and Pizzeria Uno*

Phil Pastan: If you recall they were here several weeks ago and essentially looking to close two of their curb cuts on the Piscataqua Drive. Mainly because of the concern of people coming in off of Woodbury Avenue and taking a left in an area that wasn't designed for taking a left into the parking lot. Motion was made to close it and closing makes it very difficult as owners and for the tenants to operate. It's a critical piece for the tenants to be successful on the site and for them to continue to keep the tenants interest. Based on that motion, Phil got involved. Don Rhodes came up with modifications. They came before the PB again and the PB had additional suggestions and they are prepared to add those mitigation measures to their program, which was signage. Don went on to address the PB about the signage. Phil suggested adding additional right turn only signs placed at the entrance of the driveway and additional signage underneath the "Do Not Enter" sign. They also had another suggestion and proposed putting a speed bump to deter/discourage people from coming in on that side. He's prepared to do that if it's necessary. Also suggested (pointing at the plan) cutting the curb cut back further from the light as well which Don has the exact footage (about 40 feet). The reason for doing that is they observed the intersection on two different occasions, one during the evening peak period there was heavy traffic out at the site and midday peak period. The worst combination of conditions is during midday period (12-1:30 P.M.). He went on to discuss this to the PB. Phil did reach out to the PB consultant and encouraged him to come if there were more suggestions, they could work it out with their consultant and the PB consultant felt it wouldn't be necessary and he would put his comments in writing and willing to receive those as well. They did receive a letter with the comments. He overwhelmingly supported their mitigation measures and has no changes to the additional ones that were recommended. He did receive a call from a PB member who asked him some questions and he believed he fulfilled the questions that were asked. It's critically important to them to make it completely safe and workable for everybody and obviously not to close their exit. Discussion/explanations ensued. Ken Linseman addressed the Board about the left hand turn. Phil explained this to Ken. Denis: Appreciated all the work they did and were very cooperative and seen a different approach. Denis spoke with Mike Desrochers of Edward & Kelcey on this and looked at the ordinances and asked for information, etc. and also asked for one piece of information and Denis asked the question which they didn't receive yet. Typically on the Rockingham County and DOT curb cuts, only one curb cut is allowed for a business. The understanding is why do you need to have two and be different from everybody else? The other issue is he couldn't stand up on safety issue because there is not safety history because its relatively slow moving

traffic and the flow isn't good. Looking at a safety form of view it's something basically that the Board has to make the determination that whether or not the flow is sensible/reasonable. The PB has to look at and make those determinations and the reason why the Board also brought up the reasons for where they originally approved this and looking at it, again, why do you need to have two curb cuts? Denis, reiterated, why do you need to have two curb cuts? Phil, the reason why, from the tenants lease able perspective, they need to have the two curb cuts. It works better for the customer and they have two businesses on one property. Discussion ensued. Denis: Any other comments? John: When you go to that property it's pretty unique in the fact that to an untrained eye you would almost think that there are two restaurants on one lot (you have to pass one restaurant to get to the other). That's the way it looks and that's the way it appears. He doesn't necessarily believe this proposed change will preclude people from going and turning in there but we should allow them as we have in the past and go on a temporary trial basis so they don't lose the tenants they have and to keep in mind it's two businesses, two curb cuts. It's a strange situation to see them as two separate lots. Rick Stern: The entrance doesn't have any streetlights there. Phil: If we feel it's necessary, we can do that. Chris: Light entrance, not exit. Chief Tretter: The Olive Garden is the most dangerous on Woodbury Avenue. It's much busier than Piscataqua. His feeling is that there have been two curb cuts since they have been there. It hasn't been a safety issue. It's an easier road to get on to. Most businesses have two curb cuts. Denis: Gave his views on this. Discussion continued. Denis: Any other questions? Denis: ***Closed the Public Hearing and went into the regular meeting.*** Denis: One of the things he looks at is to resolve these issues. Denis went over what the proposal was. The sign and light recommendations at the main entrance where they are proposing will definitely help. The issue comes down to it doesn't make sense to allow the traffic flow to continue to exist and probably as time goes on it will become more and more of a safety issue and at that point it will be more difficult than now and the PB has a decision to make and it's going to last in the future. The issue can be to allow it now or possibly put a condition on it if the situation deteriorates in the future, but the Board still maintains it's right to pull the curb cut as the PB has already done and rests solely with the Board. Many restaurants have two curb cuts. As John said, it's a unique situation, two businesses on a lot. The applicant was willing to take all of this when they came to us, to go ahead and put these two businesses up with this condition that the curb cut would be taken away. That question was specifically asked and they said would live with that. The Board has a decision to make and make a motion because they need to know. Per Peggy, Denis captured everything. Denis would like to get a motion on the table. Chris doesn't think it's a good proposal and gave his views. Jack: Takes the opposite tack in this particular case and feels it's a

