

Aiken City Council MinutesCOMMITTEE MEETING

July 9, 2014

Present: Mayor Cavanaugh, Councilmembers Homoki, Merry, Dewar, and Ebner.

Others Present: Roger LeDuc, Stuart Bedenbaugh, Jim Williams, Rich Decker, Maayan Schechter of the Aiken Standard, and one other citizen.

GEM LAKES COMMITTEEGem Lakes Extension
Roads

Councilman Dewar moved and Councilman Merry seconded a motion to begin the committee meeting regarding Gem Lakes at 8:29 a.m. The motion was unanimously approved.

Interim City Manager Roger LeDuc stated there was a quorum present, so the meeting was called to order accordingly. He stated the purpose of the meeting was for him to get a better understanding of the road issue in the Gem Lakes Extension development. Around the time he was retiring, the roads started showing a lot of distress and were having problems. He wanted to get a better understanding from Council, and the residents regarding the road, and from there start looking at what, if anything, can be done to resolve this issue. The citizens that are out there have to live with it day in and day out. There are a lot of different solutions, and we need to find the best solution.

Councilman Ebner stated he has been following this issue since it started in 2007. He said the bottom line is that the road needs to be brought up to specifications. He said if there will be a road problem, it shows up 5 to 7 years after construction. There is no documentation in the file that shows that these roads were properly built. One of the latest excuses is that it was land that was not built on before because it had issues. If you know you have an issue then you need to take care of it. The real issue here is it needs to be brought up to specifications and look like a new road. It is obvious when you drive down Huron and Moultrie, you leave the high ground and as soon as you go over the hump there are issues. When a patch is put in the problem moves down. Then, where the patches are butting together, patch to patch, they are beginning to give a little bit and crack. Asphalt has a zero sheer. It is a wear surface.

Mayor Fred Cavanaugh stated we have been talking about this a long time. He feels the goal is to end this satisfactorily to Council and the citizens who live there. The question is how do we get there? Do we continue with more testing and see what is going on. Supposedly the contractor is using what DOT is using for road repair. We need to have a little more patience. He realizes there has been years of patience, but there is a problem there. The question is will we ever solve it. He asked if we can take a little more time to see what the contractors are doing. The contractors believe they are doing the right thing now, which is not boring, but they are doing something that the State uses. He feels that is the next step--see what the developer has started doing and see if it is satisfactory. If it is not, something else will have to be done. He stated Council certainly wants to resolve this in a good way. He does not want a lawsuit situation. That is not good for anyone. We need to try our best to work this out. He pointed out the roads are the contractor's roads. He felt the best thing at this time is to take a little more time to see what is happening on the latest patches they are making.

Councilman Dick Dewar stated at the last meeting with the contractors in August they were looking for a way for the City to assume the roads. He does not think they found a solution, but he does not think they would agree with that statement. He feels they are under the impression that we would take a look and develop a punch list of all the things that need to be done as of August and they expected that they would do those. He said he honestly thinks when they come back to Council sometime in August they will say

they have done the punch list and now you have to accept the roads. He thinks Council made it very clear that they could do the punch list, but then Council will take another inspection and probably develop another punch list.

Councilman Merry stated he read the minutes and that is what was said.

Councilman Dewar stated he is not an engineer but it is clear to him that the problem seems to be a drainage problem. There is water under the road, and as long as you cannot deal with the water, you cannot deal with the road. It can look pretty for a couple of months, and then cracks will occur. It is a structural issue, and he feels that is beyond what the developers want to pay to fix the road. It is the only acceptable solution that the residents are looking for. They want a road just like the rest of us in the City.

Councilman Homoki stated his impression is the contractor is abiding by a State rule, but others are worried about the aesthetics. They do not want a checkerboard in front of their house. He thinks what the contractors are saying is as long as they keep patching it, they are complying with the State concept of road repair. There is something else to consider, but it is not necessarily the right form. He stated Councilman Ebner mentioned there is no documentation. That is a red flag. There should be some documentation available from someone, or it was not done. If it was not done, then that is a different case. He is not sure how to proceed. There are no enforcement capabilities. We can cajole the contractors to do this or that, but we cannot actually tell them do it or else. The "or else" is we are not going to take the road.

Councilman Merry asked when the last time Councilman Ebner knows of them doing any patching.

