

Town of Nolensville  
Board of Mayor and Aldermen Meeting  
Date: November 6, 2008, Time 7:00 p.m.  
Nolensville Elementary School

Mayor Beth Lothers opened the meeting at 7:03 p.m. Members present were Aldermen Jimmy Alexander, Joe Curtsinger, Tommy Dugger, and Ken Thomas. Staff present: Counsel Robert Notestine, Town Planner Henry Laird, Town Engineer Don Swartz, and Recorder Cindy Lancaster. There were 30 citizens present.

Pastor Larry Guin of Cumberland Jenkins Presbyterian Church led the Prayer and Pledge.

Citizens Input:

Mayor Lothers congratulated Alderman Jimmy Alexander and Alderman-elect Larry Felts for their recent win in the Nolensville election. She commended Bryan Snyder and Jason Lukawitz for their hard work in running for the Aldermen positions.

Mrs. Lynda Moses, 2230 Rocky Fork Road, stated that adults would believe that experience is the best teacher in life. She said that in regards to the Rocky Fork Road realignment, some people do not understand why the barricades cannot be removed and citizens must use a curvy road. She added that she did not know the solution, although, it seems like it would be cheaper just to make it go straight through. Mrs. Moses stated that at the last Planning Commission meeting there was discussion in regards to gravel driveways and flag lots. She noted that her family has four houses on 36 acres and it is not possible for them to pave their drive. She stated that when she gives land to her grandchildren they will not be able to afford to pave this road. Mrs. Moses said that forcing them to pave this drive when they do not mind a gravel road would not be right. She stated that if the drive is paved she feels there will be more people trespassing and using this as a road. Mrs. Moses stated that citizens in the UGB will be affected and asked that this ordinance not be passed. She added that it doesn't make an unattractive Town when the homes will not be seen from the road.

Mr. Charles Lawson, 2531 York Road, stated that about six months ago there was discussion in regards to the McCord property and a concern on paving the parking lot. He added that there was further discussion on flooding. Mr. Lawson stated that with the new ordinance it is requiring paved driveways in the Estate Residential zoning. He stated that his daughter was considering building on his property. If she builds they would be required to pave a driveway over 300' and it would cost a substantial amount of money to pave this driveway.

Mayor Lothers stated that the October 2, 2008 minutes were the next agenda item. She stated that she is recusing herself from this vote due to not being in attendance at that meeting. Alderman Dugger made a motion to approve these minutes, Alderman Alexander seconded and the minutes were approved by majority with Aldermen Alexander, Dugger and Thomas voting for approval, Mayor Lothers recuse and Alderman Curtsinger did not vote.

Mayor Lothers made a motion to approve the treasurer's report for September 2008, Alderman Dugger seconded the motion. The report was approved unanimously.

## COMMITTEE REPORTS:

Chair Rick Owens reported for the Planning Commission.

- Childers property was approved unanimously
- Proposed amendment to the Zoning Ordinance in regards to childcare was deferred
- Proposed amendment in retail uses in the OI zoning was passed
- Proposed amendment to eliminate gravel driveways in subdivisions was approved
- Proposed amendment to not allow flag lots was approved
- Bent Creek subdivision requested a maintenance bond be removed and a reduction on a bond in regards to Phase V
- Monthly bond report was approved with some extensions granted

Mayor Lothers stated that the Planning Commission will be meeting at 6:00 with the Trails and Trees Committee conducting a workshop at 7:00 p.m. in conjunction with State Greenways/Trails Coordinator. She stated that the workshop will be open to the public, but that representatives will be invited to participate from various committees and organizations.

Mr. Bob Crigger reported for the Historic Commission, noting that there was no report due to no meeting being held.

Fire Chief Presley Hughes reported for the Nolensville Volunteer Fire Department.

- Extrication class has ended
- First responder class will end on the 18<sup>th</sup>
- Fire Prevention was last month with 700 children being presented with a program
- Insurance Service Organization will perform inspections in 2009

Mayor Lothers thanked Fire Fighter Kevin Rosenberry who provided some contact information about a grant. She stated that the Town intends to apply for this grant which is due summer of 2009. Mayor Lothers noted that this is a grant to help communities like Nolensville move toward full-time fire department positions and the Town would work with the Volunteer Fire Department.

