

**Town of Milton
Planning & Zoning Meeting
Milton Library, 121 Union Street
Tuesday, April 16, 2013
6:30 pm**

**Minutes are not Verbatim
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order

2. Roll Call of Members

Mark Quigley	Present
Barry Goodinson	Present
Bob Heinrich	Present
Tim Nicholson	Present
Linda Edelen	Present
Don Mazzeo	Present
Lynn Ekelund	Absent

3. Nomination/Election of Chairperson & Secretary

Don Mazzeo: Do we have any nominations for either of those positions? Let's start with the Secretary.

Bob Heinrich: I'll nominate Lynn Ekelund for Secretary.

Tim Nicholson: I'll second that.

Don Mazzeo: She's not here to defend herself. Is that acceptable?

Seth Thompson: That's acceptable.

Don Mazzeo: Okay. All in favor say aye. Opposed. Motion carried. Lynn is again our Secretary. Do I have any nominations for Chairperson?

Tim Nicholson: I nominate Don Mazzeo.

Bob Heinrich: I second.

Don Mazzeo: Any other nominations? Hearing none, we have one nomination.

All in favor of Don Mazzeo say aye. Any negatives? Hearing none, I guess Don Mazzeo is again Chairperson. I thank you for your vote of confidence.

4. Additions/Corrections to the Agenda

Don Mazzeo: Do we have any additions or corrections to the Agenda as it has been posted?

5. Approval of agenda

Don Mazzeo: Seeing none.

Tim Nicholson: So moved.

Don Mazzeo: All in favor say aye. Opposed. Agenda has been approved.

6. Approval of minutes of March 19, 2013
Don Mazzeo: I hope everyone has had the opportunity to read through them. Are there any questions? Any additions, deletions to those minutes? Hearing none, I'll accept a motion to accept the minutes of March 19, 2013.
Tim Nicholson: So moved.
Bob Heinrich: Second
Don Mazzeo: All in favor say aye. Opposed. Motion is carried.
7. Public Hearing
- a. Preliminary Subdivision Plan Review/Approval**
The applicant, Fernmoor Homes at Heritage Creek, is requesting a preliminary subdivision review/approval for Phase 4 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00
Don Mazzeo: Do we have representation this evening from Fernmoor Homes at Heritage Creek?
Mike Coven with George, Miles and Buhr: Good evening. We're the Project Engineer.
Don Mazzeo: Mike, would you like to run through your proposal to the Committee?
Mike Coven: Yes, Sir. What we're talking about this evening is Phase 4. It's the piece here outlined. It's directly above the section that was approved last month. It's 7.57 acres and it consists of 17 single family homes; single families around here, the dreaded cul-de-sac and one over here. We've got one triplex building, three units there and then 22 townhomes in this block, for a total of 42 lots. This layout is in exact conformance with the approved Master Plan. There hasn't been any change from the layout that was approved last month. Parking is the same as the result of the development, a combination of on lot and garage and street parking spaces; 84 are required, 102 have been provided in this section.
Don Mazzeo: You are in receipt of the letter from Mr. Kerr dated April 5th, regarding this application?
Mike Coven: Yes, Sir.
Don Mazzeo: Do you have any particular comments that you would like to make regarding any of his twelve options of discussion?
Mike Coven: Yes.
Don Mazzeo: Okay, please address them.
Mike Coven: The only other thing I would mention is that this does include the 22' setbacks that were incorporated in the Master Plan for the front loads.
Bob Heinrich: Would you repeat that? I'm sorry.
Mike Coven: The front loaded units have a 22' setback, that was

incorporated into the Master Plan and that's on the notes on the coversheet of the Plan. As far as Mr. Kerr's comments, the first five are just informational. The 6th refers to this walkway and that space shown there is only 7' wide. What I would suggest, because space is kind of at a premium for these, within the building envelope, so what I would suggest there is that we can provide a 10' or even up to 15' easement, within the setbacks, so it won't affect those lots.

Bob Heinrich: Are you going to put a sidewalk in there? Are you going to put greenery?

Mike Coven: That's going to be a path.

Bob Heinrich: A path.

Don Mazzeo: A walking path.

Mike Coven: Yes.

Don Mazzeo: Jogging path, whatever...

Mike Coven: Connecting to the ones on the back... And that path has always been envisioned as something with natural materials. It's really just going to be a trail, pretty much; but a lot of it goes back through the area along the... It slopes along the way.

Bob Heinrich: I think what I'm concerned about is the weeds growing in there and that kind of stuff, that's going to require constant maintenance and cutting and things like that. Is somebody going to be looking after that?

Mike Coven: That would be part of the HOA's responsibility.

Bob Heinrich: HOA.

Don Mazzeo: But you've indicated that you would consider then, a 10' easement on both sides, particularly for the purposes of maintenance.

Mike Coven: Well there are 7' there now and there are 5' setbacks on each side, so we have 17' total in there to work with.

Don Mazzeo: You already have 17'?

Mike Coven: Right, but what I would suggest is that we put an actual easement in there, to cover the portion that's over the property lines.

Bob Heinrich: Where that walkway is, what is on either side? Are they front or back yards?

Mike Coven: They're side yards.

Bob Heinrich: Side yards.

Mike Coven: It's right here.

Don Mazzeo: Those are single family homes there, correct?

Mike Coven: Yes, right now the actual opening in this, that's in an open space lot, is only a couple of feet larger than the path itself. That's what Mr. Kerr was concerned about. So we can overlay an easement that would come into the setbacks on both lots – 15' wide, which would give you plenty of room to work; but it wouldn't impact the actual envelopes of those lots.

Don Mazzeo: Are you concerned, Robert?

Bob Heinrich: Again, what's the material of the path going to be? You say it's not going to be asphalt or concrete. It's going to be like stone or pebbles?

Mike Coven: I think that's what was envisioned.

Bob Heinrich: Because I just see stuff growing in there and it's...

Mike Coven: Because a lot of that's going to be back here along the wetlands and through the woods and you don't really want to try and pave that.

Bob Heinrich: Yeah, I'm not even suggesting that. I'm just concerned about what's going to grow in that 7' walkway and become unsightly, if anything.

Mike Coven: The part that's out in the open, admittedly, would probably require more maintenance than the stuff that's going to be back in the woods; but...

Bob Heinrich: Can you see residents taking over that, as eminent domain type of thing; and just using it for what they want to use it for? I've seen it happen in our own neighborhood, where people take vacant lots and use some of the ground, I do it myself, for planting vegetables and things in the summertime.

Mike Coven: Well the path itself won't be on a lot. That part, at least, is not...

Bob Heinrich: But there will be nothing delineating it, though; no fences on the properties, or any thing like that, right? In other words, the path is going to run right into an easement, which is going to run right into the residences, correct?

