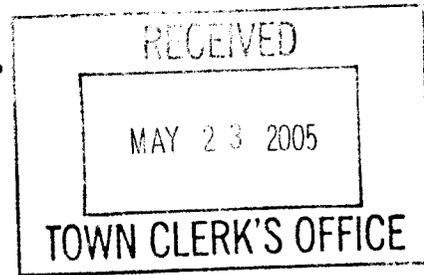




Town of New Windsor

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OFFICE OF THE PLANNING BOARD



**WEDNESDAY — MAY 25, 2005 - 7:30 PM
TENTATIVE AGENDA**

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES DATED:

APRIL 13, 2005 & APRIL 27, 2005

A. SARIS MOBILE HOME PARK – UNION AVENUE

REGULAR ITEMS:

- 1. SHADOW FAX RUN SUBDIVISION (03-23) JACKSON AVENUE
(CLEARWATER) Proposed 22-lot residential subdivision**
- 2. WAL-MART SERVICE STATION (05-15) RT. 300 Proposed filling station at
existing retail plaza.**

DISCUSSION

ADJOURNMENT

(NEXT MEETING – JUNE 8, 2005)

May 25, 2005

1

TOWN OF NEW WINDSOR

PLANNING BOARD

May 25, 2005

MEMBERS PRESENT: JAMES PETRO, CHAIRMAN
NEIL SCHLESINGER
JERRY ARGENIO
ERIC MASON
DANIEL GALLAGHER

ALSO PRESENT: MARK EDSALL, P.E.
PLANNING BOARD ENGINEER

MYRA MASON
PLANNING BOARD SECRETARY

ABSENT: THOMAS KARNAVEZOS
JOSEPH MINUTA
MICHAEL BABCOCK, BUILDING INSPECTOR

REGULAR MEETING

MR. PETRO: I'd like to call the May 25, 2005 meeting
of the New Windsor Planning Board to order. Please
stand for the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance
was recited.)

May 25, 2005

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APPROVAL OF MINUTES DATED 4/23/05 & 4/27/05

MR. PETRO: Approval of the minutes dated April 13, 2005 and April 27, 2005.

MR. ARGENIO: I'll make a motion that we accept them as written.

MR. SCHLESINGER: Second it.

MR. PETRO: Motion has been made and second that the New Windsor Planning Board accept those minutes as written for those dates. Any further discussion from the board members? If not, roll call.

ROLL CALL

MR. SCHLESINGER	AYE
MR. MASON	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE
MR. PETRO	AYE

May 25, 2005

3

SARIS MOBILE HOME PARK

MR. PETRO: Saris Mobile Home Park, Union Avenue,
someone here to represent this? No one's here to
represent to represent this.

REGULAR ITEMS:

WAL-MART SERVICE STATION (05-15)

Mr. Adam Fishel from APD Engineering appeared before the board for this proposal.

MR. PETRO: Proposed filling station at existing retail plaza. Application proposes renovation to the layout as a gasoline filling station which was approved as part of the Wal-Mart site plan. Received additional approval on 5/12/04. plans included one acre parcel on the corner near Union Avenue and Liner Road with access drive on Liner Road as well as access to internal spine road near the existing credit union parcel. I see you have the wall down.

MR. ARGENIO: Took it down on Tuesday.

MR. SCHLESINGER: Jim, this is part of the initial Wal-Mart plan of which the Town of Newburgh was lead agency, is that correct?

MR. PETRO: They were lead agency on the part, Mark, if I'm not saying it right I think they weren't on the entire site were they?

MR. EDSALL: Application that you received which was 03-03 application before this board was for the total project it was for the Wal-Mart expansion but it also included in both the site plan review and the environmental review the gas station even though the gas station was acknowledged as having to come back with a specific review, they did show it, it was there considered for traffic and the Town of Newburgh was lead agency so from an environmental standpoint if they're doing the same or lesser, it's my recommendation in my comments that SEQRA's already been concluded, you need to do nothing further than acknowledge that it's already done.

MR. PETRO: Okay.

MR. ARGENIO: But the gas station lies totally in the Town of New Windsor.

MR. EDSALL: Correct so because they're now actually nailing down the specific layout they'll need site plan approval as part of your resolution as is noted in my

comments. Your resolution already granted the special permit for the gas station.

MR. PETRO: Why don't you show us your revisions.

MR. FISHEL: Okay, I guess you all know where the gas station is, where it was previously, this is the existing Wal-Mart, New York State Route 300 here and Liner Road here, the previously approved site plan showed a 12 dispenser gas station in this area shown here, sorry if you can't see it from back there but we're proposing a slightly smaller gas station in the same location, the previous access to the other gas station had a curb cut here and curb cut over here. We still have this one here and we now have moved the curb cut to this location which we spoke to Mark last week about that before and he recommended it was a good change. We're proposing--

MR. PETRO: Excuse me one second, the plan I'm looking at is not plan what we're reviewing, is that correct, its way over here?

MR. FISHEL: Right.

MR. EDSALL: That's the blowup up there.

MR. PETRO: Okay, I'm sorry, continue.

MR. FISHEL: We're proposing to construct a six dispenser fueling station which is fewer dispensers than previously approved, the kiosks would be 224 square feet and the previous approved site plan had a convenient store located there, we now do not, the overhead canopy will be roughly 4,700 square feet and fuel capacity would be two tanks here would be approximately 40,000 gallons, we would also include diesel full service.

