



Town of Hermon

Public Safety Meeting Room

October 15, 2019

Special Town Council Meeting

7:00 PM

MINUTES

Council Meetings may be viewed live online and are archived after the meeting
has taken place – check hermon.net for link.

ALL ITEMS ARE SUBJECT TO APPROPRIATE COUNCIL ACTION

I. CALL TO ORDER BY CHAIRPERSON

II. PLEDGE OF ALLEGIANCE

Chair McCluskey led those in attendance in the Pledge of Allegiance

III. ROLL CALL

Members Present: John Snyder III, Douglas Sinclair Sr., Donna Ellis, Anthony “Tony” Reynolds, Charles Lever IV, Steve Thomas and Timothy McCluskey

Members Absent: None

Others Present: Town Manager Howard Kroll, Town Clerk Kristen Cushman, Josh Berry, Scott Braley with Plymouth Engineering, Deanna Leach, Adam Leach, Ron Bouchard, Nate Wicklow, and 17 residents.

IV. REVIEW CONSENT CALENDAR: REGULAR BUSINESS, APPOINTMENTS, SIGNATURES, And APPROVAL OF MINUTES:

SIGNATURES. –APPROVE

MINUTES. -APPROVE

WARRANTS. –SIGN

RESOLVES. -SIGN

V. NEWS, PRESENTATIONS AND RECOGNITIONS:



VI. PUBLIC ITEMS OR COMMENTS: *(Items Not Already on Agenda)*

VII. PUBLIC HEARINGS:

VIII. COMMITTEE REPORTS:

IX. SCHEDULED AGENDA ITEMS:

A. OLD BUSINESS:

R19-20-26 Meeting with the Town's Engineer and Town Attorney to discuss and take possible action on Phase II of Stone Farm – accepting new town roads named: Stone Farm Drive, Chestnut Drive and Hawthorne Drive.

Councilor Sinclair moved to approve R19-20-26. Councilor Snyder seconded the motion. The motion was accepted. Motion passes 5-2.

Discussion:

Scott Braley from Plymouth Engineering (Town's Engineer): At the podium

Councilor Thomas: I guess I'll ask I just a few questions. There's been a lot of conversation over the past several months about the flow of water from the new subdivision down to Stoneybrook and I guess what we're thinking is before we approve any road would like to hear from you as far as does the road meet engineered town and state specifications? By accepting the road I'm just wondering your opinion on how this impacts the issue that we've been trying to address over the past month regarding the flow of water downhill.

Scott Braley: With regard to the road Phase 2 was inspected as all the town's roads. We do initial clearing and grubbing, initial sub grade fabric placement, where to put D-gravel placement, its compaction and testing, A-gravel placement, its compaction testing, the paving and we have a certified pavement that is certified by the DOT. Those all were done routinely as necessary during the construction phase 2. We monitored all and our inspector did field reports on the project related to roadway construction in accordance with the permitted plans and specifications and the town ordinance. So obviously the planning board had to find the plans that met the Town's Ordinance first. The project is also permitted as a site location for development and permitted by the Maine DEP. This means they review not necessarily road design itself but the entire project with relation to impact to resources and whether that be your deer wintering yards, critical habitats things like that. The DEP found that the permit as it was applied for in the design met the state standards for all those things and it's worth noting that the DEP is part of the site law process does a significant review on storm water hydrology. DEP reviewed the design as it was done by Kiser & Kiser. Kiser's design engineer for the applicant and they found it met all of the standards that are set forth by the site law on by DEP and as part of our work not only were we looking at just the road within the pavement and shoulders but we're looking at ditches, culverts and at level spreaders to re-



distribute the water in a sheet flow as required. Then as part of our letter that you received you'll note that part of the DEP's process has conditions of the design engineer in his case Kiser & Kiser. Kiser had to review the storm water management as it was constructed in the field and certify that it was done according to the plans and the permit. Mr. Kiser wrote a letter that we copied and we found no discrepancy in this between what was in the field and the permitted plans. So in short after all of the roadway and the storm water structures were constructed they were done in accordance with the plans and the permit that had been issued by the town's planning board and by the DEP.

Steve Thomas: So I guess I'm just wondering you've heard about the other water runoff issues. What do you think is behind it? Is it the creation of this road? Is it phase 1 of the new subdivision? Is it phase 2? What do you think is behind the runoff impacting several residents of Stoneybrook?

Scott Braley: Storm water is permitted by the DEP. There are two things that we looked at storm water quality and storm water quantity. Phase 2 meet both of those on order for the DEP to grant the permit. So with that said, and actually having the history, I actually was the inspecting engineer when Gardner Construction built Stoneybrook and at that point roadway construction was a very difficult process because of all the water running off the hill. That was before all the Stoneybrook homes and well before the Stone Farm homes were all there and before any of the roadways. To say there's no water coming from Stone Farm project that obviously would be foolish but there was a significant historical flow of water off that hill that basically just percolates up out of the ground. The Stoneybrook project didn't cut into the ground as much as it built up, especially on the downhill side, it's not like the project exposed a lot more of the ground water to break free to the surface, I think a lot of the water they're still seeing at this point is still just naturally occurring groundwater that's coming to the surface. I've been out there couple times later this summer when there's absolutely no water in the ditch but the ground between the end of Stone Farm and the beginning of Stoneybrook are still wet and damp under foot.

Tim McCluskey: We have obtained the services of a hydrology engineer for geological engineering with many years of hydrology experience. His name is Arty Fessenden. He's going to meet with the Town next Tuesday to investigate where the water flows are as a result of what's going on Stoneybrook with the Stone Farm or any one of these roads as well. So we agreed to hire to an independent scientist to review that.

