

**Pembroke Planning Board Meeting  
Tuesday, August 8, 2006  
Adopted Minutes**

**PRESENT:** Bob Bourque, Chair; Larry Young, Selectmen; Bill Faith, John Harrington, Paul Andrews, Cindy Lewis, Alternate member; Todd Terrien, Alternate member; Mark Zydel, Alternate member, Kevin Foss, Alternate member.

**EXCUSED:** Roland Lemoine, Alan Topliff.

**UNEXCUSED:**

**STAFF PRESENT:** Laura Scott, Planning Director, Catie Tirrell, Recording Secretary.

Meeting was opened by Bob Bourque at 7:00 pm.  
Cindy and Kevin were designated to vote for the excused members.

**Revocation of Approved Site Plan**

Update on progress since the June 27, 2006 Planning Board action to consider the revocation of the Merrill/Dennison LLC Site Plan (Case #02-101) for Map 634 Lot 48-1.

Ms. Scott explained to the board that there were two letters in front of them that were not included in the packet that relate to the item on the agenda. She continued by explaining that the reason the item had been brought back to the agenda was there were two conditions that were agreed to by Mr. Merrill and Mr. Dennison for the extension of discussion for the revocation of the site plan at the June meeting and she felt the Board should be made aware of the progress to date. The first condition was to evict Venture Construction from the property, which was something that Merrill/Dennison had said they were going to do, in addition to the stop work order that the code enforcement officer was to issue. The other condition was to have GeoInsight hired by the Water department to do an environmental assessment of the site at Merrill/Dennison's expense.

Ms. Scott advised the Board that in her letter dated August 2, 2006 it explains what has happened thus far and her concerns that she wanted to bring back to the Board and make them aware of them and the Board decides what the next step should be. Venture construction still is on the property although she stated that she was aware that they were actively looking for a new place to move to. Ms. Scott wanted the Board to know this as everyone thought they'd be off the site rather quickly after the June 27, 2007 meeting.

The other was that the environmental assessment money has not been put into escrow and there is debate back and fourth between Mr. Merrill, Mr. Dennison, their attorney, The water Department, GeoInsight, as well as her regarding the cost and scope of the environmental assessment it is becoming difficult to keep going back and fourth. It is uncomfortable for the water department, GeoInsight, and her especially because the Board was all left with the thought of all this happening very quickly after the June 27, 2006 meeting and it still no assessment has taken place.

Ms. Scott informed the Board she wanted them to be aware that the conditions had not been met and thought it needed to be discussed between the board, Mr. Merrill, Mr. Dennison, their representative, and the water department.

Mr. Bourque asked if the Board had any questions for Ms. Scott.

Ms. Lewis asked if they had a copy of the break down of cost from GeoInsight. Ms. Scott said she did not have copies for everyone. Mr. Guida, Merrill/Dennison's attorney, informed the Board he did have copies for everyone and handed them out.

Mr. Bourque asked the Board members to take a few minutes to read the information.

Mr. Guida explained his copies of the cost breakdown included the first contract, a letter from him, and the second contract.

Mr. Bourque asked the applicant to speak. Mr. Guida spoke on behalf of the applicant Merrill/Dennison LLC

Mr. Guida stated he wanted to go back to how this started, which were allegations of an employee, which have been denied, of chemicals being dumped at the property in along with the environmental EPA and they did preliminary testing and found nothing. Mr. Guida explained that when they were at the last meeting his client agreed to pay up to \$20,000 for testing. The Planning Board did not say who the contract would be with and Mr. Guida and his client originally thought it would be with them because they were paying.

Mr. Bourke responded that it was said right from the beginning it would be GeoInsight.

Mr. Guida said he knew GeoInsight but asked who the contract would be with. The client and himself believed them because they were paying.

Mr. Bourque said no it would be with the water works.

Mr. Guida explained that they received a proposal from GeoInsight of \$16,200, and that there was concern about who GeoInsight would contract with, that Paul Whittimore obviously has to focus on what his job is. From the beginning, the testing that was talked about they thought was very expansive and there concern was brought to light when the first contract came out, despite the Planning Board being aware of it, and them being aware of it, and Paul whittimore being told it at the meeting; the first proposal was a contract for the entire site and not just the special exception site. When we met at the July 19<sup>th</sup> meeting everyone knew that but we were concerned that now all the sudden we have this contract for the entire site. We agreed at the meeting that GeoInsight was told incorrectly by Paul Whittimore that it was the entire site to be tested and we modified it down to just the one section of the property. We had a reasonable contract for \$16,200 for the entire site based on what they had been told. At the July 19<sup>th</sup> meeting we agreed to do Task 1 and Task 2 and then come back and talk about what testing should be done.

