APPROVED
12/2/04 MMB

TOWN OF PATTERSON

PLANNING BOARD MEETING

September 30, 2004 WORK SESSION

AGENDA & MINUTES

1)	**Bri-Car Site Plan**	Page 1 - 2
2)	**South Patterson Business Park S/D**	Page 2 – 4
3)	**Thomas Subdivision**	Page 4
4)	**South Patterson Business Park S/D**	Page 4 – 5
5)	**Thomas Subdivision**	Page 5 – 6
6)	**Triple J Wetlands/Watercourse Permit**	Page 6 -12
7)	**T & T Associates Site Plan**	Page 12 – 14
8)	**Parenti Site Plan**	Page 14 - 16
9)	**Site Inspections**	
	a. Metzger Wetlands Watercourse Permit	Page 16 - 23
	b. Woodward Subdivision	Page 23 – 24
	Site Walk Discussion	Page 24 - 26

PLANNING DEPARTMENT
P.O. Box 470
1142 Route 311
Patterson, NY 12563

Melissa Brichta
Secretary

Richard Williams
Town Planner

Telephone (914) 878-6500
FAX (914) 878-2019

ZONING BOARD OF APPEALS
Howard Buzzutto, Chairman
Mary Bodor
Marianne Burdick
Ginny Nacerino
Lars Olenius

PLANNING BOARD
Herb Schech, Chairman
Michael Montesano
David Pierro
Shawn Rogan
Maria Di Salvo

TOWN OF PATTERSON
PLANNING & ZONING OFFICE

APPROVED
12/2/04 mab

Planning Board
September 30, 2004 Work Session Meeting Minutes

Held at the Patterson Town Hall
1142 Route 311
Patterson, NY 12563

Present were: Chairman Herb Schech, Board Member Mike Montesano, Board Member Dave Pierro, Board Member Rogan, Board Member Maria Di Salvo, Rich Williams, Town Planner, and Ted Kozlowski, ECI

Meeting called to order at 7:33 p.m.

There were 4 audience members.

Gene Richards, Town Engineer was present for a few minutes.

1) BRICAR SITE PLAN

Rich Williams stated Gene has done a review on the latest and greatest plans that have been submitted for the project.

Board Member Pierro asked a chain link fence up against the stonewall in the back did I read that.

Rich Williams replied no.

Board Member Montesano stated a six foot high chain link fence.

Rich Williams stated I don't recall. Gene, did they put it back by the stonewall no it is on the buffer line.

Gene Richard stated it says wetlands boundary. Ron actually had a good idea on that is there a comment that talks about the landscaping and the Board has to look at it but Ron suggested pulling the fence back away from the road and put the trees out in front it just helps for the frontage appearance, put some plantings along the foundation. (Unable to hear the rest of his statement).

Board Member Pierro asked can we suggest that to the Applicant or do you want to make it a requirement.

Rich Williams stated Dave, it is probably something that when they come in you should talk to them about.

Board Member Pierro stated okay we will make the suggestion.

Gene Richards stated they also have colors indicated on their architectural elevations those you should review.

Rich Williams stated while we are on that it appears from the plans that they have got that they are still proposing a metal sided building which does not comply with the Town's Code.

Board Member Rogan stated they put a nice cupola on it though, three of them.

Board Member DiSalvo asked can they use what Bradley is using on his building.

Rich Williams replied well we have not gotten to that issue with Bradley.

Board Member DiSalvo replied I thought he gave us a sample at the last meeting.

Board Member Pierro stated Bradley is talking about stone and hardy plank.

Rich Williams stated oh, yes that is true I forgot about that.

Board Member Pierro stated it was a metal type building but they are going to face it with hardy plank. That is that concrete board.

Board Member DiSalvo asked can they use that here.

Board Member Montesano replied sure.

Board Member Pierro stated sure it is expensive.

Board Member DiSalvo asked what else can he use.

Board Member Pierro stated they can't use the aluminum. They can't use the metal.

Board Member Rogan stated it can be a metal building they just have to side it with something.

2) SOUTH PATTERSON BUSINESS PARK SUBDIVISION

Rich Williams stated they are down to a two lot subdivision. When we went out and did the site walk there was an abandoned van they have since removed they properly disposed of it.

Chairman Schech asked what did they do with the one lot that we were trying to get access or not access to the rear.

Rich Williams replied what it was is they have gone from a three to a two lot subdivision. They are back in to schedule a public hearing. There are a couple of outstanding issues with the Environmental Assessment Form and the application form. One of the issues and I hope this is Ted is with the wetlands.

Board Member Rogan asked is that a pond on site.

Board Member Pierro stated there is a pond in the back.

Rich Williams stated here is the issue with the wetlands everything on Lot #1 is already developed, Lot #2 there is a lot of upland before we get back to the wetlands. They are not accurately representing the wetlands line on the plans however for the purposes of the subdivision it really does not matter so the question becomes does the Board want them to actually go out and delineate that wetland line and Ted verify it so it is correctly on the plan or just acknowledge that we are not in agreement with the wetland line.

Chairman Schech stated go and mark it right. We always wanted it.

Board Member Rogan asked what I thought I heard you say was that if it is not going to have an impact on the project what is the point of having them go out there and go through all the flagging provided that the Board feels comfortable that the project does lie outside of a minimum of 200 feet from the wetlands something like that.

Rich Williams replied that is exactly it.

Board Member Rogan stated it has got to be a reasonable distance away that you feel hey, it is a half of a mile away and it has no bearing.

Board Member Pierro asked can we get the wetlands permanently marked anyway by Ted with our local signs just to keep them out of there.

Rich Williams replied if you are going to go down that road it might be better to have them flag it and work it out otherwise Ted doing the delineation.

Board Member Montesano stated my problem with not marking it out is simply that the reputation of the Developer,

Board Member Rogan stated no it has got nothing to do with it.

Board Member Montesano stated I am just making a statement that I don't know what he is going to have or who is going to come in there I think it should be marked.

Chairman Schech stated I guarantee it should be marked.

Board Member Montesano stated I think it should be flagged for the simple reason that if we do this on this we set a precedence again. I tell you I am not going to do something and then the next guy walks in and there is no indication well you never indicated where it would be we are just going on what we said so have them mark it.

Board Member Pierro stated in that regard Rich; I am going to side with Mike and Herb and request that it be flagged.

The Secretary asked do you want to do Triple J without Ted.

