

Aiken City Council MinutesWORK SESSION

March 3, 2015

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

Absent: Councilmembers Ebner and Diggs.

Others Present: Roger LeDuc, Sara Ridout, and Maayan Schechter, of the Aiken Standard.

Mayor Fred Cavanaugh called the work session to order at 4 p.m. He stated the purpose of the meeting was to discuss Gem Lakes Extension Roads.

GEM LAKES EXTENSION ROADS

Interim City Manager Roger LeDuc stated at the meeting in September, it was clear that Council wanted staff to get back with the developer and try to work out an agreement that could be brought to Council to settle the road issue. He stated there were some comments made by Council that they thought there was already an agreement on the table and that we were waiting for the one-year period of time before we reexamined the roads. He stated there was no agreement that we could find where Council had agreed to that. He stated we have been meeting with the developer to try to work out what Councilman Merry had brought to the table last September, which was to go ahead and come up with an insurance plan that would limit the exposure to the City but also limit the exposure to the developer since the roads are seven years old.

He stated he asked City Attorney Gary Smith to develop a resolution and agreement which spells that out. He stated the resolution is basically referring to the agreement with the developer which is attached to the resolution. He said, if Council is in agreement, he would like to present it to Council on March 9, 2015, if possible. He stated since his time is limited and he has been working on this, he would like to get it resolved one way or the other. He stated either Council can accept this agreement or the City will continue going the same way we have been, which is that the roads stay in the hands of the developer and eventually the developer will not do anything more with the roads. He stated it will become a more difficult situation for everybody. He stated this agreement would turn the roads over to the City of Aiken. He stated the terms and conditions would be that the City agrees to the dedication of the streets. He stated that is what we do every time a developer goes out and builds some roads. A year or two later a deed of dedication comes to the City for water, sewer, stormwater, and the roads. He stated in this particular case, the City would agree to accept the roads if the developer meets the conditions listed in the agreement. He stated one condition was that a final inspection would be done by the City. He stated that he, George Grinton, and Ted Jones went to the site in January. He stated that Ted Jones developed a listing of repairs that need to be completed. He stated Mr. Jones would go out again, look at these repairs, list them, give them to developer, and then the developer would have 30 days to make the repairs. He stated once the repairs have been completed the inspector would go out and make sure they were done properly and then a deed of dedication would come before the City for acceptance. He stated with that they would have a letter of credit or a bond of \$100,000 that would be for two years. He stated the exposure then, if there is a calamity or something major happens with the roads, the City would have \$100,000 available to them to fix the roads.

He stated he, the Mayor, and Bill Lykins went out there last fall and looked at the roads. He stated Bill Lykins, who retired in Woodside, was an owner of an asphalt company, and had been in business for over 40 years. Mr. Lykins thought the roads looked better than the previous time he was there. He stated he has been out there since then and said the roads are still looking good. He stated Mr. Lykins is not an engineer, but is simply a

person who has dealt with roads all his life in working with asphalt. Mr. Lykins felt like what had been done with the patches is working. Mr. LeDuc stated he feels that once these last patches are complete, probably little to nothing will have to be done from that point forward. He stated, in case there might be a problem the developer would have to get a letter of credit or a bond of \$100,000. He stated the bond the developer had in 2008 was \$108,000. It is right at what the bond was back in 2008. To limit the developer's exposure since the roads are seven years old, if there are any repairs that would have to be made that were \$10,000 or less then the City would go ahead and make those repairs. The City would go out there once or twice a year, and any cracking or patching that needs to be made would be done. He stated he is not expecting that there would be many repairs at that time. He stated if the City accepts this agreement, then the process would start with the inspection and repairs, and the two-year period of time that this agreement would be in place with the \$100,000 bond. The roads would become the City's. The agreement does not tell the residents when the road would be resurfaced. He knows that several feel it needs to be resurfaced, but he stated as City Manager, until we can see that there are few, if any, patching that needs to be done, we do not want to resurface the road. He stated we would want to wait two or three years before thinking about resurfacing. He stated the patches that are there now are smooth and have been done professionally by BK Construction out of New Ellenton. He stated this agreement would get the roads out of the developers hands into the City's and limit the exposure that the City would have. The developer has agreed to the agreement, and if there are any changes to the agreement, or if Council does not agree with it, it does not have to be placed on the agenda.

Councilman Philip Merry stated the whole point of this is Council is hearing from some of the residents that they pay city taxes and bought a home in the city. They have a certain level of expectation of reassurance that the roads be maintained, and they do not get that sense of reassurance from the developers. He stated part of the motivation for this is trying to do right by the people that bought those houses and are paying property taxes. He stated the agreement is to give the residents a sense of security and knowledge that the roads are going to be maintained, and they are not going to have to go through a law suit with the developer to get a pot hole patched.

Councilman Dick Dewar asked Councilman Merry if this will save the City money in the long term or will it cost the City money. He stated the problem is the water underneath. He stated he does not see the agreement doing anything to that. Councilman Merry stated the only way to answer that question is if you were to say whether or not if long term means the City will accept the roads, but further down the road or never accept the roads. He stated if the City never accepts the roads, then this will certainly cost the City more. Councilman Dewar stated the City's policy in the City is to accept roads that are built to the city specifications. He stated that has been done routinely, and we have generally not had a problem. He stated these roads have not been built to specifications. He stated the agreement that was mentioned, which was talked about in a meeting, was never put in writing and was understood differently by the developers and by members of the Council. The agreement was that the City would give Gaul and Kisner a checklist of items that needed to be done, and they would do them within the next year and after that year the City would accept the roads. He stated the City's policy is once the developer says the roads are okay then we wait a year to make sure that they are okay and then the city accepts them. He stated he understands that is what has always been done.

