

Park Ridge Planning Board
Meeting of June 23, 2010

The regular meeting of the Park Ridge Planning Board was called to order by the Chairman, Raymond Mital, on the above date, time and place.

Chairman called for the Pledge of Allegiance to the Flag.

ROLL CALL: Present: Messrs. Browne, Brouwer, Mesiano, Mital, O'Donoghue, Oppelt, Von Bradsky, Councilman Maguire, Ms. Eisen
Absent: Mr. Saluzzi
Also Present: John Ten Hoeve, Jr., Board Attorney
Eve Mancuso, PE, Board Engineer
Brigette Bogart, PP, Planning Consultant

COMPLIANCE STATEMENT:

The Notice for this meeting required by Section 3(d) of the Open Public Meetings Act has been provided by the adoption of a resolution by the Park Ridge Planning Board on January 15, 2010, setting forth a schedule of regular meetings, by mailing of said schedule to the Record and The Review on January 15, 2010 and by posting of said schedule on the Municipal Bulletin Board and the continuous maintenance thereat and by filing the said schedule in the office of the Borough Clerk.

ANYONE PRESENT WISHING TO BE HEARD: (non-agenda items)

There was no one.

MINOR SUBDIVISION:

BEER: Marking Marcia Eisen's certification of having listened to the tape of the May meeting as A-1.

TEN HOEVE: Mr. Von Bradsky has recused himself from this application and is not voting.

MICHELLE MITCHELL/PASCACK DUTCH REFORM CHURCH

18 Wampum Road 65 Pascack Road
Lots: 2,3,4 Block 1602

WHEREAS, MICHELE MITCHELL, being the owner of premises located at 18 Wampum Road, in the Borough of Park Ridge, County of Bergen, and State of New Jersey, said premises also known as Lots 3 and 4 of Block 1602 on the Tax Assessment Map for the Borough of Park Ridge (hereinafter referred to as Applicant) has applied by the PLANNING BOARD OF THE BOROUGH OF PARK RIDGE (hereinafter referred to as "BOARD"), with the consent of the Pascack Reformed Church, being the owner of premises known as 65 Pascack Road in the Borough of Park Ridge, said premises also known as Lot 2 of Block 1602 on the Tax Assessment Map for the Borough of Park Ridge, seeking preliminary minor subdivision/redivision approval in order to subdivide/redivide the aforementioned two parcels into two newly sized and configured lots on the site; and

WHEREAS, the Applicant has submitted to the BOARD a map illustrating the proposed subdivision entitled, "Subdivision of Lots 2 and 3, Block 1602," prepared by Christopher Lantelme, a licensed engineering firm of the State of New Jersey, said plan dated January 6, 2010; and

WHEREAS, hearings were held in connection with the application before the PLANNING BOARD OF THE BOROUGH OF PARK RIDGE, duly convened on April 14, 2010 and May 20, 2010; and

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WHEREAS, the BOARD has carefully considered the application and all evidence and testimony presented in connection with the application.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE BOROUGH OF PARK RIDGE, that the BOARD hereby makes the following findings of fact:

1. Applicant is the owner of Lots 3 and 4 of Block 1602. Since owned by the same owner, Lots 3 and 4 are merged for zoning purposes. The Applicant's lots are currently improved with a single-family home fronting on Wampum Road, having a lot area of 26,731 square feet and frontage on Wampum Road of 125 feet.
2. The adjacent property, Lot 2 of Block 1602, is owned by the Pascack Reformed Church and is developed with a church and additional structures related to the church use. The church parcel is a corner lot with 257 feet of frontage on Wampum Road, 202 feet of frontage along Sulak Lane and 320 feet of frontage along Pascack Road. The Church lot has a lot area of 112,658 square feet.
3. Applicant seeks approval to reconfigure the two lots, relocating the lot line between Lots 3 and 2 by moving the lot line 65 feet to the west, thereby transferring an area of 13,900 square feet from Lot 2 to Lot 3. The proposed lot area of the church site will thus be reduced from 112,658 square feet to 98,758 square feet. The proposed lot area of Lots 3 and 4 will be increased from 26,731 square feet to 40,631 square feet.
4. Applicant's requested redivision results in the need for two variances. The required lot depth for churches is 300 feet. The existing lot depth for the church property is 329.52. The proposed reduced lot depth will be 285.95 feet, slightly less than the required 300 feet. In addition, Section 101-21(A)(1)(j) of the Zoning Ordinance requires a minimum buffer of 50 feet. The existing buffer in Lot 2 technically is being eliminated by virtue of the transfer of the buffer area to the Applicant.
5. The BOARD finds that there are substantial reasons to grant the requested buffer variance. While the Applicant is technically removing the existing buffer, testimony indicated that the Applicant has been responsible for maintaining the existing area, since the Church had not maintained this portion of its property. The Applicant further testified that there would be no contemplated development on the portion of the property to be transferred and that the redivision would insure that the Applicant would maintain the property in the future. The redivision will thus not have as negative impact on the goals and objectives underlying the buffer requirement, but will operate to accomplish said goals and insure that the buffer remains in the future. The redivision will thus achieve the goals and objectives of the Ordinance as well as the Municipal Land Use Law.
6. The BOARD further finds that there are substantial reasons to justify the grant of the de minimus lot depth variance. The BOARD has considered the fact that the Church parcel is developed and has been for decades. The parking lot behind the Church that extends to the area to be transferred is also improved. There are no improvements on the area to be transferred. The proposal violates the required 300 foot lot depth by only 14 feet. The goals and objectives of the lot depth requirement are clearly still met if the requested variance is granted.
7. The BOARD also notes that the grant of the requested variance will have no public impact whatsoever. In fact, there will be no change whatsoever to the appearance of the two lots in any way. The public will perceive no change to the lots, the neighborhood, the structures or the area in any way.

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8. The BOARD finds that the Applicant has satisfied the flexible © criteria required for the grant of the variances. The BOARD also finds and concludes that the grant of the requested variances will not result in any substantial detriment to the public good, nor will same impair the intent and purpose of the zone plan or Zoning Ordinance of the Borough of Park Ridge in any way.
9. The BOARD thus finds that substantial reasons exist to grant the requested minor subdivision and that there are no reasons that would justify a denial of the requested redivision. The proposal will result in the creation of two conforming lots, excepting the minor lot depth variance discussed hereinabove. The redivision will not offend any provision of the Borough Master Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE BOROUGH OF PARK RIDGE, by virtue of the foregoing that the BOARD hereby grants Applicant's request for preliminary minor subdivision approval to permit the redivision of the parcels as set forth in the submitted plans subject to the following conditions:

- A. That the Applicant provide the Borough Engineer with a satisfactory metes and bounds description for both lots and that no subdivision deed or plat be signed by the Board until such time as the Applicant provides said description.
- B. That the Applicant furnish to the BOARD either proof of subdivision approval by the Bergen County Planning Board or a jurisdictional waiver from the County Board confirming that approval is not required.
- C. Applicant shall be required to prepare and file the required Subdivision Plat and/or required Deeds and related documents to complete Subdivision Approval after said Plat and/or Deeds are reviewed and approved by the BOARD Engineer and Attorney.

Offered by Robert Oppelt.

Seconded by Councilman Maguire

AYES: Messrs. Mesiano, Mital, Oppelt, Ms. Eisen, Councilman Maguire

ABSTAIN: Messrs. Browne, Brouwer, O'Donoghue

NAYS: None

PUBLIC HEARING:

MARK PRUSHA – 82 Rivervale Road R-15
Lot: 1 Block: 2207

MITAL: We left off with questions for Mr. Eichenlaub...we brought up the public late in the meeting and that is where we will continue tonight. We do have some planning board business to take care of after the meeting, so we will probably hear testimony until about 10:00pm.

Andy Del Vecchio, Esq. member of the firm of Beattie, Padovano on behalf of the applicant, Mark Prusha came forward.

DEL VECCHIO: I believe you are correct, Mr. Chairman, we had actually interrupted the board questioning as the hour had gotten late and you wanted to afford the public an opportunity to ask questions. Mr. Eichenlaub is back to answer whatever board questions remain and whatever questions from the public might remain.

We also have with us this evening, Mr. Alben...if you recall, he could not come back for the last meeting because of a scheduling conflict and I had received word that the board had further questions for him. So he is

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back this evening and I would like to conclude both Mr. Eichenlaub and Mr. Albin's remaining testimony this evening.

TEN HOEVE: I know you intended to call a planner, do you have him present tonight also?

DEL VECCHIO: He was not available so we will have him prepared to testify at the board's next meeting, is it the 14th?

TEN HOEVE: I am not sure the hearing will be continued on that date, we will let you know later. Before I forget, you have an extension through today's meeting? Obviously we are not finishing if you have more witnesses to testify so you'll supply us with an Extension of Time?

DEL VECCHIO: Same time that we discuss when the next meeting is, we can talk about the extension. Obviously I am going to grant you an extension.

TEN HOEVE: Unless you want a vote tonight.

DEL VECCHIO: I would like a vote tonight but it's not in the cards.

MITAL: Anyone from the public wishing to ask questions? And again, these are questions, not testimony.

Diane Manzione, 81 Lillian Street came forward.

MANZIONE: At the last meeting, Mr. Eichenlaub talked about the flow of water on the property and I was hoping you could show us again how it currently flows and how it will flow after the construction?

EICHENLAUB: What we've got here is drainage that is piped into the swale and that is going to remain unchanged. We have runoff coming off Rivervale Road coming down the swale into the wetland area on either side of the proposed driveway and that, too, will remain. Drainage off of the property itself, presently drains from the high area along Rivervale Road in a westerly direction into that swale and wetland area and that will remain and is unchanged.

As I indicated at the last meeting, there will be no change in the drainage flow pattern on site. There is some modification to the grading around the dwellings but when all is said and done and the drainage is completed, the drainage patterns will remain as they exist today.

So that wetland area to the rear or western portion of the property will remain. There is a crossing for the proposed driveway that will be piped underneath the driveway so the two areas will be interconnected as they are today and the drainage will be allowed to flow underneath that driveway and continue in a south/southwest direction off the property.

MANZIONE: I don't have a pointer so I'm going to go over and use my finger to point out what I am talking about.

(resident walked away from microphone & was not picked up)

EICHENLAUB: (responding to resident question) That's the south direction, correct.

MANZIONE: (again could not be picked up & then was given microphone) There is currently water that runs off of the property in a south direction, will that be improved or made worse by the construction that is being proposed?