Rich Williams replied I would prefer to have Ted here.

3) THOMAS SUBDIVISION

Rich Williams stated Gene has done a review on the latest plans.

Board Member Pierro asked the conservation easements are okay.

Rich Williams replied that was the million dollar question is Bob Lusardi, their Attorney, I had prepared a conservation easement, sent it over, Bob Lusardi took a look at it and said it is way over the top, you can't do it this way. It is too much for the Town and we would prefer to do simply a covenant restricting the activities that could occur in that area. My response was to the Town Attorney I see a conservation easement this way and a covenant this way and give us some guidance on this. I met with Anthony; Chairman Schech stated he seems to be a very sharp guy. Rich stated actually Herb and I both sat with him and I don't know Herb if you want to jump in. Chairman Schech stated no go. Rich stated basically Anthony agreed that some of the things that I put in the conservation easement that probably could be toned down a little bit. I did give him the whole conservation easement so he could make some changes to it but felt that it would be more appropriate for the Town to accept a conservation easement than a covenant and he was going to draft a memo to Mr. Lusardi to that affect.

Chairman Schech stated explain why.

Chairman Schech stated because the covenant anyone who goes in there can change it.

Rich Williams stated the one issue, the reason I want to do a conservation easement is because it gives the Town some fee simple ownership of the property. We actually now have some property rights there. It gives us more control, more strength whereas a covenant does not. It does not give us any ownership, it does not give us the same authority over activities that occur out there and that is exactly why I want to do a conservation easement and they didn't.

4) SOUTH PATTERSON BUSINESS PARK

Rich Williams stated let's back up a second, and stated to Ted, South Patterson Business Park down near Panino's, we went out there and did the site walk, the wetlands was not flagged right.

Ted Kozlowski stated right.

Rich Williams stated I brought up the issue about whether the Board wanted them to actually flag that now considering there wasn't a lot of impact back in the area or just put something on the plans that acknowledge that we don't agree with the wetlands flagging. The Board wants it flagged out now.

Ted Kozlowski stated it is probably a good thing to do because you have got that slope and you don't know what they are going to do. You have got to have it on record.

Board Member Rogan asked have we ever heard back from them what was in that truck with all the barrels, you said it was removed.

Rich Williams replied yes I made them give us paid receipts and everything.

Board Member Rogan asked did they ever say what it was.

Rich Williams replied I think there was some chemicals listed but I don't recall.

5) THOMAS SUBDIVISION

Chairman Schech asked we are okay on Thomas.

Rich Williams stated they are in looking for final they are pushing pretty hard I haven't read Gene's memo but the conversations that I have had with Gene,

Board Member Pierro asked can we get the conservation easement wrapped up in time for the meeting.

Rich Williams replied no.

Board Member Pierro stated no then, Board Member Montesano stated wait until the next one.

Rich Williams stated and there are a lot of outstanding issues with the plat.

Board Member Rogan asked technical aspects though, right.

Chairman Schech stated they can wait for another meeting until we get it all ironed out.

Board Member Rogan replied yes I am just asking.

Board Member Pierro stated they are not building this year.

Rich Williams stated I think he wants to get out there and start clearing.

Board Member Montesano asked on that situation you are going to go in and clear the land before winter and then you are not going to do anything other than attempt to keep it under control and it is the middle of winter and if we get snow why do we have to give them an approval that says they should do it, if the building season is way over. You are going to clear the land and that is fine for you but how much runoff is created with the snow and everything else on the project not necessarily this one I am just saying in

general. We approve something and the guy goes in and clears three acres because he is going to put a building up but the building isn't going to get put up until sometime around April or May that means you go through the whole winter season, the thaw and everything else with what was holding water before is just runoff.

Rich Williams replied it does not quite work that way anymore there is a specific sequence of construction laid out now whenever they do start to clear the first thing they have to do in a relatively short period of time is getting erosion and sediment controls in.

Board Member Montesano stated I have seen erosion and sediment controls, I have seen all that beautiful black stuff laying on its side, the water running in the mud and running over the top of it, the bails of hay that disappear.

Board Member Pierro asked on Thomas in the midst of this I will go on record, in the midst of this my broker took on that listing and is marketing that property. I mean it is an open, fairly open and shut subdivision if anybody sees any problem with it I will recuse but I didn't know until, he does not have to consult with me every time he takes a listing in Patterson but I didn't know until just a week ago that our sign was out.

Board Member Rogan stated fortunately the timing of that we have already done ninety-nine percent of the work on this also so I don't see, you could also just as easily vote on it and I don't think that.

Board Member Pierro stated I just want to put it on record because I don't want anybody coming back to us saying that I didn't disclose.

Chairman Schech stated I think to be safe you should recuse yourself to be safe.

Board Member Rogan stated I don't agree that necessarily just to be safe I would ask the Attorney because if you just start recusing yourself because you are afraid of a conflict we are in a small Town we all have conflicts with everyone.

Board Member Pierro stated I would rather put it on record and we will see what develops.

6) TRIPLE J WETLANDS/WATERCOURSE PERMIT

Mr. John Petrillo, Paul Lynch, Engineer with Putnam Engineering and Mr. Alan, Pilch with Evans Associates were present.

Rich Williams stated Ted and myself met with Alan from Beth Evans Associates out on the site gave him a run down, took a look at it and from that meeting they have now prepared an evaluation of the wetlands and the buffer. They have made some revisions to the location of the stormwater ponds. I think that Paul they had gotten a little bit smaller.

Paul Lynch replied we were able to pull it farther up the hillside.

Rich Williams stated right about twenty feet up the hill away from the wetlands.

Paul Lynch stated yes stay within that disturbed area.

Rich Williams asked Ted do you want to add anything.

Ted Kozlowski asked with regards to the site visit.

Rich Williams replied with the plans whatever.

Ted Kozlowski stated my feeling hasn't changed since the last meeting. The buffer that is impacted to me was not a very functional buffer. The plans have modified them as best they could I really don't have an issue just to deny a wetlands permit here. I have said that from the beginning. I would like to see some more mitigation if that is possible but it is up to the Board to decide whether they want a house and a wetland or detention basins on the same lot. I know you are wrestling with that. I also believe the Board is going to have to make a statement, a policy statement that at some point there is no more disturbance in the buffers. I mean the law is clear, the buffers are to be a buffer to the wetland not really to be disturbed. We have made that exception on every single wetlands permit and this applicant has done an awful lot at our request. I think he has taken it as far as he can. The site was previously disturbed I don't think it is a big buffer issue on this one.