Councilman Merry stated he does not think that is right. He stated what we said to them he is right about. He pointed out when he deeded his roads, he did not get Council to agree to accept them and then wait a year. They are deeded immediately. Councilman Dewar stated Councilman Merry built the roads to specifications, and the City went out and verified that the roads were built to specifications. His understanding was that the City waited a year and then Mr. LeDuc would bring it to Council and say the roads had been built, they have waited a year, and now they are ready to accept them. Councilman Merry stated that was correct. Councilman Dewar stated we will not get there with these roads because they do not go a year without needing patching. He stated that is not the same patch, but different patches. He stated that Mr. Rick Toole gave City Council an engineering report that basically said that some subsurface testing needed to be done. He stated everything he has read says there is too much water under the road. He stated he

doesn't know what to do to get rid of the water, or if you can get rid of the water. He stated he doesn't know if you have to dig down so many feet or what.

Councilman Merry stated with enough money you can get rid of the water. He stated he doubts you will see enough money from any source, except a court order. He stated he feels certain it will not be seen from the developer, so the motivation is the citizens of Gem Lakes who bought these houses in good faith who probably will never see any version of satisfaction from the developer. He stated he was not saying anything negative about the developer. He stated the best thing the City can do for the residents is to step in and do this. He stated he knows how to pave roads, but not how to maintain them. He stated he knows how to get them set up and built, but he doesn't know what to do when they do start coming apart. He stated he had a very contentious set of issues when he paved his roads because he knows what is right and wrong, but the reality is that you can build roads on top of just about any kind of subgrade. He stated there are roads over swamps and all sorts of things. He stated just having water under there by itself is not the problem. He thinks all of this is in that same draw that is essentially a water shed going through part of Woodside across Silver Bluff Road. It still draws right down to the Gem Lakes Extension and his development to some ponds. He stated he thinks that the draw has been there for hundreds of years and there is a lot of silt and sand that deposits erosion there. He thinks the basic lay of the land is not great and that is why there have been some failures in Woodside and that is part of why Gem Lakes is having this trouble. He stated there are two sets of patches. One is the original set of patches that were not so good that were done by somebody else, and the second set of patches that B&K Construction came in and did. They are holding up a lot better. He stated there are one or two of the ones done by B&K that are literally marginal around the margins, but the rest of them have held up pretty well because they started doing the full depth patching. He stated Mr. LeDuc has already identified to the developers a large area that is all alligatored in front of a house that would need to be patched. He thinks these can be fixed with patching which makes it ugly, but there is no guarantee that they will not wash off the side of the hill. He stated that is why the agreement is needed.

Councilman Dewar stated he agreed they can be repaired, but he does not agree that they can be fixed. He stated from everything he has read and been told, he is worried about putting the City at more risk by accepting this agreement. He stated if the City accepts these roads, then we will have to do whatever it takes. Councilman Merry stated what would happen if six months from now the City has not accepted these roads and all of a sudden we have a hundred year storm and one of these roads is washed off the side of the hill down to the pond in the back, and the developer says we are bankrupt in that LLC and can't afford it. He asked where would the City be at that moment. Councilman Dewar stated he did not know. He asked if there was a way for the developer to legally back out of this by declaring bankruptcy.

City Attorney Gary Smith stated there are conflicting issues. He stated Councilman Ebner sent a brief email stating he was not in favor of this. He stated he would think the citizens would want Council to accept the roads so they have the benefit of the backing of the City to take care of the problem if it arises in the future. Presently there is no bond on the road and so all of these repairs that Gaul and Kisner have been doing have been out of their own pocket. He stated there is no guarantee that they can continue to afford to do that in the future. He stated this is an oddball situation. He doesn't think it will be seen in the future again. He stated as an enticement they have offered to give the City two more years of financial guarantee to take care of repairs as they become necessary.

Councilman Merry stated there is no way to know if the roads are going to completely fail or not. Councilman Dewar stated in all he has read it is guaranteed they will fail. Councilman Merry stated they have made it seven years. Councilman Dewar stated they have not made it seven years. They have been repeatedly patched and the roads that these people are living on are different than other roads. Mr. Smith stated his road has patches on it. Councilman Dewar asked if there were as many patches as on Moultrie. Mr. Smith stated his road was repaved by the state not long ago, and it didn't take long to have a patch on it. Councilman Dewar stated he is not saying the roads are not to have any patches at all, but he doesn't think the roads have ever met the specifications. He asked if the City has engineers that say the roads have met the specifications. He stated

he gets a lot of his data from Councilman Ebner because they talk about these things, but he stated that Councilman Ebner is concerned that the specifications were either changed or ignored. At one time compaction testing was required, and there is no record that has ever been done. He stated Rick Toole's report recommended the City do something and the City did not do anything. Mayor Cavanaugh stated he wonders who changed those recommendations. Mr. LeDuc asked what recommendations they were speaking of. Mayor Cavanaugh stated something was changed about how the City was going to go about this.

Councilman Homoki stated there was a meeting by Assistant City Manager Stuart Bedenbaugh's house. He stated Rick Toole mentioned core samples were needed. The only argument against core samples was it is such a fluid situation and you take a core sample in one place and have a problem area just two or three yards away. He stated you would have to do a core sample every so often. As far as he knows, no core samples were taken. He stated that Councilman Ebner's heartburn was the same issue that was just brought up. They do not have an engineer of record or anything in black and white. He stated that could expose the City, and that is one of his concerns. He is not sure that the problem will be alleviated by taking over the roads and telling Gaul and Kisner to have \$100,000 letter of credit.

