

**Town of Milton  
Planning & Zoning Meeting  
Milton Library, 121 Union Street  
Tuesday, June 18, 2013  
6:30 pm**

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

1. Call Meeting to Order – Lynn Ekelund called the meeting to order at 6:30 pm

2. Roll Call of Members

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

3. Additions/Corrections to the Agenda

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

4. Approval of agenda

Bob Heinrich: Yes. I'd like to point out that Item 7a, Business is calling for the applicant Fernmoor Homes at Heritage Creek is requesting a preliminary subdivision review approval for Phase 3 of Heritage Creek. Please make note that it's Phase 5 of Heritage Creek. I lost a half hour on that this afternoon.

Seth Thompson: Fortunately, it's identified properly by it's tax parcel number; in addition to Public Hearing identification is correct in terms of it's phase, so I don't think anybody in the public was denied the opportunity to know that we're actually speaking about Phase 5 today; so I think that correction is appropriate.

Bob Heinrich: Excuse me, I don't understand, because we approved Phase 3 of Heritage Creek last month; that's what I'm confused with.

Seth Thompson: Correct, the only thing that I'm doing, Commissioner, is just noting the fact that I think based on this agenda, the public was made aware under the FOIA that we would be discussing Phase 5 today. If, for instance, the Public Hearing portion didn't reference the appropriate section, I think that would be a very different scenario; but fortunately it does and the tax map and parcel numbers are correct. So I think your correction is absolutely right. I would be giving you potentially different advise if there wasn't an appropriate identification anywhere on the agenda.

Bob Heinrich: Well, I have to go along with you, the expert. It just drove me nuts this afternoon.

Lynn Ekelund: Any other additions or corrections to the agenda? Can we have someone move for approval of the agenda.

Tim Nicholson: So moved.

Linda Edelin: So moved.

Lynn Ekelund: All in favor say aye. Opposed. Agenda has been approved.

5. Approval of minutes of May 21, 2013

Lynn Ekelund: Does anyone have any additions, corrections, deletions to the minutes?

Seth Thompson: I just had one. Mr. Fuquay's last name as an additional letter at the end. I think he'll correct me if I'm wrong here. I see him in the audience, but it's F-U-Q-U-A. There's no Y at the end.

Lynn Ekelund: Will someone move for approval of the minutes?

Bob Heinrich: So moved.

Linda Edelin: Second

Lynn Ekelund: All in favor say aye. Opposed. Motion is carried.

6. Public Hearing

a. **Preliminary Subdivision Plan Review/Approval**

The applicant, Fernmoor Homes at Heritage Creek, is requesting a preliminary subdivision review/approval for Phase 5 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00.

Lynn Ekelund: We have a Public Hearing scheduled. Is there someone here from the applicant?

Mike Coven, George, Miles and Buhr: We're the project engineer and I'm going to need to remember to bring an easel with me. Robin tried to find it for me. We're here this evening to talk about Phase 5 of Heritage Creek. On the overall plan, it's the area outlined here. I hope you have a hand-out. It's just above the 2B area that's under construction now in the development. We're looking at 15 single family homes, 10 duplex units, 12 of the triplex units and 5 townhomes, for a total of 43 lots in the phase. I won't go through the parking provided; there's 86 spaces are required; 87 have been provided. The typical layouts are in the folder, those are all the same as you've seen before. It conforms to the Master Plan. This is the same as the approved Master Plan, the only difference is a very minor variation on these two lots that we'll talk about a little later on. We do have some front and rear load homes in this phase and the varying setbacks for those will apply again; they're 22' on the front loads and 5' on the rear. The existing pond here is designed for this half of the development, so as an adjunct to this piece, there will be a storm drain that's constructed along what will be the road bed here and a pond will be constructed just adjacent to the existing school

pond.

Bob Heinrich: Is that going to be a dry pond or a wet pond.

Mike Coven: That's a wet pond.

Bob Heinrich: Is the existing...

Mike Coven: You can see the existing pond is right here now.

Bob Heinrich: And the existing pond on the other side of the parcel, that's presently a wet pond, as well?

Mike Coven: Yes, Sir.

Bob Heinrich: Because I drove by today to have a look around and I did notice it was full of water, but I wasn't sure if it was from the rain or just from...

Mike Coven: No it is intended to a wet pond and this one will be also. So the backbone of that storm drain will be constructed out and \_\_\_\_\_ will be left for the future phases.

Bob Heinrich: Are you planning to put any aeration devices in those ponds?

Water moving and aerated? I don't see anything in the main pond and I note that most places with retention ponds do have some kind of a flotation aeration device.

Mike Coven: I think I'm going to have to defer to Ben on that, probably. There hasn't been any algae problems or anything in Pond 1 up to now that I know of, but I don't know if they have any plans to put anything in there later on.

Ben Gordy, Ocean Atlantic Management: Yes, the plan is to put either an aerator or a fountain in the existing pond, as part of Phase 3A, which is the first 12 lots in this area. This pond is going to be redone so that it will probably be done in that time.

Bob Heinrich: Okay. So there will be aeration.

Barry Goodinson: Is that for mosquito mitigation, is that a primary reason?

Ben Gordy: Yes, that's one of the benefits? Yes, it keeps the water circulating so it's multiple benefits.

Barry Goodinson: So it's not stagnant.

Mike Coven: It keeps oxygen in there too, so you don't get algae growth on the top. So we received Mr. Kerr's comments and I can go over those now or present them to you first. It's up to you.

Lynn Ekelund: Why don't you go over those now.

Mike Coven: The first five of his comments are informational. Item 6 talks about the addressing of Lots 185 through 197 and those are these lots. These are the only lots in the development that front to open space or anything other than a public street. I know there's been a lot of discussion about that in Cannery Village. So, I think we would take our direction from you, as far as how you want that handled for signage. I've heard some of the other discussions, but I'm not certain about what's been decided in that regard.

Bob Heinrich: May I address this to the engineer, Mr. Kerr? I'm not familiar with the issue that occurred in Cannery Village, so I'm not really sure what this refers to. Could you enlighten me?

Bob Kerr, CABA Associates: I'm not 100% up to speed, so I may have to defer

to Robin on some of it, but there have been problems with emergency vehicles coming to the property and looking for a front door at a certain address and the address is actually an alley; just confusion in that manner.

Bob Heinrich: Now I remember.

Bob Kerr: I believe part of the correction has been recommended that along the sidewalk at each side, where there would be the street, that there be a sign and I'm not sure of the exact wording, that this is such and such and these houses are that way; so that there's some directional sign for the emergency responders.

Bob Heinrich: So then, I guess that brings us to the point, how would you address that? Is there going to be that issue of enough width for fire protection and emergency vehicles; in accordance with Question No. 6 that our engineer is asking for?

Mike Coven: I think it was primarily a matter of signage, so we will do whatever you direct us to do there.

Tim Nicholson: Is there a Fire Marshall requirement that provides closer access?

Mike Coven: This plan has to be reviewed and approved by the Fire Marshall; so that will happen as soon as... Well actually, they've already been submitted, but that will happen as part of the process between preliminary and final. I know of nothing that will prevent that from happening.

Lynn Ekelund: These are facing the clubhouse. Are you envisioning at this point that their mailing address or their street address could be at Bank Lane?

Mike Coven: That's what I would anticipate, yes.

Lynn Ekelund: The rear of the property?

Mike Coven: Right.

Bob Heinrich: I understand what Lynn is saying here, because Bob you're stating that the properties will face the clubhouse, indicating the front of the house.

Bob Kerr: That is correct.

Bob Heinrich: Okay, so yet the address as just answered would say that the addresses will be on Bank Lane, the back of the property?

Bob Kerr: That is correct and it's also my understanding that, help me out Robin, but either Sussex County addressing or the Emergency Services do not want to see the area in front of the houses given a street name; they only want a street to have a street name, so that there wouldn't... You couldn't just correct it by saying give the name to a sidewalk in front of the houses; so it's my understanding the only street name they can have, is the Bank Lane street and Robin is shaking his head, so I think I'm close.

Bob Heinrich: I'm still confused.

Mike Coven: I guess what we're suggesting here is that the signage that's going to be employed at Cannery Village, that we would want to do the same thing here, rather than reinvent the wheel.

Lynn Ekelund: But do you know what the signage is?

Mike Coven: I do not.

Lynn Ekelund: So as we sit now, it's the signage employed in Cannery Village

which is not, as I understand there is no signage in Cannery Village, as yet, that addresses this problem.

Mike Coven: No, there is a committee...

Lynn Ekelund: There is an Ad Hoc Committee, yes.

Mike Coven: Yes.

Bob Heinrich: From the Town of Milton?

Lynn Ekelund: It's a group of citizens and they're addressing the signage problem.

Mike Coven: I don't know the specifics of what they proposed, but I know that they have made a proposal and they have, I believe, they have that out to bid, so we would want to follow those guidelines. I wish I could tell you exactly what they are, but I have not seen them.

Bob Kerr: I was not at the last Council Meeting. I believe it was the meeting before that they had kind of a resolution of what they wanted to do, but they had not finalized the prices and what they were going to do was based on some of the pricing that was still coming in and I believe Council sent it back to the Committee or to the Town Manager to look at the pricing a little different and see what they could do. Part of it also, I think had something to do with numbers on the garages, or something and that was a large percentage of the price or something; I'm a little foggy there.

Bob Heinrich: But it did solve the problem?

Ben Gordy: Our concern is not about the fabrication of the signage, but the underlying system and the safety that it's going to provide.

Lynn Ekelund: Correct.

Seth Thompson: I believe the Council adopted the recommendations and that's why they were able to put it out for bid; so we're at the preliminary phase and obviously we're waiting for some public comment; there might be some clarifying comments at that point; but it sounds like we might be moving in a direction of an additional condition would be that they implement the recommendations that were used in Cannery Village's signage, into Phase 5.

Mike Coven: There would be no objection to that certainly. Number 7, Bob was asking for clarification of the property line between 184 and 186 and 180 and 195. That got a little bit of discussion when Phase 4 came in and I don't know how well you're going to be able to see that, but the property line for 180 and for 184 have been pulled back 10' from 185 and 197 to allow for that sidewalk, so there will be some very small open space parcels there created and there will be a little bit of public utilities in those also.

Linda Edelin: Would you say that again, because I'm having trouble hearing you?

Mike Coven: Basically we've created a 10' strip here between these lots and 180 and also over here.

Bob Heinrich: Will that be a grassy material?

Mike Coven: Well have of it will be occupied by the sidewalk that's in front of these lots, but the rest of it will be...

Barry Goodinson: So it goes into a common area?

Mike Coven: Yes.

Barry Goodinson: It will be common area and it will be maintained, the same as the rest of the common area?

Mike Coven: Exactly. I think Mr. Kerr just wanted that to be clarified. Number 8 talks about an easement that would be required for sewers serving Lots 195 and 196; that's right here, so there will be an easement on the corner of...

Bob Heinrich: And 197, I'm seeing too.

Mike Coven: Actually 197 gets served off of Prospect Street; but that is correct and there will be an easement shown on the Record Plan for the Phase. Number 9 asks for a 6" water main. That's this line. They're asking for it to be extended out to the line out here on Prospect Street to create a loop. I don't have any great objection to that, but I would ask that you reconsider that, only because of how tight this gets up towards the front of the lot. The water system is already looped around the block and elsewhere in the development and this is a 6" main that is serving a fairly limited number of lots in the community center itself. From a design standpoint, I don't think it's really necessary for it to be looped there.