Chairman Schech asked did everyone go through Evans' statement.

Board Member Rogan replied I am just looking at it now.

Chairman Schech stated go through it.

Ted Kozlowski stated but I do think that this Board is going to have to somewhere down the line you guys are going to have to, Board Member Pierro stated we have two projects right now, Ted Kozlowski stated you have a bunch of projects with this, Board Member Pierro stated two that I can think of Paddock View and this one where we have buffers,

Ted Kozlowski stated Paddock View, Board Member Pierro stated Wyndham still has problems I imagine. Ted Kozlowski stated we are going to have Wyndham for the rest of our lives, Deerwood. Every single lot is bordering a wetland.

Rich Williams stated you can go right down the list with every project that we have got on the agenda probably there is a buffer or a wetland issue on every one.

Ted Kozlowski asked so where do we make the stand.

Board Member Pierro stated how about we put a date on it after January 1 we issue a policy statement that we will not consider retention ponds on lots with homes.

Ted Kozlowski stated Dave, it is more than the retention ponds, it is driveways.

Chairman Schech stated I don't think you can have an actual policy statement I think you have to take each case by, case by case I think.

Board Member Pierro stated these are taking us more time than any other issue that we look at.

Ted Kozlowski stated yes and it is continuing and you have that Paddock View which the impacts to the buffer are far greater. I think it is a much more valuable buffer that is being impacted.

The Secretary stated Paddock View you guys are confusing, Ted Kozlowski stated I am talking about the equine center.

The Secretary stated Paddock View just has detention pond on the same lot as the house. That is a different issue than the buffer issues.

Board Member Pierro stated as far as this project is concerned, Triple J I agree with your assertion that the Applicant has gone a country mile and you know my feeling is that we ought to approve the permit.

Ted Kozlowski stated it is a tough one.

Board Member Pierro stated it is a tough one.

Ted Kozlowski stated because Rich brings up some great points.

Board Member Pierro stated very viable points.

Ted Kozlowski stated but you know is this the one where we say no it is not going to happen.

Board Member Pierro stated I don't think so.

Ted Kozlowski stated I don't know. Had the buffer been undisturbed forest or undisturbed, Chairman Schech stated then we would have a hard line.

Board Member Pierro stated then we would have something to stand on.

Board Member Rogan stated but does that send the wrong message then that the idea is to go in and disturb an area ten years before you develop it.

Ted Kozlowski stated Shawn you are absolutely right. What is the answer.

Board Member Rogan stated I don't know but I agree with Herb though that the whole point of this Board is to apply a rule of reasonableness and to assess the situation and say okay what are the benefits, what are we losing, what are we gaining I don't know that we can take a hard and fast rule but we do have wetland buffers that need to be protected if we said no to everything we would not have a need for a Wetlands Consultant we would just say stay a hundred feet away from everything.

Ted Kozlowski stated now the issue is whether you want a house in the same area that is not a wetlands issue now this is a planning issue.

Board Member Rogan stated it is a long term management of the site issue.

Ted Kozlowski stated as far as the buffers go we have made the Applicant, I mean in all fairness we have made this Applicant go through an analysis of the impacts and actually do an assessment of the impacts to that buffer. When have we done it on some other application.

Board Member Pierro stated we haven't.

Rich Williams stated that is not true we generally do.

Board Member Rogan stated but this is a pretty good impact.

Ted Kozlowski stated we haven't done it with AntRoc and all these other applications that come in.

Rich Williams stated AntRoc was a bit of an exception but we have done it with the equine center.

Ted Kozlowski stated yes we have Rich I am not saying it is all blanket, Rich Williams stated we have done it with Clancy, Ted Kozlowski stated I don't feel comfortable honestly denying this project. I really don't. Had it been different site conditions out there then I would be jumping up and down.

Board Member Montesano asked would you prefer a schedule so to speak of things I don't know if we have it in our regulations as of yet such as; there should be no impervious surfaces in the buffer areas where a detention pond.

Board Member Pierro stated I think this portion of the discussion is better served to be done at a work session where we target this issue and not,

Ted Kozlowski stated this is a work session and this is where we bring it up I really do believe that.

Rich Williams stated to answer Mike's question, our Code says there is no disturbance to the wetland buffer without a permit and then it is up to this Board to evaluate.

Board Member Montesano stated but what I am saying is we went that far to say you have got to come in for a permit before you can disturb it the problem is do we have something that would give an applicant an idea of what we are going to suggest so we have a better idea of what we are going to fight against. If you say there should be no impervious surfaces that limits the argument to a house, driveway, etc but can you do that.

Ted Kozlowski stated I think what Evans Associates did here might be something we want to require when we are into those buffers now Rich brought the buffer thing to a head.

Rich Williams stated well Paul (Lynch) when he eliminated the whole buffer.

Ted Kozlowski stated right Rich brought that to a head and I think there should be an assessment now with every application if they are going to go into the buffer the Applicant should come up with an assessment by a professional on what the impacts to that buffer is. Now, if it is Mom and Pop in the backyard that is already lawn and they are within a hundred feet of a buffer and they want to put up a deck that impact is not going to be as great as the impact say with this particular project or some other project so what they did here is they did an analysis of the wetland and all of its functions and its buffer and maybe that is what we are going to have to require in future applications instead of a blanket statement saying no, no, no to

everything in the buffers I think they are going to have to analyze it a lot better so this Board can make a reasonable decision. As you know, there is a big difference between paving a road through a buffer and putting up a storage shed so I think we are going to have to weigh each one and look at it a lot careful.

Chairman Schech stated case by case.

Ted Kozlowski stated I don't think it should be a given that you are in the buffer therefore you are able to get your project.

Board Member Rogan asked Rich, how do we resolve the long term maintenance of the basins on this property, on a residential property.

Board Member Pierro stated they are going to be part of the Southeast,

Rich Williams stated the long term maintenance is a relatively easy issue to work out, complex but easy. The greater issue is the conflicting uses on the site the house and the basins and whether you are comfortable with the fact that the house being there is not going to end up being a long term problem for the basins or vise versus, whether the two uses on that site are compatible and there is enough area to accommodate each one.