Mayor Cavanaugh stated the question is that there is no answer to is who is really at fault here. He asked if it was Gaul and Kisner because they did not do what they should have. Councilman Dewar stated he speculates that he is not too sure that it is Gaul and Kisner at fault as much as it may be the City. He stated it is the City's job to make sure the roads are built to specifications. He stated one of the ways the City solved a lot of that was by developing the Engineer of Record, but this was before the Engineer of Record that these roads were built. Councilman Homoki stated the requirements were still there before that. Councilman Dewar asked if there was a requirement for core testing or compaction testing. Councilman Merry stated not a core drill. Mr. LeDuc stated there were some inspections that were done. He stated they found the records, but all they could find is minimal records. He stated he found four or five things from CSRA Testing saying that the road base was okay. He stated you can test in one place, but the problem may be in another place. He stated it doesn't matter if there was full testing or minimal testing, parts of the roads have failed. The proposed agreement is not a perfect solution. It is a difficult situation that the neighborhood is in. They would like for someone to take full responsibility so that they know in the future that the roads will be taken care of. He stated what the agreement does is it gives the City the bond or letter of credit of \$100,000 that if something does happen in the future, there will be someone to take care of it. He stated if something catastrophically happened in the next year or two, some of it would be dealt with.

Councilman Dewar stated this passes it to the City and that is his concern. He stated if this is passed to the City, then the City will have to fix the roads. He stated the City may not get away with just doing what has been done the past seven years with patching. He stated the residents have really not received what they expected to receive when they purchased the houses in the City of Aiken.

Mr. LeDuc asked what is the alternative. He stated he has been wrestling with this for six to eight months trying to come up with a solution.

Councilman Merry stated the alternative is to not accept the roads and do nothing. He stated Council will end up in this conversation down the road anyway. He stated we cannot go back in time and produce the records. He stated what has been done is we keep kicking it down the road doing nothing every year. The developers have said that at some point they are stopping. He said they could go to Council, and who knows what could happen in court. Councilman Dewar stated the City needs to get a cost estimate of how much it will take for the City to fix the road. He stated we need to dig down as far as needed to resolve the water, if that can be done. He thinks if Council votes on taking the roads, we need to recognize that we are committing the City to potentially a million dollars.

Councilman Merry stated that is not the way roads are fixed anywhere in Aiken. He stated there is a city-wide set of standards and practices in terms of how the City fixes pot holes, alligatoring, etc. He stated he would not give them some better deal than the rest of the city gets. Councilman Dewar stated they deserve a road that meets the specifications. Councilman Merry stated we cannot say that it doesn't. He stated a road can be built to specifications, and it can still fail. He stated a road can pass all the tests and it can still deteriorate. He stated a lot of it has to do with the quality of the asphalt that was put down. Mr. LeDuc stated about 70% of the road is still okay.

Councilwoman Price entered the meeting. Councilman Dewar told Councilwoman Price that Council was discussing the resolution and agreement for Gem Lakes Extension Roads.

Councilman Homoki asked who is responsible for making sure the asphalt is of the proper quality. Councilman Merry stated the contractor and the developer. He said he had the same asphalt company to pave the streets in his development years ago that Gaul and Kisner did for Gem Lakes Extension. He stated the site contractor would normally have the results of all the tests, but that contractor is bankrupt, out of business, and there is a warrant for his arrest and he has vanished. He stated this person did his subdivision and Gem Lakes Extension. He stated they subcontract out the asphalt work. He stated he paved his roads before they paved theirs and when his asphalt went down it either went down too cold or the mix was not good. It was terrible. He could take his hands and dig into the asphalt, slide his arm under the asphalt, and pull up a pizza sized box of asphalt from his roads. He stated he took Ted Jones and Larry Morris to the site and told them he was not paying the guys for the roads. He stated the asphalt was terrible, and they were talking about suing him. He told Mr. Morris and Mr. Jones that he wanted the city to turn the roads down. He stated Mr. Jones told him he did not have to walk around. He could see the roads were bad and the City could not accept them. Councilman Merry stated he sent an asphalt sample to a lab in Florida to have it checked. They told him it was no good. He stated he got into a year-long legal battle with the contractor that put the asphalt down. He stated he would not pay for it as he had done bad work. He stated he ended up winning, and he had to fix the asphalt. He stated he used a gravel subgrade, but if he had left the asphalt there, it would have come apart. It was coming apart within days of being laid. He said you can have perfectly good subgrade and perfectly good prep, but if the asphalt is not good, you have a bad road. He said he did not know about that in the case of the Gem Lakes Extension, but you can have bad asphalt. He said the same contractor that did the job for his subdivision did the work for Gaul and Kisner in Gem Lakes. He stated in the contractor's defense the contractor was near death when the job was done and his crew came out and did the job.

Mr. LeDuc stated the asphalt is fine and is not bad. Councilman Dewar asked if it had been tested. Mr. LeDuc said there were some cores taken. He stated after seven years, the majority of the asphalt that was put down is still there. The asphalt is fine. It is the base that is causing the problem. He stated if the asphalt was bad then the entire road would be coming apart. Councilman Dewar stated if it is the sub-base then the City will end up fixing it if they accept the roads. Mr. LeDuc stated he felt that after seven years, if it was going to fail then we would have been seen it by now. He stated it has been patched and the patches are holding up. Councilman Dewar stated the patching is for the top. He stated he is under the impression that underneath the road there is water. Mayor Cavanaugh stated that is the purpose of testing that hasn't really been done. Councilman Dewar stated if the City is going to accept the roads everyone needs to be on the same page and know that we are accepting a commitment to spend up to \$1 million or \$2 million to fix the roads. That is what the citizens who have been paying taxes on those roads expect and deserve. He stated he is not against accepting the roads, but he wants everyone to be on the same page. It will cost a lot of money. Mr. LeDuc stated it may cost nothing or it may cost a lot of money. Councilman Dewar stated it will have to cost something. Mr. LeDuc stated that is assuming the road is going to continue to deteriorate. Councilman Dewar stated that was correct. Mr. LeDuc stated the majority of the road has been there for seven years, and it has not fallen apart.