Mr. Bourque asked what was going to be done on Task 1 & 2.

Mr. Guida said essentially Task 1 & Task 2 on page 5 is what we had agreed to and it says state and local file reviews activities, which includes NHDES interviews and file review and Pembroke municipal interviews and file review. Also, task 2 they had agreed to. During the meeting on July 19<sup>th</sup> Aries engineering, which was hired by the tenant, brought up to GeoInsight a question of why Task 1 didn't consider the hydra geologic survey and Aries said they would give there file for review. So, The applicant expected that maybe the cost for task 1 would go up a little bit but it went up dramatically. If you take the top billable rate of \$150, which is much higher than most of the rest, it went up by 6 hours. Mr. Guida said they were able to live with that as long as they abide by it is an estimate of what the hours they are going to spend.

The property reconnaissance, suddenly they wanted to take a second person and we want our money to go towards testing the property. We already know GeoInsight can go to the Police department or Water Works and they have a copy of the chemicals that this tenant used. There is even a question of if they have to go through the other files everybody involved can pinpoint and they have a list of what chemicals were on the property. Mr. Guida said what they don't want to happen is, that suddenly, it went from task 1 & 2, which costs \$2150, to Task 1, and they added a third task so suddenly we are up to \$8250 and the testing hasn't started yet.

The question Mr. Guida also has on Task 3 is they say they are going to do a report for \$4500, which is a 30-hour report just to summarize tasks 1 & 2 and propose how the testing will be done. We have a report for free on how the testing is going to be done under the original proposal. Our concern is that the costs are getting blown out of proportion.

Mr. Guida explained his client is not holding back money and that they have a check with them tonight. They expected task 1 & 2 to be reasonably priced and suddenly instead of \$2,250 we have \$8,250 and my clients are small business owners the want the testing to be done.

There are differences there are issues between what Aries engineering said and what GeoInsight said in our opinion this is not an environmental assessment to determine that the site is free of all chemicals, that's not the purpose. If we get to that purpose, then we have a problem because this is environmental testing to see if a spill occurred from one tenant. There is talk of going down to the water table, which Mr. Guida said he believes is at 500 or 800 feet. If we get down to the water table and there are chemicals that weren't used by that tenant, we don't know whether there are or aren't, where do we go- do we go down to the storage company, do we go up the road; In other words we were under the impression that DES and EPA did some preliminary testing, we are going to do more testing and that's it. We were not under the impression that we were going to do a complete environmental site assessment to look for chemicals that could have come from anywhere down the road.

We are willing to spend \$20,000 but we are not really willing to spend it when we see the preliminary test go from \$2,200 to \$8,200 and there is a good chance that we may not reach the end result with \$20,000. We believe based on the first proposal, based on this proposal, and based on correspondence that GeoInsight gave to Laura Scott when they said the meeting was going to be contentious and they want two people because other people are now going to be there. Mr. Guido stated that they believe that GeoInsight has been tainted, and they believe that

have been tainted because they got one side of the story and that's why they came out with a proposal for the entire site and that wasn't what we were suppose to be doing. If they go ahead and do the testing, we don't want to spent an additional \$6,000 for preliminary things that aren't necessary. They may get up and say that they are necessary, but we know what the chemicals are that use are looking for lets get to the site lets get it done. We propose an alternate and that is that perhaps right now that there is Aries engineering that is saying one thing an GeoInsight that is saying another perhaps we need to get a third party environmental firm, not related to either party, that everyone agrees on and have them do it.

We are not holding back the money for testing, we just haven't given the money because the price quadrupled before we even got to the testing. I am a small business men, my clients are small businessmen, and some of you may be and anybody would be concerned by this and I would glad to entertain any questions. We have a check here tonight but we don't want to get to \$15,000 and find out we haven't even got to the testing phase yet.

Mr. Bourque asked if the Board had any questions. None heard Mr. Bourque asked GeoInsight to speak.