Mr. Henry Laird, Town Planner, noted that there was not a report for the Planning Department.

Mr. Don Swartz, Town Engineer, reported for the Engineering Department.

- Noted there was not a formal written report
- Nolensville Road/Rocky Fork Road engineering plans are being completed and have been presented to the State
- Anticipated to begin request for signalization bids the first week in January
- Twelve Engineering firms have presented proposals for the Safe Route to School Grant

Mayor Lothers stated that a representative from the State had attended the “walk to school” program hosted by the Nolensville Elementary School. She noted that the representative viewed

issues that were addressed in the grant. Mayor Lothers added that the Town can apply for an additional \$250,000 and the representative has agreed to walk the Town through the process.

Police Chief Paul Rigsby reported for the Police Department.

- Written statistics were distributed to the Board
- Noted he is at the half-way point in school with completion being December 19
- New car is in service
- Two Officers have completed training in Rifles with the others scheduled to attend
- One Officer is obtaining training in Mississippi this week
- Community informational meeting will be held in Brentwood next week to discuss the Crime Stoppers program
- Noted that it was a quiet Halloween with every Officer being on duty
- Public education was performed in conjunction with the Volunteer Fire Department at Daycares and Kindergartens in Nolensville
- Governors Highway Safety grant was submitted for \$5,000, in the past this money has been used to purchase car videos

Mr. Bob Hayes reported for the Public Works Department

- Mowing season is ending
- Noted that this Department is within its budget
- This Department will be focusing on trash pick up
- Working with the Town Events Committee preparing for the Veteran's Day celebration

Suzie Lindsey reported for the Town Events Committee

- Commended Public Works Department for their hard work
- 118 Veterans have been identified for Nolensville
- Breakfast is being planned for Saturday
- Parade will begin at 11:00
- Young Marines will lead the parade
- Ravenwood High School band in addition to many more are scheduled to participate

Alderman Thomas noted that anyone that would like to volunteer to please notify Suzie Lindsey.

Mayor's Report:

a. Historic Zoning Commission Appointment

Mayor Lothers noted that Chair Wanda Barker of the Historic Zoning Commission contacted her in regards to adding Betty Friedlander to the Commission. Mayor Lothers made a motion that Ms. Betty Friedlander be appointed to this Commission, Alderman Thomas seconded, and this nomination was approved unanimously.

b. other

Mayor Lothers noted that there will be an Appreciation Luncheon for Board, Commission, and Committee members that work hard for the Town. She stated that it is anticipated there will be over 100 people in attendance.

Mayor Lothers advised the Board that a trails grant has been applied by the Town of Nolensville. She noted that this grant has been submitted for approximately the past five years. Mayor Lothers thanked Joyce Powers and the other Trees and Trails Committee members for their hard work. Additionally, she thanked everyone who submitted letters of support for this grant.

Mayor Lothers stated that the January Board meeting is scheduled for January 1<sup>st</sup>. She asked if the Board would like to change this to the following week, January 8<sup>th</sup> due to the Holiday. The Board agreed to meet on the 8<sup>th</sup> versus the 1<sup>st</sup> due to the Holiday conflict.

Mayor Lothers noted that the liquor by the drink referendum was passed at the election. Town Attorney Bob Notestine went over this briefly noting that several items were going to be reviewed.

Mayor Lothers thanked Vice Mayor Tommy Dugger for placing 2<sup>nd</sup> in the Pig race at the County Fair. Mayor Lothers showed the crowd a picture of this event.

Public hearing on Ordinance #08-11, an ordinance to amend Zoning Ordinance #04-09, pertaining to the floodplain within the Town of Nolensville opened at 7:41 p.m. There was no public comment and the hearing closed at 7:41 p.m.

Second Reading of Ordinance #08-09, an ordinance to amend Zoning Ordinance #04-09, pertaining to the sign regulations in Appendix A. Planner Laird distributed a written amendment. Alderman Dugger clarified that this ordinance is a safety and clutter issue.

Counsel Notestine asked if “the Codes Director” was normally used to enforce this ordinance. Counsel noted that in other ordinances it states the Mayor or his/her designee. Alderman Dugger made a motion to approve this ordinance with the Planners amendment, in addition to having the ordinance reflect, “the mayor or his/her designee”; this was seconded by Alderman Alexander.

With the amendments this ordinance was approved unanimously by the Board.