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EICHENLAUB: The area that you are talking about is this area, which is basically south or the rear portion of the site...there is no grading proposed in that area because it is a wetland buffer...see, this area here is a buffer...and this area in here, bounded by the blue area is a wetland area...there is no grading proposed in that area and it is a lawn area so the grading and the drainage pattern that presently exists in that area will remain.

MANZIONE: So the flooding that I experience in my yard and the stream that runs between myself and my neighbor will continue the same?

EICHENLAUB: Well, I haven't witnessed that...if you are talking about water than is running off this lawn area, that will remain unchanged. What will happen though, is the fact that we are constructing this dwelling back here and any water that runs in this direction through the building itself, will be running in a southerly direction would be intercepted and drained back into this wetland area. So, it would simply be this rear portion of the lot we are creating that would continue to drain in a southerly direction as it presently does.

DEL VECCHIO: I think in order to be fair to the resident's question, let's ask this, the rate or the total volume of water that will be discharged from the rear of the expanded house on proposed Lot 1.02 to the property that bounds the common line, which is Block 2007, Lot 4, will that be increased, decreased or remain unchanged?

EICHENLAUB: It may slightly be decreased because as I indicated before, the dwelling that we are proposing to be constructed here, will divert some of the water back into the wetland area. But again, from the rear of the proposed dwelling or addition, in a southerly direction, there is no change to the flow.

MANZIONE: Thank you.

Xandra Wilhovsky, 74 Rivervale Road.

WILHOVSKY: I would like to talk about the easement and the 36" pipe. This is a copy of the easement. I believe Councilman Maguire asked for it at the last meeting. I don't know if anybody else presented it but this is the easement.

My question is this, on the last page of the agreement is a paragraph...may I read the paragraph?...

TEN HOEVE: Is this leading to a question for Mr. Eichenlaub?

WILHOVSKY: Yes, it is. You'll know the question when I read it.

TEN HOEVE: No, I'm just saying you will have an opportunity to speak and if you wanted to present that document to the board and present it to the board as direct testimony at some point.

WILHOVSKY: That's fine...on the easement, last page, #3 *the grantor, her heirs and assigned, shall not construct nor permit any permanent structures upon the easement area in question but shall otherwise enjoy use of the said area to the extent that such use shall not interfere with the functioning of the drainage right-of-way....*is the driveway and new pipe not permanent construction?

DEL VECCHIO: I think that is actually a legal question beyond the scope of Mr. Eichenlaub's testimony. It is the applicant's position that the document

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which refers to a permanent structure was intended to mean things that pertain to a home, a fence or shed or something more permanent in nature than a driveway crossing. The pipe currently exists within that drainage way and we are only seeking to improve the existence of the pipe and as far as the driveway is concerned, we have already stipulated for the record, that to the extent that any maintenance would have to occur within the drainage easement area, we would acknowledge and agree that the restoration and replacement of the driveway caused by the disturbance, would be done by the owner of that lot and not fall upon the borough.

TEN HOEVE: You haven't presented any specific testimony with regard to the easement, have you? Did you provide a copy of the easement to the board?

DEL VECCHIO: I am not sure if it was in our package. I can submit it if the board likes.

TEN HOEVE: I don't recall any testimony about it and I don't know if the board has any information with regard to who created the easement, for whose benefit was it created...

DEL VECCHIO: The easement was granted to the Borough of Park Ridge by a predecessor owner in title so the Borough could install a drainage pipe...

TEN HOEVE: Can Mr. Eichenlaub provide any testimony with regard to that?

EICHENLAUB: I believe I could.

TEN HOEVE: Maybe that would be a good idea first and then the questions can follow because I am not familiar with any of this and I guess the board isn't as well.

WILHOVSKY: Actually the town doesn't have a copy.

TEN HOEVE: Well, maybe we could just get a little information about it.

EICHENLAUB: Let me start by saying that you were questioning the pipe..and I believe the pipe you were referring to is the pipe that passes underneath the driveway...that is outside the drainage easement. So that really is not included.

The only thing that will be within the easement itself is the proposed driveway. As I indicated at the last meeting, drainage through this pipe comes off of Local Street. There are two basins at the south end of Local Street, which convey water into this corrugated metal pipe. That corrugated metal pipe runs approximately 2/3 of the distance, north to south, the property depth and then discharges into the open channel, conveys through the swale to the southwest corner of the property and is picked up again by additional piping and that piping at the southwest corner of the property is a 42" diameter pipe and as I indicated at the last meeting, that is conveyed to the south through various private properties and underneath the roadways to the south of us.

DEL VECCHIO: For clarity, the water that is being transmitted through the pipe to the drainage easement that you are referring to originates from where?

EICHENLAUB: Off site...it is picked up at the end of Local Street through two basins, one on either side of the roadway.

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TEN HOEVE: Are you saying that the ...was the pipe there when the easement was created...was this easement created so the pipe could be accessed and maintained?

EICHENLAUB: I would guess that that was the case.

TEN HOEVE: Or was the easement for over the ground flow at some point?

EICHENLAUB: Again, the pipe was installed to pick up the water from the two basins at the end of Local Street...basically at the center of the right-of-way is a manhole to which the two catch basins drain...from that manhole we then have the pipe that runs approximately 2/3 the depth of the property and then discharges into open channel flow.

It would appear that the easement and that easement runs the entire length of the property to the southwest corner, so it includes the pipe itself and the open channel within the easement.

DEL VECCHIO: I think to answer your question, there are two preambles in the document that may help...the first one says *whereas the grantee and that is the Borough of Park Ridge has completed certain drainage and grading work on the premises hereinafter described and will generally maintain the drainage facilities upon the said premises referred to below and whereas the grantor has already granted to the grantee the right to enter upon said premises for the purposes of installing the 36" corrugated drain pipe and to backfill and finish grade the area and to install a 6' cyclone fence and to remove certain trees lying upon the property...*and then there are several other boilerplate Whereas provisions in the preamble.

We'll get you a copy of the document.

TEN HOEVE: My suggestion is the borough engineer get a copy of it as well so that she can take a look at it, review it and provide some opinion as to what it entails.

DEL VECCHIO: That's fine. I believe Ms. Mancuso has already indicated that certain of the improvements lie outside of the granted easement area and has expressed a desire that the easement be amended to reflect, what I would call, the existing conditions that are proposed to what was originally anticipated by the original document.

That's fine, we have no objection to providing it.

TEN HOEVE: I don't know if that answers the resident's question or not.
(could not hear resident's reply)

What I suggest then, is the borough engineer take a look at it, I'll get a chance to take a look at it and it is probably something that the borough attorney is going to have to take a look at as well, since it is an easement granted to the borough. I have not seen it up until just now.

MITAL: Anyone else from the public? No....Ok, we will now move to board members.

MAGUIRE: The stormwater coming off of the new driveways...that's going to run into this wetlands?

EICHENLAUB: Correct...it is being picked up on the driveway in a series of catch basins.

MAGUIRE: And we have multiple categories of wetlands and intermediate resource wetlands?

EICHENLAUB: Correct.

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MAGUIRE: Are you going to be doing anything to mitigate that stormwater coming off the driveways?

EICHENLAUB: No. We have gone through a series of calculations to show what the increase in runoff would be from the site and 100% of that was handled within the seepage pits proposed at the four lots, which basically allowed us to discharge the runoff from the driveways directly. A portion of it does run down through grass swales before it enters the wetlands area but the stem of the driveway will be picked up by the catch basins directly over that pipe that crosses beneath the driveway itself.

MAGUIRE: So there will be seepage pits to catch the water coming off the houses but the driveways will drain to this...

EICHENLAUB: Just the one driveway. The two driveways up off of Rivervale Road will run through grass swales, which is a way of cleansing the water prior to it reaching.

MAGUIRE: No, the shared driveway.

EICHENLAUB: That one is simply picked up by the catch basins.

MAGUIRE: But there will be an increase of water coming through this intermediate resource wetland.

EICHENLAUB: No, there won't because what we've done is we've picked up all of the runoff from the roofs and those are going to be conveyed into seepage pits on site, so those areas that are presently lawn areas or walkways, patios, what have you, run freely off of the back now and that is being intercepted and picked up and discharged into the seepage pits. So there is no increase in the volume of flows off the site.

MAGUIRE: If you pave the driveway won't you be increasing the amount of runoff?

EICHENLAUB: Right but we already have impervious areas on site, so basically what you do is, you compare the present with the proposed.

MAGUIRE: And you are eliminating impervious?

EICHENLAUB: Yes. Actually it is a wash.

MAGUIRE: And that is the existing home...

EICHENLAUB: We've got the existing home that is coming down, we've got the second dwelling back in here and the runoff from that is being picked up and conveyed into seepage pits...the existing driveway, parking area, the enclosed screened porch and walkways are all being removed so we get credit for that.

DEL VECCHIO: We don't, quite frankly, have an option...the Residential Site Improvement Standards require us to meet certain thresholds for stormwater....is this designed to meet that standard?

EICHENLAUB: Yes, it does.

MAGUIRE: So the existing Lot 1 has 5,700 sq ft of impervious coverage...and what do I compare that to? Do I add up all of Lot 1,2,3,4?

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EICHENLAUB: What we've got is, we've got the impervious coverages....I guess that's what you are looking at....let's take a step back...what we do is we come up with calculations for our existing coverages and we've indicated that on our drawing. We've got a total of existing impervious for just under 6,000 sq ft...so that freely runs off the site now, none of that is being intercepted...that simply runs off into the wetlands area in the back of the property.

What we are doing is all of the four dwellings and the impervious wherever we may have a patio or deck will be picked up and conveyed into the seepage pits located on the four lots. I talked about this at the last meeting. We are showing these seepage pits on site. These are hypothetical structures...they may or may not be of this footprint...the actual number and their arrangement on site would be presented on the individual plot plans for those lots. It is just to indicate those areas will be picked up and conveyed to seepage pits.

MAGUIRE: Thank you.

MITAL: The way I was looking at it is the way the Councilman was describing...when I look at the driveway I think about an accelerated flow of water off that driveway into that natural drainage area....I don't know if that is what Councilman Maguire was going for but where exactly is the crown point or the ...

EICHENLAUB: Well, the low point is in this area here and our crown or high point would be located basically where we come off of Local Street and at the proposed dwelling on Lot 1.02. So that water would run from the dwelling on 1.02 in a westerly direction and along that of 1.03 would run in a southerly direction to those basins.

Again, one of the other possibilities we could do to minimize the board's concern is we could install an additional seepage pit to pick up some of that runoff and then use as an overflow and tie into those catch basins, which would minimize the immediate flow from that driveway...it would reduce that flow from that driveway.

