

PRESENT: Vadney, Chairman; Bayard, Secretary; Bliss; Kahn; Finer; Flanders; Touhey; Granfield; Edgar, Town Planner; Harvey, Clerk

Finer moved, Kahn seconded, THAT WE APPROVE THE MINUTES OF 8/9/05 AS PRESENTED. Voted unanimously.

Lou Kahn advised the Board with regard to the Henmor application that he is friends with the Merciers who live closest to this island. He is also friendly with Wayne Blake and I abut his property, and Doug Hentz plows his driveway at property on Lake Waukegan. The Board members did not feel that this situation constitutes a conflict of interest. Applicants did not respond.

PUBLIC HEARINGS

HENMOR DEVELOPMENT, LLC (FORMERLY EDNA SWANK) – (Rep. Carl Johnson, Jr.) (Finer stepped down)

Continuation of a public hearing held on May 10, June 14, and July 12, 2005, for a proposed minor subdivision of Tax Map R10, Lot 22, into two (2) lots (1.76 ac. and 1.82 ac.), located on Bryant Island in the Shoreline District. Application accepted May 10, 2005.

This is a two-lot subdivision proposed for Bryant Island in Lake Wicwas and we've had multiple meetings and several hours of testimony regarding the merits of the subdivision. I'm going to try to make my comments as brief as possible to not rehash many of the issues that we've already gone over. I think the Board's pretty familiar with those issues by now. We have made a couple of adjustments to the plan based on comments made by the audience, abutters, concerns by the Board and others and some additional staff comments that were made by John Edgar and I'll briefly go over those. I know John's going to want to speak. I'm assuming the abutter's representation is going to want to speak and then I would like to do a final wrap-up if I could. One of the things that came up during the discussions was the sensitivity of certain areas of the island, both from an environmental standpoint and from a viewscape standpoint so what we've done is added a proposed 75' natural woodland buffer that starts at the southern part of the island, proceeds and encompasses the entire easterly portion of the island all the way to the northwest portion. This 75' natural woodland buffer essentially would be very similar to the State of New Hampshire's woodland protection buffer and the Town of Meredith's 25' woodland buffer in that the objective of the buffer would be not to cut trees down. There would be some provision to allow some trimming and there would be a provision that would allow removal of trees if they were dead or diseased. We would supply to staff for review a document that would either be separate from and attached to the deeds or language would be incorporated in draft deeds that would have that provision and also the stipulation of removing the

trees. Normally in cases that we've done before, the removal of those trees as a result of disease or being dead would have to be certified by an arborist. It wouldn't be up to the landowner to decide how to cut that down. This buffer provides a couple of additional safeguards, it provides an additional environmental buffer, of course, adding to the potential protection of the water quality and those issues. It does protect additionally three of the four wetland areas that were identified on the plan. As you know, there's a 25' natural woodland buffer that's part of the Town of Meredith regulations for structures. There's a 50' State of New Hampshire buffer for the Shoreline Protection Act. This would be in addition to and greater than those standards. We have shown on the plan the proposed dock locations as part of the application that was made to the State regarding the positioning of the docks and we have not on this plan because it was not shown, but there was a perched beach shown on the original application to the State and that has been removed. Those are basically the additions to the plan and there's a notation here regarding the mean high water that we've been talking about and where the mean high water is as determined by the State and why we're showing it where we're showing it and that this is a more restrictive setback that we're showing here and since it is somewhat subjective, the concern was that somebody would show up and attempt to exploit the 6' 3" below the top of the dam standard when applying for a permit to build a house closer to the shoreline would be impractical and so we have put a note on here that the municipal permitting standards will be from the setbacks that we've shown here. It would be from "normal high water" for Lake Wicwas and we've had testimony from the man who is in charge of regulating through the dam how the lake goes up and down and he does have a gauge there which is set at "0" for where they keep the water on a normal basis. There was a bunch of additional correspondence that was in your packet and I hope you've had a chance to read through that information so I'm not going to go through each and every bit of it, but we do have correspondence regarding septic maintenance from Lamprey, the historical use of the Chemung Road access from the Swanks. There was a response to the potential complaint of a possible violation of the DES wetlands and that's also in your packet. Basically, that response says that based on receiving the complaint at DES, they did an inspection of the property and determined there's no violation. That's not on this piece, it's on the piece that's on Chemung Road which again we've mentioned is not necessarily a part of this application because the Town does not require that access be provided to an island. Henmor Development, LLC has written a letter addressing some of the concerns that were raised by Mr. Dietz and the abutters and I don't see a need to go through each one of those. You've read the letter to see how they responded to those comments. John's Staff Review contains many of the elements that we've already gone over and talking about the history of zoning, the on-site inspection things like that, Bryant Island's description and the description of Lake Wicwas and the public boat launch, the zoning density and the soils based lot size requirements. The only thing I would like to mention

in the soils based lot sizing requirements that there was some concern expressed at the last meeting that we were just a little bit over and I would like to point out and remind the Board that we are a little bit over a standard that's been set far and above the normal standard for a lot size. The Town of Meredith regulations as they sit right now have a methodology which in one manner penalizes certain types of soil types by not allowing a proper lot sizing to be made once the specific soils information is provided. In other words, we do the fancy soils analysis and we have to back that into the existing Belknap County soil types and for many of the soil types that are out here, you don't get any benefit for doing that soil so the bar has been raised in that respect and then the bar again has been raised and the fact that we're providing a shoreline here which is based on what we're saying and albeit a little bit subjectively where the normal water level is kept at Lake Wicwas. Many lakes fluctuate greatly. When you have a dam situation, you have the ability to control that to some extent. Now that's not to say that Lake Wicwas doesn't go up and down, I know that it does, but because we have a method of being able to control the outfall, we do have a method to be able to stabilize to some extent where the water level is and so we've provided that and that standard is again above and beyond. Although we are just a little bit over what the standard is, that standard is very high and I think you don't have to look much further to the septic system design plan which from a lot loading standpoint demonstrates by State of New Hampshire, Department of Environmental Services Subsystems Bureau that the island can support 22 bedrooms. The purpose of soils based lot sizing and there is only one purpose for soils based lot sizing basically is determine the capability of the site to handle the septic system and it can be able to absorb what could be put into a septic system and there are some minor other issues, but that's basically the nut. The nut is can you support a septic system and there's no doubt in my mind that this island can support two 4-bedroom systems which is what would be proposed. The other thing the developers have agreed to do is to agree that if the subdivision were to be approved, although we have one approved state septic system right now, we would submit to the Board for their approval for the conditional approval, the design of the second system. That's sometimes done in shoreline subdivisions to demonstrate above and beyond what's normally required, yes you can have a septic system there and there's no proof better than that than a state approval so we would agree that the second design be shown as part of the approval of subdivision. I mentioned the alleged wetlands violation, I think there's going to be additional testimony from Mr. Dietz on that but basically right now we have the letter from the State in the folder stating that at the time of their inspection there were no violations on the site. We mentioned the Loon Preservation Committee discussions. This 75' buffer zone goes a long way towards addressing some of those concerns in that it does protect some of the habitat areas. As I mentioned previously, there's certain parts of the island specifically that's not suitable for loon nesting. It's too steep. Loons can't walk very well. The areas surrounding the

wetlands are suitable nesting sites because they tend to be at or near the lake level so this 75' buffer area essentially, half the island is going to be protected above and beyond what the normal protection would be. I mentioned the natural woodland buffer. John, in his staff review mentions some of the language that has to be reviewed at the staff level and that's common in a conditional approval that the draft deeds be submitted for review and that the language be sufficient enough not only to protect what the Planning Board's interest is, but to protect the future owner of the lots because it is essential that they understand what they can and can't do in the woodland buffer and so the language would be specific enough so that the people would know what is allowable and what is not allowable within that buffer. The septic system maintenance as I mentioned we've, gone over that before. The water supply issue John has reviewed with Bob Hill who is the Superintendent of the Water Department and Mr. Hill advised that there are no plans at this time to establish or use of Lake Wicwas in the future as a drinking water supply for the Town of Meredith. That was a question that was raised during the last meeting. In terms of the access issue, once again the Town's regulations do not require that you provide access. The access, in terms of how the people are going to get to the lots, is one issue, the construction access is another. It's intended that the construction access be from the Town ramp and what the owners have agreed to do is submit to the Selectmen for their approval, a construction access plan which would detail how the access is going to be, give windows of when the access is going to occur and post a bond sufficient enough to cover any potential damage that might be resulting as using the ramp for construction. That would be something that the Selectmen would entertain and administer. I don't believe it's something that the Planning Board would necessarily be involved in, but it would be part of whatever the bulk of the approval would be to have the Selectmen approve that construction access plan. We've gone over some of the issues regarding the fire fighting, medical emergencies and those types of things and we have a letter from Chuck Palm which is in the file addressing some of those issues. We've been over that before, I don't think we need to rehash it with the exception of the statement that we do intend to have the advance warning systems installed in the houses that would give a heads up to any potential fire situation. It's important enough when the people are there, but certainly more important when they are not. Of course, written evidence that pins will be set prior to recording the mylar. Prior to recording the mylar I would certify that the pins have been set. We have not set the pins yet. Mr. Moriarty and Mr. Hentz from Henmor Development, LLC have written a letter that's in your packet. Again, they are going over many of the issues that were raised by Mr. Dietz, some of the allegations of violations, things that have been said that have occurred, that haven't occurred, things that were said that might occur that are not going to occur and I won't go through the several pages of that testimony, but it's in your packet and I hope you've had a chance to review it. There was one additional comment

at the last meeting regarding the sensitivity of the island coming in 104 and we did some very unscientific measuring of the time if you're traveling on 104 East that you would enter the point where you could see the island and then exit the point where you could not see the island. Traveling at about 50 MPH, the island is visible for approximately 3 seconds this time of year with the leaves on the trees. Without the leaves on the trees, it's estimated to be about 5 seconds, you've got a 3-5 second window at 50MPH where you can see the island. The other thing that plays into that fact now is that we do have the 75' woodland buffer and that the houses will be facing the southwest not the northeast so it's questionable whether or not you would be able to even see the dwellings on the island from 104 as you were coming in, so that's just a comment to address basically the issues concerning potential views as you were coming in the corridor to the Town. Those are some of my basic comments at the beginning. I know John wants to address his staff review issues and I would be happy to answer any of your questions. No questions from the Board.

Edgar – Mr. Chairman, the last hearing was continued to tonight for a couple reasons and one was to allow the applicant to respond to issues raised by Attorney Dietz in his correspondence of July 8th and to allow the Planning Board sufficient opportunity to consult with legal counsel regarding several legal issues that remain. We had asked the applicants to respond to the due date in anticipation of tonight's meeting so that whatever the response, it would be in the file in sufficient advance time to allow everybody the opportunity to review the file. That, in fact, has happened so that was complied with and the Town has met with counsel in a private session to review some of the legal issues. As Carl indicated, a note has been added relative to lake elevations for purposes of municipal permitting. With respect to the access issue associated with the mainland piece, the applicant has provided a letter from NHDES Wetlands Bureau indicating that they have inspected the property in response to a complaint of possible wetland violations and that they have determined that no violations have occurred within a jurisdictional area and there's a letter dated July 22, 2005, that's in the Board's packet. It is also my understanding that Mr. Thorpe and Attorney Dietz have met with the Meredith Conservation Commission on 8/18/05 and presented recent aerial photography of the area in question and that the Commission has suggested bringing this information to the attention of DES for their review and the Conservation Commission has so advised the Wetlands Bureau of the additional information. As Carl had indicated, the letter was submitted by the applicant to the Wetlands Bureau with some additional technical information and as a practical matter they had moved any of the proposed docks outside of the Meredith zoning setback, as well as eliminating the proposed perched beach. Carl indicated the main adjustment to the plan has been the indication of the 75' wide mapped woodland buffer. The Town's 25' buffer really has to do with non-conforming structures so if you are in that 25-30' area and you're expanding a non-conforming