Dave Maclean from GeoInsight asked to go over a few things in regards to the testing. The first proposal for doing the work was developed and we met on July 19<sup>th</sup> to go over it. There were a couple of things that happened at that meeting. The original proposal included site file review, site inspection, and the installation of borings, which are basically boring the go down temporarily in the ground that extract soil samples.

At that meeting, one of the things that were interesting was that Venture construction was there we didn't anticipate the tenant being part of the study. This is a good thing and we want to understand exactly what Venture construction is doing so that we can evaluate the property properly and figure out what was utilized where and we want to involve them in the process. It was a pleasant surprise to see them there. The ramification's to have them participate in the process increased the amount of work that we have to do in terms of the file review, because they were willing to provide a lot of information we did not think we would have, such as the MSDS sheets we were provided by Aries engineering whole bunch of Material Safety Data sheets. So its not just acetone that we are looking for, there are potentially other chemicals. Dave stated he hasn't gone through this in great detail but that is part of phase 1, which is not something we had originally considered. There were also good points that their consulted brought up in regards to the hydra geology out there and they had made a point that they had done a lot of drilling out there, and we have also done some drilling in that area, and there is a disagreement as to how deep the ground water was and what is the appropriate techniques and those kinds of details. Aries had promised that they would provide us with hydra graphic studies, which is great. The ramification's of that was that the cost in the revised proposal went up about \$1,000 and that is for reviewing additional material.

On the 2nd task, which is the site reconnaissance, there are going to be a number of people who are going to be involved with that site reconnaissance and we do not know at this point where we will be doing our investigations. We are going to base a lot of that on what we get and what we see out in the field. Now when we do this site walk, we are going to have the tenant Venture

construction, Venture constructions consultant, ventures attorney, the property owners, and I believe the property owners attorney as well. In my opinion, as the principal involved in this, that one person involved in that crowd was not going to be able to figure out what would be the most appropriate place to do the investigations and we would not be able to get the straight story. That was my opinion based on looking at this and trying to get everyone orchestrated and what was going on I felt it would be most prudent to have two people doing this. That's based on my experience and I have been doing this work for about nineteen years that was a call I made that increased the cost by about \$600-\$700.

With regards to the 3<sup>rd</sup> task, everyone agreed at that meeting on the 19<sup>th</sup> that it would be a good idea to sit down at the end of this and try and agree what would be an appropriate sampling strategy. To utilize sitting down with the land owner, sitting down with Laura, and everybody and going okay, what is appropriate with in regards to monies that are available and getting this thing done appropriately. To do that I thought that it was appropriate to provide a report basically like a phase 1 report plus a sampling strategy plus the cost at that time. A full report to justify every single sampling that would be done in that meeting, which Mr. Guida did not represent that there would be a meeting but that would be the only way of talking about this would be to go over that report and that information. Now one thing that I can submit to, which I have not discussed with Laura or Merrill/Dennison, is that we could do this without having to sit down with that report and just go and sit down with a plan and a cost of an appropriate work plan. Without the report, my fear is that they will be trying to restrict us as much as possible and without the technical support, the justification in the text of a document like a report ,the recommendations of the sampling report would be discounted. But we can give that a try that would probably reduce the sampling report cost. It would take the report out of that sampling and it would reduce everything down by about \$2,000 from about \$4,500 to about \$2,500 try to do this a little bit more informally.

The only other point, in terms of point of correction on the sampling the testing that NHDES did, the NHDES did very focused testing on just a couple of places and it was fairly limited just within an immediate area of the location.

Mr. Bourque asked if it was surface tests.

Mr. Maclean replied yes. That's one of the things we will be doing is talking to the state during the reconnaissance's and the file review, but my conversations with Dave from NHDES was that it was a surface sampling and that they couldn't bring a drill rig on or anything else like that.

Mr. Maclean continued with one last point of correction, there has been some discussions on how deep it is to get a groundwater sample out there. The original proposal was priced out at about 20 feet and Aries suggested that it would be anywhere from 60-90 feet and that would impact cost.

Mr. Bourque asked if the board had any questions.

John Harrington asked who he had Material Safety Data sheets from.

Mr. Maclean replied from Venture Construction. The attorney (Bison) has been real cooperative like Aries engineering.

John Harrington said they have to list everything from Windex to white out.

Mr. Maclean replied, to be honest with you, I have haven't really looked at it but if it is very simple like household cleaning products we will probably discount it. That's the kind of thing we would have to look at in terms of quantities.

