

**NORTH ATTLEBOROUGH PLANNING BOARD
REGULAR MONTHLY MEETING
THURSDAY, OCTOBER 16, 2008**

The North Attleboro Planning Board held its Regular Monthly Meeting on Thursday, October 16, 2008 at 6:30 P.M. in the Planning Board Office located at 43 South Washington Street, North Attleborough, Massachusetts. Members Donald Cerrone, Richard Houle, Christopher Sweet, Joan Marchitto-chairman and Mary Burgess-town planner.

Executive Session;

Mr. Houle, Motion to go into executive session at 6:38 P.M. to discuss strategy with respect to litigation if an open meeting may have determination effective on strategy session in preparation of negotiations with non union personnel. To conduct collective bargaining session or negotiation with non-union personnel, seconded by Chris Sweet.

Roll Call;

Donald Cerrone- yes.

Richard Houle- yes.

Joan Marchitto- yes.

Christopher Sweet- yes.

Out of Executive Session at 6:52 P.M.

Planning Board Business:

1) Review Final Actions;

Cushman Village: October 31, 2008 (Next hearing: October 16)

Mount Hope Farm Estates: December 1, 2008 (Next hearing: November 6)

Mt. Hope Terrace Extension: October 10, 2008 extended to 20th. (Hearing tonight).

2) Endorsement of vouchers;

Earthworks Engineering

Mileage

Free Press zoning articles

Mass Federation Annual Meeting

Other Business:

Monday 10/20/08 Semi Town Meeting at 7:00 P.M. mitigation articles before zoning.

**NORTH ATTLEBOROUGH PLANNING BOARD
PUBLIC HEARING
THURSDAY, OCTOBER 16, 2008**

7:00 P.M.- Continuation of the public hearing on the Special Permit application of Boch Attleboro, LLC for a Planned Business Development;

Due to the absence of a voting member, applicant will ask for continuance.

Mrs. Marchitto, Mr. Thimot is not here.

Stephen Clapp- attorney. Don't have board that can make decision so we would like to have it extended to time when a full board is here.

Ms. Burgess, I don't know exactly how you want to do this with the pending litigation regarding how we can hear any information when there is such big thing.

Mr. Clapp, I suggested to Roger Ferris that we continue the Planned Business Development application until there is decision from land court from time to time if necessary. I haven't heard back from Roger yet. It is on average track but I think we're proposing to put in on fast track so that it would be before the court in 6 months.

Mr. Cerrone, I'm not going to act on something while you are in court as far as I'm concerned.

Mrs. Marchitto, Situation is we don't have enough members for this discussion. I don't want to go too far into this discussion because we don't have full quorum at least want date so we can have discussion.

Ms. Burgess, Wanted to continue it after January?

Nancy Proal, Richard Thimot is planning to go to Florida for 6 weeks in January.

Mr. Clapp, What if we picked December date and then revisit it?

Mrs. Marchitto, I think that is best thing to do.

Mr. Houle, Make motion to continue hearing to 12/18/08 at 7:00 P.M., seconded by Donald Cerrone.

All in favor 3 to 0 to 1 abstain Chris Sweet.

Respectfully Submitted,

**NORTH ATTLEBOROUGH PLANNING BOARD
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Planning Board Business;

Request for Zone Line Determination for property located on South Washington and Old Post Road;

Request made by Zoning Enforcement Agent and by a resident Wayne Patterson Town Planner previously submitted recommendation

Description of zone line is provided

Due to an administrative error the notice to the applicant did not go out until yesterday

Planner met with M. Clemmy, S. Clapp, L. Tilton, G. Ofcarcik and R. Palmer to explain the Planners reasoning for recommendation.

Stephen Clapp, I received fax notice yesterday of zone line determination scheduled for 6:45 P.M. I noticed the board passed over that.

Mrs. Marchitto, We had other business to attend to at that time. We have it on the agenda. Board asked Mary to notify the applicant on zoning determination she did in September contact had discussions with town council. Mary would you like to inform the board and audience what occurred yesterday when you called me?

Ms. Burgess, What had happen was we had administrative error and it wasn't brought to our attention until Mr. Clemmey came in and said he wasn't notified. We didn't realize we hadn't gotten the green card back from certified. Then we started

with Post Office, etc. it turns out that letter that we had intended with all good faith to be mailed did not end up getting mailed and appropriate parties were not notified. After discussing with town council he said that we have no legal obligation to notify Mr. Clemmey and Boch Association but because that was my intention that I should fax it around and that is what I did.

Mrs. Marchitto, I understand you had meeting with Mary this morning.

Mr. Clapp, Yes we did I got this fax yesterday at 12:54.

Mrs. Marchitto, Board is aware of this.

Mr. Clapp, My client has valuable property rights that are effected by zone line determination that board is considering and law requires that before someone's property rights are dealt with due process must be afforded to that person. Dues process includes notice and right to be heard, right to prepare the case and right to present case before your rights are effected. 30-hour notice for this matter is not sufficient. We attempted to prepare what we could in those 30 hours but this is not enough notice for us to adequately prepare. My client has 100's of thousands of dollars of value at stake on where zone line comes out. It is not reasonable to give legal notice by fax and 30 hours later hold hearing and make determination. We did the research that we could but we feel we need to more.

Mrs. Marchitto, I have had Mary every step contact legal council not just yesterday. When we first did approach this with town council in September because you did state to us in August for legal council had asked what was proper procedure in line determination.

Ms. Burgess, You mean specifically to this case moving forward from land court case that has been filed? What specifically? He did state that even though that the Boch Association has filed in land court that it wouldn't make difference if we made zone line determination if that is what we wish to do. Because of the application that Mr. Clapp has filed that it wouldn't actually because the way they filed it, it would be mute point if they were found in favor and our zone line determination would have been overturned. He did state that the building inspector who gave us the letter could not determine the zone line by zoning bylaws and therefore referred it to us, which he thought was proper.

Mrs. Marchitto, At any point did Roger say we were not doing due process to the applicant?

Ms. Burgess, No he said we have no obligation because it is not landowner who has brought it forth to us it was zoning enforcement agent in order to apply the zoning bylaws to the property.

Mr. Clapp, I would like to point out that my clients' rights of value and ownership in these lots are going to be effected no matter who brought this up and before a board can deprive an owner of property rights such as those due process must be afforded according to US Constitution. Nothing in your bylaw talks about what notices are necessary. The Constitution provides that rights such as property rights can't be deprived without due process and this is not due process. I would suggest the board shouldn't make decision pending land court. We're willing to put off the other matter there is no need to make the decision right now other than to perhaps pre-empt the court I don't know what the motivation is. I don't think first of all we aren't prepared to present it tonight and secondly we think board should refrain from making decision until outcome of case. It is jurisdictional question we've raised a question of land court as to jurisdiction. Does the Planning Board have the

authority to make zone line determination if the zone line can be determined by rules 1 through 4? Rule 5 says if can't be done under rules 1 through 4 then the Planning Board does it. We say there is reasonable basis for determining that it can be done under rules 1 through 4 so that is whether board has jurisdiction. I think the board should just refrain from making decision until after we see what happens with land court case.

Mrs. Marchitto, One question I do have when business plan was open for discussion in summertime. That evening this came up again there was request from building dept. for zone line determination. The board did stop discussion and we went into the business plan. Before we went into business plan I thought there was discussion that it would be discussed that evening when the public hearing was open. That public hearing went late into night we were going to go until 10 because building closes at 10 applicant asked if we could go longer and we left roughly at 11. It was only late evening that even the discussion of that line determination came out so it didn't appear to me was you were going to discuss it at the new planned development special permit and even there the discussion may come up the applicant didn't want to discuss it.

Mr. Clapp, I don't think we didn't want to discuss anything it was just that we had lot to present and we ran out of time. I don't think there is pressing reason to make zone line determination if we aren't going to be acting.

Mrs. Marchitto, I think the other thing is the board and I'm going to have board ask question too is in 2007 applicant himself came in and asked for a determination and during those conversations that night the applicant did ask for withdrawal and board did vote to withdraw it without prejudice. To me it appears that even though you're not ready to make a case since 2007 this line has been in question.

Mr. Clapp, It hasn't been in question from that point on because we found the real zoning map and determined that there was no question at that point but the board may have a question about it we don't.

Mr. Sweet, Does that mean they are prepared?

Mr. Clapp, There is nothing pressing this board to make zone line determination because we're not pushing the planned business development permit until that jurisdictional question is answered then lets go forward from there that is my suggestion.

Mr. Sweet, Comment seems like you already seem set and there is no need to go forward because you've already made a determination on your own what the zone line is and we don't need to deliberate. I'm confused why you need to prepare arguments against having zone line determination made it just doesn't make sense to me.