Mr. Rich Decker, 1230 Moultrie Drive SW, stated his read on the history of this road is that there was and should have been a performance bond in place on this road. Every road in every subdivision that is being built is supposed to have a performance bond. The timeline on the performance bond is what should have initiated City action. That performance bond in the contract has a certain expiration date. If the roads were not up to specification by that date, which they were not, the City was required to call in that performance bond. Why have a performance bond if you are not going to call it in. If that had happened, then the city would have taken over the roads years ago and used the 125% of the development cost, because that is what the bond is supposed to be to do the repair to the roads. That never happened. What the City did was kick it down the road saying they would give the contractor another chance, as he was a good contractor. They have had 5 years of chances. The first defects on the road showed up 10 days after it was paved. There is a notation in the files stating the roads were crumbling over five years ago. He stated they asked for an independent engineer. Mr. Rick Toole made a number of recommendations. He developed a sheet of possible fixes and repairs to the road. The least effective of those is what is being done now. It had the least expectancy of allowing the road to go the full length of its service ability. The most effective, he was not sure about, because he said testing needed to be done—deep water testing. It was not only a matter of water that was involved. We know there is water, as the City did testing and there is water underneath the road. As Toole pointed out, we do not know what the soil conditions are underneath the road that may be exacerbating it. It could be the water. It could be the soil or a combination of both. He was assured by the former City Manager, at a public meeting in Gem Lakes, that testing would be going on and that the contractor had found a less expensive contractor than Toole had recommended to do the testing.

Councilman Ebner stated there is a letter to that effect.

Mr. Decker stated he has a letter stating the testing would be done, and there is a letter from the City Engineering Department to the contractor saying if you do not come up with an alternative contractor to do the testing, the City will do the testing and bill them for it. Then all of a sudden it disappeared. He said we are sitting here today thinking maybe the patches will work, but we don't know. The required testing has never been done. As far as the patching that is going on now, there are already cracks in the patching areas that have been done recently. There is cracking in the last series of patches. The

areas around the patches are cracking as well. Other areas of the street are showing the same symptoms that the areas that are already patched were showing a year ago. The spider cracking is going down the road. He said he could send them engineering documents that say there are testing procedures and there is a scale that is used to determine the actual viability of the road as a surface based on the amount of that cracking. He believes that is well exceeded. There is something going on under the road, and until that is known this could go on forever. He stated they are now in a situation where the residents are dependent on the contractor. The contractor, at the August meeting, stood up and basically said he and his partner had a business decision to make and if the City would not accept the road then they may have to walk away. He stated the problem is that now we are saying to do the patching and wait a year. Based on what the past five years have shown us, we can almost guarantee there will be more cracking on that road and at the end of the year, we will go to Kisner and Gaul and say there is more cracking. We want you to spend another \$50,000. At that point and time, Kisner and Gaul can say that's it, and now what. There is no guarantee in writing from the City of Aiken that the City will take over those roads until they meet specifications. In a year's time, the contractor could say "We're out of here." Mr. Decker stated there is a financial loss to the citizens because they cannot sell their property because buyers do not want to be a part of the problem. He said the continual patching is the cheap way out for the contractor. The last thing the contractor wanted to do was testing, as it is expensive. He pointed out Mr. Toole's report had indicated the worst case scenario based on testing could be up to \$1.3 million. At that time the testing sort of disappeared. He believes in the future it would be nice if the City could follow the regulations that require them to call in a performance bond when a road does not meet specifications at a certain point. He said at least 90 days before the road is completed, the engineer is supposed to go out and do an inspection on the road. If it does not meet specifications, he is to notify the contractor. The contractor then has 90 days to bring it up to specifications or the bond will be called by the city and taken over. He said that is what is supposed to happen. The residents aren't supposed to be wondering if the road will be accepted in a year or not. He asked if the City is willing to guarantee that in a year they will take the road regardless of the condition of it? Is the City willing to guarantee that Kisner and Gaul are going to be here in a year to do the repairs when the City says it is still not up to specification? He said he could take anyone this afternoon and show them areas of the road that are already cracking and they just finished some repairs. He said he could show the curbing on the road that is in terrible shape. He said he could show where driveways are being undermined because the support for them is sinking.