Mr. Harrington said I thought you were to determine, within reason, how many core samples on the property that you needed to do. I didn't know that we had to go through and ask lawyers.

Mr. Maclean replied well.. Yeah, when we had our meeting it was quickly apparent to me that we weren't going to agree. We also had a meeting for everyone to agree on what was going to take place and it was apparent that all of us at the table didn't have enough information to determine where we were going to collect soil samples. I can understand restricting the sampling to areas that were occupied by Venture; where were those though? I would love to just focus on the drilling too, but you have to have a strategy before you go in only focusing your limited resources on area where chemicals have potentially been released. So, for instance, we talked about just limiting the investigation to that area of the property but my understanding is that Venture occupied an office on one side; does that mean anything? do we have to do any sampling at the office? probably not, but we would want to look at that first to make sure that indeed it is an office. We can't specify that's part of the sampling plan without going through it. We had a lot of comments like that, we don't want to do sampling, we don't want monitoring wells, we want this we want that. Well why don't we just instead of getting to the specifics, do the first two tasks and get the ball rolling.

Bill Faith asked if there are any guideline that they would use as to how many square feet per core sample. Is there any guidelines that GeoInsight would use to formulate a plan. At this site, we don't know where they did the mixing; was the trailer always in that one spot; why did they pave the driveway, was it before or after the spill? A few questions like: where do they do their work and where could the contamination be. But are there any guidelines that you would usually use that are set up by the FDA any standards that your company would use.

Mr. Maclean that there are two of them, the first one is the American Testing Society and they have guidelines for doing site assessment work. The second would be NHDES site investigation rules. Both of them are very similar, the guidelines basically state that when you are doing phase one and phase 2 like work, that the objectives are to look and find recognized environmental conditions; a recognized environmental condition is something that would peak a regulator interest if they saw it that there could be a potential release of chemicals.

Bill stated yellow grass.

Mr. Maclean confirmed yes, like yellow grass, a dry well, a drum, there are lots of them and they are called recognized environmental conditions. So when you do a phase 1, lets say for a real estate transaction, your looking to evaluate for a lender that there is no environmental liability. If

you see recognizable environment conditions and you don't know if they represent the problem or not, you do a sampling strategy to address and evaluate whether they represent any environmental threats.

Bill said, so if you have quiet time by yourself, without the hindrance of people surrounding, you could quickly do a site evaluation of the area.

Mr. Maclean replied Yes and no. It sure makes things easier and it makes things more convenient having the property owner there in terms of explaining where does this pipe go, is that a roof drain, is the a oil water separator, what is that, those kinds of questions the interviews are very important as well and as I said in the beginning I didn't think that we would have the opportunity to interview Venture construction. We will be able to interview them, which is great, they are cooperating and that they allegedly may have released chemicals is the issue we are evaluating. So there are the issues of having them along in the reconnaissance it helps.

Bill confirmed, so you need someone to explain what is it the area. The land use, you need at least one other person to tell you what is there.

Mr. Maclean: yes that's right and as a matter of fact, the original proposal specified that we needed to have some representative from the property owner with us because we wouldn't know as well how the building functioned and that's important.

Bill have you got to walk through the property.

Mr. Maclean replied No.

Bill said: so after you look you will pick either one of those plans and NHDES or ATS.

Mr. Maclean said yes and they are the same thing the NHDES rules are the same way. They only get launched though if there is a definite problem. Lets just say there is an under ground storage tank if there is an underground storage tank that doesn't mean there is a problem there could be if that underground storage tank is corroded then you'd have to evaluate.

Ms. Scott wanted to clarify something John had asked about GeoInsight picking where the test where going to happen. When it was presented to the Planning Board in June, GeoInsight was working on behalf of the water Department they were going to develop the scope of work. In an effort to be more accommodating, the water department, GeoInsight, and I agreed to meet with the property owner to go over the scope of work. We were trying to be accommodating, but it is GeoInsights job and it is there proposal, they have been hired by the water department and directed by the Planning Board to do this so we were being accommodating with them to go over the scope of work. The reason that we are here tonight is that we couldn't agree on the scope or cost and it is putting GeoInsight, The water department and myself in a position where we had to constantly defend what was being proposed, which is why we haven't done a site visit and which is why we haven't review the MSDS sheets because it is part of the scope of work. Nothing has been done because the property owner has not agreed to the scope nor has the money been paid

to do the work, although a lot of it has started. It was suppose to be GeoInsight and not the Board deciding the scope.