reasonable enough proposal to give them more time. What they have proposed looks to be good as you can make it under the circumstances and if it does become a problem, can close it in the future. Vincent: This has been discussed for so long, he sees the signs going up "Do Not Enter" and proposed to take a vote on it and if it persists, close it. Denis: any other comment? Would like to entertain a motion and then to discuss the motion and act on it. John: Moves that the PB accept the most recent proposal for making the entrance/exit an exit only and if in the future it becomes a safety concern, the PB to have the ability to close it. Peggy seconded it. Gail would like to make an amendment to include the changes of the speed bump and lights discussed in the Public Hearing. Tom is concerned about part of the motion. The original decision of the Board three years ago said that it would be closed if the Chief finds it to be problematic. Denis had made a motion at that time that the particular decision should fall back on the PB. Tom believes the PB may not have the authority to change that stipulation tonight. If you really want to pursue that Tom suggests talking to someone knowing more about the law than he does. Denis: What he would like to do at this particular point was to ask the applicant if he was willing to live with it and get it on public record. Phil: He's not prepared to do that. Tom's advise to the Board is, if you are going to word the motion that way you might want to talk to town counsel first. The other alternative is to go back to the original stipulation, which was to leave it in the hands of the Police Chief. Peggy agrees to take it up with counsel. John withdraws his motion. Wants to make sure it's legal. Someone else can make a motion with this. Denis: The person who seconded it, are you okay with this? Peggy: Yes. Denis: Is there another motion to take these comments into consideration. Jack: Moves to accept the most recent proposal as described by Phil Pastan with the addition of the lighting at the entrance signs and the speed bump that was discussed in the Public Hearing. Gail seconded the motion. Denis: Let's have a discussion right now. Tom: Just a general observation, the discussion that he's heard for the last several months has focused on the problems and wants to congratulate the PB, it's something positive from the entire development and that is the Board did succeed on preventing more curb cuts on Woodbury Avenue and the Board's determination that it came out that way. That was more important. Denis: Any other comments? Denis: So we get it right, the motion again is for lighting, speed bumps and going to have signs as they proposed and silent on original curb cuts they that can be taken away with the Police Chief comments. So basically, if traffic becomes an issue, we can ask them to come back at any time. Jack: The motion was to approve the most recent plan tonight. Denis: Any other discussion? All in favor, Aye, anyone opposed? Chris opposed. *Five were in favor, One opposed.*

B) Proposal by Texas Roadhouse for a restaurant at the corner of Fox Run Road and Woodbury Avenue

Mr. Pelech: Would like to go over the set of revised plans and has done everything the PB has asked them to do to date. He turned it over to the engineers. Dave George from WD Partners. He's prepared to go through each of the issues on the Site Plan Submission. He's highlighted eight. Dave gave them a quick update and sent in a revised grading plan. Went on to discuss if it's a reduced slope. Other thing that they did, it's the overall site sheet. The other thing they did on the overall site layout is they have the building bonds ready to be submitted for building permit review. TR is now using and has eliminated a landscape area to have an outside seating arrangement they would like to use, have a patio out there. Also spoke with utility providers as requested and the Fire chief did want hydrants which would be located on the drawing and included an additional dumpster location for the tenant in the rear, lost a spot there. Finalize the entrance location. With these modifications they reduced the parking complex by two parking spaces, but they exceeded their requirements. Dave gave the Board a quick update on the utilities. Have letters that are approved in package tonight. This satisfies the utility providers, including the backup letters. Gail asked about the letter from DOT stating that they were not going to maintain their culvert. Dave: It's something the property owner will maintain. Denis: How do we incorporate it so it is put on the deed and stays on the deed? Mr. Pelech: He feels having a note on the site plan gives the Board more power than on the deed and make that a condition of approval. What you could also do, which they do in many communities, is require the applicant at the time prior to receiving the permit, to file with either town officers or the Department of Public Works a Maintenance Schedule for cleaning up the culvert (grease & oil traps, on site catch basins, etc.). Discussion ensued.