Board Member Rogan asked and the object of creating in an idea world, creating a lot specifically for these basins on this parcel that may still have,

Rich Williams stated can't be done.

Board Member Rogan stated well it can't be done from the standpoint of say frontage on the road or something, well why can't.

Rich Williams stated that is not the issue. The issue is they are in a four acre zone.

Board Member Rogan asked but isn't this lot like twelve.

Rich Williams replied right but I mean the basins in order to create that the basins would end up segmenting completely the wetland area from the house so the wetlands would actually be part of that stormwater lot. The area that would left for the house is not sufficient to have the four acre area. You could but you would have this really crazy configuration out there.

Board Member Rogan stated well maybe the finer point then is looking at whether or not we would want to impose some type of restriction on the distance between a residence and a basin even if they were on separate lots. Even if we had two separate lots in this case and it was a four acre lot we say you know we don't want a house within so many feet of a basin that seems to be part of the argument that you are talking about. Are these conflicting uses. You have a residential house that is butted right up against the basin and in this case we are all kind of agreeing that they are fairly close. I know I hear other towns talking about being worried about people falling into these basins, how do we protect them, do we treat them like a swimming pool, do we treat them like a pond, some areas I have seen where they proposed that the subdivision fence these in, I don't know what the right way to do it is. It is something that people are talking about.

Board Member Montesano stated and in that case you have to worry about the liability. If it is a homeowners association assigned to maintain it then they would be responsible. The minute the municipality takes it over then the town itself is responsible.

Board Member Pierro stated from my understanding the Town of Southeast is already going to have other retention basins on this site and there is going to be a district that is going to also take care of these two ponds even though they are in the Town of Patterson.

Rich Williams stated right.

Board Member Pierro stated so remediation and maintenance on these is not a problem at this time.

Rich Williams stated right that is not a problem but you know you are talking about two different issues here too. One, is the safety aspect of it and the other is kind of the ownership aspect of it and the direction that the Town of Patterson has been going in and the Town of Southeast is going in is that these stormwater utilities now are going to be put on their own separate lot because both towns have found that they have had problems with these utilities being placed on a homeowner's lot because the homeowner thinks they own it and they rightfully should I mean this is their land and yet somebody else is using it.

Board Member Rogan stated I noticed for a lot of the inspections that will be required under the new MS-4 guidelines, they are talking about weekly inspections on construction sites as they are being worked on for erosion control is there a portion of those guidelines that can reflect the stormwater districts in terms of a bi-annual inspection or something that would be required so that you know that the homeowner that eventually owns this house after John moves on isn't going in and putting in a fountain in you know that it is not left to where we don't know about it for five years.

Rich Williams stated we are getting a little bit off target so I will try to keep this brief. There is pre-inspection schedules that are now being mandated under the latest and greatest MS-4 requirements that the Town just received last week. The first one is the one that was in the original MS-4 which requires a certified professional to do a weekly evaluation of all sites under construction that break this one acre threshold and anytime there is a greater than .5 inch rain storm so that is always going to be there. The new requirements also are going to require the Town to go out and inspect every site disturbance greater than 5,000 square feet every two or three weeks and the third one is we now have to develop a maintenance and inspection schedule for post construction stormwater practices so we are going to have to give actually a schedule to the DEC on how we are going to go out and inspect and maintain all of these.

Board Member Rogan asked and all three of those need to be done by a certified, because it said something about certified working under the supervision of an engineer, there was,

Rich Williams replied right you either have to be an engineer, somebody working under the direct supervision of an engineer or somebody that has gotten their national certification,

Board Member Pierro stated you have yours, you just obtained yours congratulations by the way.

Rich Williams replied I got mine.

Ted Kozlowski stated just what you needed more work.

Chairman Schech asked okay ladies and gentlemen what is your pleasure.

Board Member Pierro asked on Triple J.

Chairman Schech replied yes.

Board Member Pierro asked do you want a motion now or do you want to wait until the meeting.

Board Member Rogan replied we are not doing motions now.

Chairman Schech asked no what did we come up with here.

Board Member Rogan stated it sounds like the majority, Board Member Pierro stated the majority of the Board I think is go with a wetlands permit.

Board Member Rogan stated I have reservations with it but again, I am starting to swing more to the conservative side on these. I also have reservations with the equine center even though it is a disturbed area I am starting to think in terms of well just because it is disturbed doesn't mean we don't need to protect it now maybe we need to re-establish things. I think this one will be done properly. I have no objection in that sense. I do think that our Board needs to look more closely at what we are approving in terms of our wetland applications. I am not completely objectionable to this application. I just see that it came to us almost as an after thought where we really did not have any involvement in this for a couple of years but that is why I am only one person on the Board.

Rich Williams asked so pretty much the consensus is that, Board Member Pierro stated we would approve it.

Rich Williams stated we are going to move forward the way it is so that Gene, Ted and I can start looking at this and fine tuning whatever vegetation and looking at the stormwater report.

Chairman Schech stated sure.

Board Member Rogan stated yes.

(Too many speaking at the same time unable to transcribe).

Ted Kozlowski stated I will have my complete review for you early next week and then I will forward it to Paul.

Mr. Lynch thanked the Board for their time.

7) T & T ASSOCIATES SITE PLAN

Rich Williams stated new plans in, one of Gene's concerns and Gene has done a review on this and one of his concerns is that the width of the driveway going in is only ten feet wide at this point, it is constructed to residential standards, it is not wide enough to pass two vehicles, one going in one going out.

Board Member DiSalvo asked not the driveway from 22 it is the one up further where you make the left to go in there.

Rich Williams replied right.

Rich Williams stated so he thought that they probably should widen it. They are resisting that idea. They want to come in and talk to the Board about it. That is one of the issues they want to come in for.

Board Member Montesano stated well they are trying to make a business out of it. You have got to make so cars can pass through.

Board Member Pierro stated we are going to be expanding the parking area, they have to widen that area down below and put blacktop down we are only talking a hundred feet.

Board Member Rogan stated that is probably it all you are talking about.

Board Member Pierro stated a hundred feet three or four foot wide.

Rich Williams stated now we are starting to get into we are putting in a parking lot, we are increasing the driveway width, stormwater controls.

Board Member Pierro asked how much impervious surface do we want there.

Board Member Montesano stated well you have got to make it so that people can get in and out. You should have on a commercial piece of property and that is basically what we are talking about you should have something where two cars can pass without banging mirrors.