MR. ARGENIO: I see five dispensers.

MR. SCHLESINGER: On the plan.

MR. ARGENIO: Five dispensing islands.

MR. FISHEL: Right, two on each island.

MR. SCHLESINGER: But you said six.

MR. FISHEL: I mean 10, I'm sorry, the previous had 12.

MR. PETRO: Are we going to have to go to Orange County Planning because it's pre-existing, the new referral requirements?

MR. EDSALL: Well, subject to your interpretation it's my opinion that this already has approval and I believe the Town of Newburgh sent it anyway but the application was before this board before that September change in regulations so I don't believe it's necessary for it to go out in light of the fact that it already has approval and the environmental review is already complete.

MR. MASON: Just have one question, Mark, why did they change the entrance from the side over to the other end there?

MR. EDSALL: I believe when it was made, you can answer, my understanding was it was because it was smaller and they were trying to keep that entrance away from the access road's intersection with Liner Road.

MR. ARGENIO: I think this is a better layout, couldn't be more right, Mark.

MR. EDSALL: The other advantage was--

MR. MASON: Close to where this intersection is going to be over here.

MR. EDSALL: The internal one.

MR. MASON: Only reason I'm bringing that up because at the bank that's just a disaster there in my opinion.

MR. ARGENIO: But do you know what they're doing now, Eric, in the new package they're going to have two exits to the Wal-Mart plaza as opposed to one which they have now and you're right, it is a disaster.

MR. MASON: Aren't we recreating that same situation with the gas station?

MR. ARGENIO: Yeah, you have maybe 20 percent more traffic just in different spots.

MR. EDSALL: I know what you're saying if you have a large volume of traffic coming in that second entrance and someone's trying to exit to go left you have now

got that conflict, it's my understanding.

MR. MASON: Just work out better for sight distance or whatever and just flow, general flow.

MR. EDSALL: They want it so they can get the truck in, the delivery truck in and turn right through without having to weave their way under the canopy.

MR. FISHEL: That's correct.

MR. EDSALL: So that'--

MR. MASON: Okay.

MR. PETRO: SEQRA process is closed out so as we talked about earlier special use permit is still part of the original, this station has been reduced in size so I think all impacts are less than we originally looked at, obviously, the plan will be referred back to the Town of Newburgh so they can look at it one last time upon approval here before I sign the plan, the bond estimate will be submitted for this site plan in accordance with Chapter 137 of the Town Code, we already discussed unless any of the members have a problem that we will not go to Orange County Department of Planning, has been already approved, it's pre-existing and new referral requirements, also no other retail at this site other than gasoline sales. I think we have covered it, I think they have reduced everything that we look at in all aspects, the planning board should determine for the record if a public hearing will be required on the site plan amendment pursuant to its discretionary judgment. Now we don't have to, we're amending the site plan, Mark, but the special use permit which is mandatory, has not been affected by the amendment.

MR. EDSALL: Correct, that was already issued and here's a copy.

MR. PETRO: That's why it's not mandatory.

MR. EDSALL: Correct, if this did not have the special permit, you'd be mandated to have a public hearing.

MR. PETRO: We did have a public hearing for the original special use permit and the site plan.

MR. EDSALL: Correct.

MR. PETRO: So being this is lessening everything that we originally looked at I don't see to have another public hearing for something less than we already looked at would be necessary. That's only my opinion. How many pumps did you originally have?

MR. FISHEL: Six locations, total of 12 total.

MR. PETRO: Now, how many dispensers?

MR. FISHEL: We have 10.

MR. PETRO: So you have lessened it.

MR. FISHEL: Right.

MR. SCHLESINGER: Also a convenient store.

MR. FISHEL: Yes and now it's not.

MR. PETRO: Motion that we waive the public hearing.

MR. ARGENIO: Make a motion we waive the public hearing for Wal-Mart site plan amendment.

MR. SCHLESINGER: Second it.

MR. PETRO: This is, we have already had the public hearing so we're not just waiving a public hearing to say we're not having a planning board public hearing, we're waiving it for the second time on a lesser use on the exact same application. Motion has been made and seconded that the New Windsor Planning Board waive the public hearing under its discretionary judgment for the Wal-Mart site plan amendment on Union Avenue. Any further discussion from the board members? If not, roll call.

ROLL CALL

MR. SCHLESINGER	AYE
MR. MASON	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE
MR. PETRO	AYE

MR. PETRO: Again, the planning board should require that a bond estimate, we went over that, I think we

have gone over everything. We fire already approved. Any of the board members have any other comments? If not, I'll entertain a motion for final approval with the recommendation that the Town of Newburgh gets to look at it again before I sign it.

MR. ARGENIO: I'm going to abstain from the final vote inasmuch as Argenio Brothers is currently engaged in work for the general contractor on this site.

MR. PETRO: Okay. Motion for final.

MR. SCHLESINGER: I make a motion for the final approval of the Wal-Mart site plan amendment.

MR. MASON: Second it.

MR. PETRO: Motion has been made and seconded that the New Windsor Planning Board grant final approval for the Wal-Mart site plan amendment on Union Avenue. Any further discussion from the board members? If not, roll call.

ROLL CALL

MR. SCHLESINGER	AYE
MR. MASON	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	ABSTAIN
MR. PETRO	AYE

MR. PETRO: Thank you.