Mike Coven: I would assume. I don't know if they would put fencing there or not.

Barry Goodinson: I don't have a problem with it. I lived in a community in Baltimore that was developed... our house was built in 1890 and there were paths throughout the community and there was no problem with that.

Bob Heinrich: Okay. I'm just asking questions, because I don't know; I'm having a hard time envisioning what's going to be in there.

Tim Nicholson: I think it's a very nice community amenity. I think it's great.

Mike Coven: So hopefully, that will be acceptable; because I think you can see these are very close now to the setback lines if we shrink those lots, so we'll have trouble getting a larger footprints in there. I think we can still take care of the concern without actually impacting the lots. So then Mr. Kerr's next comments was about the materials there and I think what's always been envisioned there was something that would cause minimal disturbance, natural materials. It's basically going to be trail throughout all these wooded areas.

Don Mazzeo: With regard to Mr. Kerr's number 7, as well; it is an indication as to when those paths would actually be developed and put in

place. Would they be prior to, during or after construction in that particular area?

Mike Coven: I think we would take our cue from you on that point. If you would prefer to have them done as part of those phases; we've always left that off to the side; but if you're interested in making sure that that gets done...

Don Mazzeo: I am.

Mike Coven: I don't think there would be any objection to actually tying that as part of the phase.

Don Mazzeo: Okay.

Mike Coven: And then number 8 talks about the sidewalk here; that's actually shown in the lot area. We have enough room there to create a 10' opening there.

Barry Goodinson: What does that connect to? It's a sidewalk that goes from...

Mike Coven: It just runs along the front of these; this piece is the only piece that actually has homes looking out into the open space, as opposed to...

Barry Goodinson: So those are the rear loaded, is that correct?

Mike Coven: Yes.

Barry Goodinson: That's a walkway that goes across the front of the houses.

Mike Coven: Yes, Sir.

Barry Goodinson: Can you just point it out on the plan? Where would those few homes be?

Mike Coven: It's right here.

Barry Goodinson: Oh, I see, okay.

Mike Coven: So this is the walkway.

Barry Goodinson: And then there's additional ones that would be facing on the other side.

Mike Coven: So we can create a 10' opening there, if that's acceptable.

Don Mazzeo: What's there currently? Is it less than 10'? Or is it even indicated?

Mike Coven: Actually, the lot line right now goes right up...

Don Mazzeo: So it doesn't show a real path yet?

Mike Coven: No, it would have been an easement, but if you would prefer to have that actually be part of the open space, that can be done there easily.

Don Mazzeo: We'll defer to conversations on that.

Mike Coven: Comment no. 9 refers to the driveway apron details and those have already been changed; that change is in the works. This was in the mill before that came up.

Don Mazzeo: Right.

Mike Coven: No. 10, location of curb cuts and driveways; we certainly

have no objection to adding those to the plan also. And that's really all I have.

Don Mazzeo: The rest is...

Mike Coven: I'll be happy to answer any questions.

Don Mazzeo: Are there any questions of the applicant, prior to opening this to the public for comment? Mr. Kerr, do you have any other comments that you would like to make prior to the public portion?

Bob Kerr, CABE Associates: I don't believe so. Maybe a couple of comments during your Business portion.

Don Mazzeo: Okay, very good. At this time, I will open the meeting for this particular application to the public for anyone wishing to make comment, questions? Please raise your hand and step forward to the microphone. Your name and address, please.

John Oates, 115 Arch Street in Heritage Creek: I have not attended too many Planning and Zoning Meetings. I was interested in coming to this one just to get a better understanding of the ongoing developments. I saw an article in the Cape Gazette this morning, that this was going to include a Public Hearing and I'm kind of at a loss as to how I could attend the Public Hearing, if I don't have any information. So my question is, how can I educate myself and what sources of information are available to me, so I have what you guys have before I come to a Public Hearing?

Don Mazzeo: It's an excellent question. It's also be addressed at the Council Meetings, because of the same conditions that you are presenting right this very minute; that there's not enough information opened prior to the meeting, for you to discuss. Now I will defer to our legal counsel and/or to Robin, that indicates that all of this information is or is not available at Town Hall?

Robin Davis: Yes, a copy of all the information that Planning and Zoning Commission gets is available at Town Hall. It's there basically at the same time that the information comes to Planning and Zoning. It's available Monday through Friday, 8:30 a.m. to 5:00 p.m.

Seth Thompson: This is also really Step Two in the process. Step One is when the Town Council receives the application and then refers it to Planning and Zoning; which is designed to put the public on notice to look for it at the Planning and Zoning Commission level. Frankly, otherwise that initial council act of referring it to Planning and Zoning, doesn't have much purpose, other than to do just that; to give people the chance that when they attend Town Council meetings, to see that something is coming up.

John Oates: Okay, so given today's date and this was referred to Planning and Zoning at the Council Meeting in February? January, February? I'm trying to get...

Seth Thompson: No, it would have been at March's meeting.

John Oates: I'm trying to get a window.

Don Mazzeo: The referral from Council...

Seth Thompson: It might have been the April 1st meeting.

John Oates: So it was the April meeting, so plenty of heads up time, so when I hear that at the Council Meeting then I know it's going to be on the agenda for Planning and Zoning, so a week prior to that, or thereabouts, I can go to Town Hall and get, for example, the letter that Mr. Kerr sent and this type of information is available to the public?

Seth Thompson: That's correct.

Don Mazzeo: Approximately seven to ten days prior, you will also have the ability to go online to determine what is on our agenda.

John Oates: That was the second part of the question. I see what's on the agenda is rather generic, Public Hearing, Phase 4, Heritage Creek, etc.; then Public Hearing and then possible vote, whatever. I'm hoping to see that website be a little more informative in the future. Mayor Newlands liked to say that we're working on it. Hopefully, they still are. I have a question for the engineer, if I may?

Don Mazzeo: Please address the Commission, then we will address backwards.

John Oates: Out of the 17 single family homes, how many of those are rear loads? And that's all I have, thank you.

Barry Goodinson: I actually have a question. What would be the process, Robin, when this gentleman goes into Town Hall and he wants to request the paperwork?

Robin Davis: All any residents have to do is come up to the front counter, Trisha is at the front counter, her and Kristy and just ask for the information that's on the Planning and Zoning Agenda and all of the items are available right downstairs where they can pull them out and look at them.

Barry Goodinson: Are there copies that they can take with them also?

Robin Davis: No. They cannot take them with them. It has to be reviewed at Town Hall.

Barry Goodinson: Gotcha.

Seth Thompson: If they would request copies, they would fill out a Freedom of Information Act request form and there are charges that go along with the copies themselves.