structure, the non-conforming use provisions in the zoning ordinance identify the 25' natural woodland buffer and is kind of a sacrosanct area because of its immediate proximity to the sensitive shoreline, but as I've indicated in the staff review that they've indicated both in plan view and in their response letter, a willingness to provide for this feature provided that the owner of record retains rights to manage the timber within the zone for review and maintenance. I think this is a very positive potential feature to the subdivision application. I think shoreline buffering has the potential to address several concerns that have been raised: (1) the filtering of non-point pollution between the development sites and the water's edge; (2) protection of habitat both on and off site; (3) viewshed protection, (4) the projection of light from the island; and (5) the projection of noise from the island. I don't think the buffering is absolute, but I think it would go a long way to addressing those issues. With respect to the viewshed protection, one of the efforts that we had done back when we did the Master Plan was a study by Tom Kokx, a landscape architect, who numerated 100 some odd view points throughout the community and has gone through an analysis of the Meredith views. The view off 104 is considered a significant view and the obvious beauty of that viewscape coming in off 104 so I think that the extension if the Board were to look at this buffer as a requirement of the approval certainly would work towards satisfying that issue. My own guess is that you might drive by in a few seconds, but if you had an obnoxious element of a view or some contrast in the view, you might look at that because of its peculiarity longer than you might just look at some very blending pastoral kind of scene so if nothing strikes you as odd probably would drive by, glance at it and appreciate it whereas if you saw something completely out of character, it might actually draw your attention to it. Rather than quibble about 4 seconds or 5 seconds, I do believe and as Carl has also suggested that buffering would go a long way and basically envelopes that whole end of the island... Not unlike other projects that we've approved, specific covenants and restrictions should be developed that would set forth the objectives as they've been stated here so that there is some kind of a standard that is part of the approval that everybody can understand and that also, most importantly, is something that can be understood from the point of view of the individual property owners. These covenants and restrictions could take the form of a conditional approval, gives the Planning Board a little bit of weight relative to the significance of that. The specifics as we have them in all our condominium documents, we review those at public hearings and the Board signs off on the text at a public hearing. I would not suggest that it be strictly an administrative matter and that it would be prudent for the Planning Board to understand the specifics of the cutting provisions and then the final document would be of a sort that would be recorded at the Registry of Deeds whether it's part of these or a separate covenant document. I do think there is an opportunity here to meet the kind of flexibility that Carl indicated where if there is a tree that represents a hazard or is dead, that would come down and the assignability to

manage that within reason provided that purposes of the buffer are again identified. With respect to utilities, State subdivision approval is required for the septic, test pit locations and the applicant has already agreed to and I have suggested in the staff review that you may want to consider requiring an approval for each of the individual systems for each and will probably require minor modification to the approval on record that was granted back in July because the leachfield was on one lot and the house was on what is otherwise to be a separate lot so they probably have to seek an amendment to that approval and then end up obtaining the separate approval for the second lot. As was indicated, the issue of septic maintenance was an important issue that has been raised. The applicant has submitted a letter from a licensed, equipped and insured septic company indicating their agreement to serve the island and I brought the Board's attention to a letter in the packet from Lamprey Septic Service dated July 12, 2005. The applicant also, in their correspondence of August 5, 2005, indicate that they would have a septic maintenance agreement developed and acceptable to the Code Enforcement Officer as part of the building permit process. One of the issues that I think we need an update on, as Mr. Mercier a nearby mainland property owner asserted back at the July 12th hearing that he and others owned narrow strips of land adjacent to the NH Route 104 ROW and representations made by Carl at the public hearing that the applicant can access the power directly from Route 104 without crossing private property was incorrect. I think at the last meeting Carl had indicated he would follow up with Mr. Mercier and perhaps it would be appropriate to get an update as part of tonight's hearing on where we are on that. I spoke with Bob Hill, Water Superintendent, regarding the Board's water issue and he has confirmed to me directly that the Water Department has no plans to use Lake Wicwas as a backup water supply or primary water supply. As Carl indicated, there are two access issues. One is the details on how the lot could be accessed for purposes of construction. It is a Selectmen issue in terms of to what extent there would be potential impacts to the public safety or public facility at the ramp. Our Town Counsel has advised the Selectmen and advised the Town Manager relative to that issue, so it is an issue for one building or the second that would be triggered by subdivision. I suggested that the Board could consider incorporating that access management plan approval as part of this approval so that the Board would have a comfort level knowing that the construction access issue has been resolved to the Selectmen's satisfaction prior to the creation of the second lot. Applicant has indicated in their correspondence of August 5 that they intend on providing deeded easements to the purchasers of the island lots for car and boat parking on the mainland and that it is an historical use for that purpose. There is a letter submitted from the previous owner, Swank, dated July 25, 2005, that every year since they purchased the land and I have no idea if that was one year of 100 years but every year since they purchased that land that they have used it for various levels of vehicular parking and boat launching. An important issue that has gotten a lot of attention I think is exactly that the property is subject

to Meredith's Erosion and Sedimentation Control Ordinance which in a waterfront case will require a submission of an erosion and sedimentation control plan for approval by the Code Enforcement Officer prior to the commencement of earth disturbing activities. I suggested in my staff review that final plans should also note that requirement so the prospective purchaser of the island also knows that not only is the property subject to State law but is also subject to local erosion control. We don't require those until the building permit because we don't know exactly... then at that point we look at a detailed erosion control plan as a prerequisite to issuing a building permit. With respect to the safety issues touched on by the Chief's response of July 12, 2005, the Chief has indicated that there is an inherent delay involved with response to island emergencies, he's recommended that any construction approvals include the installation of a monitored and maintained alarm system which the applicant has agreed to. The Chief also made a couple suggestions to explore the possibility of sprinkler systems to help reduce property loss and to provide additional response time and also to get some form of understanding recorded at the Registry of Deeds similar to what is required by statute for development on Class VI roads. We have received one additional correspondence letter from Suzanne and David Larsen dated August 9, 2005, which is in your packet. The Larsens provide some history on efforts to protect properties in and around the Lake Wicwas area and suggested that the Board not only follow the letter of the law but address the spirit of the law. Vadney – Would the applicant want to talk of the power at this time? Johnson – I did speak to Mr. Mercier and reviewed the plans and there is a section of the State ROW that is acceptable for power access that does not interfere with Mr. Mercier's property or anybody else's property. There's an area where the roadway was filled in order to create the highway. The shoreline went originally up and actually across from where Route 104 is now and in by the Brunt's property by where the old 104 as it comes back and when the original plans were prepared for Mr. Mercier's predecessors, the question of the ownership of that came up and the color of title rests with Mr. Mercier for that strip of land meaning that he has the best claim and the right and there is a recorded plan in the Registry with my stamp on it that should do a better job of identifying what that area is because it does indicate that it's somehow different from the rest of the property, but after reviewing that he does have a claim of ownership for that piece but there is a section of highway that is beyond that that does not interfere with his property rights or the property rights of people that are on the other side of the culvert. Coming in the ROW essentially is 50' from the centerline of the highway and so the plan that's currently prepared that shows the line does not interfere with either his property or anybody else's. That's an update on that and Mr. Mercier may want to speak to that. Vadney – You're saying it's his land, but there's an easement over it or his land runs up to it and there's a separate... Johnson – His land expires prior to where the line is going to go. The other thing I will mention is a little bit unusual and I was not interpreting the reason why we didn't need a

wetlands impact permit on the highway side of the property and why we do on the island and it was my understanding it was because it was State property or claimed to be State property. At that time, the State Highway Department thought they owned it so it was the State applying to the State. That's not true, the State applies to the State all the time for wetlands. The reason there's no wetlands impact is because it's directional boring and they are going underneath the highway and they are not coming out until they are into the lake so there's no wetlands impact because they are not entering any wetlands. They are going underneath the wetlands. Vadney - But that piece of land they are boring to is filled land that the State owns. Johnson - No, it's filled land that the State thought they owned and my plan that's recorded in the Registry of Deeds indicates that Mr. Mercier owns that property. Either way the line that's going out does not interfere with his property. Vadney - OK. One other question for the applicant, John has stated and I read your letter that had come in August 8th that said you intended on providing deeded easement on that mainland piece of land, 1/3 acre, but I thought I heard this evening, Carl, that you intended to use it but it wouldn't be deeded. Did I miss something there, has there been a change between John's staff study. Johnson - I'll try to remember what I said that was 5 minutes ago. I think what I said was there's no requirement to provide deeded access to the island is what I stated. In the letter the owners have indicated they would supply a deeded access from that point to this point. I would caution the Board to entertain that as a requirement for this approval because there is no requirement to do that. It would simply be an intent indicated by the owners that they would do that. Kahn - On that point, I feel very strongly that if there isn't going to be access provided that the plan should indicate and put people on notice that there is no guarantee of access. Because as I've said I've run into a situation where someone was peddling island property and telling people there was access and there wasn't any access. I would like to put purchasers on notice that there's no guarantee of access. Johnson - I think that's a great idea. Just to try to fill you in why there's some hesitation. There may be other issues that we don't know about related to the parcel that's on the mainland, so for me to stand here right at this instant in time and say that we will provide a deeded access to the island, I think would be inappropriate, so what I will say, is that all of the issues can be resolved with the shorefront parcel to the satisfaction of the Town. We will put on the plan that there is a deeded access from that point to the island. If for some reason those issues cannot be resolved, we will then put on the plan a note that Mr. Kahn is indicating saying very emphatically there is no deeded access being provided to the island as a result of this plan. Touhey - I guess I still need clarification on that. I fully understand that the Town cannot require or has not or the zoning does not require deeded mainland access, but I do think this is a different situation here. This is not Lake Winnepesaukee where there are public docks, where there are marinas available, where there's public parking, where there's trailer parking. This is quite different and I would also remind the Board that this lot has historically, from what

I've learned here, has historically had access from this 1/3 acre of land. Now, if we weren't meeting here today for subdivision purposes, there could be a single dwelling put out on that island and I would assume that the access would continue to be from that 1/3 acre lot. Are we subdividing a lot here and in effect by not insisting that that 1/3 lot be deeded as access, are we in a sense taking away parking? If we read Mr. Swank's letter, he says that he knows of occasions where there have been as many as 9 cars parked on that lot accessing that island undeveloped and those cars have perhaps been there for three more days so it just seems to me, Mr. Chairman, that this is a situation we need to have some parking for. Bayard – Is that 1/3 acre lot a buildable lot? Vadney – Would you like to comment on that? Kahn – This has been addressed previously. Moriarty – I just wanted to clarify what was said about Mr. Swank's letter. Only 3 cars really fit on the lot, the rest would have been along the road. Johnson – I don't want to enter that as part of this application, whether a lot is buildable lot is not something that could be determined instantaneously at this meeting by me or anybody else. It is an existing separate lot of record. If that was the only land that was in question in the Town of Meredith, whether or not somebody could build on there would be a good question because there's a lot of people out there calling lots non-buildable. Most of them involved in the real estate industry and there's people in my profession that essentially make a career out of getting municipal permits for people to build on lots. They have a right to build on a lot if they can demonstrate certain things and it may involve going to the Zoning Board, it may mean getting waivers at the State, but whether or not that's a buildable lot is a question that nobody can say yes or no right now. Vadney – We've got to give Mr. Johnson credit for a lot of courage to make this statement in front of this crowd here tonight. Edgar – It is a little peninsula that pretty much juts out into the wetland into kind of where the lake and wetland interface and I believe that it's prime wetland in and around that area, so you're looking at a 150' setback on a small peninsula so Carl is correct, but the ordinance doesn't preclude it outright so it says lots of record can be developed as long as you comply with all the applicable requirements. Carl is correct if the ordinance does not as a matter of zoning preclude but it does require the application of all the other principles in the ordinance. For that matter, a 65' shoreline setback. Mercier – To finish off on that access for the power, I want to put on record the highway there is 100' wide. When they put the culvert in I went out there and I estimated that the culvert itself is probably about 80' so that sets the end of the culvert in 10' in from the road edge. From the end of the culvert, it becomes lake property and there's about a 10' strip perpendicular to the culvert and I want to make sure the power's going to come through that particular area. If they come through the other area even under my property, I don't know if it will damage the trees. You have to realize we provide a substantial tree line and we don't want that interfered with and I want it put on record that where the power comes in and I've had differences with the Co-op before on different issues in my development and it seems to be ongoing with the Co-op. I

want to make sure the power comes into that particular area which is basically adjacent to the culvert and I want that in the record. The other thing, maybe Carl could show me where is that rock that we all see on the west side here. Carl – I don't know. Mercier – It's a big ledge. Johnson – There's a ledge area on this part of the island. That's a ledge area that many people have been up to a tent site just above that ledge. Mercier – Where's the tent platform. Johnson – The tent platform would be right in here. Mercier – Let me explain what I'm getting at. There's two things (1) where the buffer and the trees are allowed to be cut is right in my view. Right where his line stops here, all that section is going to be exposed to myself and potentially to the highway. Even though Carl saw it for 5 seconds, on the point where my property comes out at the culvert, there's a lot of stands of pine trees there and they are already starting to go. If those pine trees drop which they may, this island is going to be exposed unless we swing that line around further to the west to protect myself and the highway from that view. Is there any chance, Carl, of that coming around to protect...? I'm looking at your northbound, I assume that arrow signifies the north? Johnson – That's correct. Mercier – I'm almost positive that ledge where it sticks out from that point around is exposed to the highway and myself. Johnson – From this point, there's a 50' buffer provided by the Shoreline Protection Act which the trees cannot be cut within that buffer. Mercier – So the part viewing the highway and myself, you say there's a 50' area that cannot be cut. They can't cut any trees inside there at all. I thought there was a law that there's only so much a year they can do. Johnson – You're allowed to remove 50% of the basal area within the 50' zone, but that is not an indication of the numbers of trees, that's the cross-sectional diameter of a tree at 4 ½' so you can take down a lot of little trees if you leave a lot of big trees and then there is a provision where the trees reach a certain size that you can't remove them, those are saplings that can't be removed, but that's a buffer that's administered by the State not the Town. Mercier – What does this additional buffer add to it that you've got on the other side? Johnson – This buffer is actually more restrictive than the State's buffer in that it doesn't allow any reduction. Mercier – My concern is that I'm going to be wide open and potentially if those pine trees drop on my property, it's going to be exposed to the highway also. You've got to come way around at least to that point. Vadney – Could you show me approximately where that short 3 second window is, you know put your arm about where 104 is and the clearing. Johnson – 104 runs roughly east-west, this is going south so the window you're looking at is roughly on the north part of the island. Mercier – The open and closing of the window, one side of that window when it gets open is that stand of pine trees on my property. There's a piece that juts out there in that bay and that protects this from the view and that view may be lost and there's nothing you can do about those trees and no other new growth is very high and nothing grows, for years and years not a straw has ever gone above that knoll. I would hope that you would require some of that protection back here to come around. I'm going to be wide open and there's two or three other property