Barry Goodinson: What's the benefit of the loop?

Bob Kerr: We prefer to have as few dead ends as possible, because there is limited usage the water tends to lay in the pipe a long time before being used and so the cooling levels will fall a little bit and you just have more problems with a dead end line.

Mike Coven: That's something, if you feel strongly about it, it can certainly be done; but I did want to discuss it a little bit.

Bob Heinrich: I feel pretty strongly about it. I don't know how everybody else feels.

Lynn Ekelund: Bob, how do you feel?

Bob Kerr: I prefer to see as many lines looped as possible.

Lynn Ekelund: Then I do too.

Mike Coven: Alright. Number 10 talks about easements for water and sewer within a future clubhouse area and that is also correct. We have to create easements on that parcel. You'll see those when that site plan comes back to you shortly. Then Number 11 calls for a fire hydrant on the clubhouse property at the northeast end of the parking area. We're going to need a little more direction about that. There are three hydrants in that vicinity already. There's one here at Garden Street, there's a hydrant here at Arch Street, there is a hydrant over here at Prospect and there's one up here at Bank Lane.

Bob Heinrich: Wouldn't the Fire Marshall determine that?

Bob Kerr: Both the town and Fire Marshall have input. The Fire Marshall, well we've argued back and forth before. He usually doesn't have a problem with adding a hydrant. Both of us are usually looking at the minimum number of hydrants. My reason for requesting another hydrant and I'm not sure which side; we haven't seen the site plan for the clubhouse. There will be parking that comes up one side of the building and to just have a hydrant at the end of that a fire

truck could get to gives the homes in the middle of that block, a little bit of additional protection. In this area, fire protection is limited in that they basically can't pull up at the front door, so by having the ability to come in through the clubhouse parking lot, gives them a little bit more fighting capability, considering that these are, I believe there's some triplex and also some duplexes in this area; so it's just a little more protection.

Mike Coven: So even with the one here at the alley entrance?

Bob Kerr: Yes.

Mike Coven: Okay.

Bob Kerr: And that helps that they can get to the back of it, but it is an alley, so they don't have quite as much room to get trucks in, to get the ladder truck in or something like that, so having a little bit more water would be my preference.

Mike Coven: Okay, that we can do. Then the last two are informational also. So that's really all I have. Do you have any questions?

Bob Kerr: If I might, there is one that I thought of after I did this, that we did discuss for Phase 4 and that would be including a note that the trail/walkway behind Lots 249 through 259 be constructed as part of this Phase; just so that we're not waiting until the end of the project to start the trail system and we did that with Phase 4, I believe.

Mike Coven: Okay, that would be fine.

Lynn Ekelund: Anyone on the Commission have any questions at this time?

Then I would like to open up the Public Hearing, but before I do, I just want to make sure that everybody understands that this is a Public Hearing for the Preliminary Sub-Division Plan Approval for Phase 5; so it is comments relating specifically to the Preliminary Sub-Division Plan Approval for Phase 5. Given that, does anyone have any questions of the applicant? State your name and address for the record when you get up there. Thank you.

- Richard Trask, 101 Mill Pond Avenue, Heritage Creek: In relationship to Phase 5, one of the concerns that I have in the applicant's effort to move through all of these phases, including Phase 5, is that they are neglecting the first phase in the development. Roads are deteriorating. The punch list for the Town, for taking over the roads, magically for something got started up again after two months of being idle and I understand that all of that takes time and I don't want to be anyone that impedes the progress of our neighborhood; but the fact of the matter is for almost two years people in my neighborhood have been complaining about the common areas and the roads in the first phase and they keep telling us that they're going to fix them, they're going to fix them, they're going to fix them and they haven't done it yet. Now the latest thing is they're going to wait until they start paving Phase 2A to put that in, but that's contingent upon how much water we have from all the rain. So my only concern is that we're getting left behind in an effort to get this development in a buildable position for the developer and the owner and

- I don't think that's the right thing for us to happen.
- Jeff Dailey, 211 Gristmill Drive: This is just a point of clarification for Council's benefit. The Ad Hoc Committee on the signage in Cannery Village, they've learned so much throughout their entire process and one of the things that Fernmoor Homes needs to be aware of is emergency vehicles do not want to go to the back of a dwelling and so, if in fact the street address is at the rear of the house on a Lane situation, they need to look at how much green space the emergency responders are going to have to cover to get to the front of the house, if that's a possibility and I don't know their plans, so I know that that's something you need to be aware of. If, in fact, the only access to the house or the most expedient access is through the rear, the houses have to be designed so that they can meet their obligation in getting equipment into the house.
- Lynn Ekelund: Thank you, Jeff.
- Bob Heinrich: Wouldn't the Fire Marshall have something to say about that? Mr. Dailey just stated that emergency vehicles don't like the address in the back; but if in fact, if it's been approved by the Fire Marshall; which way do we turn our thoughts to here?
- Bob Kerr: I think all I can say is that the drawings are submitted to the Fire Marshall's office for review. I am familiar with many of the comments they make, but I don't know that I've ever heard where he wants houses to face a different direction or provide access in a different way. There may be comments like that. I don't recall seeing those, so I can't fully answer your question.
- Richard Miller, Grist Mill Drive, Milton: I was one of the first owners in Cannery Village and we also had approval from the Fire Marshall on our LPD and approval does not necessarily mean that it's a good plan, because our plan has not changed and yet EMT's and emergency responders have run into directional problems. So I'm asking if Planning and Zoning Committee not to rely when the Fire Marshall's opinion, because their focus is in an entirely different area. Their seal of approval does not mean that an EMT is going to be able to access a property. That's why Cannery Village is in the discussion with signage, so I don't want the Fernmoor Homes project to fall into the same problem. We're solving our problem, but it's not just because the Fire Marshall didn't approve it. Everything was approved; the radius of the streets; all the access was approved by all the state agencies; but the real world response was totally different. So when someone talks about Banks Lane being in the back of a property, they're going to respond to the back of the property; they can't get there. So I'm just asking the Commission just dig one or two layers deeper. This is not a criticism of the plan. It's just the interpretation of the real world issue that you're going to face. Because they'll be back here in three years with the same signage issues.

Bob Heinrich: That's a good point. May I ask something of the applicant, please? Is this the first instance of rear addressing within Heritage Creek? Phase 5?

Mike Coven: First and only, actually.

Bob Heinrich: So I think the citizen does make a good point.

Mike Coven: Those lots are the only ones that are set up that way in the entire development. Now going back to the previous gentleman's comments, there is a sidewalk to both public streets along the front of those lots and that's part of that 10' wide strip on both sides. It can be accessed from either of the public streets on the end.

Barry Goodinson: By vehicle or...?

Mike Coven: No. We're talking about EMT's, stretchers, equipment. So they can get to the front of the houses.

Bob Heinrich: Was that particular issue discussed in the Master Plan that was submitted originally; that particular addressing issue in the rear when the Master Plan was first submitted and approved?

Bob Kerr: It was not addressed on the original application for the Master Plan. I don't believe it came up in the amendment that you made just earlier this year and the Cannery Village issue wasn't known about at the original. It probably was known when we went through the amendment to the Master Plan, but it wasn't brought up.

Mike Coven: I don't recall any specific discussion about that.

Bob Heinrich: It does raise a point that needs to be considered. If we know it failed in one place, to do it again, it doesn't make any sense to me sitting on this side of the table.

Barry Goodinson: Can we make approval contingent upon the development of a signage and an emergency response plan, in conjunction with the Fire Marshall?

Seth Thompson: That would be an appropriate condition. The question is whether the Fire Marshall will really give you one.

Barry Goodinson: Right.

Seth Thompson: They might just go down their checklist and say... I think the point was well taken that it might satisfy their requirements, but then there are practical implications.

Barry Goodinson: Yes, we don't want the minimum.

Seth Thompson: But as far as the signage, I think that makes a lot of sense. We talked about that a little bit earlier. I don't know if the Commission wants to consider some sort of signage that references the fact that they're rear addressed lots, on the sign. I don't know if that helps at all, if that makes it more confusing. Just trying to figure out the signage; what it actually would look like.

Bob Heinrich: Let me just ask this question. There's no such thing as a stupid question, I hope, but what thought could be put into changing the addressing? Would that involve major changes to the plan, in terms of

orientation of the homes? Like I said, I'm just asking a question. What would it take to fix that without having to go through all this other stuff.

Mike Coven: That would be a pretty significant change to the Master Plan at this point.

Lynn Ekelund: Could we at this point, see if we could perhaps finish the public participation portion and then close it and go on?

Bob Heinrich: Sure.

Lynn Ekelund: Is there anyone else that has any comments?

- Dick Trask, 101 Mill Pond Avenue: Concerning the subject that you were just talking about, I live in a rear loaded house. My garage is in the rear and it's accessed through an alleyway. If my address was in the back, I would never know that there was somebody back there trying to get in the house. There would be no way for me to know that, unless somebody came all the way around the front of the house and knocked on my door. Just a point.

Lynn Ekelund: Anyone else?

- John Oates, 115 Arch Street, Heritage Creek: I want to concur with Mr. Trask regarding our builder's negligence of our alleyways in particular, that has over the three years that this has occurred, has resulted in my opinion in a credibility gap and going forward I think that should be part of the consideration that this committee utilizes when they're making decisions. Again, just for the record, I concur with what Mr. Trask has to say. Thank you.
- Barbara Ferguson, 107 Heritage Boulevard: I have several comments to make. You all should stop them from doing anymore building, until they finish what they started. We have a mess. I almost didn't come this evening, because my alley is underwater. The reason for it being is when the drain is sitting 4" above the porous macadam, you are going to have that kind of issue. We have the better of the alleys; the people that are on Arch Street and the people that are on Mill Pond, in particular, those are underwater. So something needs to be done in that community before anymore building, section 5 or whatever, is allowed. And when you go to argue with these people, this is what you get; chastised in red by a gentleman that I could almost be his grandmother, okay? So I am extremely aggravated by all this and I personally don't think it should be allowed. They should put a stop to it. You all should put a stop to this until they finish what they started. Thank you.

Lynn Ekelund: Anybody else. The Public Hearing portion is closed.

7. 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 5 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00.

Lynn Ekelund: The business portion is opened. Now Bob did you want to continue with what you were saying?

Bob Heinrich: Yes, the orientation of the homes. I guess I can understand why that would be difficult, because you would have to change the actual front and rear approach to the properties, right?

Barry Goodinson: You'd have the rears of the homes facing the main entrance of the development.

Mike Coven: It would be a little bit more complicated than that, because you've already got these facing the street there, so the only way that you're going to get these to address a public street, would be to put another one in front of it.

Bob Heinrich: I have a real problem knowing that there's something go in there, that's already known to be a failure and we're just kind of repeating that.

Mike Coven: I think maybe we need to put it into perspective a little bit. Nothing has happened. There's been some confusion; there's been some time and effort spent in trying to figure out how to address the confusion. Your committee, I think, has a solution. I would suggest that we follow it. You're talking about, in this particular development there's one street like that, not twenty; so it's not going to be that difficult for the folks to get used to what's going on here. They don't have so many of them that they need to deal with.

Barry Goodinson: I have a question. Is that a common building practice, is that what you're saying?

