

**TOWN OF WEDDINGTON
SPECIAL TOWN COUNCIL MEETING
MONDAY, MARCH 16, 2009 - 7:00 P.M.
MINUTES**

The Town Council of the Town of Weddington, North Carolina, met in a Special Session at the Weddington Town Hall, 1924 Weddington Road, Weddington, NC 28104 on March 16, 2009, at 7:00 p.m. with Mayor Nancy D. Anderson presiding.

Present: Mayor Nancy D. Anderson, Mayor Pro Tem Robert Gilmartin, Councilmembers L.A. Smith, Tommy Price and Jerry McKee, Town Attorney Anthony Fox, Planning Board Chairman Dorine Sharp, Town Planner Jordan Cook and Town Administrator/Clerk Amy S. McCollum.

Absent: None

Visitors: Bill Maynard, Robyn and Steve McAreavy, Neldina Maynard, Eric Riley, Debby Block, David Block, Sharon Sidney, Christina Palmer, Sue and Paul Mead, Mike and Mary Waller, Mike DeFiore, Julia Conduit, Joe Weil, Susan Weil, Clayton Loflin, Sherri Loflin, Craig Horn, Kristin Rogers, Wolfgang Bertram, Michael Johnson, Mary Ann Schulte, Jeff R Sherrie, Robert Jones, Joy Jones, Roger Strom, Sammy Poole, Paula D. Poole, Neal Speer and William Reynolds.

Item No. 1. Open the Meeting. Mayor Nancy D. Anderson called the March 16, 2009 Special Town Council Meeting to order at 7:05 p.m. There was a quorum.

Item No. 2. Public Hearing to Consider a Petition to Permanently Close Part of Lochaven Road in the Lochaven Subdivision. Mayor Anderson opened the public hearing to consider a petition received to permanently close part of Lochaven Road in the Lochaven Subdivision.

The Town Council received the following documentation which is attached to the minutes as Exhibits:

- A copy of the Petition to Close Road
- Copy of North Carolina General Statute 160A-299
- Packet of information from Mike DeFiore, Lochaven Subdivision Resident
- Packet of information from Paul Johnson, Airborne Development, LLC – Petitioner
- Map presented by Mr. Neal Speer, Fire Marshal
- Copy of Letters from the Providence VFD and Wesley Chapel VFD
- Copy of Letter dated January 13, 2009 to Mr. Barry Moose, NCDOT from Mayor Nancy D. Anderson
- Copy of Letter dated March 16, 2009 from John W. Underwood, District Engineer with the NC Department of Transportation

Attorney Anthony Fox – What we are here for tonight is a procedure that is identified under the North Carolina General Statutes for the closure of public or private streets. It does not require that the streets be opened or that they have to be public. It requires only that there is a street that has been irrevocably dedicated or otherwise identified as a public street. It empowers the governing body to decide whether to close that street based upon a petition or on the Council's own action. Statements made to the Council should be focused on whether or not the closing would be detrimental to the public interest. You should demonstrate how the public interest will be impacted by the closing of the street. The second part of the standard is whether or not the closing of the street would be detrimental or would harm the property rights

of the individual. You have to show detriment to the public interest and harm or detriment to the property rights of the individual. Those are the standards that I would suggest that everybody address as they are making presentations on this matter. The applicant will go first and will present his case. This is not a quasi-judicial hearing. We are going to do it as a legislative hearing. Individuals will be given three minutes to speak.

Mr. Mike DeFiore - I have not been elected by any of the representatives of the Lochaven Subdivision. I will be happy to present to the Council my thoughts and my perspective on the situation. Certain residents have provided signed letters of support to keep this road open and I created a document to support their desire. In terms of officially presenting something to the Council, I am not prepared to do that. I can answer any questions you have about the documents that were provided to you. I apologize that I had no idea about the opportunity to present something.

Mayor Anderson - We will go through the presentation that you provided to the Council.

Mr. DeFiore - The documents present facts from my perspective. You can hear from the residents about their own personal opinion.

Mr. Paul Johnson – I have prepared documentation that you will be able to reference throughout the presentation. In the back of the pamphlet I have given you, there is going to be some other documentation that you can look at with some research that I have done.

Mr. Johnson read the petition. It is attached to the minutes as an Exhibit.

PETITION TO CLOSE ROAD

Town Council,

My name is Paul Johnson and I am the President of Airborne Development. Airborne Development currently owns property in Lochaven Estates. This subdivision is located on Lochaven Road which is ½ mile south of the Rea Road and NC Highway 16 intersection. Lochaven Road is a state maintained road with the exception of the portion of road in question.

This petition is being submitted to the Council in an attempt to stop traffic from utilizing this portion of the road. This portion of the road houses an earthen dam that was constructed many years ago as a means to impound the lake water at Lochaven. The primary purpose of this lake was for some of the founders of Weddington to enjoy the natural beauty of the lake and land. It was a hunting club for some businessmen from Charlotte many years before my time. The Dam was not constructed for vehicular traffic.

I have read many articles about earthen dams built in that time. These articles suggest that typically, the core of these dams were constructed of materials that were gathered from the clearing area of the lake bed, i.e. woody vegetation, stumps, or any other debris that was needed to be disposed of. These type materials are not suitable to build an earthen dam as they will decay and de-compose, leaving a honeycomb effect within the dam. The Dam Safety Act of 1967 was established in 1967. Its purpose was to stop these common practices of dam construction. The potential energy that is contained in impounded water is quite impressive. If these dams go unmanaged, there is a potential for loss of life and destruction of property in the event of a catastrophic failure.

It is my company's responsibility to protect the people that have been using this dam as a short cut. I have made numerous attempts to reach out to the people that live in this area. They do not believe the opinion of the NCDENR or the opinion of the NCDOT. This is evident by their continued travel over the dam.

They continue to allow their children to ride their motorcycles over the dam despite the signage that I have placed there informing them of its condition. I am extremely concerned about the safety of this dam. I have met with several state representatives from NCDOT to request relief. NCDOT informed me that they would never take over this portion of the road. I was told that in order for them to take it over, they would have to completely remove the dam and rebuild it to insure that it meets the minimum requirements of safety. This would cost the State of North Carolina over \$1,000,000 and that it would not make sense to spend that money because there is a perfectly good state maintained road that services every home in the neighborhood. Basically, the short cut is only a convenience. Furthermore, the Dam Safety Division of North Carolina has inspected this dam and has informed me that it has reached its life expectancy of 50 years. The inspector also noted that the dam is in need of significant repairs that would require the attention of an engineer. These needed repairs cannot be made as long as there is a road on top of it.

As you can see, the dam either needs to be rebuilt to support vehicular traffic which is going to cost over a million dollars or discontinue the vehicular traffic and conduct the much needed repairs to the dam to maintain the original purpose of impounding water for the natural beauty of this neighborhood and protect the property value of the people that own lake front property. If we continue down this same slippery path, the dam will surely breach destroying whatever is in its way and decimating the property value of the lake front property owners.

I have spoken with Mr. Todd Tuttle who is also a property owner along this same road. It is his wish to close his property to travel as well. If the dam is closed, he does not want people to turn around on his property. Please consider all of the non-state maintained road from the end of pavement to the end of the dam for closure. In addition it is our wish that the record map of 1972 be revised to show re-dedication of this road as private and that the continuous loop of Lochaven Road be interrupted to exclude the dam.