owners in there that will be open also. Bob Dietz – I represent the Lake Wicwas Association. I don't want to rehash everything we've already heard. What I would like to do is focus on the information in response to the last hearing, the Henmor letter and those related matters. Since the last hearing, it is my understanding that and I had raised the question in my letter to the Board about RSA 674:41 I & II, and whether the Town had taken the vote pursuant to Section II-a of that section to exempt island properties from the requirements of the road requirements and I gues the understanding at this point is that the Town has not taken such a vote so that we are left with at this moment 674:41 applying to this particular proposed subdivision. That section of the law as I read it and unless somebody can tell me differently, Section I basically says that you must have certain road access and certainly the island property does not and that if it does not, then the building permit let alone the subdivision, the building permit or building is not to be permitted. The exception to that would be if you filed basically an appeal of that termination under Section II of that statute to the Zoning Board of Adjustment. As we sit here, we do not have, as I read that statute, any right to put a building or issue a building permit for that lot at all and therefore it would seem as though we ought to be in the same position we're in that we're in if a variance is required in order to approve a subdivision lot and the next procedural step ought to be to send it to the Zoning Board under Paragraph II of that statute, it sets forth certain standards and criteria, many of which we are talking here already in front of the Planning Board, but procedurally it seems to me that's where we are at this moment. Kahn – John, do you want me to respond? Vadney – Go ahead, Lou. Kahn – We've discussed this with Town Counsel and with other counsel and what we are told is that that statute although it appears to apply to any island served by boats that it applies only to islands served by boats on which there are streets. Both counsel feel very strongly that that is what that statute does and in such a situation, a building permit issuance could be appealed. The failure to grant a building permit can be taken to the ZBA. It's really a ZBA issue under that statute and not a Planning Board issue. Dietz – Well, we certainly differ in terms of what you and counsel that you consulted as to what the statute says. I say the statute is pretty plain on its face and doesn't carve out an exception and by its language for situations where there are roads on the island. Vadney – Mr. Dietz would you refresh my memory and read the title to that 674. Dietz – 674:41 Erection of buildings on streets; appeals. Vadney – I thought it was something similar to that. Basically, erection of buildings on streets. There are no streets here. Legal counsel for us has said if there's no streets, it's obvious it doesn't apply. If you have streets on an island, vehicles, etc., you can exempt the islands from these rules. Does the school bus have to have room to turn around, those kinds of questions. Being there are no streets, the title of that paragraph says "streets", so that's kind of where we are resting. You have your right to take it where you like, but we are... Dietz – You look back at Section II-a that provides that you may exempt islands served exclusively by boats from the requirements. It's not saying,

there's no words in there that say "served by boats and have roads on them". Vadney – We're hanging our hat mostly on the title which is "streets". That paragraph. It's a point. Dietz – My objection is noted. Vadney – Yes. Do you have further comments. Dietz – In response to the substantive issues that we've been discussing following review of the letter from Henmor, what we have done is we have consulted with an individual who's here tonight who's an engineer in fire and safety issues and that's Mr. Nat Johnson and he is somebody who is very well qualified to give an opinion with regard to these issues. If I may, I will circulate a copy of his professional qualifications (distributed to Board members). We asked him to review the fire safety and emergency response issues concerning Bryant Island. We certainly have had a lot of discussion back and forth about that and Mr. Johnson has viewed the site, he's looked at the comments that Henmor made, he's looked at the letter that I submitted and he has in response to that review issued an opinion letter that I will also circulate and then I'm going to ask him to stand up and explain what he did and what conclusions he drew and what his opinion is (distributed to Board). Nat Johnson – I spent 25 years on the Lakes Region Planning Commission and about 20 on the Laconia Board so I know very well the other side. I did a review of all the paperwork that was available and I did take a boat trip around the island, I took a number of pictures (32 altogether), there are four here and I've noted on the bottom what they are. Those photos document what I talk about in terms of the conditions of the public boat launch. It's a very adequate launch for a small boat less than 20'. Anything larger than that gets to be a physical nightmare. There's no walkway, no partial dock or anything to get into the boat so it's either boots or wet feet. The private access as we all know is totally unimproved with the exception of a small dock that was put in relatively recently. I did do some depth measurements at the far end of the lake where that picture was taken. The water depth is 4 feet to the bottom and the underground water growth is approximately a foot off the bottom, so you've got approximately 3 feet of water. I did not enter the private property so I can't tell you the water depth at the existing dock at the end of the triangular piece. The water depth, in my opinion, is inadequate for anything more than a relatively small boat with a very shallow draft. It is not a viable ramp for Fire Department access. I reviewed a number of the NFPA documents and the section at the bottom of Page 2 which addresses fire EMS service is sort of a summary of my understanding of the Meredith Fire Department. I've worked with Chief Palm for a number of years and I'm quite familiar with the department operations, what they have for equipment and that's kind of a perspective view of the department's capabilities. I then went into the logistics from a practical standpoint of what happens when you get an emergency call. The department has a trailered boat and is a relatively small boat adequate for probably 4 people. By the time you put any kind of reasonable equipment in it, you've probably not got room for more than 3 so your first response would be pretty much amassing 3 people and enough

equipment to start doing something. A portable pump weighs anywhere from a person to a person and a half so you take an 800 pound load for a typical small boat, you're going to be limited to 3 people on the first response. Three people can't accomplish much on fire burns. I adjusted the time a little bit, realistically I think from the time of tone or notification of the emergency, I think the department would do real well if they managed to get their first manpower on the island in about 20 minutes, which I realize is probably considered quite acceptable based on the logistics of it and I don't disagree. The problem is that the NFPA which has been in existence since just before the turn of the last century has developed a number of standards and they continue to develop more and more of those standards. Two of them are of significance. They are relatively new, they are being changed all the time and that's NFPA 450 and NFPA 1720; 450 talks to EMS services, 1720 talks to Fire Department organization and response capabilities and some of the equipment. 1720 applies to volunteer departments; 1710 applies to full-time departments and they do make a distinction between volunteer departments and there's quite a bit more leeway when they get to permanent departments. What the standards in there are defining are based on what the Town has for hazards, what types of equipment are needed, how many men are needed, ability to respond to the scene within a limited period of time. 450 is working towards getting EMS on the site in 7 to 10 minutes, because it's pretty much accepted in the EMS business that if you can't get the first medical respondents on the scene in 10 minutes, you probably are not going to save as many patients as you ordinarily could save. I know some of the towns, especially some of the cities, when faced with this 1710 and 1720 have had to put a significant investment into manpower and equipment. The driving force is attempting to keep the town emergency services in line with the standard for one very simple reason and that's because it is a very sue happy world we live in and with what I do and you do not want to know how many times I've had city attorneys wanting to know what the potential is for suing an EMS service, fire department because of failure to respond, failure to adequately suppress, failure to have proper equipment and it goes on and on. Something I consider no longer acceptable to dismiss those based on the fact that we know we have the capability and the prospective owner or purchaser knows what he's buying, buyer beware, if we can't get there in a reasonable time, then we'll bring hot dogs and marshmallows and stand around the chimney. We all know, at least in my recollection, I can't think of making more than one or two island fires, I think one of them was actually out on Bear Island and Meredith did an excellent job of suppression, it doesn't generally result in total loss of structure so it's not something you should just dismiss. It is no longer acceptable to dismiss the documents is inaccurate?? because failure to meet them now may mean when you are forced to meet them now, when forced to meet them is going to be substantial added cost. Vadney – The Meredith Fire Department keeps a fire boat now on Winnepesaukee. N. Johnson – Yes, down on Meredith Neck at Y-Landing.

Vadney – I'm intrigued by your statement here that the first 10 minutes determine the outcome of fire suppression efforts. Since there are no firemen in it, it would probably take them 10 minutes to get to Y-Landing to get into the fire boat, how many islands could they reach in the remaining 1 or 2. N. Johnson – 1 or 2 perhaps. Vadney – What I'm say is if that statement, the first 10 minutes determines the outcome of fire suppression efforts, it's a lost cause. Whether you've got a fire boat doesn't make much difference. N. Johnson – No, but the fact that you have a fire boat on Winnepesaukee and the point I was trying to make is that you have the capability on Winnepesaukee should it come necessary during the summer as Meredith has seen fit to expand the Fire Department service out towards Meredith Center with the construction of the Meredith Center Station, then it may well be done in the future that Meredith could support two full-time people down on the Neck to man the fire boat should the activity on the lake increase to that level or in the event that Meredith has a couple of full-time people, that 10 minute response to Bear Island may not be that far out of whack. Vadney – I don't want to pick on your briefing but if the first 300 or 400 houses we've got on islands now haven't triggered it, two on Wicwas aren't going to trigger it either. I'm just trying to keep this in perspective. N. Johnson – The thing is, you have the equipment available on Winnepesaukee. Vadney – All that does if it can't stop the fire, the only thing you're to say, we did what we could don't sue us. N. Johnson – No, the standards are developed based on what you have for a hazard, they recognize the fact that if you have an island half a mile out in the lake, you have a fire boat, you have a capability to fight that fire. You have people who, on a normal response time and allow for those extra minutes to get to the boat and sure it's going to take another 10 minutes to get to the island, but that's the best you're going to do. It doesn't matter how much other equipment you've got, the problem becomes if you don't have adequate equipment or adequate means to get that equipment to the scene. Meredith does very well on Winnepesaukee and Gilford has a fire boat, Alton has a fire boat, Wolfeboro, I believe, so that there is substantial fire fighting capability available on Winnepesaukee when you realize the time factor. What I'm driving at is the 20 minute time factor is probably unacceptable at the moment because we can't get adequate equipment or manpower to any of the lakes other than Winnepesaukee, that's all the point I'm trying to make. At the present time, there is no development on Wicwas. I had a little discussion about alarm systems and sprinkler systems. I realize the developer has offered an alarm system, but I went into a little bit of detail about what an alarm system would require if it were code compliant. They are asking very specific requirements and a single line or cell phone dialer is not an acceptable notification means today. I talked to you pretty much on what a residential sprinkler system would require and made a note that very recently in May at an NFPA meeting, one of the codes was changed to require residential sprinkler systems in all single-family and duplex dwellings. We discussed it, I don't know where it's going to go. Vadney – Would you make that last statement

again? N. Johnson – I said the NFPA Annual Meeting or the April meeting voted to require and I think it's in Life Safety Code, the latest issue, that all single-family homes would have residential sprinklers. Vadney – There goes the price of houses. Flanders – This is probably some subcommittee that voted to recommend it to be included in the Code, is that correct. N. Johnson - No, it's not. Flanders – It's been adopted and it's part of... N. Johnson – It has not been adopted. Flanders – Thank you. You misrepresented that to us. It has not been adopted. N. Johnson – The annual meeting vote was to require it, unfortunately it was a brand new motion and because it didn't go through the public comment session, we are going to have to act on it in November as to whether it actually goes forward. Flanders – Being somewhat familiar with codes and how they are developed, there's probably as many codes proposed in each cycle as there are in each cycle of the Legislature and we know how many of those get approved. N. Johnson – It got a recommendation for a second meeting. It's the first time that I recall that it's ever gotten passed,, a proposal which was pretty much ruled expediently and legislated by the NFPA. Flanders – It still has a long ways to go to get into the Code. N. Johnson – It has a chance to get into the next edition which is 3 years down the road. Bliss – Mr. Chairman, with all due respect to all this and I really do hate to quote you, but you have been known to mention AT many meetings that this is not Laconia and I think Chuck Palm has done a fantastic job in the past and I can think of two situations right off the bat, the big propane tank at the foot of the hill that didn't happen because of his cautiousness. I also can think of another place, a subdivision we had out on Hatch Corner Road, so I really think Chuck Palm took this into consideration and I think we as a Board should take his recommendation. N. Johnson – I submit that thank god it isn't Laconia and secondly, I would be very remiss if I didn't say I have the greatest respect for Chuck Palm and the Meredith Fire Department. Flanders – Mr. Chairman, could I just make a comment and this is going to sound a little flip, but you know what "I'm real glad this is not Laconia, too." Edgar – It's not my job to envoke yay or nay but I just wanted to make sure I can get a couple questions addressed and in the record by Nat. Clearly, it sounds like you have a working relationship with Chief Palm. N. Johnson – Yes, at least I feel like I do. Maybe I won't after tonight. Edgar – It sounds from what you're saying you don't take issue with his professional judgment as a general statement given his 30 years of service. N. Johnson – I'm not taking any issue with what Chief Palm wrote in his letter. In fact, I quote in my summary of facts on Page 2, Item 3. – Chief Palm notes in his correspondence and which I had an opportunity to read and I think what he said is 100% true. What I was attempting to do was pertaining to the City and I think Chief Palm has done an outstanding job in trying to address the issue in a manner in which he felt... Vadney – I don't want to spend the entire evening on this. That particular quote says, "the ability to respond with adequate equipment to contain any emergency is compromised to some degree," Vadney – I wouldn't doubt that for a minute. If you look at all islands and all our activity, I'm

