

PRESENT: Vadney, Chairman; Sorell, Vice-Chairman; Bayard, Secretary; Kahn; Flanders; Granfield; Edgar, Town Planner; Harvey, Clerk

Sorell moved, Bayard seconded, THAT WE APPROVE THE MINUTES OF JUNE 28, 2005, AS PRESENTED. Voted unanimously.

PUBLIC HEARINGS

1. **EDNA SWANK:** (Rep. Carl Johnson, Jr.) Continuation of a public hearing held on May 10 and June 14, 2005 for a proposed minor subdivision of Tax Map R10, Lot 22, into two (2a) lots (1.76 ac. and 1.82 ac.), located on Bryant Island in the Shoreline District. Application accepted May 10, 2005.

Vadney – I would like to make a short statement to make sure everybody is aware of the situation. That island has been a building lot so to speak for some time and whoever owns it has the right to put a unit on it. What we are here for is the subdivision of the possibility of adding a second unit so that there would be two units. One unit is currently authorized. That being said, there are many issues that will play into our decision on subdividing that may also play on whether that one is ever developed. There are some logistics issues. They are somewhat as valid for one as they will be for two, but I did want to make clear and make sure everybody knows one is currently authorized and we are now talking about whether it gets the second one. Edgar - Authorized in the context of it being a lot of record. Johnson – I'm here representing Henmor Development LLC and as a point of information, the original application was made under the name of the previous owner, Edna Swank. The property has been sold and is now under the ownership of Henmor Development LLC. The agenda still does say Swank because the original application was made under her name. There are several issues we want to discuss this evening. The original subdivision line creating a two-lot subdivision went straight through the island. That was based on the assumption that we had two units on the island and that the positioning of the division line was rather moot because the total was two. John suggested that because of the way the ordinance is written that each individual lot would have to have 1.0 lot equivalents so I've adjusted the lot line here giving a little extra to this lot so that each one of the lots as you can see now on the chart has one lot equivalent of soil type. It doesn't sound like a major issue, but it does satisfy the requirement that you have 1.0 equivalents. When you do a cluster subdivision, things are different because you don't have to have that and this being a traditional subdivision, that's why we do that. Edgar – I wrote the staff review not knowing whether or not you would be seeking a decision or a continuance so depending on what your objectives are tonight, if you're seeking a decision from the Board,

then I suggest you give an in depth presentation. Johnson – What I do have, Mr. Chairman, is a response to John’s staff review and I do have some responses to the letter that was drafted by Attorney Dietz on behalf of some of the members of the Association and I’ll just briefly go through those and we believe that based on what we have and what we know this evening, we would like to seek a conditional approval and several of the conditions become evident when I address John Edgar’s staff review. The background, as John mentioned, is this island is in Lake Wicwas, is slightly under four (4) acres and as you can see, what we’ve done is a complete site specific soils mapping of the island performed by Randall Shuey of Gove Environmental Services. We came down to the soil types based on 2’ topography and we have developed a soil chart to demonstrate that we have two lot equivalents on the island. We have added the setbacks and as you can see the dark line is the 65’ setback which is the shoreline setback and then the side line setback of 30’. You can see the result is a fairly large buildable area on each lot subject to setbacks, 50’ from non-designated wetlands and those would be for a structure, 75’ would be for a septic system. Don Mercier – I thought the ordinances from the Town said we have to have 125’ setback for the leaching field? Edgar 75’ – 125’ depending on the soil type and slope, it mirrors the Shoreline Protection Act. Mercier – You don’t need a variance to go under 125’? Vadney – We’ll go to that in public hearing in just a little bit.

Johnson – As John mentioned in his staff review, the density on the island in the zone is one lot per 40,000 sq. ft. so we do meet the density requirements for this particular subdivision. The lake elevation, as I mentioned before, we have determined that the State determined level of Lake Wicwas is much further away than the line we’re showing on the plan. What we’re doing is showing a line which is much more restrictive, i.e., will result in houses being further away from the shoreline. What we are trying to do is represent to the best of our ability the level of the water as it normally stands. This is a dammed lake. We did have some comments made by the person who is in charge of controlling the dam and he did mention that he had constructed a gauge of sorts with “0” being the level that the Town of Meredith attempts to keep the level of Lake Wicwas. When we actually did the mapping on the island, the level of water was actually slightly higher than “0” so that would be slightly an even more restrictive line than what we had represented at what they considered to be “0”. We believe that’s a fair representation of the shoreline because we believe the intent of the ordinance is to define the shoreline in a manner such that it is the position of the water at normal high water. Winnepesaukee is determined by a statutory 504.32. We can measure that and do a topographical analysis. We could do the same thing here by measuring the top of the dam and 6’ 4” lower, we could come out with a topographical analysis and produce a statutory state line which would be somewhere between 3 and 4 feet lower than what the normal water level

is on the lake and that is very common with any water body that is a dammed water body. It's very similar to Squam Lake where the level of the lake is kept higher than the natural mean high water of the body. Wetlands have been delineated as we mentioned and we are seeking no relief from setbacks from the wetlands. We have demonstrated that we have buildable areas that meet the requirements of the Zoning Ordinance on each lot without the benefit of any relief from the Zoning Board. Edgar contacted Kate Taylor and also another gentleman at the Loon Preservation Committee and discussed some of the issues that were raised by some of the abutters regarding loon nesting and loon habitats on Lake Wicwas. Lake Wicwas is a very successful loon nesting lake. The Loon Preservation Committee has the largest data base on loon nesting habitat of anywhere in the world. They do not in that data base have any indication that there has ever been a nest on the island. That is not to say there has never been a nest on the island, they just do not have data to support it. Some of the members of the audience that might have been on the lake for a long time might dispute that, but there is none to our knowledge. I had a lengthy discussion with Kate regarding the loon habitat possibilities and potentials on the island and from a practical sense, they mirror those portions of the island that were showing support but no habitat. That's largely because loons can't walk very well, they are not able to get up off of the lake onto shorelines that have steep terrain. They need to nest on areas that are very gently sloped if not at lake level or very near to lake level and so as you can see by the 2' contours, those would be the areas that are noticed here by the wetlands. The entire northwest part of the island which has a steeper face would not be subject to loon nesting habitat, they simply could not nest there. That being the case, the Town of Meredith does have already a 50' buffer around the wetlands that you cannot have any structures in and you cannot do any earth disturbing activities within 50' of those wetlands. What I discussed with Kate and the owners is to develop a scheme where we would institute some additional restrictions in those 50' buffers that would restrict cutting of trees where practical so there would be no removal of the tree bowl, the actual physical portion of the tree that sticks into the ground where the root nests. In certain instances, there may be some limbs for views of the lake that may have to be taken, but those generally, according to Kate, are not issues that would affect loon nesting habitat. So that's a standard which would be above and beyond what's already required by the Board or required by the State of New Hampshire. The Town does have a 25' natural wetland buffer, this would essentially double that to 50' in those areas that immediately surround the potential loon habitat. Whether or not that would attract loons to nest there is anybody's guess. What it would do is demonstrate that the applicants have a desire to work with the Loon Preservation Committee, not

only with the location of those restrictive cutting areas, but also the locations of the docks, trying to get those docks in a place that's practical to the landowner, but also minimizes any potential damage to a loon nesting area. Beyond that, there were several suggestions made and I have taken those suggestions and put them in a form and submitted them to the applicant. One of the applicants is a member and volunteer of the Loon Preservation Committee so he's very familiar with a lot of the information already and they are very willing to work with Kate and the Loon Preservation Committee to try to do anything they can during this development process. One of the most important things is the timing and loon nests generally speaking are most sensitive around the third week in June to right after Fourth of July. This year they are a little bit late because of the high water that everybody has been experiencing around the State, but generally that's the time when they are most sensitive and to enter into some type of informal agreement where construction activity would be minimized or not at all to occur during that two or three week period would be something they would be willing to obtain. And that's a critical element that the Loon Preservation Committee by their own admission aren't able to get people to adhere to them. People build when builders are ready to build and so again that demonstrates that we would have great sensitivity toward that aspect of her comments. We would be willing to put a note on the plan to that effect to be in consultation with the Committee to try and do whatever we can. Of course, the statement is "No development is the best development for loons", and that's true on Lake Wicwas, Winnepesaukee, Squam Lake, Umbagog. You can substitute any other lake under their jurisdiction with the name "Lake Wicwas" and that holds true. In that same regard, it would even be better for the loons if we took all of the development that was on Lake Wicwas now and did away with it and got back to natural habitat, but that's not practical either so what we're left with is allowing property owners to develop their property in a manner that is sensitive to the environmental issues both with the lake and the loons and that's what the applicants have agreed to do. As John mentioned, there would be dock permits necessary which require New Hampshire DES Dredge and Fill approval and there is also a proposal underway for the potential of connecting with power to the mainland as a separate application. That application is not part of this subdivision application and subdivision of the property is not dependent on connecting to that power. State of New Hampshire DES Subsurface that issues permits to have septic systems on properties whether on the mainland or the island, has issued a permit for a septic system on this lot. The permit was issued, it does have an approval number, the septic system that's approved currently for this lot as we speak is 100' from the shore of the lake, 75' being required so it's further away from the lake than is required and much further away from the lake than many of

the septic systems that exist on the perimeter of the shoreline. As Mr. Vadney mentioned, this is a lot of record, the Town would normally issue a building permit for a lot of record upon submission and completion of an individual septic system design that has been submitted. There are a couple of other caveats involved in the shoreline zone, a Sediment and Erosion Control Plan must be in place prior to construction and a few things of that nature, but those elements would allow the property owner right at this instant if those things were filed tomorrow, to theoretically file for a Building Permit and receive a permit. I know Attorney Dietz has mentioned in his letter some issues regarding the Town's ability to issue a building permit. I don't intend to appear or pretend to be an attorney, but I do know specifically that the Town of Meredith in the past has approved several subdivisions on islands and has issued hundreds of building permits on islands and so I know that there is at the very least an assumption by precedence that the Town has the ability to do that. There are mechanisms as I understand it that the RSA allows additional to that that the landowners could do and the basis of that is that the purpose of the RSA is to protect the Town from unnecessarily having to provide services to remote areas. That applies normally to islands, but it also applies to other areas of Chemung that are on some of the roads that are quite a bit further out from the center of Town. Further from municipal services, further from firefighting services and emergency services and the like. One of those is for the landowner to register in the Registry of Deeds a notification of a relinquency in the Town services, in other words recognizing by recording in the Registry that we understand that because of the location of our property, we will not be subject to the benefit of many municipal services. Basically, we understand that when we dial 911, there's not going to be a police cruiser on our island in 10 minutes and that goes without saying on many islands, not only this one, but many islands in Lake Winnepesaukee. Bear Island, numerous houses out there are basically in the same predicament in that when we live on an island, there is an element of risk that you take. I know several island residents and I know that they tend to be much more careful about things they do. One of the issues mentioned in John's staff review, one of the issues mentioned in Attorney Dietz's letter is the firefighting aspect of what happens. Obviously, right now there are now structures of any significance on the island. If there was a lightning strike and the island caught on fire, it would probably burn until there was nothing left to burn. The Town through a letter issued by the Fire Chief says they would respond and they do have a capacity to respond to any island property in Town, not only Lake Wicwas, with a house out on the island they obviously would respond and respond in a manner a little differently than if it were vacant land, however, he's stressing that they fully recognize that their ability to extinguish a dwelling fire on any island is limited. That's why it's highly recommended and a