Mr. Clapp, Preparing a case for court involves discovery process where documentation, official records and plans are produced by the parties and then that information is presented to the court that makes the determination. We were prepared to go forward with that and request the backup documentation concerning the zoning map, zoning bylaw. What is the real map, what does zoning bylaw provide, what has been the history of the lots? All of that would have been discovered through this process. Changing that to have hearing tonight deprives us of all of that information that we would have developed through discovery. That is the information we think we need to present the case to the land court, which is essentially the case that we present to this board. In 30 hours we couldn't get all of

that information we got some of it we spent all day getting information that I would have gotten through discovery but I had to drop everything and come down and look through planning board records and building dept. records I got some of the information but not all of it.

Mrs. Marchitto, You've had information that you put on the plan. Did you not find that information from discovery? You have a plan that you have line that you state is the zone that must have been based on discovery. Am I correct or am I not correct?

Mr. Clapp, My client came to the planning board and said I'm about to buy some land I would like copy of the true NA Zoning Bylaw and he bought one. I'd also like copy of the NA Zoning Maps so I can determined whether the zone line is correct for me investing the money in these lots. He took those materials and went out and made his investment and then he learned that maybe the plan that was sold to him a map that was sold to him isn't the right map.

Mrs. Marchitto, I'm only allowing it to go so far I understand and we've had this discussion before. I understand what you're saying we're not getting anywhere and I can go around the bush again and give you a reason and make discussion on those two maps. It always brings us to this point right now. We have request for zone line determination if you'd like I'd be more than happy to observe the discovery you have so far this evening.

Mr. Clapp, No.

Michael Clemmey, We'd like to put it all together this is very important matter for the Boch organization and with respect to the board you have job to do I'd like to think you would like to serve the taxpayers and give us time.

Mrs. Marchitto, We're also taxpayers too I understand you always make that argument we are all taxpayers who are sitting right here.

Mr. Clemmey, I don't want to argue. I just want to come to the board and say we've got big investment in this town.

Mrs. Marchitto, Understood just state the facts that we haven't heard up to this point yet.

Mr. Clemmey, We've purchased the property and I believe I bought the property with the right zoning in it. All this map confusion I hired all the local people the attorney and civil engineer.

Mrs. Marchitto, We've heard that before and you should hire the correct people understood.

Mr. Clemmey, Hopefully I did. I've always been the assumption that was right zone line. At this time we feel we found some information and we just got notified yesterday of this meeting and Mary I have to thank her very much. She came down this morning and she explained to us exactly how she came up with the line and I can respect how she came up with that line. I totally understand how she is going to present that line for the board. At this time there is nothing to gain for the town or for the board it is for the applicant and the landowner, which is me is to get it right. I'm only asking to give us enough time there is lot of paperwork from the planning board, building inspector that we have to get into and put our whole case together. Yes Chris we've always felt that it is where it is but now its come to such a big decision we need to do our due diligence investigation. Gentlemen behind me have to do lot of investigation come up with all the proper paperwork and present our case totally instead of piece meal it little by little. As applicant in front of the board

it is detrimental for the line for me and our organization. We ask the board to give us time and we never knew it was going to come this far so Steve is working on it and then we got notified of this meeting 30 hours ago. We need time to put the whole thing together that is all we're asking for.

Mr. Cerrone, You have another option that we told you 2 months ago to go to town meeting if you don't like our decision. Don't come here and tell us we're not going the right thing. We told you to get article and go to town meeting.

Mr. Clemmey, I've been to town meeting before people go to town meeting when they want to rezone something. We don't want to rezone it we feel the zoning is correct. You can have your stand and I can respect that but we're the landowners and we need time to put our case together with the experts I've hired. They need time and they are doing that now.

Mr. Cerrone, It started in December 2006 have letter to Mr. Payson chairman at that time. I have the file here.

Mr. Clemmey, We were notified 30 hours of this meeting that we want to put our whole package. What is the hurry for the board to make the decision is there someone else that wants to buy the property I should know about? What is the hurry for the board? Give the applicant ample time and these people are working on it we're not saying we're not we've spent good portion Mary gave ½ hour this morning, which I thank her very much for. We understand where she is coming from we'd like to have enough time for our team to put our whole case together, present it professionally to you instead of dubs and drabs and present the whole case and you can make your decision or we can go to land court. We don't have the whole facts ready to be presented to this board yet. I'm the applicant and I'm the landowner I don't know what the rush is for the board to make the decision on my land. We're getting all our facts together and will have them together and if you want we will give them to you but we don't have all the facts right now. We have some and we have some prior documents and all I can ask the board please just give us some time to put everything together. I don't know what the rush is for board to make determination on my piece of land.

Mr. Sweet, There is another side of the coin and it's not just the applicant it is the town, residents and homeowners in the area especially. We have to think of them as well as the applicant we have to be judicious and make proper decision for best interest of all not just applicant.

Mr. Clemmey, I'm 110% with we have Mr. Dumont here I could have loaded this meeting with all my neighbors. I've spent the last 4 years knowing all the neighbors see what their problems are see what their request are and I have support of the neighborhood. Mr. Dumont is one of the few he has problem with the building and water and I can respect that but I still know him I have his cell number and he has mine. I've done more work in my own time after work on weekends.

Mrs. Marchitto, We're talking about zone line.

Mr. Clemmey, I'm talking neighbors he said neighbors I've worked, talked and I've been with all the neighbors.

Mrs. Marchitto, You're talking about the abutters he's talking about a neighborhood that goes all the way down to Reservoir/South Washington he's talking about larger than actual abutters.

Mr. Clemmey, We're really concerned about the people/abutters I've talked to everyone on both sides of that street.

Mrs. Marchitto, We're discussing zone line right now.

Mr. Clemmey, We're asking it is what it is and even if you vote on it what is going to happen to the parcel? Give the applicant time to put this case together. If you make decision tonight is that going to make the neighborhood better? I'm willing to make neighborhood better I can guarantee you tonight in front of this board in front of any board in town anything I've promised the neighbors I have come through with and I'm very concerned with the neighbors they all have my cell phone number. They call me I come down.

Mrs. Marchitto, Do you have change of use on any of property lots you own?

Mr. Clemmey, For what they're zoned for now? (Yes.)

Mr. Clapp, Only the application that is on hold.

Mr. Clemmey, Planning board application right now we're building new building.

Mr. Cerrone, 2006 you came in with your engineer with a plan I still have the plan. You just said you're not prepared.

Mr. Clemmey, We're not prepared for this meeting we got notified 30 hours ago.

Mr. Cerrone, 2006 that your engineer did zone line determination engineer was Mr. Tilton.

Mr. Clemmey, He did that according to.

Mr. Cerrone, Zone line determination plan this was plan you withdrew and said you were going to come back.

Mr. Clemmey, We were going to come back and at same time that was the night that Ray Payson was chairman I believe and he pulled out a plan.

Mrs. Marchitto, I'm going to stop it right there we're talking about the zoning we're talking about today.

Mr. Clemmey, Plan came out that night.

Mr. Clapp, I would just like to renew my request that matter not go forward tonight that adequate time be afforded to the applicant to be prepared to present his case concerning very important property right that he owns in this town. There is nothing that is forcing the board to make decision earlier and no one is going to be prejudice by not making the decision right now. I would feel that the jurisdictional question should be answered first. If the court says the board has authority to make the decision then board will make the decision and it will be binding. I think that is the answer we should get but at very least we ought to be given adequate time to prepare our case.

Mr. Houle, You keep talking about adequate time this has been going on I think as we just saw since 06. I'd like to know as board member what is adequate time, how much time do you need?

Mr. Clapp, Let me tell you what the issues are and I don't want to step on any toes or getting into demerits. When they came initially that colored plan was purchased by my client and he made his decision to buy the land based upon that plan.

Mrs. Marchitto, I'm going to add this in if you're going to bring that up it also says for analysis purposed only. It was done by SRPEDD and it says analysis purpose only. I'm tired of half-truths being told in town.

Mr. Clapp, There was question about that plan being the right plan and that there might be question about where zone line is. His engineer suggested lets go to planning board and get this resolved and while he was at the planning board.

Mrs. Marchitto, I do believe that Mr. Clemmey has hired professional engineers who do work in North Attleboro and do great work in NA and very familiar with the bylaws of NA and zone lines in NA.

Mr. Clapp, Three meetings were held to discuss the zone line and during those meetings it was learned by the attorney who was representing the applicant at the meeting Jay...(inaudible) that there was some question about what the real zoning map is. Zoning bylaw refers to zoning map dated 9/69 planning board was looking at maps dated 1/69 and other dates. Tallerman said we would like to withdraw so we can find the correct zoning map that is referred to in the bylaw and make our determination as to whether we even need to be here.

Mrs. Marchitto, Mary would you like to intercede at this time or should we wait for the courts? Those maps are public record.