not going to roll over and play dead while you tell me I can't go climb a mountain because there's not a fireman up there, I mean let's get real on this stuff. N. Johnson – I'm not attempting to say that at all. What I'm attempting to do is to point out where the world is going, not just Laconia, where we are going nationally from what I see and what I see in terms of what's being asked based on the adequate ability to provide services. It's all about services. Flanders – This may be interesting, I'm not sure it's extremely pertinent to this and I'm more than a little disappointed that the statement was made that they just approved sprinklers in all residential units and if I wasn't involved in the Code business, I might accept that on its face, but that's absolutely not correct. You've misled us substantially. N. Johnson – I'm sorry, I didn't intend to mislead you and I don't think I said it was voted in, I said it was voted to approve it and it may show up in a recent code. Flanders – A person that didn't know more about the codes would assume that meant it was voted in. Edgar – I don't want to necessarily belabor but as a practical matter when we're talking about one of my co-departments, I'm going to have to go back and explain what we did tonight and I want to make sure of what we're saying if you can just bear with me, I just have a couple more questions. So, Nat, in terms of the material that you pulled together, did it involve any direct or indirect consultation with Chief Palm. No, I did this solely on the basis of my review of the code requirements and my review of the what's happening in the other work that I do in terms of what is happening when a community allows development or has hazards which are not being addressed as they should be in terms of how the code is now addressing them and I'm talking specifically about 1710, not about the residential sprinkler systems, that's not where I'm coming from. All I'm trying to get across is that creating a hazard or allowing a hazard to exist that one or more departments can't respond to in a "satisfactory manner" under the code, not satisfactory necessarily under the determination of the Town or the Chief. It goes a lot further than that. That's the only point I'm trying to get across. You have a right as a Town to do what you want, I'm just saying the national trend is with codes and these onerous situations that come up because they have not been at least considered because of the some the work that's... Edgar – On Page 3, Paragraph 4, in general context you're referring to the, "it's no longer acceptable for a municipality to dismiss these documents", I'm assuming you're referring to the Code 1720 that you just cited earlier or are you suggesting based upon your review the Chief's letter, that he may have missed something in some code or are you suggesting that the Chief has dismissed code. N. Johnson – I don't think that Meredith has voted to accept or is attempting to meet all the requirements of 1720. It is not something which has to be adopted, but is something that all Fire Departments, it's relatively recent and Laconia only came into it as recently as 2003, that here it is and it's a big push at the present by the, to a certain extent, the International Association of Fire Chiefs and the Firefighters Union, because what it does is it qualifies equipment requirements and manpower requirements, and it leaves manning and more

equipment, i.e., more cost to the taxpayer to maintain committee concerns. From a personal standpoint, I don't agree with it. The problem is that because it's code, it's now being accepted and because it's being accepted, it's open to something we can dismiss out of hand that's all I was really trying to get across and I don't think Chief Palm is attempting to dismiss it. He's doing an excellent job doing what he's doing. I guess from my perspective, I hate to see him put in a position where he's got one more island inaccessible that he has to provide services for, that I don't feel his access is adequate and I don't think he should be put in a position of, gee whiz I did what I could. Vadney – I don't want to take any longer on this. I appreciate your coming and I appreciate your clearing up some of the issues here, but as far as approving or disapproving this particular thing, I'm not going to let my decision ride on whether or not we can get a fire truck to that island in 6 minutes. The people that live on an island know what they are living with, if they are willing to accept that risk, I'm willing to let them accept that risk. I don't give a hoot what the National Fire Association says. Bayard – In talking about sprinkler systems and 10 minutes and 20 minutes, etc., given typical fires and I'm sure there is no such thing as a typical fire, but is there any estimate of how much time, time range or whatever is saved by having a sprinkler system vs. not having one? So far, I think that the experience with residential sprinkler systems is pretty much 85% of the time, the fire is extinguished by one or two heads and it's a two-head standard for residential sprinkler systems so under ordinary circumstances, a properly designed and operating residential sprinkler system can be expected to suppress 80-90% of all the fires that occur within a single-family home. That doesn't make any difference whether it's on an island or in the middle of downtown Laconia. Flanders – Mr. Chairman, excuse me. Kahn - I haven't been misled, but Chuck did suggest that a sprinkler system would be a good idea. This gentleman says that a sprinkler system requires a tank, requires this and requires that and they would have to be winterized since this is a seasonal property. Is there any way you could have a sprinkler system that didn't have a tank that didn't have to be winterized? Flanders – You could. It wouldn't meet the standards, but it would be very effective. Kahn – I'm talking about something that permits that dinky fire boat to get out there. Vadney – I don't want to turn this into a discussion about home sprinklers, you didn't come for that. Chuck Palm talked to us about 5 or 6 months ago about this specific subject and these are dry systems anyway, right? The pipes are normally dry in the system. C. Johnson - A residential system 13D is wet. Vadney –But you can build them dry and if you're in a cold area that's going to be a frost threat and stuff, you could protect it from the elements and you can have a dry system. Kahn – I'm not misled and I am informed. Vadney – I wasn't misled by that either. I actually asked you the question about it because I didn't like your words, but I wasn't misled by it. N. Johnson – I didn't intend to mislead anybody, I'm sorry if I did. I just wanted to point out that it's one of those things that's never been an issue before only now it's coming forefront and I just wanted to make sure everybody was aware of it. Vadney – I for one shall resist it.

Anyway, did you have any more you wanted to talk to? N. Johnson – I think the rest of the letter speaks for itself and I consider it premature development. It's very simple. Edgar – Is that an NFPA phrase? N. Johnson – No, it's not, it comes about from 20 years of planning experience based on primarily the issues in my letter. Dietz – I'm not going to go back over all the discussion that we had, but to just briefly summarize as to where we are. I believe that this on balance, you look at all of the issues we've discussed that within the they should turn down this application. There are many issues and some have been answered to some degree, some have not been answered, but on balance this seems to be in my judgment a proposal that should be turned down. The first thing I said to the Board before I was counsel and sitting here in shorts instead of in uniform, I said that you've got discretion to decide what's good planning and what is not good planning and that is true tonight as well. When you look at all of these factors and weigh them, I think that this particular proposal on this particular island at this particular time is bad planning and should be turned down. To briefly go over that with fire and safety, we just got done talking about that. On the septic system risks, the builder has certainly attempted to indicate how the cleaning of the system and how you hire a contractor, clearly no matter what is arranged here is a higher risk in this kind of situation than there is for a land based system because of the crossing of the lake and the need to cross it at inopportune times perhaps in terms of ice-out and ice-in, bad weather and so on. Certainly with construction activity, the risk of there being silt and so on is increased. We're all over the place here on just how high that risk is, but certainly there is some higher risk of that happening, certainly with respect to the impact on the conservation areas, the Hamlin part, the other conservation areas around the lake and nearby vicinity. Again, disagreement as we but clearly, there is an impact on it, it's not a positive impact, it's negative and again to be figured into the balance. The Master Plan, a question about view as you come in on 104, certainly the developer has tried to address those things and certainly the 75' buffer zone is an improvement but is that enough to do the trick and are you really not going to see those houses based on where that buffer zone is. I think there's a lot of questions and fuzziness in my mind that we still feel as to whether that's the case or it's not going to be the case. Again, another risk that's part of this particular development, the access questions, I don't think they've been satisfactorily answered, both during construction and afterwards. We've got the barge issues that have basically been asked to be deferred, the Selectmen would take care of that. Again, I still think that's within the purview of this Board to make sure that this Board is satisfied with what those arrangements are going to be and the total impact on the local community of that kind of activity. We don't know at this moment where the barge is going to be kept overnight, we don't know how stuff's going to get on that barge and how the refuse is going to get off that. Is somebody going to have to walk through the water? Is it going to be able to pull up on shore at that public launch area. We have the Chemung Road access site that we've

talked an awful lot about in a designated prime wetland area and we got the statement it is their intention to grant easements, but no commitment to do that. It's not part of this plan in front of you. Certainly that would seem to have a big impact on whether this is an appropriate plan or not. If you go back and accept the view that I've laid out already, it certainly is within your purview. This is part of the total plan. If there's no deeded access granted in that spot, then that means we're going to have issues about access to the public area, where will the cars be kept overnight during what seasons and what conditions and what will that mean in terms of the surrounding community. To simply say that you don't have to get into that, I think is not appropriate and that's again one of the uncertainties that we still have. Overall I think on balance, the correct answer is to say "no" at this time to this project. Brooks Banker – Picking up on what the expert just testified to, I would like to mention some details about the ramps. There was discussion about creating a construction management plan as this is a natural entrance to the lake. It is totally unimproved, it is a soft stone, narrow area. It's very shallow. I know because I've launched my own boat there several times. I would have to say for there to be any kind of commercial development, any kind of building upon an island, it is not possible with the ramp in its existing condition. Either a very substantial dock would have to be erected and with it would have to be very substantial dredging. While that may be sufficient or the Selectmen may agree upon that occurring in order to achieve the purpose of allowing this owner to build on that, I would have to say, as one of the owners who regularly uses the ramp, I think that my use of the lake would be permanently disrupted if not destroyed, because I don't know how I, once there's a deep dock there, how I'm going to launch my little 15' boat. Right now, it's very easy, you go in with your bathing suit, you walk out 15, 20, 30 feet, there's a big rock there, there are 6 or 7 sunken logs there and if you're careful you don't hit them. What usually happens is that you do, your propeller hits and that's part of living on the lake so one thing that the Board should consider is the impact that the construction management plan given to the Selectmen will negatively impact upon the use of every other resident of the lake and even the people who don't live on the lake and use that and there are if you go there any Sunday, you are going to see 5, 10, 15, on a nice day 20 trailers out there of people who come in and use that. All those people are going to be impaired in their use of the lake. The second thing I thought was worthy of mention is that there seems to be some misconception that this is a large lake. This is not a large lake, this is 326 acres. This island is 275' from one shoreline and 700' from our shoreline where the Smith house is. If there were a fire on the lake, it would be fine for a lot of people to see the house burn down, but our concern is that if the fire occurs in a situation where there's wind, it would be very easy for that fire since there are old pines all around the lake, very easy for that fire to jump either to the western portion or the northern portion and impact all the rest of our houses. None of us want to come out and see a fire begin on this island and have it burn down 6, 7, 10 other houses around the lake. The final

point, Mr. Chairman, is that at the first meeting Mr. Johnson pointed out that the topography of Bryant Island is that it rises towards the center and that's the best soil and firmest soil for the building of the two houses and would be toward the center. While having stared at that island for several years, I also know that from the shoreline and our house is only 700' away, you are staring at the top of the trees so the 75' natural woodland buffer will actually not serve any purpose because all it's going to be is a kind of natural fence with the interior of the island being completely denuded by trees as is necessary in order to construct on that and the visual impact will be severe in that when you come along Route 104, you're going to see a small line of trees and then you're going to see rising up in the center of that, the houses. I guess that could be abated if the developer were then to cut down 10, 15 or 20' of rock in order to create a more level place for the trees to be developed. Certainly, that natural woodland barrier is going to have no purpose or have no function on the lower part because they are going to have to be large swaths being cut in order for the large construction vehicles to go in and out and therefore, there will be a disturbed view for all the people who are on the other side of the lake so it might help the few of us who are on 104 who are facing it, but it's not going to help anybody facing the other side. Mercier – I wanted to follow up with what he was talking about seeing the houses built on this high rock. I don't know if you're in a position to allow only a single-story building to be put on there. In other words, limiting the height of the building, then you wouldn't have this lighthouse effect of having the building come up above the tree line. The other thing I think is well within your jurisdiction as a Planning Board, it's not uncommon for you on a regular subdivision or people building apartments to require so many parking spaces per unit. It's not uncommon to have 1½, 2, 3 whatever you feel necessary so with this access if you require parking for the vehicles, then I would recommend probably 3 per unit, one for the owner and two for guests off the public roads. Where they would find that is their own business, but I think you could require parking and that would eliminate do they have deeds elsewhere. That would require they have a deed someplace to park those vehicles and not impact Chemung Road with those vehicles. Bayard – I don't see topography on the map that we have here. Do you have an idea of what the average interior height is and what the peak would be? C. Johnson – Previous plans that were submitted have the topography. These are 2' contours. Based on the description before, this is where the ledge is, you can see the contours here. From the lake, maybe 26'-28' up from the lake. Bayard – That's the highest point there? Vadney – The trees in that 75' proposed buffer, roughly those are pretty good sized trees in there aren't they? C. Johnson – I didn't do a diameter analysis but there are some good sized trees. It's not just small trees. Vadney – Particularly on the side closer to 104 as you come around towards the East, it seems if I remember right, they drop off in size. Dean Dexter – I don't want to belabor it's been a long meeting and a long bunch of hearings. I was going to speak to the issue of the tree line. This particular area is rather steep in terms of grading. Those of you who did do the