Steve Thomas: How long will that take to complete a study?

Tim McCluskey: We will have to talk to him, really haven't had communication with him other than coming to meet with us. We can schedule a time to come visit with us. As a result of the issues that they had on Harvest Lane there were some engineering changes that were done different on phase 2 of this project. Can you explain what they were?

Scott Braley: There were some changes made to phase 2 with regard to where the water went phase 2 has a big wet pond on it which is a different of treatment and maybe the buffers along Harvest Lane. Again that was really something that the design engineer did during the process and more of



the buffers are out in the wooded areas along and beside the road. Anything you do to make the storm water concentration more remote from the end point.

Tim McCluskey: I guess one of the other questions that I have is when we talk about road acceptance and a DEP storm water plan that's basically the design around rain runoff.

Scott Braley: Yes that's regarding quality control. You have to treat on the 1st inch of rain that drops on impervious areas and the first .4 inches of rain that drops on landscaped areas and for roadway 75% of that, if it's a development 95% of that. If we are talking in the quantity standpoint, you have to show that 2, 10 and 25 year storm events those intervals 2, 10 and 25 year are treated such that the water is held back enough so that the peak flows during the event and the runoff flows. The post development is less than the predevelopment.

Tim McCluskey: When they designed a plan for storm water drainage and you have some of the conditions that are being exposed to like artesian wells. Those are never engineered into a road, I wouldn't imagine.

Scott Braley: There are no wells when you do the design process or permit process is done. So there's no way to truly know that's going to happen. I quite frankly was amazed when I went up there and saw the water coming out of the one well. I can't remember the name of the first road on the left in phase 1 which is now been diverted...I have never seen anything like it. A storm water plan addresses your pre and post development conditions. Where you are going from wooded to pavement or wooded to lawn or wooded to ditches or whatever the change is. That's what you're trying to account for during the design process. And that's the way the permit regulations are set up both at the local and state level.

Tony Reynolds: So the State doesn't (when they're doing the storm water hydrology for the DEP) do anything extra if there's water bubbling out of the ground but do you have any idea what kind of solution we need so that the water doesn't continue down on the neighbors property because that's what I'm interested in.

Scott Braley: The state engineer when he reviewed wouldn't have any idea that the water is bubbling up out of the ground. With regard to solutions or resolutions to the issue of the water that is coming to the surface, I have met with the Town at the end of Harvest Lane versus the first road on the right and the only thing that we could do or that I could come up with in that area was to (in that piece of wood between the end of Harvest Lane and the Stoneybrook properties) to try to grab that water in a diversion ditch and discharge it down between the properties developed areas. There and trying to develop this idea there was no water in the ditches coming down Harvest Lane but the ground was still soft underfoot in the woods and so if we do anything, as the towns engineer, I recommended at the end of Harvest Lane. During a big storm event this might help a bit. It might but I don't know that it would but I don't think it's going to help for that stretch in between because if that waters coming to the surface in between, it will just continue to do that.



Tony Reynolds: We had six days that it didn't rain this summer I went up there on either the fifth or the sixth day at the very top of the road going to the left on second road in there was water bubbling out of the ground. That was pretty much at the top of that hill and not at the bottom or halfway down. Water is coming out of the ground so we've got to figure out how to fix it. This is not where water runs at 28,000 gallons a day. It's the next road up on the left that would be Chestnut phase 2.

Howard Kroll: Scott I know you have a lot municipal customers and clients and probably have done a number of subdivisions. Have you run into this type of situation elsewhere and if so what was the remediation that you recommended? Did the municipalities try to work with the homeowners and developer? We have a lot people that are affected by this and obviously I don't think anyone's up here thinking that that's not the case but when I start dealing with private property that's kind of where it gets very sensitive. I need cooperation so that everyone gets a final product that everyone can live with. So I'm just starting this conversation because I know next week we are going to meet with the hydrologist. This area has been historically a wet area and there are some parts of the phase 2 that are designated as wetland. I'm guessing those areas are protected and you have a wooden buffer between properties and I know that was meant as an area of a somewhat refuge but I don't know if that was good enough. I'm just curious if you've ever had any experience with this type of situation?

Scott Braley: Sure and that's fine. Regards to the buffers if memory serves the plan showed there were some wooded buffers left around the property on the downhill side and on some of the properties that were not part of DEP or town required storm water buffers. They were basically meant to be visual and privacy buffers the same time obviously they're offering some assistance with storm water. With regard to water coming out of the ground and causing issues the only project I can think of in 35 years I've been doing it is on Blair Hill in Greenville just outside of town on Moosehead. It was a very ledgie subdivision going way up on top of the hill and every time it rained everything came down the ditch and then about a day later everything came out of the ground hitting the ditch on the side of the road crossing and ending up in Sandy Bay on Moosehead. That was a dire problem for the state from both the DEP and I F & W. They ended up just putting in several diversions to get that water out into the woods further and take longer and longer to get down to the main road. That's really the only time I've ever run into this besides this project.

Steve Thomas: I have also been told that apparently somewhere in that new subdivision was formally a sewage dumpsite. I'm just wondering was the DEP involved in approving the use of the property knowing what it was used for before?

Scott Braley: That I can't answer. That's actually the first I've heard of that and it's not uncommon that septage haulers to have places that they dispose of septage. I know that they can permit through the State; I didn't know there was one on this property. I don't know that the DEP would have either or even if the applicant did. I don't have any information, sorry.