Dave: Wants to bring up the list. First: General Comments, 1.1; access to the cemetery being preserved. Denis: A concern he has was how high is the wall going to be regarding erosion, giving respect to the family and if it's okay with the family. The grading plan depicts a retaining wall approximately 8' in height separating the parking area (lower in height) from the area surround the cemetery. Question is what type of wall would it be. Dave stated that it's a concrete wall with reinforcements. Next item is the number of accessible parking spaces that have been met, however, due to the spaces being distributed between separate entrances consideration should be given to providing one van accessible space at each location. Accessible parking spaces are dimensioned as 8' wide. They should be a 9' minimum in width as per the Zoning Ordinance, Article IX, Section 3 - Parking lot dimensions. Discussion ensued. Denis: Any other comments? None. Dave: Another comment brought up was the sign size/signage submitted second time, under

review and going back into voting tomorrow night. Denis: Wants to see all the illumination, graphic, free standing signs, etc.

Dave: The next, 2.4.2 Site Grading Plan, there were comment about site grading. Their Intent was not to exceed beyond 5% and after reviewing it he can see a couple of locations where it got a little bit tighter than that. We would maintain the areas at 5% maximum. Discussion ensued. Provide spot grades at all corners of walkways to insure design grades for accessible routes are in conformance with the requirements of the ADAAG.

The next is 2.5.7 Check for need of a driveway culvert. Discussion ensued on which way the grade comes (coming downhill and out of driveway and would be maintained), etc. Dave doesn't feel there will be much drainage. Denis gave his views on swales/culverts. Discussions continued.

Another comment was 2.7.2 about the grease interceptor located in the loading zone for the van accessible parking space. Maintenance functions will render this space unusable. Relocate interceptor outside of the loading zone.

The next is 2.8 the Site Illumination Plan and discussion ensued. Keep outdoor lighting in mind.

Last two are the Storm water Management Report that was also discussed. Need clarification on 2.11.7 Reconcile Peak Discharge of 11.06 cfs for 2-year event into the Basin versus peak discharge of 9.73 cfs for 10-year event into the Basin.

John wanted to go back and discuss 2.3.3 Loading spaces are now shown on the plans. What are the anticipated delivery times for the site and what is the impact to site circulation and parking? Dave: There aren't any loading docks, just two ramps in rear. It's a double traffic isle.

The deliveries are really late at night. Mr. Pelech clarified about deliveries being made. Discussion continued. Dave: The other piece that he didn't address is the Traffic Impact Analysis and Access Study prepared by Vanasse & Associates. They aren't here since he just got back to them today first hand. The report also agreed with what Vanasse had done and had questions if they needed any additional information and have already contacted DOT so that they can get input.

Denis: Couple of questions, fire related regarding a fire alarm system. Dave went on to explain that they are going to have their own system.

Denis: Also do you have enough restrooms, are you meeting requirements there. Dave: They have to go by the State Building code and it will be met. Denis asked how many egress doors. Dave: Two out front for customers and two in the back for loading/kitchen help, etc.