site walk do know this is the peak area, I think this is a little lower, is that right Carl? I'm just concerned that I'm wondering what the Town would feel about going about going down this road and that's why I'm concerned about the prematurity of some of the things we've talked about. We kind of got a chuckle out of Nat Johnson's presentation about Laconia and some of the things, but we are talking about developing the lake in a way that's never been developed. We are talking about first Bryant Island, maybe Sheep Island someday so we're talking about perhaps down the road, forget about what the code people are going to do or not do, what we are talking about is the potential for increased services in a way that we don't have at the moment on this lake. The Planning Board is starting to open up new ground about development which down the road is going to impact costs of services, you know it. A couple of \$500,000 houses out there and they decide to be year-round and come to Town Meeting, you're going to start looking at some warrant articles and if the Larsen's ever depart, go away and sell the island and new owners come in, you're talking about more services so there's a premature aspect potential cost that maybe the Town Meeting will want to address somewhat. Also, Meredith for some reason, this old wood pond has become important environmentally. There's an investment in the Hamlin property and the Eames property just above it. They are talking about interrupting where the Town is going. I consider this development a premature situation, I'm wondering if the Town Meeting would want to get involved with the future of how development evolves on this lake. Life safety issues, that's debatable as Chemung Road in front of that State School Cemetery and what a lot of people have talked about is the access. It's premature to say there's adequate access for a building project of two homes. Hauling in concrete. What's going to happen to the buffer when they have to start tractors off-loading onto this island and start dealing with the trees here that about the Rawson Wood town owned property. And the people who, during the winter, have bob houses up there and who ski and use the lake throughout the whole winter months viewing the access that just the construction is going to create. I don't think that we've come to a fullness of opinion on adequacy as to whether that's good planning. I consider that another premature aspect of the decisions being made tonight, so there are practical aspects of all right you've got a 75' buffer of trees, but is it really going to be a buffer. Is it really going to do what it says on paper. I think that's very debatable, I don't think that's a done deal. I think that shows a good faith effort, but I don't think it's proof that it's going to solve the issues that we're talking about. You're talking about the entryway of the lake on 104 and, of course, now you've got a lot of vegetation and foliage. When you go up that lake in February and January and you see people out there or in the early morning hours maybe you see a deer or something run across, you are going to see much more of a view that's impaired especially when you have foliage that drops away from the island itself. When you have a house certainly on a peak area, which is I think this is above or maybe close to where the tent placement was, you walk along here and that's a pretty fast drop-off down into

the lake so I just think it's premature to, the whole question of developing islands is premature aesthetically and from whether or not the mediation that's been proposed is going to be adequate to the concerns that have been raised these many months. Paul Trombi – I'd like just to echo something that I think Mr. Touhey brought up and I'll be very brief. Relative to, do we really have a plan here? We seem to have a proposal for subdivision on the island that may or may not include it's own little piece of land relative to the power egress, construction egress, exit egress, access to the property and I wonder if that's something we should nail down. The other thing that has me concerned is I think I heard him say he's not going to give up any rights relative to perhaps a third homesite on that little peninsula. Are we dealing with an island with two homes, an island with two homes and maybe a third one on the deed access that may or may not be pushed for? I think there's an awful lot of uncertainty about this plan. Vadney - As far as the idea of a third home on that 1/3 acre, Mr. Johnson said you can never rule it out, there may be some hook or crook. Mr. Edgar said the chances of it are very low, it's in a prime wetland. I think you can put that out of your mind. They may do something else with it, but they won't build a residence on it. Tom Caldwell – I wonder if it's within the Board's jurisdiction to perhaps limit the size of the dwelling, the height of the dwelling and the color of the dwelling and it's not unheard of in development for the developer to give something back to the Town as a tradeoff for, I'm not suggesting they relinquish the other half of the island, but it might be something for the Board to think about. The size of the dwelling, the height of the dwelling, the color of the dwelling and maybe some give back from the developer. Tom Crane – I sympathize with your predicament here and all of us obviously would like to see no house out there and we understand that that's not what we are here about, but I think that as everybody has said here, everything's compounded by more than a factor of two when you go to two houses. Everything within the sight lines, the aesthetics of the place and this is not Winnepesaukee. This is a much different lake than even Waukegan, Winona, Winnisquam and almost any of the other lakes around here and even Pemigewasset, which is a similar size, is a much more active lake. This is a very quiet lake, it has again as somebody pointed out the wildlife areas all connecting to it, just by doing both lots, it completely changes the complexion of this development of that island and what happens on that lake. Carl Johnson – I would like to make some final comments and after a few hours of hearings and testimony, they are going to be editorial to some extent, but I'm hoping you will give me that flexibility. I think you know that I very much respect Mr. Dietz and all the abutters that are here and I consider many of them to be my friends, but you know I think as long as I've been doing this business, the term discretionary power comes up very few times. The times that it does come up is when there aren't really a lot of substantial issues to bring forth so what has to be asked of the Board is to look at other issues and I think it's been an excellent job of bringing in a lot of other issues, but really I think we've gone over these issues and we've beat the

poor dead horse beyond being dead on most of them and what sometimes happens is because you do that, those issues that are otherwise rarely somewhat insignificant raise to the level to be significant just because you've talked about them for so long and I don't think that any of those issues are substantive and I think that when the Board has to use discretionary power and you do have that and I have no issue with that at all, it has to rise to the level with that discretion as being used to overcome and be greater than the person's right to develop property in accordance with the subdivision regulations and the zoning ordinance and although there have been issues raised and we've tried to address many of them to the best that we can, I don't believe any of those issues even on balance rise to the level for the Board to deny the subdivision based on its merits. In terms of the abutters, I sympathize with the abutters. My family's been on Meredith Neck since 1957 and I think most of the comments that they're making is it's going to be a shame that this undeveloped island is going to have houses on it and that may be a shame, but you know, it's a shame that the Woodman Farm with a historic building on the Historic Register is no longer there and we have a 75-unit condominium development and it's a shame that all the property that my parents used to look out to across from their house which was largely thousands of feet of undeveloped property now has a house every 150' and a dock, a jet ski and a boat and that's a shame. It's also a shame that on Lake Wicwas there was a 9-unit condominium development on the lake supporting what I'm assuming is 9 individual septic systems of 4.13 acres which apparently there's no environmental crisis that I'm aware of occurring because there's 9 units on this particular piece of property on Lake Wicwas and in terms of the precedent being set, the Planning Board in the Town of Meredith approved a subdivision and I'm not real familiar with the names of the islands, but this is a subdivision plan and this is approved by the Town of Meredith showing a subdivision of what I'm assuming is the island that everybody's talking about, the big island on Lake Wicwas. Had that been a dangerous precedent, it's been 31 years since somebody has tried to create a lot on an island in Wicwas so I think what we are seeing here is the emotion of having something that was once one way be something different and I can certainly appreciate that, but I would hope the Board would take on balance the owner's right to meet or exceed every aspect of the subdivision regulations and every aspect of the zoning regulations in the Town. Dean Dexter – Just a little clarification. That condominium was a condominiumization of the Gillio cabins which have been there since the 1940's so nobody went into Lake Wicwas and put this condominium development in. Carl, I'm ashamed you brought that up, talk about misleading, that's the old Gillio cottages. The new owners decided to make a little money and there's been no building on Sheep Island because my grandmother disallowed it until she died so yes, that was all put in for Sheep Island But she died in 1982 so now people can bring it forth if they want to that's why I'm a little alarmed tonight because they weren't able to build on it until she passed away. Suzanne Larsen – I'm one of the owners with my children and my husband

of Sheep Island. I think, Mr. Johnson, if you heard all the times and all the examples that you said, "It's a shame, it's a shame". Well, it is a shame and I think Dean Dexter's point about the direction that Meredith has gone with the Eames land and Hamlin land and that this decision to develop an island on this lake is a statement very much above and beyond just to have and Mr. Johnson, my husband and I bought this property, Sheep Island, because we learned that a developer was in fact planning to buy it and develop and we have since 1986 kept it for the lake and for everyone to enjoy. Expanding beyond Mrs. Larsen's comment, I think the Board should be looking at the community as a whole. It's always true that you're going to find the rights of one individual can trump the rights of the whole, but the reason everyone is speaking here is because we all speak in our own time as a community and we are concerned about this lake and, frankly, I am very offended by Mr. Johnson's repeated statement that this area of Meredith or Laconia was spoiled, this one was spoiled, this was spoiled, therefore, here on Wicwas, we're not entitled to expect that it not be spoiled. I am very offended by it and I'm actually ashamed that he even made that statement. We are all here because we don't want that to happen. The fact that Winnepesaukee was ruined or any other area is completely irrelevant. We are here to act contrary to that. We shouldn't just say the rest of the State was spoiled, we might just as well accept that as being inevitable here. Bliss – Mr. Chairman, if I can address that, I know I mentioned it in a couple of the meetings. The really hard line like Mr. Crane said, we have a real tough decision here. This is not an easy decision for us, but the bottom line is we are the Planning Board, we do have to go by the regs that are set before us. We don't have all this discretion that everybody is talking about. Our hands are tied to a certain degree. I understand what you're saying, I don't want things up on my little neck of the woods either, but the reality is it does happen and I understand why you're so emotional and so upset and unfortunately this isn't the place to do it. The time to do it is when we have our zoning workshops trying to change the zoning and I mentioned this at one of the last meetings. We tried to have an informational meeting and people were up in arms even more emotional than you were to think that we were trying to tighten things so I feel your emotions but our hands as a Board are really tied as far as what we have to do. Brooks Banker – I should point out that under New Hampshire law, our individual hands are not tied. There is precedent here in Meredith that in order to protect your own personal easement, there is in Meredith on Winnepesaukee a case decided by the New Hampshire Supreme Court that said that a dock cannot be erected because it will impair upon your visual easement of the lake. Now, I would certainly speak for our very small piece of Lake Wicwas, but we would certainly not rule out any litigation. The battle doesn't end here and I would certainly hope that the Planning Board would stand behind us and not try and throw itself to the wind of the development. Vadney – I think what actually should be a major concern for you folks is that your Planning Board is manned by people dumb enough to do this. Dietz – I think you do have discretion and I believe you

do. When we first spoke about this, we talked about what the subdivision and land use ordinances provide and right in the preamble it does give discretion to the Board. You can't make judgments without some basis in fact and I would like to think that we presented enough basis in fact that you would be able to rely upon that if your discretion leads you to approve or deny. I think you've got more discretion than you may believe you have and other than that I would just say that the ability to make a decision now on this case would certainly be different than what's happened and I mentioned this earlier at one of the early hearings, in Meredith. It is a shame we have Midas Muffler in my hometown on Paugus Bay. This isn't Midas Muffler that's being suggested, but certainly the principle is the same. Vadney – Unless there's some more substantive or substantial (both) comments, I'm going to close the public hearing and turn back to the Board for questions and/or a motion. Kahn – I have a question. The buffer ends in the northwest end at an angle that is due northwest. I don't know how the limits of that buffer were selected, but is it possible to extend that buffer, I know they're 100' or 120' to the south? I know it's possible, would it be considered? My own experience on 104 and I go through there about once a day is that the westerly possible dwelling is going to be quite visible if that buffer cuts off where it is. Flanders – Mr. Chairman, in response to Lou's question, Carl has told us that the height of land in that area is about 26' if I remember right. The height for a structure in that zone I believe is 38' so if you take the 26' that you get from natural elevation and add 38' to it, you're going to be above any of the trees that are there in that buffer zone. I just wanted to make that point. Bayard – On the septic, it was mentioned that there's a risk about transportation and this and that, yes, there is a risk there, but I think it's probably a better design than many of them around the lake so I think it's just a different risk and perhaps probably less than septic failure that's possible around the lake. I had a question on the letter that we've used before on the Class VI road, does that include EMS services or does it just refer to... (could not understand Edgar's response). Frankly, I would vote for either sprinklers or a very strong note on the plan that says sprinklers are highly recommended in this situation. Flanders – Mr. Chairman, at the risk of spoiling my reputation for being bashful, I would like to make a motion.