Bill said before you make any proposals it should be whatever the bill is for him to go out to the site and walk the property it should be non-negotiable.

Mr. Guida wanted to address several things we didn't get, I think as the landowner we need to be involved in the proposal we've \volunteered to pay but it is their land. We didn't get the proposal until July 17<sup>th</sup> I responded to that on July 19<sup>th</sup> then we had our meeting and never once at our meeting did this attorney, or the other attorney, step on GeoInsights toes in regards to what testing is being placed. I stepped on their toes because we did allow the town, water works, and GeoInsight to come up with the proposal and it was the wrong proposal, it was for the entire parcel and not the special exception parcel which it is suppose to be limited to.

Bill said he believed that the concern that the water table could be contaminated. We need to know that our water table is safe. If its more than one area we made it clean that we need to have the water tested.

Mr. Guida clarified no, this is a ramification of the special exception area where Venture was but they came in with a proposal for the entire parcel and that proposal, which is for the entire site and about an area 3 or 4 times the special exception area was for \$16,000. Now, suddenly we focus in on the special exception area where Venture was, which is 450 feet by 400 feet or so, and we are up to \$8,200 on a small parcel. We don't mean to be demeaning. I have an engineering background; as well I haven't done engineering for many years. This is a 400 x 450 parcel and its nice to maybe bring in a point that maybe there is an underground storage tank however there's no underground tanks. There is one building there is not a septic, one underground water line that was put in without our knowledge that has been disconnected, there is a site where an employee said there was a spill and there is a storage trailer where they are worried there might have been something. It is not a 5 acre parcel. We corrected that at the meeting properly because they were dealing with a whole site all the way out to the road and this deals with the special exception site.

The other thing we dealt with at the meeting we said originally that monitoring wells is not an option.

We are willing to spent \$20,000 for the testing I am not going to tell him how to do his job but his hourly rate of \$150 per hour to prepare that report that takes 30 hours I don't think it takes 30 hours to look at a 400 by 450 foot area with one building on it and nothing else and come up with a plan. For 30 hours I could put a lot more test wells rather than putting in a report. I hope that you agree we want the money to be put towards testing we had a cost which was \$16,000 for the whole area. This is about 1/3 or 1/4 of it and now suddenly it looks like we are going to go above that. I don't see it we are not trying to hinder at all I never said one thing and attorney Besson never said one thing about what tests would be done I corrected the scope of the property and the monitoring wells. My responses have been quick. This thing about walking around the property with two people now instead of one. We simply want to be there because it is our concern that they will get a one sided view from Mr. Whittimore. After all the first proposal what

we weren't involved in included monitoring wells and the whole property so we just wanted to make sure what it said is correct and accurate if they want us to back off after that we will be glad to do that. It is not a complicated situation and we want to do the testing but I don't think it takes \$4,500 report and I don't think it takes \$8,200 to get to the testing.

Paul Whittimore said he felt at the last Planning Board meeting he actually tried to help Merrill out giving them 3 months and lets get the environmental assessment done because ultimately I want to know that the water quality is save. I asked GeoInsight for a general idea and he came up with a price between \$15,000-20,000. He gave me the proposal and as a courtesy we met with Merrill and Venture and it turned into negotiations. There were 3 tasks on the original proposal we have it narrowed to 2 tasks with a report at the end of that. We need to start this thing. He says he has a check, lets get it going we need to know what the quality of the water is. If he can't come to an agreement tonight so we can start this thing this week, then I'd like the Board to go through with revoking the Site Plan. Water Works has other means to check groundwater and we will use those other means and ultimately in the end if it turns out the Merrill/Dennison site has some issues on there that now it appears there trying to hide, then the Water Work will attach that property and do what we have to do. Venture, ironically, is being very cooperative in all this; they want to get this done. I rely on GeoInsight, this is all science and this is what they do. Merrill is complaining about cost, I don't know what the lawyer gets an hour but this is the second, third, fourth meeting. My recommendation is if we can't come to an agreement on the last two tasks then it goes back to the Planning Board and revoke the Site Plan.

Mr. Bourque asked if any Board members had questions.