Board Member Montesano stated for arguments sake let's say the HVAC guy wanted to move into that building how the hell do you get the vans coming in and out.

Board Member Rogan asked what are we talking twelve foot wide.

Rich Williams replied I am not sure what Gene is recommending but to pass two vehicles you are going to want a minimum of sixteen again, I don't know what Gene was talking about.

Board Member Pierro stated then let's talk to Gene at the meeting and see what he says.

Board Member Montesano stated for arguments sake if you were going to bring the road in there at twenty-four feet fine we use suggest eighteen feet to make it because the Town is never going to take it over and eighteen feet two cars can pass.

Board Member Pierro stated in any event this road is not getting widened this year unless they do it tomorrow.

Board Member Rogan stated all we are talking about though is the width between the main thorough fare up to D.E.W. Construction that is where it dog legs off.

Chairman Schech stated all we are asking for is what was supposed to have been done when the original thing was done.

Chairman Schech stated so we want the driveway, Board Member Pierro stated yes widen driveway, Chairman Schech asked to what sixteen feet.

Board Member Pierro stated we wanted to hear from Gene.

(Too many speaking at the same time unable to transcribe).

Board Member Pierro stated as per the site walk we are going to have them move the canoe rack.

Board Member Montesano asked I did not even read it is there anything about the propane line coming out or whatever the heck that line is, electrical line coming out through the propane tank.

Rich Williams replied I did bring it to Paul Piazza's attention he is aware of it. Dave has been out there and as a result they have issued comments to them that we have not seen and they have now put a bollard and some other protections for the tank.

Board Member Rogan stated Gene's memo says that it is not clear why they haven't provided the twenty-four foot wide which would be required but it is something that appears that they want to discuss with the Board. If we drop from twenty-four down to eighteen or sixteen even.

Board Member Montesano stated I think we ought to keep a standard.

Board Member Rogan stated we do reduce standards for short areas for the traffic I can understand that.

Board Member Montesano stated we maintain eighteen normally.

Board Member Rogan stated eighteen is fine.

8) PARENTI SITE PLAN

Chairman Schech stated Parenti is a new one site walk.

Rich Williams stated Parenti is right down here on Route 311 just before the power lines.

Board Member Pierro asked is that Sprague's.

Rich Williams replied next to Sprague's.

Rich Williams stated what they want to do is up in back of the house, they want to keep the house, in back of the house they want to put up a masonry and material re-sale area.

Board Member Montesano asked why can't they take over the ones that are existing.

Ted Kozlowski stated why don't they buy Fredericksburg's.

Rich Williams stated I have met this gentleman a couple of times,

Board Member Pierro asked what is the Applicant's name.

Rich Williams replied Parenti.

Board Member Rogan stated hey look nothing in the wetland buffer.

Rich Williams stated that is not true either.

Ted Kozlowski asked is this the wetlands that go behind Old Fredericksburg.

Board Member Pierro replied yes.

Rich Williams replied well not exactly.

Board Member Pierro stated it is next to Raveson's site and Raveson's is a swamp in the back once you get down the bottom of that hill in the back.

Rich Williams stated what they are showing on this plan they are showing everything out of the wetland buffer but they are up on a knoll, once you bring the topography down the knoll, make a cut and you are going to be grading into the buffer area on top of that one of the issues I raised in the memo is what they are showing for the wetland buffer line which has not been confirmed by Ted does not meet the soil boundary lines for fluaquent soils on the site.

Chairman Schech stated so we need wetland flags right.

Ted Kozlowski stated they have a note on there per Richard Jacobsen I think that is probably Roy Jacobsen who is no longer, he is with DEC but he is up in Albany and he is no longer in the wetlands program and that is about two years.

Rich Williams stated here is the big issue that I just want to bring to your attention because I met with this gentleman twice and I am little bit uneasy about this I constantly have said it is the General Business Zoning District that retail is a permitted use and he keeps saying yes that is what I am doing is retail, retail sales of masonry supplies.

Board Member Pierro stated be careful.

Rich Williams stated that is why I am bringing it to your attention. If you look behind the building he has huge storage bins for bulk topsoil, gravel, sand and whatever. He also has in the very back of the site a topsoil storage and screening area and I explained to him that may be really over the line.

Board Member Montesano stated but he is not going to do anything in the buffer or the wetlands once we get the bulldozers working and we level out the back so we can make the bins we are not going to be in there.

9) SITE INSPECTIONS

a. Metzger Wetlands/Watercourse permit

(Too many speaking at same time unable to transcribe).

Rich Williams stated it was not a question of the property line it was a question because the property lines I believe are correctly shown.

Ted Kozlowski stated when we walked that there was some discussion,

Rich Williams stated the issue is this the property line for Deerwood goes to centerline of that old road basically down the center of the driveway.

Board Member Pierro stated then they were trying to get away with something there because I never recall seeing that on any of Deerwood's maps about that old road.

Rich Williams stated no that road was not shown. The fact that somebody had an easement going down there, a prescriptive easement was never picked up and that old farm road was never shown on the plans so consequently when they showed a riprap swale right against the property line nobody even blinked because we didn't realize,

Board Member Pierro stated we just saw a riprap swale we didn't see it up against the property line. Have you had any contact with Deerwood people.

Rich Williams replied yes we are having a lot of issues with Deerwood. I did contact them, I think Monday or Tuesday he was in and I pulled the plans out while Joe Darnell was in and I showed him everything and I showed him all the issues and I am saying Joe you didn't show that road somebody may have a right to go through there. You have got the riprap swale. You may need to pull it out of there because you really don't have the right to obstruct somebody from getting through there. I said I don't know where you are going to put it. It may be a very difficult situation. I said have you sold all the rest of the lots is it possible maybe we could get a way for this guy to get down through your subdivision so he does not have to go through here and you don't have to move everything. He said he did not think so but he would take it back and they would kick some ideas around but all the lots at this point in Deerwood are sold off in the first three phrases.

Board Member Pierro asked what can we do at this point.

Chairman Schech asked going through the old road is out.

Ted Kozlowski stated here again, now this one we are not only in the buffer we are crossing two streams and a wetland.

Board Member Pierro stated and a wetlands that feeds Bog Brook.

Ted Kozlowski stated so what do we do.