Best regards,

Airborne Development, LLC
Paul Johnson

Mr. Johnson - I want to make sure you understand this clearly. I spoke with Mr. Tuttle. He owns property along the right-of-way. Mr. Tuttle wishes, if the Board makes the decision to close this road, for people not to come down and turn around on his property. I will move straight into my presentation. Thank you for taking the time out of your busy schedules to review my petition to close Lochaven Dam to vehicular traffic. I think it is safe to say that this is a complex and highly controversial issue. If you need supporting information, please contact me. My name is Paul Johnson and I am the President of Airborne Development. My company is owner of the property that is home to the earthen dam that was constructed over 50 years ago. The dam's primary purpose is to impound the 28 acre feet of water that makes up Lochaven. To put that in real terms – acre feet is an engineering increment of measure for lake water. That is roughly less than 10 million gallons of water. It is my hope to be able to communicate to you in the presentation the fears that I have developed through my process of research and discovery with regard to this matter. Lochaven Subdivision is quite possibly one of the oldest and most historic subdivisions in Weddington. The first recorded map of the subdivision is dated February 1957. There are reports that the dam is much older than that. I have been told that this land was originally acquired by some business men from Charlotte as a retreat or men's club to hunt and share business ideas. I have outlined the area in question. The original map, in my opinion, shows what the developer's intentions were when he created this. This was originally a dam first and secondly it was a road or driveway that serviced one individual hunting cabin. I believe that the intention was clear by the way that it is laid out. You can see the road is being interrupted and was never included as an intention of the original plan of the subdivision. The covenants are also an indicator of what the intentions were and how the dam was designed. The legal

description that describes this is hard to read. If you wanted to go through these numbers, it specifically excludes the original cabin and property. I would have to assume based on the metes and bounds of the original survey and the descriptions of the covenants it clearly defines what the developer's intentions were. The land was used for their enjoyment until they would find themselves subject to the urban sprawl that would later catch up to them in the early 70's when Charlotte would begin talks of annexation. The formation of the Town brought new interest to Weddington and the surrounding property. It was in the same time frame that the owners revisited their plan for the property. A new record map was recorded a few years later that showed the dam as part of the loop. This is the record map that Mr. Fox with Parker Poe refers to as a public dedication. Up until that time it was used solely for a driveway and it is hard to say if there were any upgrades that have been made to the dam or if any considerations had been given towards safety and durability. As the owner of the dam, I feel that it is my responsibility to make publicly known that it is possible that these considerations have not been made. It is clear to me that there is not nor ever has been a maintenance plan put into place to ensure the dam is maintained to a particular level of condition. There is not nor ever has been an action plan put into place that would give good clear instruction as to what to do or who to contact in the event of a breach. This lack of foresight leaves me to believe that the dam is not being used for the purpose it was originally designed and that the additional traffic had not been considered. This is how I came to own the land. My family and I reside in Weddington. In 2006, we made the decision to sell our home and build a new home in Weddington. As a condition of this location, I made a promise to my family that I would find a new home site in the same area, same school district and same privacy that we enjoy now. As you all know, finding a place to build in this area at that time was not an easy proposition considering there was not much property available in Weddington, let alone the Sandy Ridge district. We began looking for land in the traditional fashion and were unsuccessful in finding the property that suited us. We have always loved this area; however, there were no lots available. We could find homes but no listings for land. We even considered buying a house and remodeling it but my wife and I wanted to make our own history. As a last ditch effort in finding a building site, I did some research and found the land that we eventually purchased. It happens that the land we bought is in the same community that we currently lived. It worked out great or so I thought at the time. I absolutely had no idea what I was getting into. For the record, I have never been a developer so I had no clue as to the problems that the dam would bring. I am going to try and unfold the events as they have occurred. After we purchased the property we began to develop. I cut in a road into the area where I was going to build my house. Everything was going fine until I got a call from a guy who was doing some work for me and his tractor had been taped up with yellow tape. Apparently one of the residents called DENR and said I was not in compliance with the erosion control standards of North Carolina. I quickly brought into compliance. The residents were still unhappy with the development. They called upon the state, local and government agencies bringing increased awareness to Lochaven Subdivision. Several other agencies were also contacted, the Department of Environment and Natural Resources, the Department of Transportation, the Department of Land Quality, the Department of Air Quality, the Town of Weddington, the USDA as well as the Wesley Chapel Fire Department. Subsequently, based on the increased awareness, a dam inspection was performed by the dam safety division of North Carolina. I made a copy of the report. It talks about erosion. They are all significant shortcomings; however, the one that seems to be most critical to me is the principal spillway. It is not draining properly and is causing erosion to the dam due to poor topography. The down stream slope or the facet shows thick vegetation which is easy to fix. The principal spillway has two sections. The next section is the auxiliary emergency spillway which there is not one. They have observed voids, cracks and erosion and undermining honeycombing of the dam.

Mr. DeFiore - What is the date of that document?

Mr. Johnson - 2007

Mr. Johnson - The summary talks about the outlet of the spillway with regards to its undermining and some of the trees that are located in that same vicinity that are a potential threat to the dam. I have included the dimensions of the dam as well. It shows the tow, the water to crest height, as well as the embankment side of the dam. After this inspection was made, as a property owner, I became extremely concerned with the safety of the dam. As a responsible property owner, I talked to the folks at DENR to see if they could recommend someone. I spoke with Bo Moorefield, who is an expert on dams. I was referred to him by the Department of Environmental Resources Dam Safety Commission. I spoke with Mr. Moorefield and he told me that a sealed design would start at \$40,000 due to the liability associated with the dam. He said that the construction repair cost could easily exceed a million dollars. Now aware of my liability as a property owner and the public record that I had been informed of these dam safety deficiencies I had to consider my options. Due to the fact that I was planning on living in the same area, my initial response was to maintain harmony in the community. I made an offer to the folks in the community to sell the dam and the associated liability to an HOA group for \$1. The offer was denied by the residents. No one wanted to assume the liability, the same liability that I was expected to be exposed to by keeping the dam open. After hitting a road block with them, I contacted Mr. John Underwood with DOT to see if he could take over maintenance. I had a site visit with him at the dam. John is the Regional Engineer to determine if DOT would take over maintenance. I was informed that when the State originally took over the Lochaven Road, the dam and the associated road was purposely excluded due to the inability to meet State minimum standards. Basically, the result of the meeting was that the dam would never be taken over by the State due to the unknown nature of its original construction internally at its current condition. If it were to be taken over and approved for vehicular traffic, the dam would have to be breached, Lochaven Lake be drained and the dam structure removed and rebuilt to State guidelines. This would cost the taxpayers of the state over a million dollars. At this point I am now extremely concerned as to people's safety and my liability that comes along with the use of the dam. With these concerns in mind, I called a meeting with the residents advocate, Mr. DeFiore, who was at that time, speaking mainly on behalf of the residents, not all residents but some. I had a meeting with Mr. DeFiore and Scott Harrell, who is the Dam Safety Supervisor, Tamara Eplin, who is the Erosion Control Specialist and Aaron Brown, who is the Regional Manager of the entire division. I learned at that point that the Department of Natural Resources only deals with the dam classification and not road safety. It only classified dams based on its potential for loss of life and property downstream in the event of a total failure. They don't even recognize the road. They look at it based on its ability to retain water and the threat that the impounded water can cause downstream of the dam. Under these guidelines, the dam is classified as a low hazard dam. Meaning if it were to fail, there would be no significant damage or loss of life downstream. The dam being classified as a low hazard means that DENR will not require improvements nor would they require it to be rebuilt if it were to fail. This meeting was concluded by a follow-up email send by Scott Harrell giving his assessment of the current state of the dam - as a dam, not a road. This is what the email stated:

Mr. Johnson,

Concerning the Lochaven Dam, our Section has observed erosion damage on the downstream slope (likely the result of overtopping during large rainfall events), cracking and undermining of the concrete principal spillway, and large trees/unmaintained vegetation on the dam embankment. These observations have been consistently noted during inspections made from March 1987 (the oldest inspection report in our file) to September 2007. These observed deficiencies, if not addressed; all could potentially result in the eventual failure of the dam embankment and/or loss of the impounded waters. Our file contains a repair plan that was submitted and approved in 1991 to address some of the issues with the concrete principal spillway. It is not clear if these repairs were performed. Another repair plan was submitted in 1998, review comments were provided to the design engineer, but there is no record in our file of further correspondence or an approval of that repair plan. Again, it is not clear if these proposed repairs were performed. Since 1997, the subject dam has been classified as a "low hazard potential," meaning failure

of the dam would likely result in minimum downstream property damage. (Mr. Johnson - They always refer to downstream – they don't refer to the road. They are a dam commission, not a road commission.) As such pursuant by our Section repairs/remediations to low hazard potential dams is not among our most pressing priorities. My recommendation to you is to address the observed deficiencies as you are able to afford and perform them. As we discussed, work such as removing woody vegetation less than six inches in diameter and top dressing the gravel road is classified as routine maintenance and does not require a permit from our Section. Other activities, such as spillway repair, removal of trees greater than six inches in diameter, and regarding/paving the road surface, are considered modifications/repairs and require prior approval. It will be necessary to obtain the services of a licensed professional engineer to prepare design drawings and specifications for review by our office prior to performing any modifications or repairs to the dam.

Mr. Johnson - That is when I spoke with Mr. Moorefield and he said his starting number was \$40,000 just to look at the project. The main thing I take out of this is that they have noted the erosion damage and undermining of the concrete principal spillway and large trees/unmaintained vegetation in the dam embankment. The most pressing issue here is that these observed deficiencies, if not addressed, all could potentially result in the eventual failure of the dam embankment and/or loss of impounded waters. I would not want to be on top of that dam when that happens. Now that I realize that, as a layman, my fears of possible failure were verified, I took measures to inform the public. I posted signs on each end of the dam. Now that I have posted the dam and informed the residents of the potential failure, these efforts were in vain and the dam continues to be used by residents and local commercial traffic. (Showed picture of one of the residents using the dam in back of the FedEx truck) As you can see, this is the sign that is within 3 feet of eye level of anybody crossing that dam. They choose not to pay attention to the hazards. (Showed a picture of a trash truck using it). Attempts to keep up warning signs for unsuspecting motorists have been unsuccessful. One of the signs was removed within three days of placing it up there. Also, bringing safety issues to light did not change the residents' use of the dam. Due to these reasons, I feel that I am left with no other choice than to close the dam to vehicular traffic. As soon as I made noise of that, someone contacted the Fire Chief and he rendered his opinion as closing the loop would be a hindrance to fighting a fire down there. I can totally understand his point but I do not know that consideration of the road and dam spillway were taken into consideration when that letter was written. After that, I met with Pat Beekman, who is no longer with Homeland Security. His position ultimately oversees and is responsible for all local and safety response efforts. He stated that due to his assessment of the dam's condition, he would not endorse the use of the dam in any formal or local response plan. I met with one of the Captains of the Wesley Chapel Fire Department who after seeing the spillway of the dam made the statement that he would not cross the dam with a new fire truck as it weighs approximately 73,000 pounds loaded with water. He did say that the dam may support the older type trucks, smaller and lighter. However, these trucks are being phased out and will be replaced with newer and heavier units in the future. The Fire Captain also said that the lake water would not be used to fight a fire. There is a fire hydrant within seven-tenths of a mile which provides a much more reliable source of water and turnaround. I want to be clear that I would never withhold the water if it is a resource to fight a fire. I am not going to make a decision on how a fire is going to be fought. I just contend that taking a 73,000 pound truck and rolling it over that concrete spillway could simply cave in the concrete spillway and possibly render the truck useless. As Mr. Fox had mentioned, you have to ask yourself is the closure of the road over Lochaven Dam detrimental to the public interest or to any individual property rights. Also, does it deprive local residents a reasonable means of ingress and egress? I contend that closing the dam to vehicular traffic is not detrimental to public interest. On the contrary, I believe that leaving it open would be detrimental. A failure of the dam with a vehicle on top of it would likely result in loss of life. Dam failure happens swiftly and without warning. There is no detrimental impact with regard to property rights as there is no recorded easement across the dam. I have been to the Register of Deed's Office and I have spent about three hours with Mr. Bennett Glass and there is nothing on record that gives a legal right for use of that other than the implication of the irrevocable dedication of the 1972 plat. Closure does not

deprive residents' reasonable means of ingress and egress as the entire subdivision is served by a DOT State maintained road. To say they don't have reasonable ingress and egress would be like saying no road in North Carolina is a reasonable road. The Waller property would be the furthest property to be accessed in the event of a fire. I went and timed it. It is a difference of approximately 44 seconds in response time across the dam versus around the loop. That is at an average speed of 20-25 miles per hour. The Town of Weddington Subdivision Ordinance Section 405.7 Cul-de-sacs states the following, "Permanent dead end streets shall not exceed 600 feet in length in conventional subdivisions unless necessitated by topography or property accessibility and if the Town Council grants a modification per Section 206.3." Obviously if you close this, it is going to be much longer than 600 feet. This is not a conventional subdivision and it was created before Weddington was even here. Section 206.3 (c) states that "no modification shall be granted unless the Town Council finds that the circumstances giving rise to the need for the modification are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this ordinance." I contend that there is a circumstance giving rise to the need for the modification which is peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this ordinance. It is safe to say that this is genuinely a peculiar situation and that the precedence has been set many times in Weddington that are much less peculiar than this. In conclusion, I believe that we need to look at safety. Safety is paramount. People assume that roads are safe and tested. As you travel down around the corner and it is posted at 35 miles an hour you do not second guess the sign. Lochaven has never been tested and remains listed as a low hazard dam despite the fact that it is being used as a main road, a purpose that was never intended or designed for originally. School buses do not cross it yet unsuspecting motorists under false assumptions of safety continually cross the dam with their children in their vehicles. You have to remember that dam failures happen swiftly and without warning and often killing. The dam that people are crossing daily holds back 28 acre feet of water. That is 10 million gallons of water. That is a weight of 83 million pounds of water. That is equivalent to 100 fully loaded Boeing 747's or the weight of the world's largest aircraft carrier. I have two videos that are short. The first one is basically a representation of what happens in this area. Up unto this point it has been very factual. I want to put you in the shoes of one of the residents if they are passing over in the rain. This will indicate what the area is like in a rainfall.

Mr. Johnson showed two videos.

Mr. Johnson's description of Video 1: This is coming out the west end of the dam down the Waller property heading back out towards Highway 16. You are getting ready to leave the State maintained road and go onto the private portion of the road. You can see how the water is not draining the way that it should drain.

Mr. Johnson's description of Video 2: I wanted to give you an idea of the magnitude of the power that is in this water and the dynamics that is working on the dam.

Mr. Johnson - That is basically the end of the presentation. As a property owner you have to ask yourself is this an acceptable situation? A lot of people don't understand what they are getting into when they go over this dam. They don't realize what the potential dangers are. I want to officially be on record - I don't know if I can live with the fact if someone dies or someone loses a tremendous amount of value to their property. I request you grant my petition to close the road.

Attorney Fox - Do you recall the segment of the road you are requesting be closed?

Mr. Johnson - It is in the last paragraph of the petition. I am requesting the road be closed across the dam only. The end of the pavement up unto the dam - that road be rededicated as private.

Attorney Fox - You are asking that they close that portion of the road that encompasses the dam from where the dam starts to where the dam ends with a sufficient amount to accommodate a turnaround.

Mayor Anderson - Mr. Tuttle has also asked that if we grant closure of the road that his portion, which is evident on the map, be considered for closure also.

Mr. Johnson - You would not need a turnaround on that portion of the road. It would just basically turn around and go up into Phase IV.