Councilman Ebner stated the Land Development Regulations say you cannot have a private road in the City. It has to belong to a property owners association or it has to be owned by the City. That is in Section 5 of the Land Development Regulations. It is his understanding there is a Recreation Property Owners Association in Gem Lakes as opposed to a Property Owners Association in Kalmia Landing and Woodside.

Councilman Merry stated Mr. LeDuc found some additional documentation he had not seen before. He asked if he found anything relating to a performance bond.

Mr. LeDuc stated he had not found that information. He said they talked about testing. He thinks some things have happened. He said there were comments about testing not being done. He said he found some test results from 2008-2009 on proof rolling by CSRA. They said it was okay. He stated whether all of the testing is found or not, the proof is in the test of time. We can have all of the reports saying the roads are in good shape or the sub-grade is in good shape, but if they fail a year or two years later after they are built, the results do not mean a thing. That is why we go through that one to two years of waiting to see what the roads are like before the city even considers accepting them. He thinks the testing is there. That is probably not a point of contention. The performance bond is an issue, but that is in the past. The question is how to deal with this road right now.

Councilman Dewar asked if there is a difference between proof roll and compaction testing.

Mr. LeDuc stated in the 2000s all that was required was proof rolling. The proof rolling is something we found out was a more evenly comparable test by taking a loaded dump truck and running it up all the roads to see if there were any soft spots in the sub-base or sub-grade. Proof rolling was done on the project. He said the report was dated February and March, 2009. He said to forget about the reports, because basically even though there are reports saying that inspections were done, the road is still failing. They are 90% sure it is due to water problems. Back in the 1990s, Mr. LeDuc said he remembers walking that area and a sewer line there was very wet. He said the method by which it should be taken care of is the question. He said if we had to start all over again, French drains, and other things could probably take of a lot of what is out there, but the question is where do we go from here. He said he agrees that the patches that have recently been done need to be checked in a year, and then a year from now there will need to be more patches. It is a continuing saga. He could see Gaul and Kisner telling the City they will keep their roads. The City has had situations in the past because LLCs have disappeared and people have died before we took over the roads. We had private roads in the City that the City finally took over. He is not saying that is what the City needs to do at this point in time, but at some point, we need to support the residents in some fashion.

Mr. Decker stated his understanding of final plat approval is that you have to have the engineer certify that the roads are to specification, or you have to have a performance bond in place. How on earth was the final plat approval given when this road failed 10 days after, and has continuously failed for 5 years? It is not a gray area. That is the two specifications in the old section. Is it the contractor? Mr. Decker said he was in business all his life, and if he were the contractor he would be seriously thinking about putting that LLC under at this point as he has spent \$100,000 plus on the road. It would not impede Mr. Kisner and his developments. He stated we are pinning our hopes on the fact that Kisner and Gaul are somehow going to be here at the end of the year and do the right thing. He said he is not willing to accept that. He thinks the City is culpable because of the fact they issued final plat approval without that road being proper, and the fact that they did not have performance bonds. The maintenance bond they had in place, they cashed in, even when the road was not up to specifications.

Councilman Merry asked if the developer was invited to this meeting.

Mr. LeDuc stated the meeting was for the Council committee.

Councilman Ebner stated test wells were bored on that road right after it was installed. He has asked for that data. Someone drilled the wells, put a piece of perforated PVC in and someone measured the water levels. Somebody took soil tests. In checking with the local geologists here, the water comes from up the hill and down the hill as we would guess, basically the water from the higher elevations. The strata of the soil there is that it goes in about 50 to 100 feet above where the roads are now. Six or eight weeks after a rain, that water is down there. You go without a rain for six to eight weeks and everything looks great. It takes that long for the water to get there. He thinks there was some knowledge that there was a problem there. You can build roads anywhere, you just have to build them right. We knew there was a problem, and we did not fix it. Councilman Ebner stated he lives on a road that has not been accepted and the contractor still owns it after 14 years. It continues to cave in. They did run tests on his particular street, and it goes down about three feet over the sewer line and then there is nothing but mush underneath it. He suspects if they were to drill in the Gem Lakes Extension area they would find the same thing over the water lines. He thinks we could wait another year, but that is not going to buy us a whole lot. There have been several meetings a year for the last three or four years since it started happening. He does not know how to move forward from the City's aspect. By our codes it is not legal to have a private road, so how long do we wait? There are others waiting right behind this one. This is a test case. There is his street, Chukker Creek, Ascot, etc. He stated there is nothing cheap about this. It is expensive to fix the roads. With the City expenditures and what the contractors have spent on the road he lives on, there is well over \$1 million invested in about 3,000 feet of road. It probably needs another half-million to keep it from caving in.