Mike Coven: It's part of what's commonly termed as neo-traditional. Most of this development didn't follow that model, but I guess there was a desire to have them overlook the community facilities. But it is fairly common elsewhere.

Barry Goodinson: I understand, because it creates this village green type thing and it's attractive. I'm not sure if this is a design failure or a failure in terms of emergency response and not having an ability to respond to this particular situation. But I just don't know what we can do to influence the emergency response.

Mike Coven: My sense, and maybe Seth can shed a little more light on this, I think it was mostly just a matter of them needing to know where to go, as opposed to not being able to get there.

Robin Davis: Madame Chair and to compound the issue at Cannery Village, some of the alleys that they have, they have garages on both sides of alley. If you look to the left side, and I'm not saying these are the exact streets, you might have Sundance addresses. On the right side you might have Grist Mill. That compounds it, because you're riding down a street that doesn't have the same name. Here, I'm not saying it's not an issue, but here you only have one, so it will still be Bank Lane or whatever it is; it wouldn't be if you

looked to the left, you're looking at Bank; if you looked to the right you're looking at Sam.

Barry Goodinson: What you get in any development that has rear loading that are backing up to one another. But it does seem like it's a failure with emergency response, rather than... Because you see these rear loaded designed communities all across the country and I think Cannery Village is a special case, because it is kind of haphazard, more so than other places.

Tim Nicholson: I have a question. How wide is the walk in the front of those units where there are issues?

Mike Coven: The sidewalk is 5'.

Tim Nicholson: I guess turf and lawn on each side of it, or no?

Mike Coven: Actually right now the sidewalk is towards these 5' grass strip on this side and the sidewalk is right along the property line now. If you preferred it, we could put it in the center; that's not how it sits, as we speak right now.

Linda Edelin: I'm not really interested in watching you redevelop that whole street; turning things around. I don't think that's necessary. That's much too complicated. I think the signage issue can be addressed. Maybe we don't know right this minute, but we will know soon enough about what everybody thinks is the most effective way to get an emergency vehicle where it needs to be. Can we table that? I don't mean table, but can we make it a condition that a little bit more thought goes into it; a little bit more research?

Mike Coven: I think you can make it a condition that the guidelines developed by the committee are followed.

Seth Thompson: Right, I think the way we phrased it before a condition would be that when they come back for final approval, they would need to have implemented the recommendations that were made in conjunction with Cannery Village; in terms of the signage.

Tim Nicholson: Are you alright with that?

Barry Goodinson: Do we think that those would be adequate; because I don't want to take an inadequate response and just duplicate it.

Seth Thompson: Understood.

Linda Edelin: Well even in Cannery Village and I have my own personal experience with it, they find you, even with all the confusion and the signage. They found me and they have found others. I'm sure this is solvable. Maybe you're right that the emergency response group needs a little bit of training and if you're going to come here, this is how it works. You've only got 10 homes? I think it can be worked out.

Bob Heinrich: Yes.

Mike Coven: There's 13 there.

Seth Thompson: But the scope of the issue is much smaller and I think as Mr. Davis was explaining, we don't have a situation where the same pavement is somehow two different road names.

Linda Edelin: Right. Right.

Bob Heinrich: I'm okay with it now.

Tim Nicholson: So am I.

Bob Heinrich: I'd like to ask a question. I don't know who I should ask this to or of. We have heard some pretty negative comments from the citizens here about phases prior to Phase 5 and I know this session for approval is only supposed to be concerning Phase 5; but, I'm not happy with what I'm hearing from the residents that live over there, that things aren't being addressed. The flooding issue, for me, if that was my house, I'd be furious and I live in a fairly new development myself. I know what these problems are about. If they're not addressed, they can be extremely frustrating, so is it appropriate for me to ask the applicant if anything is intended to be done with regard to the complaints regarding the prior phases?

Seth Thompson: Really the way that needs to work, certainly those complaints are valid complaints. It's not really within the Commission's discretion to deal with those issues; especially not tonight, given the fact that they weren't noticed for tonight. So if people have those complaints, they really need to address them at the Town Hall, so that they can go through the proper channels in it being addressed. The Commission...

Barry Goodinson: What are the proper channels?

Seth Thompson: Well, it's going to depend on what the issue is, but it could be the Code Enforcement Officer, if it's within their authority under your Code. It could be the Town Council, if it's something larger than that. It's going to somewhat depend on the specific issue.

Bob Heinrich: Would it be appropriate to table this review until we have more results from those particular issues?

Seth Thompson: The problem is, it sounds to me like we're dealing with a separate prior phase, so tonight's issue; the application before you deals with only that.

Bob Heinrich: Yes. I understand, but it's hard for me to make a decision to permit something to go forward, when I hear the things that haven't been done from the past. It's very difficult for me in that position, to make a decision.

Seth Thompson: And I understand. The only thing is we need to be fair to the applicant as well in that we're dealing with this application. There isn't anything in your Code that when somebody comes for preliminary approval of a sub-division, they need to have completed X, Y and Z on all prior sub-divisions.

Barry Goodinson: Can we hear from the applicant?

Seth Thompson: I don't know if the applicant wants to get into it.

Barry Goodinson: He stood up.

Ben Gordy: I can offer an explanation on where things stand. I don't know if it's appropriate to do it now, or if you want me to wait until after this meeting, I'll look to your advise.

Barry Goodinson: No, we're all interested now.

Bob Heinrich: We have to follow procedure here too. There is a public information issue going on here, as far as notice; seven day notice for being put on an agenda, correct?

Seth Thompson: Right. Again, this is the applicant offering an explanation. We're not asking the applicant... We're not forcing the applicant's hand. And the Commission needs to understand that again, dealing with issues in other phases can't be tied to whether or not you approve the preliminary application that is before us tonight.

Bob Heinrich: I would still like to hear what you have to say.

Ben Gordy, Ocean Atlantic Management: The issues that are coming up with Phase 2A, which was essentially the first phase we constructed. We've completed the majority of the homes in there now and we asked for the punch list from Mr. Kerr's office, I believe it was late last year. We've got that and we've been working through the punch list in preparation for actually doing the top coat of paving this year. We've done numerous curb and sidewalk repairs. We have not done the asphalt patching as one of the homeowner's mentioned earlier. The plan has been to do that patching when the streets in Phase 2B are paved, which we hoped to do that a couple of months ago, but with all the rain we've had, we've been delayed, not only on that phase of Heritage Creek, but pretty much all of our projects. So the plan is to complete those repairs; hopefully within the next few weeks; hopefully we'll get some dry weather; finish up whatever concrete repairs and other repairs are left on that punch list from Mr. Kerr's office; and then actually do the top coat of paving this year. It's in our best interest to complete that too. We still have a bond out for 125% of the remaining amount of work, which I think is \$368,000 off the top of my head.

Bob Heinrich: Is that bond enough to cover the entire scope of the project that needs to be completed for that Phase?

Ben Gordy: It's well above that.

Tim Nicholson: So if it weren't done, then the Town could call the bond, correct?

Bob Heinrich: Right, yes.

Ben Gordy: Any other questions?

Lynn Ekelund: Does anyone on the Commission have any other questions, comments? Do I hear a motion?

Tim Nicholson: What are you looking for? Approval?

Bob Heinrich: Okay, I'll put myself out on a limb here. I'll make a motion to accept the applicant's plan for Phase 5, conditional upon receiving a proper report on how to address the signage on the properties and I wish I could make it conditional that the prior work be completed; but I guess I can't do that, can I?

Seth Thompson: That's correct. It's not related to this parcel.

Barry Goodinson: I would add, not just the signage though, but some type of

an emergency response plan. I don't necessarily think that signage is going to get the job done.

Bob Heinrich: I'd agree with that.

Seth Thompson: I want to make sure the applicant understands that there would be some need that the emergency response; I don't know if they have an approval process necessarily, but that they're input be received. Is that somewhat akin with what we do with other agencies, where they might give a letter of non-opposition? You're just essentially seeking for the emergency response to provide their input on the signage issue.

Barry Goodinson: I think that, but also some type of plan for either ongoing notification to new employees; or whatever so emergency responders don't show up there and are left scratching their heads. So it's not just the signage, but it's some type of prior information that's provided to them.

Seth Thompson: Okay.

Barry Goodinson: And they know the system. They should be able to figure out the best way to do that.

Robin Davis: Again, it's not an ideal situation, but speaking with Meghan, going through the Cannery Village thing, they can load additional information in their system, the 911 system, saying that there is a little issue; or that the address is for a rear load and you need to go through the front, or whatever. They can load that into the addresses for the 911 center so that when a call comes in, that they're aware if they look at that information.

Lynn Ekelund: How do they know to load that information?

Robin Davis: We have to let them know.

Lynn Ekelund: We, meaning the Town?

Robin Davis: Yes, the Town. The Town, yes. When this Phase gets approved, if it gets approved, it's just like the rest of them, it goes over to the County, Mapping and Addressing, they assign parcel numbers to it. Once that happens, we physically assign the address to it, then I send it over to the 911, the ladies over in the office and they will place it into the 911 center's information software. Then at that point I can put on there, that there's a difference in how these are addressed.

Barry Goodinson: Is that what happened over at Cannery Village?

Robin Davis: No. It wasn't done that way. I actually had a conversation with Meghan and Terry Dukes from the 911 center. We have several of our developments that once they were approved, the addresses were never sent to them. We have Wagamon's West Shores, we have partial addresses for Oysterman. They've got the addresses for the homes that were built, but not the empty lots. Now that some of the homes are being built on empty lots, they don't have it loaded in their system and I'm working with them to get that squared away on all the developments in town.

Lynn Ekelund: So do we have to make that some form a tickler file; it certainly can't be a condition for Fernmoor Homes, if it's our responsibility; but how do we make sure that those footnotes are given to the 911 response.

I'll just have to put a note in the file when I do it, that I'm going to have to make them aware of that; that the addresses on Bank Lane or whatever it is, are going to be towards the garage areas and not the front of the homes and to make the 911 addressing aware of that.

Mark Quigley: I guess my hesitation is, my brother was a New York City Fireman, he was a Lieutenant there and he had seen more people die from the confusion of addressing and access; so while I'm sitting here, it sits on my shoulders. He was a Lieutenant in the New York City Fire Department for 20 some odd years and I heard all the stories and then you hear something like this, I mean, it's just...

Barry Goodinson: Robin, I hear you talking about all these instances where the Town didn't do what it's supposed to be doing, in order to ensure people's safety, so is there some other thing that we can put in place here. If the Town doesn't have the capacity or the resources to make that happen, then, can we shift that over as a condition?

Mark Quigley: Another mechanism or something like that?

Bob Heinrich: In response to Mark, though New York City is a much bigger place. I hear what you're saying...

Mark Quigley: I understand that. I grew up there.

Barry Goodinson: But Robin just said that we have a bunch that aren't in the system; something's broken here.

Mark Quigley: We have an aging population. People are here retiring and if you have medics or somebody going in with a stretcher or a fire...

Bob Heinrich: But again, this is only ten houses we're talking about here, or thereabouts.

Barry Goodinson: We have a situation here we can fix easily, because it's only ten houses.

Mike Coven: Thirteen.

Bob Heinrich: I agree. We're going to fix it. That's what we're talking about, I thought. We're going to make this motion to approve, with those conditions that signage will be addressed and some sort of inputting into the 911 system will take care of any problems emergency vehicles would have coming into the development for that particular situation.