SHADOW FAX RUN SUBDIVISION (03-23)

Mr. James Clearwater, Mr. Drew Kartiganer and Joseph Rones, Esq. appeared before the board for this proposal.

MR. PETRO: Next is Shadow Fax Run subdivision on Jackson Avenue represented by Mr. Clearwater and others. Proposed 22 lot residential subdivision. Application proposes the subdivision of the 70 plus acre parcel into 22 single family residential lots. Plan was previously reviewed at the 23 July, 2003, 25 February, 2004, 12 May, 2004 and 9 March 2005 planning board meetings. Who says we move right along, right? Property's located in an R-1 zone district of the town, this layout plan has received numerous reviews with most attention to the roadway access point locations of the wetlands and sight distance and potential drainage problems. The applicant recently submitted a revised access plan with improvements on Jackson Avenue in an effort to address concerns of the highway superintendent. It's my understanding that this latest plan was reviewed by Hudson Valley Engineering Associates, P.C. the Town's special design consultant for improvements to Jackson Avenue. Based on that review, they have determined that the access location proposed is not desirable. The highway superintendent has again directed the applicant to pursue the access location previously requested and made appropriate submissions to outside approval agencies to gain approval for this location. That's all I have here so why don't you tell us what you want to tell us and go from there.

MR. CLEARWATER: Okay, as you said at the March planning board meeting you had suggested, board had suggested that we move the road from the location shown at that time to a location a little bit further to the north which we had done and shown on this plan. The road at that location--

MR. PETRO: That was my recommendation.

MR. CLEARWATER: That's correct. The road at that location caused reconstruction of Jackson in order to get the required sight distance that's published by the New York State DOT. We then took the plan to Henry Kroll, Henry Kroll reviewed it, we had a meeting with himself and Brendan Fitzgerald from Hudson Valley Engineering and to make a long story short, Mr. Kroll

still would prefer the road to be at the location directly opposite the Wau's house further north. Of course the problem there has always been the reason it was never placed there was because of the wetlands and the potential for flooding.

MR. KARTIGANER: This is the wetlands map and this shows where the potential proposed location for Henry, that Mr. Kroll wants will be going through these wetlands as opposed to through these wetlands, Mr. Griggs is the expert, the issues that go on about the wetlands is this, this proposed entrance at this location will require an individual permit and you'll correct me if I'm wrong which is something that's not going to happen from everybody we spoke to.

MR. PETRO: Don't you need a permit to cross it up further?

MR. KARTIGANER: We do but it's less than a tenth of an acre.

MR. CLEARWATER: It's within the Nationwide permit number.

MR. PETRO: What's your main objection in crossing down there?

MR. KARTIGANER: There's two main objections.

MR. PETRO: One getting the permit and two the flooding.

MR. KARTIGANER: Two is the flooding. There's a sketch plan that shows where Mr. Kroll's road is coming through and what had happened was a flood study was performed because Mr. Wau who's present there when we first proposed this plan to him and at one point he was prepared to give us an approval to go through what is a non-development area and when we spoke with him he said what are you going to do when it floods. I asked him what do you means floods. He said it floods every ten years, he's provided us photographic documentation which we provided to you and have other copies that shows flooding in this area every ten years or so periodically. Now what occurred was I asked my engineer to do a flood study, the thing that's causing the flooding and just to give you a little more graphic demonstration there's a railroad right-of-way here with a culvert, that's I think 12 feet, 10 or 12 feet wide

which is the choke point for all the flooding, what happens is the stream that's coming down here which it never had a proper flood study done before Michael Sandor who's done a flood study before performed on the area where it goes underneath the bridge here is a documented flood zone. what occurs is there's a choke point here and the water backs up and Mr. Clearwater will attest to the fact that he told me he doesn't believe it could flood because it's too wide, if you go out there you'll see it, the problem there is there's a drainage basin which floods from Stewart and Orange Lake so when you get a bad rainstorm condition it floods, what happens when it floods is these two orange areas are the 10 year flood study and that it will flood there in effect if the road comes in here you'll be blocked along Jackson Avenue from existing, from this site, the purple locations are your 50 year flood study that's when it will rain once every 50 years it will flood up to here and the pink are the hundred year flood study. By locating the road in this position you'll be telling 21 residents or however many people we put here when it floods once every 10 years you can in effect get held up and not have any means of egress in or out of your site. This kind of shows it a little more clearly more specifically or more graphically basically the location where the highway superintendent is requesting and directing and telling us to put it is right smack dab in the middle of this flood so there's a 400-foot distance here that you will not be able to get out and 700 lineal feet here. now the first delineation in the design standards for the subdivision plan is to protect against flood, this is the flood condition that we can't stop, you can't stop, there's nothing that we can do to change that. Based on that, our preferred area which we have originally done because we did not want to have to go through the wetlands was up here, we originally located the road here based upon the last comments, we have relocated it to here and we have agreed so that it won't cost New Windsor anything that we will reconstruct 600 lineal feet of the road along Jackson, so the sight distance requirement which is the sole issue that the highway superintendent has taken to relocate this will not be an issue. The point is that I as an architect, as an engineer, as an engineer, as a planning board you can't knowingly tell us to put a subdivision in with the only road access for 21 families that's periodically going to be cut off.

MR. PETRO: Let me hold you up for a second. The

letter that you have from Hudson Valley, the Town of New Windsor retained Hudson Valley, what's the full name?