Ms. Burgess, Correct and I would like to state one thing if they were so unsure about where the zone line was then I'm just assuming as an applicant I wouldn't have them draw and provide all these plans for planned business development with the same location that was discussed in 2/07 that they withdrew. I'm assuming that the engineers being professional and all that they would do their due diligence when providing a planned business development plan with same zone line that they did in 2/07. If we want to go with all the maps and start discussing that I have everything here tonight and I'm willing to discuss that. I'm not sure there is need to because they've displayed where they believe the zone line is and obviously the planned business development plan are the same thing. I don't understand why someone would pay ten's of thousand dollars to recreate plan if they thought there was any doubt.

Mr. Sweet, I have question maybe someone in audience who might know. How is that land being used today? What is the current use of that land? There are vehicles on that land are they meeting with the assumed zoning line or are they going forward with what they think it should be?

Mr. Cerrone, Shouldn't be on there. There is no site plan. Where is water runoff going? That used to be backyard for residential houses.

Mr. Sweet, What is the land being used for right now?

Ms. Burgess, I did take drive over there and it appears there are new cars parked over there as well as employee parking. In fenced area there is 10 x 10 tent that appears someone is cleaning cars under.

Mrs. Marchitto, Is it zoned for that?

Ms. Burgess, Previous use was residential but we don't have site plan saying that it can be used as accessory parking for the principle use.

Mrs. Marchitto, Has there been change of use from residential?

Ms. Burgess, Not that I'm aware of and it is not paved according to our zoning bylaw any parking lot has to be paved where you're storing cars.

Mrs. Marchitto, We're going to continue this I have public hearing at 7:30 I have to open up.

**NORTH ATTLEBOROUGH PLANNING BOARD
PUBLIC HEARING
THURSDAY, OCTOBER 16, 2008**

7:30 P.M.- Public hearing on the application of Corliss Landing Investments, LLC, for the proposed modification to the Corliss Landing Definitive Subdivision. Note: Final Action due 12/22/08;

Applicant wishes to carve Lot 3, which abuts Landry Ave. to make Subdivision a 4

Lot subdivision.

Applicant is also seeking relief from condition 23: sidewalks on one side and asphalt instead of concrete

No additional reviews are required because the drainage isn't changing, electric is done on a lot by lot basis

If approved, the Board shall release the existing covenant on Lot 3

No ANR is being filed

Ms. Burgess reading in application

Donald Corliss-owner, I am still the current owner I know there has been some question about that. I'm looking to remove lot 3 from subdivision so that I maybe able to sell that to generate revenue to put in a road. Have frontage on Landry Ave. Mr. Houle, You're removing lot from the subdivision is it going to remain its own lot?

Mr. Corliss, Yes it will still have all municipal easements on it that were approved with the subdivision.

Ms. Burgess, Applicant has also requested modification to the conditions of approval. Conditions # 3 regarding sidewalks he did proved letter. Reading in letter (insert).

Mrs. Marchitto, We made the modification then the applicant would have to come in for ANR at later date and show frontage on Landry Ave.?

Ms. Burgess, It can be done that way because it already abuts and already has access of Landry Ave. and by means of it being carved out on itself it is not necessary for ANR because it is also established boundaries.

Mrs. Marchitto, There is frontage on Landry Ave.? (Yes).

Mr. Cerrone, Lot 2 is going to be on cul-de-sac?

Mr. Corliss, Yes.

Mr. Cerrone, You're going to have one lot on the cul-de-sac?

Mr. Corliss, There will be Lot 1, 2, 4 and 5.

Ms. Burgess, That is on the road.

Mr. Cerrone, Cul-de-sac will only be one lot?

Mr. Corliss, Yes it will be Lot 2.

Mr. Sweet, I have question about going out to Landry. We didn't want a through way situation I mean entering one way or the other not both.

Mr. Corliss, Yes on site plan review we'll deal with that issue.

Mr. Sweet, Will it lock us in if we do this?

Mr. Cerrone, Yes he's going to use Landry Ave. our leverage is gone.

Mr. Sweet, He could use both ends is my concern.

Mr. Cerrone, Yes once he builds that he can use both ends.

Mr. Corliss, You could restrict it at site plan review.

Mr. Houle, Our second bite at the apple is site plan review.

Mrs. Marchitto, You could actually have entrances in both places you could have it on cul-de-sac or Landry Ave.

Mr. Sweet, I want one or the other my personal concern.

Ms. Burgess, It is due in December. It would come down to deeded access and deeded access would be through Landry Ave. because Santoro Dr. doesn't exist. Then coming back for site plan review there would be deed restriction because they can only access on that road. Has 243ft. frontage on Landry Ave.

Raymond Payson-54 Walcott Rd., I was away and I couldn't attend there was add in the newspaper foreclosure today. I'm just wondering if that foreclosure took place or who owns the property now? Is it still under the former owner or did someone purchase it? What happen there?

Mr. Corliss, I already answered that I'm not going to answer it again. I am owner still the owner.

Mrs. Marchitto, It was softly spoken earlier in the evening.

David Manoogian, Representing party that maybe interested in purchasing lot 3. I just have couple questions I'm not speaking for or against. My question is under Condition 13 of your approval says access to subdivision to be on Santoro Dr. only, which I take it is the cul-de-sac that has not been built yet. I would like the boards' statement or their take if this lot is removed from the subdivision then it would appear that condition #13 is no longer in effect. Would that be the boards' position?

Mr. Cerrone, Lot #2 from Santoro too I think.

Mr. Manoogian, The condition said that access to the subdivision, which would mean all the lots in the subdivision would be lots 1 through 4. It is clear that condition said all those lots have to have access on Santoro Dr. only. Lot 3 has access theoretically on Santoro Dr. but in fact on Landry Ave. Given that if this lot is withdrawn from the subdivision I just want to know in the boards' opinion that condition #13 would no longer apply as to access to Lot 3 being exclusively on Santoro Dr. that is my question to the board. I have my opinion what it is but that doesn't count.

Mrs. Marchitto, I have opinion but I'm not legal.

Ms. Burgess, Considering Lot 3 will no longer be part of the subdivision the subdivision would be accessed from Santoro Dr.

Mrs. Marchitto, That was my logical thinking.

Mr. Manoogian, As follow up to that Madame chair I have one more question.

Mrs. Marchitto, Would you agree with that?

Mr. Manoogian, Yes I agree with that great minds think alike.

Mrs. Marchitto, Thank you it is on tape? (Yes).

Mr. Manoogian, I understand that the board would expect that if the subsequent applicant came in with proposed use on that lot through site plan review the board would then make determination whether I would assume the access would have to be on Landry if Santoro Dr. was not built. Or if both roads existed the board would look at the proposed use and decide whether access would be better on either Santoro or Landry or both.

Mrs. Marchitto, That could be a possibility. My assumption looking at it that he is carving it out so that he can sell the property. Road is not built so this lot cannot be accessed by Santoro. Clean way of coming to his goal and I see site plan review you

are right if the road is built if it comes on site plan review. Now we're on tape you will come back and tell me. If the road isn't built I think we have to still give the property owner access to his land.

Mr. Manoogian, Sure you've answered my question thank you.

Mrs. Marchitto, But the board changes over time so I can see in future someone wanting to access on Santoro when that is built that could be 10 to 15 years later down the road.

Mr. Houle, It would seem reasonable.

Mr. Sweet, Concrete sidewalk?

Mrs. Marchitto, I understand I think we've worked very hard on this subdivision I think we worked very hard on the conditions long duration of deliberation on this. I believe that the condition should still stand. I understand his reasoning but again as I was just talking to Mr. Manoogian right now is that at sometime in the future Santoro is built out whoever owns the property may want to access it on that roadway. Reasoning why we had the sidewalks on it would still stand because of site plan they could go either way.

Mr. Houle, It would seem reasonable to me looking at Santoro Dr. at this point it is imaginary street anyway. The entire industrial park doesn't have any sidewalks of any kind currently. This being a cul-de-sac that basically is going to get entered from end presently. I think having sidewalks on both sides might be little overkill for a cul-de-sac of this size.

Mr. Sweet, Had question on condition #2 dated 10/17/08 town clerk. #2 says condition 14 shall now read: The Definitive Plan shall include the following note: This approval is for four lots only (Lots 1 –4). Are we renumbering the lots? It should be lots 1, 3, 4 and 5.

Ms. Burgess, I do have the actual number.

Mrs. Marchitto, Yes that would be good idea.

Mr. Houle, It should say 1, 2, 4 & 5, 3 is being taken off.

Mr. Sweet, Are you looking for motion?

Mrs. Marchitto, Sure.

Mr. Sweet, I'd like to make motion that we proceed with the processes stated in the letter.

Ms. Burgess, Close the public hearing.

Mr. Sweet, To close the public hearing sorry my mistake, second.

Mr. Cerrone, Are we doing conditions first? You have to do the waivers.

Mrs. Marchitto, You want to do that in open? (Yes).

Ms. Burgess, You don't want to close the public hearing then make the decision?