Mark Quigley: What I'm hearing is that the way the system currently exists, it's not the responsibility... It doesn't sound like what I'm hoping for can take place over here. It feels like it's supposed to take place with the Town, which isn't happening, so how do we fix that.

Robin Davis: I can't speak for the individuals that were in this position before I was and I'm not trying to blame anybody for that. This was all done prior. We're playing catch-up on all this. Unfortunately, this portion of it, what happens with the parceling and the addressing and all that, happens after the approval. It cannot go through the parceling and the addressing until they get approval. So, in a sense almost making the applicant do it, it's kind of... It's going to be the responsibility of the Town to do it.

Bob Heinrich: I think, too, this Commission is aware of this problem and I think, although we're not all permanent members here, this is on the record right now and this discussion is on the record and for any future developments or building, we all know that this can be a problem and we should think about that when we approve for...

Mark Quigley: I'm not interested in just placing conditions on the applicant. I think we need to place conditions on the Town, as well.

Robin Davis: And if nothing else we just can keep it in and maybe make it something that I have to come back and report to the Commission, after the fact, when it's done.

Bob Heinrich: That's good.

Seth Thompson: I think Robin's right, that the applicant can only control what's certainly within their control. I appreciate the Commission's comments. It might be something where a member of Council proposes an amendment to your Code that requires front loading units.

Bob Heinrich: Can we make a recommendation on this Commission that that take place as a result of this approval?

Seth Thompson: You can. You'd want to put that on your next meeting, so you can discuss it, after it's properly been noticed, but that's really what you would do so that the applicant's would be on notice going forward, that again, these rear loading units...

Bob Heinrich: Well not only this applicant, but any future applicant.

Seth Thompson: That's right. That's what I mean. Getting back, it's helpful to me to formulate the motion based on the memorandum Mr. Kerr provided. It sounded to me like the implementation of the sign recommendations was in response to Number 6; Number 7 was simply to clarification. I take it the Commission was satisfied with what was presented.

Bob Heinrich: Yes. Me, anyway.

Seth Thompson: Okay. There was a correction on Number 8 where it's only lots 195 and 196, as opposed to 197 that are serviced, on that line. The Commission wanted Number 9 implemented with the loop. Number 10, Number 11 with the fire hydrants and then...

Bob Heinrich: Number 11, we wanted the fire hydrants, right?

Seth Thompson: Correct, so that would be one of the conditions attached to your preliminary approval and then the one that was not included was that the trail/walkway would be constructed with the phase from lots 250 to 259. I think I've hit everything that we've discussed.

Bob Heinrich: So do we need to restate this motion?

Seth Thompson: I think you can probably just incorporate my comments, by reference; my conditions by reference. I should say.

Tim Nicholson: Okay.

Bob Heinrich: Okay, so I'll say again I make a motion to approve this preliminary sub-division plan for Phase 5, Heritage Creek, referencing the discussions we just had with our counsel and regarding the signage and the

addressing issues regarding Mr. Davis' putting something in place to keep the 911 system up to date and perhaps, putting on the next agenda, the discussion for the Council to amend the procedures for keeping those 911 systems updated. Does that work?

Seth Thompson: It sounds to me like the last item you want on your agenda, as opposed to being part of this motion.

Bob Heinrich: Okay, I'll strike that one out of there. That's my motion and I'm stickin' to it.

Lynn Ekelund: Do we have a second?

Mark Quigley: Second.

Lynn Ekelund: Roll call vote:

Mark Quigley	Approve
Barry Goodinson	Approve
Bob Heinrich	Approve
Linda Edelen	Approve
Tim Nicholson	Approve
Lynn Ekelund	Approve

Lynn Ekelund: Motion carried.

Barry Goodinson: Can I just ask a question, because the whole issue has been raised about follow-up. How do we, as a Commission, encourage the Council or whoever is supposed to make sure that the people in this community are getting what they paid for and expected? How do we go about encouraging that? What's the appropriate mechanism?

Seth Thompson: I would direct them to Town Hall if they have a complaint and at that point the Town Manager or whoever the appropriate employee is...

Barry Goodinson: I suspect they've been there already.

Unidentified Speaker: I sent a letter to the Mayor and she recommended I come here.

Barry Goodinson: Yeah, that's my concern. I'm afraid people are going to get bounced back and forth and we're not serving anyone's best interests. How do we get everyone in the room without playing shuttle diplomacy and just kind of hash this out?

Seth Thompson: Again, your Code lays out a process where if somebody were potentially in violation of a Town Ordinance, they need to be notified in writing.

Barry Goodinson: By who?

Seth Thompson: It's typically going to be your Code Enforcement Officer, although it might come from the Town Council, depending again on the level of severity. It's really going to depend on which section of your Code you fall into but, in all likelihood it will not be the Planning and Zoning Commission to do that.

Barry Goodinson: So who can help these neighbors figure out what part of the Code applies to each of their complaints and what recourse can they take for each one? Who helps them lay that out?

Seth Thompson: Right. And what they would do would be they would file the complaints and then...

Barry Goodinson: To?

Seth Thompson: It really should go through Town Hall and then if it's a Code Enforcement issue, again, your citizens shouldn't be in a position where they need to determine what applies and what doesn't apply. They just need to present the information and then allow the Town Manager, as the Chief Administrative Officer of the Town.

Barry Goodinson: The problem is...

Bob Heinrich: If I could just jump in. I think the problem really is between the residents and the developer; because the Town isn't responsible for the development, the developer is, until it's completed and then the Town comes in and takes over. We've had issues at Wagamon's West Shores similar, not the same, but similar issues, that we just had to take up with the developer and bang on him, and bang on him, and bang on him to take care of it and threaten the Bond, threaten that performance bond, because we did that to get our streets paved in Wagamon's West Shores.

Mark Quigley: But your developer went under, didn't he?

Bob Heinrich: No.

Mark Quigley: He didn't?

Bob Heinrich: No. The developer is Simeon, the builder went under.

Mark Quigley: Oh the builder, okay, sorry.

Seth Thompson: I think we're getting a little far afield. It could be that it truly isn't a town issue. That's certainly a possibility.

Lynn Ekelund: I think the best bet is as Seth alluded to, take your complaints to the Town Hall, make sure you give them to the Town Manager, Win Abbott, he's the Town Administrator. He should, in turn, direct it to the proper department, whether it's Robin or whether it's the Code Enforcer or Maintenance and I think that's just the best way. We're a land use board. We understand and appreciate your frustration. We've all been through it, one way or another, but we're just not the place. We can listen to you, but it's not our job. You should take it to Town Hall.

#### **b. Preliminary Site Plan Review/Approval (Follow up)**

The applicant, Chestnut Properties, is requesting a preliminary site plan review/approval to construct an underground propane tank field on a portion of the open space area in Phase 2B of Cannery Village. The proposed propane tank field will be located in the area of the Community Center. The property is identified by Sussex County Tax Map and Parcel # 2-35-20.00-57.00

Lynn Ekelund: Is there someone here from the applicant?

Pret Dyer, I'm one of the members of Chestnut Properties, LLC: I suppose this is the follow-up to the letter that I sent to Planning and Zoning dated June the 11<sup>th</sup>, where I stated basically two items that it was recommended to me to do so. The first relates to the question of the whether the alley will withstand the traffic from the trucks for the deliveries and we responded that we would be responsible for the necessary remedial action to correct any deficiencies, if such deficiencies could be or would be occurring in the future. We reviewed the specifications of the alley, spoke to different contractors to ascertain whether or not the design of that was sufficient. Their response was that it should be sufficient, but I guess the question was whether or not, if there were a deficiency would we be responsible and we replied in the affirmative. The second was the issue of the water ponding and we also responded that we would address that issue the earlier of the two, the first being completion of the top coat of the paving within Cannery Village and the second being six months from the date of the letter, again, which was June the 11<sup>th</sup>. So that's the two items that I understood we were supposed to address and therefore we did.

Barry Goodinson: Question, Pret, how would you determine, for example, if the propane trucks were causing... What would you be looking for in terms of damage or anything?

Pret Dyer: I think it would just be whether or not there was cracking or alligator... some type of a failure in the road base.

Barry Goodinson: And the second question I have, is there some connection between the top coat paving and six months? Are you just saying the earlier...

Pret Dyer: Well, it was indicated to me, to give a time frame, so I said the earlier to occur.

Tim Nicholson: I still have a question. It says Chestnut agrees to correct the water ponding issue. How would you do that? Have you looked into...

Pret Dyer: We've actually spoken to the engineer for Poore's Propane and we're in the process of reviewing what the original plans called for and there may be an indication that there were catch basins that were in the plans that were not built and we're trying to determine why that wasn't disclosed during the inspection of the property by the Town? We didn't have knowledge of it. We paid the contractor, so we're just trying to find out if that's the case or not the case. Regardless of the situation, there is a ponding issue there. It's a low point and usually a low point indicates a projected inlet of some type...

Barry Goodinson: What do you mean projected inlet? I'm not sure what that means.

Pret Dyer: A low point would be that some type of a storm drain inlet was designed to be at that site.

Barry Goodinson: But not installed?

Pret Dyer: Yeah and that's what we're looking at at this point; to find out, because the suggestion was to build up the area. Well building up the area to

increase the fall to get to the surrounding inlets, would be an extreme measure if, in fact, the design worked to accommodate that lower area and that's what we're in the process of doing.

Mark Quigley: In the access where the propane trucks are going to come and it's going to have a top coat of asphalt?

Pret Dyer: It has that. The question is whether or not that asphalt will fail or not fail based upon the design and according to the design and different contractors that I spoke to, the design itself should be sufficient for the weight and the deliveries that would occur.

Mark Quigley: I guess it seems like asphalt, in general, seems to rut over time.

Pret Dyer: I think a lot of it has to do with the load; a lot of it has to do with the temperature. If it's really, really hot and someone cuts a wheel, then it can create rutting, as a result of that type of traffic and and I think that the experience when we talked to Poore's about that, that they are very much aware of on August the 5<sup>th</sup> you don't sit there and do a three-point turn on a hot \_\_\_\_\_. I find them to be very responsible. I can't say that about all truck drivers that I've encountered, but...

Mark Quigley: My question is, after five or ten years and the trucks constantly pulling in and out and you have the ruts from the tires from pulling in and out, is there a trigger where if it's a half inch rut for each tire, that it gets repaired at that point?

Pret Dyer: I think again, it really... A lot of our experience with road bases and I'm not an engineer, but just from a practical and we own a number of shopping centers; if there's a failure, there's a definite... Because we have, as you're aware, we have a lot of freezing and thawing conditions, so if there is a failure, it manifests itself very apparently and very readily. It's not something that's... Usually, with a very hard winter, it will manifest itself, as opposed to like a gradual wearing away. That has not been our experience, but I'm not saying that it couldn't, but that has been our experience with road bases or even parking lots.

Bob Heinrich: I have a question and I'll admit, I wasn't at the original meeting that this issue was raised. I think it was March 19<sup>th</sup>, but I read the minutes and I'm just reading something here about a recommendation to do the road with concrete, rather than asphalt. Did I miss something there? Was that something that was discussed and was it decided not to do that? It seems to me concrete might hold up better than asphalt.

Bob Kerr, CABA Associates: I believe that the propane company would prefer to have used concrete within their portion of the site, because that's where they will be turning the wheels; but on the road approaching it, where it is more a less a straight shot, they did not see a need for that.

Bob Heinrich: Okay. So they're recognizing by default that that's going to be a problem, that's why they're using concrete.