Rich Williams stated it gets a little bit more complicated than that because it is a landlocked parcel, he does have a prescriptive easement, my opinion, my non legal opinion is he does have a prescriptive easement to use this property to get back there. He does not have any other way to access his property so for us to now tell him no may raise to the threshold of a regulatory taking.

Ted Kozlowski stated but Rich we did have that discussion the only one in the world that is calling it an old farm road is you. It is nowhere documented as we discussed in the field and I asked you.

Rich Williams stated I think it is in the title report. (TAPE ENDED).

Rich Williams stated regardless of that let me just say we did pass the stone foundation out there that was one of the first houses built in Putnam County. It is clearly shown on some of the older maps with this path going out to it, I don't want to use any other word.

Board Member DiSalvo asked how many years ago was that.

Board Member Montesano stated now you are talking about Budakowski that road was used once before they put a railroad in.

Rich Williams stated okay but it is the exact same situation as Budakowski, St. Johns Road was an old pathway, Ted Kozlowski stated but that even had a name this doesn't even have a name.

Board Member Montesano stated but the idea was that was a community thorough fare. Was this ever a community thorough fare and are we going to be held does he have the right to cross it over by not doing what the up to date laws require.

Board Member Pierro stated I understand that there is another impact here. I understand that there may be some sort of access, Mrs. Burdick owns some land over there.

Rich Williams replied well she is the Trustee for the Elting Estate and she did give them an easement but her giving them an easement does not create any burden on this Board to give them a permit but having a landlocked parcel and this being their only method of access may.

Board Member Pierro asked but is there access to the rest of the Elting property via this driveway that Mezger has the easement on. I thought there was some kind of exchange going on there.

Ted Kozlowski asked when this property was landlocked when they subdivided the land and landlocked this was there a provision for an easement to that parcel.

Rich Williams replied no a prescriptive easement is an easement, Board Member Pierro stated by use, Rich Williams stated by right not something that is created and filed with the County.

Ted Kozlowski asked and that has been proven in this case.

Rich Williams replied no it has not been proven in this case I told you I am making some assumptions.

Board Member Montesano stated what we should do when we review this is not to give it any assumptions let them prove the thing is don't answer a question unless it is asked. Why are we going to answer a question if we don't get asked that questions.

The Secretary asked Rich, didn't they do title searches on this for the ZBA. What did they go through for the ZBA.

Rich Williams replied right I have a lot of that it has been awhile since I looked at it. Somewhere along the line I picked up that this was an old farm road which is why I made that statement in the first place. I think we may want them to clearly demonstrate that but if we do we may open another door.

Chairman Schech asked who owned this parcel years ago. How did it get there this little lonely parcel.

Rich Williams stated this parcel was owned by Dell and Charles Stuart I think they bought it from they bought this and the Deerwood property from a guy who lived there for years and years. They both passed away and left it to their two kids who in the will Charles got this parcel, Cecelia got another parcel which I guess she since has gotten rid of I am not sure whatever happened to that and then there was this third parcel and they were always separate parcels by deed but because they were all tied together they really should never have been separate parcels; having said that what happened was an Attorney was handling the affairs for Charlie and CC and actually ended up taking the property and then selling it off and Charlie was left with just this five acre parcel. That is how it all came about.

Board Member Rogan asked so in other words the property at one time was not landlocked it was landlocked by action of the Attorney selling off the parcels.

Rich Williams replied right.

Board Member Pierro asked is that Attorney still around.

Board Member Rogan stated so in other words it was basically you can see it was an illegal subdivision.

Rich Williams replied no that was thirty years ago.

Ted Kozlowski stated Rich the point that I wanted to make and this old farm road thing we have Old Road and then you have got this easement that he wants to use going to his lot and then you have a stream crossing here when we did the site walk there was a clear and evident old farm road that crossed over through here from north to south that was the one that we were saying why doesn't he go this way how do we know that that old road isn't the old farm road that was

designed to access this site because it is clearly closer, it is clearly avoiding all the wetlands and streams crossing and in those days wouldn't they have taken the most direct route and least involving so how do we know,

Rich Williams asked direct route from where.

Board Member Pierro replied from Old Road.

Rich Williams stated right from Old Road.

Ted Kozlowski stated but you are saying these parcels were subdivided and part of this was not Deerwood.

Rich Williams replied there were three separate parcels, Ted Kozlowski stated right and part of that now is Deerwood. Rich Williams stated I don't know what happened to CC's parcel because it is not showing on any map whether somebody bought it and merged it in with their land I don't know. Charlie's parcel is still there, the third parcel though they were all contiguous the third parcel is the Deerwood subdivision.

Ted Kozlowski stated right so how do we know they did not access through the Deerwood subdivision which had old farm roads all through out it.

Board Member Pierro asked how do we know the parcel where the swale is the farm road I think your direction is the farm road may have been on the other side of that bank to the right. It could very well have been.

Board Member Montesano stated it is all one family why wouldn't they come through their other property.

Ted Kozlowski stated but this one is 7,000 feet or whatever it is, how many lineal feet is it.

Board Member Pierro stated it benefited Deerwood clearly to skew that map a little bit.

Chairman Schech stated if he has a right to use it so let him use it. All he has to do is do all the mitigations there.

Ted Kozlowski stated well certainly I am sure that you guys are going to make him go to Army Corp. on this because he has got three hundred feet of wetland that he has got to fill. Look at the precedent we are going to set here folks. You are worried about Triple J and a buffer.

Board Member Montesano stated to me he has got to prove to me where the hell this road is. If I was the original owner and people crossed over whether I separated it legally or illegally why would I put a road coming that way that is impossible to cross when the other one exists and it is a possibility he can, if I owned Deerwood why wouldn't you come through that way. I don't know where that road ended up or began.

Board Member Pierro stated I don't understand how Deerwood put in that swale on top of the stream without a wetlands permit.

Ted Kozlowski stated we missed it.

Board Member Pierro stated we missed it or they hid it from us.

Ted Kozlowski stated Deerwood filled in a wetland okay that wetland was less than two acres in size. When Deerwood did the wetlands application our law required a two acre wetland or greater so,

Board Member DiSalvo stated and they were under two.

Ted Kozlowski stated it was a lot under two and then we missed the connection. We blew it.

Board Member Pierro asked we blew it or they didn't show it to us, we didn't go down there when we walked that site.