Nate Wicklow: I don't know anything about that. I've never heard of that but I can say on phase 2 we cleared everything that was developed. We cleared the trees which were mature. They were 40 – 50 years old trees, so if that was the case it would've been over 50 years ago. Every piece of



cleared area was marked by Pliska & Day and was cleared with the harvester. There was no land that was field.

Steve Thomas: We had some legal advice from the Town's attorney. Howard will you discuss that?

Howard Kroll: I don't know if I would clarify as a legal advice. As with any development that takes place I think there's kind of a leap of faith that Josh and the Planning Board go through where a developer will come up with a design of making a subdivision with various roads and the town makes those developers go through a massive checklist to make sure everything is constructed up to levels the town would accept as if it was building itself. So I first want to take my hat off to Nate and his development team, I think they followed everything. We have a pretty strict inspector with Plymouth Engineering and in coordination with DEP and other state organizations there is a high standard however our town is not legally obligated to accept any proposed roads but when someone develops a subdivision and they do all this process there is a usually an opportunity for the town to accept so those properties can be developed, right of ways will no longer have to be allowed. It will become a public road so people can pass over it regardless if they live there or not and that is one thing that I've got to be very clear. I don't know if I would really want to be in that position where I am playing judge and jury on that when I've had an applicant go through all these processes and steps that's basically what the attorney saying. I'm not saying I agree totally with what he's proposing but historically the president has been set that if someone goes to the planning board and gets approved and they've constructed the road to town specs usually it appears in front of the Town Council gets debated and that's where you guys make your decision whether you accept it as a town road and then you're legally responsible for the maintenance of that road, the driveway culverts, the winter maintenance and everything else that goes along with that. I will refer back to, we hired Plymouth Engineering to inspect our roads whether they are public or private to meet our standards that are in our ordinance and in our subdivision plan and they've done nothing wrong. In terms of saying yeah you should accept it or you shouldn't he (attorney) is not going out on that limb and suggesting that either way. That is your decision and your decision only. That's why people are here and they can testify whether you should accept it or you shouldn't accept it or you should come up with alternatives to this

Last paragraph from Attorney Ed Bearor's email: In short, if the water runoff issues is not directly related to the road/ditch construction, I would not expect there to be legal liability on the Town for damage to other properties, should the town council decide to accept the roads.

Howard Kroll: But I will remind each one of you even if you accept the road that does not mean the roads are going to stay in perfect condition the moment you accept it. I have been here three years and I can't tell you how many roads that we accepted over those years where we had to go back and make repairs to ditches and to culverts whatever. There's an obligation you have to the residents that build a house. I don't have a policy that says you install your first culvert and then you're on your own after that doesn't exist. So once you accept the roads you accept everything that goes with it until further notice. If you decide to have a policy to change all that and I would highly recommend before you decide to do that, you think long and hard before you make that decision.



Adam Leach: 48 Stoneybrook Way. I appreciate the deliberation and the thought that has been put in all of this, by everybody... townspeople and developers putting your heads together and recognizing that there is an issue. I'm speaking tonight to say that my wife and I've been on board with the idea of the Stone Farm coming. It's nice to have a little bit of open sunshine coming in through the backyard. We actually originally thought that would help dry out our yard. Our goal in speaking has been that our property be returned to the condition it was in prior to the development of a Stone Farm. We have never questioned the integrity of the road, it's a beautiful road. I've run on it and it's been good on my knees but there are a couple of facts that are true. I'm limiting my comments to what we know and what we don't know. One of the things that we do know is that I have 14 years of evidence on the behavior of the water. It is unquestionable there's a lot of water on Stone Farm and Stoneybrook. In fact if you look at our lawn the part of our lawn that for 14 years was the last part of our property to dry after the spring thaw was the first part of our lawn to dry this year. The behavior of the water has changed. The water has gone away from the natural collector brook and is now being forced down between Mr. Bouchard and myself. I've been able to run the lawnmower across that part of our yard twice this entire summer and I know it's been a wet year but the first time I was able to mow that lawn was in the last week of July. That lawn is normally mowed before May 1st and that's 14 years of evidence and behavior of that water has changed. We do with great confidence have knowledge of dumping sewage in the fields existed about 200 yards behind our home. It's on the Harvest Lane properties as they exist now. There are Google earth photos of the road going in with a turn around and have even on a 2009 Google earth photo have a truck on it. So those are the things that I know to be true. Now to the things we don't know. I appreciate Mr. Braley's testimony but I want to draw attention to the fact that the water situation is like something he has never seen and that the ability to predict exactly what's going to happen to the land as it exists from the creation of the DEP plan. We're not accusing anybody of not following the rules or anything like that but the reality is we are witnessing the difference in the behavior so we don't know where it's coming from. What can be done about it? The sewage water that is running off of Harvest Lane onto our property does surrounding our wells. I consulted a biologist and I asked the question because I read up on it and found out that sewage sludge is used for fertilizer. So my first reaction was well that's not a big deal and it's not an issue. When I consulted a biologist and asked is there anything here I need to be concerned with? He unequivocally said yes there are chemicals called Pfas chemicals. He said those are ever present in sewage. So I looked up the Pfas chemicals I was a little bit alarmed and sought to have water tests. Consulted a lab in Waterville were most water tests are sent from around Maine. They informed me that a typical real estate well test would not pick up those kinds of chemicals. There is a second lab in Massachusetts that is certified by the State of Maine and does do Pfas chemical testing. The test takes 14 days from the time that they receive the shipment. I've already ordered the test. It's a wide range of chemicals and has a wide range of potential hazards from fairly benign to quite serious. I'd like to know what is being included in the flow of water that comes onto our property and also on properties on Stone Farm. Not accusing the town or the DEP or Mr. Wicklow or anybody of any wrong doing, just another one of those things that we don't know. A course of action, answer questions before attempting solutions, hiring a neutral engineer as a sort of second opinion, to find the source of the water and to make recommendations for solutions, to test wells for chemical contaminants and to reconvene after the facts of these assessments are done. I'm prepared to live with the