First reading of ordinance #08-12, an ordinance to amend Zoning Ordinance #04-09, pertaining to permitting uses in the Office Industrial (OI) District of zoning ordinances as it pertains to general retail, restaurants, and landscaping/nursery businesses. Town Planner Laird went over this ordinance for the Board. Alderman Alexander asked Planner Laird if this ordinance came about due to a review of property that is coming into the Haley Industrial Park. Planner Laird noted that was correct.

Alderman Thomas asked if there was any discussion at the Planning Commission with the design of a restaurant. Mr. Laird stated that was not really discussed. He noted that if they are on a major arterial they would have to meet certain criteria.

Alderman Curtsinger asked if sidewalks were removed from OI District. He stated that he believed sidewalks were removed or placed only on one side about two years ago. Alderman Curtsinger asked if this should be reviewed since retail will be placed in this zoning. He added that if there are businesses in that zoning with retail, there will be walkers. Planner Laird noted this was addressed in the Subdivision Regulations. Alderman Alexander noted that when the Planning Commission reviewed the plan it was an industrial building with one section that wanted to have a retail section. He stated that it was not the intent to have a number of retail establishments within this zoning.

Alderman Curtsinger stated that if there is a flower shop or something else of that nature there may need to be some connectivity. Planner Laird stated that he thought the OI has been looked at differently than the main corridor. He stated that he felt there would not be many retail establishments in that zoning. Alderman Dugger stated that staff may want to review this issue. He added that he did not perceive a large retail going into OI zoning, but maybe a small paint store or a small sandwich shop.

Alderman Thomas stated that what kept catching his eye was that a restaurant would probably not want to be in the back of OI zone due to the lack of visibility. He said that it would be a cheaper way for a small sandwich shop to get started.

Alderman Alexander noted that if the Board's concern was with restaurants, he thought that there could be ordinances that limit a restaurant to a 500 or 250 square feet minimum.

Mayor Lothers asked if Alderman Curtsinger would like to sponsor something to go before the Planning Commission regarding sidewalks in the Office/Industrial area. Alderman Curtsinger stated the he felt it should be reviewed if retail was going to be allowed. Mr. Laird stated that the Planning Commission could review this issue, although he did not think it contradicts the intent of OI zoning. Alderman Curtsinger stated that there may be some other aspects that the Planning Commission did not consider.

Alderman Thomas stated that if a restaurant was looking for an economical place to initiate a business this would be an ideal location. Alderman Thomas stated that he did not feel this would fit in this zoning or was what the Board wanted the future of the town to look like. He added that, would it ever happen, he did not know, but it could happen if the Board leaves it written like it is.

Mayor Lothers stated that she felt that restaurants would want higher visibility. She added that it is so expensive for a "mom and pop" to get started, although a lot of requirements for commercial kitchens are dictated by the State.

Alderman Curtsinger stated that anything that pays sales tax is better than a warehouse that does not pay anything. Alderman Thomas noted that was a good point and if the building site is reviewed, he thought it could be better and it could work.

Alderman Dugger made a motion to approve this ordinance, Alderman Alexander seconded, and this was approved unanimously.

First reading of ordinance #08-13, an ordinance to amend Zoning Ordinance #04-09, pertaining to the issue of allowing gravel surface private roads. Planner Laird noted there is three different parts to this ordinance. Mr. Laird went over this ordinance noting the specifics. He stated that the Planning Commission recommended this ordinance.

Mayor Lothers asked Town Engineer Don Swartz if there was a middle ground to not require the entire drive to be paved. She inquired about a possible asphalt apron. Mr. Swartz stated that it could be reviewed.

Alderman Curtsinger asked if there was a “farm house cluster” addressed in the Subdivision Regulations. Alderman Curtsinger stated that he thought it was for ten homes. Alderman Curtsinger stated that the intent of the farm house cluster was to skirt some of these costs.

Mr. Larry Gardner from the audience stated that was why there is a 50’ easement instead of the 22’, this was due to if the Town ever took over the road there would be a base. He added that the situation Lynda Moses brought up earlier was discussed extensively during that time.

Mayor Lothers asked for staff’s opinion on this issue. Mr. Laird stated that since Alderman Curtsinger has brought up the “farm house cluster”, this section could be reviewed to see exactly what it states.