Rich Williams stated I think there is two issues here because again I have a lot of familiarity with the property. It was always wet back there but you know growing up as a kid you never considered it a wetland. I probably would now but it probably would have been a very marginal wetland in its natural condition. I think as a result of the site work that is going on out there it is tended to focus the hydrology and the water in that area to make it wetter so it is even more pronounced as a wetland now but yes we absolutely did miss it when we did the review.

Board Member Pierro stated I think we ought to twist Deerwood's arm a little more.

Board Member Montesano asked what are you going to do to them. You can't twist their arm if they don't have anything that we can twist it with.

Ted Kozlowski stated well I think you have a few issues here. First of all,

Board Member Pierro stated we can ask them to move the swale.

Ted Kozlowski stated maybe Richie has got it in writing but correct me if I am wrong Rich we do not have conclusive proof that this is the easement that has an absolute right to use it.

Rich Williams stated what I can do if the Board is interested I can pull out the paperwork, go through it, show you clearly why I think it may be a farm road. I can give that to you. It comes back that it is going to be somewhat of a burden on the Applicant to demonstrate that it is by say definition an old farm road that he has an easement over.

Board Member DiSalvo asked was there ever (too many talking at the same time unable to transcribe).

Board Member Montesano stated the easement has got to be in writing. It has to be stipulated somewhere.

Ted Kozlowski stated but the burden of proof is not the Town's.

(Too many talking at the same time unable to transcribe).

Rich Williams stated there is a blanket easement to landlocked parcels to use these old farm roads in State Law I will give it to you.

Board Member Pierro asked Rich, to the right of that pallet covering the stream isn't there a house there.

Rich Williams replied there is a house there.

Board Member Pierro asked is there anyway we can check our records or the deed to that house to see or earlier maps to see if that farm road came out through that house maybe that was the beginning of the taking when that house was built where they took the old roadbed because I don't think anybody, I don't think the farmers were dumb enough to go in through that portion of the stream when they could have been on dry land where that house was built.

Ted Kozlowski stated Dave, not to outside of curiosity this burden proof is not on this Board nor Rich,

Board Member Pierro stated I agree.

Ted Kozlowski stated this is on the Applicant to prove without a doubt that he has got a legal right to access that five acres through this.

The Secretary asked I thought he did that though.

Rich Williams replied no.

The Secretary asked with the ZBA.

Rich Williams replied no. He came in to the ZBA and said I own it and it was clearly proven that he did not own it.

The Secretary stated and that is where she came into play.

Rich Williams stated and then before it got to well does he have a right to use it she gave him the easement so it never got resolved.

Board Member Pierro asked there is no other access to this lot other than from Deerwood and this old farm road.

Board Member Montesano asked excuse me, with that note in mind she gave him an easement does she have the right to give an easement over such a piece of property.

Rich Williams replied yes she owns the property.

Board Member Montesano stated then he is fully aware that he can get the easement from her to go across that property and he has got to comply with anything and everything we decide if not we are going to be in court on each one of the steps.

Ted Kozlowski stated that is like I can give an easement to my neighbor to cross my stream to access his back parcel that does not give him the right to build a bridge over that stream.

Rich Williams stated I am not suggesting that it does. She gave him an easement but I don't think it really matters because I think that he may have had the right to go back there over that land anyway if it was an old, Board Member Rogan stated by way of a prescriptive easement. Rich Williams stated right by way of prescriptive easement if it was an old farm road. What I am suggesting here to the Board is this maybe not such an easy thing that we are looking at where you can say the magnitude of the impact to the wetlands and buffer is so great that you can't do this because he may have a legal right to do it and because this parcel has no other method of access. It is landlocked. He does not have any other option, if he does not have any other option and you deny him a permit so he cannot gain access and a reasonable use of his property it is a regulatory taking. I am not saying you should issue the permit. I am not saying he has an old farm road. I am saying he may have an old farm road, I am saying walk carefully because this may be a very

Board Member Montesano stated to me something like this I would rather have the court make the decision.

Board Member Pierro stated this is the one I would rather let the court.

Ted Kozlowski stated even if he has an easement to access that five acres does that easement allow him to put a paved road through or is just that he can access it by pedestrian walking.

Rich Williams stated Ted, even though he has a right to access it and use it he still has to meet all the regulatory requirements.

Board Member Pierro asked Rich isn't there another location on Elting's property further away from this stream where he can access this.

Rich Williams replied no. Think about this, this property goes all the way down to South Patterson Business Park.

(Too many talking at the same time unable to transcribe).

Ted Kozlowski asked the other road the one that was after we crossed the wetland and we went up hill we found that other road that was the one we were saying well why doesn't he go this way.

Rich Williams replied that goes all the way down to where the pond used to be and all of a sudden there is a huge linear wetland that comes up from the Bog Brook Unique Area, it goes through the pond and it keeps going right up that stream corridor. He basically, can I get to it sure but I got to drive through a pretty and even more extensive wetland from South Patterson Business Park,

Ted Kozlowski stated but from the Deerwood side back before Deerwood was Deerwood and these parcels were all part of the one this road clearly went through that property and was

probably the one that they would have taken because it was all up hill, it was all upland. They didn't have to cross a stream.

Rich Williams stated again because the kid who built the log cabin on this property you know that wetland area he used to drive his four wheel drive truck through there all year long so yeah it was wet, every once in awhile he would have to throw some rocks in the ruts but it was never that wet that he couldn't drive through there. We went through there there was no way you are driving through there not anymore.

Board Member Pierro asked when did he build the pond because that may have contributed.

Rich Williams replied he didn't build the pond. Are you talking about Deerwood.

Board Member Pierro replied no what about the stone pond that we saw in the back near where that log home was he dammed it up, an area that looked like it had been manmade.

Rich Williams replied well again, that was all he didn't do that. That was all part of the original farm road that went through there. On the maps that goes all the way over to Farm to Market Road. I don't know how it goes through Farm to Market Road but it shows up on the maps.

Ted Kozlowski stated I would think that he is going to have to show us proof that he has got the legal access. He is going to have to get Army Corp. jurisdictional determination there.

Board Member Pierro stated we are talking about remediation work there that far surpasses the value of the land.

Rich Williams stated that is not our issue.

Ted Kozlowski stated DEP.

Rich Williams stated that is up to him.

Board Member Montesano stated we are not denying him he had to do it.

Ted Kozlowski asked Rich, he has two DEP stream crossings.

Rich Williams replied he has got within a hundred feet of two streams

(Too many speaking at the same time unable to transcribe).