probability that this house or houses would be equipped with a wireless alarm system. There are technologies available now that allow an alarm system to be connected to a wireless home system whereby if there were an early detection of a fire, it would be notified by wireless alarm to an alarm system run by an alarm company that would relay directly to Dispatch and then the Fire Department would have a heads up on getting out there. The benefit of that is if the property owners are not there, the system is in effect. Obviously, if in the winter, there is some type of a problem and the owners are elsewhere, without the benefit of an alarm system, the Fire Department would be not able to respond in a timely manner. There is no fire boat on Wicwas. The Town does have a trailered boat that they use for firefighting purposes. In the winter time, they do have all terrain vehicles that they use to get to islands if there's fires, so they do have the capacity to respond. It's not immediate, but it is a capacity to respond. In Chief Palm's letter, the sense of that letter is basically buyer beware. You're on an island, you don't have the benefit of immediate services. The same with emergency services, if you have a heart attack out on the island and you're alone, the chances of surviving are not good. If you live at the end of Roxbury Road in Meredith and you're alone, you're in the same boat. There are a lot of places in town where emergency services, because of the nature of where we live in the world, aren't going to happen right away and I think if you live on an island, you understand that. The access to the island has come up and the Town of Meredith does not require dedicated and deeded land parcels to be associated with subdivisions on an island. The possibility of accessing this island is by several means, one is a land parcel, the other is a public launch. There are many island residents in the Town that do not own any ROW and do not own any shore land to access an island. They launch a boat, they must have two people to do it, one of the persons runs the boat out to the island, the other person takes the trailer and parks it off site somewhere and in this particular case, maybe not close to the island and then by process of shuffling, the other person gets out to the island. Inconvenient, maybe, but that's the way it happens and it happens all over the place, not only on this particular island, but it happens on Bear Island, it happens on some of the other islands in the vicinity of Bear Island that my company's done subdivisions for. People own no land other than the piece on the island and have no ROW and don't even have a slip in a marina, but they do get to the islands. The septic system issue as I mentioned already, we do already have in hand a state approved septic system on this island issued this week without hesitation by DES. One of the conversations that has been undertaken between the septic system designer, DES and the applicants is to address the issue of what happens when a system fails? Even the best system may fail. The system out on the island that's designed for the particular unit is oversized. It has approximately twice the surface

area that's the minimum required by the State. In other words, it's a bigger system than normally required. That coupled with the fact that this is most likely going to be a seasonal dwelling, not a permanent year-round every day dwelling, lengthens the maintenance time by which any system would fail. In other words, for that particular size system and a four-bedroom home, if the normal maintenance table tells you that every four years you have to have your system pumped, it may be six, it may be eight, it may be longer, depending on the use and the fact that the system is bigger. The methodology that is used to pump a system or to deal with a system that's failed is through a person that's licensed by the State of New Hampshire to deal with that. There are several around. The owners have spoken with Mr. Lamprey who owns a septic disposal business. He regularly has contracts with people on the islands to do the pumping of their septic systems. He is licensed to have a boat with a tank in it, he has the machinery that pumps from the septic tank into his tank, he's licensed to carry that over water to his truck and then he takes that down the road where all of our septic systems go. The owners have a letter from Mr. Lamprey and we would be willing to make it a condition of the approval that they have a contract with Mr. Lamprey or somebody like him to be on a regular maintenance schedule and that is a contract that would be based probably at the first instance on the use. In other words, if it is saying in 3 years we're going to have the system pumped and Mr. Lamprey shows up and says 3 years is way too soon to pump this system, they may have the ability to adjust that to whatever they believe a normal allowable maintenance period would be. That's why they have a professional license from the State of New Hampshire to deal with that. As I mentioned to you, the septic system is 100' from the lake and that distance is much further away than many of the systems that may become in failure that are around the property's perimeter. That being the case and the fact we have a State approved system should give the Board some sense of security that the island has the ability to support this system. If you look on Mr. Ames approved septic system plan, it does have loading calculations based on the size of the island. The approval is for a 4-bedroom system, the allowable number of bedrooms is a lot greater than that. Bryant Island is not a tiny island. Flanders – The minimum lot you could create on a shore now is 40,000 sq. ft. Johnson – There are a number of lots surrounding Lake Wicwas that are non-conforming and non-conforming by density and by soils and slopes without any questions. Many of the houses are too close to the lake by our standards now, their septic systems may not even be by today's standards, but Bryant Island is not a small island when you're talking about soils and slopes. As I mentioned before, the soils and slopes methodology that the Town of Meredith uses is very, very conservative in terms of the size of lots that it requires to have to support a septic system. Most every other standard that's used in other towns and by

the State of New Hampshire is much more lenient than the Town of Meredith so we are not talking about a tiny island from an environmental standpoint. If you use a 40,000 sq. ft. lot, you'd have fewer lots on the island, but there would be more than 2. Edgar – Just to clarify that, if we were looking at density only and not factoring in any environmental, we would be looking at 3 and change. If the soils were all Gloucester soils and flat land, you could have 3 lots out there. The soils are varied out there and there are some soils and topography types on the island that we're not allowed to count at all and that's why there are several categories on the chart that the soil equivalent lots are zero. That portion of the island can't be counted. That's why you do a site specific soils analysis so you get a much better on-site representation of what the soils are. There are several plan notes that John recommends and as usual we will make all the plan notes as necessary based on his staff review. Obviously, we have to change the ownership and a new deed reference. Since we are representing what we believe to be a shoreline that is more restricted than any other standard that might be available, John was concerned about somebody showing up and saying that since the State standard is really way out here, I want to put my house down closer to the water. To prevent that, what we have agreed to do is to make a plan note that the standard shall be as shown on this plan and they cannot be any closer to the lake regardless of what standard that you're using than these interior setback lines. That would prevent somebody from doing an end run and trying to locate a house closer than the setbacks we've represented. We agree with John in saying that is a part of the plan that gets approved. Pins will be set prior to recording of the mylar as normal. Some other additional notes that John had will be added. Bayard – I'm a little confused about the septic, are you talking about one septic for the two houses. Johnson – Right now, there was a septic system design plan filed with the State of New Hampshire for one lot. The plan that was submitted showed the limits of the island, a house and a septic. Right now, there is an approval for one on the island. There is in one design pending the approval of this plan or a separate plan that would add an additional unit and an additional septic system. That would be submitted by Ames Associates to DES. It will be part of the approval process. John mentioned that as in many cases, the Board requires DES Subsurface approval of the septic systems prior to approval of the plans and we would agree to that. Based on information that we know about the loading, we don't think there's much of a problem. The plan that was approved will be amended to show two lots and two septic systems. The idea right now is to have two separate systems whether or not they are adjacent to one another, that's subject to Mr. Ames design. As you know, most people don't like to share anything, especially their septic systems. Vadney – Is Lot 1 where you have currently received a

septic approval? If the subdivision were disapproved and the second house disapproved, is that where that one house would go or would you redo the whole thing? Johnson – The plan submitted and not subject to any commitment was to have the house in the premiere location on the island. Flanders – Earlier you said that the septic system that's approved now would support 22 bedrooms, is that correct? Johnson – No, I didn't say that. I said the loading calculations said that the island would support 22 bedrooms. Flanders – What is the loading of the system that is approved now? Johnson – All I can tell you is that it is a 4-bedroom system as approved. Flanders – That's 600 gallons/day. The surface area that's required for 600 gallons/day is something like 200 sq. ft. and the septic system that's being constructed is 400 sq. ft. It doesn't matter when you get approval for a 4-bedroom septic system, if you build it to the capacity of 20 bedrooms, you have a 4-bedroom septic system as approved by the State. Typically, a system approved is a 4-bedroom system. Edgar – The first thing I would like to point out is that the Planning Board did conduct a site inspection on the 30th of June. We had three Board members present and that did not constitute a quorum of the Board, but we have taken minutes of it. Members Touhey, Vadney and Kahn were on the site inspection and myself. The Fire Department provided the transportation out to the island. We walked the island from one end to the other, observed the topography, vegetation and the like. We observed the test pit locations to get oriented to the plan and no testimony or action was taken. With respect to the loon issue that was raised previously, the Board does have copies of two communications from the Loon Preservation Committee, one is basically the same that was shared with the Wicwas Association from John Cooley which includes some of the 30-year loon data and the map associated with historical nesting sites. The second correspondence item is the one that Carl is referring to and that was with Kate Taylor. In that correspondence he recommends five different ways potential impacts on the loons could be minimized if this subdivision were to go forward, including the maintenance of vegetative buffers, clustering of docks, eliminating the number of motorized boats, scheduling construction activities to avoid critical nesting periods and sharing educational materials with the current and future owners of the property. The Dredge & Fill Application has been filed for two 6' x 30' docks, one for each of the proposed lots, a temporary landing that would convert to a perched beach for proposed Lot 2 and for the electrical service via the lake bed from NH Route 104. That application is currently under review by the Meredith Conservation Commission. With respect to the sewer and septic issue, following up on the issues raised at the last meeting, I have spoken with Tom DeTurk of Mason Marine. Tom has indicated that he has worked with Lamprey Septic Service which provides septic services to island properties. Typically a barge is brought to the lake and either they