Mayor Lothers made a motion to defer this ordinance until next month, Alderman Thomas seconded, and this was unanimously approved.

Alderman Curtsinger stated that he was not in favor for paving this due to it putting an undue burden on people wanting to build homes for their family. Alderman Alexander stated that he had never seen a private road that does not meet the Town’s standards.

Engineer Swartz stated that he did not believe the Town had a standard for a gravel road. Mr. Laird stated that he felt it would be best for staff to review this. He noted there is a farm house cluster in ER zoning that is different.

First reading of ordinance #08-14, an ordinance to amend Zoning Ordinance #04-09, pertaining to the common driveways permitting flag-type lots. Planner Laird went over this ordinance explaining the content and the definition of a flag lot to the Board. Alderman Alexander stated that in order to avoid confusion, this ordinance should be reviewed in two sections. He stated that he has discussed this with Town Planner Henry Laird and Town Engineer Don Swartz and it could go either way. He added that the last sentence adds to confusion in regards to flag lots.

Alderman Alexander made a motion to delete the last sentence “the minimum frontage shall be twenty-five (25) feet”, Mayor Lothers seconded the amendment. The vote was taken on the amendment and this was unanimously approved.

Town Planner Laird went over Section 2 in regards to common driveways extensively. Alderman Alexander stated that the Board needs to decide if Nolensville wants this type of development or not, in addition to what problems could be with it. Mayor Lothers said she had abstained at Planning Commission on this and has since talked to several people getting a couple different responses. She noted that one said they would like to build for a relative on their land

and then another person said they did not want to look at homes so close and that is why they bought a larger piece of property. Alderman Alexander stated that sums up the two sides of the issue.

Alderman Dugger said that he thought this was a loop hole that needs to be cleaned up within our documentation. Alderman Alexander stated that the question is do we really want this type of development. Planner Laird added that there would not be any screening. Alderman Dugger stated that if he lived on that property he would not want to look at the back of homes. Counsel Notestine stated that some cities have done away with flag lots period, and this is partly due to safety issues.

Alderman Thomas stated that he would think if someone bought a larger piece of property it would be due to privacy, although he could definitely see both sides of the issue. Mayor Lothers asked if there was a way to handle this through the permitting process, such as notifying the adjoining property owners. Mr. Laird stated that the farm house cluster is there for families who have ten acres or more and not pave the road.

Mayor Lothers asked for Chief Hughes opinion in regards to emergency vehicles. Chief Hughes stated that he's driven the type of road they are discussing and it is ten feet wide. He stated that an emergency vehicle is nine feet and there may be multiple vehicles. Chief Hughes stated that it would be difficult to get emergency vehicles back there.

Alderman Dugger made a motion to approve this ordinance, Alderman Thomas seconded. The vote was taken and approved by majority with Mayor Lothers, Aldermen Alexander, Dugger, and Thomas for, Alderman Curtsinger against. Alderman Curtsinger stated that he doesn't know enough about it to vote for it yet.

First reading of Ordinance #08-15, an ordinance to amend Title 2, Chapter 1 of the Municipal Code pertaining to Historic Commission. Alderman Dugger noted that there is a typographical error and this ordinance should read Ordinance #08-15. Mayor Lothers made a motion to approve this ordinance, Alderman Thomas seconded, and this was approved unanimously.

Reading of Resolution #08-14, a resolution to amend the personnel policy in regards to disability/workers compensation. Mayor Lothers noted this was recommended by TML. Mayor Lothers made a motion to approve this ordinance with an amendment that Section 2 becomes Section 1, Alderman Thomas seconded, and this resolution passed unanimously.

Reading of Resolution #08-15, a resolution to amend the personnel policy in regards to sexual harassment. Alderman Thomas made a motion to approve this resolution, Alderman Alexander seconded. Alderman Dugger said that he has seen a lot of harassment policies and his concern is the "shall" language for a sexual harassment clause. There was extensive discussion on this issue with concern to the language. Alderman Thomas withdrew his motion, Alderman Alexander withdrew his second. Mayor Lothers made a motion to defer until next month so that the language can be clarified. Alderman Thomas seconded and this was unanimously approved.