Ms. Lewis said if she received the proposal she would all be upset. Her reason was the original proposal covered the soil borings and got to what the issue is. Unfortunately, on the second proposal all we get is a report on what we are going to do. If stuff was spilled it is just going deeper and deeper. Ms. Lewis stated she didn't think the big report was necessary.

Mr. Giuda said they approved task 1 & task 2 and said they were ready to move forward but instead they got a revised proposal with a new task 3. The only changes that were asked to be made were in his letter and they address the language not the tasks themselves.

Ms. Scott stated that the contract was rewritten after the meeting on the 19<sup>th</sup> to address the concerns of everyone at that meeting that if we do Task 1 & Task 2 then we could further review how many test borings we need to done where they were going to be. GeoInsight revised the contract based on the feedback given at the meeting of just doing the reconnaissance with a much more firm testing proposal.

Ms. Bourque asked Mr. Maclean if he could do the whole job for \$20,000.

Mr. Maclean said he could not specify because he doesn't know what he is going to find. As he said before, that's based on five bores being done at depths 15-20 feet. 15-20 feet is an estimate. He said he couldn't promise it will be \$15,000-20,000.

Mr. Guida said lets go back to the first contract, which was for a six acres site we will go back to it for the 1 ½ acres they are going to do it on. Our concern is we are at \$8,200 before we even get to the testing. My clients want to prove that this employee was wrong and the property is clean. He said he thinks the increase is excessive.

Bill Faith asked what just a walk through would cost.

Mr. Maclean said he couldn't answer that. You can't divorce the site walk from site reconnaissance and all of that. It all has to be taken together to evaluate what are the appropriate areas to test. For all we know it terms of looking at the alleged small property we could need 1 or 2 but you could need 7 or 8 based on what you see. The point is you can't pluck the site reconnaissance out.

Bill Faith said in a sense we can't but we are asking to get the ball rolling and get the money in escrow.

Mr. Maclean summarized the cost increase. The increase in task 1 was associated with different & new information provided by Venture Construction, which is a good thing, and that increases it about \$1,000. The 2<sup>nd</sup> task gets increased by another person to do the initial walk through an increase of about \$600-800. In regards to the report, both if there are 3 rings binders, one thing that can be done to save on those is that we go right from that two-step and sit down and go over a cost estimate. And as I said before that would save \$2,000.

Mr. Guida stated his issue is they already had a report and sampling plan for free. Why are we paying \$2,500 for anything. Why can't we do task 1 & task 2 and sit down and say this is a 400 foot by 450 foot area we need this this this and this. What are we paying \$2,500 for we already paid them to review; this is a task that wasn't on the original proposal.

Ms. Lewis said she was unsure of where we go from here. If they (GeoInsight) don't do it, are you guys (Merrill/Dennison) going to disagree with what he comes up with where he wants to do your borings.

Mr. Guida stated that there was no disagreement at the meeting at all except with the special exception property verses the other property and with the monitoring wells. The only disagreement between the engineering firms was whether this type of boring was required. When my clients left the meeting they fully expected him to bore done to water level and to move forward, we were ready to go. If we go back and do step 1 and do it by the hour, I mean he is getting information now that he doesn't have to research but the price went up by 70-80%. You would think it would stay the same or go down. We don't want a report that is unnecessary. I say we go ahead with tasks 1 & 2 and then we sit down and have a meeting about what we are going to do and if the cost is in the range we agreed we go ahead and get it done.

Mr. Harrington asked if Mr. Maclean could explain the savings on task 3.

Mr. Maclean said yeah that is primarily the preparation for the report. It would be a 25-30 page report, with all the information. If we don't do the report, the balance of the costs would be to do

a site plan to develop a sampling strategy to develop a cost estimate associated with that sampling strategy and then to present that at a meeting.

Mr. Guida said he wanted to point out that the cost Mr. Maclean was talking about were included in the original proposal under task 3. We don't want to pay...

Mr. Maclean stated there wouldn't be a meeting in that first there would be no negotiation step we would be moving right along.

Mr. Guida said and they would have to prepare the drilling plan anyway...

After a brief verbal dispute between Mr. Guida and Mr. Maclean , Chairman Bourque asked that we continue to hear from GeoInsight.

Mr. Maclean said he had answered the question asked regarding not doing a report.

Mr. Harrington asked if he didn't have the report, what would stop him from getting the boring plans and getting into the soil. If you don't have the report.