recommendations of those tests. It's our feelings that arguing back-and-forth and having emotional debates is not productive. Relying on experts they can give us a greater degree of certainty on the cause of this water behavior and the solutions is our goal. The decision making process is relatively clouded from many points of view. Going back to January and talking to neighbors, friends, all of you and everybody here we've heard multiple excuses from well it's been a wet winter, to there's a lot of water on that hill and just about everything that you can imagine. Lots of people have offered lots of different solutions. Some of the solutions have been tried and they haven't created a remedy. We have delayed for five days from your original consideration of the approval of phase 2. Will the Town of Hermon feel comfortable assuming some greater degree of responsibility? Whether that is even an accurate statement by myself, I'm not really even sure. We want solutions to be correct not fast, trying solutions without understanding the causes could be more expensive and more disruptive if they don't work. We have pondered solutions that include digging up our property and we're not opposed to that as long as it's not a shot in the dark to try to figure out how to solve a problem. Existing properties adjacent to new developments should be safeguarded from damages due to all phases of construction version of storm water, surface and groundwater changes due to expose land as well as prior land use. We do favor the idea of a neutral assessment for the behavior of the water as well as having our wells tested. We are willing to work with the town and developer to find solutions.

Nate Wicklow: I'd like to discuss two separate issues: there's the issue that Mr. Leach is brought up on his property and there's the issue of which is Harvest Lane and there's the issue of whether a completed project consisting of three subdivision roads Chestnut, Hawthorne Stone Farm should be taken as a public way instead of remain private. First with Mr. Leach's concerns I respect what you are saying. He talks about things that we know. Everything that he stated that he says we know I don't believe we know. His yard appears to be wet I've seen it myself, his home is built in a hole on the side of the hill at the bottom of the hill and these are factors that will always be there. Mr. Leach put in a French drain and it appears to of failed. It appears to be working in reverse like a septic system pulling water out of the ground. Many things could be done to landscaping of his property to improve it. I could hire any number of engineers to write a report as to why his property is wet other than blaming it on a development next door. In terms of making sure that any development doesn't have any impact on surrounding property is impossible and is not what Maine law provides for. Maine law follows what's called a common enemy doctrine and I'm not going to overstep as I'm sure you've talk to town attorney about it but the basic idea is that each landowner has the right to develop his or her land and is not liable for storm water that may or may not be flowing to a downhill property. Likewise the person downhill is responsible for protecting their property for reasonable uses and reasonable means that would be permitted by zoning uses. It would be consistent with the area so if I build a house and grade my land differently and it changes the same amount of rain water and it goes on one side of my neighbor property. I'm not liable for that and I've done hours of research. I have a memo from an attorney about it. When Cases go to the Supreme Court the complaint does not win. OK that's the legal aspect of it. You know the case law is clear the Town of Hermon has been historically very good to work with on the homeowner level, on a business level and I respect that. There is a ton of mapped wet land on Stoneybrook, there's mapped wet land on Mr. Leach's lot, there's mapped wetlands in areas that appear to be cleared since the subdivision was put in and those areas are always going to be wet. I'm in favor of helping



him out with that if the town chooses to do it but I don't believe that us having built Harvest Lane which is the road that he's concerned about means that we should be forever held accountable for how his house was built to start with. The conditions of the ground overall has natural forces at work. The town's gone above and beyond to help I think they should continue to so. That's my overall opinion on everything Mr. Leach has said relates to Harvest Lane. The road is complete and was built to spec and was accepted by the town. The other separate issue is three other subdivision roads. We have Chestnut Lane which abuts Evergreen woods and doesn't even touch Stoneybrook. We have Hawthorne Lane which does run and abuts Stoneybrook in a similar manner as Harvest Lane does. We have Stone Farm Drive that meanders toward Oak Ridge Dr. I've seen no evidence there is any water problems on phase 2. We look at it every storm after Mr. Leach had brought his concern about his property. We look at every single piece of that property and where the water going. I haven't seen a single issue and it is flatter up there. I think Stoneybrook has much less ground water as you go up toward the top Stoneybrook just like Stone Farm does. The point is lumping these two issues together is inappropriate. It's essentially using leverage, using the word extortion but you know it's highly inappropriate to penalize someone that's built a project properly and above and beyond standard for an issue on a different project. Simply saying there may or may not be a future water problem in phase 2 is not a good reason to not accept the roads in phase 2. The subdivisions had a public hearing in 2018. Some Stoneybrook neighbors expressed some concern about what it buffers. We increased the buffers in the rear of the lots in phase 2. As you drive up there in most cases you can barely even see your house in Stoneybrook. There's a process for all of this. The process as you know starts with a sketch plan, a public hearing where the public can come, and a final plan and approval. Those are many months worth of time the DEP was consulted. The DEP took a very long time on the hydrology geology as Scott mentioned deer wintering. Every thing that Mr. Leach is bringing up or that questions that I've been asked tonight the DEP has looked at and when I mention the Supreme Court cases that I happen to looked at they defer back to the DEP. When making their rulings if there's a storm water permit in place by the Maine Departmental Protection they defer back to that. It's right in those court cases. The town has always followed the same process for residential subdivisions. A business owner or developer that comes into town knows they'll be treated fairly. The subdivision needs to be built properly and the engineer knows. There are no handouts, no one is allowed to skip a step and that's well known. It's also known if you do the right thing your project will be allowed to succeed and an individual abutter is not going to be permitted to bankrupt a project that was done properly. We have 10 homeowners some of them are here tonight already move into phase 2. Some have sold homes some will have a financial impact if these roads aren't taken as public ways. I don't think that's right. They based their decisions on the fact that the town would follow the same procedure they always followed. These are Hermon taxpayers. They have rights just like Mr. Leach does except their damages are real and will actually occur right now. They will not have homes to live in. One homeowner has a home almost completed at the end of Stone Farm. That home we will have an issue with. Town will have loss of tax base. The other minor thing I will mention is the storm water plan on phase 2 with those three subdivision roads requires that the road be plowed and maintained because the water needs to be able to flow in the ditches and to be treated. If the town doesn't plow the road then the storm water will not work and there will be an actual water problem in phase 2 from the water rushing down those two roads Chestnut and Hawthorne. It's frustrating to me that the process seems to of been changed and I keep working hard. I've always been confident that coming to this town I would be