Bob Kerr: Well, no, the drawing submitted was showing only stone; so it

was my recommendation that it be a hard surface and I did not specify hot mix vs. concrete and they preferred concrete over hot mix, for their portion of the driveway. I might also say that I'm the one who brought up whether the road was sufficient or not, the alley. Under the Town standards, 2" of hot mix is required for an alley, but in the interest of getting the memo done and out, that's why I put in the "it needs to be checked." Robin found the cross-section and reminded me where it was and the cross-section for the alleys in Cannery Village is a 2-1/4" base course of hot mix, with a 1-1/4" overlay, so that you end up with 3-1/2" of hot mix, which is almost twice what the Town standard would be for an alley alone; so it's actually the same thickness as most of the streets in Cannery Village.

Bob Heinrich: Thank you.

Barry Goodinson: You said if they found a drain that was supposed to be put in...

Pret Dyer: The drainage situation, regardless of the reason, the drainage situation needs to be addressed, so we're in the process of figuring out what the solution to that is, because I don't think there's a question that there is a drainage... I don't think there's a question of that, so regardless, we're in the process of trying to determine how best to correct this situation. What the solution is.

Barry Goodinson: So we don't have a course of action laid out here?

Pret Dyer: No, we do not.

Bob Kerr: If I may add to that, just a little bit. In the original approval of the Cannery Village drawings, there were two catch basins shown just off of Village Center Boulevard; there were two catch basins shown. Also where the clubhouse is now sitting, was to be housing units; I believe they were a townhouse row there, so that there was also a parking area and on the opposite side of the alley from the clubhouse, was a curb. Somewhere along the way, that got changed when the clubhouse came along and there were some changes to 2B. There was a catch basin that was supposed to be installed near the edge of the road and some other changes to the drainage because of deleting the townhouses. It does not appear that those got constructed correctly and they will have to be added to the punch list, so that it's taken care of.

Lynn Ekelund: I have a question. I was here for the meeting and I'm looking at the last page of the minutes and it was my understanding, at least that's what it says, that before final site plan approval, the applicant will need to show a remediation of the flooding, as well as improvements to the roadway acceptable to the Commission; so we're saying, at least I thought we were saying that when we approve this, that before we would give you final site plan approval, you'd have to show remediation, as well as improvements to the roadway that were acceptable to us. And now we're at a follow-up of the preliminary and you're saying you agree to correct the water ponding upon the earlier of completion of the top coat paving within Cannery Village, or

six months from the date of this letter. So are you saying that you're trying to change the condition you would prefer... I know you would prefer a lot of things. You'd like to have final site plan approval without the need to show remediation of the flooding and you're saying that you'll do it either upon completion of the top coat paving, or six months from the date of your letter?

Pret Dyer: That's correct.

Lynn Ekelund: So you're trying to change the conditions of the final site plan approval?

Pret Dyer: Yes.

Lynn Ekelund: Okay. I'm just trying to figure that out and again, you're trying to change the conditions of the final site plan approval from improvements to the roadway acceptable to us, to we'll fix it if it breaks.

Pret Dyer: I don't think there's a determination... I believe that Mr. Kerr just indicated that the standards for the road that confirms what we... the alley, rather, that it should be adequate for the truck traffic, so I don't, unless I'm misunderstanding that; I don't think there is a determination that the road is going to fail. So I don't know how I can offer a solution to something that neither has occurred, or is in violation of the Town standards for the construction of a cross-section of an alley.

Lynn Ekelund: I'm just reading what one of the conditions were for final site plan approval.

Pret Dyer: Well I think that that would be based upon what you're saying, subject to what your requirements are. I've just indicated through testimony, I think it was confirmed by Mr. Kerr, that there isn't a suspicion that the roads are going to fail; the alleys are going to fail.

Lynn Ekelund: Is that correct Mr. Kerr? You have no suspicion that Acre Lane is going to fail, as a result of the truck traffic?

Bob Kerr: When the memo was prepared, I did not have an opportunity to review the Cannery Village cross-section. It's the last page of what Robin handed out, as part of his memo this evening; it shows the paving that I was just saying 1-1/4" of top; 2-1/4" of base; 3-1/2" all together of paving, plus 8" of stone. The Town standard for an alley, or the minimum requirement for an alley, is only 2" of hot mix and 5 or 8" of stone; so this hot mix is twice as thick and is the same as the streets within Cannery Village that if you look at the truck traffic that goes in and out of Cannery Village now, they're holding up.

Lynn Ekelund: So again, just so I understand. Had you had an opportunity to review...

Bob Kerr: I would have said the paving is okay, but there's still a question on the...

Lynn Ekelund: You would have said the paving was okay and therefore there was no need for us to impose a condition as far as improvements to the roadway acceptable to the Commission for final site plan approval?

Bob Kerr: Yes, that is correct.

Lynn Ekelund: Okay. But we still have the final site plan approval condition that this Commission approved was that the applicant would need to show a remediation of the flooding, prior to final site plan approval; that you're seeking to change.

Pret Dyer: Yes.

Bob Heinrich: And that's a final approval. This is still preliminary, right?

Lynn Ekelund: No. Well.

Bob Kerr: Correct. You've given preliminary.

Lynn Ekelund: We've given preliminary with these conditions. Now he's coming back as a follow-up and saying no, in one case, according to Mr. Kerr, the condition as far as improvements to the roadway was not a necessary condition. Correct?

Bob Kerr: That is correct.

Lynn Ekelund: Whereas the condition that we imposed, as far as remediation, we wanted done prior to final site plan approval; whereas he is saying that he wants to do it, either after he completes the top coat paving, or six months from the date of this letter; in other words he wants to get final approval before the condition. That's all I was trying to say.

Pret Dyer: If I could add to that, I think that there's been a concerted effort on many people's behalf to get the tank farm moved from many different aspects, so the question is and we haven't denied that there is a ponding issue there; does the ponding issue inhibit the ability to relocate the tank farm? No. The trucks can still, even if there's a ponding issue, can the trucks get through? Yes. Is the alley an issue in that regard? No. That's why from trying to address the concerns of the residents of Cannery Village to have the tank farm moved, then the issue of the drainage, we're not saying we're disregarding it, we're saying we will address that and in the interim we would like to get final approval so the tank farm can be moved now, because it is a great concern to a number of the residents, as it is to us, to get the tank farm moved to its final location; so that's the reason. It's not we're saying you've brought up an issue that's irrelevant; we're just saying we understand that, but the issue itself of the ponding, does not prohibit taking the steps to move the tank farm now. That's the basis for the request.

Barry Goodinson: My concern is if we lift this condition, then it will never be remedied. You'll move the tanks and then you'll be done with it and the ponding won't be addressed. That's the concern that I have. I think that that condition needs to stay in place.

Lynn Ekelund: And I share that concern.

Barry Goodinson: I don't want to slow down the moving of the tanks. I want to expedite the correcting of the ponding.

Pret Dyer: Well, I mean, I understand that.

Barry Goodinson: You've not responded to the condition, to that particular condition here.

Bob Heinrich: But could I jump in here. My interpretation, according to Mr.

Kerr, is that and maybe I'm wrong, but I'm interpreting that the paving will be superior to anything required by Town. In other words, the paving they're putting in, will be better than what...

Lynn Ekelund: I'm okay with the paving. Now that I have Mr. Kerr's explanation, I'm okay with that condition should never have been placed.

Barry Goodinson: It's the ponding issue.

Lynn Ekelund: It's the ponding.

Pret Dyer: I understand what you're saying, but the ponding is not... This is in my understanding, the ponding is not prohibiting moving the tank farm. It's a vehicle for you to address the ponding, but it is not a condition that in my mind is valid for whether or not the tank farm could or could not be moved.

Barry Goodinson: Then how else will we get you to address the ponding if we don't attach it as a condition?

Pret Dyer: Again, the whole point of this, the application for moving the tank farm was a request from Poore's to take the temporary to move to that and then, if there were surrounding issues, with and I'm not saying that there aren't; I haven't stated that, nor would I state that; then what we're trying to do is address Poore's desire to move the tank farm to the permanent and the resident's desire to have that done. Now, that's...

Bob Heinrich: Okay, so how can we put something in there that says, if there is a problem... There is a problem. How do we get that in there that you will address that flooding issue, even if we give you approval to go forward?

Barry Goodinson: Yes, what do we attached it to; if not the moving of the tanks, then what else can we attach it to?

Bob Heinrich: We'd like to give you approval, really; but we also want to see you go fix the flooding there.

Pret Dyer: I understand that and again, with this project and we just saw that previously, every time a phase comes in, it's subject to approval. Obviously in some cases, things have been met, conditions have been met, and other times conditions haven't been met, so there is the ability... If I come back as a developer and say give me my next phase and you say you've never fixed the ponding, we've already seen that there are and can be ramifications to that.

Barry Goodinson: No, what we saw is we have no power to enforce, once the horse is out of the barn, we have no power. Here we have an opportunity.

Pret Dyer: I'm trying to accommodate the... I put... The request was made for me to respond. I put two dates in there. We are trying to address both the ponding here as well as the final paving for Cannery Village and I think, you know, from a legal point of view, is this a condition that can be imposed for this application? It is my view... You may ask your attorney. I don't think it's an appropriate condition. I think it's a conditional approval outside the purview of the request.

Bob Heinrich: What say you, Seth?

Seth Thompson: Well, I can't make the engineering leap, as to whether or not

there's a causal connection there, but I can say that if there is a causal connection there, that I think legally you are allowed to attach the condition, just under your General Condition Powers.

Pret Dyer: What's the causal connection? The trucks can still get through, whether there's ponding or not; the trucks are not inhibited from going in and out to fill the tank farm, so where's the causal connection?

Seth Thompson: And again, that...

Pret Dyer: I agree, if there were a causal connection, then it would be an appropriate condition, however, I don't believe it is an appropriate condition.

Bob Heinrich: I think it's an appropriate condition.

Seth Thompson: I'm not saying whether it is or it isn't. I'm saying, that's not my wheelhouse. I'm an attorney.

Bob Heinrich: I have to say, I think it is an appropriate condition, to solve the flooding problem.

Barry Goodinson: Right and just do it right. That's what we're...

Seth Thompson: Perhaps... Maybe this could get us there. One of the conditions that was attached the last time and was discussed by Mr. Sockwriter was a bonding issue. It sounds to me like you're not looking to modify that, or you're not looking for relief from that condition while you're here tonight. If that's something that could go into the bond, then seemingly then, the Commission's concern about something just never being done is alleviated in the sense that there's some form of recourse.

Bob Heinrich: Who takes that action? Who would take that action?

Seth Thompson: The Town would, not the Commission. You're talking about the bond?

Bob Heinrich: Yes.

Seth Thompson: Right, so in other words, let's say Mr. Dyer didn't do what he said he would in terms of the timing of this; then the Town would call the bond. That's why we're discussing the fact that we attached the bond, as a condition the last time.

Lynn Ekelund: We're talking about proposing the bond for correcting the water ponding issue. That's what we're talking about.

Seth Thompson: So in other words, if the water remediation would be included in the bond that was attached last time, then again, Mr. Dyer's presented a timeline and if he doesn't meet it, at least there's some recourse. That seemingly allows him to move forward and it allows to take him at his word that he's going to do it, but in the event that something inhibits that, there is some possibility for recourse.