Mr. Maclean responded we could certainly do that. My fear would be in terms of sitting down and having a meeting that there would be push back of Venture & the property owners of you don't need a sample there why do you need a sample there we are not going to have the documentation. Provided that people can work with each other and try and do this we can try and do this with out the report.

Mr. Bourque asked if it came to question would you have the documentation in file.

Mr. Maclean said technically yes. One thing that could potentially happen if we go down this line and do a meeting and a sampling plan is pulled together and the plan is not endorsed by either Venture or the property owner again sitting around here with no testing done.

Ms. Lewis said if you come up with a very basic plan for where you intend to do the borings there would be additional cost as to whats he got in his initial estimate. For them to review it and have any discussion on it and we could get into the \$4,500 because then he has to document everything and prove why he's doing it.

Ms. Scott said that in the initial proposal, it was start to finish by GeoInsight, there were no meetings except there was the initial one when they did the site walk to have the property owner there, but there wasn't lets sit down review the contract and review where you want to do drilling that's why those things aren't in there.

Mr. Guida stated that we revised the contract because it was incorrect. we don't want any of the \$4,500 that them come up with a plan and drill anywhere they want if Venture objects there not part of this. My clients want to prove the property is clean. Lets do steps 1 & 2 wipe out step 3 and have them come up with his plan we'd like to see it. The only problem we have is if he came up with a plan that had \$20,000-30,000 worth of drilling.

Mr. Harrington asked what happens if they do the site reconnaissance and they find out that's there's run off from the Venture property to the property now he wants to close us off from that property. If it runs off and they have to do a core sample he doesn't want to do that. I am just saying for the future this may be where we are going with this. If we want core drilling's on the original property he may say no.

Mr. Maclean if something like that is going on that would be a point that would be recommended for sampling and we need to see whether that goes and gets through the second meeting.

Ms. Lewis if you do your plan and send it to Merrill/Dennison and you give them two days to respond and they respond and they have an issue it would force the \$4,500 one.

Mr. Maclean agreed, stating if the more we have to go back and fourth the more it costs. He said he is completing willing to proceed on a time and material basis on this.

Mr. Bourque if there was any other questions from the Board.

Kevin Foss asked if there was still an issue of Venture Construction being on the property.

Mr. Guida asked if he could address the question. The day after the June meeting, an eviction notice was sent. Subsequent to the meeting their attorney has been talking with Code enforcement and has asked for a 90-day extension to purchase another property. Code enforcement agreed to this extension. Merrill Dennison has begun eviction proceedings but they are willing to let them stay until they find a place.

Venture construction employee stood up to speak. Stating he wants to help in the investigation and that they have nothing to hide. They want it tested and they want it tested fast.

Mr. Bourque asked Mr. Maclean if by suspending the report we are looking at decreasing the proposal by \$4,500 is that correct?

Mr. Maclean stated it would be decreased by about \$2,000.

Mr. Bourque asked what the cost would be to get us to task 4?

Mr. Maclean answered about \$6,200 to task 4 meaning the sampling

Mr. Zydel asked if he could cut the second individual out for site reconnaissance to cut it down another \$1,000.

Mr. Maclean said he can do that but he wants him to understand that everyone needs to be cooperative. If that is the pressure point then he will reduce it down to one person.

Mr. Bourque asked if that is acceptable to the applicant.

Mr. Guida stated he would have to ask him but the question is still where is the \$2,500 that was not in the first contract. That was not in the original proposal.

Mr. Maclean asked if the meeting was being cut out?

Ms. Lewis said there is no meeting and no report.

Mr. Maclean agreed that if there was no report and no meeting that was fine.

Ms. Scott stated if the applicant doesn't agree then the price will go up.

Mr. Guida said if we agree to task 1 & task 2 and you cut out the \$4,500 and task 1 is one person then the check is tonight.

Ms. Scott clarified using the July 25<sup>th</sup> proposal- Task 3 is just a check in \$600, Task 1 is the same \$2,250, Task 2 only have one person \$1,000. If they can't work it out the will be back at the board at the next meeting.

Kevin Foss stated that because the special exception Venture construction should have never been on the property to begin with right... so I don't understand why we are negotiating if that exception had been met we wouldn't be here at all so before we go forward and negotiate and agree to this I want to know that Paul Whittemore is okay in the direction that this is moving in because if not I don't think that we are successfully negotiating it if they are not comfortable with what we are agreeing to do now.