pump into a container on the barge or they pump into a vehicle riding on the barge. They do provide the service to properties on Squam Lake which is the one mentioned. It is Tom DeTurk's view that it will not likely have to be pumped very often, but as a practical matter, it would be fairly expensive because there aren't too many. This would be the only island property at this point that would contract for the service. I raised the question about the ability of the ramp to support the equipment necessary to perform this maintenance. I also spoke with Bill Evans, a Registered Professional Engineer, he is the Administrator of the NH DES Water Division. Basically, he's in charge of the folks that relate to approved subdivisions and septic systems. As a general observation, he felt there was a doable scenario relative to the maintenance issue, however, he too agreed that the cost would be higher than a typical scenario. There are other technologies such as compost toilets and so forth that have residential applications that are approvable by DES. He suggested the Board have the applicant identify a maintenance scenario contractor methodology, etc., which addresses the maintenance and water quality concerns to a reasonable level of satisfaction. He also indicated to me by e-mail today that the likelihood is that that may be a condition of approval that his Bureau would require relative septic systems on the island. As Carl indicated, the Board has in the past on shoreline development subdivisions in certain instances required State septic approval which goes one step beyond typical State subdivision approval. State subdivision approval is limited to review of the test pit locations and the receiving area that will be used as a potential for a future house site, septic and the Board has in the past required that we take it to the next level which is an actual state approved design of both systems, as a prerequisite to making sure that we have full compliance with the Shoreline Protection Act, etc., before the plan gets recorded. Relative to our zoning, our zoning simply provides a 75' – 125' range as a leachbed setback from the lake and the ordinance clearly just cross references back to the Shoreline Protection Act which requires the 75' – 125'. Any waterfront subdivision septic system needs to comply with that Act and our ordinance mirrors that. One issue that has not been addressed, Carl, and something may be you could speak to is what would be the source of drinking water for the proposed houses. Are on-site wells proposed? Could a drill rig get to the island? Could a drill rig get on the island. Will they be withdrawing water from the lake? Will it be bottled water? What will be the source of potable water? Johnson – It is more a function of having to show those wells for a State approved septic system? There is no requirement that you have a well so it is up to the landowner that would buy the lot to decide how they want to draw water whether it's from the lake or not. Drinkable water, I would say that probably most of the island residents that I know drink bottled water. The water that

would be used for showering and flushing toilets would be up to the owner whether or not they could functionally drill a well on the island or whether it would simply be drawn from the lake. Edgar – With respect to the electricity, cable and telephone plan notes that the power line is proposed from the mainland, a DES Dredge & Fill Permit is required for that power line and has been applied for and should be cross-referenced on the final plans. Mr. Mercier, a nearby mainland property owner, advised me that he in fact owns the narrow strip of land adjacent to NH Route 104 and that the assertions made at the previous hearing by the applicant that they can access the lake directly from the highway without crossing onto private property may be incorrect. He indicated he will be bringing this information to the public hearing this evening. I did request that he give us a copy of any information for our file. With respect to roads, access and parking, it has been stated previously that the zoning ordinance does not require mainland access to island properties, however, as a practical matter, it is a fair issue to discuss. If there is to be deeded access to the property, it would be appropriate to cross reference that on any final plans. Typically, on the bigger lakes, island property owners have access to their property via a municipal ramp which is not the case here. However, they also have access to mainland municipal parking or private parking at the ramp or elsewhere or both. Neither of which are available in this instance. There is very limited parking on Chemung Road which is not available for round-the-clock parking during the snow removal season. The access to the island for construction purposes is another question. The question would relate to whether it is a one house on one lot or two houses on two lots. The same question would come up perhaps in slightly different venues, but how and where would the property be accessed for construction purposes is a fair question to ask. Construction staging and all the equipment and materials, etc., along Chemung Road raises potential traffic safety issues, potential wetland encroachments and so forth. The Board should consider stipulating that a construction access plan strategy be required as a condition subject to the recommendations of the Police Chief and could possibly be reviewed by the Planning Board at a compliance hearing. I have spoken with the Town Manager and she has consulted legal counsel with respect to the use of the Pickering Park boat ramp for that purpose. It is my understanding that there is nothing on the books that would preclude that from a legal matter. I was speaking most recently to the issue of how raising the question as to how the island would be accessed for purposes of construction activities and the issue is a fair one to raise for purposes of the subdivision, but it's also a practical matter relative to even the first house if there's only one house on one island. It's still a fair question as to where and how that would occur. The answers to that might be slightly different venues depending on whether

it's a subdivision or simply a matter of one house on one lot. The Board could consider a stipulation that a construction access plan or strategy be required as a condition of approval subject to recommendations of the Police Chief and review and approval by the Planning Board at a public hearing if it felt necessary to do so. To the extent that the public ramp is to be used, I spoke with the Town Manager relative to whether or not there are any ordinance restrictions or anything of that sort relative to the use of the ramp for that purpose. Obviously, this issue hasn't come up on Wicwas before. We do have some limitations on other facilities in the Town so I wanted to find out if there were any limitations on this. She indicated to me that to the best of her knowledge there are no ordinances that would come into play, but as a practical matter given the size of the boat ramp area, the travel speeds, etc., etc., on Chemung Road and the use of the ramp by other folks, the applicant should first obtain some kind of approval from the Board of Selectmen so that those issues can be addressed in advance of the construction activity occurring. As a practical matter, to the extent that the public access is to be used even for the construction of one house on one lot, the necessity of the Selectmen's approval in relationship to the building permit process would still be valid. Several concerns have been raised, appropriate concerns, relative to the possibility of the site eroding and sedimentation getting into Lake Wicwas. I have made a couple observations and suggestions in the staff comments and one is to flag for current or future owners very clearly that the development of the property is subject to the provisions of the NH Shoreline Protection Act. More specifically, as the lots are waterfront, the Town of Meredith's Erosion and Sedimentation Control Ordinance kicks in and requires an approved E & S Control Plan prior to the commencement of earth disturbing activities. The final plans should also note that an Erosion and Sedimentation Control Plan, as approved by the Code Enforcement Officer, is required prior to earth disturbing activities. Under the heading of legal, I've advised the Board that we've received a 5-page letter opposing the subdivision on procedural and substantive grounds from Attorney Dietz on behalf of the Association. The Association believes the application should be denied as being premature. One of the procedural issues is the abutter notification, a question that was raised at the last meeting. In the Board's packet is a letter in response to the issue that I raised to the attention of our Town attorney. I ask the Board to review that if you have a moment. I have not placed that letter in the file at present as it is potentially a privileged communication between Attorney and Client. I have no objection to that letter being placed in the file. It's pretty straightforward, but I would only do so at your direction. We can come back and discuss that. Attorney Dietz does raise two procedural issues and a series of substantive questions that pretty much track the questions that he raised verbally at the prior hearing, those dealing with fire risks, medical

emergencies, septic systems, construction related siltation, water quality, negation of the public investment in the Hamlin property and potential impacts to Lake Wicwas as a backup water supply. Here again, the question of access to the island, potential wetland related impacts, the question of construction barge access and how refuse will be disposed. He identifies reports of dredging activities without a permit. Sign ordinance violations on Chemung Road and questions the cost to purchase appropriate fire and emergency equipment and the cost of manpower related to that equipment if the Town were to go down that road so he can speak more specifically to those concerns. I have raised an issue of procedural process that we need to go through potentially, depending on the outcome of tonight's proceedings. RSA 676:4 requires the Board to act on the application within 65 days of acceptance. The application was accepted on May 10 and if my math is correct, we are at day 63 of 65. If the Board were not to act tonight, if you were to grant some kind of approval, approval with conditions or denial, that would satisfy that requirement. If a decision of some sort is not made on the application, then the Board should seek a waiver from the applicant and seek their consent to a mutually agreeable extension. If the Board needed more time and the applicant were not agreeable, our next step that is provided for in the statutes is to seek an extension from the Board of Selectmen for up to 90 days. My guess is that is readily workable. The purpose of that statute is to provide protection for applicants to make sure that Planning Boards don't simply and purposely string projects along to no end to provide a statutory clock to tick to ensure that applicant's rights are reasonably protected relative to requiring the Board to act on an application within a 65-day period unless otherwise extended. One other legal detail that I identified in the staff review is that the Dredge & Fill Permit Application suggests that a construction access landing would be established on Lot 2 presumably to access both lots at the southern tip of the island. If the lots are conveyed out to others, there would be a necessity of a construction easement over Lot 2 benefiting Lot 1. Here again, there's a strong likelihood that if this were to be approved that the owner's would actually develop the properties, but we don't know that for a fact. Subdivision could occur, the properties could be flipped tomorrow then the question would remain, how would one access the island for purposes of construction so some pre-planning on the front end in terms of how and where the building envelopes will be accessed for construction is actually a good thing. It also appears that the landing and construction access could possibly be placed within one of the protective wetland setbacks. That may necessitate a special exception. Bill's looking into that, as well. We have received numerous letters from abutters, most of them dating back to June. A few have come in since the last hearing. The Board has in front of it a packet that includes a listing of all the correspondence as well as copies of the correspondence. In

conclusion, in writing my staff review I didn't know exactly where the Board may take this. If you were to grant a decision one way or the other, the 65-day is moot. If you are not in a position to resolve that decision tonight, we'll need to address that issue before we end tonight's proceedings. I wrote the recommendation section of my staff review under the premise that the applicant may want sufficient additional time to respond to Attorney Dietz's letter because of some of the legal principles that Attorney Dietz has raised. In their request to you tonight for a decision, I would view that as a response indicating that they do not need sufficient additional time to respond to Attorney Dietz's letter relative to legal issues. If you were to continue the hearing, we would need to do it to a date specific and allow sufficient time for any additional information to be received by a filing deadline. Given the fact that they have indicated there is not a necessity on their part to respond to Attorney Dietz's letter, that may be moot, but given some of our past experiences, we want to make sure that everybody has the opportunity to respond to everybody else's material and at some point out of fairness to all parties draw a line in the sand and say OK we've heard all, we received it all, everybody's had a chance to respond to what's in the file, close the hearing and then begin the deliberation phase of the application. I don't believe subject to whatever else you may hear in the public hearing tonight, you may or may not have to keep the public hearing open after tonight. I've also suggested that it may be prudent to consult with our legal counsel. There are some issues that Attorney Dietz has raised in his letter. I really don't want to comment on my personal opinion as to the strength or weakness of those issues, I think that would be an appropriate discussion for the Board to have with its legal counsel. I have spoken with Chief Palm and Chief Morrow relative to emergency services issues. We started that dialogue at the outset. I've asked the Fire Chief to specifically respond in light of Attorney Dietz's letter. The general sentiment I think is that we have island people living on islands in lots of different places and some where it's analogous to this, such as Lake Waukegan where there is no fire boat. Others where it is different where their ability to respond is different because there is a fire boat and the like. The Chief has made several observations (copy in packet 7/12/05), the bottom line is that as a practical matter on a small island like this, we don't have the same kind of access that we would have with a fire boat, police boat and so forth. The response time is going to be longer. There's no debating that. The opinion of the Chiefs is that it is typically something that island people understand when they buy on islands that things are different including the ability to respond. We will respond, we will respond with emergency services, including supportive medical emergencies, the Fire Department will respond and the Police will respond so we have the ability to respond. We have all terrain vehicles. We have recently purchased an amphibious vehicle that you go out in the transition