Denis: How big is the sign? Dave: It's within the guidelines. Jack: Has concerns on light pollution. Discussion went on about shining lights/illumination, lights should shine down, not up and about how many flags will be put up. Gail Pare spoke from the audience: Location at top of hill regarding lighting. How is the lighting going to effect people

coming up the hill toward the restaurant even with the light shining down it would be hitting people in the eye. Dave: They will be using a sconce and the light doesn't spread out far. Denis: Gail, this has been addressed before you came in and that the lights should be place down. Denis: Question has not been answered regarding outdoor lighting. What are the hours for outdoor lighting? Dave: One hour after closing. Denis wants a commitment to it. Chris: The area he wanted to talk about is the walk ability of the sidewalks. Discussion ensued regarding the sidewalks/crosswalks. Denis: Any questions from the Public. Richard Talbot: He has worked 30 years across the street and is enthused with sidewalk ideal. There are a large number of people walking on Shattuck Way. Regarding Woodbury Avenue, they tried to discourage walking it. He would like to see something done/addressed. Mr. Pelech doesn't have a problem with it and think it's a good solution for a lot of problems and allows them to incorporate it with the landscaping/driveway. Denis went on to discuss the fund for sidewalks and asked TR to make a contribution to the fund. Discussion continued. Denis: Does the Board want to act on this tonight or wait till everything gets resolved? Dave: We will be meeting with the CC on Thursday night and would like to see how other Boards act and then the PB makes the final decision. Denis: Let's meet in two weeks. You have been a model applicant. Discussion went on. Denis: His concern is about the slope of the driveway and would like to have a specific comment from Mike Desrochers, just wants to make sure it's okay. Denis: Move the hearing to the 25th and have all this issue resolved and wants to move on this quickly.

5. Preliminary Discussions

A) Proposal by Tyco and Astoria Properties LLC for a 3-lot subdivision of Tyco's Shattuck Way property and for the re-location of the Louis deRochemont homestead to 100 Shattuck Way.

Greg Kirsch with Astoria Properties. He has contacted Tyco to acquire some of their land and be their developer. This is his second time at the meeting with a proposal regarding the last remaining piece of industrial zone land. It's the parcel of land that the Louis deRochemont house sits, about 10 acres of land. You'll recall that when he came there in April or May and proposed a sub-division and essentially didn't have a game plan for what was going to happen to the house. The Board asked if Greg could come up with a plan to save the house either in place or to move it and has worked very hard over the last few months to align pieces of the puzzle. Greg gave a brief introduction. He brought before the Board a plan that shows what a magnificently well-developed industrial zone they have. Greg went to point out areas on the map that he placed for everyone to view and pointed out the proposed location he wants to purchase from Tyco and place the homestead on. Tyco has no longer used the house for several years now. They are under pressure

from their corporate offices to reduce their annual expense for taxes, maintenance, and more importantly to take unused assets, their land, and convert it into cash to reduce the amount of assets that are on the books, take the cash and try to reinvest it in the business. They recognize that they could demolish the house and wait for the next project to come along. They really don't want to demolish it. They have been rather flexible. Greg passed out to the Board the sub-division plan. The house can't be moved very far economically. He talked about moving it to the corner of the lot and now that they have an appropriate piece of land there. It will require a bunch of variances and it's on the Zoning Board of Adjustment Agenda next Monday to ask them for variances to allow a 1.6-acre lot in the industrial zone where approximately 4.5 acres would be required. They will be asking them for a variance to allow office space use and because of the size and shape of lot, it's a unique location, and it's specific requirements for a user that they find for the house, there are a number of set back variances to ask the Zoning Board for. Just wanted them to be aware of this and at this stage has no plans for what would go on the larger industrial lot, etc., little premature to start thinking about that. Plans for that lot is to do something zoning compliant and esthetically pleasing and have a unique incentive to pull together this corner of Newington and hope with everyone's feedback he can make that happen. Another piece he handed out is a conceptual site plan for the deRochemont house and adding an addition on it. Greg has an agreement with Whole Life Healthcare, medical providers, which is on the Beane Farm who needs to expand and wants to own their own their space instead of leasing it and to make this project work for them. To do this he needs to expand it as he is showing it on the plan and get them a good amount of parking spaces, approx. 61 spaces, something in that neighborhood needs to happen. Greg continued to explain the buffer/land, etc. He discussed the process. He's made at least an initial presentation to the State and they have accepted the notion given that this is an industrial zone and looking at all the development and the fact that 10 acres is tied up by this house, that moving it is a sensible thing and the focus is really on mitigation of the impact of that moving. Greg goes on to discuss the Historic Commission, etc. He presented a concept on what the house would look like and went on to explain what the house on the site would look like, etc., a Colonial Revival style, two-story addition. Section 106 will require incredible detailed drawings of every room, etc., a long and detailed historic narrative of the house and it's significance which will be put together by a company they are hiring (Preservation Co.). All this documentation goes into an on-line archive. Will have to do a history on the original landscaping, etc. to be recorded and the Board will get something out of it than just having the house just sit there. In addition, they will work with interested parties to try to decide what aspects of the interior of the house can be kept in tack and get feedback from the