Barry Goodinson: Thank you.

Don Mazzeo: Mike, can you give some insight to the number of single family homes?

Mike Coven: None of the single family's in this piece are served by alleys.

Don Mazzeo: These are all front load, all 22 was the number, I believe. 17. Excuse me.

Barry Goodinson: And the townhouses are front loaded as well, right?

Robin Davis: Yes.

Don Mazzeo: Any other questions from the public?

Tim Willard, 4 Seahorse Lane, Lewes: I got direct notice of this hearing, because I own this property and I'm trying to figure out where this is. I think I'm more down here. This is the Phase you're dealing with right here, I think?

Seth Thompson: Yes.

Tim Willard: My property might go from here to here; so this phase doesn't impact me more. I've seen a Site Plan of this with the Community Center back here. I only have a comment, to let you know and I don't know what you can do about it; but this area is Round Pole Branch, down here; maybe some of you know it. It's sort of swampy, but it's moving water. There's a beaver... I wouldn't call it a dam, a mound back there; there are mallards and ducks and a lot of wildlife. It's a pretty special habitat here. I don't know what your buffer requirements in Milton are, or if they've changed and I'm not sure if this complies. I imagine it does if your engineer drew it. But I'm just concerned about making sure this is protected to the most extent it can be. If you can do that, when you recommend to Council, whatever you're going to recommend. This is also pretty heavily hunted and I think it would be wise to require that the developer notify their purchasers of that fact; deer, birds, rabbits and that's why I'm here tonight, just to let you know what's going on out here. Most of you gentlemen and ladies probably do, anyway, but this is not in the town, the property over there.

Don Mazzeo: Thank you Mr. Willard.

Tim Willard: It looks like... I'm concerned somewhat about soil conservation. I know they're going to observe it and he's going to have to do what they've gotta do; but the Branch there is silting a little bit and I would hope this development doesn't add to that. That's all I have. I spent a few hours with your engineer, so I admire his work and know it pretty well.

Don Mazzeo: Thank you. Regarding the setback, may I ask our town professional what that setback is? Town professionals?

Bob Kerr: We're looking.

Tim Willard: I actually sat in your solicitor's seat one time and I would have prepared him for that specific question, because I just spent some time with him in Lake Hall, but I'm aware of the DNREC regulations that require setbacks for many tidal water or any water; I bet Mr. Kerr is too; the Superior Court recently found them invalid, because it was beyond the scope. I just am not familiar as to whether the town has specific wetland requirements, or whether the State will supersede them. It looks like part of it is pretty far back, but when you get up here, it's awful close. That property drops off pretty steep on that side of the Round Pole Branch.

Barry Goodinson: I have a question. How far would you say it is to the edge of the development?

Tim Willard: From where?

Barry Goodinson: From where you're talking about, from your property to where the end of Heritage Creek would end...

Bob Heinrich: Or where the flowing water is.

Barry Goodinson: in your direction? Or the flowing water.

Tim Willard: I'm not sure I understand your question. I own this property; Heritage Creek owns this property and there's a finite line in between our properties. We both own to the middle of Round Pole Branch. Right to the middle of it.

Barry Goodinson: Oh, okay.

Bob Heinrich: The middle of the moving water?

Tim Willard: That's correct.

Bob Heinrich: That's strange.

Tim Willard: Your Council could talk to you about riparian law; that boundary can change, but that's what it is. That's what it is. So my line will follow the creek and there's does... yeah, it's a moving target and kind of unusual, but the wetland is something that's designated by engineers and it's based on the plant life and things like that and I'm not here in opposition to this development. I just want to make sure they have the most buffer that the law may require; because of the wildlife and because of the hunting.

Bob Heinrich: Well the hunting... they only use shotguns back there, right? They wouldn't be using anything else to hunt.

Tim Willard: You can, in Delaware, yeah, nothing else.

Bob Heinrich: No bows and arrows and things like that.

Tim Willard: Oh yes, they have those. Yes.

Don Mazzeo: Mike, what is the physical dimension and if you'd like to borrow this, you certainly can.

Mike Coven: It varies quite a bit.

Don Mazzeo: What's the minimum then? Let's put it that way; to the flowing water? I know you know how to use that.

Mike Coven: From the center of the Branch, it looks no closer than 150'.

Don Mazzeo: No closer than 150'.

Mike Coven: Yes, but we are into the... one thing I would point out, when we did the Master Plan Revision, back when this was a boulevard, back here and when we made that into a regular street, we pulled all those lots forward and part of that was to get them out of the slope, because it does drop off quite a bit.

Don Mazzeo: It's a dramatic drop.

Barry Goodinson: What's the topography of the area? It's hard to see. The toe _____ lines.

Mike Coven: You can see... If you see the lines here, you see where it looks like a lot of dash lines?

Barry Goodinson: Yes.

Mike Coven: That is the slope down to the Branch.

Bob Heinrich: What's the height? What's the drop? That's what he's getting at.

Barry Goodinson: Yes, that's what I'm trying to get a sense of. So what's the slope there?

Mike Coven: There's probably... I think you've probably got 8' or 10' between the lots and the bottom of that slope.

Barry Goodinson: There's an 8' or 10' drop over 150'?

Mike Coven: Yes, it's steeper than that in here, though, because the bottom portion of that is relatively _____.

Barry Goodinson: What's there now, in terms of plant life? Is it treed?

Mike Coven: There are some woods back there now, yes.

Bob Kerr: If I may, we still haven't found anything in your Ordinance that states how far a wetlands you have to be away from.

Don Mazzeo: Doesn't DNREC direct?

Bob Kerr: I can not find anything looking real quick.

Seth Thompson: Still looking.

Bob Kerr: Still looking, but none of the lots shown are within 50' of the wetlands line; so essentially there is an approximate at least a 50' buffer between a property to be offered for sale and the existing wetlands. The only thing that's closer is this walking trail and at much, much earlier meetings when we were going through the original Master Plan and some of the earlier reviews, it was stated by the developer at that time, we have a different developer now; that the idea was to put the path in without major construction; so it would follow the natural terrain without having to do a lot of regrading. It would not be a straight line, so you would go around trees and that type of things, was their intent. Now, at this point, I can't say that that's what is still the plan, but that's what the plan was at that point.

Don Mazzeo: Well we did hear testimony this evening, that you're looking for natural materials going to go through there. You're not going to put macadam, you're not putting concrete block. It's going to be natural materials. It's going to allow the water to still continue to flow in and through the property and back out to the Pole.

Mike Coven: That was always the intent, to have as little disturbance back there, as possible.

Don Mazzeo: Okay.