Mr. Decker stated on the test wells, there was also a spray field in that area. There were also reports by DHEC, and DHEC sunk test wells in that area. DHEC said the test wells failed because the water could not reach the level of the test well. They felt the water was sheeting on top of a clay layer strata and going horizontally downhill, instead of going down into the soil. This all points to a water problem in that area and difficulty in doing the road. The original road called for a crushed stone as a base. That went away, and they put a clay sand base in. He speculates that if there had been a stone base that possibly the water would have had a way to get to the bottom of the hill as opposed to a sand clay base where it is blocking that water and retaining it. He said he did not know, but he could say that DHEC could not perform the test well properly because of the clay. He said there is kaolin there, and he has kaolin in his yard. He said the matter is an engineering situation. If anything you could back against the engineer and say they did not design the road properly for the conditions that exist on the property. He said what they got at the Council meeting from the engineer was that they did not go any further than normal.

Councilman Dewar asked if these problems were manifesting themselves in the homes at all.

Mr. Decker stated they have cracking in the floor areas. The tile in the kitchen and bathrooms have been cracking. There is settling. He stated every house in there had to have French drains installed to route the water out of the yard.

Councilman Merry stated there is a water problem, but service water and yard drains have to be done anyway. One thing he wanted to mention was the Storm Water Division of DHEC was out there for a period of 18 months about 40 times. He said what they were looking for was offsite discharge of mud, sand silt, etc. He said he never had the privilege of seeing the results of the inspections for that site, but it might be something to look at. They inspected the entire site for runoff and water problems. He said if that had not been looked at, it might be something to look at—the DHEC stormwater inspections.

Mr. Decker stated that was something for the consulting engineer and whoever gets on the case and says do a definitive engineering study, do the testing, and find out exactly what has to be done. He said by guessing we are continuing to put more patches, on patches, on patches which started five years ago. This has not done it. He said he would be glad to meet anyone out there and show them where the patches are. He said he walks it every day in his morning exercise.

Councilman Ebner asked how do we proceed. He said at some point we have to draw the line in the sand. He pointed out that Kisner is not going to keep spending money on the road. He said Mr. Kisner is a good guy and been around a long time, but at some point he is going to have to come to a halt.

Mr. LeDuc stated it was brought up in May of 2013 that a letter was written by the former City Manager to Kisner and Gaul stating the results of what Rick Toole did and stating that it was recommended by Rick Toole to go ahead and do some further testing for possible problems associated with water. In that letter it says they had 10 days to go ahead and do this or we would do it and charge them for this work. Mr. LeDuc asked if anyone knows what happened with that and why that did not go forward.

Councilman Merry stated he remembered that and actually called Mr. Pearce and asked him if he could actually force him to pay for that. He said Mr. Pearce stated he did not know, but we will try.

Mr. LeDuc stated you cannot force him. He said if he does not pay and you are billing him, you are forcing him in another way.

Mr. Decker stated it was discussed at a Council meeting that the city had the option for requiring further testing in situations where something was not working. The City had the prerogative of requesting that testing be done.

Councilman Ebner stated he thinks that is why the letter was written. The design specifications give the City that option.

Mr. LeDuc asked if there was any reason the City did not go forward with that.

Councilman Homoki stated it seems like August of last year was supposed to be a seminal point. Kisner was supposed to arrive at a solution to make everybody happy. He asked what happened to that.

Councilman Dewar stated essentially they never arrived at a solution. He said he thinks Kisner thinks they arrived at a solution.

Councilman Homoki stated Kisner said he is doing what the State requires. He said Kisner says he has done what the State requires him to do, and he just puts another patch in. Councilman Ebner pointed out the patch is what the State does, but that does not take care of the subsurface

Councilman Dewar stated that was in response to requests from the residents. The residents said when this is all said and done, they want a street like everyone else has. They do not want a bunch of patches. Mr. Dewar stated that Mr. Kisner said there were no specifications that tell him, as the developer, that he has to have a road with no patches for the City to accept it. It was never discussed at any length, but that was Mr. Kisner's understanding.