Ted Kozlowski stated I am looking at bridges.

b. Woodward Subdivision Site Walk Comments

Rich Williams asked is everybody okay with Woodward.

Board Member Rogan asked is that above Town Hall, the old Town Hall on the left hand side before Deacon Smith.

Chairman Schech replied yes.

Board Member Rogan asked that is the two or three lot subdivision that six months ago we said stake it and we will go look at it.

Board Member Pierro replied yes there is a lot of crossings.

Board Member Rogan stated I will look at that after I look at Mezger. The main stream runs down through there out of the outflow from Wilbur-Herlich.

(Too many talking at the same time unable to transcribe).

Board Member Pierro stated there was drainage off the top of that hill.

Rich Williams stated it was kind of funky.

Board Member Rogan stated when they re-did the dam there at Wilbur-Herlich they had problems with it where it was being undermined. The water wasn't going the way it was supposed to go. They had a lot of problems with actually so if some of the water was being re-routed it might have created a new channel way but I have never walked from that outflow downstream to the road.

Board Member Pierro stated I don't think there is a new channel way I think you have existing flow from just runoff from the top of the mountain, the top of that hill that criss-crosses those lots. It criss-crosses the septic systems. We are talking a lot of water.

Rich Williams stated there is that but that first main stream there is a main channel that shows up on all the maps going all the way back up to the lake and when we were out there it was dry. It was not running it was surprising because it should have been running.

Board Member Montesano stated I am wondering if there is a breakdown underground somewhere.

Chairman Schech stated my son says that the spring has been there for years.

Board Member Pierro stated we saw fish in that stream, trout in that stream. It looked like trout to me but I am blinder than a bat though.

Site Walk Discussion

Board Member Rogan stated even just the way and site walk comments are wonderful but even just the way the site walk comments are written we are implicating ourselves for a violation of the Open Meetings Law just by some of the terminology; the Board discussed, the Board felt. I asked the question pretty specifically to a bunch of different people and every time I was told

you are clearly in violation of the Open Meetings Law. They were talking about how some Boards will send two people at a time. They will do it all on their own. They said you can go as a group, you can observe site conditions but any further discussion beyond that; what do you think, how does everybody feel, do you think this is a problem, anything along those lines is clearly a violation of the Open Meetings Law. Saying something like I noticed there are Elm Trees or there is a stream there period is certainly fine. They agreed that, and they also agreed by the way that everybody is breaking this rule across the Board people are probably doing site walks this way or across the State I should say. Anytime more than the majority of the Board meet and they call this the diner meeting I guess, if you discuss anything related to the Planning Board it constitutes an open meeting. I further said well what does that mean you have to announce it to the public, hey we are doing a, they said not only do you have to post it but you have to allow for public access so of course I said what does that mean. Somebody who applies to the Board has to allow the public on to their property they said yes. They said the way people handle it they make it part of their application process that it is understood. I said what about the liability; at that point the people were like you are crazy whose going to sue, whose going to do this. I guess that they feel that us down state people are over reactive when it comes to liability. I said well you don't realize where we come from people would create lawsuits just to stall a project.

Ted Kozlowski asked who is telling you this.

Board Member Rogan replied the lawyers that were at this training. They said that you are clearly in the way that we are doing them we are clearly violating the law.

Board Member Pierro stated yes Somers versus Riverkeeper or Riverkeeper versus Somers was one of the case law. They also said that we must they were clear we must post in a conspicuous public place that we are having, Board Member Rogan stated and the media and the paper. Board Member Pierro stated that we are having a site walk. I didn't hear the media part.

Board Member Rogan stated because the one gentleman who liked to hear himself talk said so we can just post it on our Town Bulletin Board. They said no it also has to go to the newspapers as a press release saying the Planning Board will be doing a site walk at Mezger's on Saturday at 8:00 a.m. and it is then a public invitation. Now, what they said is sometimes people get away from it they will have the discussion out in the street so that the public has the ability without having to go on to the property.

Rich Williams stated let's be clear because I am not sure where all this is coming from but you can go up on the site for Open Meetings, the Committee for Open Meetings, you can go and look at Bob Freedman's letters and they will clearly say that the Planning Board for purposes of observation and data gathering can go out and look at a site. You can't make any decisions, you can't give any directions. There is also two court cases one settled by the (unable to hear) and I don't remember the exact site. The other one was the Riverkeeper versus the Planning Board of the Town of Somers which went to the Supreme Court in Westchester where the Judge clearly said that the Planning Board can go out as a body and look at a site and gather data and the public does not have to be invited or informed.

Board Member Rogan stated and that was exactly what we got from it but they were very specific to say that it is more the context of the conversation you are having and I think the

important part is everybody has to understand the rule and know where it is coming from. The idea is you can make observations but then to get into well how does everybody feel about these observations. Rich always says to us these are the kind of discussions you need to be having either at the work session or the meeting.

The Secretary stated so then why don't you just do the site inspection memos here at the work session or whatever and then just date them for the date of the work session.

Rich Williams stated generally what I try to do if you look at the memos is I will say Board Members not the Board but Board Members conveyed to me meaning one or two maybe not a majority and I will always deny that all five guys said this.

Board Member Rogan stated all it really came down to is because I left saying we are not going to change a darn thing we are doing. It left me with an awareness of just knowing that there is a law out there that says like if we all sit down at the diner and say so what do we think about Burdick Farms then we are really in violation.

Ted Kozlowski stated you know what when we sit down for breakfast we very rarely talk about stuff like that.

(Too many talking at same time unable to transcribe).

Board Member Rogan stated but that should threaten, all it says is make sure that you remember that you need to build your record, you need to follow the right procedures, and that we assess, hey none of us are experts, us five are supposed to be all laypersons that are supposed to be able to take a reasonable look at something and say does it make sense or does it not make sense. We have experts that are supposed to tell us hey, this is the technical review, this is the wetlands review, this is the zoning so we can make a common sense decision and nobody can fault us for that as long as we even if we make the wrong decision if we follow the steps and outline our thought process then I will go to court every time and we will probably win every time. We may make the wrong decision but we followed the process that is what SEQRA is all about.

Rich Williams stated we haven't lost yet.

Discussion ensued regarding the training some of the Board Members attended.

Board Member Montesano made a motion to adjourn the meeting. Board Member Pierro seconded the motion. All in favor and meeting adjourned at 9:15 p.m.