Councilman Homoki asked for an explanation of the deductible. He asked if we take a bundle of patches so it makes the cost above \$10,000, can it be taken out of the letter of

credit. Councilman Dewar stated that only lasts to \$100,000. Councilman Merry stated there is a definition of an event. Councilman Dewar stated there is an arbitration process to make sure the estimate is correct.

Councilwoman Price stated her apprehension comes from the patching in the road, and she has heard it from the citizens that they are not happy with the patches. They want their road to look like one layer of asphalt. She stated she needed help in being comfortable with her decision. She stated she needed a price of what it would take for one overlay of that road so they could have an even road without patches. She stated secondly she wants to know the cost if we have to dig everything up and start over again. Councilman Merry stated they received that from Rick Toole. Councilwoman Price asked if that was a good number. Councilman Dewar asked what the number was. Councilman Merry stated Mr. Toole gave them three scenarios and the third one was complete dig up, putting in drains, redoing the subgrade and base and the paving. He stated it was over \$1 million. Councilwoman Price stated that is what they estimated it would cost but we did not know that was the number. Councilman Merry stated it was in the report. He stated Mr. Toole did not recommend that, but he said that would be the most reliable fix. He stated asphalt goes up and down with the price of fuel. He stated right now it could probably be repaved for under \$100,000. The original paving was under \$100,000. It got up over that, but it is back down. He stated the overlay is thinner. Mr. LeDuc stated it is 1" instead of 1.5".

Councilman Dewar stated he would be much more comfortable if Mr. Decker was in the room because he has studied this more than anyone else. He stated if he were here he would be able to explain where he is coming from.

Councilwoman Price stated she thinks Council can discuss the bare minimum in terms of getting that one overlay to make it an even road, or the worst case, dig the road up and see what the problem is. She felt the leaks will continue to exist. Councilman Merry stated he agreed with Mr. LeDuc, in that there are still some cracks that have not been rectified, but the majority of the road is holding up. He stated there are some areas that have no cracks. He stated the roads have not had a catastrophic failure. They have had a cosmetic failure. He stated they have done a lot of the work as far as patching those problems. He stated a good bit of the trouble came from the fact that when they sold those lots, they sold them to builders who came in with heavy equipment and dug out and leveled the lots. He stated they were bringing heavy equipment with extreme high frequency, because they build so fast. He stated that did as much to damage those roads as anything. That happens all the time. He stated most of those lots are built on so that is gone now. Mr. LeDuc stated there is a big patch where they are building three new homes. He stated he is sure that is from overloaded vehicles.

Councilman Dewar and Councilwoman Price stated they do not see overload damage in other places in the city. Councilman Merry stated you do not usually see that much extensive grading on a lot. He stated most developers will get everything graded when they develop the property because they are going to build on it themselves. He stated the one house that Gaul and Kisner built is sitting up on a little hill. When Faircloth and the others came in, they cut everything out. He stated that Rob Braithwaite complains about how he has a sheer drop on the outside of his fence in his backyard because Faircloth took it down 20 feet below the grade where it was before. He stated you do not normally see that kind of earth movement after roads have been paved. He said you will see delivery trucks, cement trucks, etc. to build houses, but you don't see that kind of heavy equipment on the road. He said there are some subgrade issues, but if you take a mediocre subgrade and you start putting that kind of stress on it, it will do what has happened. He stated he doesn't disagree with anything that has been said, but he is not ready to say he will spend more than \$1 million to dig the road up. He thinks there is a lot of room between that and digging it all up.

Councilwoman Price stated she is saying this because of the meetings we have had with the residents there and the expectations they have. She stated there were also some complaints about some saying they are having water seepage in their driveway. Councilman Dewar stated again it would be nice if Mr. Decker were at the meeting to present his side again. He stated it is like the bike lanes – having more meetings than we

need. He stated he is not comfortable being able to defend what he is saying that the roads are not built properly. He is going by what he has read and listened to over the years. He feels if the City accepts the roads then we are accepting the obligation to fix the roads and whatever it costs. Mr. LeDuc stated the City would be.

Councilman Merry stated his point is not to jump to Rick Toole's third scenario. Councilman Dewar stated they have tried patches for seven year. Councilman Merry stated there are two sets of patches. The ones done by the first contractor were not good, and the ones done by B&K are holding up. They have been there for about three years. He stated there is an aesthetic problem, but does the City guarantee everybody an aesthetically beautiful road. Councilman Dewar stated he knows the aesthetic issue gets to be a little controversial, but what do you say when a homeowner comes in and wonders how they can sell their house when someone drives down the street and looks at the road. Councilman Merry stated he checked on that because he has heard Mr. Decker talk about that and how it has hurt the value. He stated he ran a list of every house that sold on Huron and Moultrie since 2008. He stated every house that sold on those two roads in the new section has sold at above the market average between list price and sales price. He stated with the exception of the four model homes, they have sold well below the market average for days on market. He stated many of them sold above their asking price, so the question of whether the roads affect the property values can be argued all day long. He stated if you want to start looking at some way to quantitatively analyze that, you look at what has been on the market and what it sold for. He stated they have sold faster and for money. Councilman Dewar stated he hears what Councilman Merry is saying, and it is emblematic of this issue. It is the opposite of what some of the people have come in and told Council. Councilman Merry stated his information is factual. Councilman Dewar stated he did not know what to say. He stated he would be happier to see Mr. Decker and Councilman Ebner in the room talking about it. Those are the two people that have done most of the analysis on these issues. Councilman Merry stated in the very beginning he was dead set against taking these roads, but this many years later, the roads are sufficing, even though they are not pretty.