Mayor Anderson - Mr. Tuttle asked if this is closed can his be closed as well. Is that correct?

Mr. Johnson - I believe so – yes.

Mr. Tuttle – The request is that section of the road where the paved road ends and it turns into a gravel road down to the dam. That area has been a private road. It is not a state maintained road. The only reason to go down there is to cross over the dam. What I have requested is if this is closed, there is no reason to come down here unless you are one of these homeowners.

Mr. Clayton Loflin – Since Mr. McDowell is not here to represent himself, will he have access to his lot which is the lot across the street from Mr. Tuttle's?

Councilmember Price - This section right here, they are talking about putting a sign that says private road. In the future, these people still have the private drive to get to their property.

Mayor Anderson - To be maintained by private citizens and never to be dedicated to the public or accepted by NCDOT?

Mr. Johnson and Mr. Tuttle – Correct.

Mayor Anderson – Attorney Fox made reference that this has been irrevocably dedicated. It has been dedicated but not accepted by DOT.

Mayor Anderson read the following letter dated March 16, 2009 from Mr. John Underwood, District Engineer:

This office is in receipt of a letter dated January 13, 2009 in which the Town requested that NCDOT accept maintenance of the entire road system within the Lochaven Subdivision. The Department of Transportation currently maintains 1.78 miles of roadway within this Subdivision. After investigation, it has been determined that all property owners are being adequately served by the roads currently on our network. This section of road that is not State maintained is classified as a roadway dam. It is the policy of the Division of Highways to discourage the location of roadways on dams. Therefore, we can not recommend the addition of the remaining section of Lochaven Road to the State Maintained System.

The Town of Weddington has been petitioned to allow this portion of Lochaven Road to be closed to the public. Should the Town approve this request, NCDOT will assist in the construction of turn-arounds to accommodate emergency type vehicles on either end of the Roadway Dam. However, if additional right-of-way is needed for construction, affected property owners will be asked to dedicate said R/W without monetary compensation.

Councilmember Smith - When did you purchase this property?

Mr. Johnson - December 2006.

Councilmember Smith – Who did the inspection report that you have in your presentation?

Mr. Johnson - Clinton Cook. He was the Dam Safety Engineer prior to the current inspector.

Councilmember Smith - Nowhere on here does it identify an agency or a name. It does have some initials on it but there is not an agency on the form I have.

Mr. Johnson - I have the original here.

Councilmember Smith - Likewise on the notation from December 2008 from Scott Harrell – there is no indication on what we have in our packet about where this is from although the one you presented had the DENR logo on it.

Mr. Johnson - I have a copy of the original. If you look at the top of the inspection report, you have initials here. This was conducted by the Dam Safety Commission of North Carolina which is a section of the North Carolina Department of Environment and Natural Resources. This is the standard form they use for their inspections. There is no letterhead or anything of that nature. When I went up there to get this documentation I got a copy of the original engineering report which has their stamp on it, if that is of any help. This is a document that is an accepted repair plan for some of the deficiencies that they found with the dam. I got this from the Mooresville Regional Office.

Mayor Anderson - We would like to enter it into the record.

Councilmember Smith - You also made reference to a quote you got for dam repair. Did you have any of those quotes in writing?

Mr. Johnson – No, I spoke with him over the telephone. I did not think it was appropriate to pursue it further since there was no way I could afford it.

Councilmember Smith - Did they come out and look at the dam?

Mr. Johnson - I described the situation to him. Before they will touch any engineering on the dam, he said a stamped drawing is \$40,000. His field is all about liability management. The only way he could go in there and design is to do testing. It would have to be core drilled to see what types of materials are in the center of the dam.

Councilmember Smith - When was your first indication that there might be a safety issue with that dam?

Mr. Johnson - First indication was shortly after I started to develop the land.

Councilmember Smith - How long was that after you purchased it?

Mr. Johnson - It was within the first 6-8 months. I had actually gotten quite a ways along with the development before I had even driven construction equipment across the spillway. I was in the same category of the people that I am trying to protect by making them aware of this. Obviously in hindsight, I would never drive that equipment over the dam now.

Councilmember Smith - As part of your due diligence during your purchase, did you look at that dam? Was that a consideration in your decision to purchase?

Mr. Johnson - The dam was part of the package. I knew it was an unconventional purchase but knowing what I know now, I did not get this information prior to owning the dam.

Councilmember Smith - The video you showed of the water through the spillway- was that functioning as designed? Was there something else I should have gotten out of that?

Mr. Johnson - The sole purpose of that was to impress upon the Council the power of that lake and to demonstrate visually what kind of forces we are dealing with when people are driving over the dam. It did show that it was not working. You can see where the water was coming around the spillway which was causing the wave erosion which was indicted in the dam safety report.

Councilmember Price - You bought the lake in the purchase? The lots that are around the lake – do they come to the waters edge?

Mr. Johnson - Yes, the lake bed was part of the purchase. At that time, I did not know a lot about it myself. The waters of the lake belong to the State of North Carolina. If they have property that goes up to the edge, which I have never had it surveyed along the lake, I am sure some touch the lake, some go into the lake. The lake bed itself is a part of the common parcel. With regard to the lake, I only own the lake bed.

Mr. Loflin - All of the lots have four dimensions. They were cut off before they reached the water. In some cases the lake over the years has built up more and might encroach. All the lots do not go into the lake. They have a solid four dimensions.

Resident - That is defined on the deeds as the blue water mark of the lake. When the lake is at a higher water mark – then yes, the property owner would be under some small portion.

Mayor Anderson - What kind of liability insurance do you have? Are you able to obtain any?

Mr. Johnson - It is cost prohibitive.

Mayor Anderson - You are essentially uninsured right now?

Mr. Johnson - I have the protection of my company.

Mayor Anderson - Everyone here has homeowner's insurance and if people get hurt on our property – then insurance covers it. You are not able to get that type of insurance?

Mr. Johnson – My only protection is my corporate veil and the fact that I maintain it as a corporation.

Mayor Anderson - I maintain mine as an LLC but I have to spend \$10,000 a year on liability insurance.

Mr. Johnson - That is a definite concern to me.

Mayor Anderson - I have had numerous discussions with DOT about this and I have tried to get them to request funding under a special provision. Apparently there is some legislative law that was passed saying that roadways and dams that were built before October 1974 may be eligible for special funding through the legislature. I asked them if they would be willing to go on our behalf and ask for that. They did not think they could get the environmental permits to do that now. If you try to bring this up to code, you would never get the EPA permits. Have you looked into that at all?

Mr. Johnson - Yes, with the dealings I had with DENR and the calls that were made and the subsequent meetings with DENR, some of the work that was conducted in the area did not meet the restrictions by DENR. There are a lot of wetland issues. You have several permits that you have to have such as a Nationwide 14 which is done through the Army Corp of Engineers. You have to do a Nationwide 404 which is an application that has to be administered by a Wetlands Specialist that can deal with delineation. There are a lot of issues with regard to the wildlife and the fish. I am sure there are a dozen criteria that need to be met before you can even start with that project. Right now, we have a dam that is functional and it does impound the water. The fact that we have a road going over the top of it – I don't want to take the responsibility of trying to repair that as a road and someone goes over and all of a sudden I have liability because I have been acting as a road commission when the road commission itself won't even touch it. My proposal is to close it. If you close it, then you can maintain it as a dam and you don't have to worry about it. If you put the barriers on it and it is repaired, it is only repaired as a dam so if it does fail, you have a dam that failed. You have two dynamics that are working there. You have the road and you have the dam. They both serve two completely different functions. You can't repair the road without repairing the dam. I can't repair the dam without repairing the road. The dam is going to fall into disrepair and it is going to fail as long as people are traveling across that. DENR is not going to make me fix it because it is a low hazard dam. I think the easiest solution is to close the road. If you close the road, then you repair the dam for its original purpose of impounding the water and natural beauty of the area. It only makes sense.