periods when it's not solid ice, but when there is ice, we have a small boat that's trailered at the Meredith Center Station. The boat is used to transport pumps, manpower, hoses, it's a small boat but they will respond and they responded to Lake Pemigewasset fairly recently in support of New Hampton and that's exactly what they did, they were in small boats and they dragged the hoses and pumps and dealt with a fire. So they can respond and would respond, the issue is the timing. As a practical matter, this is not altogether different than other islands in the Town such as Lake Waukegan, which doesn't have marinas and doesn't have a fire boat, but has some island development. There are 3 specific observations that he makes, two of which specifically deal with trying to improve that response time to maximize the ability to get there as soon as possible. One is the one that Carl indicated and that would be something the Chief would require in the context of building permits, here again whether it's one or two, and that is the monitored and maintained alarm system. Basically, that is an alarm system that rings up in a private alarm company and then it goes from there to Dispatch. That improves, based upon the experience of the department, it improves their response time significantly and that would be something he would be looking at as a requirement relative to building permits. In addition, he suggests that the applicants explore the possibility of installing the sprinkler systems that we have spoken about before. They would not be a requirement as I understand it under the NFP Regulations because of the number of lots involved, but he thinks that might be an appropriate feature to look at. Here again, it would knock the fire down a little bit and give the Town more time to get there to finish the job and save property along the way. He recognizes that the above suggestions, the alarm and sprinkler systems do not address fires occurring on the island that involve brush or vegetation. He indicates that we should understand that such a fire can occur currently due to acts of nature or human intervention. In such cases, the Department would respond as promptly as possible given the method of timing and notification. Although the Department records do not indicate any such event occurring in the immediate past on Bryant Island, they have responded to this type of call on islands located on smaller lakes in the Town of Meredith. Finally, he's sort of speaking to this issue of buyer beware and the fact that the response times are different on islands. As a practical matter, he's suggesting that we look at something similar to what we would require on a Class VI road which is a Class VI Road Agreement where effectively the property owner holds the Town harmless against issues that may result from the access issue. Class VI Road Agreements do specifically address emergency service response issues that the Town would be held harmless relative to that circumstance of living on a Class VI road so he's at least suggested that having something like that developed, signed and recorded runs with the property and may be another feature that might be a

prudent thing to explore by the applicants. Vadney – In quick response to the Chief's three comments, I would support a comment in there that they'll hold harmless because that to me is kind of an unwritten rule of going someplace dangerous, you kind of let yourself hang out there and that's the way it is. You don't have a lot of claim if the doctor isn't there in 2 minutes. As far as the sprinkler goes, I would oppose requiring it, I think anybody building that house with a lake full of water there, would be rather silly not to put it in, but I don't know if it's something we should think about requiring and the same would go for the alarm. If somebody wants to pay for that alarm and have the Fire Chief or the Police there a few minutes quicker, that's kind of their business, but if they are willing to do without that to me those are things that are a little beyond the Planning Board for requiring. Flanders – In response to the comment on sprinklers, recently I attended a seminar on sprinklers and they showed what happens with no suppression system with what they had and it was catastrophic in less than 2 minutes. The same test was done again with the same duplicate structure with sprinklers and two sprinklers knocked the fire down in less than 5 minutes and completely extinguished it. Vadney – I'm not arguing with the effectiveness of the sprinkler, I'm arguing with the Planning Board's ability or logic in requiring it at the homeowner's expense. Flanders – One of the responsibilities of the Planning Board is to ensure public safety and I think that goes right to the issue. Bayard – If they've already agreed to Condition 1, I have no problem with accepting that agreement and certainly the third condition, I think you have better access on a Class VI road than you have here so I think it certainly should require that. How legally enforceable all of it is, I'm not sure but I think it does provide some protection to the Town and it certainly puts them on notice that they are not going to get the same response they would get in the center of Town. Bob Dietz, Attorney with Normandin, Cheney & O'Neil, I do represent the Lake Wicwas Association as an organization. I did submit a written objection, but I do want to highlight some of the more important ones. One is that I had raised a question and I don't know the answer to it and that is whether or not at some point in the past the Town has in fact formally voted to exclude islands from the road statute, 674:41 2a, because that statute would if you have not so voted basically prohibit the issuance of a building permit to anyone on an island that is not accessible by road but only by boat. I know that building permits have been issued but it doesn't necessarily answer the question and you may have gotten information about whether or not that has in fact happened or has not. Edgar – I have brought the issue to the attention of Attorney Bates and it's fair to say in general terms without getting into specifics that he probably has a different view of the meaning, intent and application of that statute and I think that's one of the reasons you would be well served by consulting with him and not just accepting the testimony of Attorney Dietz at its face value.

Dietz – I would also note that I made two procedural objections, one is that this has been characterized as a minor subdivision, but in reading your Subdivision Regulations it doesn't appear as though it satisfies 5.1a or 3.27 in that there is no frontage on an existing street and it may be the desire to treat this as a minor because it's only a single split of a given piece of land as a minor subdivision, but it doesn't technically qualify under the rules that you're operating under. Edgar – Similarly, I have spoken with Attorney Bates about this. Attorney Dietz is correct in that in the regulation it identifies minor subdivision and one of the characteristics of being 3 lots or less and having frontage on a street, the only practical significance is that and this also follows state statute is that if it is determined to be minor, it enables the Planning Board to accept it, hear and decide it in one meeting and that is the only practical significance of the distinction between major and minor that I'm aware of. As a practical matter, we're at day 63, I would not call this expedited review so if there may be something technically incorrect here but the practical implication of it is something I'm not clear on and here again it would be something that you might want to talk to Tim about. Vadney – If declared to be a major subdivision, we would do exactly what we've done effectively. Dietz – The second procedural objection we were objecting to is the notification or lack thereof to anyone else on the lake property or the Association and I understand you are operating under what your land subdivision regulations actually say and, in fact, what the State statute says and I'm basically reserving my constitutional grounds for an objection with respect to the contents of the statutes and your regulation. There ought to be some people given their proximity to the island, location or whatever factors might come to play, ought to be in the position to receive notification that this subdivision proposal was on the table. Even as we sit here, I know great efforts have been made to try to make sure everybody is aware of that who might be in the near vicinity, I cannot say that everybody who has property immediately near the island is in fact aware of that at this moment. Edgar – A fair question was raised, we reviewed with Town Counsel and you have a letter in your packet relative to man who will represent you should any of your decision be challenged. You have it, if you decide to disclose it, we can disclose and we should discuss this issue at some point relative to whether or not the Board feels it needs to chart a different course or maintain the course that has been set. Vadney – On that letter you've referred to a couple of times from Attorney Bates, he said he has no trouble releasing it and I certainly don't. Does anybody have any problem with that. Attorney Bates does say that in effect that's a rather type of argument and I would certainly happy to release that. Edgar – WE also checked with NHMA's legal counsel. They did a search for us to see if there was anything in the statute that we're missing, if there's any case law on point which there isn't and my guess is that's why Attorney Dietz is arguing the constitutionality

of it because there's not a lot of case law or statutory citations that would speak to the Board doing anything other than what it has done. So we do have a legal opinion from your Town Counsel and it's up to you whether or not you want to address it further and he's reserved his objection which is an appropriate thing to do and let it play out. Kahn – His position is that the Legislature knew very well that they were omitting notice to shore owners as abutters to islands because of the number of abutters who would have to get noticed and on a larger lake, it would be nearly an impossibility to track down and notify everyone so he believes that it was a deliberate decision on the part of the Legislature not to talk about people on the other side of a road or on the other side of a stream. But not to include people who are shore owners on a lake, he recognizes the possibility that someone could be so close to a property that they might have some right to notice, but from a constitutional standpoint, everybody's aware of what's going on here and I can see the people closest to this island are here. It's not like it's been kept a secret and so he feels that there's been sufficient notice to pass a constitutional test and that there is no need for notice from a statutory standpoint. Vadney – I will say that those 3 legal points to me are pretty thin. The minor versus major and the noticing of abutters basically says they don't want Planning Boards taking action at midnight when nobody knows about it. This was well publicized. The fact that you are all here kind of proves that. Dietz – So we go to the substantive objections and many of them have been addressed in part. We had some discussion at the last hearing as to whether the Board had discretionary authority. I don't know whether the Board at this point is of the opinion it does. I think the Board clearly has discretionary authority if it chooses to exercise that authority. Section 1 of the Land Subdivision Regulations of the Town of Meredith basically provide that and they are supported by the RSA's, which is probably the source for that provision in the Land Subdivision Regulations and in particular, your Land Subdivision Regulations indicate where the development is premature or otherwise undesirable as it would involve danger or injury to health, safety or property, that the Board does have that ability to exercise discretion. The case law also supports that kind of discretion in Planning Boards. I'm not going to read my letter in particular, but there is one quote that I do want to say and this is from Loughlin, 15 NH Practice, in referring to this discretion:

“The Board must ascertain what amount of development, in relation to what quantum of service is available, would present the hazard described in the statute and regulations. At the point where such a hazard is created, further development becomes premature. In determining prematurity, the Board may consider off-site as well as on-site circumstances.”