Councilman Homoki stated that was true, but it seems like August of last year, something magical was supposed to happen.

Councilman Dewar stated Council was to receive another punch list and sometime this August Council was going to go back and look at it. Mr. Kisner thinks if he fixed the punch list then the City would accept the roads. Mr. Dewar stated that he very clearly said, no, there will be another inspection in August and if there are additional punch list items that need to be done, then it will be done again and wait another year.

Mr. LeDuc stated in reading through the thirteen pages of minutes from that meeting, he was not at that meeting, but it was clear to him that the developer was told to patch it and the City will go back out a year from then, re-inspect the road, and if everything looks fine the City will consider accepting it. It was clear that a year from August, if the City finds more failure, then the developer will have to fix those areas.

Councilman Dewar stated Council knows they are going to find more failure.

Mr. LeDuc stated the developer's idea was that if he fixed the road then the City will accept it and all will be fine; but in fact, if the patches are still failing, the City cannot accept the road. He stated when the State gets to an area that has a poor sub-base or poor base material, instead of a patch typically being 2 or 3 inches, they will go to a fuller depth of 8 to 12 inches of asphalt to try to get through that poor material. Most of the time that works fine, because it is just a pocket of poor material. This appears like the problem is not just poor material, but it is water along with it. Even if gravel, which had been mentioned, had been put in there, during heavy periods of rain, water does not go through very quickly, therefore the gravel becomes like a sponge. Every time a tire presses down on the gravel full of water, it wants to pop out in some location, and that is where potholes come from.

Mr. Decker stated potholes also come from that kind of clay in the area. He said it is a very specific clay, and you will see that kind of action when you have a hole that comes and then the soil dries and you get that chunky effect. That can actually destroy a foundation. When it gets wet, it expands and has a hydraulic action, pushes up against the road, contracts, and there is a void underneath the road.

Councilman Ebner stated that was an engineering problem. He stated you can go from Houston to the other side of Mobile. It is all in swamps. They build roads there. He has worked in 4 or 5 states around the country and every place has a specification of how deep you go to eliminate the shrink/swell in the water. You use different size rocks and the water will drain out from under it. He believes there is a way it should have been done and was not.

Mr. LeDuc said the problem is solvable, but the question is how to solve it and that is why they are here today.

Mayor Cavanaugh stated he recalls when Toole gave Council the list of things to be done, obviously the boring was number one. Number two was also satisfactory according to him, not as long lasting, but he said that is what the State is using.

Mr. Decker stated there were four or five items listed. Based on the probability of the road meeting the life expectancy of 20 years that should be on a road, the one with the least satisfactory and the one that was most susceptible to further deterioration, was the patching. The other ones he could not make a determination on what was really going to go on with those because he did not have the test data to do that.

Councilman Ebner there were four items on the list. He asked how Council moves forward from where we are. He said we could wait until August of next year. Mr. LeDuc responded that we really can't wait. It needs to be August of this year. Councilman Merry stated he believes Mr. Decker is right as there is risk that the developer can dissolve his LLC and be done with it which makes it more difficult for the City to pursue. At the same time, what harm is there in pursuing them resolving this until that time? If we gave them an ultimatum to do the boring tests or else, why can we not reiterate that ultimatum and hold them to it.

Mr. LeDuc stated he would like to meet with Kisner and Gaul next week and try to determine what their intent is at this point. He wants to find out if they have given up, or if they plan on moving forward. Then based on that, the determination can be made as to whether the City does testing. We need to figure out what our options are as a City to get a final resolution on this problem. He said if the road passes now, theoretically we would wait until next June, which is another twelve months. He said we need to come up with some options. He stated the committees that have been formed with Council have resolved just about everything. This is the toughest of them all. He stated if he were living on those roads, he could understand the frustrations and difficulties that the residents are dealing with. Each road has to be looked at on its own merits as to what needs to be done and how it needs to be dealt with. With this road, the City believes they know what needs to be done. He said it appears from his side that there needs to be further testing. He said we need to know more about what is going on. Presently we are kind of moving forward blindly trying to resolve the issue. He stated he will talk to the developers and try to get from them their standpoint as to where they are and their intentions, and call the committee together for another meeting.