Reading of Resolution #08-16, a resolution to release CK Development Performance Bond on Clovercroft Road. Mayor Lothers noted that a Representative from CK Development was in attendance for any questions. She noted that this bond was held due to some drainage easement

issues. Mayor Lothers asked if this had been resolved. Planner Laird stated that this was in litigation and it had been resolved. Mr. Laird went over this resolution noting the various issues that surround this bond. He noted that this bond expires December 1, 2008. He noted that it is a short time line and action is needed. Mr. Laird stated that this Performance Bond has been reduced to \$69,000.00. The only other issue linked is the new Clovercroft Road extending to Nolensville Road brings the need for a traffic signal. It is not addressed in this bond, but the Developers have agreed all along that they would provide for a traffic signal. Mr. Laird stated that it is in the Planning Commission, Board of Mayor and Aldermen, and various workshop minutes their commitment. He noted there are various traffic studies, including Fischbach's and RPM studies that show a signal. During the three year period of this bond the Town of Nolensville adopted an Impact Fee. The Bent Creek Development has paid Road Impact Fees on 34 homes which comes up to \$99,008.00. Mr. Laird stated that therefore this Development has contributed to that fund. The traffic signal is a part of the Road Impact Fee Plan. Mr. Laird said that the thing to do would be for the Developer to pay the difference of the cost of the traffic signal and the collections for the Road Impact Fee which is roughly \$34,992. Planner Laird stated that he thought the Developer has a different viewpoint.

Mr. Eric McNeely, representative of CK Development, stated that they disagree with staff and staff has their facts wrong. He stated that the facts as being a condition of Bent Creek approval they were asked to acquire right of way from a city official. Mr. McNeely stated that they proceeded with roadway construction plans and sought Planning Commission approval. He stated that the road was then built out of their funds.

Mayor Lothers stated that for clarification the statement that Mr. McNeely made that the developer was required to purchase land from a city official. She stated that it was a property owner and Mr. McNeely had characterized him as a city official. Mr. McNeely apologized and stated a property owner. Mr. McNeely stated that at the time of the road completion, bond improvements were established. He stated that no where in the submittal of the construction documents and no where in the bond approval signalization at that intersection was mentioned. He stated that for the past two years this bond has been held up for a pre-existing condition. Mr. McNeely added that within that time Stantec Engineering has rectified the problem with the property owner. He stated that his company feels that they will assist the Town, but they strongly oppose a condition set tonight that on releasing the bond that they post either a check or a bond to make up the balance. Mr. McNeely stated that they asked for a set of construction plans and a competitive bid to get the most competitive price for the signal and to be involved in that process, if they are going to funding the signal.

Mayor Lothers stated that a point of clarification would be to state that the engineering plans were going to go into the bid process for that project. She stated that the Board has approved the Design Engineer for signalization. Basically we are now talking about funding. She stated that in all fairness she has had people approach her right after she was elected saying that they recalled Bent Creek, Cates and Kottas, agreeing to donate toward that project. Mayor Lothers read documents that Planner Laird had researched that she shared with the Board. She stated that they had a meeting with Mr. Cates and he was very agreeable at the time. Mayor Lothers stated that she was trying to discern if Mr. McNeely was more concerned about the cooperation of being connected to this bond release or if they are having second thoughts in terms of that discussion. She stated that if the Board does entertain the releasing of that bond, what form of guarantee does the Town have that that discussion would be honored. Mayor Lothers noted that

she had two pages of notes from the meeting with Mr. Cates that was attended by the Town Planner and Town Engineer. She stated that the Town Planner had researched this issue and retrieved documents that pertained to the signalization. Mayor Lothers read from the various documents stating, “conditions of the approval of the Bent Creek PUD, the Bent Creek PUD workshop on February 19, 2004 at Nolensville Town Hall, a mutual agreement between CK Development with the Town of Nolensville item #8 to install signal prior to build out, they indicated that the signal on Nolensville Road is still subject to TDOT approval, Steve Cates will put a signal in when the Town wants it”, she stated that she could go on and on. She stated that she had Planning Commission meeting minutes from January 15, 2004, “Bob Murphy with RPM Transportation Consultants presented the traffic impact studies performed for the proposed project. The developer would be willing to install the proposed traffic signal at Nolensville Road and Clovercroft Road whenever the Town desires.” Mayor Lothers stated that from the Fischbach traffic study it shows a traffic signal at that intersection.