Mayor Cavanaugh stated some of the residents will say the road is going to keep failing and the City should take it up now, make it good, and get on with it. He stated Council has heard the residents talk already. He stated he agrees with Councilman Merry and Mr. LeDuc in that some of those patches that have been recently applied over the last year are still holding. He stated he does not think that most of the roads are patched roads. He stated the patches are here and there. Councilman Dewar stated there are a lot of them. Mayor Cavanaugh stated there are a lot of them, but some people like to say it's the whole road and it's not. Councilman Merry stated you have some areas that have patches on top of patches. There are certain sections of the road that are heavily patched and other parts of the same road are okay. He stated he has looked at roads all over Aiken because of that and there is very severe cracking on most roads. He stated he went down Whiskey Road looking at cracks, and they are as cracked as they can be and some of the cracks you can drop a quarter in. Councilwoman Price stated there is a difference here. Councilman Merry stated he knew. Councilman Dewar stated he agrees Aiken has cracked roads. He stated you can go down the bypass just before the light at Silver Bluff, and it is a mess and will stay a mess. Councilman Merry stated if it is being said that an agreement to accept these roads is an agreement to spend over \$1 million to fix them, then he will not agree to accept the roads. Councilman Dewar stated that is the way he reads it at this point. He stated he would love to be dissuaded.

Mr. LeDuc stated a lot of things have been talked about, but what he is hearing is what is before Council today is probably not going to be acceptable. He stated in the limited time he still has left in Aiken is there anything that he can do to try to come up with something that is acceptable.

Councilman Dewar stated he did not know. He stated he would like to see Councilman Ebner and some of the Gem Lakes people in the room. Mr. LeDuc stated he was not going to speak for Councilman Ebner or Mr. Decker, but they feel the roads are not up to specifications and will never be and we need to replace them. He stated replacement will probably not happen by the City or the developer. He asked what alternative do we have. He stated this is the best he could come up with the developers and even the agreement

was hard to come up with the developers. He stated if the agreement is not acceptable, then we may need to look at a legal solution.

Councilman Dewar asked if there was a legal issue where you cannot have a developer maintain roads in the City. Councilman Merry stated the developer actually has the right to deed the roads to the homeowners. Mr. LeDuc stated it could be a private road like Woodside and Kalmia Landing. Mr. Smith asked what Houndslake did. Mr. LeDuc stated the roads were finally deeded to the City in 1999 or 26 years after they were built. He stated the City still went out there and maintained them and patched them. He stated Stratford Hall was another interesting situation where after 10 years, the roads were not deeded to the City and the developer had passed away. Finally the homeowners association asked the City to take them and the City semi-legally did. He stated his personal belief is the developer is not going to continue to maintain these roads much longer. Councilman Merry stated they said they won't. It was said that they will just walk away. Mr. LeDuc stated it is an LLC. Councilwoman Price stated they will dissolve the LLC. Councilman Merry stated they do not have to dissolve the LLC. They can just quit writing checks, and the only way they can be forced to write checks prior to dissolving it is court. Councilman Dewar stated that will force the residents to sue somebody, probably the developer and the City, or just the City.

Mr. LeDuc stated if Council would like to go ahead and having testing to see if there is subsurface water that can be done. Councilman Dewar stated this is the third time we have said we would do it. Mr. LeDuc stated the letter he saw from the former city manager was telling the developer what the City thought was the solution, and the city was expecting them to do the subsurface testing. This testing would be over \$20,000. Councilman Dewar stated it also said that if the developer didn't do it, then the City would and bill the developer. He stated the City never did it. Mr. LeDuc stated that can certainly be done. Mayor Cavanaugh stated it may be up to the City to do it and pay the bill just to find out. Councilman Dewar stated he agreed with the Mayor because that will tell the city for sure what will need to be done to get the roads to meet City specifications. Mayor Cavanaugh stated it will also show the residents that the City really wants to help and have this done right. He stated we need to find out where the water is, how much it is, and where it is coming from.

Mr. LeDuc stated he has been out there several times and there is one area along the curb that has water running down it. He stated the pavement is perfect, but there is algae in the curb from the water running down it. He stated there is water coming up alongside the curb, but the road is in fine shape. It has never been patched and the asphalt looks perfect. He stated there is no doubt that there is water right below the surface in certain areas, but not all areas.

Councilwoman Price stated that is what they contended. She stated they took Council out in the summer and showed them where the water is seeping based on the curbing of their homes and then the asphalt itself. She stated it is very clear where the cracks are appearing.

Mr. LeDuc stated in that area there is nothing wrong with the pavement for 100 feet or more. Councilman Merry stated he wished the coring samples had been done when Mr. Pearce sent the letter. He asked what happens if the City does that, and we find out it is the worst case scenario. He said he would be in favor of doing it now. He stated a developer would patch the roads forever. Councilman Dewar asked what would need to be done if it was the worst case. Mr. LeDuc stated it depends on what is found. He stated French drains could be put in. He stated you can get below the water line. He stated a French drain is digging a trench about a foot and a half wide and go down whatever distance is necessary. He stated when the core test is done it will tell how far down the water is. He stated if it is down three feet then you go down 3 ½ feet and put in a six inch drain and put a filter cloth around it. You put stones around it, and the water goes into the stone, then into the pipe, and then it is discharged. He stated in his former life all he did was work on roads. He stated that is where all his research was done at the university. It is now done routinely along every interstate to go ahead and capture that water with this type of a system. Councilman Merry stated it works. Mr. LeDuc stated the soil borings will at least tell what the City is up against. He stated it may be \$1