Mayor Anderson - I had a conversation with Pat Beekman, former Homeland Security Director and he gave me his thoughts. He is not there any more so I have had a conversation with Neal Speer.

Mr. Speer - You asked me the question – was there a safety issue with Fire Department response? Wesley Chapel is what is called an ISO rated fire district. The maximum road mile distance for that insurance rating is 5 miles. This is well within that response distance. The closer you are the better off you are. I did hear the statement made that DOT had agreed to construct the proper cul-de-sacs to meet the turning radius of emergency vehicles. That does help the situation. I discussed this with the Director of EMS earlier and he had some concerns about this portion of the roadway. I found out tonight that this was going to be developed – I have a question as to addressing and what those addresses would be called because previously all of this had been Lochaven Drive. Will this continue to be Lochaven Drive as well? If this closure takes place, then there are considerations that need to be made such as addressing and turnarounds. This is a one lane gravel road. This is a residential setting. If there were a fire in this section, and I believe that you made a statement in your presentation that the fire department said that they would haul the water from hydrants and that it would be water shuttle operation. The fire department is not going to bring one load of water back and then stop if there is a significant fire. It involves many trucks making many trips. It involves those trucks having to pass each other along that roadway and that is the downside of a single gravel road.

Mayor Anderson - That roadway over the dam was originally a driveway. The rest of the road that the state maintains meets state specifications for a gravel road.

Mr. Speer - I am not saying an apparatus could not pass.

Councilmember McKee - The Fire Department responds to it up on Providence Road.

Mr. Speer - That is the closest station.

Councilmember McKee - Do they have one of these 73,000 pound trucks?

Mr. Speer – Wesley Chapel’s main station does have a ladder. That would be the second responding station. Their primary response truck is probably 35,000 lbs.

Mayor Anderson - They need to be able to pass each other safely. Lochaven Road is at the very top of the list for resurfacing. That was what I was told by DOT today.

Councilmember Smith - Was there an effort on your behalf or the resident’s behalf to contribute towards a dam repair where those that use the dam would help pay for the maintenance?

Mr. Johnson - When I began to communicate with the neighbors, I opened up a message group on Yahoo. I laid the problems on the line so everyone knew what they were. I made some suggestions with what we could do with that area. The general consensus was that the HOA group would take it over but they wanted me to bring the dam up to State standards before I donated that property to the HOA. Here recently, I did receive an email after this issue has exploded and become more in the public eye where it appears that people were more cooperative about the maintenance of the dam. There were folks who were interested in contributing to the road but no one wanted to make a contribution to the maintenance or repair of the dam. In order to repair the road, you have to repair the dam. In your packet, on the last page, I prepared a site map that shows where people’s homes are located. You can see from their perspective, how the closure would affect them.

Mr. DeFiore – I wanted to clarify some of the timelines that Mr. Johnson had referenced in his presentation. I have a letter here from NCDENR on Page 70 in the packet that you have that says the last time the Division Staff were on site was December 9, 2008. They met with Mr. Johnson and another resident of the area. The letter from Scott Harrell is dated December 4. NCDENR came to the dam site to look at the dam five days after that letter was written. The erosion you saw on the video is the whole reason why we have been contacting all of these agencies for relief. We are concerned about what has been happening with the dam recently. What I took away from that video was that the spillway works and it is fully functional. Regarding comments about the original purpose of the road and subdivision, I have yet to see any evidence from Mr. McDowell produced by Mr. Johnson on what the original intent was and further, in my opinion, the fact that the road according to Mr. Fox has never been listed as private on any of the recorded subdivision plats demonstrates what the intention was. Mr. McDowell didn’t file it as private. Doesn’t that speak to the intent of that road? Where is proof of title and ownership? Where are the deed and lot lines? In all the GIS maps that I have seen and all of deeds that I have looked at, I haven’t see any deed of reference. I can see that Airborne Development owns both sides but I didn’t see that extending into the road itself.

Mayor Anderson - For the 50 years that I have been here, that was a driveway. It was originally started as a driveway across to the property the Wallers now own. It was prior to 1972.

Mr. DeFiore - Why was it filed as not private in the 40 years after that? Because it was not filed as private speaks of the intention and I am aware that several residences are going to give you written documentation that it was intended to be public.

Councilmember McKee – On page 11 you list the lot owners that signed this petition. How many lot owners are there in there?

Mr. DeFiore – I am not sure how many lot owners are in the subdivision. There are 27 affected by the road closure – 16 of which have signed the petition.

Mr. Johnson advised that there were 30 parcels.

Councilmember McKee - You have a petition from more than half. On Page 12, you said the road that Mr. Johnson wants closed has always been recorded as public. Where is that recorded?

Mr. DeFiore - Evidenced by the letter from Anthony Fox on Page 28.

Councilmember McKee - But it has not been recorded as public?

Mr. DeFiore - Given my understanding – if something is not private – then it is public.

Attorney Fox – It was not defined as private and not offered for dedication. This letter was dealing with whether or not the street closing procedures were applicable to the situation. In order to determine whether or not NCGS 299 applied, there had to be a determination that it dealt with a public street or a street in which there was an irrevocable dedication. This was saying it wasn't noted on the plat that was recorded in 1957 or 1972 that it was private and not offered for dedication.

Mr. DeFiore - I tried to be as factual as possible here. If it appears otherwise – it is my ignorance of the law.

Councilmember Price - On the State maintained part of the road, the lots lines go to the center of the road but there is a right-of-way that is State maintained. The lot lines go to the center of the dam also. Considering the property owner owns both sides of that dam and there is no right-of-way because it is not State maintained I would put to you that he does own that. Is there a Homeowners Association in this neighborhood?

Mr. DeFiore – My understanding is that there is a HOA.

Several people in audience were saying no.

Councilmember Price - Since you are acting as spokesperson for the neighborhood, where is the money coming from to fix the dam and road?

Mr. DeFiore - We came here prepared to discuss Mr. Johnson's petition. I would ask that the Council give us 30 days to come up with a proposal that would address some of the funding concerns.

Councilmember Price - If I owned that piece of dirt – I would have had barricades over it. I understand that it is shown as a public road. When the State comes in and takes over, you are limited in liability because of the State right-of-way. I would be concerned, whether the dam broke or not, somebody coming through there and going too quick and hitting the guard rail and suing my pants off. Just like someone can drown in the lake I live on and sue me if they are on top of my property lines.

Mr. DeFiore – That is based on the fact there is no right-of-way easement.

Councilmember Price - This is private property. Yours is on a State maintained road. This is an entirely different situation. I was hoping you would come with some type of remedy. How you will fix it so it is safe for traffic first of all.

Citizen - We have been maintaining it for years but we are not allowed to now.

Councilmember Price - I understand. I live on a lake in Weddington also. We have a Lakeowners Corporation. We also have a several million dollar liability policy for the dam. We were told not to

allow bicycles or motorcycles to drive across it. This dam is over 200 feet wide at the base. We had to put chains at each end.

Mr. DeFiore - There is a precedence that the residents of the Lochaven Loop maintain this. I have tried to speak with Mr. Johnson on several occasions and work with him to not necessarily continue maintenance permanently but continue the maintenance while this is going on.

Councilmember Price - Maintenance of filling a pot hole is different than making this a safe road. The State does not allow roadways on top of dams.

Mr. DeFiore - NCDOT said they won't maintain it or approve a road going over a dam. I have not seen any letter from anyone saying this dam is unsafe when you combine that with the fact that it has been in operation for 50 years incident free. It seems to be a huge coincidence right now all of a sudden there seems to be a huge necessity to close the dam because it is unsafe.