Mr. McNeely stated that his company is asking that this be made a separate issue and to be released from the bond without discussion of the signalization. Alderman Curtsinger asked what the terms of the agreement were with Mr. Wilson. Mr. McNeely stated that it was his understanding that Stantec settled with the property owner on a drainage issue. Counsel Notestine stated that the town was not a party to that dispute and it may be confidential between the property owner and Stantec. Alderman Curtsinger stated that the road flooded and nothing has changed since August of 2007. He added that the Cemetery Board had some agreements that he is unsure if they have been completed. Alderman Curtsinger stated that the fact is that the road still floods. He added that he had pictures showing 18” of water over the road.

Engineer Swartz stated that the problem is at the intersection and part of the drainage ditch and drainage structure was outside of the right of way. He stated that there have been changes with piping under Nolensville road and will be additional work done as part of the Nolensville-Clovercroft Road realignment. Mr. Swartz stated that the drainage features were outside the right of way. Alderman Curtsinger asked that if tomorrow the Town gets 5 inches of rain will it not flood. He stated that the road still floods and until that is completely settled, the Town should not release this bond.

Counsel Notestine stated that normally a road goes from Performance to Maintenance and this bond has been a Performance Bond for three years. Mr. McNeely stated that he thought the majority of the roads in Nolensville would flood. Alderman Curtsinger stated that the majority of the roads within Nolensville have not been recently built. Mr. McNeely stated that they built the road per the approved plans and design standards within the regulations.

Alderman Alexander asked why it was not reduced to a Maintenance Bond. Counsel Notestine stated that Nolensville took the stance that the problems were not resolved and until they were resolved it would not be reduced.

Alderman Curtsinger stated that until everything is in place and that road does not flood this bond should not be released. Counsel Notestine stated that he reviewed the documentation that the Mayor discussed earlier and he agreed that there was a promise in a workshop and they had agreed to participate in the light. He said that he agreed that the traffic light was not a part of the bond, although if Mr. McNeely is willing to say on behalf of CK Development they are willing to do what they have promised in the past, then the Board may consider his offer.

Alderman Alexander stated that the road has been built to the Town's standards. Mr. Swartz agreed that the road was built to the approved plan. Mr. McNeely stated that if Nolensville has a major storm event, if it is designed to the standards he did not see how that was an issue. Mr. McNeely stated that Frank Wilson and CK Development did some land swap, in addition with the Cemetery. He stated that CK Development has fulfilled the obligations of paving at the cemetery.

Alderman Curtsinger asked the Town Engineer if the Town regulations state anywhere that a road cannot flood. Mr. Swartz stated it establishes a storm event, and it is a ten year event. Mr. Swartz stated that if it is a 100 year event Nolensville is going to be under water. Alderman Curtsinger asked if Nolensville had a 100 year event a couple of years ago. Engineer Swartz stated that it could have very well been one.

Mr. Swartz noted that on the intersection, the Town is performing some improvements to address drainage issues. Alderman Curtsinger stated that water has come up over that road more than once. He added that he felt the Town has not had multiple ten year floods numerous times over the past.

Alderman Alexander asked Mr. Swartz for clarification on his statement that Town would be performing work on drainage issues. Mr. Swartz stated that CK Development has done their part and built the road to Nolensville's standards. He stated that the question is does the Town want to tie this to the signalization. Alderman Alexander asked Mr. McNeely if the Town did not get the assurances now for the signal, when could it get the assurances that they would assist with the signal.

Mr. McNeely stated that CK Development has met with the Mayor and has stated that they will work with the Town. He stated that Nolensville has asked CK to secure a portion of the cost and they would like to get their hands into it and be a part of the bid process.

Alderman Thomas stated that CK has agreed to work with the Town. He asked what that meant when they said they would work with the Town. Mr. McNeely stated that CK does not want to get this tied to signalization. He stated that his company wants to separate the issues. Alderman Alexander asked if Mr. McNeely could see it from Nolensville's point of view. He asked Mr. McNeely what assurances did the Town have that they would participate in the signalization. Mr. McNeely stated the he could not have any contingencies and they wanted to be more involved in the signalization project. Mayor Lothers stated that the Town was asked by Mr. Cates to come up with an amount. She stated that the Town has come up with \$34,000 and she feels this is quite fair. She noted that the Town has a relationship with every builder and developer and it is the Town's job to protect the public good. Mayor Lothers stated that she was in agreement with Alderman Alexander that the Town does not have anything to "hang our hat on".