million or it may be almost nothing, but you do not know. Councilman Dewar stated we have been trying to get to a known point. Mr. LeDuc stated they will not know until they do some soil boring. Councilman Merry stated if they bore five different places and they all come back okay, that doesn't mean all the other places are okay. Mr. LeDuc stated they will probably not bore at the top of the hill. Mayor Cavanaugh stated there are some places where there is not a problem so they would not be bored. He stated you bore in places that are having problems. Councilman Homoki asked if there was some type of radar that can tell where the water is. Councilman Merry stated there is. He stated it uses sound waves. Mr. LeDuc stated it is sonic. He stated it is not perfect. To be conclusive soil borings need to be done. He stated if Council wants to do that then we can hire someone. He stated he could bring that to Council on March 9. Councilman Dewar asked if they could look at the document that Mr. Pearce prepared regarding the developer doing that, or the Toole report. He stated he thought one of the reports tasked the developer to do the soil testings and there was a caveat that if the developer did not do the bore testings that the City would do them and bill the developer. Councilman Dewar was told it was a two-page letter. Mayor Cavanaugh asked what the developer would do if the City sent them a bill. The Mayor was told they probably would not pay it. Councilman Dewar stated he wanted Council to realize the impact of our accepting the roads. Mayor Cavanaugh stated all of Council wants the same thing.

Councilman Merry stated if the City takes the roads and digs them up and replaces them, because they do not meet specifications, the City needs to find about \$20 million because we will have to do it for all of Woodside and all these other places. Councilwoman Price stated that is what she has been told this will lead to. Councilman Merry stated this is the camel's nose under the tent, and he is not sure the City should spend that money to redo the road. He stated there is some developer responsibility. He stated he knows it is easy to pick on the City and government, but there is some developer responsibility here as well, and in a court of law, the court would point that out. Mayor Cavanaugh stated they are still the developer's roads. Councilman Dewar stated it is his understanding that some of the roads in Woodside have not been turned over to the POA. They still belong to Rick Steele. He believes that Councilman Ebner's street is still under the responsibility of the developer. Councilwoman Price stated one concern of a resident was the roads were caving. Councilmen Dewar and Merry stated they are not caving. Councilman Dewar stated the concern is as the water keeps coming up they will need more patches. Councilwoman Price stated the residents are afraid that things will start sinking.

Mr. LeDuc stated a typical patch goes down two or three inches. You are capping the area. A full depth patch is going down about a foot. It goes down in the ground and there is so much asphalt there that even though there is water underneath it, it cannot push back up. The way a pothole works is like a sponge. If there is a sponge and a tire goes over it, it squirts water out. That is what is being forced when the sub-base is very wet and there is only 1 1/2" of asphalt, you are pushing up and that causes the cracking. The water from underneath is pushing up on the asphalt. He stated when you have a full depth patch it is pushing down but it is so far down the water cannot get up anywhere.

Councilman Merry stated if you go a foot with this patch, normally the base and asphalt is less than a foot. That full depth patch is actually going down deeper than the base. Mr. LeDuc stated that is one of the alternatives that Rick Toole had in his report. It was the least expensive. Mayor Cavanaugh asked if Mr. Toole needed to be involved. Councilman Dewar stated Mr. Toole had given Council his report, and Council should probably get copies of that report again. Mr. LeDuc stated it would just cost more money. Mr. Toole has already given his recommendation. He stated his recommendation is to do soil boring so he can do further testing. He doesn't do soil boring. The City would have to hire a firm to do soil boring. Mayor Cavanaugh stated he thinks that is what should be done. He feels that if Council goes with the resolution and agreement then we will have a lot more problems because the citizens will come back and say the same things they have already said, that we are not fixing the roads.

Mr. Smith asked how Council is anticipating the soil boring would change the proposed agreement. Mayor Cavanaugh stated we would know where the water is and possibly could figure out where it is coming from. He asked Mr. LeDuc if that made sense.

Councilman Merry stated we could quantify the fix. Mr. LeDuc stated the patches that were done in the last few years are primarily holding up. He stated there are some new areas that have developed and there are some patches that didn't go far enough out that now has some minor cracking. He stated when he and Ted Jones looked at the roads in January, Mr. Jones had not been out there in a year and half and his list went from a page and a half to a half a page. He stated there is less of it. He stated there will be more patching in the future. He stated the question we do not know is how much patching will need to be done. As far overlay of the road, he stated he would not overlay the road for several more years to make sure all the patching that needs to be done is taken care of. He stated the roads are seven years old and that in itself will cause the road to deteriorate faster but all the distress on that road probably has not already occurred.

Councilman Homoki asked if there is something like repainting a driveway that can be put on the road to make it look more uniform for the residents. Mr. LeDuc stated it would make the road look more uniform. He stated typically the reason to put the skim coat is when you patch it is hard to get the patch to be smooth. He stated they use a skeep that goes out in front of the asphalt machine that levels your machine so it is not going up and down as it is traveling. He stated you try to level out the road with this skim coat. He stated putting down a seal coat does not level out the road at all between patches. He stated it makes it look uniform but that is all it does. It adds no strength. Councilman Merry stated if you put a patch on the wall and you do not sand it out right and paint over it, you would still see the patch. He stated it is the same sort of thing.

Mr. LeDuc stated that Councilman Ebner and Mr. Decker could have been at the meeting and could have added a whole lot more, but either Council is satisfied with this agreement or not. He stated that obviously they are not and that is fine. He wanted to try to move this forward before he left.