Mr. Cerrone, No do the waivers then make decision on subdivision do that in public hearing.

Mr. Sweet, Like to make motion that we amend.

Mrs. Marchitto, Then close it?

Mr. Cerrone, Then you go for vote for subdivision.

Mrs. Marchitto, You want to do the waivers first then close it and do vote on subdivision? (Yes). Okay for clarity.

Raymond Payson, Are you on the waivers?

Mrs. Marchitto, Conditions and waivers.

Ms. Burgess, Amendment to the conditions.

Mr. Payson, I think it is going to set precedence there is still quite bit of industrial land over there. I think it's setting precedence if you're going to have bylaw then you stick with it. I start to think what happen in the beginning is that was the thought process. I think eventually there will be sidewalks somehow in that industrial park. I don't think the government should foot the bill at that point to put sidewalks in that subdivision. If you're going to subdivision control and you have it in there then it should be concrete not another waiver I believe from cement sidewalks to asphalt sidewalks. There is reason when you see those trucks up on sidewalks there is more strength than the concrete than there is in asphalt. I just don't think you should set precedence of waiving industrial land without sidewalks. Mr. Sweet, Make motion conditions and waivers now read #1 Lot 3 of the Definitive Subdivision Plan shall be separated from the original subdivision plan.

Mrs. Marchitto, We should do the waiver first.

Ms. Burgess, Just want to make vote on whether or not to amend condition #23. Technically you are just amending the condition not really waiving anything.

Mr. Sweet, Like to make motion that we amend Condition #23 to read as follows; Sidewalks are to be bituminous concrete and on the North/West side of Santoro Drive only in accordance with the North Attleborough Subdivision Rules and Regulations, second by Dick Houle.

All in favor 2 to 2 oppose Joan Marchitto and Donald Cerrone.

Ms. Burgess, Motion did not pass.

Mr. Sweet, Make motion to close hearing at 7:48 P.M., seconded by Dick Houle.

All in favor 4 to 0.

Mrs. Marchitto, We do the approval then the conditions or approve or denial. We need motion for the subdivision.

Mr. Sweet, Make motion to approve Chapter 41 Section 81W of Mass. General Laws and the North Attleborough Planning Board's Rules and Regulations Governing Subdivision of Land. Remove Lot 3 of the definitive subdivision plan to stand alone. Application entitled Corliss Landing Investments, LLC to modify the definitive subdivision entitled Corliss Landing, identified as Lot 2 on Assessors' Plat 36, and Lot 336 on Assessors' Plat 35.

Mr. Houle, It should be Lot 3.

Ms. Burgess, The assessors' has not given them new lot not parcels yet so they still refer to as they were originally as to when subdivision was approved it was still 2 separate original lots.

Mr. Sweet, Identified on Lot 2 on Assessors' Plat 36 and Lot 336 on Assessors' Plat 35, which within the subdivision plan is know as Lot 3, seconded by Dick Houle.

Mr. Sweet, From the overall subdivision leaving four lots within the subdivision to modify the conditions of approval, seconded by Dick Houle.

All in favor 3 to 0 to 1 abstain Donald Cerrone.

Mr. Sweet, Make motion condition #14 now read definitive plan shall include the following note: This approval is for four lots only (Lots 1, 2, 4 & 5), seconded by Dick Houle.

All in favor 3 to 0 to 1 abstain Donald Cerrone.

Mrs. Marchitto, Condition #1 we missed.

Mr. Sweet, Make motion that Lot 3 of the Definitive Subdivision Plan shall be separated from the original subdivision plan and will stand alone, seconded by Dick Houle.

All in favor 3 to 0 to 1 abstain Donald Cerrone.

Mrs. Marchitto, Now read #3.

Mr. Sweet, Make motion all the remaining original conditions of approval as listed in the attached decision dated July 24, 2007 and filed with the Town Clerk on July 30, 2008 shall be adhered to unless otherwise indicated July 30, 2007, seconded by Dick Houle.

All in favor 4 to 0.

Respectfully Submitted,

**NORTH ATTLEBOROUGH PLANNING BOARD
REGULAR MONTHLY MEETING
THURSDAY, OCTOBER 16, 2008**

Zone Line Determination for property located on South Washington Street and Old Post Road;

Mrs. Marchitto, Should we take zone determination after Cushman?

Mr. Cerrone, Have them come back on the 18th.let them get ready for then and we'll make the decision that night.

Ms. Burgess, Do you want to do zone line in December when we have it scheduled for Planned Business Development.

Mr. Houle, I agree 100% with that. Given the fact letter didn't go out in time.

Mr. Cerrone, We even specified month ago that wanted to make sure it was registered mail they were supposed to receive it and it is not their fault either. Do we another night?

Ms. Burgess, Yes we have three other nights.

Mr. Cerrone, Set it up for one of those nights whatever is good for the client.

Ms. Burgess, I can do 11/6 that gives you three weeks.

Mrs. Marchitto, You said you just needed more than 30 hours.

Mr. Houle, That is why I asked the question that I did. How long do you need? You guys never answered me. Does 11/6 work? Is it 6th. or 20th.?

Ms. Burgess, Mr. Cannata was here he's the one we have scheduled for 7 and I know he is changing his plan. I expected that whole night being for him to have some time to present to us so if he isn't going to be ready for the 20th. we could put it on then. First date in December 4th. would be no good it would be 18th. Our meetings in December are 4th. and 18th. December 4th. is booked and so it would be 18th.

Mr. Houle, Right now it is 11/6 or 12/18.

Continue until 12/18/08.

Ms. Burgess, We don't need specific time because it is not public hearing but we have them on at 7.

Mr. Clemmey, Can we go ahead and make that time?

Ms. Burgess, 7 if you're going to continue your public hearing then I think that slot maybe open.

Mr. Tilton, On public hearing of the site plan for Planned Business Development discussion was to be focused on drainage. That drainage analysis way you have it set up is going to take 2 ½ to 3 hours.

Ms. Burgess, I think we're going to wait to hear from the court anyway weren't we?

Mrs. Marchitto, I understand where Mr. Tilton is going.

Mr. Tilton, That is going to be some pretty intense numbers.

Mrs. Marchitto, Does the board want to have the determination on different night?

Mr. Tilton, I want to do zone line first then do the drainage.

Mrs. Marchitto, Absolutely.

Mr. Cerrone, They want to know where they stand.

Mrs. Marchitto, You want to go in December you don't want to do it earlier because we might be here all night.

Mr. Cerrone, Do it earlier I don't care.

Mr. Clemmey, December 18th. we do zone line determination then when we're done with that we will do continuation for Planned Business if that pleases the board.

Mr. Cerrone, Fine with me I would have done it 12/6 but I guess you guys couldn't make it.

Michael Dumont, December 18th. is public I can come to the meeting?

Mrs. Marchitto, Absolutely all the meetings are open meeting and there are certain situations like special permit for subdivisions that are called public hearings when the abutters have to be notified, which you were notified with this one that is only difference. Subdivision, special permits called public hearings but everything is open meeting you are invited.

**NORTH ATTLEBOROUGH PLANNING BOARD
PUBLIC HEARING
THURSDAY, OCTOBER 16, 2008**

8:00 P.M.- Continuation of the public hearing on the Definitive Subdivision to be entitled Cushman Village. Note: Final Action Due 10/31/08;

Applicant has requested continuance with an extension for final action

Received notice from applicant regarding the change in engineering firms

Commonwealth Engineers is the new firm.

Stephen Clapp-attorney in North Attleboro, I represent the applicant we had previously sent letter to the board requesting this hearing be continued again so that we can have the final hopefully reversal of B. of Health denial of the subdivision approval.

Mr. Tilton, I believe 11/20 is open.

Ms. Burgess, We could put it on at 8 P.M. on 11/20. What I've heard and I previously said that Cannata is on for that night. What I've heard is he is changing his Planned Business Development Plan to just only contain the ice rink. I haven't seen any of those plans or anything or any of detail so I'm not sure we they stand on the redevelopment. We could do 8 for Cushman on 11/20/08. They've also requested an extension for final action to December 1 pretty sure we're probably going to need more than December 1. I would suggest 12/31/08 if we close,

conditions, etc. extend final action until 12/31/08. We already have extension until December 1 but I figure while were here we might as well do it until 12/31/08 so we don't have to keep filling out all the paperwork if the board so wishes.

Mr. Houle, I don't have problem with that.

Mr. Cerrone, Make motion to continue Cushman Village until 11/20/08 at 8 P.M., seconded by Dick Houle.

All in favor 4 to 0.

Mr. Cerrone, Second motion to give extension until 12/31/08, seconded by Dick Houle.

All in favor.

Respectfully Submitted,

Board is taking 10-minute break.

**NORTH ATTLEBOROUGH PLANNING BOARD
REGULAR MONTHLY MEETING
THURSDAY, OCTOBER 16, 2008**

Board returned at 8:20 P.M.