Mike Coven: Now, some of these lots will be steep enough that they'll be able to have walk-outs, but we've tried to keep them off of where the slope really starts to take off. That was one of the reasons why we wanted to pull everything forward and make sure we take care of all that.

Don Mazzeo: Any other comments from the public at this time? Seeing none, we will close that portion of this application.

8. Business – Discussion and possible vote on the following items

a. Preliminary Subdivision Plan/Review Approval

The applicant, Fernmoor Homes at Heritage Creek, is requesting a preliminary subdivision review/approval for Phase 4 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00

Don Mazzeo: We will now revert back to the table. While we're still looking at the Code...

Seth Thompson: Robin and I did have a discussion a few weeks ago about tree cutting in a buffer, bordering on water and it was a 50' buffer. I'm just having trouble finding it...

Barry Goodinson: That's for tree cutting, right?

Seth Thompson: Well, our specific issue in that instance, was whether you could cut trees in the buffer. So there was something in the Code about a 50' buffer and that's what I'm looking for. So that's why Mr. Kerr referenced the 50' buffer.

Don Mazzeo: And there's no piece of property, currently less than the 50' buffer that you've just commented on?

Barry Goodinson: I'm a little uncomfortable proceeding until we know what the Code says. We got dinged a couple of weeks ago with the trees over on 16th Street and we didn't know DeIDOT would allow and then we proceeded without information and I don't want to make that mistake again.

Bob Kerr: Lot 239, which is on the right hand side, as part of the cul-de-sac, that appears to be slightly less than 50'; maybe in the 30' range. There's quite a bit of regrading also to be done on that particular lot.

Don Mazzeo: That one appears to be dramatic on it's downgrade, if you will; down slope. Excuse me.

Linda Edelen: Is this near the water?

Don Mazzeo: That particular one is not near the water.

Bob Heinrich: And the wetlands line shows on the drawing as being; I don't know what the distance is there, but it's considerably farther away.

Mike Coven: Yes. There were no buffers incorporated in the LPD or the approved Master Plan, to my knowledge.

Barry Goodinson: I just want to make sure I'm reading this properly. Over here, because it says wetlands line, up there; and it continues down; so everything to the right of that is considered wetlands.

Mike Coven: Yes, Sir.

Barry Goodinson: That's pretty close.

Bob Heinrich: What is the distance at that closest point? Can you measure that? Right on that curve there, at the wetlands line.

Barry Goodinson: That was 30', wasn't it.

Don Mazzeo: Lot 239.

Barry Goodinson: That was 30'?

Bob Kerr: Yes, it's in the 20' to 30' range. There are a couple of lines in

there and I'm not really sure which one is the property line on this particular copy that I'm looking at.

Bob Heinrich: I guess we really do need to hear from the legal folks.

Don Mazzeo: I would concur at this point.

Mark Quigley: Yes. I don't feel comfortable.

Don Mazzeo: This particular application at one point did go through DNREC as it was modified; because this is slightly different than the original plan, correct?

Seth Thompson: Well maybe the applicant can correct me, but did DNREC review the Master Plan at all? I'm trying to remember if that was the case.

Mike Coven: The plan's have been reviewed not by DNREC but by the Sussex Conservation District and they have approved an overall plan for the stormwater management of the site and then we've gone back in phase by phase for just erosion sediment control plans.

Don Mazzeo: Which you would be doing on this Phase, as well.

Mike Coven: Yes. It's already in process.

Bob Kerr: Mike, would I be correct that the original Master Plan, not the Revision that was just done, but the very first one went through the State Plus Review Process that would have had all the State agencies taking a look at it?

Mike Coven: Yes.

Bob Kerr: I think it did because of the size of it; that was a requirement.

Mike Coven: I believe so.

Don Mazzeo: But it's been modified since that point in time.

Bob Kerr: If anything, the lots are now further away from the wetlands than they were before.

Don Mazzeo: Further away than they had been originally established.

Barry Goodinson: I'm not comfortable with believing so. We need to know so. So I'm just uncomfortable.

Don Mazzeo: I'm hearing a lot of discomfort at this point, to be quite honest with you.

Bob Heinrich: Yes, I agree.

Don Mazzeo: Not setting that aside too far, but are there any other questions, concerns of this particular application as it's been presented to us this evening; notwithstanding what we're just concerned with.

Tim Nicholson: They're not going to find that now.

Barry Goodinson: No, I don't think so.

Don Mazzeo: Well, at this point, unless we get some definitive response with either Code, or Ordinances, or something from the State level; I'm hearing a lot of discomfort at the table right now and at this point, I would then ask for a motion that we table this particular application...

Seth Thompson: If it's going to come from one of the State agencies, the comments already address that, in a sense that if it's not our issue, they

have to have all their approvals through the State agencies before they come... they need those with them when they come for final approval.

Don Mazzeo: But we are looking for anything the Town of Milton says; are there specific setbacks or are there not. If there aren't, then it puts us in a very precarious position to say, sure go ahead and do something.

Bob Heinrich: But what about who would supersede who? Let's say Milton does have some restriction, but does the State supersede Milton, the County...?

Seth Thompson: It's just going to depend on what the State Authority looks like, so for instance if it's abundantly clear that they have filled the field with their regulations, ideally they would expressly say on the State level, we're the only regulating body; the towns and municipalities are not able to regulate this field; so that's the best case scenario. There's also the fill the field notion, where their regulations, seemingly encompass everything, which means by implication, you're not to adopt additional regulations.

Mike Coven: There is no State requirement for this, at the moment.

Bob Heinrich: For wetland?

Mike Coven: For a buffer from the...

Bob Heinrich: Buffer?

Mike Coven: Yes, that was part of what Mr. Willard pointed out had been struck down.

Seth Thompson: In your Code, you do have general language in your subdivision Ordinance that talks about the fact that you, as a Planning and Zoning Commission can look to preserve the natural features. Again, that's very general language. It's not a specific setback. I don't see any specific setback in your Code from the wetlands. It could be that there was some level of reliance on the County level or the State level doing that. That, logistically, probably makes sense.

Don Mazzeo: Lacking that, we have nothing.

Barry Goodinson: Right and if our task is to preserve and protect these natural features, and we're not being given the tools to do that, then I think we need to do a little bit more research to find out whether or not there are tools and if not, what tools do we want to bring to bear to make this decision?

Mike Coven: I would point out that this is an approved Master Plan, that this is based on.

Bob Heinrich: I'll start at the beginning. This Master Plan has been approved already, correct?

Seth Thompson: Correct.

Bob Heinrich: So that would have been addressed at that particular time by whichever agencies were going to address that, correct?

Seth Thompson: As well as the Town.

Bob Heinrich: As well as the Town, right. So if it was addressed then and

approved, do we know that nothing has changed in what we see here vs. what was on the Master Plan?