Mr. McNeely stated that he did not want to get into a big discussion on this. Alderman Dugger stated that he was already in discussion. Mr. McNeely stated that he was not comfortable right now with what the Board is requesting. He added that he thought the Town should be very careful right now in this deliberation.

Alderman Curtsinger made a motion to convene to an executive session for an attorney-client discussion, Alderman Thomas seconded, and the board adjourned at 9:16 p.m.

The meeting was reconvened at 9:34 p.m.

Mayor Lothers noted that the Board had legal questions for the attorney. Alderman Alexander asked if Mr. McNeely was willing to stand there on behalf of the developer/company to make a firm commitment by December 1<sup>st</sup>, if the Town will provide all of the documents to make up the difference of the signal.

Mr. McNeely stated that he cannot make a commitment about the signalization. He stated that the signalization is not attached to this bond. Alderman Alexander stated that the Town does not have a firm commitment from you to take care of the signalization. Alderman Dugger asked what if the Board took a month to review the minutes and the previous commitments this Developer has made.

Mayor Lothers stated that she views this as part of the road performance. She stated that the signalization benefits CK Development's residents. Mr. McNeely stated that he appreciated Beth's opinion, although with Tommy's statement, if it is deferred until next month, December 1<sup>st</sup>, will have passed. He stated that by deferring they would go into default on the Letter of Credit. Alderman Dugger stated that he understood but there is not a commitment. Mr. McNeely added that Steve sent the Mayor and Henry an email late this afternoon and he stated where he stood on this issue. He stated that this is to release CK from the roadway project and this is a separate issue. Alderman Alexander stated that this Board is trying to help Mr. McNeely. He stated that he could call who ever he needed to and the Board would wait. Mr. McNeely stated that he did not need to call anyone that he stood that this is a separate issue and CK Development is asking that the BOMA release a bond on this issue. Alderman Dugger stated that there are minutes stating that CK Development will provide a traffic light when it is ready.

Counsel Notestine stated that maybe the Town needs to research this some more, but they would have to continue the bond. Alderman Dugger noted that sometimes that is just a part of doing business.

Alderman Curtsinger asked if the road project was completed. He stated that this is a complete package and it can't be done 85% of the way. Mr. McNeely said that he has stated the facts. Alderman Curtsinger asked what was approved. Mr. McNeely stated that a road that ran through Frank Wilson's property that was what was approved. Alderman Curtsinger stated that the Town did not specify where the road must go, it required a road.

Alderman Thomas stated there are too many questions. He stated that he knows that Mr. McNeely has stated that the performance is meeting everything that you say, although it is not in completion as an overall project.

Mr. McNeely stated that he feels this issue is about the signalization and making a commitment. He stated that the public has been using this road for over three years and the Board is asking the Developer to maintain it and keep liability.

Alderman Dugger noted that Mr. McNeely had said that his company had been sitting on this bond for three years. He noted that was not the Town's responsibility this was in litigation.

Mayor Lothers stated that this Board is in a position with the lowest property tax rate in the county and is trying to perform a lot of work. She stated that she felt that everyone involved can see this as a team and it doesn't need to be adversarial. Mayor Lothers stated that we all want to move forward and at the end of the day that is what we all want. Mr. McNeely stated that he strongly suggests to this Board that the signalization is not a part of this issue. Alderman Dugger stated that he felt it is a point of view.

Alderman Alexander asked Mr. McNeely if he was in a position to give the Town anything. Mr. McNeely stated that he was not and he did not think it was necessary to defer this. He stated that CK Development had sit down with the Mayor and Town staff to discuss this issue. Mayor Lothers stated that she did not see any commitment from CK Development to assist the Town in the future. She stated that Mr. Cates conversation was "let's do the right thing". She added that she did not see any other way but to defer this.

Alderman Curtsinger stated that there were too many issues. Alderman Curtsinger made a motion to continue the Performance Bond, Alderman Thomas seconded. Alderman Dugger asked if the Board continued it, would this have to go before the Planning Commission. He additionally asked if the Board defers can a Special Meeting be called. Counsel stated that if it is continued it will not have to go before the Planning Commission.