MITAL: You create that impervious area and it does accelerate...that water is going to come off there pretty hard...

EICHENLAUB: That water would come off of this driveway, which volume-wise would be less than what is reaching this point now...the water coming off of this driveway would be picked up by these catch basins and flow through before the majority of the flow has reached this swale off of Rivervale Road.

MESIANO: The impervious is now 6,000 sq ft and you said you did the calculations for the four dwellings...you don't calculate the patios and dwellings because those are going into the seepage pits so you're saying the driveways are less than 6,000 sq ft?

EICHENLAUB: Correct. The two driveways for Lot 1 and 1.01, they are allowed to discharge and run through the grass swales on the lots themselves and that in itself acts as a purification of the water, refines what may be picked up off of the driveway...

MESIANO: As a follow-up to the neighbor on Lillian, is there anything that could be done to reduce that runoff?

EICHENLAUB: Are we talking about the runoff at the back of the property itself into the property?

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MESIANO: Yes, that's what she was talking about.

EICHENLAUB: These are things I would actually have to talk about with my wetland consultant because what we've got here is a situation where this is a buffer area in wetland and we've already indicated there will be no disturbance in this area.

Obviously one of the means of controlling runoff of f of the site at this end would be to create a berm effect or a swale to channel it back down towards the wetland. Again, I did not go and I have not gone back to these properties to the south of us to review the lay of the land in that area...it would appear that there is a ridge at that point and they live there and they say the water runs off but it appears that there is a rise that prevents the water from running off onto those properties according to topography.

OPPELT: There is only one driveway on that property today, is that right?

EICHENLAUB: Correct.

OPPELT: That is paved.

EICHENLAUB: That is paved.

OPPELT: But there is a driveway area also there.

EICHENLAUB: The driveway is along the south side of the easterly portion of the property... there are some gravel areas also. The driveway basically runs down off of Rivervale Road in a westerly direction...there is a parking area here for vehicles and it bulbs out in the back as well.

OPPELT: All paved.

EICHENLAUB: And gravel as well.

BROUWER: Is there any standing water on the lot?

EICHENLAUB: Well, there is some standing water back in the wetland area. I was not out there today but I've been out in the past after rain and there are puddles that sit in that wetland area. It is not a pond of water; there are puddle, maybe as much as 5 or 6 sq ft. within the low or depressed areas. The entire area is not covered with water but like I said, puddles.

BROUWER: On the proposed dwelling off of Local Street, the first one, the bottom of the garage, what would prevent the water from coming off of Local Street and instead of going into any drainage down at the curb...would go into the garage.

EICHENLAUB: Our driveway will be slightly higher than those two catch basins, so the water comes down the curb line of Local and runs directly into those catch basins. Those catch basins are sunk down lower than our driveway coming off of Local Street.

DEL VECCHIO: I think we need to focus the question a little more...what is the elevation of the tie-in with Local Street to the driveway as compared to the elevation of the garage proposed to be on

EICHENLAUB: The garage itself is at 137.83, the easterly basin is at 137.87 and the grate on the westerly side is at 138.27.

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DEL VECCHIO: If water were to flow off Local Street and into this driveway area, what would prevent the water from making a right turn into this drive area as opposed to continuing down and hitting the proposed catch basin?

EICHENLAUB: We've got 137 and we've got 136 so the grade out in the driveway itself is lower than the garage itself by almost a foot.

BROUWER: It looks like the elevation on the street is at 139.

EICHENLAUB: Correct, I do see that.

BROUWER: So there is kind of a big dip there and you're going to get some water.

EICHENLAUB: We've got 139, we've got 138...the topo line closes on itself and around the basin to the east...

BROUWER: It's pitched down, right?

EICHENLAUB: Correct but the drainage is in a southerly direction. It is going in north to south.

BROUWER: So you'll have a head on that water but it...

EICHENLAUB: When it reaches the catch basins? Well, the volume will have increased obviously along the run of Local Street...yes.

BROUWER: And what will prevent that water from that head other than a little step in the driveway...

EICHENLAUB: Right...we'd create a high point so the water didn't run down. We would create a high point at the north end of the driveway. I don't know if you have been out there during a heavy rain but the water runs down the gutter and you probably have a spread of 2 to 2 ½ feet during a heavy rain but it clearly runs into the catch basins.

BROUWER: We've had a lot of history with this driveway...

EICHENLAUB: Understood. From the point right where we would turn in going along the driveway, making the turn into that proposed driveway and garage, we've got an elevation of 137... the elevation of the garage itself, the apron is at 137.83, ten inches higher and if you were to go to the south side of that driveway where the two would intersect, we're a foot lower than that, so we're actually ten inches and one foot ten lower than the garage.

The water would have to be a foot deep to reach our garage. Even with the velocity...with a greater velocity you would probably have a shallower flow, however, even with the head you are talking about because of the gradient, it is still not going to reach that garage, not based on the volume of flow coming down Local Street.

MANCUSO: Along the same line, if we can go back to discussing the two catch basins that are at the low point of the shared driveway...I thought there was earlier testimony that you or Mr. Albin regarding water quality issues as well as the stormwater coming off the driveway and perhaps filters or some other mechanism within those two basins to keep the road salt or silt out of the intermediate wetlands...

EICHENLAUB: In the two basins?

MANCUSO: Correct, in the two catch basins that were on the driveway.

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EIEHENLAUB: I didn't testify to that..no.

MANCUSO: Then it was Mr. Albin, I'll wait...it is really an issue regarding the quality of water coming off the driveway going directly into the wetlands, so perhaps that is an environmental question.

In terms of stormwater, when I visited the site just recently I noticed that a good deal of water comes from off-site Lot 3, which is from the north as well as Lot 7 and a bit of Lot 6. So one lot to the north as well as two lots to the west.

EICHENLAUB: 3 and 7? They would be off the northwest corner of the property?

MANCUSO: Correct. What is the intent in terms of allowing that drainage pattern to continue? It appears that the property is being filled with it. Where will that off-site water flow?

EICHENLAUB: When you say the site is being filled a bit, for the most part the contours along the rear of the dwelling on proposed Lot 1.03 aren't being changed much. Where they are being changed is up against the foundation so that the drainage is away from the foundation. At most you might have six inches of fill across the back of that foundation but the flows will continue to flow in a southerly direction.

Now if flows come off of Lot 3 in that direction, they will continue to come off of Lot 3 in that direction. We do have a proposed planting ...a series of plantings...the spruce that we are looking to plant along the northerly property line. We are not proposing they be placed in a berm or anything like that so the water will continue to flow through that.

If you are concerned with us blocking and damming up the flows off of this property, they flow in our direction now...there is no change proposed. If you are concerned with the flows onto our site for the new dwelling, what we can do is possibly pick up some sort of a slot drain across this property line, which would be discharged into that basin to pick up the flows in that manner.

MANCUSO: That is exactly my concern. I see you did have a nice row of evergreens planted for privacy as well as to revegetate those trees that have been removed but over the course of time, future residents might consider mulching under the trees or something of that nature and it wouldn't take much of a berm if it was a six inch mulch bed and that would effectively trap the water on Lot 3 causing a problem there, whereas, it did in the past flow onto the subject property and then continue toward the open channel.

So that would be a concern, to allow the open water to continue to flow onto the subject property and into the open channel as well as from Lot 7 and a portion of Lot 6, to a lesser degree.

And again, in that same area on proposed Lot 1.03 there appears to be, when I was present, not so much standing water as very wet boggy ground and I would imagine after a rain such as we had yesterday, and seeing the fact that there is an isolated wetlands label here, how is that loss of sort of a natural storage volume being accounted for?

EICHENLAUB: Is that the area where you are talking about, a boggy area?

MANCUSO: The area is where you have the proposed dwelling and the deck...

EICHENLAUB: Right, in this area here.

MANCUSO: Correct, on Lot 1.03...that's sort of a natural detention area right now.

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EICHENLAUB: So your question is what's going to happen to that water?

MANCUSO: Yes, how is that going to be mitigated so you don't have an increase in runoff downstream?

EICHENLAUB: Our proposal was simply to fill that area in and allow it to continue draining in a southerly direction. Basically what happens is you probably get somewhere in the neighborhood of about 10 to 15 inches of water, if that were to fill up, and then it would top it and continue to drain in a southerly direction.

TEN HOEVE: I'm confused and maybe Ms. Mancuso can help. She said the water is running across the area that now shows a driveway and a house.

EICHENLAUB: We're talking about this area right here.

TEN HOEVE: And she's saying it flows across. How is it going to keep flowing there if you have an elevated driveway and house there, that's what I don't understand.

EICHENLAUB: What we've got here is we've got the water running...grading is such that what we will have is the water coming onto the property will run around the rear of the house and continue in a southerly direction.

TEN HOEVE: All of the water that is currently flowing across there now will be directed in that direction?

EICHENLAUB: For the most part...

TEN HOEVE: It will make that right turn

EICHENLAUB: No, no...or over the top of the curb itself and flow along the driveway. Our driveway in this area here is still lower than these grades to the north of the dwelling and north of the driveway.

TEN HOEVE: Even where it reaches the house?

EICHENLAUB: What we've got here, is we've got contour lines of 137 and 138...

TEN HOEVE: If that's the case then why wouldn't it then go into the garage?

EICHENLAUB: Because our driveway itself is pitched away from the garage.

TEN HOEVE: I understand but I thought you said it is still going in that direction even adjacent to the house.

EICHENLAUB: Right. Well, we've got a foundation. The garage door itself is on the easterly side of the dwelling.

TEN HOEVE: I'll defer to our engineer.

MANCUSO: I have a concern about the grading and the passage of water through the subject property.

DEL VECCHIO: Would a slot drain be a more acceptable remedy here?

MANCUSO: Some sort of drainage...I'm not so sure a slot drain would work since it is a heavily treed area on the adjacent lot...that would tend to need a

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lot of maintenance and potentially clog up. But some sort of drainage is needed in the rear yard to allow it to continue past that proposed dwelling that is sitting pretty much in that isolated wetland area that's acting as a natural detention basin.

It seems problematic that a house is going to be situated in an area that serves to store water historically.

EICHENLAUB: You had mentioned the fact that you saw some sort of boggy area...the boggy area you are talking about is not in this isolated wetland area.

MANCUSO: It was when I was there.

EICHENLAUB: No portion of the house is within that isolated wetland area.

MANCUSO: Perhaps it would be helpful if some of the trees...if there was some sort of property markers to better get our bearings because so much of the property has been disturbed...I saw there was a lot of filling with woodchips and a lot of activity going on. Perhaps if some of the trees that were to remain and some of the trees that were to be removed were marked, we could get a better idea of our bearings and see exactly how the proposed improvements relate to the existing condition. That might be helpful.