Flanders moved, Granfield seconded, I MOVE THAT WE NOT APPROVE THE HENMOR DEVELOPMENT ON BRYANT ISLAND BECAUSE IT IS PREMATURE, THERE'S NO PARKING SPACES BEING PROVIDED ON THE MAINLAND, THERE'S NO GOOD ACCESS FOR THE ACTIVITIES OF CONSTRUCTION OR EVEN THE PEOPLE WHO WOULD POTENTIALLY LIVE ON THE ISLAND. THEY ARE TALKING ABOUT USING THE PUBLIC RAMP, IF YOU HAD TWO HOUSES OUT THERE POTENTIALLY FOUR CARS ON A GIVEN WEEKEND AND THEY ARE PARKING AT THE PUBLIC RAMP AND THEY'VE USED PROBABLY AT LEAST 40% OF THE SPACES THAT WOULD BE AVAILABLE FOR THE GENERAL PUBLIC SO THEY'VE SUBSTANTIALLY REDUCED THE

RIGHTS OF EVERYBODY ELSE THAT WANTS TO USE THAT LAKE AND WITHOUT PROVIDING PARKING SPACES AND ACCESS, WE WOULD NOT CONSIDER A SUBDIVISION ON THE MAINLAND THAT DIDN'T HAVE ACCESS AND DIDN'T PROVIDE A PLACE FOR THE PEOPLE TO PARK THAT ARE GOING TO LIVE IN THE STRUCTURES SO I'M NOT SURE WHY WE ARE CONSIDERING DOING IT HERE.

Granfield – I just wanted to mention in the second a couple of my concerns if I could in my second to not approve. The access issue, based on our master plan and the 104 gateway issue also gives me a lot of concern. I think that's something that we need to be committed to for the long run and I think this affects that in a substantial way so I second. Touhey – I spoke regarding the access issue in the absence of any deeded access to that other lot that is available through the developer, I would have to vote affirmative to this motion. Vadney – Any other discussion on the motion. Bayard – Just a comment. I haven't even made up my mind how I'm going to vote on this yet, but the view shed issue in that particular place, that is one of the prettiest and it does give me pause as to what would go in there. Other than that, that would be my Kahn – It sounds like we're dealing with two issues, I mean there are a host of other ones, but maybe what we've concluded is that the other ones are going to kill us, but it seems to me that what we're talking about is access and view shed and if the view shed could be protected by extension of the buffer or restriction on the height of the structures, maybe that would knock that objection out, I don't know. The other thing is the access, it seems to me, it's been dangled there but if the access were to be formalized does that knock that objection out and then, where are we? As I said, there are a host of other issues, but maybe we're concluding, maybe the movement has concluded that those issues are not show stoppers. Edgar – One of my jobs is to make sure that you make an informed decision when deliberating. One of my jobs is trying to make whatever decision is made as defensible as possible and so another idea might be that you not act on the motion. You continue to make sure you've discussed all of the objectionable issues, you know exactly what to rule in and rule out and at the end of the day, when deliberating if you take a straw poll like you have in the past and if the sentiment is in favor of a denial, that would give myself and Town Counsel an opportunity to work with you relative to a finding that would support that in a more defensible way. Vadney – Just before going to John, I was going to make a comment. He probably stated it better than I would have, but I would say at this point and the reason I stopped John here when he went to second and asked Mr. Flanders if that was his entire motion and I'm kind of like Bill, I'm not sure I've made up my mind on this because both sides have some excellent points and I think this is part of what John is getting at, if we're going to make a motion to deny and I don't mind having that motion and I don't mind voting it up or down, but if we're going to do it, I think we want... You mentioned access and parking and I'm concerned that we've talked

about a number of other things that we could disapprove it on not just those two things, but I wouldn't want to see us come back and hash over the 19 other things and then have two of those kick it out. I'm thinking that if there are any other major issues, we should at least document them here as part of the decision. Is that kind of where you were going, John? Edgar – Perhaps the majority of the Board feels otherwise and feels comfortable with the motion as it's presented. I just offer that as an alternative to where you're at. Bayard – Frankly, I think that would help clarify the issues, certainly in my mind. Vadney - Just to state them. Bayard – Partly and also I think it does make for a stronger decision one way or the other when we do make a decision. Touhey – Where do we stand on the Class IV road condition, applying that to the island. I really do feel that the island fits all the criteria of a Class IV road... Flanders – Class VI. Touhey – It kind of fits all the criteria that is usually present in a Class VI road situation we have right here on the island. Vadney – I'll tell you where that stands and I don't blame Mr. Dietz and the people around the lake for trying to use that, but our counsel and it's been confirmed by another counsel, that first as we mentioned that statement in the RSA's doesn't pertain to islands, it pertains to building on Class VI roads. Its basically about building on streets and making sure school buses can turn around and fire trucks can get in and stuff like that. It says in it that you don't have to apply this to islands, because you can't get to them anyway effectively and that's the way it has been applied in municipal law, that's the opinion of the Municipal Association, whatever that group's called down there, I can't think of their name. Flanders – Local Government Center. Vadney – It is intended to handle street issues and access and it really is almost frivolous to call it, that we're going to apply it to an island. Touhey – We're still talking access. Vadney – Right, but it's a different... Edgar – The access issue is still a fair issue as a function of subdivision review, but to hang your hat on that statute given the advice of counsel would probably not be the strongest decision. Kahn – I guess my question is and I'm, as I said there are a host of issues here, but Chuck Palm has suggested that we get an agreement in the event we approve this, that we get an agreement from the developer and treat it... Edgar – The Class VI road agreement which is required by statute is effectively an acknowledgement by the property owner that they in essence hold the Town harmless, waive the Town of liability arising from failure to maintain the road which is by definition what the Class VI road is and any emergency related issues kind of stemming from all of that so he's just drawing a parallel because of the nature of islands in relationship to emergency response and drawing at least some kind of parallel there from the point of view of that acknowledgement. He's not saying this is a Class VI road instance, he's just using that as an illustration of the kind of acknowledgments if that were a recorded plan note or document or something of that sort, that would help to advise everybody and offer the Town... Bayard – I just wanted to add something. I think this thing about the road and the exemption, the exemption to me at least refers to a, there may be an island with a small road on it or something like that which people have

to bring their cars back and forth. We aren't going to talk about a 50' ROW on the water and all these other, so you have this potential exemption for islands. Now, that doesn't mean it can't be argued for precedent, but I think it would be a precedent, I mean we've not denied, other towns have not denied any development on islands just because they don't have roads there so I don't see that as an issue... Vadney – Pretty much a non-starter. Bayard – Yeah, a non-starter in my mind, there are other issues I think to be looked at. Vadney – Any further comment. Do you want to take a minute to review your notes or anything, the letters that we've looked at. Kahn – I've sort of been keeping a scorecard and I don't know that its complete so if somebody can add to it if they want to. You have the fire issues which seem to me, the fire alarm, sprinkler system and "Class VI road agreement. Those are 3 issues... Vadney – A hold harmless agreement. Kahn – You have issues of access and those come under two headings, one is the ramp construction access and owner access. You have the septic system and the developer's stated agreement that they would come up with some sort of an agreement with the Code Enforcement Officer and would we want to write that into our plan. It seems to me one issue we haven't discussed and we do this on commercial properties all the time is downward lighting so that I don't know if we have any basis for that or not whether we can do anything about it or not. The issues that were raised by the motion were various questions regarding the buffer and the height of structures and things like that and the parking, but I'm talking about lighting in terms of you know the lighting of docks and housing and outdoor lighting and then we have this whole issue of whether or not we're going to do anything about the controversy that apparently continues to exist with respect to DES, although I think that relates entirely to the Chemung Road property and then I just have one other thing which I guess is a and that is how do we keep having, if we were to approve anything, how do we then keep the owners from going to the ZBA and saying, oh, we'd like to build in the buffer or you know if not the 75' buffer, then one of the other buffers? That exhausts my list. Bayard – Procedurally, I suppose we could do a straw vote to see if we would like to postpone this and get additional grounds for possible... Vadney – We've got a motion on the floor. Bayard – But can we amend the motion to... Vadney – You can talk about amending it. Most of these issues that Lou has just added, like fire alarms, sprinklers, hold harmless clause... Flanders – Mr. Chairman, Vadney – Just a second Bob. The septic one, I think good science would show that they can do as good a job treating septic on that island and getting the waste off of the island as is necessary so the septic one to me is not too big of an issue. The fire alarm, the sprinkler, the hold harmless and the buffer and whether we expand the buffer some or whatever and limit even possibly limiting the height of the building, those are all things that the first few would be things that you could do in the conditional approval and make sure that those things were worked out in some kind of detail as plan notes or whatever so I hate to admit this, but Mr. Flanders

could have been right by only including the access and the parking. Flanders – Mr. Chairman, can I expand on that a little bit. Vadney – What, that you were right or... Flanders – There are a lot of issues here, OK. The two that are in the sharpest focus for me is that this is premature because there's no parking provided on the mainland, there's no access even for the residents that live out there except to use up a substantial portion of what little public access there is already. I guess I subscribe to the theory, I think it's probably reasonable to assume that no matter which way we go on this, somebody's going to sue and if I'm going to pick a fight, I want to pick a fight I can win and the access issue and the parking I believe are the strongest points in this. Now if we decide to vote in favor of my motion, all this other stuff goes away, it doesn't make any difference so that's why I made the motion the way I did. Vadney – You did make a good point there and if we were doctors, we'd know the rule is do no harm. That's something I guess we have to think of. Kahn – It seems to me though, there has been an indication that deeded access is available so we have 3 gentlemen sitting here who can answer that question. Vadney – It still raises the issue though and John we probably need a little help on this, we don't normally look at parking on residential, we do though on apartments and multi-dwellings and stuff. How would you view this parking issue. Is there any such thing as an algerhythm of parking spaces for island campground. Edgar – The zoning does not require deeded access. On the other hand, as a practical matter, the lake is different. There aren't marinas, there aren't municipal lots of sorts, so there are just fundamental distinctions between this lake and the bigger lakes and so the access issues are a little bit different. I'm not aware of a formula for island parking, we need to be looking at boatslips and stuff like that. I'm not aware of formulas, but if you are looking at residential formulas where you have a conventional subdivision where you have driveways, garages and a typical environment which this is not, you would be looking at a couple parking spaces per unit. In response to Bob saying I'm picking a fight we could win, I really suggest that you recognize that you have a fundamental duty to the general public that's you administer subdivision regulations and take all this stuff into account, you have a fundamental responsibility to the public. You also have a fundamental responsibility to the applicant who has property rights. In this particular case, they have met the objective criteria. They do not need zoning relief, they meet soils and slopes requirements and they meet test pits so in terms of the black and white side of it, they don't need relief to meet their objectives so you have your fundamental responsibilities to the applicant to treat them fairly and under the rules in exercising discretion. The third component of that is you have responsibilities to the people who are affected by your decisions and so forth and so I would, not that this is enlightening but I would just suggest that you look at those three kinds of considerations as what should drive you, that's what should lead you to the decision and then when we've gotten to the point as to which way you are going to tilt, we'll figure out how to make sure we don't lose the legal fight once you've

exercised your judgment based upon all the facts that have been presented. I have to look at it from the defensibility point of view, we certainly don't want to act irresponsibly, don't just simply decide the easiest one to defend, decide what you think is right based upon all your responsibilities and let that guide you into which way you tilt and then we'll look at the technical aspects of the language to make sure we've put the general taxpayers in the best possible position to defend the decision that you've come to. Vadney – I might say, John, you've clarified my thinking a bit with one of your statements. I've been struggling with this term premature because as far as emergency response and fire stuff, I don't consider premature development that those things in this particular case rise to the level of me caring. The one that I can see, premature development is pretty hard to defend anyway, but if you're going to defend it, it has to be something that impacts the Town in a negative way which could be used and say that trumps the landowners' rights in this situation and from the strict interpretation of premature and comparing it to Winnepesaukee, we could say that this doesn't have a public parking lot on it. If we had a public parking lot where people could leave their cars, then we could say you can go ahead and develop, but without that that means with or without the one or two places on that little 1/3 acre, you would no doubt be causing people or encouraging people to come up for a two-week stay or whatever and park along the street and those of you who have driven Chemung Road know that sometimes in the summer now with trailers backing and filling and cars parked along there for about ¼ mile or more, it does get troublesome so for something to hang your hat on, the premature development if anything we could say there is no public parking out there so would you comment on that John? Edgar – I think that's certainly part of it, but I think it is the adequacy of the facilities to support the development and if you are so far out on the other end of Town and the development would place an unreasonable burden on the community by virtue of the timing and location of development and the impacts. You know it's been suggested that if relative to the liability of the ramp for access, that could be conditioned subject to the Selectmen's determination. If the Selectmen determine that the facility is not feasible for that purpose, it's a show stopper. They have to meet that condition and that's along the lines of Lou saying what could reasonably be conditioned to mitigate an objectionable feature or uncertain feature and so certainly and as we talk with counsel, clearly that will be in the Selectmen's lap whether its one lot or two lots so the Board wanted the comfort level of knowing that that needed to be resolved in terms of its adequacy and feasibility and so forth, not knowing exactly how and when the Selectmen (can't make out) the Board, legitimately shift that ultimate burden to Selectmen who are the keepers of Town . Finer – Can I just ask a question, I haven't been part of this. Nothing's been said as far as boat parking. Most island residents have a marina where they can leave their boat to hop into to go out to the island. I haven't been out there, is there any kind of facility there where they can leave their boats. Vadney – No. There is the 1/3 acre lot where they've just installed a seasonal