I omitted the citations in terms of the different New Hampshire cases, but that gives you in my view the authority to consider not just the lot but the situation surrounding the lot and all of the factors that go into the question of health and safety of property. The Meredith Regulations say that the Planning Board can decide if it's premature where such a danger to injury, health, safety or property may occur by reason of and lists a variety of things, including lack of public services and we've had a discussion about that here or where it would require an excessive expenditure of public funds to supply such services. So talk about what additional equipment is needed, whether it's medical, police or fire, that certainly is a factor that you are empowered to consider. The specific problems that we've raised with respect to this particular subdivision, fire, that certainly has been discussed. There is not a readily available service without a long delayed response for fire and there's been some comments made about people take a chance when they have lakefront property or island property. Even if they are willing to take whatever risk there is, they certainly will have guests and others that will be there and they may not have made such a decision so I figure a fair balance for this Board to consider is what the effect is and whether on a lake that's as small as Lake Wicwas, the issues of getting safety people in there and the timing of it, whether or not that's different from Winnepesaukee or other islands where there are marinas and larger boats that may already be on the lake, that's the difference in terms of what we have here. Whether it's been done once on some other small island some place in this Town doesn't mean that it was necessarily right then and certainly shouldn't be a precedent for feeling you've got to do that now in this case. The issue is whether this, in fact, is an undue risk. We talked about the public health issues, the septic system. There are some answers tonight that we didn't have at the last hearing on how this would be proposed to be done in terms of pumping it or in the case of septic failure, but did I understand you, John, to say that this was the only company that provides this service. Edgar – I didn't say that. Dietz – It was the one that would be under contract is what you said. Edgar – I did not say that. I said it was the one that I spoke to. I didn't go through the yellow pages and do a survey. The first one I called back I had a dialogue with. You may, through the Chairman, ask who Carl spoke to and they've referred to someone they have a letter from that may be willing to contract with. The applicant made specific references. I have no knowledge of what they have done, but what I had done started with one septic company and they referred me to Island Services and I spoke directly with Tom DeTurk who, by coincidence, uses the same company that Carl eluded to. Dietz – We still have the question what happens if a septic failure happens to occur during a bad ice time, ice in or ice out or whatever in terms what might

happen? I understand these places are not intended to be restricted to seasonal so we may very well have people using it during winter months unless that somehow becomes a condition. We also had the specific problem with the overall access to the island. I think this is legitimately within your purview because off-site circumstances are within your purview. The developer hasn't wanted to talk about the access. They certainly have a piece of property on Chemung Road, but it would be appropriate to know whether if that's going to be the access, what the surrounding conditions are at that location in terms of whether or not it's a legitimate place to bring a barge in and out. whether or not there's been an allegation of dredging having been done there already illegally? My understanding is that there is a review of that being undertaken now by DES. There may have been a disturbed loon nest from earlier this spring. These are things that again, if you look at all the circumstances, this is what we ought to be looking at as well because that kind of thing, if it's being done now, may be continuing as this project goes on or as people are using that for permanent access. If there's a reason that the developer doesn't want to look at that, then that would give rise to suspicion that there's something amiss about how the access is really going to take place. If people are going to be coming in off the public launch, that's certainly a fair thing to look at from the standpoint of whether that's going to tax the public launch or whether or not the public launch is suitable for that purpose. The barge itself is again important because it magnifies all of the access problems. Where will that come in? What will the impact on the lake be? What will happen to stuff that's on the barge? If it's refuse, how will it be disposed of, will it pass through the lake? And then we have what I'll generally call the water quality factors and lump several of these together and we have the silting risks. We have an island that does have a mound that certainly would mean that it's more prone if there's a silting problem for there to be silt ending up in the lake during construction. We have the underwater power line. We've got septic risk with respect to water quality and I ask the question whether or not Lake Wicwas is still listed as the backup water supply to Lake Waukegan? If Lake Waukegan failed as a water supply for some reason, whether Wicwas is in fact still a back up. I know it used to be, I don't know if it still is today and if it is, it would seem to be again a factor to consider in the balance that you're going to make as a Board. Vadney – Is that still true? Flanders – I'm not sure, I would have to check on that. Edgar – We received the water rights to Wicwas as part of the whole Hamlin conveyance. We own the face of the dam and we're involved with regulating the water elevation of that and my understanding is that it was back in the early 70's when that conveyance occurred. It was the Selectmen's desire to obtain the water rights to the lake under the thinking that it was a potential water supply. I'm not aware personally of a specific plan for us to tap into that lake. I've not seen any plans showing mains going from that lake to a treatment plant or anything of that sort, but I agree with Bob, it's something we can certainly double check and see if the Water Department has anything in it's plans to

reserve that or even consider that as a backup water supply. Flanders – I will say that we just had our water system analyzed by SEA Consultants and they submitted a report to us that was very detailed and there was no mention of Wicwas or any other backup source to Lake Waukegan and it would be problematic and extremely expensive in my opinion. Vadney – But it may still be a backup water supply. Flanders – It may be, but the SEA report was very comprehensive and done over a period of a year made no mention of it. Kahn – I think that was going on at the time that the wells in Meredith Center were found to be contaminated so that may have been around the same period, but the solution to that was to run a line down Route 104 and Corliss Hill Road. Vadney – But anyway, it certainly is still a possible Town asset. Dietz – I would make a couple of comments about Carl Johnson's statements. First, he talks about people he represents being sensitive to loons and the environment, but what apparently has happened so far on the Chemung Road access/non-access point certainly is not indicative of sensitivity and again that would cause concern for what the Town presumes or hopes might happen with respect to the island. With respect to the waiver of liability to the Town for lack of services or for people to get there timely, that's fine for the Town to seek to protect itself, but this Board needs to be looking at what protects the people themselves. Should there be better access for this to be developed as an island before this Board approves it aside from whether the Town's going to be liable or responsible for it or not? That's really one of the purposes of having a Planning Board is to protect the public, not just the Town. I think I've already commented about, we've done this before and so we can do it again. That's been said in a couple of different contexts here tonight and it doesn't mean that it ought to be done here. It doesn't mean that it was right that it was done at some point in the past whatever the approval may have been that's in question. In short, I think at this point you have the power to exercise discretion and then it comes down to your judgment on balance as to whether or not this is, in fact, what the law calls a premature subdivision and turn down this subdivision application at this time. Dave Thorpe - That area is also used as a swimming beach by the folks in Town and at least one barge owner that I am aware of has said he cannot launch his barge at that ramp because power loading by bass boats has created a hump there so that may preclude, without underwater dredging, the use of that ramp to launch a barge at all for any purpose. The issue of the Chemung property is likewise significant in that DES has agreed to undergo a survey of the property to see if there has been undue wetland disturbance already by the Henmor Development people by putting in a temporary dock, their boat and creating a channel and access for that boat out into the main part of the lake and so I really do ask you to give the issue of access even though you

are not normally required to a high priority in this case. Vadney – You're referring to both access once the houses are there and lived in, as well as access for construction. D. Thorpe – I'm worried about access right at this moment with current Henmor activity preliminary to the construction. I'm very worried about access during construction and one might take one step further and say where are these homeowners going to get their access and I think at some point you have to say that's their problem, but I am particularly worried about construction access based on what I see as disturbance to wetlands on the Chemung property today. Vadney – I will make the comment that I agree with you on the construction issue and I've put a rowboat in a few times on that ramp and even that's difficult and it's not the kind of place you want heavy construction. It would be problematic to say the least. As far as the issue on access for somebody wanting to buy the island, I would say it would take a fairly stupid person to buy an island without a place to park his car, but that's not our issue. The construction one I think is a very valid point and I'm very concerned about that. Ron Naso – I live at 33 Loon Point Road and I actually have lived in that Cove for 38 years. Just a couple of clarifications I had, did I understand there would be a disclaimer that would be in the conditions for no liability to the Town, did I understand that would be something as a condition or was being offered as a possible condition? Vadney – A hold harmless statement for fire and police being that this is a developer and not a private owner is that correct? Nobody's decided to approve anything and identify conditions, it's been discussed in the context of a potential condition in that the Fire Chief has raised it analogous to what we do as a statutory matter on Class VI roads so he's drawing the parallel between Class VI road development which raises issues relative to our ability to respond in ways that would not be typical and so he's raised a parallel here. If we were to do something like that, it would be something that would run with the property to all successors in title, it's not a one-shot deal, it's something that would typically get recorded just like the Class VI Road Agreement. It runs with the property and is on file at the Registry of Deeds. Anybody doing a title search would come across it. If we were to do something like that, we would cross reference it on the plan so anybody doing work in the Registry would find it on the plan. That's the kind of document that is being discussed. Naso – So I do understand that would be a possible condition that would be set forth as an option. I would just say to the Board, would we as individuals buying from a developer be willing to purchase a piece of property with that disclaimer. I think that at the spirit of what a disclaimer is and I'm not an attorney, I would question whether or not they are giving up their legal rights by signing this disclaimer. But perhaps more important in a practical standpoint of view, that we'd have a situation in which I wouldn't want to see one or two albatross being built out there and someone through

a title search or whatever happens finds that we now have property that may not be desirable for their particular safety so I really have a concern because the 38 summers that I've spent there, I just think that Wicwas is a very unique watershed in many respects that we're all aware of. Thirty-eight (38) years ago, no one wanted to be on Wicwas. But now there seems to be something happening because it's a lot less expensive to develop there than on the big guys. With due respect to what is being said here, I would like to thank the Board for the time that's been spent by this panel as well as Mr. Edgar in really looking at this under a microscope because I think it's necessary that it be viewed that way. Donald Mercier – I happen to be probably the closest property owner to this property and it's very disheartening that I was not notified. I had to find out by hearsay, somebody sent me a letter, but not from you people. I think that even though you may have covered yourself under the law, I think there's a point of which a courtesy should have been given to at least the people who are within sight of that island on a small lake like this and I know I'm the closest one to that island. We own a piece on the northwest shore. On the subject of the power, I would like Mr. Johnson to show me on Route 104 where he proposes to run the power and I would also like to know on this drawing where the proposed docks are supposed to be and who in the electric power company approves of them running the power out to that island. I would like at least those three questions answered. I have my drawing here to show the Planning Board the subdivision drawing which is only about 7 or 8 years old and shows that we own a strip of land along Route 104 and abutting that is a family by the name of Kortz who owns another piece along there. Ours runs from the culvert all the way around. Johnson – I haven't seen that plan so I'll have to take a look at it. Mercier – Where did you come up with the idea you could come off of 104? Johnson – The State of New Hampshire, Department of Transportation, believes that they own the ROW to the water and there was a plan drawn in 1954 prior to the highway being relocated which showed the shore of Wicwas going up to where Old 104 was and down and essentially this 100' strip of land was filled land with the ROW coming to this bound and southerly to the ROW being there. Based on that, DOT believes they own the property. Mercier – This is the latest drawing that shows that piece of land and I went out and physically measured it. This is a lot more accurate. There's a piece of land in here over and above the 100' of road that you can walk to the edge of the lake. There's a complete line of trees in here. That to me is private property and I own that land. Johnson – That could be subject to debate. That plan shows direct course and distance from this point to a point that's on the shore and this is low lying marsh type land with this line labeled approximate original shoreline. Mercier – When this highway was put in, the abutting land was turned back to the abutting owners. My deed comes