Something like the corners of houses, just a couple of permanent markers so when we walk the site we can get a better feeling for our bearings.

Another issue was...you keep mentioning seepage pits and I can appreciate seepage pits would work on the upper lots by Rivervale Road but how effective do you think pits would be in that lower area?

EICHENLAUB: We did test pits for Lot 1.03 and we went down 10' and there was no water. We put the seepage pits for 1.02 at the higher side or easterly side of the property to get it away from that wetland area. There were test pits done and I believe I handed out soil logs and the permeability results from the soil samples we took.

MANCUSO: You just mentioned perhaps additional seepage pits to accommodate the runoff from the shared driveway in response to some of the questions from board members...

EICHENLAUB: That would have to be located to the front or easterly side of that dwelling on proposed Lot 1.03.

MANCUSO: That seems to be to the east side of 1.03.

Ok, one other question...I believe the property owner of Lot 4, and I'm sorry I didn't get your name, mentioned that a lot of water does run to the south onto Lot 4 ... with the regarding around that existing dwelling it appears that there would be more water being pushed toward that area. Previously the grades were running in more of a westerly direction directly toward the open swale and now to accommodate the regarding of the proposed shared driveway it looks like a lot of those grades are now headed directly south.

EICHENLAUB: Are you talking about on the west side of the dwelling on 1.02?

MANCUSO: Exactly. 131, 132, 133 all the way up to the proposed driveway. Would that not direct more water towards Lot 4?

EICHENLAUB: The only draining in that direction is on the west side of that dwelling and that's the direction the flow goes now. The flow on the

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driveway itself is being retained on the driveway. So there is no flow coming off the driveway into that area, it would simply be the lawn area on the west side of that dwelling. That's the direction it is going now. The slope there is a little steeper because we've raised the grade but that's the direction it is flowing now.

MANCUSO: It appears from the existing contours that it is probably more toward the west as opposed to toward the south.

EICHENLAUB: In the area of the proposed driveway you are correct but if you would look at the contours that are intercepting the proposed addition, that would be contour 131, that all drains in a south to southwest direction.

MANCUSO: Ok, thank you. I think those are my questions for Mr. Eichenlaub. I did have other questions for Mr. Albin. Is it appropriate to ask them now or should we wait?

TEN HOEVE: I have a few questions, so why don't we finish up with Mr. Eichenlaub now and he can be done.
Rick, did you design this plan?

EICHENLAUB: Did I design it? My office did.

TEN HOEVE: I mean in terms of the layout of the lots.

EICHENLAUB: Yes.

TEN HOEVE: Did anyone else participate in the decisions as to how the lots would be laid out or how many lots would be created?

EICHENLAUB: No, we certainly consulted our client.

TEN HOEVE: Did the planner participate at all in the design of it?

EICHENLAUB: No, not really.

TEN HOEVE: It was presented to the planner?

EICHENLAUB: The planner reviewed it prior to it being 100% complete but the lots were already established.

TEN HOEVE: The basic layout was designed by you and your client?

EICHENLAUB: Correct.

TEN HOEVE: Were you given any instructions in terms of how many lots you should try to fit onto the parcel?

EICHENLAUB: Well, we...

TEN HOEVE: As many as you could?

EICHENLAUB: Like any other client. We obviously looked at it and we carefully reviewed what we needed to minimize any variances that we might be seeking but we felt comfortable that we could get four lots on this site.

TEN HOEVE: Well, that's where I'm going...if you have three lots wouldn't you have fewer variances or maybe variances that weren't as substantial in extent?

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EICHENLAUB: Well, we'd be eliminating a lot so the variances that were attached to that lot, we'd be eliminating.

TEN HOEVE: And I guess you would also be minimizing the impact on wetlands area and environmentally sensitive areas if you reduced the number?

EICHENLAUB: That really comes down to how we reduce it. We have an existing structure and we wanted to maintain it. We certainly would want to maintain the structure that is located on Lot 1.02 and in order to access that we would have to have the crossing. Except as Eve pointed out, the elimination of this isolated wetland, there is very little impact from the dwelling on 1.04. The impact to the wetland is because of the crossing for the driveway to 1.02.

TEN HOEVE: How is that access now?

EICHENLAUB: The existing dwelling?

TEN HOEVE: Yes, the one you are trying to preserve.

EICHENLAUB: Through the driveway that comes off of Rivervale Road.

DEL VECCHIO: But that driveway does not reach the home on Lot 1.02, it is nearly 100' short.

TEN HOEVE: You can ask him a lot of additional questions or redirect if you want.

DEL VECCHIO: I just wanted to make sure you have clear answers to your questions.

TEN HOEVE: You can put anything else on the record you want obviously. But right now that it accessed by the driveway you were just referring to.

EICHENLAUB: Right, so the user of this dwelling if they had a car, they would enter the site through the driveway off of Rivervale Road and as Mr. Del Vecchio indicated, the terminal end of the driveway itself, is probably in the neighborhood of 50 to 60' from the dwelling.

TEN HOEVE: That's an existing house, right?

EICHENLAUB: Correct.

TEN HOEVE: And it has been occupied and that's how it has been used.

EICHENLAUB: I am not sure if it is occupied at this time but yes, that's correct.

TEN HOEVE: For all time that is has been there, that's how access has been provided and I guess you could continue to provide access simply by extending that driveway?

EICHENLAUB: Under this proposal?

TEN HOEVE: No..you don't have to have access off of Local Street to that property. It never has had that.

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EICHENLAUB: No...we would then have to create an easement for that lot and a driveway would have to run down the southerly side of Lot 1.

TEN HOEVE: Again, because you are constructing a new dwelling that is not there now.

EICHENLAUB: Right. I would certainly argue the point that the driveway that we are proposing for the dwelling in this location would better service this especially for emergency vehicles than a narrow driveway coming down into an easement on Lot 1.

TEN HOEVE: I understand that argument but again, all of that is motivated by the desire to keep that existing structure as opposed to relocating...

EICHENLAUB: We admit there is a reason for that. The fact that we've got a wetlands situation there, they allow us to expand on that. If we were to take that down, we would have difficulty. That's why we are looking to expand on the dwelling as it presently exists.

TEN HOEVE: I understand that. If that dwelling were taken down it could be located closer to Rivervale Road.

EICHENLAUB: No, in fact we are taking a portion of that dwelling down so we don't need an additional variance. The easterly side of that dwelling we are removing a portion of so we are not encroaching on the side yard that we are creating.

TEN HOEVE: You are creating two new lots where the only frontage on the street is 25' on Local Street?

EICHENLUAB: Correct.

TEN HOEVE: Do you know of anywhere else in the borough where that exists?

EICHENLAUB: At the end of a dead-end? No.

TEN HOEVE: Do you know of any other lots that have 25' frontage on an improved street?

EICHENLAUB: I believe the planner is going to touch on that.

TEN HOEVE: Ok, but you don't?

EICHENLAUB: No, I haven't researched it.

TEN HOEVE: Are you aware of a provision in the Subdivision/Site Plan Review Ordinance that requires that dead-end streets that end should have cul-de-sacs?

EICHENLAUB: Yes.

TEN HOEVE: I know there has been some testimony....what's the reason for that, by the way? Engineering-wise.

EICHENLAUB: If we did not have the wetlands....

TEN HOEVE: No, my question is what is the engineering reason for that requirement.

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EICHENLAUB: To have a proper turnaround at the end of the street.

TEN HOEVE: And there has been some testimony with regard to a cul-de-sac...did you explore that option?

EICHENLAUB: Yes.

TEN HOEVE: And what were the reasons you decided not to do that?

EICHENLAUB: The disturbance within the wetlands. The impact that would have.

TEN HOEVE: Isn't that again tied to the fact that you want to have four lots created? If you were going to create only three lots...

EICHENLAUB: Well, to be perfectly honest with you, you would get the cul-de-sac in ... these are oversized lots...we've got lot areas for 1.02 of 28,000 and for Lot 1.03 we've got 27,000...if we were to come in here with a fully conforming cul-de-sac bulb, forgetting about the wetlands at this point, we would still have 15,000 sq ft on those two lots.

TEN HOEVE: I understand that. That wasn't my question. My question was, couldn't you configure a three-lot subdivision whereby you would have a cul-de-sac and perhaps have a less significant wetlands impact?

EICHENLAUB: I don't believe so. I think we would have more. Are you talking about where the cul-de-sac....

TEN HOEVE: Yes.

EICHENLAUB: No, I think we would have a greater impact on the wetlands with a cul-de-sac. If we were to place a cul-de-sac in this area here and we'll take them one lot at a time...if we utilize this lot, our front yard setback would be pushed way back into the house....

TEN HOEVE: I'm asking if you did it with a three-lot subdivision not with four lots.

EICHENLAUB: I'd still be crossing the wetlands with a driveway, so it would be the cul-de-sac as well as the driveway impacting the wetlands.

TEN HOEVE: My question is would it be more or less significant impact than what is proposed here.

EICHENLAUB: I think it would be a greater impact.

TEN HOEVE: More wetlands would be utilized?

EICHENLAUB: Yes, exactly. We would have to disturb a greater amount of the wetlands.

TEN HOEVE: Would you compare the shared driveway and the 25' frontage to a flag lot situation? Would you think it is comparable to a flag lot, particularly with the existing dwelling?

EICHENLAUB: I don't know if you would be able to classify it as a flag lot...it doesn't have the standard narrow stem feeding into a much wider, larger developable area at the back of that stem.

TEN HOEVE: It still has a very narrow area on frontage...

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EICHENLAUB: Oh, absolutely.

TEN HOEVE: I'm not asking you if it is identical, I'm just saying would you compare it to a flag lot.

EICHENLAUB: In the amount of frontage we have? Yes.

TEN HOEVE: The property line for the shared driveway...what is the distance from the driveway to the property line? There is a Subdivision/Site Plan Review that says the driveway needs to be located a certain distance from the property line.

EICHENLAUB: I believe you are right...it's five feet.

TEN HOEVE: Does this?

EICHENLAUB: We are within that five feet.

TEN HOEVE: So you encroach

EICHENLAUB: Right.

TEN HOEVE: I am not sure if it is a Zoning Ordinance provision or if it is a waiver from the Subdivision/Site Plan, so you would need either a waiver or a variance.

EICHENLAUB: Right, but the portion of the driveway is within the feet of that property line to service that particular lot. It is not as if the driveway is encroaching on a lot adjacent to the lot line or the lot that is being encroached on...the encroachment is for the lot that is being serviced by that driveway.