MR. EDSALL: Hudson Valley Engineering Associates, P.C.

MR. PETRO: To review this on our behalf they're also a designated company that's going to resurface and redo part of Jackson Avenue, they came up with some comments, Mark, you want to go over it now, how did their comments differ from what they're telling us?

MR. EDSALL: I don't know that you want to paraphrase Mr. Fitzgerald's letter but their objections are to the sight distances and the location of the road access relative to vertical curves within Jackson Avenue.

MR. PETRO: They didn't touch upon the flooding at all?

MR. EDSALL: They to my knowledge did not comment at any time on the accuracy or inaccuracy of the study that was done relative to the flooding.

MR. KARTIGANER: Which they have been given and we had also gone through a meeting which there is a memo in your files someplace in which we presented the flood study issues in order to try and resolve this with Mr. Kröll, with McGoey, Hauser and Edsall and Pat Hines, Mike Sandor came forward at that same meeting in which basically we were told the flood study's accurate based upon standard procedures as they understand them and know them. So basically and that was back in I believe August of last year so basically what was stated at that point, you know, subject to being re-reviewed is that the flood study is accurate and if that is accurate, you know, and this is a part of public record regardless of what it is we can't, we, you, me, we can't knowingly put a road in a spot that these people are going to go.

MR. PETRO: Let's skip over that. Let's assume what you're saying about Mr. Kröll's suggestions where he wants to put it can't go there because of flooding, let's assume that's all correct.

MR. KARTIGANER: There's two reasons, flooding and wetlands.

MR. PETRO: Okay, the wetlands I'm not so sure about but the flooding to me you don't have to be a rocket

scientist if it floods it's not a good idea. The wetlands whether or not you can obtain a permit to go across there admittedly you haven't tried that yet so we don't know that for certain, just bear with me for a second, let's say that this is horse shit, okay, now let's go to the next one. You understand what I say when I say, you understand what I mean, the next one where you want to come out now I've got the letter from Hudson Valley.

MR. SCHLESINGER: Can I clear something up, maybe I'm confused, I'm reading this letter quickly and paragraph one says in accordance with the New York State DOT the proposal meets the minimum criteria for intersections and stopping sight distance based on the design of 40 miles per hour and then later in the letter it says it's not desirable to locate a new roadway sandwiched between three vertical curves, am I misreading something or is there an inconsistency?

MR. EDSALL: No, I'm not going to comment on their letter, if you have specific questions we'll pass them back to the highway superintendent. Again, Hudson Valley Engineering Associates is not a subconsultant to us, they were hired by the town to do the Jackson Avenue rehabilitation project, Henry is looking for consistency between that design and this application.

MR. PETRO: So let me finish what I was saying. So the first one we're going to say now we'll go up to yours and we have Hudson Valley telling us that that location is not desirable for whatever reason, did they use the word unsafe in that?

MR. EDSALL: I just believe they say it's undesirable.

MR. PETRO: Because of three vertical curve problems and you have our local highway superintendent who says he doesn't think it belongs there.

MR. KARTIGANER: Correct.

MR. PETRO: So if that's no good, where we going next?

MR. KARTIGANER: There isn't anyplace else. The other location that we proposed which was up here.

MR. PETRO: That's no good.

MR. KARTIGANER: That's no good. The point that was

made when we ran this plan and one of the letters that I stated one of the reasons why this is the desirable plan is because this resolves two primary issues that I don't think are resolvable which is the wetlands issue because we don't need a Nationwide permit, need a minimum crossing and takes out of the flood zone completely, it allows us based upon rebuilding which we said 600 lineal feet of Jackson Avenue that we'll meet the sight distance criteria that Mr. Kröll has stated he's not happy with which, you know, we'll do that, that's what, 100, \$120,000 cost now we do, that will be something we'll solve after preliminary plans but the one point that I would say having just looked at that letter briefly is that its general sense and the sense that our engineers have had and also a petition of 200 some odd signatures asking to drop the speed limit because the perception was this road should not be at 40, it's not designed for that.

MR. PETRO: We can't control that.

MR. KARTIGANER: But the point that I did make we'd be taking out part of the vertical curve here and we'd be improving the road and I would personally like to coordinate it with Hudson Valley so that when this road is resurfaced or whatever rather than me having to come back after that money is spent I can basically say here Hudson Valley do this too and give the town the money to do it as opposed to redoing what somebody may spend another \$40,000 in doing before this happens that was the original coordination issue that we talked about.

MR. PETRO: I can tell you now that you and I and all your counsel here and everybody, all these brains we're not going to figure a damn thing out tonight, not going to happen because I don't know the answer and anybody out here that says they know the answer is trying to be a big shot because there's no answer unless you take a stance one way or the other, I'm going to suggest this that for some reason I guess your counsel here wants to have, wants us a schedule a public hearing you feel that's advantageous to do that?

MR. RONES: Yes.

MR. PETRO: We can't schedule a public hearing without having, actually schedule it without having a map that's going to be shown to the public. What we can do is authorize a public hearing to be done or scheduled once you're ready and you go to a workshop, I'm not

opposed to doing that plus Mark you feel there's a specific reason not to do that?

MR. EDSALL: No, I just would question as to whether or not you want to have a public hearing showing both alternatives or do you want to have a public hearing with their preferred alternative?