Mayor Anderson - Does the phrase accident waiting to happen come to mind and the fact that it is way over its life expectancy?

Mr. DeFiore - According to whom?

Councilmember McKee - When was the dam built?

Mr. Johnson - I am not sure exactly.

Mr. Loflin - No one knows.

Mr. DeFiore - Read the following statement from Scott Harrell – Land Quality Section dated February 19, 2009:

Mr. DeFiore:

To my knowledge, the NC DENR Division of Land Resources has not issued a judgment or statement regarding the life expectancy of Lochaven Dam (Inventory No.: UNION-066-L).

North Carolina Administrative Code Title 15A Subchapter 2K (15A NCAC 2K) defines the design life of a dam as “the period of time the dam and reservoir can be expected to perform effectively as planned” (Section .0209 (b)). Without access to original design drawings and construction documentation, this Division cannot assess the original intent for this dam with regard to its design life.

During a meeting at the dam on December 9, 2008, I indicated that the average design life of a dam is approximately 50 years. This statement is general in nature and was not directed specifically at the Lochaven Dam. Factors such as original design, original construction practices, daily use, and maintenance affect the condition of a dam and its appurtenant structures over time. An interpretation of 15A NCAC 2K .0209(b), as quoted above, is that the design life of a dam is not the anticipated time to failure of the dam, but rather the time at which significant maintenance and/or repair needs may be needed.

Mr. DeFiore - I do not speak for the residents when I make this statement. I do not feel that it is appropriate for Mr. Johnson to assume sole financial responsibility for maintenance of this. People who want this road have to contribute to its upkeep and if we cannot get enough money to maintain it then it is not important to them.

Mayor Anderson - I am telling you that the dam has been there for 50+ years.

Ms. Susan Weil – 654 Lochaven Road – I tell everybody that I live in heaven. There are some comments that Mr. Johnson started off with that this is a road for just convenience and I don't think it is. There were recent fires in Australia and there was an entire community in there that had one road access. That entire community was destroyed. We need the dam road for egress, not for just fire trucks, but for people to get out and to be safe. I think you can repair the road without repairing the dam. I don't think there are 10 million gallons of water pressing on that dam. I know what the property looks like down below our house on the lake and it is filled with leaves and I have no clue how deep the lake is but I think that makes a difference as to how much water is pressing on the dam. I think the videos of the road showed the water going into the lake just as it does from the other places. I thought the dam worked really well. I think we should keep the dam road open. I think that your neighbors should sign you off for liability that we may be allowed to use the road and not hold you liable should anything happen to us. I think that we should help you to repair the road. I realize we have really lovely speed bumps now. They are concaved. I think we should build three convex speed bumps and that would slow people down and discourage traffic and still allow us to get out of that neighborhood in an emergency. North Carolina clay is like cement. If that is what the dam is made of - I personally think it is very structurally sound. We can make all sorts of speculations of what it was built with. It really bothered me that it sounded like it had already been discussed and decided that the road was already going to be closed and I would be very much against that.

Attorney Fox – There are two points that need to be discussed - Whether or not the closing of the street/dam will be detrimental to public interest and whether or not the closing of the street will impact the property rights of individuals.

Mr. Andy Pelick - 700 Lochaven Road - My wife and I are in favor of keeping the dam road open. I am not sure what will happen if the road is closed. Is he going to let the dam deteriorate and the lake empty out or is he going to maintain it in some fashion or are we going to have nothing behind our homes? Is the road going to be closed to all vehicular traffic – pedestrian or otherwise?

Mayor Anderson - You would be willing to help with the financial...

Mr. Pelick - In some manner, depending on the cost.

Mrs. Pelick - I think it should remain open. If we have fire trucks going through there, not just with the fire trucks, but to get people out. It is another option if there was a fire. I think that people have offered to help maintain this in the meantime and it has been turned down. The road is in terrible repair right now. It is in deplorable condition right now.

Mr. Bill Reynolds - 630 Lochaven Road – We have lived here 40 years. We were the first house developed out there other than the owners of the property. All during this time, the circle residents have contributed to the maintenance of the dam/road and will periodically have it scraped and kept up to date. I don't see how we could possibly close the dam. I am thinking about the safety of the people in the event of a fire. It has always been my fear that someone would be careless with a match or fire and set the woods on fire. Several years ago my neighbor had a separate garage next door to us and it caught on fire and burned to the ground. Fortunately, we had not had a drought. The ground was still damp and the fire trucks were able to get here and put it out and they crossed the dam.

Ms. Paula Poole - 725 Lochaven Road. Our property is on the outside of the circle. It does not face the lake. One of my concerns, is if the dam is closed, it is going to increase the traffic that comes through that road - some at indecent speeds and the dirt and dust that it creates in the process. We would like to

have access to the lake but since we have been there, which is almost six years, it has been, for all practical purposes, disallowed. You can't go over there and park without someone getting on your case. There is no way to have access to it unless you go through someone else's property. I don't go that way, except for the beauty of driving through there but I think it would present an inconvenience to those of us who live on the far side.

Mr. Roger Strom – 719 Lochaven Road – I am concerned if the road is closed about egress from the community. Would we be able to get past if a fire was going on? If we have some major drought here and we have a forest fire, would we be able to get out? If a tree came down across the road, during a fire, would we be able to get out? It is the Town's responsibility to make sure that its residents are safe. I request you keep the road open. I have also heard from another resident that one of the garbage companies would stop servicing our neighborhood if the road is closed.

Mr. Robert Jones – 729 Lochaven Road – We are one of the newer homes that was built here. We have owned the property for 15 years. The use of the lake has been all but restricted completely. I still try to use it. Mr. Johnson has allowed us to use the lake after his purchase. I have not talked to him personally but according to the covenants, the homeowners were allowed to use the lake as members of the neighborhood which means we should have access to that. The other thing I wanted to point out was that we have had letters in the mailbox, emails and we have been going back and forth talking about the road for a long time. The one thing I mentioned and Mr. Price you wanted an answer about how it might be fixed and I threw this out in an email. I suggested that a separate road be built next to the dam. Allow the dam to be only a foot path. Have a separate road built that would still connect Lochaven from the paved area down by Mr. Tuttle's home and up by the curve where the Waller's live. That way, we can still have the access and at the same time, Mr. Johnson, who is developing these others lots in Phase V, would have access as well. I think that would solve everyone's problems if that could be considered. However, being on the far side of the neighborhood, I am not sure that poor Mr. Johnson buying a pig in a poke should have the neighbors to have to foot the bill for this dam. I think that it should be considered by the State to be taken over since it is an access to that end of the neighborhood and the fact that it has been used for over 40 years. It is Mr. Johnson's property to do with as he wishes but I think the Town would consider the neighbors, the people who voted for the Council, to keep this road open and maintain the access to protect our homes, not to mention the value of our homes, as well as the liability of insurance which may increase because of the fact that the fire department can't get to us as quickly as they would if they went across the dam.

Mayor Anderson - As Mr. Speer stated it clearly meets the standard for insurance.

Councilmember Price – Two things - The State has already said there is no way they would take that road. There is a letter from the Fire Department that said a fire truck would not cross over that dam.

Mr. Jones - That is why I suggested a separate road.

Councilmember McKee - Who is going to build a new road?

Mr. Bill Maynard – 647 Lochaven Road - I have not been convinced that the dam is unsafe. I defer to the DENR letter from Mr. Harrell who states that the dam needs maintenance but it is not unsafe. Mr. DeFiore mentioned that earlier where he states it needs maintenance. Maintenance should be done as Mr. Johnson can afford it. That doesn't indicate to me a very pressing matter requiring immediate maintenance. I just don't see it as being unsafe.