Councilman Homoki stated the letter Mr. Richard Pearce wrote regarding the ten days to do testing needs to be updated or rescinded.

Mr. LeDuc stated if that is going to be the requirement, there will be a brand new letter as to what the City intends to do.

Councilman Dewar stated a lot depends on what Kisner and Gaul say they are willing to do.

Mr. LeDuc stated before that letter is written he wants to come back to Council and let Council know the letter is going out. Council is the final authority as to what action can be taken. Everything that the City does eventually comes back to Council to say yes or no.

Councilman Ebner stated he would have to disagree; the specifications are very clear. They are tried and true. The specifications that are being used are probably close to 100 years old or more. Our design specifications say as they are updated we automatically update. They are national codes. They are ASTM standards for compaction and road building. He stated it is not like there is a pothole in front of Mr. Decker's house. If that was the case then Council would not be here today. He thinks Council needs to look at it from that aspect. Council should be informed, but if Council has to say we need to enforce our specification then they will have to vote to do that.

Mr. LeDuc stated he is not saying that. He is saying if the City takes it to the next level, it could involve legal action or all kinds of different actions. Before we go to the next level, he believes Council needs to be informed as to what will be done.

Councilman Ebner stated that the letter Gary Smith, City Attorney, wrote in February or March of 2014, was well worded as to what Councilman Ebner's findings were. He stated he has been to the Attorney General twice, and Councilman Dewar was with him. The Attorney General told them it is a local issue. He did tell him a list of things to do which were done a year ago. Councilman Ebner stated that Mr. Smith's letter very well states what he has been told and what they have been told by others. Councilman Ebner asked that Mr. LeDuc include that letter from Mr. Smith as part of the documentation. He said Mr. Smith could send that letter out to all of Council so they can all know what he is talking about.

Councilman Homoki asked when Mr. Pearce sent out the letter to Mr. Kisner about testing, was that in the minutes where Council decided to actually do that.

Councilman Dewar stated Mr. Pearce sent it on his own and has the right to ask that.

Councilman Ebner stated if Council needs to enforce the specifications, then they need to do that. He believes Mr. LeDuc has the right path in talking to them and looking at the City's options. The next move will not be pleasant.

Councilman Merry stated the way this is handled could be a precedent setting issue. It affects not only roads that are yet to be built but it also affects roads that have been built. In his case, he spent about an extra \$70,000 to do a crush stone sub-grade for his roads because he did not want this problem. After his roads were paved, they were really rotten so he wrestled and argued with his contractor for 13 months to have the roads redone. During this time, he had an ally with the City with Ted, Bruce, and Larry, who agreed the roads were rotten. He said he did not want the City to accept the roads. He stated his point is that between the money he spent on the gravel base, law suits, 13 months of interest at \$2.5 million in debt, and the loss of market to go from 2006, when the economy was good, until 2008 when the economy was bad, it cost him literally one half million dollars. However, he got roads that were right. If we end up fixing roads that were not done right and the City takes them over, it will set a precedent for roads future and roads past. He said he will have a significant grievance with it. He said the matter cost him \$500,000. He said he still has 30 lots in the development because he missed the market. He said the clock is still ticking on how much he lost because of roads. He said he is just one of a lot of developers. He said this is very important issue.

Councilman Dewar stated there needs to be a consistent policy on how to treat bonds. It should not have to come before Council to release a bond, but the rules are the rules. He said if he understood Mr. Pearce's email about final plat approval, the roads had to be built and accepted before building houses could begin.

Councilman Merry stated that for the final plat approval, the roads have to be inspected and meet the City standards but you can still be in the bonding period and the lots can be sold.

Councilman Dewar stated in this case, standards were never met, so how did they get to plat approval and how was the bond dealt with.

Mr. Decker stated that is why he did not understand Councilman Merry's objection. These are one-off cases. If the City continues down the path of not requiring a bond or letting the bonds go when the roads do not meet specification, then this will become an issue in the future. What should have happened was bond in place, roads did not pass, bond called in, and responsibility is on the developer because he did not do the job properly and bring it up to specification. That did not happen.

Councilman Merry said there is a choice of a bond or a Letter of Credit. Should the City call the bond, the City gets the proceeds of the bond. The bonding company or creditor who provided the Letter of Credit goes after the developer. They don't just lose the money. They go after the developer to recover the amount of the bond.