from this point here also and reads this footage. Johnson – That doesn't mean that this is owned by you based on... but you admitted it shows that. I don't believe it does. The drawing identifies the distance from here to here and it shows the approximate original shoreline and it shows low lying marsh type land that I don't believe is indicated within the area of this property. If I can walk on this 100' piece, is that not my land? Johnson – That is subject to debate because if the State of New Hampshire filled that land and created that land, it doesn't necessarily revert to you as an abutter its ownership. Mercier – If you go back in the history of this road... (can't make out). Johnson – That may be a valid point but it's not part of the subdivision application. Mercier – I want to know who approves the power? Johnson – NH Electric Co-op. Mercier – They will get a registered letter from me to not cross private property and that's private property. There's no reason why you can't come off Chemung Road. You have access to Chemung Road and I think whether there's a hardship or not, they have the access, use their own access. Johnson – The current conversations with public utilities and with the State of New Hampshire is that they would not require a Dredge & Fill on this portion at this end of the power because they believe the ROW extends into the lake and the State would not permit themselves for a Dredge & Fill, but it would require a Dredge & Fill on the island. If Mr. Mercier wishes to challenge that, he has a methodology to challenge that and whether or not the power could actually be put out there is subject to debate. That does not preclude the subdivision that's before you, neither one of the lots is required to have power coming out to the island and that's why it's not part of what we applied for when we applied for the subdivision. The ownership of that parcel of land is subject to great debate and whether or not the filling of that property, the rights of it and actually being land that you can actually walk on and I will not deny Mr. Mercier the fact that there is land that you can stand on outside of a strip 50' from the center line of the property. Whether or not that's indicated on my previous plan as ownership by him will be something that would have to be worked out. We don't have to necessarily have to discuss this in this forum, but Mr. Mercier can probably have a conversation about that in another forum. Edgar – Don, when tonight's over if I could just get a couple notes off that plan to check it. Mercier – Are you going to be able to show us where the docks are going to go on your plan? The application for the docks is separate, but part of what John's comments indicated was that if the DES approval is part of this approval, then the docks as approved would be shown on this plan as part of this conditional approval so when the docks are approved by DES, we would transfer the approved locations of the docks onto the subdivision plan. Mercier – Can he show us where he's asking for them? Johnson – I did not make the application to DES so I don't know specifically where those are. Edgar – I took some notes on my

plan from the Dredge & Fill Application and I could point out the approximate locations. Edgar pointed out on the proposed subdivision plan the general area of the proposed landing which is to be converted to a perched beach and the two dock locations. NHDES is trying to get away from creating beaches that always have to be replenished with sand so what they are doing more and more now is approving perched beaches which effectively are pulled back a little bit from the shoreline, built up a little bit and there's like a sandy platform so you have the benefit of sand, but it wouldn't wash away. Dean Dexter – At the last meeting we asked that you perhaps go out and see the island and thank you for doing that. This is a discretionary issue that I want to address, there's a lot of technicalities, there's a lot of legal questions that may or may not go forward in other venues. I would like to talk about what you looked at on your visit and what we will potentially see. This is why we're here. We're laymen and concerned citizens who are naturally going to gravitate towards perhaps the aesthetics, perhaps the qualities that have brought people to Wicwas and other lakes in this area. There's a lot of technical material that's been discussed, there's been a lot of discussion about the staging on the shore for the barges. I would like to talk about the staging and what this is going to look like during construction and after construction. I had the opportunity years ago to go to London, went to the big castle and saw the crown jewels. This is a very tiny lake and a very small island in comparison everything's kind of in miniature. This is almost like a crown jewel on Wicwas. What we are going to see is a barge maybe one or two come up here, we're going to see the plastic around to prevent erosion, we're going to see the crest of the hill perhaps bulldozed to some extent, we're going to see some roads through here. Less than four acres we're talking about. We're going to see some cutting, we're going to see maybe, if there's been talk about a tennis court in the middle, there could be lights. If there's no electricity, does that mean we're going to hear generators on a little island. We've got material from the Loon Commission or Association but this year we've got a loon nesting place perhaps 25' from this island. There's signs of them on the island. When I was growing up, they were always over there, but I've seen from the history of the loon population, they are all over the place. The idea is that we're going to see really the decimation of this place. That's going to effect the quality of life, the aesthetics and that's going to change the nature of the lake. You guys have legal things to balance, you have some of the abstract points that Mr. Dietz brought up, premature timeliness of development may be a legal question that gets hashed out, but what brings people out to hearings like this and what we come to you about is what we're talking about now. Where are they going to stage the barges? Where are they going to bring the backhoes in? What are they going to do to the crest of the island? What are they going to do to the trees? What

are we going to do with the power? There are safety issues. You, as the Planning Board, have in your hands the future of what's going to happen here and it's irrevocable. If you want to cut some trees, they are going to grow back. When I grew up there were hardly any trees on certain portions of Sheep Island. I could look across, I could see sheep and I could see the boulder covering the crest of the south portion of Sheep Island. Within my lifetime, that's grown back and if you cut trees here, they are going to grow back. You put in roads, buildings, cement, you cut away and put in tennis courts and docks, you have people going and coming every hour day or night, they are going to disrupt all of the natural habitat that is here and you're going to destroy the essence of what this lake is to the property owners that have been there. Had we known that this was a buildable island and frankly it's been common knowledge on the lake for years that this is perhaps not a suitable place to develop and that's why I think people have been late to the call here. Perhaps the modern technology and new innovations in septic design have changed that and it makes it possible for people to build on lesser parcels, but this is by definition a little under four acres but that is small for what we're going to see happening out there. Maybe a year from now if you grant this, you come out and visit that island, you're going to see something totally different. The question is do you want to do that to this lake? You have the discretion to say what's good or bad. I would like to have time to meet with some people in various areas, conservation organizations. I would like to have time to be able to go out and perhaps raise some funds to see if we couldn't put together a package to maybe buy the rights to this island or purchase this property so it could be donated to public use like the Hamlin property. We're happy with what happened with the Hamlin property out there. You have a beautiful development of Hamlin property there, good homes, beautiful homes set in and then you have this whole natural area that's been donated to the Town. We would like to see that happen to this little island. Not because it's 4 acres, but because it has such a place of prominence in the community of that island and in the community of the natural habitat which includes people and animals. I would also hopefully someday like to be able to do that with a conservation easement for the owners of Sheep Island. There are possibilities here, we are not against development, we are against what this represents. You guys were out there, you saw it and yes, you have soils and you have setbacks and you have a lot of stuff that we talk about in a meeting like this and have that technical aspect, but there's something more important here and that's what's bringing people to New Hampshire, that's what's bring people on the lake, that's what's bringing people here to settle down and that's the essence of the aesthetics and the balance of what this quality of lake brings to us. I would ask you to tread carefully, start cutting, start pouring cement, start building roads throughout here, it's

going to be irrevocable and that's why it's kind of a precious time here for you guys to consider and we know you've done well in the past and we recognize the owner's rights to do with what he wants with his property, but unfortunately those rights have to be balanced and I certainly wish and hope we can perhaps take time to approach the owner to try to and I'm not saying we have it, but I've really done a lot of research I do know there's a lot of organizations that perhaps would want to help preserve this land for the Town. It's within shouting distance of the Hamlin land and Rawson Wood donated this island over here to the Town and Mr. Mercier has graciously decided he's going to keep his property out of sight so you look across the lake and you don't even see his place. We understand that the buyer, this is a commercial development situation, a businessman doing his thing and god bless him, we need businessmen, but perhaps we can approach people. I've been told this is a small lake maybe small potatoes, maybe the big conservation agencies and people wouldn't want to invest whatever it would take to preserve this, but maybe we can put together a strategy some of us to try to approach people of means and people who have similar concerns for this little lake in this little Town of Meredith that can balance everybody's concerns. I don't know if we can raise a million bucks. If you build a couple of houses out here and sell them for \$500-\$600 thousand dollars a piece, I don't know what we can do so I'm not trying to make that a promise here, but this is important stuff to people and it's not just me it's to my children and it's to you people as Town fathers because you know what happened on the lake 25 years ago, the building that went on out there in the big lake and the small lakes and I don't think people would be so happy about that today. We're living in a time when this kind of land is very precious and scarce so I simply refer to your good judgment and hope you hear us. Tim Golden – I absolutely agree with Mr. Dexter, I grew up on the lake, swam in it and fished in it, it's a great lake. It's a unique lake. It's not Winnepesaukee. I think it would be nice for the Town to try and preserve it. We've got pieces of Winnepesaukee and some of the other big lakes, we don't need to do that to everything and there are people that are dedicated to this lake that are here right now so that's the emotional side, but I think you guys can't say that's a nice lake so we can't let you do that. Aside from that, there are some very valid concerns. There's a clear concern for the electricity where that will come in. There's a clear concern with the access on the other side of the lake and already demonstrated problems with that right at the get go. The loons swim all around here and around Sheep Island as well. It sounds like there is some documented information about the loon habitat there. It seems to me there is a question if this is approvable at present. Do you have a design for two septic fields or one? There is a present design and there might be something else going to happen on the other design. As far as I know, you

use a pump system when you don't land that will perc and you need to pump the sewerage to somewhere else. Has that been considered? Perhaps I misunderstood. If there is no electricity, can you have a pump system? I may have misunderstood, but I don't think it's clear. Was there an application for one lot or two and if it's two, are there two septic systems clearly defined? If there was pumping needed for the first one, that might indicate that one of those areas is unacceptable for a leachfield. Has that been considered? If it needs to be pumped, the electricity will need to happen or that can't happen. Vadney – There's a surprising amount of elevation on that island. That's one thing I was struck by when we visited the island. Carl, from what I could see of the test pits and the proposed house locations, they should both be downhill gravity systems? Johnson – Not correct. Just to clarify, there is no requirement by DES to have power for an approved septic system whether or not it's a gravity feed or a pump. Some systems don't require a pump because it goes into the tank and the tank spills down into the leachfield by gravity. At least one of these systems, if not both, would be a pump and there is not requirement from DES to have electricity supplied off-site onto the island for a pump. It would be a generator situation and so right now, there is not normally a requirement to provide individual septic system design for subdivided lots. We're required to show a test pit and a dedicated 4,000 sq. ft. area for a leachfield. What's commonly done by the Planning Board in shorefront lots and other sensitive lots is to require as part of a conditional approval that State approved individual septic system designs be done prior to final approval and recording the plan. This subdivision plan would show on it two septic systems that each have state approval numbers. Right now the plan is approved by DES and does not show this subdivided line. In lieu of this there has been a plan submitted to DES for a single house and a single septic system. The purpose of doing that is to demonstrate that the island has the capacity to have a septic system on it. Tim Golden – So you don't have all the specifics you need for this plan? Johnson – That's up to the Board to decide. If the Board decides that they require an individual septic system design plan for both lots, then we would have to do that. They haven't required that yet and it's not normally required. It's not normally required because they would perhaps use the same septic system. Johnson – No, what's normally required is that you show a test pit on each lot and show a 4,000 sq. ft. area acceptable for a leachfield and that's it. The Board normally in their Subdivision Regulations uses that information to determine if the lot is able to support a septic system. Vadney – Before we get a whole lecture on septic systems, let me assure you that nothing will be built there without the properly approved septic system. Even if we give conditional approvals, the condition is make this right or it won't happen. Tim Golden – Conditional approval just makes me nervous