dock and there is some intention at least that that would be used by the island dwellers. Flanders – Mr. Chairman, I would like to point something out. When these hearings started that 1/3 acre was touted as going to be deeded and provide access and so forth and then that's kind of been pulled back and it was pulled back further tonight by Carl and then based on my motion if I was the developer and I had that 1/3 acre and I really had any kind of intention of committing that 1/3 acre to this project, I would have jumped up and said, Hey, wait a minute folks, we've got this 1/3 acre, we're willing to deed these rights. It's obvious that they are not planning on this at this time at least and maybe never have. Vadney – We don't want to get into badgering the witness here. Flanders – I'm not trying to badger the witness, I'm just telling you what I'm reading. Edgar – My recollection of the testimony was that in their written response, they did indicate their intent to deed an easement access and in Carl's testimony he at least offered up some kind of an either or scenario, these are not necessarily Carl's words, but something to the effect that the issues relative to the mainland property are resolved, i.e., the deeded access, environmental issues or that there would be no deeded access. I didn't mean that you accept an either/or maybe you accept the either part of either/or. Carl, I think in all fairness to the applicant, they did offer up some clarification that their intent was to provide deeded access in a written letter and then I think Carl spoke to it in terms of recognizing that the environmental issues have played themselves out. Brian Moriarty – We bought the island only with the 1/3 acre that came with it for access and we would not have bought the island if it didn't have the access so it has always been our intention to deed access to the island from that, but not to ever get into any type of subdivision of that, it would just be deeded access because you couldn't subdivide a third of an acre, so the reason why it wasn't offered originally is because it really doesn't effect the island as far as the ordinance goes, but if the Board wants to hang their hat on access and a place to park your boat and a place to park your car, you can easily park 3 full-size pickup trucks there right now and a fourth car and still be 5 or 6 feet off the pavement so there's 4 cars parking anyway. Vadney – Let me make sure of the words here. You are saying a deeded access. You would still own that little piece, but they would have a deeded access to it. Moriarty – Well, it would be in the deed with access from that point so they would be responsible for the access from that point. Vadney – So, it's basically an easement. Flanders – No, they would have a fee interest. Moriarty – The owners would be paying the taxes on it. Touhey – So they would share in common ownership. Bliss – Mr. Chairman, I know there is a motion on the floor, I guess with what we, after meeting with Town Counsel, we really need to stop and think and we really need something that's a serious show stopper to deny this. I at this point would rather favor a conditional approval or if we do decide to go with the denial, I would rather have us meet with Town Counsel to draft that so that we do it in a very cautious way because at our meeting with him, he was very clear that we had to have a specific and unfortunately from what I'm hearing all of these little things are coming out which

are not show stoppers and that was one of the things that I came away from that meeting with is that we really had to have something that was a serious show stopper and I am not seeing that. Granfield – I think we have to really think hard about that. You know, we don't want to make our decision based on whether we are going to be sued or not. I mean it's always there and John should worry about that, but I think we have to do the job at looking at this and deciding whether or not in its totality it fits into the whole scheme of things and then what our exact reasons are. Attorneys are always going to advise you to do this in black and white and then they'll go and argue grays, but I don't see any problem with access, I think you can hang your hat very specifically that there is not a good place for anybody to park, they could be ending up in the road, that's a public safety issue, that's not a hard argument to make. The gateway issue, we have a Master Plan. Master Plans have been held up if you do things that show that you are conforming with the Master Plan and that has been held up, I think we've got a number of things and I think we can vote on these things and then the applicants can come back and say, we'll you know we heard you, here's what we think would answers to that. If they don't want to do that and they take you to Court, I think we have things we can hang our hat on. We have to make our decision based on what we think is right and then go from there. Bayard – We may be beyond this, but I did want to address one issue that was brought that was about the DES, the concern about the possibility of prior encroachment. There is a letter on Page 16 that does say at this time, there appear to be no violations. I don't think that's an issue at this point. Mr. Thorpe - Mr. Chairman – I know this is out of order, but if you are going to consider the DES issue, I would like to speak to it. Flanders – Mr. Chairman - One of the things that I try to do and I would suspect a lot of you here do the same thing. When you have a decision to make, you kind of sit down and make at least a mental list of the pluses and minuses. I've tried to do that with this issue as well and there are some things on both sides, but when we start to add the, at least in my mind when I add the list up of the minuses, at this point with what's been offered, it substantially outweighs the pluses of approval and that's another reason I made the motion that I made and at this point, I think I'd like to call the motion. Vadney – OK. Edgar – I would just ask us to make sure we know the issues. Do you want to just restate it Bob? Flanders – I moved that we disapprove this application because it does not provide parking access or lake access adequate for this property. In fact, it provides "0" parking. Vadney – The applicant has since stated at least 3 parking spaces. Flanders – Well, what's on the table and what we have a firm offer is "0", we don't have any guarantee of anything. Brian Moriarty – In my written response which you received prior to the 8th which was the deadline for any other testimony for this hearing, I put in there that our intent was to deed that, I don't know what other word to use, I can't say I'm going to because I don't have the ability to yet. My intent is and it was in the written response so what Mr. Flanders is saying, I don't know why he's saying it, because it was in the written response. Vadney – And that is what's before the

Board, Bob, I believe. Flanders – I think Carl's language tonight helped me get to that conclusion. Vadney – Well, I thought Carl's was clear too, but anyway. Flanders – I called the question, Mr. Chairman. Vadney – The motion was to disapprove it because of inadequate parking and access. Flanders – Well, in that motion I also said it was premature for those reasons. Edgar – Is that clear to the second, is that your understanding of the motion. Granfield – That's my understanding of the motion, I just added the gateway issue and the Master Plan. Edgar – Did you intend to add that to the motion or was that just a comment? Granfield – I'll stick with what I started with and just say that was my comments. Flanders – I would accept that addition. Granfield – All right, then I'll make it. Vadney – So, they want to deny it because it is a premature development for lack of parking and access, but he has just said there is at least 3 parking spaces and a dock. Flanders – Mr. Chairman, we could be here at midnight. Vadney – Oh, I know. Flanders – I called the question. Vadney – I know that and John we do, I want to ask at least one question of John. We have to be very careful of property owners rights and I think you all know that and sooner or later you'll want to sell your property and there is an issue, the way the State courts have ruled on bringing things, it may seem like we could disapprove this and the owners could go back, tweak it a little bit and come back. That's not necessarily so. As I recall, John, they have to come back with something that's substantially different in order to re-enter it. That's to prevent pressure to get rid of Planning Board's and get somebody else, but you can't swap out the Planning Board and then try to get the same proposal through that was disapproved by a previous one so you can't just come back saying well now we've decided it was 5 parking spaces, we don't want to submit anything. Edgar – If the Board makes a vote to deny and state your reasons, that is not something that is subject to further negotiation to the extent that the applicant is aggrieved by that, then you become Superior Court. Kahn – Are you suggesting that for further discussion, we need to continue. Edgar – I've already said my thing. I just want you to reconcile amongst yourselves what you think you would do and I just didn't want it left with some sense that you're going to have multiple bites of the apple. You've got to think it through carefully now recognizing the balance to the general public, the abutters and the property rights of the applicants and come to that conclusion not based upon whether or not we get sued, but recognizing that when you make that decision, you need to clearly state your reasons and it's not something that then gets further negotiated. The hearing's closed, you're in deliberations and when that vote is taken, basically that's the deal and then go from there, but it's not something where we are going to come back in two weeks and try to tweak it or change it whatever, so I just wanted to make sure you understand. Vadney – And it should be clear to everybody on the Board and everyone in the room that what we are voting on is simply the subdivision to a second lot. Even though some of these issues could apply to a single dwelling, that's between the Selectmen and the owner and whoever else, but it's not a

Planning Board issue and that should be clear to everybody. So, if you vote yes, you're disapproving the two-lot subdivision project and making it extremely difficult to the landowner to come back with a similar proposal. I just wanted to make sure that's clear because that's one of the nuances of the rules so to speak. Board polled. Bayard – I'm not prepared to vote on this tonight. Touhey – Yes. Kahn – No. Bliss – No. Granfield – Yes. Flanders – Yes. Vadney – No. Vadney – That leaves it a tie vote and defeats the motion. I know that disappointed a lot of you, but the Town I believe would have been at great risk had I voted yes. We have some homework here and we'll be willing to look at this again, but if we had disapproved that here tonight, the way and the information that we've been using, the Town would have been at great risk. Dexter – Why is there an abstention? Why is that allowed? An abstention is a no vote, isn't it? It's a tie under your rules, do you operate under Roberts Rules? Vadney – We are not sure on that. Dexter – Is that a negative? Bayard - The vote is no, the decision is no on this. Dexter – What about the abstention? Vadney – He's talking about the abstention, you. Bayard – If you want my opinion on it as I believe. Dexter – No, I'd like your vote, sir. You are supposed to vote yes or no. Vadney – I have to admit I do not know the rules on that. ?? - I wonder if I heard something correctly? Did your advisor say that defeats the motion? Vadney – Yes. Edgar – The motion didn't carry. But is an abstention a tie vote? Edgar – If you have a tie vote, you don't have an affirmative vote. You can't conclude that you had the majority. Dexter – The question is the abstention, is that a no vote? How does that stand? That would be a legal question I suppose. Edgar – You're in the deliberative phase, you just voted. The hearing is closed and so if you want to schedule a subsequent deliberative session, we've got to act affirmatively one way or the other and there has to be a clear decision, assuming it be a tie doesn't end there, so we could either get a readout on the effect of the abstention which is probably the smart thing to do and then schedule a deliberative session for a subsequent meeting. Johnson – Mr. Chairman if I might, I would like to offer something to the Board and that would be for Henmor Development, LLC to withdraw the application that's before the Board. Vadney – We now have a proposal put forth moments ago that they will withdraw the proposal. Flanders – Mr. Chairman, can I ask Carl a question? Is that withdrawal with or without prejudice? Vadney – That's not for him to say, that's for us to say. Flanders - This goes back to Shep Brown's. Vadney - No, Bob, they have offered to withdraw, we can say "fine", we can say "no" or we can say "yes" but with prejudice. Edgar – The distinction between this and the other application is that the other application's withdrawal occurred prior to the Board taking a vote. Vadney – But see, this wasn't a negative vote. If we had voted a distinct majority "no", they would not be allowed to withdraw it. Since it was a tie, I'm willing to allow it unless the legal eagles turn us around. Flanders – It was a simple question, I asked them if that was with or without prejudice and that's a very significant thing and if they choose not to

answer, they can say we don't answer, but I think they should have the opportunity to say "yes" or "no". Moriarty – We don't know what the difference is. Vadney – It's without prejudice. It's not up to them to determine if there's prejudice. Edgar – I think the next step is to determine what if anything is the effect of the abstention because if for some reason that carries a motion to deny the application, then there is no opportunity to withdraw so I think maybe that's the next step. Lou, do you have a different view on that. My own guess is that someone is entitled to abstain if they want to abstain and it's no vote. It's not a "no" vote, it's a non-vote. Vadney – Let me explain some of the details on this and don't take my word to the bank, but when we vote up until the moment we vote, the applicant can withdraw with no problem. He can just pick up his briefcase and leave. Once we've voted, if we vote it down, he cannot then withdraw, however, this one maybe because it was a tie, it was a null vote so to speak and he could withdraw. The difference is how he can reapply and it's up to the Board to state whether we are allowing him to withdraw with prejudice or not because that determines whether he can bring back a somewhat similar proposal in the future. John, am I fairly correct on that? Edgar – That's a good summary. Vadney – That basically where we are from a legal standpoint. The real issue right now is how does the abstention work and I will admit, I do not know. We will get a reading on that. Dexter – If it wasn't a tie vote, it would not be an issue, but because of the tie vote and you have a sitting member who's heard the deliberations and is refusing to vote that you are now putting this into a quandary and because there's a lot of money at stake and a lot of prejudice at stake on both sides, this could be a mission you guys shouldn't be in. Vadney - That's the situation we're in. In a way, we can't continue it until we know the status. Edgar – The hearing's closed so you can reschedule and in essence it's a continuation of the deliberative session if you want to have this back on the Board's agenda, not as a public hearing but as an item for deliberation that would be your prerogative and at that point you could report back to the Board regarding the abstention on the vote and at that time, you could consider the applicant's request to withdraw or the line of defense. Flanders – Mr. Chairman, could I suggest that we schedule a meeting between the Planning Board and Town Counsel to discuss this to further understand what's going on here. Bayard – I second that motion. Vadney – The first thing is, it's not really a continuance but it's... Bliss – Continued to deliberate. Flanders – You don't really need to do that Pam because you're not worried about abutter notification at this point because there is no public input. Kahn – There never were any abutters. Vadney – What's our next meeting date? September 13th. John, let's schedule a deliberative session to discuss this and we'll probably have an attorney here with us and you and I and possibly whatever, would meet with the attorney in the meantime and you can call him in the morning and find out his opinion on this and call the Municipal Association on the null vote, the abstention. I know that leaves you folks in a lurch and it leaves him in the lurch and so we're all in a lurch, but. Can we do it for the next meeting and try to wrap it up before the summer is over. Moriarty –