Seth Thompson: Well that's what the applicant is representing. You would have to look to the Engineer to confirm that.

Mike Coven: Right. This layout is precisely...

Bob Heinrich: Because if it's been prior approved, I don't see how we can deny going forward. You know? If it's already been looked at and approved once...

Mike Coven: The layout you see tonight is precisely the same as the Master Plan. It has not changed one bit.

Bob Heinrich: I can't see delaying the applicant either, for... I guess, to me the big question is, is that what the original site plan looked like?

Seth Thompson: Site plan or Master Plan?

Bob Heinrich: If it did and it was approved, then I think we've already answered the question.

Bob Kerr: The most recent approved Master Plan and this Phase 4, are identical in layout.

Seth Thompson: You may recall that the front, I think it was the front loading driveways, that was one of the issues that you dealt with when you were dealing with the revisions to the Master Plan.

Bob Kerr: Yes, when the Master Plan was revised, there were alleys that were eliminated and then became front loaded where the garage faces the main road, instead of facing the alley. There were also, where the cul-de-sac is, there were roads before that went on around towards the front of the property that had been eliminated; between essentially the cul-de-sac area out to Route 5, the road network was changed a little bit. The location of this road is almost in the same place as the earlier Master Plan, but the width of the road changed and most of the change, I believe, would be on the stream side where they pulled the lots closer to the road, as they made the road narrower.

Mike Coven: I don't remember what the precise figure was, but we had a graphic with us when we brought the Master Plan in, that showed how much the raw footprint of the development had been pulled back and there were several acres in there.

Barry Goodinson: Right, I guess the question I have is, when that approval was made, were these considerations brought to bear? Were the wetlands and so the riparian issues brought to bear; the professionals that we hired to do this, did they bring that information to us? Did they tell us what the Codes were and was that approval based on that real information? Or was the approval made with only partial information?

Bob Kerr: To the best of my knowledge, there's nothing in this book that says there's an X foot of buffer between wetlands and the property line.

Don Mazzeo: And by recollection Barry, was that there was very little discussion at that particular meeting, however, because a lot of the

discussion truly was centered on those lots that were brought away from; the ones that were on the far right... I'm saying the far right. I'm not sure if it is east or west, it's probably south. They were not in the deepest of the discussions, but we were very uncomfortable at the outset, that's why these things were all brought forward.

Barry Goodinson: I guess I have a question for Mr. Willard. You took your personal time, last night, to go out with the engineer, spent some time with him, is there anything else that can contribute or help or anything else that you found with the engineer that might be helpful to the Board?

Tim Willard: Well, last night I was representing an applicant that was trying to get an expansion for a senior citizen thing and he was the engineer on the job. So you misunderstood.

Barry Goodinson: Okay.

Tim Willard: I've known Mike and his work, that's why I said that. If the town doesn't have a buffer requirement and the State's kind of going by the wayside, as far as their regulatory buffer requirement, I think the County's... What's the County's, Mike, for wetlands? It's 50' and the State wanted to make it 100'. I'm sorry. I'm supposed to ask you. I know you're wrestling with it, the Master Plan was approved and you're stuck with that and can you change it and if this was changed, and why are you even reviewing this? You've got to stick with the _____.

Don Mazzeo: Precisely.

Barry Goodinson: Right.

Tim Willard: What your Solicitor said about your responsibility to have some discretion to protect aqua features, is broad and a little wishy washy; but it's real, too. What you're recommending Bob, you're recommending Council, right?

Bob Kerr: Yes.

Tim Willard: In a perfect world, these guys want more lots, but this is a nice development. I'm not here to really oppose it. I've looked at some of the houses... But they want more lots and they're trying to get them in there as many as they can. What I want, for the birds and the beavers, is a fairly large environmental easement; that's your job to weigh the balance and be able to do it. Seth will tell you whether the Courts will say it's okay. Actually, it's Council's job, but if you do, and I think you can impose a buffer, an environmental buffer, because it's the right thing to do; it should be that... And I think that there's a State regulation because this property was clear cut before I owned it and you could not cut trees within 100' or 50', because they provide stabilization for the back; but if you impose an environmental easement, which seems perfectly reasonable; not only here, but all the way along the property line, it should be required that the natural habitat can't be disturbed; because what you'll see is these property owners... that's their waterfront property and they'll start playing with it. You know, some better than others, but you say that there's an

easement there that says it can't be disturbed. That's something that will be the law of that sub-division. That's what I would like to see.

Bob Heinrich: Okay, good enough. I appreciate it, thank you.

Seth Thompson: The one comment that Mr. Kerr and I had, perhaps it could be framed in the context of it's going to be dedicated open space, so the HOA would have control over it. It would be possible to require in the Declaration that that area not be disturbed. Basically, to incorporate that 50' buffer that the County did impose, in terms of clearing and whatnot, on the HOA to not disturb that property.

Bob Heinrich: But disturb and preserve are two different things, aren't they?

Seth Thompson: Well... Typically in my mind, when I think of buffers, the concept is that they're allowed to remain in their natural state. I don't envision somebody preserving them in terms of cleaning them, or that sort of element; if that's what you mean.

Bob Heinrich: I guess if I owned that piece of property, I'd worry about what happened behind it... to the water going through there and the habitat; I would be concerned about that as the owner.

Barry Goodinson: We have one chance to get this right and if we screw it up, it's screwed up forever.

Don Mazzeo: Well, actually, that's not quite correct. We have one recommendation by which Council can either then agree or disagree.

Barry Goodinson: I just don't feel like we've got enough information right now.

Unidentified Speaker: What are you looking for, Barry, exactly?

Barry Goodinson: I feel like we don't have enough information in terms of direction. Honestly, you're not giving us a lot of direction.

Seth Thompson: Well and your Code doesn't appear to have a buffer specific for wetlands. You guys do have a flood plain, but that's not the issue here. I have a feeling that the Town probably relied on the fact that the County had a buffer; just circumstantial evidence would point to that.

Don Mazzeo: But we, at Town level, have the ability then to change to something other than 50'. We could say 200' and this applicant would have a really tough time, I would think, trying to accommodate a 200' buffer.

Linda Edelen: What process would you change that setback, or that buffer?

Don Mazzeo: That would be a question that we would set Mr. Seth on that one. Where would that take place? It would not take place here.

Tim Nicholson: It would take place in a courtroom.

Seth Thompson: The concern, when you do something on an individual level is that there isn't going to be an even-handed approach, so that's why typically you ought to have something in your Code... but obviously there is some general power of flexibility. You guys aren't purely a rubber stamp. So here we're looking at something; number one, I think it's

important to understand procedurally where we are; and we're at the preliminary approval phase, so this is seemingly coming back for final approval. The heavy lifting, to speak kind of off the cuff, happens at this time.