Other Business:

1) Decision on Mt. Hope Terrace Preliminary Subdivision Plan;
N. Attleborough Real Estate LLC. Final Action Due: October 20, 2008
Plat 25 Lots 6, 91, 93, 94, 99, 100, 109, 117, 13, 147.

Mrs. Marchitto, Asking David Manoogian if he received draft?

David Manoogian-attorney, Yes I did.

Ms. Burgess, Do you want to just go over the conditions? However you want to do it. There was two questions that were specifically asked by the applicant to be addressed. The 900ft. dead end as known as Road A and whether or not that is considered a dead end. Also where the dead end street is measured from. In second paragraph I addressed both of those issues. I don't know if you want to discuss those. I took some liberties through discussion I believe with Don and Joan what dead end street constitutes.

Mr. Manoogian, Evidently it is not a dead end for roadway A.

Mrs. Marchitto, We were looking at these two intersections with one intersection the idea was if it was blocked for some reason they still had access another way you would go around the loop.

Mr. Sweet, But it doesn't go out to the main thoroughfare it still tees into road. It is interesting similar to Westwood Estates back exit for this. My observation would be that it is dead end only because you have one way out to main street.

Mrs. Marchitto, What is existing length of road now?

Ms. Burgess, I think existing Mt. Hope Terrace 1200ft?

Mr. Houle, What did you conclude Mary?

Ms. Burgess, I concluded that Road A is not a dead end street because of the fact that you have several entrance and exit routes. What I believe the main concept for 900ft. road is for emergency access so technically is there is accident you can access it from two other ways. There is still more than one access for this specific road. Mt.

Hope Terrace the same thing if there is accident can still get out other way so there is still means to get out.

Mr. Sweet, I'm not going to push the point but if something happens in certain area everybody is trapped in there.

Ms. Burgess, That can happen with Road B it can happen with any road. Other item in concern that the applicant asked was where exactly does the 900ft. start and end. It was determined that it starts on layout of the road that is intersecting and then to center of cul-de-sac.

Mr. Houle, That is not in question?

Ms. Burgess, That is statement I made if anyone wants to discuss it.

Mr. Cerrone, Layout of Mt. Hope St.

Mr. Sweet, Do you have preliminary estimate of what that length is based upon this plan?

Ms. Burgess, 887ft.

Mr. Manoogian, That determination will help us when we design the road so we don't exceed 900ft.

Mr. Sweet, Do some audience member have some comments?

Mrs. Marchitto, We closed the hearing.

Mr. Cerrone, How many lots on cul-de-sac three/two?

Ms. Burgess, It appears three if you count the one abutting.

Mr. Cerrone, That is fine.

Ms. Burgess, Still has some frontage on cul-de-sac still abuts it.

Mr. Cerrone, Not five right?

Ms. Burgess, Not that I can see.

Mrs. Marchitto, Other thing is Mary did diagram for traffic report and impact report for stormwater analysis. She did diagram of 1/2 mile, 1 mile and 1 1/2 mile would be. David asked for direction what is the radius we wanted him to look at.

Ms. Burgess, Point is right on Mt. Hope Terrace that is center point of the radius just so the board could see how much it encompasses. There is other property in question.

Mr. Houle, What is the norm Mary for traffic study like this?

Ms. Burgess, Normally we wouldn't do a radius like that.

John Lavin-engineer, You look at major intersection right around area say about 1/2 mile you have major intersection.

Ms. Burgess, Within the mile you have major intersection as well as intersection...(inaudible). I left it so the board could decide how they wanted to proceed.

Mrs. Marchitto, 1/2 mile doesn't include Old Post and Mt. Hope intersection.

Mr. Cerrone, Go the 1 mile. Does it catch Linden St.?

Mrs. Marchitto, Mile does 1/2 mile doesn't.

Mr. Houle, I don't think I would have problem with 1 mile. Whether or not we want to go to 1/2 mile that is up to the board.

Mrs. Marchitto, 1 mile radius did include those two major intersections and also over Draper. I think one of the concerns that Donald was bringing in was the property that maybe developed on other side. That is why you wanted the impact you wanted to capture some of that?

Mr. Cerrone, Yes has the other parcel across.

Mrs. Marchitto, I think it is important at least those two intersections.

Ms. Burgess, Also it gets more of the neighbors.

Mrs. Marchitto, There was Tower Rd. some of those neighbors that were abutting that property.

Mr. Houle and Mr. Cerrone, 1 mile is fine ½ mile doesn't get the intersections.

Mrs. Marchitto, That is why I had Mary show three scenarios. That would be adequate for traffic why don't we do stormwater now. I had Mary look at other impacts. How far do you usually go for stormwater? Mary and I looked at previous studies to try and pin it down.

Ms. Burgess, Generally it has to do with watershed and the vicinity, etc. You can't really put a mileage on it usually it is the watershed and how it attributes.

Mr. Lavin, It is really anything coming off the property handle it...(inaudible).

Mrs. Marchitto, Should we list watershed for analysis verses radius?

Mr. Lavin, You look for anything that is uphill so to speak and comes down onto that property depends on where the break is at whatever comes down.

Mrs. Marchitto, We have it written the applicant shall provide stormwater analysis that addresses the watershed and any drainage that falls within then we have take ½, 1 mile or 1 ½ mile radius from the local site. Really doesn't apply it should really be?

Ms. Burgess, Just falls onto the site or contributes to the site?

Mr. Lavin, No anything above it that contributes onto the site. You can't ignore what gets hit if there is something shedding onto the property water you have to take that into consideration.

Mr. Manoogian, Of what drainage that effects the site.

Mr. Lavin, First you do site itself but you really have to count for anything coming onto it. You could put in a swale or bypass the water or treat the water coming on.

Mr. Manoogian, How about if it says this; the applicant shall provide stormwater analysis that addresses the watershed and any off site drainage that effects the site?

Mr. Cerrone and Mr. Lavin, Yes.

Ms. Burgess, Any drainage that contributes to the site?

Mr. Manoogian, That is fine. If you did it with any mile specification.

Mr. Cerrone, You could go to the Mall.

Mrs. Marchitto, Yes that is little unfair. Like John said you could be down or up if you were up it would be perfect.

Ms. Burgess, Those were the only conditions that I had come up with. Does the board have anything else? I had also put on it that this action of the Planning Board relates with concept shown in preliminary subdivision plan and it is not a definitive subdivision plan approval or disapproval. Just so everybody is completely clear that this is just concept. We haven't voted on it. Hearing was closed we just didn't vote.

Mr. Sweet, My concern is the wetland and stream coming down through it obviously accounted for.

Mr. Manoogian, That will all be looked at as part of drainage.

Mr. Sweet, Its coming off 295.

Mr. Cerrone, Yes when they start getting into details they will have all that.

Mr. Manoogian, It is part of condition 3 anyhow.

Mr. Cerrone, Once they start looking at all the runoffs, where the drain is, etc.

Mr. Lavin, Does this have high water table?

Mr. Sweet, You could say that.

Mr. Manoogian, We don't know yet I think the answer is my guess is that it is probably mixture. I think what is happening and why neighbors are having such water problems is the state basically drains 295 and probably sheet flowed off of the existing land that was there. Quite frankly when they did their small subdivision they piece mealed lots stormwater systems were greater than anyone knew...(inaudible). We just don't know if high groundwater is contributing to that it could be combination. My guess is we're going to find lot of deficiencies in the area that can't handle the state sheet flow of 295 that is our guess.

Mr. Sweet, There is soil map that DPW gave us the other night.

Mr. Lavin, I haven't seen this plan but they will have to do perk test for sewer.

Mr. Manoogian, That is correct it is not on sewer.

Mr. Lavin, Taken into consideration usually as far as the ...(inaudible) involve the high groundwater and the designs criteria. The houses the foundation has to be 2ft. above that. It is just matter ...(inaudible) they can reach the high groundwater.

Mr. Sweet, Is sewerage being brought down Mt. Hope to the Weston Farm?

Ms. Burgess, Yes it is not within 1200ft.

Mr. Cerrone, Make motion we approve the concept plan preliminary subdivision N. Attleborough Real Estate Mt. Hope Terrace Extension, seconded by Dick Houle.

All in favor 4 to 0.

Mr. Cerrone, Make motion we approve conditions for Mt. Hope Terrace Extension.

Mr. Houle, As stated second.

All in favor 4 to 0.

Mr. Manoogian, We think the biggest issue on this site is traffic, drainage is secondary. We're going to spend lot of time on traffic and then meet with DPW before we actually finish the interior design of the subdivision. Location of the roadway improvements and what can be done on Mt. Hope St. may cause the entranceway to preliminary plan change little bit. We'll keep you in loop of what we're doing I think the biggest issue is going to drive the actual design to do traffic and then once that design ...(inaudible) we'll go through drainage.