Bob Heinrich: Do we have a sense, and again I don't know how much the bond is for, is the bond enough to cover whatever contingencies might be there?

Seth Thompson: The way the bond works is typically the Town Engineer and the developer's engineer discuss figures and normally there's some back and forth in figuring out what's a reasonable estimate in terms of the cost; then

hopefully there's some agreement on that figure and then your Town Code puts it up to 125%.

Bob Heinrich: Right and when was that bond prepared? How long ago was that?

Seth Thompson: It hasn't been prepared.

Lynn Ekelund: That was the bond about remediating the temporary tank farm.

Linda Edelin: Yes, it had to do with the temporary...

Lynn Ekelund: And seating it and grading it and doing all that, so we would have to have a larger bond because if I'm understanding you Seth, it's adding to the bond for remediating the tank farm and remediating the water ponding issue. Is that something that you would be okay with?

Pret Dyer: Was that part of a previous recommendation, because I don't remember that one?

Lynn Ekelund: The remediation of the temporary tank farm was something that was included in this last round, yes.

Seth Thompson: I think Mr. Sockwriter represented that they needed the approval in order to get the bond, so really the condition would need to attach I suppose on final approval, but frankly the building permit wouldn't issue without a bond. It's how that would work.

Bob Heinrich: So a bond is in place for remediation of the flooding issue?

Lynn Ekelund: No.

Bob Heinrich: No.

Seth Thompson: Are you talking about currently or are we talking about the hypothetical world that we're discussing. No, there isn't one currently in place, but that was just my attempt at trying to bridge the gap, so to speak.

Lynn Ekelund: And a good one, I thought.

Barry Goodinson: We don't want to slow down the movement of the gas tanks... We just want to make sure that the ponding is addressed.

Lynn Ekelund: We don't want to slow down, if you want to move those. We just need an assurance.

Bob Heinrich: Yes.

Barry Goodinson: So if the bond can do that, then great.

Bob Heinrich: I'm fine with that. You're saying yes, it does.

Seth Thompson: I'm saying that that would be a potential solution. Frankly, if there had been a larger bond in place, we wouldn't have this discussion.

Barry Goodinson: How do you feel about that?

Pret Dyer: I'm not sure the extent... We've only talked to our engineer's preliminarily, so I'm not sure the extent of what the cost of that's going to be and the ramifications to the pond. But, if that's...

Bob Heinrich: We want to see you go forward.

Pret Dyer: I know you do.

Barry Goodinson: Are these things very expensive?

Pret Dyer: Bonds are very... In today's world, bonds are very difficult.

Bonding companies, in our projects today, you end up putting the amount of cash up; bonds are very difficult to get in today's world. I mean, well I can tell you... Ask your engineer how difficult bonds are to obtain today. They're very, very difficult.

Bob Heinrich: How can you help us, help you?

Pret Dyer: Basically what you're asking is to put 125% of the cost up and I can tell you, we're not going to do that. You know, we'll fix it and we'll just have to wait to do the tank farm, because if you make it a condition, I don't see the... I don't want to sit up here and mislead you and say impose the condition and we're going to abide by it, because I really don't believe that we're going to have the ability to secure a bond. We have another project that currently we're working on for an entrance bond and we can not get a bond and we can't even get a bond from the bank and we agreed to put the amount of money in the bank as collateral for the bond and we couldn't get it, so I'm not sitting up here crying wolf to you; I'm just telling you the realities of bonding requirements today are... it's unfathomable to me, but I'm telling you what our experience is. So I'm not trying to be resistant to what you're saying, I'm just telling you the reality of what the bonding world is.

Barry Goodinson: So what you're saying is if you wanted to get a bond for \$100,000, you'd have to put up \$100,000?

Tim Nicholson: \$125,000.

Pret Dyer: Yes and right now, even with banks... We used to go to any bank and get a bond on our personal signatures. No problem whatsoever. Now we've offered to put full amount in, with 25% extra and we still couldn't get it. They wouldn't issue it. I mean, they just wouldn't touch it and do I understand that? No. But have I experienced it, yes. Bonding companies are not writing bonds today that I have seen and we had a very good rating with two bonding companies and we just had not had the ability to secure those bonds, so then our experience with DelDOT right now, the Department of Transportation, is they seem to be accepting a cash bond and that's about all that people have been able to secure. If you have a lender with a project and that's not the case with Cannery Village, if you have a lender that's under a current construction mortgage, that increases your likelihood, because they're already in a lending mode on a particular phase, then that increases your likelihood to be able to secure a bond. In those cases, I think that there's a much higher likelihood of doing that. So I don't want to sit up here and say yes, make the condition and then you come back and say well why didn't Mr. Dyer follow through? I'm just telling you that I think that's going to be very difficult and possibly keep the tank farm from being able to be moved under that timeframe.

Barry Goodinson: I'll direct this to the Town Engineer. Is that your experience also? Can you have some input on that?

Bob Kerr: Yes, we actually have a municipal client that couldn't get bonded to put an entrance on a state-maintained road. Seth has asked me about

Letters of Credit. I haven't seen those lately; I've seen them but it's the problem that Pret is saying; you have to essentially put up more cash into an account that the bank is still hesitant to say yes we have \$150,000 of Mr. Dyer's money, but we're not interested in guaranteeing you that you would get \$100,000. It doesn't make sense, but some of it is with the new banking rules that went into effect after the recession hit. They've just changed the rules. The way that banks operate is totally different.

Barry Goodinson: Even on a property like this, where it's inside the development and not the state-maintained road?

Bob Kerr: I'm seeing it on all types of projects. I'm seeing it where contractors that a few years ago would bid \$5 to \$10 million projects, can't get bonded more than \$1 million today and nothing's changed as far as that contractor, other than the bonding industry. I'm told that their financials are still the same, it's just the bonding companies have changed their rules.

Bob Heinrich: So what do our experts advise us to do here?

Bob Kerr: As much as I would love to see Cannery Village finalize, closed-out, turned over to the Town, I think you must consider is it in the Town's interest and the resident's interest more for the correction of this drainage issue vs. the moving of the tanks and how that impacts both the residents of Cannery Village and the overall town. I don't have the answer for you.

Bob Heinrich: Well if you don't have the answers, how can we be expected to have them? I mean, I don't want to see the flooding continue, but I think I'm hearing that yes, the flooding could continue and we might not get it fixed and that's not acceptable. To me, it's not.

Bob Kerr: In the overall issues addressing Cannery Village, the problems that need to be corrected, this drainage issue is probably very minor percentage of the problem. The repaving of all of the streets and the correction of curbing and other drainage issues is certainly significantly higher. I know that still doesn't answer the question, but it is a small fraction of the cost.

Seth Thompson: Again, you're in somewhat of a unique situation based on the fact that if there were a bond for the entire sub-division, you wouldn't be focusing on these individual issues, but I think Mr. Kerr is correct in that you have to do what's in the best interests of the Town and the resident's that are affected.

Bob Heinrich: Alright, can I ask this question? Again, not having been at the first meeting, how big of an area is this flooding issue we're talking about? Square footage wise.

Bob Kerr: It's relatively small if you have the handout that Robin gave, there are pictures next to the last page, I believe. It's a double-sided, four photos.

Barry Goodinson: What's it looking like these days? When were these taken?

Bob Kerr: Robin took these in the last week or two.

Bob Heinrich: Probably worse today, right?

Bob Kerr: It had rained, I believe, just about the time he was out there and

for the record, the date is June 11<sup>th</sup>.

Bob Heinrich: Again, forgive me, but what is this area right now and what's it going to be? Is it going to be where the tanks are going to be placed, or what? I'm sorry. I thought you knew what we had.

Bob Kerr: On the first page of the photos, Robin is standing on Village Center Boulevard and that would be this top one. I know, it's too small in the back, sorry. And there's a small depressed area with the puddle, right in the center and that's about where a catch basin was shown on a revised drawing to go in this area.

Bob Heinrich: A catch basin.

Bob Kerr: On the right hand side of that photo, you see the side of the clubhouse; originally that's where townhouses were going to be.

Bob Heinrich: That's the clubhouse there?

Bob Kerr: Yes, that's the clubhouse wall.

Bob Heinrich: And it looks like this is paving here. Right?

Bob Kerr: Yes, that's the alley and at the back of the alley and behind the white fence that you see on the right, is where the tanks will be located...

Bob Heinrich: Behind here. Okay.

Bob Kerr: So back at this corner, they're going to be back in there.

Bob Heinrich: And the traffic in here will be what?

Bob Kerr: A truck will come in off the main road.

Bob Heinrich: Here?

Bob Kerr: No and just go straight on back.

Bob Heinrich: Oh here. Okay, but this isn't going to be repaved then. This is just going to exist as it is.

Bob Kerr: It does and Pret will have to correct me, but I don't believe this has the top coating.

Pret Dyer: Right.

Bob Heinrich: We're putting a top coating on there to correct it?

Bob Kerr: That will not correct the drainage problem, because essentially you put an 1-1/4" of hot mix over everything, but the drainage needs to be corrected before that final coat is done. And then, as you go back the alley, the picture at the bottom shows that there's another drainage issue at the corner where you would turn and go down behind the houses.

Bob Heinrich: Okay, so just stay here Bob. Don't go away. If the trucks are coming in here, we know that that's going to be traffic and over time if this flooding doesn't get corrected, it's only going to get worse. The water's going to become more damaging to the existing paving and it's just going to deteriorate, so I agree it's a small area and it probably shouldn't impact the tank farm, but it does really. It does, over the future. I think that's got to be fixed. That's all I'm saying. I don't know how else to vote on this. What do you guys feel?

Barry Goodinson: I think there are also some very serious issues about moving the propane tank farm. I don't know that those are always addressed,

or not.

Bob Heinrich: I don't have a problem with that. That's just me, though. I'm more concerned...

Bob Kerr: If I understand correctly, there were some concerns, maybe not last winter, but the winter before that there wasn't a sufficient supply of gas and there's some equipment out there and propane is not my specialty, but vaporizers or something that weren't able to supply enough gas to homes and people were being cold.

Bob Heinrich: So are you saying, Tim, that you want to see the tank farm go forward.

Tim Nicholson: Yes, believe me I have no desire not to see something taken care of here, but I just think moving the propane farm is important.

Bob Heinrich: Yeah, I do too.

Barry Goodinson: I think we all agree. I'm just so afraid that this goes down the block and then we have no ability to do anything about it.

Tim Nicholson: And I understand that, believe me I understand that.

Barry Goodinson: Because we just ran into that earlier this evening.

Lynn Ekelund: I think point number two of Mr. Dyer's June 11<sup>th</sup> letter, is pretty much I pinky swear.

Pret Dyer: Let me address one question. If the approval is not granted and the tank farm's not moved, the situation with the drainage is going to be the same, regardless. So the question is, which would you... And again, I can sit here and tell you that I can get a bond and that I'm going to do all these things and I'm telling you, honestly, that I don't believe that we're going to be able to do that; so the question is, is it better to get the approval and move the tank farm and we're working diligently; we just had a board meeting today; we're working diligently to try to secure funds to do drainage repair, to do top coat, to do those things; or is it better to say we are going to forego moving the tank farm. That's the bottom line. I'm sorry.

Bob Heinrich: And I hear you loud and clear. Let me just ask you, do you then say to us, okay, are you promising to us that you will do the best to correct that situation?