Ms. Neldina Maynard – I witnessed that fire. My husband could not get to me on one side so he came around to the house and the fire was halfway to our house. It took the fire trucks two ways to get in to get to that barn. We have to have two ways out of there.

Mr. Paul Mead – 534 Lochaven Road – The Fire Chief said it would take a multiple truck operation to get water back there. If they have to turn around, then they are in big trouble.

Ms. Sue Mead – I was there during the fire and immediately following Hurricane Hugo when it took every member of our neighborhood with chainsaws to get anybody out of that neighborhood. Either way, we need both ways to get out.

Ms. Robyn McAreavy - 762 Lochaven Road - You all are my neighbors. I am not going to present something to be for or against the closing of the dam. I am in Mr. McDowell's home, the original owner of the land when it was developed. I have lived there for almost 11 years. I don't have a horse in the race. I live on the side of the dam that it would not affect me driving back and forth. However, I am concerned with two specific things. Safety – We have lots of neighborhoods that don't have two ways in and out. It would be great if everybody did - but we don't. I have witnessed children on 4 wheel vehicles and witnessed kids on golf carts. They go around our lake and they come down the hill that you saw in the video as fast as they can and they get a flying leap across the dam. I am a pediatric nurse at CMC and I see more than my fair share of accidents from unsupervised kids. I don't want to do CPR on your kids. I don't want to have to pull them from the lake. If we could fix it so that someone watches so that the kids don't go across like that. I am very concerned about some of the things that are not safe. The dam is in deplorable condition. The other interest I have is – I am on the lake. My house comes up to the lake. We bought the house because of the lake and the ambiance of the neighborhood and the view. We don't know if it is safe or not. No one has drilled down to test it. If it does get breeched – then I no longer have lake front property. That affects my property values, the ambiance of my back yard and I think for the safety and for my property value, I want someone to guarantee me that the lake is safe for kids to drive their golf carts across. My suggestion is to close the lake to traffic and have it be a walkway. I drove the lake today. There are six homes on the far side of the lake at which point it is faster to get to the main road by crossing the dam. That is from the point it starts at the circle. At that point, you are midway across the lake and it is just as quick to drive around.

Ms. Christina Palmer – I do not go over the dam. I do not live lakeside. I have always enjoyed the lake and the dam. I have been there 12 years but I think about liability and if I was in Mr. Johnson's shoes, I would be very concerned about the liability. With this being his personal private property, I do not think we really have an opinion as to what he should or should not do with his property. I love it being open but if it is unsafe the best thing for us to have done is have it closed.

Ms. Debby Block – 621 Lochaven Road – We are one of those six homes. We are the last home on the end. It does really concern me about closing it. I am concerned about fire trucks, etc. I would like it to be absolutely open but if that fails, then why can't we look at some kind of compromise? There are plenty of roads that say no trucks, only essential vehicles. I think it has to be open for fire trucks, if we can make a turnaround and that is a big if. The topography is such that it goes up like this and that. I don't know how you will do a turnaround on the far side of the dam. I think there are many other considerations.

Mr. David Block – 621 Lochaven Road – I will agree with my wife. When talking about liability and due diligence – if safety was really an issue – then how come 6-8 months ago we had logging trucks going up and down the roads and over the bridge with no construction plan ahead of time with what to do with the maintenance. A \$40,000 bill for a sealed plan is implausible. Sealed plans are for construction. You

don't need to start off with that. You can have an analysis done without having a sealed plan done because there is no liability with the analysis to determine what is wrong with the dam.

Ms. Sharon Sidney - We are for keeping it open. I have already had the fire truck come to my house. We live in a place where it is a Volunteer Fire Department - you don't just get the fire truck that pulls up - you get every guy who answers the call. You can easily fill our loop with all the guys who respond to the call. I got claustrophobic when we moved in thinking there was only one way out of this place. I always wished there was another route to give us some other alternative if something catastrophic happens. I am a Mom and I go there immediately for my kids. The dam road is not a short cut for me. It is the shortest way to my house but that is not the reason I take it. I am not trying to cut corners. I don't think people around the other way would appreciate it if I always went past their house the millions of times that I leave my driveway to take my kids wherever they need to go. I think there are a lot of factors here. I do think a lot of this should be buyer beware. Did he do due diligence to find out exactly what he was buying? There are five more homes being added to the property back there so we are also increasing the number of cars coming and going on that loop.

Mr. DeFiore - You had mentioned that the fire trucks will not be able to go over the dam. That is contradictory to the Assistant Fire Chief that came out and met Paul and I who said that they would not go over the dam with heavy duty super trucks but they would go over with the lighter trucks and their fire suppression contract does rely on that dam. Also, could you clarify the property rights? Is the property rights to the road or is it how our property rights might be affected if the road is closed? Mayor, based on the letter that you read to me, my property might have to get condemned because Mr. Johnson wants that road closed. That is a serious encroachment to my property rights and I think everyone else's property rights. I am not going to get compensated for the land that is going to get condemned to make it wide enough. What about our property rights?

Mayor Anderson - Are you talking about the DOT easement?

Mr. DeFiore - My understanding of that letter was if that the road is closed and DOT is prepared to create the turnaround they can't do that without condemning our property. And if any additional right-of-way is needed to make the road wider they are going to take property away from me which will definitely decrease my property value because it is less land. I am not going to be compensated for that. I consider that a serious encroachment of my property rights.

Councilmember McKee - The letter says the owner will be asked.

Ms. Mary Ann Schulte -733 Lochaven Road - I have lived out there for 25 years and I am for keeping the road open mainly for safety reasons. I have been out there when there have been fires and trees in the road. I have had to go around different ways to get to my house or to exit Lochaven Road. It is a serious safety issue. There are many trees in the neighborhood and they do come down regularly. About three months ago, I had a fire truck at my house and it took up more than ¾ of the road.

Mr. Mike Waller - 606 Lochaven Road - My wife drove around that loop and she didn't make it in 44 seconds when she went the other way around. It was closer to three minutes. The other issue of safety that has not been addressed is that in case of medical emergencies, the first responders are not fire trucks. They are firemen in personal vehicles. There are some older people living on our end of the road. They certainly get there faster going across the dam. Mr. Johnson said someone has researched a few deeds. I have also researched a few deeds. The current deeds all reference the plat map. That is why we no longer have the low water mark as the indicator. It just has the line on the map and the lake falls where it may. Some of the old deeds, the wording is - the continuance of the road constructed of the dam at the site of the present dam and running thence and so. This was in 1967 so well before the 1970's they were

planning on continuing that road around. In fact, in one deed in 1958 or 1959 the deed said the road would be constructed, the property owner and Lochaven Corporation would have access to the road as would the public. The road, as you saw on the map, at that time and when Mr. Reynolds moved in, came up the side of the property to here and connected to this road. The road was stubbed there because it went to a private driveway and that was the circle. In 1957, there is an older map than the one filed in the Register of Deeds Office which shows a plan for this road to be put around. The plans for that road to connect to the dam by far predate a 1974 build out. Lochaven Corporation started buying that property in 1955. Within two years they had already planned to use that dam as a road. The one thing that I have not made the connection in all of this discussion is how shutting traffic off of the dam – other than reducing Mr. Johnson's liability – which it does – helps improve the safety of the dam other than eliminating extremely heavy vehicles and wear on the surface? The wear on the surface has been maintained from the time of the dam until recently and it has been a decent road to drive across. Other than that damage to the road which has been maintained and repaired, I am not sure how shutting the traffic across the road improves the safety of the dam itself. Just in case you read a story or see it on TV, there is already a lawsuit between Mr. Johnson and myself so understand I am not speaking because of that. I am speaking because this has an impact to my property and in fact the deed to my property, several generations back, said the road would be built and I would have access to use it.