Don Mazzeo: Right here.

Seth Thompson: And that's only fair to the applicant, because then they're going to be spending some money obviously as they're going forward in trying to get final approval; but it sounds to me like Mr. Kerr said that there isn't an area that's less than 50'...

Barry Goodinson: I thought you said 20-30'.

Seth Thompson: I'm sorry. Maybe I misheard.

Bob Kerr: There is one lot, lot 239 that's in the 20-30' range, possibly the corner of 240 and maybe 2 or 3' of 238.

Don Mazzeo: 238?

Bob Kerr: All right in the cul-de-sac area.

Linda Edelen: You're not talking about modifying a property line?

Bob Kerr: That's what would be required if you are looking to have the lot outside, completely outside some arbitrary buffer distance; so those three lots would have to be slightly smaller.

Seth Thompson: Right, so if you were looking to have the entire buffer as part of the open space, then you would have to move the lot line. If you're thinking of the buffer as being the open space and then having an easement for whatever is necessary to make up the difference; then you wouldn't have to move the lot line. But that person's going to have, in essence, a smaller lot, in the sense that they have an easement where they are going to have to leave that buffer.

Bob Heinrich: I find myself flip flopping on this actually. The fact remains it still was approved, the site plan was approved, as is. I guess I keep on having to go back to that. Somebody put some thought into it at the beginning and it was approved.

Barry Goodinson: I guess I agree, but we on one hand were told this has been approved; and then I just heard you say, this is where the heavy lifting takes place and this is where we've got to make some real decisions.

Don Mazzeo: Correct.

Barry Goodinson: So either the decisions have been made when it was approved, or now is the time to make the decisions. So tell me where we are?

Seth Thompson: Okay. I was really drawing a distinction between the preliminary sub-division approval and final sub-division approval. Occasionally people and I'm not saying members of the commission, but the public, often gets confused as to what they can expect when it comes to final sub-division approval vs. preliminary sub-division approval and really it's the preliminary sub-division approval, compared with the final

sub-division approval where you're going to need to receive input; that's why we have the Public Hearing at this phase. The final sub-division approval is essentially a checklist to make sure they've complied with all the conditions that you've established.

Don Mazzeo: We can place conditions on this tonight, can we not?

Seth Thompson: You can.

Don Mazzeo: It was a rhetorical question.

Mike Coven: Can I make a point though? We may not have discussed specifically we didn't use the word "buffer"; we didn't talk about buffers, in particular, but there was a fair amount of discussion about the effort in the approved Master Plan, to pull the lots back and to give back some of that natural area.

Seth Thompson: Mike, if I'm not mistaken, was this where the street was taken from behind those houses to in front of them; to do just that? Maybe I'm mis-remembering that.

Mike Coven: There were a couple of different things that happened. There used to be, once upon a time, a street that ran along here, very close to the edge and there was an alley in the back. We pulled all that away through here and then the other piece of that, that used to come this way and this was a Boulevard all the way through; it looked a lot like this guy. We took the median out, shrunk that up and took all that space and came this way with it. We didn't leave the back of the lots where we were; we pulled them all forward.

Barry Goodinson: Why? Why did you do that?

Mike Coven: For a practical reason and also to maintain a little more of the natural area. It's also going to be easier to build on those lots, because we've got them on a more level area than they were.

Barry Goodinson: So you saw the same thing that we're seeing here, with that 239, is that what you mean?

Mike Coven: It was taken into consideration when we redid the Master Plan, so we didn't speak of it in the terms exactly that you're talking about it tonight, but it did get considered and we did make an effort to leave a little more of a natural area back there.

Linda Edelen: So you have already accommodated many of the concerns that we're speaking of here?

Mike Coven: I think we have.

Linda Edelen: Is there something specific that has not been done and if there is, is there anything that we can do about it?

Seth Thompson: We're at the phase where, again, you can attach certain conditions, if you deem it appropriate to preserve the natural features; so now would be the time to do it.

Bob Heinrich: So we could make a motion to accept the preliminary plan with the condition that a further look would be taken at this buffer zone in question and resolve that? I'm just fishing here, that's all.

Seth Thompson: The applicant's going to need more specific...

Barry Goodinson: Because this thing has been chopped up in small enough pieces, so we can make these section by section considerations and I don't know if chopping it into a smaller piece is going to help.

Mike Coven: I think if you look at this thing, if you look at the way the lots stair step here, the topography does the same thing, so where it got steep, we pulled this in; where we could make a little bigger lot, we took advantage of the area.

Don Mazzeo: But it would appear right now that the area of most concern is lot 239 and 238, in that vicinity?

Mike Coven: If you look at the difference between what we're looking at; if you look at the contours here and how tight all this is here, the same thing; if you look at this, it's really not the same character.

Bob Heinrich: So it's more of a gradual slope?

Mike Coven: Much more. Yes. This is about 4 to 1, so if that were a lawn, you could actually cut that.

Barry Goodinson: If not for the slope, though, why was the determination made to put the wetland line there?

Don Mazzeo: It's delineated that way.

Mike Coven: That's a determination.

Don Mazzeo: We don't have a choice on that.

Barry Goodinson: No, but what I'm asking is what criteria was used to make that determination?

Don Mazzeo: That's not set by...

Bob Heinrich: The State would have made that.

Don Mazzeo: Yes. DNREC or...

Barry Goodinson: But they would have used certain standards to make that decision?

Mike Coven: Based on whether they are hydric soils there, it's based on the plants that are there and so we take pains to stay out of those areas, but there's no actual requirement to do anything beyond the line itself.

Don Mazzeo: But our concern appears to be it's already too close to that. How would the members on this Commission feel about doing something about the lot lines, or in some form or fashion, preserving and preventing any type of condition of use beyond the current lot line, so we will not have a potential homeowner going out there and "clear cutting" anything that's back there, well it's clear land. He doesn't own it. That's the issue. And as you already indicated, Bob, folks say...

Bob Heinrich: And that wasn't eminent domain, by the way, I got that wrong.

Tim Nicholson: It's really firewood.

Bob Heinrich: I don't know what it was called, but...

Don Mazzeo: Gee, this is a nice place to put my garden, but it's not wetlands preservation any longer, if you're going to be doing that.

Linda Edelen: I'm sure the homeowner's documents will not permit people putting vegetable gardens in their backyard.

Don Mazzeo: Highly unlikely that they will prevent.

Linda Edelen: Aren't they already recorded?

Seth Thompson: I haven't seen them reviewed or I haven't reviewed them, I should say. Have you guys set up your declaration per phase, or did you do one for the master community?