Councilwoman Price stated that one of the key points is that the residents feel that Council has tied themselves to what has happened to their roads. The implication has been the City gave approval of the inspection of the roads and the last she heard there was no documentation saying the city had approved the roads. Mr. LeDuc stated in 2008 Ted Jones sent a memo to the Planning Department saying to remove the bond on the road. The Planning Department holds onto the bond until the Engineering Department says to stop because they have looked at the roads and they look good. He stated the City is implicated in the fact that the City's Engineering Department looked at the road and gave approval to remove the bond. He stated we are part of the problem. Councilman Dewar stated the bigger issue is to look at the big picture of building roads within the City of Aiken. He stated the implication being this is just a piece of the problem at Gem Lakes. There is a problem at Woodside and possibly some other places. He stated the City needs to look at our specifications as written and see if they are adequate to get the quality of roads that the City wants when they are built. He stated he doesn't know how many new roads will be built in the near future. Councilman Homoki stated there were concerns about the road near Mr. Smith's office. Mr. LeDuc stated that road has not been accepted because no testing has been done so the City doesn't know if the road meets specification or not. He stated eventually when the road starts crumbling in several years, the City will have to fix it. Mr. Smith stated the developer is dead and the road is over ten years old.

Councilman Merry stated as long as the City allows a sand clay base for roads, this problem will show up every once in a while. Mr. LeDuc stated all the roads in Houndslake are sand clay base, and they have held up well. Councilman Merry stated the sand clay base works a good percentage of the time. Councilman Dewar asked Councilman Merry if he did core testing for his roads. Councilman Merry stated no. He did an aggregate base of crush and run and stone. He stated he did a compaction test. Councilman Dewar stated it is his understanding that a compaction test is not required now for new roads. He asked if he was correct. Mr. LeDuc stated no, the Engineer of Record is supposed to go out and make sure the testing is done on the roads. Councilman Dewar asked if that was written down anywhere. Mr. LeDuc stated we have always had testing done. Councilman Dewar stated not in this case and that is part of the problem. Mr. LeDuc stated he found three or four reports on the testing, and they were all satisfactory. Councilman Dewar stated not the way Councilman Ebner and Mr. Decker

want to see them. Councilman Merry stated they have their agenda to see it their way, but he doesn't think we have all the tests. Mr. LeDuc stated at this time, whether there was testing done or not, or whether the testing was good or bad, we know the roads failed. Councilman Merry stated there are certain specifications the City has when the engineer draws the plans that he turns in to get approved, that deals with the depth of the base and the depth of the asphalt. It will say so many inches of compacted sand clay. He stated he doesn't know if it says you have to do a compaction test, but it does say it has to be compacted sand clay. It certainly infers it.

Councilwoman Price asked Mr. LeDuc what would happen if Council agrees to pay \$10,000, if the test costs \$20,000, and let the developer pay \$10,000. Then if the information comes out that the road needs a base surface to make it very smooth and one layer where there are problems but still not accept the road into the City system but be available to make sure the road is smooth. Mr. LeDuc stated there is about \$15,000 - \$20,000 worth of patching that needs to be done currently. He stated where the new homes are being built, there is a large patch that is the width of the road by 50 feet. He said there is probably 1,000 square feet of patching that needs to be done there.

Councilman Merry stated the thing to remember is that Mr. LeDuc presented this agreement to the developers around Thanksgiving and they did not like it. He stated they will probably be like that for everything.

Councilwoman Price asked if there were more houses to be built in the subdivision. Mr. LeDuc stated no. He stated a couple of years ago the City could have gone to him and told him we were not going to give them any more building permits until they did what needs to be done. Councilman Dewar asked who gave building permits for these last three houses. Mr. LeDuc stated they were already sold to another person. Councilman Dewar stated that is different than a Certificate of Occupancy. He asked why the City allows someone to build on a lot on a street that is bad. Mr. LeDuc stated the City could have stopped it. Councilman Merry stated nobody thought to stop it.

Councilman Dewar asked if we were going to do the compaction testing. Mayor Cavanaugh stated he thinks we should. Mr. LeDuc asked if he meant the soil boring. They stated that was correct. Councilman Merry stated we cannot do a compaction test now over the asphalt. You have to drill down through and pull out and see the layers of earth. Councilman Dewar asked what the soil testing would tell Council. Mr. LeDuc stated it will tell where the water is, if there is any. Councilman Dewar asked what the difference between soil boring and compaction testing was. Councilman Merry stated compaction testing is where they put something on top of the soil and it hits it and it tells if it is compacted and to what degree. That will not tell Council what they want to know. Council wants them to drill a hole and take a core. They need to pull up that core and be able to see which area has a lot of organic matter and very wet and holds water. Councilman Dewar stated we could assume that a compaction test would fail because there is water down below. He was told that was not true. Mr. LeDuc stated he would say the compaction is not the problem. He stated when you look at the sewer line going down the middle of the street; if it wasn't compacted properly you would start seeing a dip down all the way down the road. He stated he only saw one spot on both streets that had that dip. It was very minor. He stated the compaction is not the problem. It is really the moisture that is down there.

Councilman Dewar stated the City would do the testing. He asked if Mr. LeDuc would put a copy of Toole's report in the packet. Mr. LeDuc stated he was going to have this as an agenda item asking Council's permission to go ahead and provide the money.

Mr. LeDuc stated if they start finding water in every boring we want them to keep doing the borings as the water will not always be one foot down. In some areas water might be one foot down and others two feet down. As you go up the hill doing the borings, they will probably not find any water at all. He stated at that point they can probably stop. Toole Engineering thought the boring would cost around \$24,000. Councilman Merry stated the engineer will make a recommendation. He stated if they start finding water at a certain area, they will keep going. Mr. LeDuc stated they will do that until it stops and based on that, one solution may be to install French drains. That may solve the problem.

Councilwoman Price stated if she was living there, it would give her hope that we were going to help with the problem. She stated she would assume that once the boring was complete that they would know the problem and help the neighborhood out of the problem.

Mr. LeDuc stated the purpose of the meeting was that he did not want to get out there in a Council meeting and harangue through this issue for an hour or more and dig up everything in the past if the solution is going to be soil boring, or if there is no solution, or if Council liked the agreement it would go to Council.