TEN HOEVE: You are applying it to both lots then? Does the line subdivide both of those properties?

EICHENLAUB: Correct.

TEN HOEVE: I'm not sure that I would agree with that but in any event it is not outside the five feet.

EICHENLAUB: It is within five feet of the property line.

TEN HOEVE: What is contemplated with regard to maintaining that driveway? Is there going to be an easement... is it going to detail the conditions property owners would have and who would be responsible and how it would be plowed ... what is your contemplation?

EICHENLAUB: Obviously the driveway itself would have an easement. There would be an easement granted to Lot 1.02 from 1.03 to establish the driveway as it continues in a southerly direction beyond the driveway stem servicing Lot 1.03. So that would be an easement granted to the Lot 1.02 for the purpose of establishing a driveway.

TEN HOEVE: You're saying that one property owner is responsible...1.02 is responsible for up to the point the other driveway is and the property owner in 1.03 is responsible for the part of the driveway from his property to the street?

EICHENLAUB: No, that's not what I am saying. They would both be responsible from basically where Lot 1.03 would turn off of that driveway

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into their garages...from that point they would both be responsible for that because both of them are using it. It is the common area between the two of them.

TEN HOEVE: I'm just curious. How does it work? Who plows it, who shovels it, who maintains it?

EICHENLAUB: That's something I'm sure we could write right into the deed or easement itself.

TEN HOEVE: I think this question has come up in other cases where you have been the engineer.

You're aware of the fact that with wetlands areas the property owners are frequently unaware of the fact that they have wetlands restrictions on their property.

EICHENLAUB: I am sure that's the case.

TEN HOEVE: It happens all the time. I'm sure you have been involved in cases where people have tried to put up structures or put in pools or done things without any knowledge that they were encroaching and violating some wetlands restrictions.

EICHENLAUB: I understand and more often than not, that ends up happening when they simply put them up without getting the proper permits. All of these wetlands areas, the easements, they would all be shown not only on the deed but on the survey itself. There are restrictions to the property.

TEN HOEVE: That was my question. There are going to be restrictions in the deed themselves?

EICHENLAUB: Absolutely. The State is requiring that.

TEN HOEVE: I think this question also came up in another application that you were involved in. The ejector systems for the sewers, again, while I don't have any direct experience with it, I think situations arise where purchasers of property may not be aware of every detail that involves their dwelling that they are purchasing and are perhaps unaware of the fact that they have an ejector pump system to pump the sewerage and if that pump breaks down, they have a real problem.

EICHENLAUB: Those systems are usually in the basement and they are a large tank so if they were to go into the house, they would be well aware that it exists. I'm sure they would at least ask what that was.

TEN HOEVE: Because frequently what happens is the town gets called and told to fix the problem even though it is, obviously, not a town problem because the property owner is unaware. I'm just asking if there is any suggestion that you have to deal with that issue with regard to the notification to the purchaser.

EICHENLAUB: That would really be the responsibility of the builder to inform the prospective purchaser that that exists or even the realtor.

TEN HOEVE: Just a couple more questions. I think you testified last time that the basements are going to be within two feet or less of the water table?

EICHENLAUB: Yes.

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TEN HOEVE: Does that change? Does the water table change with either seasons or rainfall?

EICHENLAUB: It can but we also did our test pits back in March...we had a significantly wet winter, a combination of snow and rain and the test pits were done specifically at that time, being the wettest time of the year. Again, one of the things we look for is mottling (?) within the soil, which would indicate what the high water mark was and we certainly believe we were close to it, if not right on it when we did our excavation.

TEN HOEVE: I have no other questions.

MAGUIRE: The storm drains, who will be responsible for the maintenance of the storm drains that empty into the wetlands?

EICHENLAUB: The homeowner. They are not the responsibility of the municipality.

MAGUIRE: On your impervious coverage chart...proposed Lot 1.02 you have calculated square feet for the dwelling and then another 1,169 for additions? That's to reflect the existing house and then you are expanding it?

EICHENLAUB: Correct. That would be the garage area to the north and the addition off the back side of the south side of the structure.

MAGUIRE: Dropping down then to the driveway, are Lots 1.02 and 1.03 swapped?

EICHENLAUB: I'm sorry?

MAGUIRE: If I am looking at the drawing correctly, Lot 1.02 has a shorter driveway than Lot 1.03.

EICHENLAUB: This is Lot 1.02 and basically the driveway to get to the drawing on 1.02 you would have to come from the end of Local Street, traverse the entire length of the driveway. The driveway for 1.03 ... are you saying on the chart?

MAGUIRE: Yes. I think it might be a mistake.

DEL VECCHIO: The number on the chart for impervious coverage for the driveway is larger on Lot 1.03 than it is on Lot 1.02 and I think the answer is that most of the driveway that exists is actually existing on Lot 1.03 even though it is meant to traverse through Lot 1.02.

EICHENLAUB: It is still on 1.03.

MAGUIRE: I see. Thank you.

OPPELT: On Lot 7, which is on the very bottom of the sheet, where would the water be flowing from?

EICHENLAUB: If I'm not mistaken the back of this property flows in the most part for a south to southeasterly direction.

OPPELT: So the water that we were talking about coming around the back of the house....

EICHENLAUB: Will not be flowing onto Lot 7, no.

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BOGART: I was out with the board engineer when we did site inspections and as she had mentioned, it is very difficult to figure out exactly what was going on because there was disturbance and it looked like some of the trees that are currently there are not on your tree location plan. Particularly in the northwestern corner...

EICHENLAUB: Northwestern corner...in this area here?

BOGART: Yes.

EICHENLAUB: Were they large trees, over 6" in diameter?

BOGART: Yes.

EICHENLAUB: I will certainly check that but I would be surprised...

(someone off microphone, purchaser perhaps, said there were two dead trees that had been removed at the request of neighboring property owner)

I think what Brigitte is saying is that it appears that now there are more trees than what we are show on our plan. I would have to look at that and let you know. I know our surveyor is pretty careful and flags each one of those trees as they are located.

BOGART: That was my next comment. Maybe you could go back and look at the tree location plan and tag the ones that are to be removed so we can get an idea of what the disturbance level is and where the land that is actually going to be disturbed by the development is.

EICHENLAUB: I don't have a problem doing that but I would have to discuss that with my client.

BOGART: You were talking about if you had three lots and you put a cul-de-sac in and how that would affect the wetlands...it seems to me that if you have a cul-de-sac off Rivervale Road and just developed the eastern portion of the property and left the entire western portion as is, that you wouldn't have any impact on the wetlands and you would have three conforming lots. Is that not true?

EICHENLAUB: I had a feeling you were going to ask that question. If we were to bring a cul-de-sac in off Rivervale Road and we bring it along the southerly property line and we have two lots fronting on that to the north side of it...to get the necessary areas you would have a depth of lot of 137' and we would need a width of 110', which would bring the lot lines back to just about the wetlands area or the side yard setback line that we show on the plan now.

To obtain that we would have to bring a cul-de-sac in off of Rivervale Road and the bulb would be located in this area here, which would be the house as we show it on Lot 1.02. The reason being is, if we were to come in and terminate the cul-de-sac in this area, which would be to the rear of what we are proposing as Lot 1 now, that cul-de-sac bulb would extend well into the lot that we would be trying to create here and there would be no building envelope. You have the 30' front yard and the 45' rear yard...you wouldn't have a building envelope.

As I said, if we take the cul-de-sac and we extend it all the way back so that the bulb would extend back into what now is Lot 1.02, which would basically fall within the footprint of the proposed dwelling...

TEN HOEVE: Existing dwelling, you mean.

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EICHENLAUB: I'm sorry...existing dwelling that will remain on Lot 1.02, that cul-de-sac bulb would then encroach within any building envelope and we wouldn't have a building envelope or the proposed dwelling on what would be the remnants of the property to the south.

The reason we are able to do this within the wetland and wetland buffer is we've already got the structure and we are allowed to add onto that structure so many square feet. If we were to create a new structure to the south of the proposed cul-de-sac that we are talking about here, the majority of it would be within the buffer area and as I indicated the bulb of the cul-de-sac, even if I were to split it in either direction, half to the south and half to the north, would minimize the amount of building envelope to that lot.

TEN HOEVE: Is the answer then, No?

EICHENLAUB: I wouldn't be able to get a third lot in at the end of that cul-de-sac.

TEN HOEVE: Ok, you couldn't come in off Rivervale Road and put a cul-de-sac and have a three lot subdivision.

EICHENLAUB: No. That was looked at.

OPPELT: On either property then....

MESIANO: Yes, why couldn't you go on the other side....

EICHENLAUB: The reason I came in off the south side was that I had much more room before I encroached on the wetlands or the wetlands buffer. By bringing it in on the north side, I'm right on top of the wetlands buffer within less than 140' so what would happen is, I would certainly have a greater impact on the wetlands and the wetlands buffer by bringing the cul-de-sac in on the north side.

TEN HOEVE: Is the limitation that you would not comply with lot area requirements if you did it?

EICHENLAUB: No, not at all.

TEN HOEVE: What is the limitation?

EICHENLAUB: As I indicated, I would be able to...

TEN HOEVE: No, I meant with the first proposal that you were talking about.

EICHENLAUB: With the cul-de-sac coming in off the south side....no, I would be able to get lot areas. I would be able to get two lot areas for the lots that would be along the northerly section of the property. The remaining property would all be one lot, which would be the third lot. The problem there is I don't have a developable area. I don't have available footprint area to get a house in there. I would be encroaching well into the buffer and the wetland area just to get a house in because the bulb of the cul-de-sac would be extending to the south, which would choke off what is now buildable area.

I wouldn't be able to get a house in there.

BOGART: Take a step back..if the bulb was shorter, behind the house on Lot 1 and you flared the lots so they weren't just rectangular, would that do it?

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EICHENLAUB: I'll go back...if I were to come in and start the bulb directly behind the house on what is now Lot 1, we are talking about a fully conforming bulb now, 100' or 98' radius, the dwelling that would be located to the northwest of the property would fall within the wetland buffer and the wetland area itself. It would be a brand new structure...

BOGART: It falls within the wetlands and the wetland buffer now.

EICHENLAUB: I don't know if the State would allow us to do that.

MESIANO: Isn't that where it is now?

EICHENLAUB: No. The two proposed dwellings aren't encroaching on that wetland...

MESIANO: Not 1.02 and 1.03...the other one.

EICHENLAUB: Lot 1.03? I'm outside the buffer itself. There is an encroachment to get the driveway in. That is one of the general permits we are seeking from the State to allow us to do that.