Mike Coven: I believe they...

Robin Davis: I think the original goes to the Master, the original.

Linda Edelen: I would think so.

Seth Thompson: The original master? Okay.

Robin Davis: I think it was done on the original.

Bob Heinrich: Of course, the owner could always put up "Private Property" and warning signs on the edge of the property.

Linda Edelen: Are we concerned about preserving the wetlands, or I should say, not disturbing the wetlands?

Don Mazzeo: Yes.

Linda Edelen: And the only two lots that are affected...

Don Mazzeo: The ones on... And again, I'm using the map orientations, the ones on the far right there; 240, 239 and 238. Particularly 239, to be quite honest.

Barry Goodinson: That's the worst.

Don Mazzeo: That one seems to be the worst... Whoever just said that, thank you.

Mike Coven: Unfortunately, I don't have anywhere for that one to go.

Don Mazzeo: Other than cutting it back 10' and making the lot 10' narrower.

Mike Coven: This house doesn't fit on there anymore at that point.

Barry Goodinson: Right.

Seth Thompson: You could require... they own the property currently, so they could put a Deed Restriction in those two specific lots, to leave some additional buffer at the back of the lot line, rather than redrawing the lot line.

Don Mazzeo: Okay.

Linda Edelen: I like that.

Barry Goodinson: And that would go for possibly all three, from 238, 239 and 240; that there would be a minimum of 50', or something of that nature?

Seth Thompson: I think it would be important to just know what you're measuring from, do you know what I mean, so that the Deed Restriction is clear; so you don't say 50' from the back of the lot line, if that's not what you intend. Do you know what I mean? Because it's on a cul-de-sac, so it's a little bit difficult. It seems to affect lot 239 the most.

Don Mazzeo: Yes.

Tim Nicholson: But Mike, you're saying it won't work if we cut it back, right?

Mike Coven: We can't. You wouldn't be able to build this house if we pushed the actual property line back, because...

Linda Edelen: In terms of a Deed Restriction...

Seth Thompson: In terms of a Deed Restriction, so that you're in the rear yard setback anyway, right?

Mike Coven: Yes, but that doesn't get you to 50'.

Seth Thompson: Right.

Mike Coven: That would get you to 35'.

Don Mazzeo: I'm confused on that one you just said, Mike.

Mike Coven: I'm using Mr. Kerr's figure, if this is 30' here, the rear setback is only 5', so that doesn't get us anywhere near the 50'.

Don Mazzeo: And that particular home site, as it's currently designed, only has a 5' setback?

Mike Coven: Yes, Sir.

Don Mazzeo: You couldn't change the size of the home that's on that and give it a 20' setback; a little smaller home?

Mike Coven: You're getting me out of my territory.

Linda Edelen: Let me ask you something. What's wrong with 35'?

Mike Coven: To me? I don't...

Seth Thompson: It sounds like they have to do that. The only difference on the 35' would be that that the 5' setback...

Don Mazzeo: Is on property.

Seth Thompson: Exactly and they're not going to be allowed to disturb that area, basically; whereas if you didn't attach that condition, they could clear cut that 5' basically. Is that fair to say, Mike? Now you guys...

Mike Coven: Yeah.

Linda Edelen: A Deed Restriction would affect how much of that back lot from the back property line?

Seth Thompson: It just depends on whatever figure you guys deem appropriate, but it would just affect that lot.

Linda Edelen: But if it were 50', it would be what? How many feet?

Mike Coven: Roughly 20'.

Seth Thompson: Roughly 20' right, so that the building envelope they would lose about 15' of what would otherwise be the building envelope.

Linda Edelen: 20'. But if it were 35'...

Mike Coven: This is already as shallow as they get on the single family size.

Barry Goodinson: Let me ask you. How many houses are in this total development? How many are we looking at?

Mike Coven: 425 approved through the LPD.

Barry Goodinson: What would happen to your business plan if you went from 425 to 420 homes?

Mike Coven: Again, I'm not the right guy to ask that question.

Barry Goodinson: Because it seems to me that the assistance of having these five houses and creating this cul-de-sac...

Mike Coven: But we have a standing approval for 425.

Don Mazzeo: That's the problem, Barry.

Barry Goodinson: Okay.

Don Mazzeo: The plan, as presented to us as we see it, is an approved plan.

Mike Coven: We're not asking to do anything here that hasn't actually...

Bob Heinrich: And they are doing what they're supposed to do now.

Don Mazzeo: They are following the plan that was presented to us, that was approved and he's just returning to us for this particular phase.

Seth Thompson: We're going from the 30,000 foot level to about the 10,000 foot level; so that's why we're focusing on the exact features of these lots.

Barry Goodinson: Right and I understand that, so when you go from 30,000 to 10,000, you see things that you didn't see at 30,000, so you can't pretend that you don't see them.

Seth Thompson: Right. That's right. Understood and that's why we go through this process, that if there's something about this phase that you see in terms of it needing additional conditions...

Mike Coven: I just would posit here that given the topography on this piece that it really wouldn't adversely impact this wetlands, if you cleared this entire lot. It's a much different situation over here, than it is in the back.

Don Mazzeo: Based on what would you say that?

Mike Coven: The topography; this is much flatter back here. The concern is always that if you go into the steep slopes, that once you clear, then you start to get erosion and then it goes away.

Barry Goodinson: Yes. Silting. Right.

Mike Coven: Not really a big concern over here. Much more so back here and you can see how much tighter these contours are. It's visually a whole lot different. Much different character over there. That's why we didn't feel uncomfortable about going this close over here. Everywhere where we got into this, we tried to get out and you can see it reflected in how that stuff stair steps through here.

Tim Nicholson: It looks like further on... to the left here, those are undeveloped, right, this here?

Mike Coven: Yes currently.

Tim Nicholson: It looks like we're going to have a similar situation with distance later on.

Mark Quigley: We are.

Tim Nicholson: So if we take care of it now, we'll be taking care of it later on, so maybe we should just, I hate to say hold off, but hold off.

Barry Goodinson: I agree.

Tim Nicholson: And give ourselves a little more time; because it's coming up again, in the not too near future.

Seth Thompson: When it comes to the sub-division plan, I certainly understand the concern that what you do now, seemingly sets the trend for what you're going to do in the other phases; in the other sub-divisions. I would focus again on the specific topography, the specific natural features of this particular phase, because I don't think it's appropriate to hold off on one phase based on what might happen in a different phase.

Don Mazzeo: Would we be setting precedent if we were to suggest, today, as a condition, that the 50' buffer? Would that hold true then for any other development that would come forward?

Seth Thompson: No, in the sense that you review each sub-division plan for its compliance with the Code and whether it...