Councilman Dewar stated the other issue of that is determining the amount of the bond and what the bond is for. Councilman Merry stated there is a formula set by the state for a bond. Mr. Decker stated the state law is 125% of the total construction cost. Councilman Merry stated the way he understood it is that the bond was for satisfactory completion of the roads. Essentially it is based on 125% of the paving cost. Councilman Ebner stated that is the issue. He said the paving is immaterial. The paving is not the issue in this case. Councilman Dewar stated that was the issue he wanted to raise, as he did not understand how the amount of the bond is determined. He asked why the bond was not equal to the amount that it will take to do what needs to be done.

Mr. Decker stated he did not see anything about that. It said that the bond was to be a percentage of the cost of the infrastructure. It did not break it down for just the roads. It was 125% of the development infrastructure.

Mr. LeDuc stated they signed off on the water, sewer and other things. The only thing left is the road.

Councilman Ebner stated when you sign off on the sewer lines, there are three sections in the Design Code that says what you have to meet and part of it is how it was bedded and how it was compacted. That is part of the sign off.

Mr. LeDuc stated once the water and sewer are accepted, they are no longer part of the bond process.

Councilman Ebner stated in this case, the acceptance was not correct.

Mr. LeDuc stated he did not know about that, but DHEC requires certain things before they will allow the sewer lines.

Councilman Homoki stated that Councilman Ebner stated in several meetings that he could not find documentation and he asked if Mr. LeDuc was able to find the documentation. Councilman Ebner asked Mr. LeDuc if he had the compaction reports.

Mr. LeDuc stated he had the compaction information on the roads. He said we were dealing with roads, not sewer or water.

Councilman Ebner stated he feels one reason the developer did not want to drill tests is because if you drill one over the water and sewer lines you will find mush over the top of them.

Mr. LeDuc stated that water and sewer were not part of the issue that he knew of.

Councilman Merry asked if the water and sewer had been deeded.

The answer was yes.

Councilman Merry stated there is no risk to the developer at this point if he finds mush over the water and sewer lines.

Mr. LeDuc stated the letter that went out to Gaul and Kisner concerning the 10 days and testing is not from Mr. Pearce. That letter was from Mr. George Grinton. Mr. Pearce followed up with a letter to Rich Decker and Faircloth Homes referencing the letter that Mr. Grinton wrote. He is not sure if it was sent or not. The letter to Mr. Decker was May 29, but there is no date on the other letter. Mr. Decker stated he thought the letter to him indicated that a letter went to the developer.

Councilman Ebner stated even for the asphalt and the subsurface for the asphalt, compaction tests are required by AAST standards that were not made. Mr. LeDuc stated the information he has said they did proof rolling and compaction tests. Councilman Ebner stated that is not part of the specifications. Mr. LeDuc stated what he was saying these test were done. He said again does it matter what the test results were or not. The fact is that the road is failing. Councilman Ebner pointed out the road did not fail because of the asphalt.

Mr. Jim Williams, of 1240 Moultrie Drive, SW, stated as a homeowner, he would like going forward for the level of clarity to be extended. Include the homeowners. If Council wants the homeowners to be patient, as the Mayor has asked, show the residents what is going on. He said show them what is going on. He said he works for one of the largest contractors in the world, and there is no way, if they had something like this going on, that they would ever have these conversations this far down the path. There are pieces of the puzzle, as homeowners, that do not add up to them. They may be in different areas that they do not see. If you want the residents to be patient then give them something or show them something. It is not that they want a pretty road, they want it to last. He said he did not build his house to be there for a year or two. He said to show the residents that some things are getting done. If you want their patience then give them something that shows them they do not have to take it into their own hands. If they have to take it into their own hands then they have that option. That is what lawyers are for. You can sue anybody for anything at any given day whether you have a reason or not. He does not want to do that, but he does not want to accept something that has not been done right if he has an option. He stated he has been patient. He asked that the City give them something that shows the residents that the City is working on their behalf, as he felt that is what they are here to do. If we can't and there is ultimately nothing the City can do on their behalf, then they will take Gaul and Kisner on their own. In his opinion, there are things that do not add up from the City's perspective. He said he has a background in contracting. They do it the right way. If they mess it up, they fix it. As City Council, they should be doing everything they can on behalf of the homeowners that they are legally obligated and right in doing. He does not think that every aspect has been taken advantage of. The contractors do not want to spend more money than they have to. Giving them more time and wondering if they will do the right thing is not the thing to do. They had an option to do the right thing when this was brought up. He said they were given the option to find out what the right thing was. He said perhaps we can get back on track so we can get it solved so we will not be talking about this two or three years down the road. He said his patience will not last that long. He said the more transparent the City can be with the homeowners, they would appreciate it. He said perhaps the thing that will buy time is when the homeowners start seeing something happen. He said they have not seen anything happen even after numerous meetings.