treated fairly. I did follow the rules and regulations. I would go above and beyond to do a good job I stand by my work. If that changes it's certainly going to change my future plans with the town and I'm sure it will a lot of people are watching this. I just think it's a terrible precedents to do this sort of thing and I hope you will take this into consideration and again these three new roads, three separate roads, when I ask you for approval we're asking for the town to take them as public ways and maintaining that is what we're asking for tonight. We fully support the thought that a hydrologist should be hired at the base of Harvest Lane which was accepted as a public way last year to look at groundwater. I'll go to those meetings. I've been out there several times with Scott Braley, the town manager looking at this and we were scratching our heads the same way because if you remember another special meeting was done on a issue resulted in the town ditching a section of Stone Farm and plugging the cross culvert on phase 1. No water goes down there anymore. All the water has been diverted so the water that still exists near Mr. Leach's house is most certainly appears to be coming from the ground. I would be happy to help in anyway I can. I just don't think it has anything to do with our other development and there's any reason to bankrupt our project.

Steve Thomas: So if there was a delay you're talking about the cost to the people that own those lots. I guess that I'm not following you where their going to lose out. Worst case scenario they bought the lot they can still build a house in the interim period. If the town doesn't accept the road an easement could be granted just like people have a camp throughout the State of Maine. I guess I still don't understand why it would be a problem if we delayed this until we have the report from the hydrologist.

Nate Wicklow: Because the residents are not going to build on those properties if the town essentially corrupts the process for accepting a road by throwing the procedure out the window these people and their lenders are not going to build on those sites.

Steve Thomas: In maybe a month to make sure that we're doing things correctly; you think the banks are going to walk away?

Nate Wicklow: Yes, there's no way you're going to get the problem in Stoneybrook in the month as most of it is wetland... I know all about the construction issues that were encountered when the road was built and when the houses were built. No hydrologist is going to show up on site and write a report in a month and say oh here's a neat fix. It's not going to happen in my opinion. I think it's going to take you a long time for a solution to be an overall solution for Mr. Leach unless the town decides to simply build a berm and divert the storm water or ground water at the head of Mr. Leach's property into the Stoneybrook system. What you would be doing is combining the two subdivisions together for the purposes of water drainage that's the simplified exclamation. That would be empty into the fire pond.

Scott Braley: This doesn't have to do with hydrologist, it has to do with the town historical policy regarding public road versus private road. This was approved with the intent to be a public road. If in fact it's either delayed or for some reason the Town Council denies accepting it as a public road. The applicant would have to go back through the planning board process to have approval as a private road to provide homeowners documents road association documents, all those things that



would have to be put in place because they would have to get those to the DEP. The DEP would want it on record because those associations have to be in place because part of all those approvals are who is maintaining, plowing and sanding, and who's taking responsibility for everything down to the mailbox fiasco they were all dealing with in the Postal Service right now. So with regard to delays, historically the town allows during construction of a roadway one building permit. The building permit can not be converted to an occupancy permit until the road is accepted. Now if it's a private road and that can't happen till all those association documents are in place. So from that perspective as I just want to say you have certainly one month or two months to process by any means.

Tim McCluskey: Howard, do our school buses go on private roads?

Howard Kroll: Not that I am aware of.

Jeff Cyr: 64 Stoneybrook Way. My comments are based on a couple things that I've heard; I am a couple houses up from Adam & Diana. As far as where the water is coming from I have a question maybe for the engineer regarding the buffer between properties like the back of my property and the new development. What is that buffer supposed to be for distance? Does anyone know?

Scott Braley: If it's a storm water buffer it depends on how much area is treated. If it's a protective buffer then it's what ever was the good nature offering of the developer.