Don Mazzeo: I recognize and there's nothing in our Code, so therefore would it be appropriate then from this table to suggest to Council that they come up with something with input from professionals accordingly?

Seth Thompson: That certainly makes sense; if there's a whole in your Code, it's going to have to get fixed at the Council level, and you guys are free to make those recommendations, that's part of your charge is that you can make recommendations to the Council.

Linda Edelen: I'm sorry, but I'm lost as to what we are trying to accomplish.

Don Mazzeo: Tonight? Our purpose tonight is to look at this Phase 4A and B, I believe it's called...

Linda Edelen: No, that I understand. But we're talking about a buffer and we're using, it appears to me to be an arbitrary number of 50'...

Don Mazzeo: Somewhat arbitrary.

Linda Edelen: Somewhat arbitrary of 50'...

Seth Thompson: I wouldn't say that. I would say that that number comes from the County in that that's at least at one point what the County used, so it's not completely picked out of the sky.

Linda Edelen: Okay.

Don Mazzeo: Alright, so we're utilizing the County Code...

Linda Edelen: County and that's 50' and if we seek to apply that here, we have possibly three lots that are involved...

Mike Coven: In this particular case.

Linda Edelen: Which the property lines have already been approved.

Seth Thompson: The property lines haven't. That's part of this.

Don Mazzeo: That's why we're here tonight.

Seth Thompson: But the number of units has been approved through the Master Plan.

Mike Coven: This is the layout that was in the Master Plan.

Linda Edelen: What do you see possible to accommodate our concern with

respect to this 50', as it affects those three lots?

Bob Heinrich: Or four, or five, whatever the number is.

Linda Edelen: Well, I think it's...

Bob Heinrich: I don't know what it is.

Linda Edelen: No, I'm not talking about other phases.

Don Mazzeo: No. Let's focus specifically on this and I hear what you folks are saying at the other end of the table that it's going to happen again, but when and I will only hope that this will happen; should we move forward and find the corrective action here, that you'll then apply it to any subsequent applications that you will be coming forward with, for any other phases. That's just a hope that we might have.

Mike Coven: What I would suggest is, I am hesitant to speak on behalf of my client; I suspect that they wouldn't have an objection to putting the area outside the lots into something akin to a conservation easement.

Don Mazzeo: Does that sound appropriate to the Commission?

Mike Coven: What I would ask for this phase that's already basically been engineered, to not go beyond the property line, at this point; and then what I would promise you is that we would go back and look at the stuff that hasn't been hard engineered at this point, to see what we could accommodate.

Barry Goodinson: I know you don't want to be speaking on behalf of your client without talking to them; so you're talking about a conservation easement. It would be the space outside of...

Mike Coven: We would have to figure out what the mechanics of that would be; exactly what would be acceptable to Town and to the client. I don't think they'd have any objection. I don't see why they would have any objection being maintained in a natural state.

Don Mazzeo: There should be no issue on that side of this either, but these three lots...

Mike Coven: The only exception to that would be the trail. We'd have to make provisions for that to be allowed in there, but I would just ask that for this particular piece, because we've really done all the work at this point, that we don't go beyond the lot lines. When we get into the stuff that we haven't actually submitted to you yet, along the back here, then we can take a look and see what we can do for that.

Bob Heinrich: So there's no way you could accommodate a 50' buffer in those three lots?

Mike Coven: 50', there's a tendency in the Ordinance to set an arbitrary distance; but it's simply that. It matters...

Bob Heinrich: Well you did say at one point 20-30' and that's what I'm wondering. Is it 20' or is it 30'?

Mike Coven: The point I guess I'm trying to make is that this is a completely character than this.

Bob Heinrich: Understood.

Mike Coven: If you were 30' from the line back here, I would be a lot more concerned than I would be here.

Barry Goodinson: I think arbitrary is a tough word to use. Arbitrary is in the eyes of the beholder. For one person it's arbitrary and another person it's protective.

Mike Coven: What makes 50'... What exactly makes that the appropriate distance?

Don Mazzeo: It's kind of like the 22' that we came with the front loading. What was magic about 22'?

Mike Coven: There was some logic to that.

Barry Goodinson: It was car lengths.

Don Mazzeo: Well there's logic here to, 37.5 sounds like a nice number; it's more than 30, it's less than 50.

Mike Coven: Frankly, I can see some concern here and I think that's something that we probably need to take another look at.

Bob Heinrich: And that hasn't been hard engineered yet?

Mike Coven: Right.

Don Mazzeo: So let's just set that aside and you're going to go back and take care of that. Let's just refocus on these particular three lots this evening. You've indicated that you feel comfortable that your client will then come back and agree to 50', 30'; we're going to have to come up with a number apparently to have this put in the record accordingly, so that when you come back for your final, at whatever point in time that becomes, that you will have accommodated the number that we have come to.

Bob Heinrich: I am not sure I understood that, Mike, maybe you can correct me. I didn't hear you say that you would accommodate a number in the setback. I heard you say that you would accommodate some kind of conservation measures back there; is that what I heard; or did I hear something of a number?

Mike Coven: No, I think we'd try to see what we could do to maximize the buffer. I don't know... I can't stand here in front of you and tell you that we could go 50' everywhere.

Barry Goodinson: I would prefer that you come back and tell us exactly what you will do, don't tell us what you'll see what we can do.

Don Mazzeo: We might do.

Mike Coven: Right, but I would suggest...

Don Mazzeo: But direction from us, we are looking for a maximum buffering in the vicinity of those three lots. Okay? If the maximum you come back with is because of the way it can be engineered is only going to be (and I'm just going to use an arbitrary number) 13', then maybe we're going to be uncomfortable with 13'. Then we'll have to have another discussion. The onus is going to be placed upon you, the applicant, to accommodate a maximum available buffer for each of those three lots and

then come back with that information and as a presentation with another, I guess, continuing this application.

Barry Goodinson: Which might include a smaller house, correct?

Don Mazzeo: Anything. That's the applicant's prerogative.

Barry Goodinson: I understand that.

Don Mazzeo: So, do we have any other discussion at the table? Hearing none, I'll accept a motion to continue this application.

Barry Goodinson: So moved.

Tim Nicholson: Second.

Don Mazzeo: With the applicant coming back as we have discussed, maximizing the buffer on those three particular lots under discussion. All in favor say aye. Opposed. Motion is passed.

9. Adjournment

Don Mazzeo: I'll entertain a motion to adjourn.

Tim Nicholson: So moved.

Bob Heinrich: Second.

Don Mazzeo: We have a motion and a second to adjourn. All in favor say aye. Opposed. Motion carried. Thank you ladies and gentlemen. Meeting is adjourned at 7:45 p.m.