Mr. McNeely asked if they could come before this board due to having renew a letter of credit. Counsel Notestine stated that if the vote tonight is to continue at this level, then they have to go back before the Planning Commission. He stated that if it is deferred they will have to renew the bond. He stated that the real key is the date of December 1<sup>st</sup>.

Alderman Curtsinger got clarification on deferring it for one month. Counsel Notestine stated that a special meeting can be called by the Mayor.

Alderman Curtsinger withdrew his motion, Alderman Thomas withdrew his second. Alderman Curtsinger made a motion to defer until a Special Meeting on Thursday, November 20, at 2:30 p.m. in Town Hall, Alderman Dugger second and this was unanimously approved.

Resolution #08-17, a resolution to release C.K. Development Maintenance Bond for Road and Public Improvements.

Planner Laird noted that the repairs have been made for the release of this bond. He stated that there are some drainage issues with some drainage easements that were not on the plat. Mr. Swartz noted that he had a meeting tonight with Stantec and the property owners that are affected by the easements. He stated that Stantec has been working on obtaining these easements. He noted that the decision was made with the homeowners that Stantec and the Town would walk the property with the homeowners to discuss what can be anticipated. Mr. Swartz stated that currently Stantec has obtained about five easements out of 25.

Alderman Curtsinger asked if there was a time frame of when this will be completed. Mr. Swartz stated that he would be surprised if all the easements are obtained. Alderman Curtsinger

asked what happens if they are not obtained. Counsel Notestine stated that once lots are sold it is hard to obtain the easements. He stated that some homeowners are saying they are not going to do it, some are saying that they are selling their property and let the other owner do something with it. Counsel Notestine stated there is not a time frame and his recommendation is not to release on the sections that involve the easement issue.

Mr. McNeely stated that CK Development has established a funding amount. He stated that the Planning Commission decided to bring this to BOMA and an amount that would secure those easements. Mr. McNeely stated that the Town has been provided with an established amount.

Mayor Lothers noted that Stantec had contacted the property owners and the drainage issue protects the property owner.

Alderman Curtsinger asked if the design of the PUD required it. He added that it should meet the Town's regulations. Counsel Notestine stated that their Engineer, Stantec, certified that plan and is responsible.

Mayor Lothers stated that there were some things that were missed. Alderman Dugger added that just because it was missed it does not release the developer/engineer from the liability.

Mayor Lothers stated that it was her understanding that drainage easements are 90% of the value. CK Development has allotted 100%.

Mayor Lothers made a motion to amend the resolution to release the maintenance bond on Phases 2A, 3A, and 3B, Alderman Thomas seconded. The vote was taken and this was approved unanimously.

Mayor Lothers then addressed Phases 2B, 4A, and 4B. Counsel Notestine stated that it is planned to get as many easements as they can. He stated that his recommendation was to continue with the bond in place while attempts are being made to secure the remaining easements.

Mr. McNeely stated that in the event all the easements are not signed what is the process to get release. Counsel Notestine stated that once the bond is in place, it goes to the Planning Commission and the Planning Commission will make a recommendation. With that recommendation the Board did not act on the other Phases.

Other:

Alderman Dugger stated that he would like for the Board to look at annexing the south side of Rocky Fork Road and the Silverstream Subdivision. He stated that they would have to build the remaining Phases to the Town's Code and the Police are already going to calls in that subdivision.

Alderman Curtsinger stated that the paperwork is already completed due to the previous annexation attempt. Alderman Dugger added that he felt it should be annexed rather it was friendly or unfriendly. Mayor Lothers stated that she would not be in favor of an unfriendly annexation. Alderman Alexander stated that the Town could talk to the property owners. He

asked if Alderman Dugger would be in favor of doing that. Alderman Dugger stated that he would and noted that it would be contiguous.

Alderman Dugger noted that the Bennett's recently had an event at their home. He noted that prior to and after incorporation of the Town, leaders met their on a regular basis. Alderman Dugger asked if the Town could get some type of plaque or something to honor the Bennett's and recognize their efforts and participation. Mayor Lothers agreed stating that maybe some type of resolution can be brought forth before the Board by Vice-Mayor Dugger.

The meeting adjourned at 10:25 p.m. by acclamation.

Respectfully submitted,

Approved,

Cindy Lancaster  
Town Recorder

Beth Lothers  
Mayor