Mr. Sweet, I have suspicion B. of Health might have some issues too.

Mr. Manoogian, The thing is they can't get involved until we start the definitive, which we haven't, haven't done all the engineering.

Christina Estates:

Request for determination of minor modification or public hearing required.

Ms. Burgess, It didn't get on the agenda

Glen Ofcarcik-Tilton & Associates, I filed it last Thursday. Representing Cumberland Associates Realty Trust. Thursday I filed a letter and plan under condition #5 of approval any proposed modification of the plan requires us to come back and seek your comments, approval, acceptance or you determine that 81W modification is necessary. The subdivision is currently under construction but no work has been done this year. At the end of paved section of Deltas Monast, which is the main roadway entering the site. We are prepared and we have all the local and state permits to do wetland fill crossing to the back section. Army Corp. of Engineers was the last permit we needed to get. As requested we looked at alternatives to minimize the wetland fill. Plan we presented tonight shows a bridge 90ft. clean span that would be used at that crossing and would eliminate the wetland fill. There are two conditions in Conservation Commission Order of Conditions that we need to go back and talk to them. I spoke with them about three

weeks ago they've obviously endorsed the idea minimizing the wetland impact. We did to know whether the Planning Board and you just got this you can accept this as construction change. You can find it is insignificant or you can determine that public hearing should be held in which case we would file a formal 81W modification and have public hearing. We're basically looking for some direction from the board.

Mr. Sweet, What is the feeling of having structure that has to be maintained verses culvert crossing? I have concern that you build structure that is going to rust and rot out. We're replacing the interstate bridges every year this is just another headache waiting to happen. I don't know what the previous boards thinking is with regards to bridge.

Ms. Burgess, When I spoke to DPW they won't accept road with bridge to maintain. Especially coming...(inaudible) 20ft. steel frame, two sidewalks. I know when I previously met with Glen and Bob Hearn regarding this I believe you said it had 30 year (35 year Mr. Ofcarcik) life span.

Mr. Sweet, Interstate bridges are 25 year life span and we're still driving over them.

Mr. Ofcarcik, To address your point Section 5.9 of subdivision regulations allows bridge as long as it is constructed to Mass. Highway specifications, which this would be. We requested workshop with the Commission again we did meet with Mary and talk about it informally met with Shannon and we filed with Conservation Commission.

Mr. Sweet, I think you will have to do 81W.

Mrs. Marchitto, I'm trying to refresh my memory of public hearing I see it is Cumberland Ave. so it might not be the area. Wasn't there further interior of the subdivision applicant at the time wanted a bridge?

Mr. Ofcarcik, We originally propose bridge when there was going to be road coming in off Cushman Rd., which the Planning Board asked us not to do and we're building the road out to May St. instead. We had proposed bridge but before we ever got to the analysis of DPW review the Planning Board has asked us to look at coming in down at the Attleboro side so that bridge wet away. We did present proposals to Planning Board and Conservation because you require 4 to 1 side slope. We requested waiver of 2 to 1 side slope we showed what put bridges would be. We showed bridges in all these locations but then Conservation came and spoke in favor of the waiver, which we got from the board to reduce side slopes at the crossing 2 to 1. That is not the spot that was at other end.

Mrs. Marchitto, That was what I was thinking and then I saw Cumberland Ave. very close.

Mr. Ofcarcik, It was on other side coming in from the golf course.

Mrs. Marchitto, This is new proposal?

Mr. Ofcarcik, This is formal proposal on one of the areas we talked about.

Mr. Houle, You just answered my question. What is your alternative to the bridge?

Mr. Ofcarcik, We have all state and local permits to do 4450sq.ft. wetland fill there and replicate it. Planning Board approved and all the other state and local commissions have approved filling the wetlands and putting box culvert I think it is 2ft. high and 8ft. wide at that location. Army Corp. of Engineers as we are going to have to do for MEAPA when our draft EIR, which is being prepared for the rest of subdivision asked us to do a very in depth analysis. Is there any possible way to avoid wetland impacts. They've asked us to pursue this avenue and again it is not

traditional but many things we do now a days are non-traditional. It is permitted under the subdivision control law to have bridge. You have the authority to determine it is minor change I don't think you'll do or to have public hearing on the proposal and get comments from the other depts.

Mrs. Marchitto, I don't think it is minor change I agree with you on that.

Mr. Ofcarcik, We're going through the process under condition #5 of your original approval. If board feels public hearing is in order if board would set hearing date today obviously your agendas are filling up.

Mr. Cerrone, This way we can get comments from other depts. too.

Mr. Houle, DPW told Mary they would never accept the street with bridge on it. Why would we even go down this road?

Mr. Sweet, That was over the phone.

Mr. Cerrone, I would like to have it on paper.

Mr. Ofcarcik, The street could remain private town meeting could refuse to accept it. Even if you're in favor and DPW is in favor the RTM could not accept the street.

Mr. Houle, If that happen who would have responsibility for maintenance?

Mr. Ofcarcik, The owner/developer, Homeowner Association whoever owns that as in any subdivision.

Mr. Houle, In perpetuity?

Mr. Ofcarcik, Yes. With all respect I think everybody has comments but unless they are in writing.

Mr. Cerrone, Glen your saying any street that is not accepted right now the homeowners are responsible?

Mr. Ofcarcik, Developer is the landowner unless as far as my opinion goes if the developer sells the entire property to Homeowner Association. Legal operation for maintenance this culvert whatever happens if the street is never posted to town meeting for acceptance the Planning Board used to ask all streets be put in for acceptance. I don't know if that is still your policy. I don't know if town meeting has ever refused to accept a street.

Mr. Cerrone, Yes so what happens then?

Mr. Houle, They do it all the time.

Mr. Ofcarcik, If everyone is agreed and the bridge is built and town meeting doesn't accept it then the developer still owns the road.

Mr. Cerrone, Developer is long gone.

Mr. Sweet, 81W my vote.

Mr. Cerrone, Have public hearing this way we get comments from all depts.

Mr. Ofcarcik, I know your agendas are full but if you could set public hearing date soon so we could set and least start the comment period.

Ms. Burgess, Soon as I get application.

Mr. Houle, What would height of that bridge be?

Mr. Ofcarcik, How high above grade would it be? (Yes.) It is almost 10ft. at the center it would be about 6ft. at either end it is 90ft. clear span.

Mr. Houle, About 10ft. drop.

Mr. Ofcarcik, 10ft. at the center.

Mrs. Marchitto, Have you talked to DPW at all?

Mr. Ofcarcik, No we haven't because it starts here. Our direction has always been to the Planning Board.

Mr. Cerrone, I think maybe before you want to set public hearing you might want to stop there and ask them.

Mr. Ofcarcik, I'm not sure I would get anything in writing to even consider answer.

Mr. Sweet, This is at request of Army Corp. of Engineer? Do they have to be notified of public hearing and comments?

Mr. Ofcarcik, Not in this aspect their only concern is with direct impact. If you would like us too I have no problem.

Mr. Sweet, The whole reason you're going through this process is at their request. Is it mandate?

Mr. Ofcarcik, They requested us to do this doing analysis for this we'll include them if you wish.

Mr. Sweet, I guess no matter what we say is it going to be overruled?

Ms. Burgess, No. I think one of the reasons why you were looking into I is because it triggers different permit if you fill in all these wetlands. You have to go a very expensive more further and so if they can avoid that as well.

Mr. Houle, You have to replicate anything that you fill in?

Mr. Ofcarcik, Anything we fill in has to be replicated under state and federal regulations and federal regulations require higher replication. We would have to replicate on our property. This would reduce our total impact we have over 27,000sq. ft. of direct wetland impacts in Christina Estates. This would reduce it by 4000sq.ft. but again it adds another dimension with the bridge.

Mrs. Marchitto, This is more than constructional change so 81 W and that is your due process to have input.

2) Discussion on Bally Heather Definitive Subdivision;

Ms. Burgess, What ended up happening after several conversations with the developer if you recall the September 18th? Meeting board voted to allow the applicant to extend the LOC to 11/1/08 or in lieu of replacement with cash bond. In all the efforts that were made the LOC did expire I was informed that the bank did not extend LOC. That is where we stand to date and there was in lieu of cash.

Mrs. Marchitto, It was going to be one or the other? (Yes). And there is no cash because?

Tom Fitzgerald, It was claimed immediately. Once the bond ended the board lost its attachment to it so one of my creditors claimed it.

Mr. Cerrone, When did we find out that we didn't receive letter what date?

Ms. Burgess, I believe it was either October 1st. or September 30th.

Mr. Cerrone, Did any of the board members know about it?

Mrs. Marchitto, She notified me it was after October 1st. I'm trying to think if it was the Thursday of the meeting.

Mr. Cerrone, That was October 6th. we had meeting if I recall right.

Ms. Burgess, October 2nd. we had meeting.

Mr. Cerrone, We weren't told that night?