because you're giving them the go ahead. Vadney – Conditional is not, that's what we're saying is you don't have the go ahead until you've met these conditions and we put very specific conditions on it. Edgar - Just to help clarify a little bit, under a normal subdivision scenario, let's just all agree that this is not a normal subdivision, it is an island and so forth. If we created a one-acre lot, we would go through State subdivision approval which is a review of the test pits to make sure that the receiving area is in fact doable for a design. That's a limited review, it's not a full design, it's a review of the test pit log, the perc data and other things. That's normally what's required for subdivision. The logic there is if we created a 3-acre lot somewhere, we don't know at the end of the day where the house is going to go. So on the front end, we get a State permit as the backup and it's very clear that we have at least one doable situation, but probably 90% of the time, where the septic system actually goes is driven by a house site which is not known at the time we create a 3-acre lot so you get the subdivision approval which is test pit data and then for the building permit under normal circumstances, it's the building permit that would then drive the State approved septic design so once the house is sited and we know whether it's a gravity or pump and all those kinds of things which are driven by a very large degree by the house site, then there's a state septic design done under normal circumstances and that is a function that is part and parcel to a building permit. So at the time of the building permit, we have a State approved septic and off we go. That's the normal drill. In some cases when we have shoreline development or other sensitive sites, the Board, as an extra level of precaution, may require the septic to be designed in advance just for an added level of security to know what the deal is prior to the lots being created. That's the question and that's what we've been speaking to and it's this Board's discretion if they were to grant an approval, there could be a condition to take it to the next level and not only require State subdivision but actually have the designs done so we know for a fact exactly what's going on. Tim Golden – Given the sensitive nature of this and the wetlands nearby and it's on an island and it's not normal, I would hope that you seriously consider that extra level of precaution. Is this where the lake level is right now, this outer blue line that surrounds it? Johnson – I can't tell you that because I don't know what the gauge reads right now. Golden – Is that four acres? Johnson – Not quite 4 acres. Golden – But is that based on this line right here? When the lake rises 1 foot which it does, if this is at zero, do you know if you're telling me this is 4 acres when that lake is a foot above the present level which it is sometimes in the spring 6" easily, do you know how much acreage you lose here and aren't your setbacks all shot to heck at that point and given the sensitive nature of this, if you're close and that water level rises up that's not going to be very good for the water quality or the septic system. Johnson – I don't

know if you were here at the first meeting, but the State of New Hampshire actually determines the statutory mean high water of Lake Wicwas. It is measured at a point that is significantly lower than what the lake is normally kept at. This gentleman keeps it at roughly "0" which is 27" below the top of the dam. The jurisdictional mean high water is 6' 2" below the top of the dam which means that the State mean high water which is what we would have to measure from for the State would be up here somewhere. I don't know why that's being brought up, that has no bearing on anything. Golden – I know the lake. My dad used to complain about the lake levels 20 years ago and I will say the lake does vary. In spring when the water's running in at the top through the culvert, there's a lot of water coming into there. It's going to have to vary. If this is the line, I think you need to know what happens when the lake level goes up 6 inches which it normally does in the spring and according to my rough calculations and I would trust them more than the State and who cares that the line's supposed to be up here, what we need to concern ourselves with if there's a septic system in here and the things that are in it and the water rises up, your 125' setoff just became 50', so given the extraordinary nature of this, I hope that would be taken into account. Johnson – Every water body has some type of a reference line associated with it. Winnepesaukee as I mentioned is determined by a USGS elevation of 504.32. When we do a shorefront property or island property on Winnepesaukee, we identify a line that's at elevation 504.32. Sometimes the lake is lower than that and sometimes the lake is higher than that. We don't change the plan every time the lake goes up and down, we have to go by the reference line. That's what we are required to do. The reference line for this particular property, sensible or not or senseless, is out here. What we are doing is providing a self-imposed reference line which is considerably more restrictive than we have to based on the gauge being kept at an artificial level by removing and putting in boards. And so does the lake ever get any higher than that, yes. Vadney – If you lowered the lake that extra four feet that you say the State uses, you could lower it an additional 4 feet and there wouldn't be much lake left, but you're saying that's what the State would call normal mean level. If you did that, how much buildable land would you pick up on this island. You would pick up mostly ledge.. Johnson – What I would have to do is I would have to go hydrographic mapping like when we apply for boathouses and whatever shows the contours of the lakebed and then reference that to the gauge and then show where 6' 2" below the top of the dam would fall and then based on Randall Shuey going back out and analyzing the soil types out there, determine what the soil types would be. The common misconception is that if you lowered the lake, it would all be bad soil. That is not the case and especially not the case over time. As a

matter of fact if that were to be the case, many of the areas that are identified as wetland on the property now would transiate to a _____ situation. That's more likely the situation unfortunately. I went over in great detail why we are showing the line where we're showing it, it is a judgment issue. It's a much more restrictive line than any reference line that's determined by either this Board or the State of New Hampshire would make us adhere to so you are correct, it would go up maybe. Tim Golden – Wouldn't the more restrictive line be a foot above the "0" reference level of the lake which is what the actual high water level tends to get to and can get even higher than that some springs. Vadney – You are correct, it would be more restrictive, but it's not necessarily one we're allowed to do. Tim Golden – His argument is that he's stating it's most restrictive and it's just not true. Johnson – I didn't say that. It's a more restrictive line than what we're required to show. Don Mercier – I had a boundary problem with this property years ago and I went to the Highway Department and if you go back in the history when they put that road through there, there was land taking and then some of the surplus land that was near 104, they arbitrarily folded into the abutting neighborhood. As you know, 104 crosses the new 104 in several places and some of that land, you can go back and look at the records, was given up to the abutters and that's what I maintain is the same practice here. They took some land and whatever they didn't need was folded back into the abutter which in this case was myself and I would hope that you would in my interest and the interest in the viewing, when you go by this all the trees are in that area now. There may be a chance that they want to go to one of the other neighbors to cut through to get that power, but I don't want them going through this section here. I would hope you would put that in your decision so we wouldn't have to go through a legal hassle. Vadney – We will investigate that. Mercier – Will I have any way of knowing when the decision is made whether it's in the decision or not. Vadney – It will all be disclosed here in the public meeting in the future. I'm sure one of these folks will let you know. There's certainly a lot of interest in the issue. It will all be public record. Johnson – I obviously have to resolve the issue of that plan with Mr. Mercier and what's being shown there and I will guarantee him that regardless of what happens, he will be notified. Edgar – Activities, the hearing, the deliberations, etc., are a function of a public meeting. Nothing is done other than potentially consultation with legal counsel, but all the hearings and deliberations are a matter of public record in terms of minutes. The law also requires the Board to develop a Notice of Decision so once they complete the deliberative phase, there's a document that would include whatever stipulations or conditions, if any, the Board would impose on the project if they were to vote favorably. You asked if this were to be worked into a

decision, would you be able to ascertain that and the answer is "yes". If that was decided by the Board as such, it would be in a Notice of Decision. Mercier – I want to avoid making unnecessary calls to your office to see if a decision was made. Tom Crane – Just to back up what Don said, my neighbor is Mr. Kortz who abuts Mr. Mercier and he told me the same thing that his land abuts Mercier's and there is no State ROW along there according to his plot plan also. Just quickly and it has to do with I think with what Bob Dietz was talking about with your taking a look at the impact. Just quickly, if this is the lake and this is Route 104 across here and Chase Island is here, the islands that Dean Dexter was talking about are over here, the Hamlin area is on this side of the lake and then you have Sheep Island over here, most of this area is all marsh area, this is where the loons are right now and then this is marsh area, this is just a natural highway for wildlife through here. I live over here and look right down on this. I'm a year-round resident and I can't tell you how many fisher cats I've seen going between these islands, weasel tracks, fox, there was a moose killed, a deer killed here one year, another year a deer went out on an island. I've seen moose swim through here and because of the marshland and the access to Hamlin, it is a very distinct wildlife corridor and it's critical and I agree with Dean that it's a shame anything would go on this island, but two houses are going to be quite a bit more of an impact than one and again just taking that into consideration, I think does make some sense. Is there any way to verify that there is just under 4 acres there? ??? - My sense of land is not that great, but when I go and paddle around that island, it doesn't seem like 4 acres to me. You guys have walked it, you probably have good sense of land. Vadney – I don't have any reason to doubt Mr. Johnson's estimate of the number of square feet at the water level he's using as a reference. I think his numbers are certainly good there. You could question what level the lake was at or whatever was used as a reference, but I don't think there's too much of an issue other than the crooked shoreline, it might make it a little difficult to do the calculations so I'm willing to accept that those numbers are certainly within normal surveying errors they say. Charlie Ferrone – Forty-one years ago, I bought two lots from Dr. Hamlin and I love the lake and it's been said how unique it is and I just biked up to Waldron Bay yesterday and I saw a lot of For Sale signs on homes that were just built 3 or 4 years ago. There's a lot of turnover. You don't see that much on this lake. I just put our property into a family trust for generations to come in my family. I see people staying here, I've seen their 2nd and 3rd generations out in the Cove swimming. It's a precious place. I've seen a moose at 7:00 a.m. in the morning swimming all the way down to the marshes and I just think it's very unique and it's