Historic Commission and to keep the house intact and use the new space for Whole Life Healthcare. Interesting process and will unfold between now and the end of November. Denis: Concerned about establishing a 1.6-acre zone in an industrial zone and that others would want the same thing, how do you prevent this? Greg went on to explain this and that it's a unique site and that is what's left in the industrial zone. Discussion ensued. Denis: Would like to see them go for a variance for Tyco and reduce the number of variances. Denis: Any comments? Discussion continued on setbacks/easements and reconfiguring parking lot, swales, gas lines, etc. Jack gave his speculations also. Greg is given to the end of the year to acquire this. Denis: Have you looked at any other sites? David Choate, Real Estate Broker of Grubb & Ellis spoke. This is a one shot deal. He is a preservationist and needs a lot of help with this and did look at other sites, but this was the only feasible alternative. He feels this is a win-win solution. Need people to support it. This is a classic case with public interests. The alternative is to do nothing and the house will rot/deteriorate. Greg was able to get Tyco to give away this piece of land. Decisions are being made in New Jersey and they are not really interested in the deRochement house. Denis: Any other comments/questions? Gail Pare gave some comments, including Denis. Jack: This is a preliminary discussion and suggested talking with the town to address the subject-precedent on variances. Discussions continued. Also, Barbara McDonald from the audience spoke. If there ever were a case to go the Board of Adjustment to get a variance, this would be it. There seems to be a situation where the opportunity is here and it will be gone. You have someone who wants to buy and maintain the building and they are getting in some pretty heavy figures for them to come in and take the responsibility. Greg, hopes he can make the case and if he can't it will go back to Tyco. Denis: Needs to give it more thought. Greg concerned about the timing problem. Denis: Move onto the next item.

B) Proposal by Westinghouse to expand a parking lot and improve drainage infrastructure at their Shattuck Way facility.

Richard Talbot, IT & Facilities Manager from Westinghouse (250 employees). They have a two-year long-term lease. He passed out a drawing with yellow highlights. They are requesting an asphalt parking lot on Newington Tax Map 20, Lot 3. They want to asphalt an unpaved section of the existing parking lot situated on land owned by Westinghouse Electric Corp. The area to be asphalted is 16' wide by 141' long, totaling 2,25 sq. ft. The proposed parking is 8' east of the Shattuck Way right of way, 24' from the edge of the road. This area will provide parking for 14 vehicles. A gravel island will protect a gas pipeline marker pole located on the edge of the parking area. Their business has started to boom and there was an article in the Foster Magazine. They want to stay in the area and have a good working

relationship with the Town of Newington. He's been at the company many, many years. Where they have an issue is they have enough parking spots, except when they have their shift change over to the second shift. They overlap one another as Richard pointed out on the plan. They have an issue with drainage. Richard went on to explain the problems they were having re storm drains and they are trying to resolve the water issue. Discussion ensued. Denis: Need to look at water runoff, too close to the river. Denis: Lets move on. Do you want to go to a Public Hearing? Tom: Initial procedure is a Preliminary and then a Public Hearing. Richard is seeing DOT and the Board gave them their blessings.

Discussion on having a meeting on the 2nd Monday in October which is Columbus Day. They will go to the next meeting on October 9th. Vincent made a motion to adjourn. Denis: All those in favor of adjourning, AYE. Jack seconded the motion.
Meeting adjourned at 10:45 P.M.

Respectfully submitted:
Pearl Travis-Sirois, Recorder/Transcriber
File: NPB Minutes 9-1-06