MR. PETRO: I'm going to get to the rest of my statement. I know you're tired of being here and I'm tired of looking at this subdivision and I'm not going to schedule it again unless a judge tells me to until you have a plan that shows an access point somewhere. I don't care where you put the road, I could care less, not interested, put the road, when the highway superintendent tells me that it's okay and the engineer for the planning board tells me it's okay, I'll review it. Again, this is not a big deal this subdivision.

MR. KARTIGANER: I understand your position and I agree with your intention about not wanting to personally see you in this kind of position again for some time until we're ready to get a preliminary hearing.

MR. PETRO: What's the sense of me looking at the plan, you don't have a way to get into the subdivision

MR. RONES: Excuse me, Mr. Chairman, the rules as I see them in the Town Code of the Town of New Windsor for the approval of subdivisions just requires that the plans be submitted to the various agencies, Mr. Kroll included for review and comment. It doesn't require his approval before you schedule a public hearing. And based on what has gone on the history of this project so far we know that this location for whatever reason is not going to be approved by Mr. Kroll and the only location that will be approved by him is the location that he has already recommended which can't occur because A, of the flooding and B, the project will not qualify for an individual wetlands permit. That wetlands permit process by the way would take approximately a year, probably two years, require the expenditures of thousands and thousands of dollars of the developer's money and we have determined through our experts that that application is a futile application because this project does not qualify for an individual permit. So with all of those considerations in mind, Mr. Chairman, we would request that two things, first, that a specific date for a public hearing be allowed. We will submit our plan if

any other agency wants to submit another plan they may or if you direct we will submit both plans and have the evidence with respect to the merits and demerits of both plans placed upon the record for the Planning Board's consideration. And prior to that, we also ask to be placed on the next agenda so that we could not for public hearing but just so that we can take care of some SEQRA issues that need to be done with. But there doesn't really appear to be any legal authority to hold this process up any longer.

MR. PETRO: All right, I heard what you said and I kind of wish I went to law school but I didn't. But I can use common sense and some of what you're saying I agree with, some I don't agree with. I'm still going to request that you have a plan that shows an access point other than what you have because I already know that I am not going to get signed off on it and if you want to I will still authorize the public hearing so you don't have to come back to do that. If you want to contact the town attorney and they instruct me in a different manner, this board unless there's an objection will abide by that, if they feel that your suggestion is in order I will go along with that.

MR. RONES: Well, we'll certainly speak with the town attorney but without prejudice to our rights to seek relief from what with all due respect Mr. Chairman we feel is an unlawful directive that you're giving to us.

MR. PETRO: I understand, I'm not trying to cut you off a hundred percent, I'm trying to have some middle ground here but, you know, if you feel that's inadequate then you can do whatever steps you want to do. I think that to have a public hearing with something that may not take place, i.e., your roadway entrance onto Jackson Avenue or Mr. Kroll's suggestion or some other third way of doing it that's why I brought that up, I'm not an engineer, I'm not going to design the plan without having a specific plan, I do not believe it's in the best interest of the public to show that plan if it's not going to happen. Now I think what you're saying--

MR. RONES: We do have the plan.

MR. PETRO: But that's unacceptable to the planning board at this time.

MR. RONES: Has there been a vote on it?

MR. PETRO: We don't have to vote on it. It's highway approval that I'm looking for. I don't have it in front of me, I doubt very much that I'm going to have it, we can review the layout up to that point but it would you be futile if you're going to change it again, there'd be no sense for us to look at it, things would change.

MR. KARTIGANER: If I could interject, I think the only three alternatives as to where this plan can go have been shown in a general sense, I mean, maybe you can move 50 feet one way or the other. The one thing about this location is that it resolves the three primary issues that have been consistently brought up with regard to get access onto this site, the point that the highway superintendent is never going to approve this plan in this location, for whatever reason is pretty consistent based upon over a year's worth of trying to accommodate his actions for it to be relocated to a different location, we've gone through various schemes.

MR. PETRO: He's saying the exact same in reverse but you're refusing to try what he's suggesting even though Mr. Ronas explained that you don't think it's ever going to be possible you have not even tried, is that correct?

MR. KARTIGANER: That's wrong. I disagree with that completely because back in May of this year of last year we came in with a plan that was acceptable to the highway superintendent by a letter and until such time as the flooding issue and wetlands issue which we were led to believe we can get the permit were brought up, we were pursuing that plan to the point that I also had absolute approval verbal from the Waus allowing me to go through the non-developable area where we made every effort to push that plan forward. When the flooding issue came forward and that was the first thing that I, and I don't believe anybody here can allow or solve that made that plan dead. Now every time that we presented the flooding study which hasn't yet been refuted by Hudson Engineering Mr. Kröll has stated I don't believe it floods because he hasn't seen it flood. That's the level that's been taking, even though we have a technical detailed floods study by an engineer, it's been reviewed by your engineer, the detail that it floods, so I understand what's being said but that's not accurate. We made every effort at that point in time but there's a point in time when the

knowledge as a design professional, as a planning board or somebody who lives in New Windsor understands what goes in here. we have to live this, and Mr. Kroll can say whatever he wants. At this point, you cannot as a planning board put that road where he wants to put it because it floods putting aside the wetlands, wetlands is the 800-pound gorilla on this side and flooding is the 800-pound gorilla on this side, if you can't solve both, you're going to get crushed.