MESIANO: So you expect them to be more lenient for the encroachment of the driveway than an encroachment for the dwelling.

EICHENLAUB: That's my feeling but I think Mr. Albin can better discuss that with the board.

BOGART: I think Mr. Albin can comment on the impact on the wetlands on that type of design.

EICHENLAUB: Again, we haven't reviewed that with Mr. Albin, this would be all new to him. You would have to ask him.

TEN HOEVE: If you are saying it couldn't be designed even if the bulb was moved a little bit so that it encroached into the wetlands a little bit and the paved area was going to be similar to all the driveway area...

EICHENLAUB: You're talking about the cul-de-sac bulb in this area here?

TEN HOEVE: Yes.

EICHENLAUB: Even if I were allowed to do that, what that does is...let's say the bulb starts here, my 30' setback for this particular dwelling on this lot goes back here and I wouldn't have any developable area. This is all buffer here and this is all wetland. So I can't slide the house to the west. I would have to keep it up in this area here and there is just not the building area available to me there because of the 30' frontage and 45' rear yard.

TEN HOEVE: There might be variances required but I think the question that the board might have, is the extent of the variances that were required and how those variances compare to having two lots with 25' frontage on a dead-end street. Those are considerations that the board would want to weigh.

EICHENLAUB: Ok, let's say we were able to get variances from the board, I would still have to discuss this issue with Mr. Albin whether or not the State would even entertain that.

BOGART: I am sure you know what my next question is going to be too...

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EICHENLAUB: Go ahead, fire away.

BOGART: You keep mentioning that you looked at a fully conforming cul-de-sac. Have you looked at doing it slightly less with a 40' radius because even that would be better than not having any street access to those two back lots there.

EICHENLAUB: Have I looked at it? No, not with a 40'.

BOGART: It just seems there may be some compromises and benefits to looking at a design that would have less of an impact to the wetlands even if a different kind of variance would be required...this plan still needs a number of variances and has an impact to the...

EICHENLAUB: Well, let me ask you this. We are talking about three lots. If we were to get three lots off a cul-de-sac coming in off Rivervale Road...in essence we could still get a lot back in this area here so there would only be one lot being serviced off of Local Street.

BOGART: I'm glad you brought up that one because that was going to be my next question. I have a concern with that lot in particular because we talked about the seepage pits, we talked about the deed restrictions to the wetlands area, the buffers and then we started talking a little bit about not interfering with the drainage from the off-site lots and how that was going to be impacted and all of a sudden you are taking away all the useable land area for that lot, even though it meets the lot area requirements, there is no place you could actually do a pool, there's no place they could put a shed...how do you ensure that that remaining lot is not going to be developed with fences, berms or sheds or anything.

EICHENLAUB: I'm not sure that that is 100% correct. The way we show it now, we have a dwelling, we have a proposed deck and then we have an expanded patio area. The patio area would be in addition to the deck. But there is area still outside of that buffer area where a shed could be installed.

BOGART: Yes, there probably are little pockets.

EICHENLAUB: There are areas, yes.

BOGART: My question to you is how do we delineate those for future homeowners so they are not creating drainage problems or any other type of problems with the surrounding residents. We've all laid out the facts here and we all understand that there are prohibitions to the site development but in the future, who is going to know that and how are we going to convey that message to residents 20 years from now?

EICHENLAUB: As I indicated where we run into problems with that is when a resident comes in and puts up a shed or makes improvements to his property without getting proper permits. I know for a fact that your Zoning/Construction Official requires that when improvements are made they must come in with a map...all of that would be delineated on the map.

BOGART: That's my question. What would be delineated on the map?

EICHENLAUB: The wetlands and restricted areas and easements.

BOGART: Is there going to be an easement to allow drainage from all the lots that...

EICHENLAUB: Are you talking about the drainage from adjacent lots?

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BOGART: I'm talking about a combination of all these things that affect the lots.

EICHENLAUB: There would be nothing to prevent them from doing that. There are no restrictions on the deeds against gardening and making those types of improvements outside the wetland area.

BOGART: But those types of improvements could affect (?).

EICHENLAUB: There's a possibility but again, one of the reasons we are showing the plantings is that they would be initially installed to make sure that is not the case. 20 years down the road, 15 years down the road, a couple of those trees die and they decide they want to come in with a berm and plant it up and put plantings on it, you basically have no control just as we have no control on our neighbors preventing water runoff from Mr. Prusha's property right now to the south of us. If they wanted to come out there and build a berm.

BOGART: That's true but that is not the application before us.

EICHENLAUB: I know so I guess my answer is we wouldn't have any control in that sense.

BOGART: That is a major concern of mine particularly with that last lot to the west because there seems to be a lot of restrictions that won't carry over if this application is approved.

MAGUIRE: We've had that case before and didn't we deed restrict and say they couldn't put a pool or patio in.

MANCUSO: We have had instances where there are specific drainage easements assigned to the property to allow the water to continue. One of the recent subdivisions that was approved had a whole drainage system.

MAGUIRE: And that was included in the deed?

MANCUSO: It was on the plat.

BOGART: I know you are going to look into some sort of drain in that area. You had mentioned to me that you would look into some sort of drainage easement or something that would address that issue.

EICHENLAUB: More or less a restricted area that they couldn't put plantings in? Who would the easement be to? It wouldn't be drainage to the township, it would simply be drainage for that lot...a restricted strip.

MAGUIRE: The patio on Lot 1.03. What is that going to be constructed of?

EICHENLAUB: At this point, we don't know that there is going to be a patio there. We simply show that there would be area available for use such as a patio, an above ground pool, what-have-you...it is still useable space. It could be concrete or it could be pavers if they wanted to put a patio in.

MAGUIRE: That's one of the permits you applied for, right? For the patio in the isolated wetlands?

EICHENLAUB: No, the isolated wetland was simply to fill it completely...to eliminate it. So whether we have a patio there or not, we are looking to eliminate that so that we can establish a lawn area there.

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MAGUIRE: The walls along the shared driveway..what is the height of those walls?

EICHENLAUB: We've got a wall height of 4 ½' on the northeast side and we've got wall heights of approximately 5' maximum on the south or southwest side. So 4 to 5' at maximum and then they taper down to 0 as you run away from that pipe that crosses beneath that driveway.

MAGUIRE: The drawing says 3' maximum.

EICHENLAUB: I'm sorry, which drawing are you referring to?

MAGUIRE: Four of six.

EICHENLAUB: Six?

MAGUIRE: Four of six.

BROUWER: Proposed linear foot landscape wall, 3' maximum.

EICHENLAUB: At the crossing that wall including the pipe that runs underneath it, from the invert to the top of the wall will be 4 ½ to 5'...but, mind you, 24" of that is the pipe itself.

So if you were standing at the top of the wall looking down at the invert of that pipe you would be looking down 5' below your feet.

MAGUIRE: Are there going to be guard rails there?

EICHENLAUB: Yes, the other thing...and I am just going to take a quick step back...and Mr. Albin, I'm sure is going to touch on this...

One of the things that the State had requested is that we minimize the disturbance and try to pick that 24" pipe up that we show there...to pick it up so we are not as deep with it...so we're not excavating down below the existing grade within the wetland area.

So we are going to revise and we have revised the plan that went down to the State for an elliptical pipe rather than the circular pipe that we have there so it will be an elliptical pipe that has a 19" deep depth and 31" wide. So we are reducing that by an additional six inches.

DEL VECCHIO: Just to follow-up...the actual wall height, physical wall dimension is not going to exceed 3' but the area between the grade and the pipe, on top of which the wall sits gets up the 5'.

EICHENLAUB: That's what I said.

DEL VECCHIO: And in terms of the planner's input to this project, a meeting was conducted with yourself and the planner prior to the submission of this application to secure the planner's input and permits of the design you had prepared on a conceptual basis (paper crackling)...

EICHENLAUB: That's correct. I had indicated we did meet with the planner.

DEL VECCHIO: And the planner was given an opportunity at that meeting to offer any comments or suggestions or statements on how to improve, change or alter the conceptual plan that was in preparation at that time.

EICHENLAUB: That's correct.

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DEL VECCHIO: And did the planner make any suggestions to you that were not accepted?

EICHENLAUB: No.

TEN HOEVE: I have one follow-up. Were there changes that he suggested that you did include in your final design?

EICHENLAUB : No.

TEN HOEVE You just left it as it is.

EICHENLAUB: There were no suggestions given to us.

TEN HOEVE: Thank you.

DEL VECCHIO: Mr. Eichenlaub, with regard to the other conceivable designs and considerations for this project including a cul-de-sac off of Rivervale Road, you did fully explore those prior to finalizing this design that you have presented to the board?

EICHENLAUB: We spent a considerable amount of time looking at various alternatives.

DEL VECCHIO: The other alternatives that were looked at included the cul-de-sac alternative that was discussed in your cross-examination.

EICHENLAUB: Absolutely.

DEL VECCHIO: And based upon your work in looking at the other alternatives, did you come up with a plan whether it was four-lots or three-lots that would yield less of an impact to the wetlands area than exists on site.

EICHENLAUB: No.

DEL VECCHIO: Thank you.

TEN HOEVE: I have one final then. When you did attempt to rework the plan with the cul-de-sac off of Rivervale where...

EICHENLAUB: I didn't attempt to rework it...it was one of the initial...

TEN HOEVE: No, that was my fault, I poorly worded that. I wasn't trying to put words in your mouth.

EICHENLAUB: No, I understand.

TEN HOEVE: When you were considering other alternatives, were you focusing on a three or four-lots...

EICHENLAUB: Again, I was looking to maximize, so it would be four-lots.

TEN HOEVE: Thank you.

DEL VECCHIO: I have nothing further.

MITAL: Thank you, Mr. Eichenlaub.

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DEL VECCHIO: At this point, I would like to recall Mr. Albin and as Mr. Albin comes forward, I am going to remind him that he was previously sworn in, followed-by and I don't know if he has a preference with continued testimony with some additional direct....because since he last appeared here, Mr. Albin did have occasion to have an in-person meeting with the DEP field representative and their supervisor concerning this application and the easements....if I am wrong, Mr. Albin can correct me, but that meeting was held on June 2nd.

John Albin, Environmental Consultant came forward.

ALBIN: That's correct.

DEL VECCHIO: Mr. Albin, can you tell me how that meeting came about and what occurred at that meeting?

ALBIN: DEP requested that we come down to the department offices to discuss the application because they had some clarifications they wanted. In addition, they wanted to place some restrictions on the property in the event that a permit authorization was given.