Jeff Cyr: I thought it was probably about 50 feet and I can say along with Adam what I do know is my buffer and my neighbor on the right of me that buffer average is 40 feet. So there's 10 feet of trees and vegetation that normally would absorb water that's gone. The closest part is 31 feet of a buffer behind my property that's now 20 feet of vegetation that would absorb water that's one thing that might contribute to water accumulating and aiming downhill and progressing. I'm not a scientist or an engineer anything but I do have some experience with home inspection. When you build a home and a home inspector looks at the home the first time you ask... "Where the water is going?" Water is the number one damage to a home. A good contractor will build a home so that water runs away. Where is it going to go when you build roads and ditches ...to the ditch and hopefully runs away from your home or unfortunately when you're in their position and you're at the bottom of that hill there's a lot of homes where all that water goes into the ditch runs down that road and head towards them and our house. Right behind me is a cul-de-sac and it's a straight hill. There are probably six homes I don't know which road that is if you were going to the main road and take the second left you talked about, Hawthorne, I think. Right on the right is the one that comes towards our house. There's probably six homes right there. Perpendicular main road which is uphill to the right and a lot of homes going in there and then directly across from another home that goes up from ours is another road that goes straight up hill with I believe 16 more homes going in there. All the water coming off those homes going to those ditches is running right towards my house when it hits the perpendicular road lucky for me unfortunate for them the land tilts to the right and it goes towards them. If you can imagine all that tree growth and soft ground when it rains 2, 3, or 6 inches whatever it absorbs. When you designed these roads and ditches, I have to beg to differ, but you've directed that water towards certain areas. So I'm not a scientist or anything but it all makes sense to



me that the water has been directed down towards these homes. That's not a natural phenomenon that's been directed that way. So my issue was the buffer maybe has lost some absorption from the trees that are no longer there. I'll know whether that's all part of the problem or not but just my analogy.

Deanna Leach: 48 Stoneybrook Way. I just wanted to go back to one thing that Mr. Wicklow said, he talked about the fact there were wetland on our property. The wetland that he's referring to was the intermittent brook we have talked to you about that runs down the side of my property and the wooded portion of our property. What is happening to our property is the whole backyard and the whole left side of the border between us and Mr. Bouchard, which is entirely different this year. You can tell this winter when things started to freeze everything in our backyard was a sheet of ice and everything on the left side of our driveway was just ice. The whole flow of the water from the side of the hill is different now. It used to run down the intermittent brook, the wetland portion of our property that's in the tree line and I just wanted to make sure that was cleared up.

Ron Bouchard: 42 Stoneybrook Way. I will say that I know some of you have looked at Google earth maps and I've heard comments of all I have a berm that can be seen from space. But yet I'm the one who's taking on the most water so I'm kind of conflicted as to where it's coming from and where it's directed. I have lived there for 15 years and I've never had anything close to this. I guess I'll just say that I've made the offer for the town to buy my place and make a pond. The offer is open because I'm not going to babysit my house forever and that's all I have to say.

Adam Leach: Feel it necessary to offer a little rebuttal. Ron was the first one to raise concerns with regards to the flow of water from Stone Farm onto our properties. That was in January. I got on board in April, and I spent many times talking with Mr. Berry and Mr. Kroll as well as others. I was patient to take time to see what was going on. It was a wet spring. I'm looking for solutions to what might be going on. I can sympathize with the buyers of the land on Stone Farm and know what it's like to wait 14 months to get a home but it's important to mention the first time that I met Mr. Wicklow was in my backyard was August 8. The previous day it was very rainy weekend and we talked about potential solutions to the problem. We both agreed that a berm might be a good solution at that time. He suggested it should be on my property I questioned as to why it shouldn't be on lot five which is the adjacent property on Stone Farm next to my property. He informed me that day he couldn't because he no longer owns that property. Wednesday Mr. Kroll and Mr. Berry along with Mr. Wicklow came to my backyard. The same discussion occurred and I would defer to Mr. Kroll and Mr. Berry but he repeated the same assessment that he no longer owns that property and couldn't do anything about. He'd love to help but he couldn't. The next day and again I'll ask Mr. Kroll to verify, Wicklow Builder's is still the owner of that property. So we sought solutions in a timely manner and haven't met with cooperation, so if the town decides to go forward with phase 2 of Stone Farm. That's OK, but I want you to know that we are still looking for a solution to our problem and it is a visible and obvious problem it does exist and lots of very intelligent, very smart, very experienced people don't know why and all were asking for is a few more weeks so we can get a second opinion and so we can have our wells tested. Then I think in the future if things are not resolved by then and we still have a water problem that's between us. The last comment I would say



is that my french drain in my backyard I opened up the bottom of it is flowing like crazy so it hasn't failed.

Nate Wicklow: Just to clarify as I mentioned I did want to help. The town took over Harvest Lane last year and I don't have any direct responsibility to go on Mr. Leach's property and build him a berm. I did however visit his property at least twice with him and the site in general with Scott Braley, our engineer just to look at things and see if there was anything we could find. I told Mr. Leach that I could not build a berm on a property that had contracted for someone for clarification. I apologize if I miss communicated. The area between the properties is a wooded buffer that I can't touch because it's permitted by the DEP. So the berm cannot go in that wooded buffer without a modification to the DEP permit and this goes back to my point that we have to follow the proper procedures. We can't just cancel or stall development over because somehow that will fix it or create a berm. We have to follow the process. There is a process for everything. We followed it. If we don't follow the process and the town doesn't follow the process everything goes out the window, it's a disaster. Let's assume Mr. Leach needs a berm built on his property. No good will come of bankrupting our other three subdivision roads. They don't have anything to do with Mr. Leach. The water flowage has nothing to do with it. The watershed is different. The two things don't relate except that Mr. Leach is angry and he wants to use the Town Council to sabotage our three other developments which don't have an impact on his property. That being said, I'm in favor of helping him but I can't do it. I can't go onto lot 5 Harvest Lane and cut down a wooded buffer and build a berm. I can't do it. I could see building a berm on his property but that's something the town has to make a decision on. I'm not going to go on someone's private property based on conjecture, let's assume Mr. Leach is correct and there's a water problem maybe it's coming from the ground maybe it's percolating from the natural run he mentioned on his right side. If you're looking at his house, hitting a vein of gravel which are scattered throughout that whole area and coming up through his French drain maybe, maybe not. It's coming from somewhere else. Let's assume the waters there and a berm is the solution, that doesn't make me a bad person. I shouldn't be penalized or be bankrupted because of it and my other three subdivision roads shouldn't be penalized as a way of retribution is its wrong and it's contrary to the way you should run the town ethically and responsibly and following the rules. We should continue to follow the rules as well as try to be good neighbors which I have been. I hope everyone else feels the same way.