MR. PETRO: How about your point where we have an outside agency saying it's not acceptable.

MR. KARTIGANER: This is the first time we've seen the letter, we will review the letter and go through the letter but at this point even based upon what Mr. Schlesinger said nowhere does it say that it's unsafe and there are, you've got a road that's subject to the development now has higher traffic as every road in New Windsor, now there's always a lot more places you want to put the road, nobody wants it in their back yard, their property which they've paid property taxes on for 40 or 50 years, this is a, I'm on the Orange County Planning Board and so is Mr. Jacobowitz wherever he went to, this plan does everything that the Orange County Planning Board says we should do. We're giving you a 1,700 lineal feet worth of open space, putting the access point in one location where there's already human activity by the power lines, we're clustering it's, it's a really beautiful plan and it doesn't do anything against the natural environment except the most minimal of impact, it's a very good plan as the other one that we have done.

MR. PETRO: Planning Board's not disputing the plan or your right to go there, it's the access point is the problem.

MR. KARTIGANER: Access point is the problem and the other point that I would make not only that I have the same opinions of Mr. Jacobowitz which you all know is pretty effective at real estate and Mr. Roness who's also pretty effective at real estate but a lot of the planning documentation work that you guys are working off of was developed by Kartiganer Engineers and my father told me that the way it was set up is that the highway superintendent who's not a licensed professional is consulted and requested but he does not have control to say yes or no. And if he does say no, there's a procedure that's put in place where they'll

take dedication for the road but it's not his call to make it, it's the Planning Board's call to make it and you do not necessarily need the highway superintendent's approval for a road location.

MR. CLEARWATER: If I can jump in here, in Mr. Fitzgerald's letter down in number four here he goes on to say that it's recognized that other engineering constraints, i.e., wetlands, steep slopes could influence the location of the road to the north from a traffic safety and occupational standpoint and as far as the other layout we had made a layout a year ago, this is just one sheet shows the location up here.

MR. KARTIGANER: This is the layout here that was approved that we had sketch plan approval and approval from the highway superintendent that it was acceptable and in the meeting that that occurred the Waus had basically given me verbal notification forwarded soon thereafter that this area floods and I notified everybody at that point, Mr. Crotty saw those pictures, at one point he says it's pretty credible and those are part of the record, I can give you copies of the flooding shows a New Windsor town vehicle clearing the flooding over a 40 year period and on January 15 of this year I went out there, it was flooding, again, it didn't go over the road but at the culvert location which is someplace over here the water was within about a foot and a half of the road and that was not a 10 year flood condition and Mr. Wau saw it again I think in March and he saw it with within eight inches of the road. So the fact that it's going to flood isn't really much of a question. The person who confirmed it flooded is Mr. Steidle who told me about the woman he helped whose car flooded.

MR. WAU: It's flooded so much that we have actually swum in the road.

MR. KARTIGANER: It's not a question that it floods.

MR. PETRO: Other than posturing yourself for a court date, why are you telling me all this because what do you want me to do?

MR. KARTIGANER: Schedule a public hearing for this plan, you know, there are obviously some SEQRA and other items that we have to do but this is, you know, even in the initial cursory reading of what Hudson Engineering has put in it doesn't say that this plan

cannot be approved, doesn't, and is deadly, dangerous, it also specifically says that there could be other reasons that this road is located in different places. I think in their meeting alone we have given you two of those reasons neither of which can be resolved to the satisfaction of putting a road someplace down here.

MR. PETRO: By having a public hearing, schedule a public hearing for this plan, what do you hope to gain by that because I would never sign that plan in a hundred years without the highway signing off on it?

MR. KARTIGANER: Well, that's a choice that you have and we understand that but we want to get on the record what's here and there's procedures to go through when that doesn't happen and the thing is that the both the Waus and myself both have a reasonable right to develop this property.

MR. PETRO: Listen to me. I want to stay within reason, I know you have people who have real estate and know about stuff, I know a little bit about real estate enough, enough to feed my own family, I do all right, you know, so let's get back to the plan.

MR. KARTIGANER: If you were to turn it down in the public hearing that is the procedure.

MR. PETRO: But I know our procedure and I also know that I'm the Chairman of the Planning Board and I'm going to tell you I will advise that we can schedule a public hearing when you're ready, if you feel that's one step short of where you want to be to take your action, I can't help you, you follow what I'm saying? You can do whatever you want, you, counsel, the plan if we didn't have this other documentation and I think I told you this already other than somebody just saying they don't want it there which I don't think is a good reason just because they don't want it there, I said I wanted a third opinion other than your opinion, your counsels' opinion, your architect, your engineer so that's where we had Hudson Valley come into the picture and they do make the one statement that they feel we don't want to use the word unsafe or undesirable, I have to, if I didn't look at that, I would be not doing my job here or the board and I have to at least look at that.

MR. KARTIGANER: We'll respond to that letter cause this is the first that we've seen it.

MR. PETRO: If the flooding does take place or doesn't take place I don't, you did a study, can't dispute the study because I'm not certified to dispute the study I'm only going by facts that are given to me here.

MR. CLEARWATER: We'd be happy to respond to comments to the study if someone has reviewed it, be it Hudson Valley or McGoey, Hauser & Edsall wants to comment on it we'd be happy to respond.