Will that deliberative session be taped. Vadney – Oh yes, it will be right here. Flanders – It will be a public meeting. If there should be in the future another public session, will we be notified? Vadney – It will be a public session on the 13th, it will be right here. We take our beatings in public. Hearing closed at 10:03

Kahn – Are you and the Chairman going to speak to him first? Vadney – John can and he can involve me as he sees fit. Edgar – Whether we have to physically meet with him or not, I'll just brief him on the outcome of the meeting and what the basic issue is. Kahn – If that's determinative, do we need to have, well I guess we are going to need some advice. Vadney – By the way, when they finally schedule it, make all reasonable attempts to be at the meeting because it's going to be important that you all hear the same story. Edgar – We had a small turnout for the last session with counsel on this application. Bayard – Can I make a suggestion that someone give us a call that day because if its off cycle. Bliss – I'll call you and remind you, Bill.

PAUL FORTIER/N.H. ELECTRIC COOPERATIVE, INC.: Rep. Paul Fortier (Bayard stepped down) - Public Hearing pursuant to NH RSA 231:158, to consider a proposal to perform the necessary tree removal and trimming associated with the installation of utility lines on a designated scenic road known as Roxbury Road.

This is pretty straightforward. I got together with Bruce Gavarney from the Co-op and this is what we came up with. Mike Faller has seen it and really liked it. It has the least impact to the scenic status of Roxbury Road. Basically, we are just coming from Camp Waldron Road because it's a little bit shorter than coming from this end of Roxbury Road, but if we went from this end to Roxbury Road, we have to do significant cutting because it's twisty and curvy in there. He set it up so we could hop across the road and then my driveway is adjacent right here and we would pretty much shoot straight up the driveway so there is limited cutting there so it's really the least impact for getting power to 67 Roxbury Road. Vadney – OK so it's starting at that circle. Fortier - There's a pole here on Fred's property which is existing, that's as far as power goes. Where I am right here, there is no power so we're going from Fred's to this pole here which is Camp Waldron Road which is not a scenic road, across to my property and back across the road and up my driveway (see plan). There's very limited cutting by criss-crossing the road he was able to do that. Vadney – Any comments from the Board. Bliss – Can you tell me what the note on the plan that says future road relocation means. Mike was saying that this corner is something he said hopefully within 10 years, the Town wants to, what happens is people come around this corner and it's a dirt road so it gets really washboard and the Town owns this swath of land here, so they

eventually want to straighten Camp Waldron so instead of doing this funky corner, it goes straight through and then Roxbury Road in stead of there being no stop
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signs and kind of this flowing thing will come to a "T". Bliss – So that's what the dotted lines are. He was just saying that's the future for that road. Edgar – When the Waldron Bay subdivision went in, we negotiated that intersection easement for future improvements. Vadney – OK, we've seen it, any discussion on the proposal itself.

Flanders moved, Finer seconded, I MOVE THAT WE APPROVE THIS APPLICATION. Voted unanimously.

CRESTWOOD AT MEREDITH SUBDIVISION: (Rep. Kent Brown) Compliance Hearing to determine amount of performance guarantee for Phase II of the Meredith Crestwood Subdivision, Tax Map S20, Lot 3, located on Parade Road in the Forestry/Rural District.

Edgar – This is Kent Brown, Kent is the principal of Crestwood. The Crestwood approval was flipped and Kent's company owns the project. He is building out the roads and he's building out the homes so we're dealing with him and his company relative to all development issues in the Crestwood project. As you know, this Board approved the three phase subdivision, effectively they are fully permitted but we broke the project down into three construction phases. They are actively in Phase I, effectively the road work is substantially complete in Phase 1. I think I they have one model complete and two other homes under construction. Effectively, three homes up in Phase I which will be the first right-hand cul-de-sac coming off Parade Road. Part of the approval was a development agreement that set forth the do's and don'ts, vesting and things of that sort and the dedication of the ROW for future public use and also provided for the process of how to enter into the next phase. The Performance Guarantee that we're sitting on is for Phase I. As you know, in order to be able to convey a lot, etc., etc., and get the building permits rolling, they have guarantee the completion of improvements. The Development Agreement signed by the Planning Board and the Board of Selectmen and Developer requires that in order to enter into subsequent phases, in this case Phase II, they have to come back to the Planning Board in the context of a Compliance Hearing. The Compliance Hearings basically ahs two purposes, one is to review the status of the permits to make sure everything remains valid, that nothing expired so we can go into Phase II because it was fully permitted at the outset. Second, is to establish the Performance Guarantee amounts for the roads and drainage for the second phase. When the Board establishes that amount, the Performance Guarantees are put in place and they proceed with the infrastructure work and the building permits and they can convey property at that point. The short version of the permit status is that everything is current, nothing has expired and I had the engineer verify that and I have a letter in my file. That's

really a non-issue. The applicant has requested that the second phase which involves three cul-de-sacs and 30 units be broken into two sub-phases, two cul-de-sacs totaling 15 each. The purpose primarily is to break it up into manageable phases and in the first instance from a cost point of view, we're probably talking over a million dollars for the two phases combined and then seconded from the environmental point of view, just trying not to get too much construction going where it becomes difficult to manage site stabilization and the like. So for fundamentally practical reasons, they are looking at 2A and 2B if you will. This is coming in from the road, this is what is under construction. The cistern's in, the roads are in, there's a house here and I think a couple at the end so this is well on it's way. Vadney – The road stops right here, now, have you punched anything through beyond that? Brown – No, we've cut the trees, but we haven't done any more. Edgar – They have an intent to cut and all that. So this is all Phase 2 and we have 15 lots here and 15 between the two so it's 30 lots, 3 roads plus the continuation of Crestwood and the second cistern which would be going down on the end. So what they've come back with is the first issue, is there an issue relative to breaking up into distinct phases? Now, Phase 2A, what would go first would complete the next leg of Crestwood and then build these spurs and then at some subsequent time, they would tie in off this spur with this module. So effectively, think of it in my mind I think of it as a 4-phase project as opposed to 3 which is effectively what we're looking at. As a practical matter, the Development Agreement didn't anticipate Phases 2A and 2B so the Development Agreement has a one-page addendum (that's in your packet) amendment that references 2A and 2B. All the language, all the prerequisites is basically all the same. There is no substantive change other than the fact that the Development Agreement didn't envision 4 phases, it envisioned 3. That has been reviewed by Tim and will be before the Selectmen for their review because they are one of the parties of to the Agreement. The Selectmen's main issues on the Agreement had to do with the future dedication of this ROW, but as a practical matter they are a signer to the Agreement, we've had Tim look at it and I don't anticipate any substantive issues. All the material aspects of the Development Agreement remain in effect, it's basically just referencing 2A and 2B as opposed to 2 regular. So that's the second issue for tonight, is there an issue with the concept? They have submitted unit cost estimates to continue the road work, put in the cistern and do the drainage improvements for 2A and 2B as separate entities under the premise that we have those numbers established for two distinct phases. Mike Faller is reviewing the numbers and he's been on vacation so were not in a position to recommend a number tonight so the short version of what I would like to accomplish tonight is #1 at least acknowledge that all permits are valid and here's the correspondence from the engineer, the permits are all numbered and they are all valid and acknowledge that for the record. The second thing then is to determine if the Board has any concerns about breaking Phase 2 into two phases. If that concept is OK? Vadney – Is there anybody that can't live with that concept? Flanders – It looks

like it makes sense to me. Kahn – It seems to me the only issue is the cistern and the cistern is going in 2A and there's no other work that... Edgar – The drainage stands alone, I've had that verified. The only thing I would talk with Kent about is to make sure that if we establish a number on Phase 2B, if there's a huge lag time between the numbers, we may need to do this drill over again. If that happened to be 3 or 4 years and the numbers are old, we're not going to be comfortable with the numbers set in August of 2005 and be talking about it's relevance in 2008 so we may need to look at that. So if that is generally a consensus then we would ask that this compliance Hearing be continued to the next meeting at which time we would have Mike's review of the numbers. Bliss – Just out of curiosity, is this phasing changing because the house lots aren't selling or is it just that you do want it to be more organized? Brown – The first phase is 16 lots, the second phase was 30 lots and the third phase was 13 lots and it seems like the 16 lots was a nice size so when we looked at this from a practical standpoint, we don't anticipate doing any more than 2A next year in 2006 and possibly getting into 2B in 2007 so from a practical standpoint, we're really not going to be there for 18 months and it didn't make sense to bond all of that when we go to get our first building permit or sell our first home in Phase II, the bond for Phase 2B that we're probably not going to be in for a year or two more so I would rather not even pull the stumps out, take the topsoil out or do anything in there. I'd just as soon leave it the way it is, it's stable and leave it alone and focus on the 15 lots in 2A. Bliss – As a learning curve for us maybe we can kind of keep that in mind for next time. Flanders – It's not really our call, it's the developer's call. Touhey - Just out of curiosity, when did you take over the project? Brown – Last October or November. Flanders – Before any construction started. Bliss – I do have a questions, Herb. Is there a reason why we have to continue this? Edgar – Yes, because we don't have a dollar recommendation. They have submitted numbers that have not been reviewed, Mike's on vacation, plus we picked up one oversight that's going to extend the amount of road work prep. There were two different locations of the cistern under Phase 2 and the engineering plans show it in the agreed to location which is a little further than the terminus that you see on that plan so as a practical matter, Crestwood's going to be extended by a couple hundred more feet that is in the estimates I'm sitting on right now so that just got reworked the other day, Mike gets back from vacation, he'll review it, then we'll have a recommendation. Bliss – So it's not something you could do administratively? Well, then I would suggest that because we do know we have that hearing the next time, maybe we could put that first on our agenda. Brown – John had suggested that maybe we wait until the following meeting to come in, but two things, one is because I am the new owner of the development and I hadn't been before you at all and wanted to introduce myself in case something came up and John did a great job of explaining my role in the project and the fact that we're building the homes and not selling the lots so really everything comes back to me so you have only one call to make if there's a problem and the second thing is just

from a practical standpoint, if you did have a problem with breaking this up, we would redo it so Mike Faller wasn't looking at it as two different phases before the next meeting and come back with the numbers. That was really just a little bookkeeping. The last thing we are doing administratively is remember the discussion we had about ledge and how much ledge probing you do and in Phase 1 they built most of all that roadbed work under a conditional approval so they, at their own risk, blasted a lot of ledge, they hit a lot of ledge and so Ken's company, part of Ken's company is also an engineering company so working with the actual design engineers, we now did more detailed ledge probing and the ledge probing reveals there is a fair amount of ledge. They've come back to look at raising some of the road profiles and the grades that we agreed to, 8% here, 4% there, all of that stays, but the whole probe project gets lifted a foot or two to provide more separation. Because of that effecting about 3 or 4 sheets of plan and profile, we have set up the escrow account to have our engineer who's reviewed all the original plans double check all that stuff to make sure from an engineering point of view, everything's copasetic. It doesn't effect, it's the same ROW, it doesn't effect the number of lots, it doesn't effect the actual grades, but it there is a grade change. Vadney – It doesn't change any culvert crossings or drainages? Edgar – No, Lou's going to look at the profiles to make sure everything's copasetic and make sure the drainage is copasetic. We'll set up a \$1,000 escrow and double-check that. It's just something that was designed by an engineer, reviewed by an engineer and is significant enough at least on it's face where I'm not comfortable looking at it and making a call that everything's covered so we're all in agreement on that, there's no role for you to play other than I just wanted you to be aware that we're doing that. Another engineer bought it and couldn't keep his fingers out of it.

Bliss moved, Finer seconded, I MOVE THAT WE CONTINUE THIS COMPLIANCE HEARING UNTIL SEPTEMBER 13, 2005, AND PUT CRESTWOOD ON THE AGENDA FIRST. Voted unanimously.

Hearing closed at 10:55 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