Tony Reynolds: We're talking about following the rules but when I was in one of the previous meetings I heard one of the engineers tell me if you build a wooded buffer or a berm on a property to protect the people from Stoneybrook not to get more water going down and then the landowner comes in and buys a piece of property and cut all the trees down there's no penalty from the state. So why are we following those rules? Both engineers told me that.

Scott Braley: The issue is if you look at the way this site law permit is written the landowners when they buy the lots they are subject all the regulations in that permit. All the findings and the permit, for instance if Mr. Wicklow sells a lot that has one of those wooden buffers on it they're marked out there. That landowner is not supposed to cut that but if they do, like I said the state has historically been very reluctant to go after private landowners for doing those things. The state has been very reluctant. In a recent project I had that discussion with Jim Byer who runs the land bureau in Bangor



and I said quite frankly why the heck you're putting all these requirements on a developer when the landowners are doing whatever they want afterwards anyway. He said it's something they are actively looking at.

Nate Wicklow: The buffers in my experience the buffers part of the storm water plan in a subdivision. I've never seen them marked on the ground as is required by the DEP. In the case of Stone Farm phase 2, the DEP was consulted specifically, and Scott reminded me of this, required us to mark on the ground the buffers with property pins. Again I've never seen it done in this entire area. It was done on this site specifically so that those buffers could be maintained so that homeowners knew those roadside buffers could not be cut. A simple note with a building permit or occupancy permit to the homeowner reminding them that buffers have to be maintained. These are all over the place and every subdivision old or new but that would be a good addition to the building process.

Ron Bouchard: Nate talks about helping Adam out but I haven't heard him say anything about helping me out not that there's anything that can be done really at my yard because I have the biggest berm in Hermon. So I don't know what you're up against. My only concern is that Adam and I don't get hung out to dry because you're taking on plowing the roads. If my property is allowed to continue on we're talking about people losing money. I'm losing money; my yard got trashed last year I gave Howard bills for \$30,000 to fix stuff. And that's after one year so that's what I'm up against.

Tim McCluskey: The agenda item tonight was about accepting the road for Stone Farm, Chestnut and Hawthorne. We have talked a lot about what repercussions of the road both Harvest Lane and Orchard Drive. The roads reach down to the cul-de-sac that abuts Adam & Ron and Mr. Stevens. We've heard from our engineer that it says the contractors followed all of the storm water permitting to a T. So we have some decisions to make. We elected to hire a hydrologist to look at the issues that a result from the ground water coming up between on the tree line of the backside of the subdivisions. Which none of that is impacted by the acceptance of the roads or not what I've heard? So are we going to continue to keep the contractor at bay and wait for the results of the hydrologist? Not knowing how long it will take or are you going to look at accepting maybe roads Chestnut and Stone Farm and leaving Hawthorne because it borders up next to Gottlieb, Cyr, Hill and Peter? Wait for hydrologist to get you an idea what's going on. I know that there's people that have contacted me, as you guys as well, that are building houses on these roads that are frantic. I think everything is done right to this point. We can't really tell them when there's going to be a solution for them to move forward in the process. I have to ask you guys, you are not saying much but what do you think John?

John Snyder: He followed all the steps and did it right for the whole development and we approve the development. We're just accepting the roads so I think we should be accepting the road but I do believe we should have the hydrologist looking at it and trying to figure out a way to help the Leach's and Ron on his house. Ron sent me an email giving me permission to go take a visit so on Monday I was standing in his puddles of his swales. He has some serious water on either side of his



berm, on the high side it's a swap in on the low side swap. So they have a serious problem. I do think the town should help them in someway but at the same time we should be accepting the roads.

Charles Lever: I don't know where the idea came from or where it started but I have a little bit of an idea that you know. If we hold off on accepting the roads that means we are neglecting Stone Farm subdivision/ Stoneybrook. My decision tonight is not based off the fact that I feel used as a hostage for Mr. Leach's agenda and I don't feel impressed that the Supreme Court would back Mr. Wicklow should any litigation to take against him. I feel like they're separate but connected issues. I feel approving the roads would allow us to take care of them but like John said we can't drop the other issue. So I think we should move on as if we were going to not accept the roads to get stuff done.

Tim McCluskey: So at this point you're not willing to accept the roads tonight.

Charles Lever: I think we can do both but I'm hesitant to accept the road just because I don't want that to deter our process.

Tim McCluskey: We can accept roads conditionally.

Charles Lever: I know that, I just mean I'm OK with accepting them as long as it doesn't deter any progress of us helping. Basically to sum it up, I want to move ahead with the (hydrologist) at all costs but accepting the road we're going to do if there were no issues because we have already accepted the phase.

Donna Ellis: Whether we accept the roads or not, it will not change the water problem. The roads are there and finished so I can't see a reason why we wouldn't accept the road to take care of them and hopefully find a solution to what the problem is.