Pret Dyer: Yes. And we just, we told... I'll go on record. We sold a property to try to help to raise... You can't go to a bank and get a loan today, you know, for extended development; you just positively can't do it. We're one of the developer's that built a clubhouse that cost a lot of money. Now if we didn't build that clubhouse, we could have fixed all of the road problems, but we wouldn't have had a clubhouse; which do you do and which do you not do? The issue that's before us and we have this with every sub-division that we have ever done is, when you go forward and you finish a road and there's still construction that's done, I don't know what it is, but many of the truck drivers just don't obey the rules and then you come back after the fact, so you've got two nightmares. We are doing our best to sell properties. We haven't defaulted at Cannery Village. We understand that there are residents

who have been impacted. We have never said oh we disagree with you, the roads are perfect. The reality is and I believe it's the hand of God, that we didn't go bankrupt with this project, because I have other friends, who are developer's, who have gone bankrupt and whether it's their fault or not, doesn't matter; but we do have a situation where in my mind, at least, and that's your purview; my mind here is moving the tank farm overrides and I'm hearing this from the residents. I'm hearing this from Poore's Propane.

Bob Heinrich: I'd like to make a motion. Will Madame Chairwoman entertain a motion? We could talk about this all night.

Lynn Ekelund: Do we have any further comment from counsel?

Bob Heinrich: I'd like to make a motion that we do give permission for the tank farm to go forward... Let me rephrase that. I would like to see this project go forward, as do the residents want to see this project go forward, as Tim mentioned. So I will make the motion that we move forward on this project, however...

Seth Thompson: If I could chime in. I just want to make sure I understand what exactly we're doing with the prior approval; so if we're removing the two conditions, okay...

Bob Heinrich: Okay. I'll start over again.

Seth Thompson: I just want to the record to be clear of what you're doing.

Bob Heinrich: I want the procedure down here, that's all. I think we have to accept the applicant's word that he will work diligently to get the flooding issue resolved. He's on record here and we have to make that assumption, that he's going to do it. Based on that, we have to get the tanks relocated and the farm improved, so I'm moving, motioning, that we accept this...

Seth Thompson: It's preliminary.

Bob Heinrich: Preliminary approval.

Seth Thompson: Okay, so it would be a preliminary approval and just so I understand, the prior condition with regard to the road, would be replaced by the fact that the road will be built per the specifications from the sub-division approval and we're incorporating into that Mr. Dyer's representation on his letter number one and the letter is dated June 11, 2013, that Chestnut Properties agrees to be responsible for any necessary remedial action.

Bob Heinrich: Yes. Yes. Yes.

Seth Thompson: And in terms of the prior condition correcting the water ponding, we're replacing that condition with Mr. Dyer's letter number two, where Chestnut Properties agrees to correct the water ponding in the alley, upon the earlier of either completion of the top coat or six months from the date of the letter.

Bob Heinrich: Yes, I think we have to.

Seth Thompson: Or six months. Okay.

Bob Heinrich: Is that acceptable for a motion?

Seth Thompson: I hope so. As long as everybody understands what I said.

Bob Heinrich: Yes.

Tim Nicholson: I have a question. If this is a preliminary site plan...

Lynn Ekelund: We need a second.

Tim Nicholson: Sure, I'll second. Just so I can ask my question. If this is a preliminary site plan review, then that implies that there's something that comes next; so what comes next and what are our options then?

Seth Thompson: He'll have to satisfy the conditions that we discussed tonight, as well as the prior conditions from your approval in March and come for a final site plan. The other element of that, I believe we probably have a Clean Hands issue that I think that they're going to need to address before then, at that point; so just to let the applicant know as a heads up and the Commission knows as a heads up; since I did see the list recently, in terms of money owed to the Town. So but that would be the process, that assuming the Clean Hands issue doesn't exist or is remedied, then there would need to be a final site plan application, where he can come in and show that he's met the conditions that you attached tonight, as well as the ones that weren't replaced from back in March.

Lynn Ekelund: I have a question that I just thought about. When we had the preliminary site plan discussion, Mr. Sockwriter talked about a bond for remediating the temporary tank farm. Mr. Dyer is now saying that...

Tim Nicholson: It can't be done.

Seth Thompson: If we go back to the motion, I think you didn't change that condition.

Bob Heinrich: I withdraw my motion. I think we're getting too confused here. I withdraw.

Lynn Ekelund: We didn't change that. That's still a condition.

Seth Thompson: That was still a condition... Again, the only conditions that have changed from the ones you guys implemented in March, would be the road and then the water remediation.

Lynn Ekelund: Okay.

Bob Heinrich: Can we caucus?

Robin Davis: What we had is... There are conditions that were put on the application that pertain to on site conditions and the two off site. The applicant, Poore's Propane, was willing to take care of the conditions on site, which left Mr. Dyer to address the two off site. That is why Mr. Dyer is here to just discuss the two off site...

Lynn Ekelund: So everything else is in place and these are the only two changes.

Robin Davis: Everything else that was addressed by the applicant at the meeting, they said they were willing to work on.

Seth Thompson: Does that clarify the motion, where everybody stands?

Bob Heinrich: Okay. Well I just said I withdrew, may I reinstate that?

Seth Thompson: You may.

Bob Heinrich: Okay, I'll reinstate my original motion.

Seth Thompson: I think you need another second.

Tim Nicholson: Second.

Lynn Ekelund: We have a motion. Do you want to... Any further discussion?  
Roll call vote:

Mark Quigley	Come back to me.
Tim Nicholson	Agree. Yes
Linda Edelin	Approve
Bob Heinrich	Yes
Barry Goodinson	I'm going to vote no
Mark Quigley	I'm a no also
Lynn Ekelund	No

Seth Thompson: So the motion doesn't carry since you don't have a majority. It would be appropriate to make a different motion.

Mark Quigley: What kind of a motion would we be talking about? I thought his encompassed pretty much everything that...

Seth Thompson: Well it could be a motion with a different set of conditions for approval; it could be a motion to disapprove; it could be a motion to table, frankly, if it appears that there's going to be a 3 to 3 tie, where there's not going to be a majority. Those are your options. Again, somebody could make a motion with different conditions; a motion to approve with different conditions.

Mark Quigley: The concern that I have here is and it's the concern that you have; you don't know what it's going to cost to address the ponding, so if we say sure, go ahead, do it, we trust you to address the ponding. Then you could come back and say you know what, it's really too expensive. We can't afford it.

Pret Dyer: The ponding issue, as Mr. Kerr pointed out, is one of several issues that relate to the overall completion of the work.

Mark Quigley: No, I understand that.

Pret Dyer: So, again, we... If the Commission decides to not vote for this, then I go back to the residents and say we're doing the best we can do, when we get to that point, we'll fix the ponding and then we'll go back and seek to move the tank farm. I mean, I'm here trying to move the tank farm.

Mark Quigley: We want to do that as well.

Pret Dyer: And the issue of the remedial is this is one aspect of overall remedial; so I mean this isn't a new concept to me. I completely understand that and I'm sympathetic to the people and I'm sympathetic to the people to whom the remedial issues, you know, affect. The bottom line is everybody in the community is impacted by moving the tank farm and there was a vast appeal to do that and I understand that and that's why we're trying to do it and if the Commission deems that the ponding issue here, trumps that, then I mean it's not my decision and I can't and I won't sit here and make promises that I can get bonding, when I really am very skeptical that I can do that, so

that the tank farm can proceed. So, you know, I would prefer that the tank farm get... I don't think that the ponding itself, does not inhibit the trucks to be able to get in and out and serve the tank farm. Now, is the ponding an issue? Yes. But it's up to the Commission, you know, I can only seek to make an application; have Poore's make an application; and Poore's address the issues that were responding, relating to the on site. The issue was raised about the off site and again, my plea is that we get the tank farm moved, because I think that affects everybody in there and I certainly know that I'm not trying to diminish the aspect of the ponding; but from my personal opinion, the benefits derived from moving the tank farm, are substantial. That's all I have to say.

Bob Heinrich: If we're going to beat this up, I'll continue to beat it up. Going back to Mr. Dyer's response number two. Chestnut agreed to correct the water ponding issue in the alley, upon the earlier of completion of the top coat paving within Cannery Village, or, six months from the date of this letter. So Chestnut is agreeing to correct the problem. Correct?

Seth Thompson: That's how that reads.

Lynn Ekelund: That is how that reads.

Bob Heinrich: Well I guess I don't understand why we're not accepting that, to move forward, to get the tank farm taken care of. That's my problem.

Mark Quigley: I guess if this were the only thing that we had in front of us, was that Chestnut agrees, but I also hear you saying, I can't make any promises. So I'm not sure...

Bob Heinrich: But it's right here on paper. They agree. They agree.

Pret Dyer: I can't promise you... My assertion to that was I can't make a promise. You were going to seek to impose conditions on bonding. I can't stand here and say I can get a bond, because I am not of the opinion that I can get a bond, so that's a reality. I'm not going to represent that I can do something, which I really am doubtful, highly doubtful, that I can do. That was my response to the bonding, is that I can't make a promise that I can get a bond, when quite honestly I don't think that I can. And again, the issues, the larger issue, the question is, which is the larger... Which is more to the public benefit, moving the tank farm or not moving it; or addressing the... The drainage here is part of what Mr. Kerr said of a bigger spectrum of more issues; but that exists whether the tank farm gets moved or whether the tank farm doesn't get moved. That's the reality. I can't really make any more...

Bob Heinrich: I'm going to try this one more time. May I? I'd like to make a motion that the applicant be given approval to construct the underground propane tank field on the portion of space discussed here on tonight's agenda, with his agreement that the water ponding issue in the alley, upon the earlier completion of the top coat paving within Cannery Village, or six months from the date of this letter, will be corrected. I can't say it any simpler than that. I think we should be able to move forward on this for the larger... I'm sorry. That's my motion.

Seth Thompson: I want to make sure I understand the motion.

Bob Heinrich: Why do I always have a problem with this?

Seth Thompson: I just want to be clear that this is preliminary approval?

Bob Heinrich: Yes.

Seth Thompson: That's correct, that your motion is for preliminary approval, it's not approval...

Bob Heinrich: I'm sorry. Yeah. As planned for tonight. I'm sorry. I misspoke.

Seth Thompson: No problem and the other thing is are you then... Does your motion include essentially removing all of the prior conditions?

Mark Quigley: I have a question.

Bob Heinrich: Let me answer the question. This is my motion. This is my motion, that we grant preliminary approval with the applicant's agreeing to correct the water ponding issue, given the time constraints he's offered here in this letter and that's my motion. What's been written before, I don't care about. This is my motion right now.

Seth Thompson: So I think the I don't care about means, this motion would override... Your motion does not include any of the prior conditions that were attached in March.

Bob Heinrich: Yes. Yes. I think we have to move forward on it. Yes.

Seth Thompson: Okay. I just want everybody to understand what the motion is.

Lynn Ekelund: Do we have a second?

Tim Nicholson: I'll second it.

Lynn Ekelund: Any discussion?

Mark Quigley: I just want to understand the ramifications of this. So it's a preliminary approval, so we are going to be talking about this again, is that correct?

Seth Thompson: We are only... When it comes to final site plan approval...

Mark Quigley: Because God knows we just want to keep on talking about this.