Ms. Kristin Rogers – I have lived in Lochaven for 36 years. We first drove back there in 1973 shortly after the road was connected. I live on the other side of the lake. That was our decision. We didn't want to drive out this far. If the dam road is closed, the traffic is going to be thrown on the existing road. It is a narrow, hilly, heavily wooded road with sharp blind curves. There are places that just drop off on either side. It is impossible for two vehicles to pass. Many times people pull over and wait for a car to come. Right now with the garbage trucks, recycle trucks, delivery trucks, until this so called cul-de-sac is built there is no way for them to turn around. If you do vote for the road to be closed – please at least leave it open. The garbage truck would have to drive down and back up. There is no way to do it. There has to be some kind of order in what does happen.

Mr. Mike Maxson – I don't live in the neighborhood but I do have a vested interest. I have been familiar with the area for about four years now. Hearing what everyone is saying this evening, I would encourage the Council to consider the overall safety of the citizens that vote you in office. I don't know how many times a dam has busted in this State. I know how many times people have heart attacks and fires, and windstorms. Please consider the percentages of what would be safer for the citizens in that area.

Mr. Clayton Loflin – As a former owner of Lochaven, small minority owner, I was privileged to sell this property to Mr. Johnson. One of the criteria that Bill Little, the majority owner, and I put on Mr. Johnson is what are you going to do with it and what are you going to do to protect the lake. We live on the lake. Mr. Little is getting ready to start a million dollar house next week. We would not be interested in selling to Mr. Johnson unless we knew he planned to preserve and protect it and make it better for everyone. The lake is far more important to the neighborhood than the road. The lake is formed by two storm water creeks that come off Providence Road and Ennis Road. It is all storm water, dry weather creek. The lake impounds that water and then sends it on down to Aero Plantation. If you want to think about safety, from my home office, I can look across the lake and see the dam and I can see where fuel trucks go across that dam routinely. If he knew what I knew he wouldn't do it. You talk about a disaster, you let that fuel truck go into that culvert and we have major problems on our hands. It is far more serious than the idea that someone might be inconvenienced from getting to their home. The dam is not safe. You can look at it and tell. The minute I got involved – I tried to buy insurance and they laughed at me because of the vehicles going across that road. They said they would not even consider it. They might consider it if it was just a dam for the pond and you had a Homeowners Association that was maintaining it. I insisted that we put up those telephone poles which we got from Union Power and we spent our own money to go down and put those on the dam primarily to keep kids on golf carts and four wheelers from going into the

water. We have recognized that we have had a safety problem forever. When I got there, car traffic was going across the edge of the culvert that you saw. The tires actually left a rut going onto that culvert. If one had gotten into that concrete it would have flipped instantly. The lake is more important for all the property values and everybody in the neighborhood. I call this neighborhood one of the most naturally beautiful areas that I have seen in Union County. I bought there because I do like it and it is our only home and since owning it I have improved it probably \$150,000. It is an improving neighborhood and I would never let Mr. Johnson buy from us thinking he would do something that would hurt us.

Ms. Kym Cuthbertson – The lake is beautiful but to me it is all about people’s safety. The most important thing is people. We live in probably the most heavily wooded area in this community and if a tree goes down a fire truck cannot get through and would have to go around the other way. I live very close to the pavement on the gravel road. I am more concerned for people that are a whole mile on the other side. That is entrapment and a new meaning to the term dead end. I do not want any divisions between neighbors. It really should be about safety. I do not know where you got the weight of the water or amount of water. You have had two houses and this is your third purchase in our neighborhood. I am more concerned with lives.

Mr. Todd Tuttle – 542 Lochaven Road – I agree with Clayton and I agree with the Wallers. If there is something that can be done with finances to find a way to do it to keep it open - great and increase the dam size that would be wonderful. If it is closed, consideration for everyone that lives on the other side that we have a timeframe of closure and that consideration is given for the development of the cul-de-sac, widening of the roads and that the neighborhood is heavily involved with the Council and with the State.

Mr. Louis Iglesis – I live on the lake. I bought it because of the lake and the loop. I think it is a safety issue. I have three little kids and older neighbors next door that I am concerned about. I am worried about if one of my kids gets hurt, how do we get in there?

Mr. Rocky Cuthbertson – I have been out there for 11 years. For a long time we maintained that dam. We cut down the shrubs and we put gravel down. It has never been proven that this is an unsafe dam at all as far as driving across it. I think shutting it off like that without doing anything is totally wrong. I do not understand why all of a sudden it is an unsafe issue and for years it was not. No one has been allowed to go down there and maintain the dam for the last two to three years so it looks crappy on the films because we can’t do anything now.

Mr. Loflin - That land was always owned by Lochaven and called common area. For fifty years they paid taxes on it. All of that was in the sale to Mr. Johnson and it went hand and glove. The water, dam and the common area belongs to Mr. Johnson.

Councilmember Smith moved to continue this hearing until April 13 to give the homeowners the opportunity along with Mr. Johnson to clarify ownership and to develop their own repair, maintenance and funding mechanism/plan relative to the road and dam.

Mr. Johnson – I contend through this whole thing that it is my property that people are using and I want them to be safe while doing that and I want the condition of the dam road to NCDOT standards and I would be open to keeping it as is.

Councilmember McKee - To me the main issue is the liability of the dam and it comes to Mr. Johnson as the owner of the property does not want to take on the liability of an accident happening. I do not know if I have heard from anyone in the audience wanting to take on the liability. There is a gap that I do not know if it can be narrowed. I think in your presentation you offered to sell for \$1.00 if someone would take over the liability.

Mr. Johnson – I made that offer to the residents and HOA group. I thought it was prudent because essentially the dam is the key to the lake. Whoever controls the dam also controls the lake. The reason being the people that should control the lake are the people that stand the most to lose with the loss of the waters in the lake which in my opinion would be the folks that own property up against the lake. I got one taker. Mr. DeFiore said he would take over for \$1.00. I made the offer that the folks form an HOA and purchase that property for \$1.00. The talk from that point was it was a ploy to get me to bring the dam up to standards to benefit the development of this area right here. When it closes down there are seven lots that I am cutting off. It would not be degrading anyone else but myself. I am affected by it as well. Even though I do not own any lots on the property I do have a significant investment in the property and the ambiance of the property.

Councilmember Price – Thirty days gives you guys an opportunity to explore those options. Our dam was deeded to our Lakeowners Corporation. You have from the looks of it most everybody in the neighborhood has an interest in this dam because you drive on it. In your case it is not just the lakeowner’s responsibility it is everyone that is going to be driving on this thing. Everyone is quick to jump up and say leave it open. Nothing is free. Real easy to say leave it open but it is going to cost somebody. I would like to give you 30 days to figure it out.

Mayor Anderson - I wanted to ask Mr. DeFiore to make sure that I understood you when you said before that you would not be willing to give up a portion of your easement to dedicate to NCDOT so that we can widen the road.

Mr. DeFiore - Without monetary compensation? It would depend on a lot of specifics. Based on what I heard before - no.

Mayor Anderson - If you are not willing to do that, then why are you willing to ask your neighbor to provide access? I am trying to understand that. Why a private citizen is being asked to provide public access.

The vote on Councilmember Smith’s motion is as follows:

AYES: Councilmembers Smith, Price, McKee and Mayor Pro Gilmartin
NAYS: None

Item No. 3. Adjournment. Councilmember Smith moved to adjourn the March 16, 2009 Special Town Council Meeting. All were in favor, with votes recorded as follows:

AYES: Councilmembers Smith, Price, McKee and Mayor Pro Gilmartin
NAYS: None

The meeting adjourned at 9:57 p.m.

Nancy D. Anderson, Mayor

Amy S. McCollum, Town Clerk