Tony Reynolds: I'm OK with accepting the roads but I think the council needs to make a commitment to all the people on Stoneybrook that we will take care of the problem. That we will hire a hydrologist and we will, as a town, and it will cost some money to do with ditching project or whatever we have to do to stop the water from coming down on their property. Or at least try the best we can. There may not be a solution but you know I talked to two or three construction workers and they seem to think if you build good ditches and rock them in that water will run down through there. As long as the council commits to fixing the problem than I would be in favor of accepting the roads other than that I have to wait, and I don't want to do that. But if three or four councilors say no then I would vote no.

Steve Thomas: This is definitely a tough issue and I hate to delay any kind of progress in Hermon but I just feel waiting for the hydrologist report. We have people on opposite sides and I think it would be very helpful to have an independent a review of the water flow. I know this is not popular if we find there are some issues that can be resolved if we approve the roads all of the roads now there's no incentive for the developer to work for the town to fix those items. So if we work with the hydrologist and they come up with recommendations I'm guessing the developer will be more



motivated to bring this to a close once we had a plan devised by the hydrologist. So if you were up to me I would hold off until we get that report.

Doug Sinclair: I would have to say that I've visited both the properties up there again today. There is an issue there; I do not believe it's all coming from anything to do with the development. The way I look at it's been there for sometime I think it's worse right now but it's underground water. I don't believe it's running down across the ledge. There's nothing running down there today. I'd have to vote to approve the roads so this guy can get on with his life and I'm hoping that he is man enough to say if.....there is a problem then we have to spend some money in those two properties he kicks up some equipment and does it. I would vote yes.

Nate Wicklow: Not knowing what a hydrologist would say I can't say for sure what we would do, but I can tell you that if a plan was drawn and involved digging a ditch or berm and we have the capability to do it we would be happy to help but it's a slippery slope as you know working on private property. It's a difficult thing if it were done properly with the proper document and documentation we would be happy to help.

Howard Kroll: First of all once you accept this road is a public way the developer is no longer involved in this and he or she has no obligations. It's going to be you the leaders of the town to go forward with this and I know you've agreed to hire hydrologist which is great but my biggest request of you is don't look at Stoneybrook as three homes. It's a long road and there are more people affected by this than the first three nothing against the people that are here. I've met with them and met with people that are beyond those three homes and I seen what they've been subjected to and what they're going through. My advice if you can do a hydrology study on this you do the whole length don't limit it to just one area. That's because someone will get lost in this equation and I don't want to see that happen. These people are experiencing something that you know what I pray no one else has to experience. I know Mr. Leach brought up the testing of wells I strongly recommend that the town support them and the testing of those wells for the Pfas contaminants. This is real these are usually things that you find industrial areas of been developed and they been abandoned if this is truly was a spreading site and it's been licensed and then expired and mothballed, let's rule it out. All I can ask of you, homeowners deserve to know if something above them is flowing down and make sure there's nothing in that ground water that it's going to affect their water. If they have young children I don't think you want on your conscience if there is something that can be related, so rule it. The final request that I have is once we determine all of this and we find out what the actual problem is you're going to have to get permission across these private properties to do work on. I can't go on private property no more than a butting property owners can go on someone else's property. So you got to be very careful that's why when Scott Braley gave me his design or his recommendation what it would cost to do a berm above these two properties it was conceptual it was kind of an estimate of what the cost would be but I don't know what the true impact would be because I'm going to go across someone's property and I have to get a temporary right away to cross it and to do any kind of construction. It's their property you have no rights on it until they give you permission to cross it. You can get drainage easements, things like that, I don't know if we are there yet but I think those are things that we need to exhaust to make sure that we didn't leave any stone unturned. The hydrology study is not something that you're going to get in 30 days. This is this is



not going to be a cheap report. I think you should accepting the roads but I think you also need to remember what these folks deserve to have some attention and we shouldn't leave them hanging if we've accepted something and they're going to be affected in someway. They've been dealing with this for a long time and I can't thank them enough for being patient because a lot of people probably would have been this patient.

Tony Reynolds: One more point I would like to make is we keep talking about lawsuits and going to court and storm water runoff. This isn't storm water runoff it's water that is boiling out of the ground. There may be cases out there, but this is a very unusual circumstances. Stop talking about storm water runoff because that's not our issue. It's adding to our issue but that's not our issue.

B. NEW BUSINESS:

C. WORKSHOPS:

D. OTHER ITEMS: (from Table Package)

X. APPOINTMENTS:

XI. MANAGER STATUS REPORT:

XII. FINAL PUBLIC ITEMS OR COMMENT: (*Items Not Already on Agenda*)

XIII. COUNCIL ITEMS:

XIV. EXECUTIVE SESSION:

XV. ADJOURNMENT:

Councilor Reynolds moved to adjourn the meeting at 8:37PM. Councilor Thomas gave seconded. With no objection the meeting was adjourned at 8:37 PM.

Respectfully Submitted,

Kristen Cushman
Town Clerk

Explanatory note #1: All items in the CONSENT CALENDAR are considered routine and are proposed for adoption by the Town Council with one motion without DISCUSSION or deliberation. If DISCUSSION on any item is desired, any member of the Council or public may request the removal of an item for it to be placed in the regular agenda prior to the motion to approve the Consent Agenda.

Explanatory Note #2: In the interest of effect decision-making: At 10:00 p.m., the Chairman shall poll the Council and Town Manager to identify remaining items which shall be carried forward to the next Regular Meeting.

Explanatory Note #3: A Councilor who feels the need for the Council excusing his/her absence will make the request to the Town Manager or the Town Clerk prior to the meeting.