Councilman Dewar stated Mr. Williams means productive things, as he must have seen the care on the part of Council. They have talked about this and have looked at it. Council is not leaving them hanging. Council is as frustrated as the residents as they want to solve the problem. It seems we take two steps forward and one step backward. He feels we have a roadmap, but not sure where it will lead.

Mr. Williams stated the issue is time.

Councilman Merry asked who decided not to require a bond and why. Also, time is a critical thing in this. He said if the plan of Gaul and Kisner is to walk away, he had mentioned that they could divest themselves of their assets and dissolve the LLC, the State law says they have to divest of those assets for two years or else those assets could

be brought to bear and action. He said things could be drawn out for some time. Councilman Ebner stated it is not going on that long. He said we are down to weeks.

Councilman Dewar stated he felt we are getting to the point where there is going to be substantial change in the status quo which has been just watch and see. He thinks Council needs to give Mr. LeDuc a chance to talk with the developer and come back and discuss it again.

Councilman Merry stated he would like to know who decided not to require a bond and why.

Mr. Decker stated, in an email he received from the prior City Manager, the reason there was no performance bond placed on that development was because there were no proposed lot sales, which is nonsense. Mr. Williams stated there is also some verbiage somewhere along the line that they were good standing citizens and good natured people and well known. He said whether he is a nice guy or not does not matter when doing a job.

City Council discussed the different types of road bedding used over time.

Mayor Cavanaugh asked if some of these different types of bedding would have made a difference. He said he understood that going back that rock was supposed to be used as a layer originally.

Councilman Merry pointed out that the ordinance allows for sand clay. Mr. Decker agreed that it does, but there is speculation that rock would have done anything. Mayor Cavanaugh asked who changed that. It was pointed out that the engineer changed it.

Councilman Merry stated it was done for financial reasons. He said most of the roads in Aiken have been built with sand clay as it is a permitted way to do it and still is a permitted way to do it. He said it is the cheapest way to do it. He said for his development he had mentioned that he did another way which turned out to be the most expensive way. He said the rock bed is the most reliable and does hold up. He said you still have to do compaction tests, but it goes down 100% compacted and you don't have the settling problems. He said the city does allow sand clay, and it is vastly cheaper than stone.

Councilman Ebner pointed out that prior to the specifications in 1987 everything was sand clay. It was just put down properly.

Mayor Cavanaugh asked if the Gem Lakes Extension road had been rock, would it have made a difference.

Councilmembers stated maybe it would have made a difference or maybe not. It was pointed out there is a drain field there.

Councilman Merry stated his development is very close to the road in question at the Gem Lakes Extension development, and he does not have a single pothole and it has the same soil conditions.

Mayor Cavanaugh asked if French drains were used down the road. Mr. Decker stated it was said there were French drains there. Councilman Ebner stated they were not put the full length of the road.

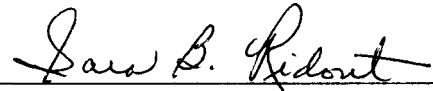
Mr. Decker stated that Kisner is on the record as saying unless the underlying problems were addressed then the problem would not go away. He stated he does not feel any enmity towards him. If he was a contractor in his same situation, when those potholes started showing up five years ago, he probably would have tried to patch them. If that first patching had not fixed it though, he might have thought there was a bigger problem and had better get someone competent to test. Mr. Kisner came to the meeting and said

he had spent \$100,000 plus on the road already. He said that is Mr. Kisner's business decision. He questioned doing it without proper testing or proper engineering. He said that was Mr. Kisner's choice.

Councilman Ebner moved that the meeting adjourn. Councilman Dewar seconded the motion.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:36 a.m.



Sara B. Ridout
City Clerk