MR. KARTIGANER: But the point is that it was actually responded by memo at the meeting where we sat with McGoey, Hauser and Edsall in which they basically accepted the findings of the flood study so that and when you say that you're not a technician on it, the technicians who are the engineers have responded, have reviewed and have confirmed that it is accurate so that makes it a non-issue.

MR. PETRO: I don't want to dispute it because I can't.

MR. RONES: The reason why we're asking for a public hearing is to have exactly that opportunity so that we can have our experts, our witnesses present the evidence under oath with respect to the plan that's being proposed, if there are reasons that the highway superintendent or anybody, any other consultants that the Planning Board's engineer can articulate to refute what's being presented that gives the planning board good reason to turn it down well then so be it, that's what a public hearing is really for. Maybe some members of the public also that are not part of the board will have some views that the planning board may want to take into consideration but unless we actually have that hearing we're just talking about some suppositions. There have been some off-the-record comments that some members of the planning board apparently are relying on that the highway superintendent has made and a letter which is somewhat ambiguous as to the safety issues and so it is important to get to a place where both we and the town's consultants and the highway superintendent can have the opportunity to present their views in a proper fashion.

MR. PETRO: What's your opinion, Mark, I'm not asking Hudson Valley, I'm asking you.

MR. EDSALL: Relative to having a public helping or

not?

MR. PETRO: Right.

MR. EDSALL: I know what they're asking for, obviously, with or without the public hearing if they decide to seek relief through a court they can do it with or without the public hearing. The only benefit of the public hearing is for you folks is that besides listening to all those people that get paid to give you opinions, you'll be able to listen to the public. That's the big advantage you can have, you can notice it, you can make sure that you notice all the people that live on that street and if they all believe it floods, who cares what the study says. You'll hear it. If the study say it does flood and everyone says we've never seen a drop of water on the road, you can hear that

MR. SCHLESINGER: I agree with Mark's evaluation of the value of the public hearing. Hudson Valley Engineering was hired by the town?

MR. PETRO: Yes.

MR. SCHLESINGER: To help all of us including Henry make a valid evaluation.

MR. PETRO: I want a third opinion.

MR. SCHLESINGER: In my opinion, I realize everybody wants this to come to a head as soon as possible and you guys put a lot of time and effort and money in this and of course we don't want to have to go through this again either but I would like to have Hudson Valley Engineering be a little bit more specific with their response to me. I find it a little ambiguous as well and I think in helping me and I think in helping everybody here if we have an evaluation that's a little bit more specific it would help us come up with a better evaluation and determination.

MR. CLEARWATER: Maybe he should be here.

MR. SCHLESINGER: He's not and that's not the issue but the thing is that I feel that, you know, there's a value with having a public hearing getting another person or people's opinion but in order for myself personally and I think for everybody's value getting the opinion of an expert should be a little bit more

specific as far as I'm concerned.

MR. KARTIGANER: There's two points I'd like to make and one of them was the point that Mr. Jacobowitz was making previously with regard to Mr. Edsall's comments to have or not have a public hearing, at issue is from the legal point of view and this is not anything against you all, this is just business, this is how it works is that if you do not hold a public hearing and the first legal process is simply to compel you to have a public hearing at which point whatever is decided in the public hearing if it's not to our liking then it's a whole other legal process rather than have a lot of business before the actual public hearing we should just have a public hearing, get everything out and at that point the judge if it goes to a judge and this is not meant in any way threatening cause I need to say that out loud.

MR. PETRO: I've never heard a judge being mentioned without being threatening.

MR. KARTIGANER: I have enormous respect for the Town of New Windsor and Town of New Windsor Planning Board to sit up here and get dumped on and not get paid for it, with all due respect, but we'd like to schedule a public hearing because that's the critical point where the decision is going to be made and that's the critical point where we'll respond to the experts, it's not going to happen in two weeks because we can't get it done in two weeks, Myra will tell that you that but over the next four weeks we'll respond to their letters and hopefully they'll respond to us. We have already forwarded letters to Hudson Engineering asking them to look at the flood study, comment on it, if they find it inaccurate, we have already sent a letter Hudson Engineering saying you're going to tell us we can get a wetlands permit, please tell us one example.

MR. PETRO: Let me finish polling the board. Mr. Mason?

MR. MASON: Well, call me crazy, Mr. Chairman, but this whole issue about the road is between Henry and you, is that the whole theory here?

MR. KARTIGANER: Yes.

MR. MASON: And you're telling us that when you get done with the road you're going to have all your sight

distances?

MR. KARTIGANER: Right.

MR. MASON: So I don't understand the problem.

MR. PETRO: So you would say have the public hearing, see where it goes from there?

MR. MASON: Sure. Why not?

MR. GALLAGHER: I agree with Mr. Schlesinger as far as some of this Hudson Engineering being a little vague, I'd like to hear I guess a little bit more detail but also I guess public hearing would be nice to get a different view of it.

MR. ARGENIO: I think that Mr. Mason said it very well, my thoughts are very similar to his and I think that there's no ambiguity, I think they're vague.

MR. PETRO: Motion to schedule a public hearing with the plan that's presented.

MR. ARGENIO: I'll make the motion, I guess.

MR. SCHLESINGER: Second it.

MR. PETRO: Motion has been made and seconded that the New Windsor Planning Board schedule a public hearing with the plans presented before us tonight for Shadow Fax Run development major subdivision on Jackson Avenue. Any further discussion from the board members? If not, roll call.