Seth Thompson: When it comes to final site plan approval, if they have met their conditions at that point, then it's more of a procedural checklist items. So for instance, in March we discussed the fact that an easement would need to be presented and recorded over the property, so that Poore's could maintain the tanks. That was a condition. Now I understand the motion that's on the table, doesn't have that condition. It doesn't have any of the conditions from March. I just want to make sure the Commission understands what they're voting on. I don't have a vote. It's entirely up to the Commission. My job is to make sure you understand what you're voting on.

Linda Edelin: I'm not looking to remove any of the conditions that we sent in March. The only condition I'm looking to remove is the one for the paving, because we have more updated information in the approval of the engineer.

Mark Quigley: Right. I agree.

Seth Thompson: In terms of procedure then, you would need... Again, we

can only have one motion on the table, so you would to... There still needs to be a second on this motion, if there isn't a second.

Bob Heinrich: Apparently, there's no second.

Lynn Ekelund: Tim seconded.

Tim Nicholson: I seconded.

Seth Thompson: Then I apologize.

Lynn Ekelund: We're in discussion.

Seth Thompson: So there needs to be a vote on this motion.

Bob Heinrich: But what about our second?

Seth Thompson: It sounds like you're not in agreement with the motion, so you need to vote no.

Linda Edelin: Are you in agreement with removing the conditions we set in March?

Lynn Ekelund: No.

Tim Nicholson: No.

Linda Edelin: No. So...

Lynn Ekelund: But you voted that you were, the first time you voted.

Seth Thompson: You do need to take a formal vote on the motion that's on the table.

Tim Nicholson: It's on the table, so we need to just vote.

Lynn Ekelund: We're still mid-discussions, so this particular motion that's on the table, would in effect, remove the condition that we placed back in March.

Bob Heinrich: Yes.

Lynn Ekelund: That before we gave final site plan approval, the applicant would need to show remediation of the flooding; before the final plan...

Bob Heinrich: Final plan.

Lynn Ekelund: Before the final plan. But you're removing that and by saying I'm accepting...

Bob Heinrich: I'm sorry. I see what you're saying.

Tim Nicholson: I don't think you want to do that, Bob.

Lynn Ekelund: You do not want to do that.

Bob Heinrich: No. I'm sorry. I'm trying wrap my head around this whole thing and again, not having been at the first meeting, I'm not totally clear. I understand what the problem is. I see the applicant needs to move forward to get this tank farm moved; and I see the flooding as being the minor problem of the two, and my position is that we should figure out a way to get the applicant to move forward with the tank farm and still address the flooding issue down the road. That's my goal.

Tim Nicholson: I agree completely. You're absolutely right.

Bob Heinrich: So how do we get a motion to do that?

Seth Thompson: It sounds like you're withdrawing your current motion.

Bob Heinrich: Yes, I am. My apologies.

Tim Nicholson: Well I have a question. Does the applicant have relief for us

in this specific situation? On these particular sticking points, that we're talking about?

Pret Dyer: The answer that I've proposed is, that we are working on not just this flooding issue, but the overall conditions that Mr. Kerr referred to, to be able to remedy the drainage problems, the paving and the curbing issues. We're working on that as not just an isolated drainage issue here, but in unison, together; and we are making progress in doing that, but I'm not able to make an assertion on the issue of the individual, other than what we have stated here. The time frame, I was asked to give a time frame, six months and hopefully, hopefully the tank farm moves forward. We have this drainage issue, will move up in terms of priority of remediation of the other issues that we are dealing with and...

Tim Nicholson: Is there bond on the other...

Pret Dyer: No.

Tim Nicholson: No bonds connected with the other issues either?

Pret Dyer: That's correct, no.

Mark Quigley: So you're saying that if we were to pass this, the tank farm would be moved in whatever time...

Pret Dyer: I think very quickly from once approval were given.

Mark Quigley: Okay and then the ponding would be fixed in no more than six months.

Pret Dyer: That's correct. I mean, the affect of this is it moves that particular issue that Mr. Kerr was referring to, to the top of our list.

Mark Quigley: It moves it up.

Lynn Ekelund: And what is the town's recourse if the tank farm is moved and six months from the date of this letter, the flooding issue has not been remediated.

Pret Dyer: There's no difference. The only question is, which is to the Town's benefit more; to have the tank farm moved and us continue to proceed and to pursue fixing this drainage, as well as the other issues, or not. And again, I'm not trying to be illusory. I'm trying to be transparent here and tell you that we are working on not just this issue, but the other issues as well; otherwise moving the tank farm is going to be subsequent to when this issue were to be remedied and that's, again, as transparent as I can be.

Tim Nicholson: What is the health of the development in business going on over there at this time?

Pret Dyer: It's picked up. It has picked up recently. There have been new starts. There's no question that from our perspective fixing the roads, the appearance of Cannery Village is in my opinion, very good. The condition of the roads is very bad. So improving the roads, does nothing but help us continue to sell the rest of the project. So I don't think I've ever stood up in front of the Cannery Village meeting and said you have no basis whatsoever to criticize the roads. I've agreed. The reality is that we have done everything in our power to pay, which we did, for the clubhouse; which was a very

expensive facility, because we were obligated to do that. I was advised by Council, to not even build the thing. If we didn't build that, we could have had the best roads in Milton. But we tried to do the right thing and going back to the bank, we had NV, we had Ryan pull out, we had to get another builder in there, so you know we haven't just said, hey, I have two sons who live in California. I could move to California and die of skin cancer from surfing the rest of my life. That was the other option. Otherwise I'm sitting here... I'm not trying to mislead the Commission. I'm trying to be transparent. The reality is we had the option to throw our hands up and walk away. I was raised in Sussex County. I intend to stay in Sussex County and that's why we're trying to make the situation improve and I believe that moving the tank farm... the condition of the drainage is the condition of the drainage. Moving the tank farm is whether we want to tie the two together, or not, the condition of the tank farm, is, in my mind, a wholly separate issue. Does it go across the area where there's poor drainage? 100% agreed. But whether or not the tank farm moves or not, has to be the dominant issue. From the Commission's point-of-view what it does do, is it focuses more attention on the remedial action for this drainage, because we have made an application for moving the tank farm and this issue has come up and it has shed a brighter light on that; so from that perspective, I think it's beneficial to this particular drainage issue. But, does it fix it with bond and guarantees? No, it doesn't. So I mean, that's the... I wish I were more eloquent and could be able to tell you otherwise, but...

Mark Quigley: That's helpful and I know there are all these developments that they promise a clubhouse and a swimming pool and that's the first thing they yank when the money gets tough.

Pret Dyer: And looking back on it, would we have been better off not building the clubhouse; the indoor pool; the outdoor pool; and a huge facility? Would we be better off? You wouldn't be asking me whether or not the roads were improved, because the roads would be done, because guess what, the roads sell lots. So, would we be better off if we had taken the money there? We could have done that and some, a lot. That facility costs a lot more than finishing the roads. Trying to do the right thing, has put us in a position of hurting, not only the residents, but also ourselves in terms of lot sales. Was that smart? I don't know. My father would probably question that. He didn't raise a very smart son. That's always subject to debate.

Lynn Ekelund: Do we have a motion on the table? Are we going to make a motion? Anything down here? Do I have a motion to adjourn?

Barry Goodinson: One other question, when did they have the propane issue; they were saying earlier about the propane issue and there was something in the winter?

Pret Dyer: There's been two stages if my memory's correct. One was there was some component that needed to be added; it was added and I don't know the name of that thing; it was some kind of thing; that needed to be added to

the tank farm and the result of that not being there is there was a loss of service for some time and I don't remember how long or whatever that was. Then there's the issue of the size of the facility, temporary being more homes needed to add more tanks to that, so I think it's actually a two-stage; one was that issue of whatever that component that needed to be added was, which I understand was added and the other was, the size of the temporary area became cramped, as a result of the number of homes for which it was responsible to serve; so I think it was a two-stage issue.

Barry Goodinson: I think people want to have a motion. I think we're all afraid to make a motion, because we're not sure how to construct it; I'm a little apprehensive.

Seth Thompson: There could be a piecemeal approach. For instance, obviously we've been focusing a lot on the water remediation. I don't want to put words in people's mouths, or votes in their mouths, but at least in terms of the road, it sounds like that hasn't got much discussion.

Barry Goodinson: No, I think we're all okay with the roads.

Seth Thompson: So there could be a motion to remove the prior condition, with regard to the road and instead, implement what the developer has agreed to do tonight and essentially follow the sub-division plan. Again, you could do this piecemeal and maybe that will make it clearer for everybody.

Barry Goodinson: I've been the one that's been kicking and screaming about the ponding and I guess I want to see these things moved. The consolation prize of having the ponding moved up in priority; it's not correcting it right away, but I appreciate that it's getting moved up. So I'm not sure how to construct the motion though. I want to leave things intact, in terms of the other part of the project.

Seth Thompson: So it sounds to me like your motion would be along the lines of what Mr. Heinrich moved previously in that the prior conditions would remain in effect, with the exception being the condition of the paving be replaced with what was discussed tonight and the condition of the water remediation being replaced with what the applicant has put forward, in terms of his proposal.

Barry Goodinson: Right.

Bob Heinrich: Is that the motion?

Seth Thompson: I can't make the motion, but you can certainly...

Barry Goodinson: What he said.

Lynn Ekelund: Is there a second to what he said?

Tim Nicholson: Second.

Lynn Ekelund: Discussion? I have a question. How does that, what he said motion, differ from Mr. Heinrich's motion of an hour ago?

Bob Heinrich: Because I...

Barry Goodinson: I don't think it does.

Lynn Ekelund: That we voted on. Are we just doing like an hour later, let's have a re-vote of the same motion?

Seth Thompson: That's what it sounds like to me. Obviously, there's a different moving party, but I think that's a fair assessment.

Lynn Ekelund: I listened, Barry, to what you were saying about how the remediation has now been moved up and I'm just asking, is that based on a representation that Mr. Dyer has made to you this evening?

Barry Goodinson: Yes.

Lynn Ekelund: That it's going to be just moved up? So it's the same thing... His representation is that it's going to be moved, but there's no time frame and we have no recourse to determine whether that is or is not really going to happen; but you feel confident.

Barry Goodinson: I don't feel confident.

Seth Thompson: Just for clarification, there is a time frame...

Barry Goodinson: There is the six months.

Seth Thompson: That's right.

Lynn Ekelund: But there's no recourse for the Town should he not perform.

Barry Goodinson: That's what he said.

Pret Dyer: Aside from the several million dollars of equity I've already invested in the Town of Milton.

Lynn Ekelund: But, as you say, that remains.

Pret Dyer: Pardon me.

Lynn Ekelund: That would happen whether the tank farm is or is not moved; you've still invested that money.

Pret Dyer: But in terms of skin in the game, I think if you checked the revenue for the town, I think we have substantiated that we have significant skin in the game and I believe that that accounts for something; and the fact that we haven't left. I would just present that as some consideration.

Lynn Ekelund: Any further discussion? Okay. Roll call:

Mark Quigley	Approved
Barry Goodinson	Approved
Bob Heinrich	I'll abstain, since I wasn't here for the first meeting
Linda Edelen	Approve
Tim Nicholson	Approve
Lynn Ekelund	No

Lynn Ekelund: Motion carried.

Pret Dyer: Thank you.

8. Adjournment

Lynn Ekelund: Do I have a motion to adjourn?

Tim Nicholson: Motion to adjourn.

Mark Quigley: Second.

Lynn Ekelund: All in favor say aye. Opposed. Motion carried. Meeting is

adjourned at 8:58 p.m.