Paul Whittemore said he thinks the first proposal was a fair one and it was going to be us what was going on on the site. This thing keeps getting narrowed down and what you've given Merrill is a chance to stall again at the end of a task, and that's all they've been doing. If they don't want to agree to the first proposal I would say that we revoke the Site Plan, they are not in a position to negotiate this should have never gotten to this stage. It is probably my fault that I let I get to this stage but I was at the Planning Board that agreed to give them the 90 days believing Merrill was going to work with us. Even since the lawyers got involved its been nothing but stalling. There has been a lot of activity happening up on that Merrill site. I don't know where the material is going and I don't know what happened to the equipment. We got that well that's all I am concerned about. I don't think this tells us everything, this latest thing I think it should go back the original proposal it was fair it was in the \$15,000-20,000 and it would give us a better idea as to what is going on at the site.

Ms. Scott stated that the Site Plan area is the only thing in front of the Board at this time.

Mr. Guida stated he thinks it is very disingenuous to say Merrill has stalled at all.

Paul Andrews asked that we just move forward.

Ms. Scott stated we would write a letter making the decision formal.

## **2007 Town Meeting**

### Existing Building International Building Code.

Mr. Stone present to the board a new international building code that he hopes to have adopted. The board asked if anyone would like to review it. Ms. Lewis stated she would.

### Cluster Subdivision/Conservation Subdivision Ordinance Review

This item was tabled until the September work session

### **Board of Selectmen Input Request**

Laura Scott explained Troy Brown has asked for feedback on the following.

#### Street Acceptance

##### a. Cooperative Way

Laura explained that the entire site was inspected and a 5 page list of small items that need to be cleaned up on the entire site. The only item regarding the road was the easement for the gas line.

Laura is working with the Conservation Commission to finalize the conservation easement.

No comments were made by the Board except that all items found by Keech are to be addressed.

##### b. Fairway Drive

Laura stated that KV Partners is reviewing the plans and that there is currently a negative amount in the escrow account.

Alan Clark, president of REI Development, and the developer for Fairway Drive. Mr. Clark stated that this goes back a long ways. He stated he was unaware of the negative escrow balance until July and has asked for an accounting and has not yet received. Mr. Clark explained if they owe the money they will pay but they would like the accounting. Mr. Clark was very frustrated as he said with a former public works director. Mr. Clark said he has all the letters from water, fire, sewer required from 2004 that his road was all set. Mr. Clark asked that Planning Board send a letter to the Selectmen that they are all set or not.

### **Bond Release**

#### a. Dearborn Road

Alan Clarke of REI showed the Board several letters stating the road was fine and asking why now they are having to do inspections and engineering. The Board requested that the Board of Selectmen take into consideration what REI has already paid for inspection fees. The Board asked that the Planning Board files be read as to what inspections have taken place already and been accepted prior to sending items out for review.

#### b. Smith Avenue

There are no issues and the Board is also asking that the Planning Board file be reviewed and consideration for fees already paid be looked at by the Board of Selectmen

## **Road Issues**

### Class VI Road to Class V Road Procedure

Laura Scott explained she presented the procedure to the Selectmen and there were a few questions and issues that needed to be answered by town Counsel and that they have review it and have not found any issues at this time.

The Planning Board liked having the Board of Selectmen review and agree to the reclassification of the Class VI Road prior to it coming to the Planning Board.

She will continue to work on the proposal and bring it back to the Selectmen and Board later in the Fall.

### Town Roads and Private Roads

Laura reviewed the items in her memo. The Board wants to look at this more closely at the next Work Session.

## **2007 Budget Development**

Mr. Bourke requested that we add \$100 to Meetings everyone agreed. The remaining line items are to stay the same as the 2006 amounts.

## **Lot Merger Application**

Map 868 Lot 38 (806 Martin Hill Road) & 39 (125-133 North Pembroke Road)

Cindy Lewis motion to approve the Lot Merge. Paul seconded.

MOTION APPROVED VOTE 7-0

## **Development of regional Impact**

Henniker Cell Tower

Merrimack Cell Tower

Epsom Cell Tower

Laura Scott to send a letter thanks for noticing us but not interested.

## **Adjournment**

Mr. Bourque motioned to adjourn Paul seconded. Unanimously approved by voice vote. Meeting adjourned at 10:15 pm.