The meeting was very productive. The department requested a number of minor, very minor changes to the plan, primarily in the area of grading around the existing structure, which has been discussed tonight on Lot 1.02 to minimize it to the extent possible.

The remainder of the project, as Rick mentioned before, that were concerned about having too much depth or cut to install the cul-de-sac under the driveway. They were concerned that if it was cut too deeply it would tend to drain the wetland areas to the north of the driveway and dry them out. We discussed that and that we would look at either dual pipes, smaller diameter pipe, elliptical pipe, raising the driveway and that information was given to Rick and they have addressed that and have an invert elevation of the pipe at grade.

The other thing that DEP wished to have was a conservation easement on the wetlands and I can describe it to you. It covers to the north of the house on Lot 1.02 and the driveway, all of the existing wetland area...

DEL VECCHIO: I am going to ask you to describe it with an orange highlighter and maybe you can generally depict it on the map...I believe that is Sheet 4 of 6 of Mr. Eichenlaub's drawing. Maybe you can just generally draw an orange line around the conservation easement.

ALBIN: This area to the north of the driveway and the house on proposed Lot 1.02 would be put into a permanent conservation easement with the exception that those portions of the Conservation easement that exists as lawn area at this time, would be allowed to remain as lawn and they would be for the use and pleasure of the homeowner of this lot.

It would never be able to convert it into a structure, pool, playground or anything else but they would be able to continue to use it as a lawn.

Now, to the south of this area, the Conservation easement will be delineated by the eastern edge of the wetlands proceeding down along the property line to the western edge of the existing stream, drainage swale and proceeding back in this direction to the driveway and closing off there with the same exceptions because a portion of this is lawn.

DEL VECCHIO: Thank you. I hope that was easier than trying to verbalize it.

Did the DEP also ask you to withdraw one of the permit applications you had made?

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ALBIN: Yes, they did.

DEL VECCHIO: Can you explain that?

ALBIN: DEP arrived at a determination that the permit for stormwater discharging into the existing drainage ditch was not required. They requested that we withdraw that part of the application.

DEL VECCHIO: Of all of the requests made of the DEP for changes, can they be accommodated in the design that has been submitted to the board?

ALBIN: Yes, they can....absolutely.

DEL VECCHIO: And it is your understanding that Mr. Eichenlaub is prepared to issue a new set of drawings reflecting that revision?

ALBIN: That's my understanding.

DEL VECCHIO: You heard in questions to Mr. Eichenlaub concerning the potential of bringing in a cul-de-sac from Local Street. Based on your meetings with the DEP and your prior experience with them, is it likely that the DEP would authorize a cul-de-sac to be installed in that area that you show as either wetlands or conservation area?

ALBIN: Actually that was subject of the discussion at our meeting and DEP prefers the arrangement as it is shown on the plan because it would have far less impact on the wetlands and the water courses in the area than the arrangements as shown on the plan.

DEL VECCHIO: Do you have any opinion or have you had the opportunity to consider whether or not a cul-de-sac brought in along the southerly property line from Rivervale Road toward the existing home on proposed Lot 1.02would a disturbance of those wetland areas be favorably viewed by the DEP?

ALBIN: Actually I did take a look at the concept plan earlier on in the project that showed that kind of arrangement coming in from Rivervale Road and proceeding in a westerly direction and having a cul-de-sac in the central area of the property and frankly it is not permissible. Even if you could get the cul-de-sac in there you would not be able to build any houses back there.

DEL VECCHIO: That's not because of zoning restrictions, that's because of the existence of wetlands and regulations by the DEP.

ALBIN: Yes, the current wetland regulations will allow a driveway across a wetland to gain access to a developable area. That's the principle behind it, you can't prevent development in a developable area that can be legally developed. But they will not allow you to build a house in a wetland or in a wetland transition area .. they are not going to allow a house.

DEL VECCHIO: Would it be fair to say then, that you participated fairly heavily with Mr. Eichenlaub in designing the alternate subdivision layout for this property so that the DEP regulatory impacts could be considered in the final design selected?

ALBIN: Yes, that is accurate...that's exactly what happened. I was consulted very early on as to the extent of the wetland areas and what the regulatory constraints would be in terms of developing the property.

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DEL VECCHIO: Thank you, Mr. Albin. I have no further questions of Mr. Albin at this time and make him available to the board for questions.

MAGUIRE: Why did DEP suggest or recommend you withdraw the permit to discharge into the culvert?

ALBIN: They didn't feel it was necessary.

MAGUIRE: You are going to be discharging into the culvert, right?

ALBIN: We are discharging into the culvert but we are not discharging directly into the wetlands. There is a fine difference but under the way DEP regulations are structured, it isn't actually required to get a permit for a stormwater discharge into a culvert even if the culvert discharges downstream into a wetland.

MAGUIRE: Can you tell me more about the conservation easement? That's a permanent easement?

ALBIN: Yes, it is.

MAGUIRE: And it goes along with the plot?

ALBIN: It will be an easement in perpetuity to the State of New Jersey.

BROUWER: The easement...does that preclude any temporary structures such as sheds?

ALBIN: It excludes all of those things.

BROUWER: Other than grass.

ALBIN: That's right. In that exception for the lawn area is only for those areas that are existing as lawn today. They wouldn't be able to expand and create any new lawn areas.

BROUWER: And the purpose of that easement is to?

ALBIN: To preserve the wetlands and the wetland transition areas.

BROUWER: So if you have grass and you want to maintain your grass and put chemicals down or something like that?

ALBIN: You are allowed to perform normal maintenance.

MAGUIRE: I did have one more question. The raising of the pipe will that have any impact of the flow off the property at the southerly end?

ALBIN: My understanding of the dynamics of the hydrology going through the site is that it will have no impact. But I would defer close examination to Mr. Eichenlaub.

BROWNE: How is the easement being enforced?

ALBIN: There are going to be a couple of things. It will show up on any survey of the property, first of all. There will be a filed easement. It will be enumerated in the deed and go along with the deed, so anyone purchasing the property will have knowledge of it. They will be advised of it, they will see it, they will have a copy of it.

Other than that, it is up to DEP to enforce it.

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BROWNE: So they would have to come and visit and see if there were any violations?

ALBIN: That is correct.

DEL VECCHIO: DEP has an enforcement division to do just that.

ALBIN: That is absolutely correct.

BROWNE: It would be expected that they would come and visit periodically?

ALBIN: Yes.

VON BRADSKY: How often would that be?

ALBIN: I couldn't hazard a guess but they do periodically...whenever an application is made to the department, the department personnel go out and take a look at the property. They also look at the adjoining properties and properties along the way and if anything looks out of line, they'll stop and make inquiries and if there is any cause, they'll refer it to the enforcement division.

OPPELT: I don't know if it is your question to answer or not...the utilities, the gas and water and sanitary sewer...that's going either over or underneath that pipe in the driveway..is that?

ALBIN: I would have to defer that to Mr. Eichenlaub.

DEL VECCHIO: If you like, Mr. Eichenlaub can answer that question.

EICHENLAUB: They will be underground and they will go over the top of the pipe. They will be within, as we show, the driveway itself.

OPPELT: So any repairs would have to rip the driveway up.

EICHENLAUB: That's correct. If it was necessary to dig that up and get to one of those buried lines they would be going through the driveway.

MANCUSO: I just have a couple of questions for Mr. Albin.

You had shown on the map that's there for us to look at the orange highlighted area which appears to be outlining what is labeled "intermediate resource wetland"...correct?

ALBIN: That's correct.

MANCUSO: And you had mentioned that the DEP stated that lawn areas could be utilized?

ALBIN: As lawn areas. They would be allowed to remain as lawn.

MANCUSO: Do they state at what point in time these lawn areas were developed? Meaning to say, were they existing lawn areas for a period of time, are they newly developed lawn areas? How do we define "lawn areas"?

ALBIN: It's the lawn areas that were present at the time of the DEP's inspection for the Letter of Interpretation.

MANCUSO: And do you know at what point in time this occurred?

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ALBIN: If you will give me a minute...the Letter of Interpretation was issued on November 13, 2009.

MANCUSO: That was only within the last 8 months or so...seven months, eight months?

ALBIN: That's correct.

MANCUSO: Is it your understanding that this lawn area had been existing for quite some time or was this a newly developed lawn area?

ALBIN: No, it was my understanding and DEP verified it through inspection of aerial photographs that those lawn areas had been there for quite some time.

MANCUSO: Meaning in excess of a year, an excess of 10 years...

ALBIN: In excess of 10 years.

MANCUSO: You had also mentioned that there was a remediation of wetlands needed in terms of replanting because the owner inadvertently encroached into the wetland and then stopped that encroachment when he learned he was in an area he shouldn't be working in. But when I recently visited the site, less than two months ago, there appeared to be fresh tire tracks in that same area. Could you tell me what activity is now occurring back there?

ALBIN: I have no idea.

MANCUSO: Perhaps someone else can answer that question.

And along with the tire tracks there was some mulch, grass clippings, fresh wood chips, things of that nature. So I was curious to know when all of that activity occurred and if that continued activity respecting the determination that the DEP is making in calling that a disturbed area whereas it appears that that was a natural area just recently.

ALBIN: The area that is to be restored by Mr. Prusha was delineated by the department personnel at the time of the field inspection that was made for the Letter of Interpretation.

MANCUSO: Last November.

ALBIN: It was actually a number of site visits before November...November 13th was they issued the Letter of Interpretation. We had at least two on-site meetings with department personnel and we were there in September, November and May 2009. So they were out there a number of times. They took a look at what was going on and what had happened and the area delineated to be restored is going to be restored.

MANCUSO: Yes, I recall you saying that and it is approximately in that intermediate wetlands area to the north of the shared driveway, if I recall, but that appears to be the area I just recently saw the tire tracks in.

So that's why I had a bit of concern. Is there continued activity in this area?

ALBIN: You would have to ask Mr. Prusha that question.

MANCUSO: As well as when I came in from Local Street, there seemed to be fresh woodchips, there seemed to be a lot of activity going on in an area that

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on your map is marked as in "intermediate resource wetlands" and that's why I had a concern. Perhaps the owner can answer my questions.

ALBIN: That's what I suggest.

MANCUSO: Thank you.

BOGART: Going back to the replanted area...it is my understanding that DEP requires a certain amount of survival rate for plants that you bring into that revegetated area?

ALBIN: Generally, what they require in a replanting is different than what they would require in a mitigation plan. Usual practice in a mitigation plan is that they require 85% of survival for a period of three years after the planting.