Councilman Dewar stated Council cannot make a decision at this meeting, but if Mr. LeDuc comes to them on Monday night and ask for permission to do bore testing, then Council can vote on it then. Councilwoman Price stated there should not be discussion for an hour about it at the Council meeting. Councilman Dewar stated he wished Council had control over that. Councilman Dewar stated he got a call today from one of the Gem Lakes residents because they want to come down and raise cane. He stated if we tell them up front that this is only to do the testing, they should be satisfied. Councilman Merry stated this could be voted on without having a public hearing. Mr. Smith stated everything has to be done in a public hearing. Councilman Merry stated he wouldn't exclude people from making comments, but he asked if they have to allow comments. He asked if a resolution could be passed without comment. Councilman Dewar stated people can make comments on every item on the agenda.

Mr. Smith asked if they actually needed Council's approve to do the bore sample. Mr. LeDuc stated that back in 2013, based on the letter that Richard Pearce wrote to the developer, it said here is the report and this is what was recommended. Either you do it or the City will and bill you. He stated he doesn't know what Council authorized back in 2013. Councilman Merry stated he did that on his own. He stated he called Mr. Pearce afterwards and asked what it was about. Mr. Smith stated that one of the things Council needs to be prepared for is the possibility that the developer might say to get the bore sampler off his property.

Councilwoman Price stated he is going to hope that the city is going to manage his problem and rescue him. Councilman Merry stated he doesn't mind public comment, but there is no reason for this to go on for an hour or more. We are only considering having the bore sampling done. We are not considering the quality of the road, whether the patching is holding up, etc. All we would be considering is if we want to do something that Council talked about some time ago. Councilman Dewar stated the work would have to go out for bids based on the cost. Mr. LeDuc stated there are probably very few people who do this work in this area. Councilwoman Price stated a lot is determined with the statements that Mr. LeDuc makes in terms of what is to be done. She stated Council would in no way be saying that we are taking the roads over. She wants to make that clear. She stated this in no way would imply any commitment except that we need to figure out what the problem is. Mr. LeDuc stated the City is gathering information so we know what the next steps are.

Mayor Cavanaugh asked if Gaul and Kisner liked the proposed agreement. Councilman Merry pointed out that it took many months to get to this point. Mr. LeDuc stated an agreement similar to this one was presented to them in November, and it took three months to get to this point.

Councilwoman Price stated in asking for the boring testing, the City in no way would be saying what we are attempting to do now. She felt we should make that clear. Mr. LeDuc stated the city is gathering information at this point to be able to determine what the next steps are.

Councilman Homoki asked if the City was promised at the end of the summer in August that everything would be completed by Gaul and Kisner. Councilman Dewar answered yes. Councilman Homoki asked what happened to that. He asked if anyone ever followed up or asked them about it. Councilman Dewar stated Council identified a list of things that needed to be done and their understanding of the agreement was that they

would get that list done and then the City would accept the roads. He stated that is not how it works. The way it works is when the developer says the roads are okay, the City looks at them for a year and if there are no further problems, the City accepts them. That never happened. Councilman Homoki asked what did they do between the time they agreed in August. Mr. LeDuc stated they patched the road. He stated they made patches based on what Ted Jones had given them. Councilman Dewar stated that after August there were more patches that developed.

Mayor Cavanaugh stated the City told the developer to make the patches and then wait a year and if there are no more problems, we would accept the roads. Councilman Dewar stated that has not happened. Mayor Cavanaugh stated he knows it didn't happen then, so why not try now. Councilman Dewar stated he didn't know if we would get anything different from what we have experienced in the past. Councilman Merry stated he felt the developers are about done.

Mr. LeDuc stated when the developers were at a meeting last September, they left very upset. Councilwoman Price stated one of the walked out of the public meeting and did not come back. Mayor Cavanaugh stated they would not even answer their questions. Councilman Dewar stated if the City does the bore testing, if Council will agree on Monday night, at least we will work form a base of knowledge on the issue.

Councilman Homoki asked if there was a way to do the bore testing judiciously. He stated there has to be some visual cues as to where you start bore testing. Councilman Merry stated they will identify areas they see as low points that they think may have problems and that is where they will start. They will then look at those areas where you can see the surface water that is coming over the curb and creating algae. They will use all of that as clues for where they will test. They will then radiate from those places. Councilman Dewar asked if they would tell Council the specific places. Councilman Merry stated they will do it like an engineer does it.

Councilwoman Price stated there are residents who probably spend six hours a day walking to see where there is water seeping. They can pinpoint areas.

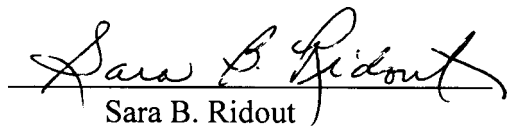
Mayor Cavanaugh asked who the City will get to do this testing. Mr. LeDuc stated we would have to go out for a Request for Proposal. Council's direction is anything over \$10,000 has to have an RFP. He stated we will do that and get the results back in April or May. It will probably be June or July before a report is received.

Councilman Homoki asked if the weather has any effect on underground water. Mr. LeDuc stated it does. That is probably part of the problem. In 2008 when they did the testing and work, it may have been very dry. If that is the case, the water table might have been low, and now all of a sudden it starts coming back up. He stated there is a wetlands across the street where the detention pond is. Councilman Dewar stated there is a reason the original developer did not build on that road. Councilwoman Price stated the residents have reminded Council of that. Councilman Merry stated there is also a spray field there for Gem Lakes when they had their own sewer system.

Mr. LeDuc stated he would have something to Council at the March 9, 2015, meeting.

#### ADJOURNMENT

There being no further business, Mayor Cavanaugh adjourned the meeting at 5:20 P.M.

  
Sara B. Ridout  
City Clerk