Ms. Burgess, What Mr. Fitzgerald had informed me is he was going to have something that following day.

Mr. Cerrone, How much was LOC?

Mr. Fitzgerald, \$86,000.

Ms. Burgess, \$84,000.

Mr. Fitzgerald, My bank wouldn't renew it they said no. I think I informed the board that my bank was not going to renew this note.

Mr. Cerrone, You informed the board?

Mr. Fitzgerald, To my knowledge I informed the board.

Mrs. Marchitto, Board did not know that I don't know who you informed.

Mr. Fitzgerald, My bank was not going to extend it for simple fact I'm capped at that bank my limit of loans are there and they said we're not going to extend it again. I was trying to get the money to you I was not trying to play any games.

Mr. Houle, Somebody claimed it?

Mr. Fitzgerald, I had borrowed money from Marjon who is my other banks. When you took your money they had balance of it when you didn't take your money it all went to them they had right to grab it. I have \$700,000 of other credits I have other places this has never happened. I just kept going back to the bank saying give them letter and kept saying to the board give them letter to release it and it never happen. That Monday I had gone back to the bank and bank said we're not going to renew it I thought automatically it became yours at that point. I want to say October 1st.

Mr. Houle, Did you inform the board then or town planner?

Mr. Fitzgerald, I stayed in touch with Mary right through.

Ms. Burgess, It was Monday October 6th. following Monday after October 1st. I also spoke to the bank I believe that Friday October 3rd.

Mr. Cerrone, You didn't call the bank on the 29th.?

Ms. Burgess, I called the bank several times and I spoke with them several different times trying to different ways that Mr. Fitzgerald was going to change LOC into cash, etc. I said we can't release LOC to cash without having cash in place.

Mr. Cerrone, LOC was going to expire the 30th. somebody should have made a claim the 30th. going to bank and get the money. Ball got dropped.

Ms. Burgess, Yes and I take full responsibility for that. I wasn't aware that you could actually go because of the current bond situation I was doing with another developer. I wasn't aware that we could actually just go to the bank and it has never been mentioned to me before.

Mr. Cerrone, You didn't ask chairman or vice chair?

Ms. Burgess, No I did not.

Mr. Cerrone, Town council? (No I did not). How do we finish this project?

Mr. Fitzgerald, I believe there is \$62,000 still there to finish the project. I walked through the road with one asphalt guy and John we were going over what can be done to correct the road? There is pitch but it is minimal pitch but it drains we don't have major issue with drainage on the road other than one area down at end of Garrett Rd. or Jonathan Rd. one puddle.

John Lavin, There is couple of those.

Mr. Fitzgerald, Couple of sewer basins that could be lowered that would pick up this small puddle to left and right of it. John said there is one area that washes across an intersection has to get crown there are two areas.

Mr. Lavin, I did meet out with Bevilaqua paving and Mr. Fitzgerald just for the history after Bevilagua paver we walked the whole site with Mr. Larson representative for Mr. Fitzgerald and then the paver. Mr. Larson spray painted before I got there the areas that are to be repaired. They did try and make some repairs Bevilaqua, second time I went out with another representative of Mr. Fitzgerald Mario and that was Murray paving. We walked the whole road second time went over the same things. This is third time we walked out with Bevilaqua

that was part of the span of 14 to 16 months. We looked at the road I wasn't aware when I was out there about the ...(inaudible). The contractor said he was going to look at the areas and propose it. All I can do from what I understand is follow the regulations. I've given punch lists from before and gave you in December about the road itself as far as the pitch in the area. They were taking action to fix it at time but it was to no avail. Now we have less money I don't know if it relates to the board they have to repair the road. I asked to propose the areas of what should be fixed so there is plan and we can talk about it. If pitch isn't there its not there I made that clear in the letter. Hopefully if we have proposal the areas on the plan are marked out because there are several areas. There are couple different ways one when we talked to Murray Paving if road was pitched he was going to grind the sides and had to raise things because the curbing is too low he would have to raise the structures and grind the sides and pave it. Another way to do it and I mentioned it to Mr. Larson couple times is to overlay and really only issue is you're raising the structures and inch you can do inch overlay it is not unlike we did at Windchime. That is probably the cheapest way going in to just try and patch this and that ...(inaudible) you'd rather just leave it alone again I'm just going by the regs. There are some driveways that have issues. There are other ways you can go you'd have to give some leniency to the pitch in the road to pull out areas certain points and take it from there and go up. It is like putting keyway in and doing certain part of the road whatever specified areas. You don't want to cut it up you saw what happen at Windchime it is brand new road. Hopefully you get the areas that are proposed there are several areas that are worse than others and then just have to look at the pitch.

Mr. Sweet, Is this something that could be done before winter?

Mr. Fitzgerald, We're trying to get it done before season ends.

Mr. Sweet, Season ends November 15th?

Mr. Lavin, It depends on the weather it is kind of to shut off then you need permission after that.

Mr. Houle, The \$64,000 was for other street?

Mr. Fitzgerald, That was for Massand Rd.

Mr. Houle, If we take some out of that what happens to Massand Rd.?

Mr. Fitzgerald, We're talking about using the money for all of them.

Mr. Lavin, That is what you would hope to do. I'd probably suggest get price for overlay it is over \$60,000 it would probably be \$60,000 if it was last year this was approved in 2002. Everything has doubled the mix doubled. You might be in there 80/90 grand for overlay somewhere around there that was quick estimate in square yards. You're raising catch basins and raising ...(inaudible). I'm just giving ideas instead of raising things you could put extensions on the manholes it is like ring you put inside and it allows you just to put what is existing take the cover off put ring in. That is what you usually do when you remodel a road if you will as opposed to brand new road.

Mr. Sweet, That is acceptable?

Mr. Lavin, Yes it usually is for fixing road that is already in place. This way it's same thing this is brand new road that is the difference. That is one way you could save money and then that number would come down all you have to do is sweep, tack, overlay and then you have some driveways.

Mr. Fitzgerald, I'll chase it down tomorrow try and do it that way. I had meeting with John after they pulled the bond I'm still following through I'm not trying to run away.

Mr. Lavin, Yes he did.

Mr. Fitzgerald, I'm trying to stay and get this finished I don't want the town or anybody in box.

Mr. Sweet, What other work has to be done?

Mr. Lavin, Has asbuilts, just got through on the sub drains, have water service issue.

Mr. Fitzgerald, Yes they've all been done.

Mr. Lavin, It would be easement from each one because some of them were on properties the water gates.

Mr. Fitzgerald, That has been completed.

Mr. Lavin, Get easements submitted there is punch list I gave the board in March.

Mr. Fitzgerald, We've gone through all the punch lists I believe we're 90% only thing we have left is the road.

Mr. Lavin, Probably paving, flushing, cleaning, asbuilts make sure everything is in place for final.

Mr. Houle, You think maybe there is almost enough money there?

Mr. Lavin, It depends like raising the catch basins you have 22 of them.

Mr. Fitzgerald, \$125 each.

Mr. Lavin, You have that then its just square yards a matter of what you can get for deal for paving. I just went by kind of more standard pricing as opposed to quantity pricing. I didn't make phone calls to get bids.

Mr. Fitzgerald, I will tomorrow I'm not dealing with Bevilaqua anymore. I gave them \$22,000 to come back and get this stuff worked out no matter what I've done with this guy he is still disappearing. John had same feeling he was wasting our time with him. I will go back to Murray and other guy.

Mr. Lavin, There is Ryan Paving in Rehobeth I don't know him he's done work for another contractor.

Mr. Fitzgerald, Sorry to put the board in this spot it wasn't planned. I was in here three days trying to get the bank to give us something. I tried to get letter from the board to release it so I could bring it here no matter what it just wasn't connecting anymore. Bank called me to tell me I said okay the money has been released they said no Murray has it. I spoke to Mary I said I believe it is yours once it's released you have control of it.

Mr. Houle, Mary bank never gave us any type?

Mr. Cerrone and Mrs. Marchitto, You have to claim it yourself.

Mr. Cerrone, All my years on the board this never happen in 17 years. One case we had to go get the money Don Johnson went to Boston. LOC expires 30th. that morning you send them up that is why I can't understand no one was informed.

Mr. Fitzgerald, I was never aware of that how it happen this never happen to me either.

Mr. Cerrone, Only time we got beat was back in 89 when FDIC took over the project then the new developer did the work. It took awhile but we got it done. FDIC would come in take project that was $\frac{3}{4}$ done and developer would come in the finish everything up.

Mr. Fitzgerald, I'm not running away I'll start tomorrow so we can get it in next month period and get this done.

Mrs. Marchitto, Mr. Fitzgerald said he is going forward and do it.

Mr. Lavin, From boards' perspective best would be overlay you might lose an inch or so on the curb reveal so instead of 6 you have 5.

Mrs. Marchitto, We were successful with Windchime when they did overlay.