ROLL CALL

MR. SCHLESINGER	AYE
MR. MASON	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE
MR. PETRO	AYE

MR. PETRO: We'll schedule a public hearing, you can do that, I would suggest very strongly that we'll have that engineering firm there.

MR. EDSALL: Well that will be up to Mr. Kroll, they're working as a consultant for the road design, they're

not really at any aspect representing the town at this point but what I would suggest to the applicant is that you folks know the issues, you can have consultants whose specialty is in wetlands applications write specific letters and advice the board and we can review those as to the probability of getting permits, you can have profiles prepared, extremely detailed profiles that will show sight distance lines, that will show exact or non-exact, noncompliance or compliance with all the standards, I suggest you have that available. We can forward that to our consultants and highway consultants, Henry Kroll. The fatal flaw will be if you don't take the benefit of every bit of information brought to your attention and provide information that can be reviewed. That's only a suggestion.

MR. PETRO: Mr. Clearwater, if you took the road and brought it further this way towards the owner's house, what happens?

MR. CLEARWATER: What happens is the sight distance as I bring the road to the north the intersection to the north the sight distance then becomes, runs across the wetlands and I would have to infringe on the wetlands in order to trim the trees or clear them out altogether in order to get the required sight distance. By having the intersection where it's shown on this plan I can simply rebuild that stretch of Jackson to get the sight distance I need.

MR. PETRO: But you realize that you're going to rebuild Jackson Avenue, you know that you're going to have a public hearing, almost everybody that lives there other than the fella that's selling the property is going to be against that, you're going to have a lot of people here they don't want the road rebuilt, I'm telling you these are the people who've lived there for 50 years same as that fella, so why don't you try to come up with a, something a little different to change the elevation of the road. I don't know if maybe you have to go up 10 feet, I'm sure you looked at all possibilities, you didn't just draw it there and go watch Matlock reruns but maybe there's something.

MR. EDSALL: One of the other constraints just so the board's aware I don't know if you're aware or not the highway superintendent when one of the options was to move the road and then create grading, clearing easements so that the sight distance would be improved by clearing back away from the road right-of-way and it

was his comment that he didn't want to have clearing easements because he doesn't want to have the burden of having to make sure they're maintained so that was one of the other curve balls we passed onto Mr. Clearwater.

MR. SCHLESINGER: We would like to approve and you want approval as long as it meets our guidelines and what we feel is acceptable based upon all the input we're getting I think that you have to make the best effort and give it the best shot to what you think is going to be the best thing to bring before the board and if that means what Mark says come up with some sort of plan to have the area that you're clearing maintained and straighten the road out as best you can that's what you've got to do, just give us as much as we need in order to help go forward.

MR. KARTIGANER: We're prepared to do that.

MR. CLEARWATER: This stretch of Jackson Avenue is posted at 40, the road itself is not a 40-mile an hour road and it's the vertical alignment does not meet the criteria for 40 miles an hour but it's posted that, when we rebuild this, then it will meet the 40-mile an hour criteria, even Hudson said that that's the whole idea it provides the sight distance that's required.

MR. KARTIGANER: I think we've beat the dead horse.

MR. ARGENIO: The horse is definitely dead.

MR. KARTIGANER: Thank you very much for your consideration.

DISCUSSION

MR. EDSALL: One item before you close up there was a transmittal from BDL Construction Services who are doing the medical building down at the old Devitt's site sent it to your chairman, your chairman wanted it to go to Mike Babcock, it made its way to Mike. Now I'm back before you, they're proposing to move the dumpster from adjacent to the building to the south right next to the building, they're proposing to put it all the way out.

MR. PETRO: I talked to them, we're going to eliminate it completely.

MR. EDSALL: They want to put it all the way down the panhandle way up in the left, it's 300 feet away from the building, I'm convinced they're moving it there because they really I don't want it but they can't tell us that they don't want to do it being that it's a medical facility they're not allowed to throw their garbage out in the dumpster anyway so they probably don't need it so Mike and I suggested we tell them if you don't need it tell us and we'll eliminate it when you need it because you have a waste problem, put it where we told you.

MR. SCHLESINGER: Are you trying to say that they're saying they don't need a dumpster for waste?

MR. EDSALL: Correct.

MR. SCHLESINGER: How can they not need it?

MR. EDSALL: Because medical waste is contained and is usually stored in the building and then taken right out and disposed of.

MR. SCHLESINGER: They have no other waste, any office, any secretarial waste? I find that hard to believe.

MR. EDSALL: They probably have paper waste, a lot of the places have several cans but no dumpster.

MR. SCHLESINGER: I find it hard to believe they don't need a dumpster.

MR. EDSALL: I'm saying it's ridiculous to put it 300 feet away.

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MR. ARGENIO: I don't know.

MR. PETRO: I will say this, we'll find out.

MR. EDSALL: My suggestion is either they put it where it belongs but don't move it 300 feet away because that's a joke then everybody from Newburgh is going to be dumping their garbage. Okay, we'll pass it on. Thank you.

MR. PETRO: Motion to adjourn?

MR. SCHLESINGER: So moved.

MR. ARGENIO: Second it.

ROLL CALL

MR. SCHLESINGER	AYE
MR. MASON	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE

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MR. PETRO

AYE

RESPECTFULLY SUBMITTED BY:


FRANCES ROTH
STENOGRAPHER

6/1/05