In the case of this particular wetland area, that we are discussing, the department and the property owner agreed to call an area a wetland that is primarily lawn...that was the first thing...it was primarily a lawn area...it was a very, very small area that had any wetland vegetation in it.

The area is a...I went back and I looked at the 1878 historic topographic maps of northern New Jersey and the area that we are discussing here was generally within a drainage-way or a drainage area of about 40 acres of land. So at some point in time, the development of the surrounding area interrupted the surface water flow. While there are remnant conditions in the soil that are indicative of a wetland, it is not necessarily, in fact, a wetland.

The reason we allowed the department to say, Ok, this area is a wetland is because it would have taken years of study and hydrologic measurement of the groundwater to establish whether or not it was clearly a wetland or not a wetland. In my opinion, most of the area is not a wetland, it appeared drained at the time we did our wetland delineation, at the time the department personnel were out at the property, there was no discernable groundwater in that area, so it really doesn't look like much of a wetland.

BOGART: My question was of the plantings...you are going to be replanting the area?

ALBIN: We are going to be replanting but there is no requirement for a survival rate.

BOGART: So if they all die, that's the end of it.

ALBIN: Well, they won't die. The plants that we are putting in there...we've done many, many replanting of plants and the plants that we are using in this particular case, are plants that will survive equally well in dry conditions and wet conditions. We fully expect them to survive.

BOGART: And if they don't.

ALBIN: Then it will be up to Mr. Prusha to replace them.

BOGART: And if he doesn't own the property.

ALBIN: It is only going to be for a period of a year or so. That's it. After that he's free. And if they spot the first year, they will survive. It's not like we are putting plants that are highly dependent on hydrology into an area with questionable hydrology.

If the area is truly a wetland, it will be wet enough for plants to survive. If it is not truly a wetland, they'll probably survive anyway because

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they are generally plants, shrubs and vegetation that would grow in a moist area as well as a wet area. And this being in the center of a drainage-way and receiving off-site drainage is a moist area.

BOGART: There is no language within the deed restriction to require the plantings to survive?

ALBIN: None.

BOGART: Can you tell me how this is different, the plan that you are proposing, than the typical plans we see, which if you are disturbing buffer areas or wetland areas you have to make it up on site with an averaging plan, provide for additional buffer areas or additional wetlands areas?

ALBIN: Yes, I understand your question. The mitigation requirements for wetlands kick in when you've disturbed more than 1/10 of an acre. In this case we are only disturbing about 1,800 sq ft of wetlands, which is well below the threshold to require wetland mitigation.

In terms of the wetlands transition areas, you're talking about transition area averaging. We are not engaging in any activities which require averaging of the transition area. The disturbances which may be within the transition area are permitted under the general permit authorization, which we are obtaining.

In addition, the existing dwelling, even though it is in the transition area and not in the wetland permit, which would allow expansion of a house that exists legally in a wetland applies to a house that legally exists in a transition area. So we don't have to do any transition area reduction by averaging.

BOGART: No obligation to mitigate any disturbed area.

ALBIN: No obligations whatsoever.

BOGART: And my last question pertains to the permit for the driveway crossing. My understanding that if you can provide an alternate plan that has less impact on the wetlands, that the DEP wouldn't grant that permit.

ALBIN: That's correct.

BOGART: Can you explain to me how a driveway coming off Rivervale Road would have more of an impact that you are proposing?

ALBIN: I understand your question but the question is how do we access a landlocked lot or a lot with the only public access that it will have is from Local Street. It won't have, by rights, access off of Rivervale Road.

BOGART: The DEP reviews that requirement based upon the fact that you've created that lot that only has access on Local Street.

ALBIN: That's correct.

BOGART: It doesn't review it on the fact that it could potentially have access on Rivervale Road.

ALBIN: That's correct.

BOGART: So basically it's relying on local requirements or a local board to approve that lot and then they would issue a permit based upon that approval.

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ALBIN: Their judgment with regard to their permits is based on their regulations alone and not on municipal ordinances.

BOGART: But if this board were not to approve a lot that had only access on Local Street, they couldn't technically issue the permit because you would have access off Rivervale Road, right?

ALBIN: If the lot had access, deeded access, off of Rivervale Road, which showed up on the plat, then you are correct.

TEN HOEVE: I think another way she's asking the question is, the DEP doesn't care about zoning issues, they only care about the wetland issues.

ALBIN: That is correct.

TEN HOEVE: And they leave it to the town to deal with the zoning matters.

ALBIN: Yes, sir.

TEN HOEVE: Can you tell me some of the details as to the proposal you considered for access from Rivervale Road...show me on the map where it was?

ALBIN: Yes, sir. The concept plan that I took a look at had a stub street coming in here with a cul-de-sac.

TEN HOEVE: It was along the edge of the property?

ALBIN: Pretty much along this property line, here.

DEL VECCHIO: Again so the record is clear...it is the southern property line.

ALBIN: The southern property line adjacent to Block 2007, Lot 2.

TEN HOEVE: And where was the cul-de-sac going to be?

ALBIN: The cul-de-sac was located in the area of the existing dwelling...

TEN HOEVE: It would have required the removal of the existing dwelling?

ALBIN: That's correct.

TEN HOEVE: And your conclusion was that such a development wouldn't permit a three-lot subdivision?

ALBIN: It would create a lot that you couldn't build on because you couldn't comply with the DEP regulations for wetlands.

TEN HOEVE: And the house can stay because it is existing there...it is in what would be wetlands if it wasn't built.

ALBIN: Well, the house is not in wetlands...

TEN HOEVE: I understand because it is a house.

ALBIN: Right. Well, it is not in the wetlands in any case. We looked at this area and there is no indication that any of this area is wetlands. Wetlands are close by but is within an wetlands transition area.

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TEN HOEVE: Right, the 50' transition area. And it stays because it is there.

ALBIN: It was legally existing prior to the implementation of the Freshwater Wetlands Protection Act.

TEN HOEVE: Those were my only questions.

MITAL: If there are no more questions from the board, I would like to extend it out to the public.

(there were none)

Thank you very much.

TEN HOEVE: That concludes the testimony that we are taking tonight since we have to go into a closed session to discuss some other matters. The hearing will be continued on July 28th. There will come a time when the public has an opportunity to present any evidence it may wish.

DEL VECCHIO: I would ask some consideration to be able to get onto that July 14th meeting. We have been going 30 days between meetings and will be going into our fourth meeting in July. I understand the board's calendar was full on the prior months but I ask for consideration to get on that July 14th meeting.

BEER: We have a conceptual that is coming in that night and will probably take at least an hour.

TEN HOEVE: In addition, the board has been proposing modified zoning ordinances and doing some additional planning work that it has been pushing off because it hasn't had sufficient time to address some of those issues. Some of what are probably shown on the agenda, which never get discussed at the night's of the meeting. But that's up to the board.

DEL VECCHIO: The other alternative is to request for a special meeting so we can finish the application.

TEN HOEVE: In the middle of the summer?

MITAL: Well, July 14th we have the conceptual meeting. So that takes us to the second meeting on July 28th.

TEN HOEVE: There won't be any notice sent to the public. This is the only notice you will get.

BEER: I will poll the board and professionals and check the calendar because this room is used on a regular basis.

DEL VECCHIO: The other alternative if the meeting date is not available is perhaps we could knock out sufficient time beyond 10:00 o'clock to try and finish this application including testimony from Mr. Preiss and perhaps have Mr. Eichenlaub talk about the changes you just heard from Mr. Albin that the DEP required.

TEN HOEVE: The policy of the board is to usually stop taking testimony at 10:30pm and the only reason it didn't do that tonight is because it has some other matters it has to discuss.

DEL VECCHIO: I understand that those matters come up. I am just hoping to try and block out time 30 days in advance of the 28th.

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TEN HOEVE: You're the reason it has come up.

BOGART: Mr. Del Vecchio, you mentioned that Rick would be testifying to the changes...to save time maybe you can just get some of our comments on the Landscape Plan.

DEL VECCHIO: Which comments are those?

BOGART: In the original memo that we did back in May.

DEL VECCHIO: Your comments of the 21st? That memo?

BOGART: Yes, it was May something.

DEL VECCHIO: I guess I misspoke. I would say that not only is he going to pick up Mr. Albin's comments but he will pick up all the others we have received along the way. All the reviews, including yours.

TEN HOEVE: And get the easement to Eve and to me?

DEL VECCHIO: I will give a copy to Mrs. Beer...I would give it to you directly but I don't want to get...

TEN HOEVE: No, that's fine, go to Mrs. Beer and we need an Extension of Time.

DEL VECCHIO: No, you will have it...I just wanted to confirm when you would be carrying the meeting to...that's July 28th and no further Notice.

TEN HOEVE: She'll still send you a document to sign.

APPROVAL OF MINUTES:

Motion made by Councilman Maguire to approve the May 26, 2010 minutes as written.

Second by Ms. Eisen.

AYES: Messrs. Von Bradsky, Mesiano, Oppelt, Brouwer, Mital, Councilman Maguire, Ms. Eisen.

ABSTAIN: Messrs. Browne, O'Donoghue

Motion made by Councilman Maguire to approve the June 9, 2010 minutes as written.

Second by Mr. Oppelt.

AYES: Messrs. Von Bradsky, O'Donoghue, Mesiano, Browne, Oppelt, Brouwer, Councilman Maguire.

ABSTAIN: Mr. Mital

APPROVAL OF VOUCHERS:

Brooker Eng. PE

Mitchell/Dutch Reform Church	\$160.00
Mitchell/Dutch Reform Church	240.00
L.C. Developers, LLC	80.00

Burgis Assoc. PP

Mitchell/Dutch Reform Church	\$145.00
Mitchell/Dutch Reform Church	582.50
L. C. Developers, LLC	181.25

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Motion made by Councilman Maguire to authorize the vouchers for payment.

Second by Mr. Browne

AYES: Messrs. Von Bradsky, O'Donoghue, Mesiano, Browne, Oppelt, Brouwer, Mital, Councilman Maguire, Ms. Eisen

Motion was made by Mr. Oppelt and seconded by Mr. Mesiano to confirm to go into closed session at 10:09pm to discuss COAH litigation and possible settlement.

Carried unanimously.

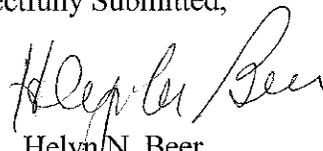
ADJOURN:

There being no further business to come before the board a motion was made by Mr. Browne that the meeting be adjourned.

Second by Mr. Oppelt.

Carried unanimously.

Respectfully Submitted,



Helyn N. Beer
Secretary

10:23pm.