precious and hopefully it can be protected. Paul Bradley – Is it possible that this island might be “For Sale”? Vadney – That’s beyond the purview of the Planning Board, but it’s certainly a good question for you folks to ask and Carl do you want to make a stab at that? Johnson – The owners have indicated to me that they do have a price that the island can be purchased for not to be disclosed at a public hearing. I know they were contacted after the last meeting by one of the members of the audience in here regarding that and there was some discussion on it, but I do know there is a certain price that the island could be purchased for. Flanders – I think it’s clear that there’s enough issues outstanding that we shouldn’t be considering even a conditional approval tonight. My suggestion would be that we ask the attorney for the applicant to respond to the issues brought up by Attorney Dietz and then that response be referred to our counsel for review and then the Board set up a non-public meeting with our counsel to get guidance. There are enough issues here, I think we need to do that. Bayard – I agree and I think we obviously need to talk with the applicant about an extension of the process. Edgar – I think as a practical matter asking the applicant’s attorney to respond to Attorney Deitz’s letter is a practical thing to do, I’m not so sure we can force him to do that. Flanders – We can’t force him to do it, but keeping the taxpayers in mind, I would prefer to have them spend their nickel to get an opinion and then it’s just a matter of our attorney reviewing the two opinions. Johnson – I don’t believe Mr. Dietz’s letter has anything in it that my clients’ attorneys can respond to substantively. The issues that he brings up that are legal issues are the notification issue and then the issue of whether or not not having road frontage or street issues, are Town issues not our issues. We can’t hire an attorney to make a decision on the Town’s behalf. The other substantive issues that Mr. Dietz talks about are issues that we’ve addressed in a public hearing through representation, not legal issues. There are issues like emergency access and the fire, those aren’t legal issues, those are issues we’ve addressed and brought them forth. If the Town thinks there are legal issues that have to be resolved prior to proceeding, go for it. I don’t think there’s anything... maybe Mr. Dietz would like to comment on that whether or not one of our attorneys would be able to respond to his letter or whether it would mean anything. Vadney – As far as the procedural issues on that, I won’t say that its totally unfair for him to raise those issues, but I’m not worried about them from a Town’s legal standpoint or constitutionality, because the intent was met by the fact that you all came and there was nothing done at midnight trying to sneak a subdivision through without proper notification. Some of you may have been miffed and I don’t blame you, but there was no intent on our part and there was no actual damage done by not having sent our 30, 50 or 100 certified letters. Those arguments may have some validity

from a constitutional standpoint, but I'm not worried about them. A couple of the substantive things that he had in his letter, I think we've either kind of hashed them over here tonight with some conclusion or at least we are well enough aware of them that we will take that thinking and do some more research on it. Flanders – I would suggest that the Planning Board send a letter to the applicants and tell them that we will be reviewing this with our Counsel on a date specific and give them the opportunity out of courtesy if they want to respond with information from their attorney. If they choose not to, then it's at their risk. Vadney – I do want to make a couple of comments on things that you folks didn't raise that I was somewhat surprised that you didn't. Some years ago, we wrote a new Master Plan. One of the major things in the Master Plan was to preserve the rural character and to protect the approaches to Meredith and I guess part of it is that it's your view, you see the lake from your cottages looking out. I consider it actually more important for the people coming in who look across the lake and see it from 104, which none of you mentioned and that struck me as a bit odd, but I can see that your vantage point is different than my riding by. Based on that fact, we do specifically say in the Master Plan that we have a goal of protecting those types of view sheds to make things look nice when you enter the Town. I think that is a thing worth protecting and that's a thing that two units, one would be bad, two would be a lot worse so to speak. I can't quantify that any closer than that. There is also a clause in our ordinance that says that the lot size is, although we do have minimum lot sizes, there is some ability and some authority of the Planning Board to require more than that minimum when the situation suggests that and this is one. There is certainly a question and I'm not going to get into an argument on lake levels, but there is certainly a question as to how much land is out there and I don't question Carl's numbers for what he measured, I'm sure they are accurate, but there's a question of where you should measure and what you would measure if you measured higher or lower. In just some rough calculations eyeballing this thing here tonight, it would appear to me that it's 1,500' around that island and if the lake went up and down a foot and you've got the normal slope that you see around that island, you would be adding a substantial amount of real estate for every inch that it went up and down. I've been concerned from the day we first looked at this over the calculations for minimum lot size, soil type and soil types that are excluded and the fact that the calculation came up to 2.011 lots are authorized. If you offered to give me \$2,000.00 I'm not going to argue about 11 cents and that's what 2.011 equivalent is 2000 versus 11 cents and that's pretty meaningless. My point here is his numbers are good, but it's a real stretch to say there's two real good valid lots out there based on that .011. That by the way, .011 lots I think that comes out to about 440 sq. ft. which is about 21' square. If it was 21' less of good

buildable land, they wouldn't have two lots is what I'm saying so that's something I'm going to be looking at very stringently in the conclusion. I don't need to tell you this tonight, but I want to tell you right where I stand on it. Those are the two issues for me, protecting that entry view coming into Town and looking at how close we are on having two authorized lots and whether or not the Board's discretion is to be able to say, hey, this is a case where maybe you need 3 acres or whatever. Two lots just aren't capable, but that being said, we need to continue this and investigate some of the things, there were many good issues and we do appreciate those coming up tonight. Granfield – I just want to make one comment after hearing all this. What troubles me is and I totally agree with the attorney, I think we do have discretion here and that all of a sudden I see us building this thing with so many caveats to it and I don't agree with any of this on the Fire Department side. I can't see anybody signing away the fact they may get poor Police service, Fire service and I don't think the Town would really want to be signing that anyway. You try to do the best job you can and if somebody's thinks it isn't, you take action later and then we need sprinklers. I mean, we're building this box and one of these gentlemen said "who would want the plan anyway by the time we get done with that", so I think that points out how much problem we've got with this and the access to me is a whole other issue. If I'm responding to an emergency and after 30 years with the Police, I want to know right where I'm going and how I'm going to get there. This is very nebulous to me and there's a whole lot of things we've got to get answered before we can move forward with this in my opinion. Vadney – I will add to my statement of a minute ago, there are still some construction issues even if one house is built out there that I think are very important, but I think the view coming in and the idea of two lots is something that is highly questionable and that's where I stand and it pretty much sums it up. Anybody want to give any kind of indication to the Board or a motion. Sorell – The only comment I've got is that it may be an island, but it's still a lot of record and if the guy so wished to make one house out there, he's got a perfect right to do that. Vadney – He may have some stringent construction problems, but he has the right to have something. We either vote or get an extension. Edgar – I think you need to look at the extension issue because you have the cart before the horse if you pick the continuance and then work out a mutually agreeable timeframe. Johnson – We agree to an extension at the Board's purview right at the moment. It appears that the amount of time necessary for response is up to you and not up to me. Flanders – Do you have any suggestions for us? Vadney – Timing for your schedule? Edgar – Tim is actually going to be on vacation for two weeks and we would need to consult with him if we followed your lead and sent a letter availing them the opportunity to respond to Mr. Dietz's letter. Following this week, Tim will be gone until the 1st of

August. So we would have to schedule something for him early August and then you would look at a continuance date sometime recently thereafter which would be the 2nd Tuesday in August, that would be the earliest. Flanders – I just think it's a courtesy that we allow the applicant to respond, whether they choose to or not is up to them.

Flanders moved, Granfield seconded, THAT WE CONTINUE THIS HEARING TO AUGUST 23, 2005, TO ALLOW TIME TO MEET WITH TOWN COUNSEL. Voted unanimously.

Flanders - The reason I'm doing that is I want to make sure we've got adequate time to get this... and if the applicant's attorney chooses to respond and we send that to Tim and Tim reviews it, then we as a Board need to meet with Tim before we come back to another hearing in my opinion. Kahn – My concern is that a lot of these people won't be available if this drags on into September or October and I would like to see us push it and try to deal with it during the month of August when most of these people will be around or at least can make themselves available. I've dealt with issues on Waukegan where if they drag on into November, there's nobody at the meetings so I think as a courtesy to the people on Wicwas, I think we ought try to meet as early as we can. Flanders – That's a valid point, I think but could I just ask a question, how many people here are summer residents and how many are year-round? The majority of the people are year-round residents. Edgar – The issues that have been raised are all appropriate for the Board to consider. All the issues that we've heard today are more or less refinements of things we heard at the last meeting and some of that we heard at the meeting prior to that so I don't suspect that we're going to get a whole lot of new testimony and I just caution the chair of just having another hearing for the sake of hearing it for the fourth time. I think what's relevant to the Board's decision has to deal with some of the discussion about to what degree is discretion appropriate and the basis for it and how far you go relative to whether it's a denial or relative to attachment of conditions and those kinds of things. That really is the crutch of the issue from my chair and to that extent if the applicant's attorney wanted to comment on the issue of prematurity and the application of discretionary authority, it's appropriate for them to give that opportunity for their legal counsel to maybe offer a contrary view and as Bob suggested if they take advantage of that, off you go. We know what the issues are, we maybe need to staff to continue to refine a couple of things, but I think the issues are pretty well framed. We've heard it several times, appropriately so. I don't suspect there's going to be new issues raised at the next meeting. I hope everybody's being straightforward with their testimony so

the cards are effectively on the table so we can draw a line in the sand, close the public hearing and then go into a deliberative mode and make a decision and let the chips fall wherever they fall. From a slightly different point of view, I think it would be appropriate to hopefully get our arms around this on the 23rd such that the Board could make a decision and as you suggested, Bob, giving ourselves adequate time for counsel to review some things and to meet with you is very appropriate. Vadney – I would agree with John that we need to wait so we can meet with our attorney, Tim Bates, that apparently adds a couple of weeks in there with all the scheduling and stuff the 23rd of August is still in the summer although some people don't call that summer any more. The 23rd works and I would agree with John that on the 23rd, it's the duty of this Board to vote up or vote down, but there's no sense in dragging it on beyond that. Edgar – I think also you have the responsibility to the applicant who has agreed to waive the 65-day review requirement and I think it's in fairness to all parties to move this thing along. Bayard – I would just like to say that it would be totally our intention to do it at that point, but I don't want to bind us to anything to vote on something. Vadney – There could be additional information by major change in the proposal. Assuming this motion is going to pass in a minute, I can't say you will be re-noticed because you weren't, but this is your notice to be here on the 23rd if you're interested.

The Board authorized signing of the Nadeau Subdivision Plans outside of a regular meeting.

Plan Signatures: Mark & Robin Brady – 3-Lot Subdivision
38 Main LLC – 5-Lot Subdivision

Meeting adjourned at 9:58 p.m.

Respectfully submitted,

Mary Lee Harvey
Administrative Assistant
Planning/Zoning Dept.

The minutes were reviewed and approved at a regular meeting of the Planning Board held on _____.

William Bayard, Secretary