Mr. Lavin, It satisfied everything it was cheapest thing to do. It is expensive if you cut the road/keyway if you do it right do that and raise curbs. Just couple areas.

Mr. Fitzgerald, Washes across.

Mr. Lavin, That could be fixed with overlay.

Mrs. Marchitto, We're looking at overlay here?

Mr. Fitzgerald, I will chase that down I wasn't up until now I was thinking the other way.

Mr. Lavin, I didn't mention it to Mr. Fitzgerald the two times I was out there before. It is the easiest way.

Mr. Cerrone, What happens if we don't have enough money?

Mr. Sweet, When do we ask Mr. Fitzgerald to come back give us update?

Mr. Houle, Big question is what do we do if there isn't enough money there once it is started?

Mrs. Marchitto, He said he is going forward and have it done next month. We just got commitment that you would overlay it.

Mr. Cerrone, We should have answer before next month. I don't want to wait until next month we should be discussing this now.

Mr. Fitzgerald, We are I did not think about overlay until John said it tonight.

Next meeting is 11/6/08.

Mrs. Marchitto, We would need some information before next meeting 11/6 of what you are planning to do.

Mr. Fitzgerald, I will have stuff for you next week. I will get it into Mary. Whatever bids come in I will run them into you.

Mr. Lavin, You have to get on their schedule now because it is crunch time.

Mrs. Marchitto, Would like to see you 11/6 especially if there is no action. It would be nice to have it paved by 11/6. If we see no due diligence we expect to see you.

Mr. Fitzgerald, I will be on the phone I've already been on it as far as getting repairs done. I guess best way for town, board and everybody is overlay.

Ms. Burgess, One thing I was looking into was to add Jonathan and Garrette to the cash Form J so that at least if we were to take the cash bond for any reason right now that is only used for Massand technically. This kind of paper shuffle to add Jonathan and Garrette to Form J at least if there is something there at least it would be used on Jonathan and Garrette. It is not \$84,000 but it's not also zero.

Mrs. Marchitto, What does that involve?

Ms. Burgess, I believe it just involves transferring of Form J.

Mr. Cerrone, You have to get his approval.

Mr. Fitzgerald, That is no problem.

Mrs. Marchitto, We can work on that for 11/6.

Mr. Houle, Could you give us that in writing?

Mr. Fitzgerald, Yes.

Ms. Burgess, I have existing Form J here and basically all it would take is letter transferring it notifying the treasurer that the existing Form J for Massand Rd. is

now to include Jonathan and Garrette. You will have to come in and sign it because we have to have it notarized, etc.

Mr. Fitzgerald, Monday I will come in.

Mr. Houle, I have no problem with that.

Mrs. Marchitto, We expect communication.

Mr. Fitzgerald, I will stay in touch with Mary.

Hickory Woods:

Fred Bottomley is not present.

Zoning Applications: October 21, 2008:

McIntyre, Boulevard Liquors, Special Permit, extending pre existing non Conforming use.

Lighttower et al, 346 Allen Ave. Use Variance, 130' Cell Tower

Mr. Sweet, Did we turn down the lighttower and now they're going to zoning?

Ms. Burgess, It never came to us they withdrew because they are still trying to get their zoning there. It is one behind the school same property. They withdrew their application from zoning so now they are coming back. We sent letter before expressing our opinions regarding location of lighttower in location to the school and residential neighborhood. It is not allowed used in that district, etc. If you like I could reiterate our feelings and send them letter?

Mrs. Marchitto, Yes any other additions to letter? Make sure it is in our package.

Ms. Burgess, Meeting is for this Tuesday.

Miceli, 42 Michael Road, Dimensional Variance, front yard setback

Noelle et al, 14 Donald Tenant Circle, Dimensional Variance front yard Setback.

Ms. Burgess, Both of these are dimensional variance for front yard setback.

Upcoming Meetings;

October 18, 2008: 9 A.M. site visit CarMax.

October 20, 2008: Semi Annual Town Meeting.

Correspondence:

Town Moderator's letter regarding our articles.

Mt. Hope Farm Estates;

Ms. Burgess, Shannon Doyle asked me for update they were going to close it at next Conservation meeting. She wanted me to reiterate where they stand with us.

They did end up closing it.

Tina Brooks understudy of Executive Housing and Economics next Wednesday at SRPEDD is going to be guest speaker. Invitation was to all board members and selectmen.

Mass. Development;

Mrs. Marchitto, Sent letter about Attleboro Enterprises on John Dietsch Blvd. Just reading it sounds like it may not be zoned in that area.

Ms. Burgess, Project already exists and what the money specific to 284 John Dietsch Blvd. it is being used for there are two locations. Location where it is going to be used for us.

Mrs. Marchitto, One is North Attleborough.

Ms. Burgess, It is existing use.

Mrs. Marchitto, Are they already there?

Mr. Sweet, It is for the special needs adults it's been there since I've been in this town.

Mrs. Marchitto, Funding but they manufacture there? (Yes). I don't think I read I that way.

Ms. Burgess, There are three locations where the money is going to be allocated one being 284 John Dietsch, one 1228 Wilbur Ave., Swansea and 1240 Wilbur Ave., Swansea.

Mrs. Marchitto, This is training this locational program that they utilize okay.

Mr. Sweet, This if FYI.

Ms. Burgess, Yes obviously if they were going to build anything or do anything that would require ... (inaudible).

Mrs. Marchitto, Attleboro Enterprises themselves is a manufacturing business on John Dietsch?

Mr. Cerrone, Yes they have been there for years since the park got built I think. Beaupre and Pinsonnault Hickory Woods;

Donald Cerrone left table at 9:23 P.M.

Mrs. Marchitto, We notified Kevin Joyce and now we have to notify him second time.

Ms. Burgess, As we discussed in phone calls I had with each individual voting member. There was procedural error that was caught. When we sent out letter for 45 days to give him to complete the punch list it was actually suppose to go to town clerk as well. Way I had read interpretation of Mass. General Laws was that after we made our default decision that goes to town clerk and that starts the one-year statue of limitations they also do 45-day clock. After discussing it with all the members I did send out new letter to Mr. Joyce and new meeting date is December 4th.

Donald Cerrone returned to table 9:24 P.M.

Community Development Tina Brooks;

Mrs. Marchitto, Second letter from Tina Brooks was Community Development has sent us what our census of year on housing units subsidized. It has remained the same at 2.75%.

Planning Board Business:

Town Planner;

Mrs. Marchitto, I've had Mary call the board members on couple of things snafus that have occurred last couple of weeks. I just want to address that had Mary call members directly to let them know what had occurred. I just want to say to Mary with LOC you did let us know after the fact what was occurring. All that I ask that the members are fully disclosed on issues especially issues that we've taken vote and especially vote of seriousness that we were changing LOC extending it and bringing it into cash. Board members need to be all fully disclosed if it's not going the way board members have voted so that we can give direction. You are the town planner it is your responsibility that if we see something with those who have more experience we can give you the direction to go different avenue. The zoning request I understand how that occurred I understand that there was letter that went out certified mail it was in our package. We make assumptions as board members that it has been mailed out. We did have number of certified it appeared to all members and it would appear to the staff in here that letter was sent. All that I ask going forward that we make sure that we do have certified mail that it does get out.

Mr. Cerrone, When was letter written?

Ms. Burgess, September 29th.

Mrs. Marchitto, I did know of it because we did discuss it.

Mr. Cerrone, I didn't see anything in monthly report you have everything else.

Ms. Burgess, It may not have made it into my daily journal. Sometimes I do put wrote letter to so and so, provided this for so and so it appears that I did not write it in my journal. It was in the package. Linda and I are trying to come up with way to log these individual certified so she has system in place. Maybe we need clipboard to write down the numbers when it was mailed, etc. to keep accurate log. Normally the way it is handled is letter is written, etc. gets mailed. This is first time this has happened with regards to something not going out.

Mr. Cerrone, You put copy in our package? (Yes).

Ms. Burgess, October 2nd. package so I believe I wrote it after I had conversation with all board members.

Mrs. Marchitto, I was going to say Kevin Joyce procedural we have to be careful I understand because I would have thought the same thing. Somehow we have to do check and balance that we know procedural going forward with these different things. You know your public hearing, special permits and time this one is new. Going forward with new one we just have to do double check to make sure we have our times and who we have to notify the clerk, etc. Only reason I'm bringing it up this is third incident so moving forward we need check and balances our I's dotted and T's crossed.

Ms. Burgess, It was copied for legal it was copied for certified mail.

Mrs. Marchitto, This we caught in time so that was good. Just might be freak thing that within three weeks of lot of meetings occurring and new things are coming across. We need to go forward and not let anything fall between the cracks.

Mr. Sweet, Make motion we adjourn at 9:31 P.M., seconded by Dick Houle.

All in favor 4 to 0.

Respectfully Submitted,

Attach Agenda to Minutes.