

NEWINGTON CONSERVATION COMMISSION

February 19, 2013

Regular Meeting

I. CALL TO ORDER

Chairman Block called the Regular Meeting of the Newington Conservation Commission meeting to order at 7:0 p.m.

II. ROLL CALL

In attendance:

Philip Block, Chairman
John Igielski, Secretary
Jeffrey Zelek, Vice-Chairman
Andreas Sadil, Member
Alan Paskevich, Alternate sitting for the vacant position

Absent:

Kathleen Clark, Member
Philip Shapiro, Member (7:15)

Peter Arburr, Chris Greenlaw, Town Engineer, Peter Boorman, Town Attorney.

III. ACCEPTANCE OF MINUTES

Chairman Block: Are we ready to proceed on any acceptance on any of the minutes starting on December 18th?

Commissioner Zelek: So we haven't accepted the 18th?

Chairman Block: I've lost track.

Attorney Boorman: This would be your regular meeting, not special meeting.

Chairman Block: So, is anyone ready to review them?

A. Regular Meeting of December 18, 2012

Commissioner Igielski: On page 3, at the top of the page, Item 5B, Meeting schedule for 2013 and January 2014, then in the paragraph it says 2012 and 2013. It should be 2013 and January 2014 in that first little paragraph. That's all I have.

Chairman Block: Any further corrections for the minutes of December 18th?

Commissioner Igielski moved to accept the minutes of the December 18, 2012 meeting as corrected. The motion was seconded by Commissioner Paskewich. The vote was unanimously in favor of the motion with five voting YES.

B. Special Meeting of January 31, 2013

Chairman Block: Is anyone prepared to take on the special meeting of January 31st?

Commissioner Igielski moved to accept the minutes of the January 31, 2013 special meeting as written. The motion was seconded by Commissioner Sadil. The vote was unanimously in favor of the motion with five voting YES.

C. Special Meeting of February 5, 2013

Commissioner Igielski moved to accept the minutes of the February 5, 2013 special meeting as written. The motion was seconded by Commissioner Paskewich. The vote was unanimously in favor of the motion with five voting YES.

D. Special Meeting of February 7, 2013

Commissioner Igielski: One correction, the meeting was held on February 7, 2013 not 2012. That's the only correction I have.

Chairman Block: Anyone else?

Commissioner Igielski moved to accept the minutes of the special meeting of February 7, 2013, as corrected. The motion was seconded by Commissioner Sadil. The vote was unanimously in favor of the motion, with five voting YES.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS
(Each speaker limited to two minutes)

Holly Harlow, 11 Edmond St.: I'm looking to make myself a better public participant. I'm asking for a clarification of Section 10.5 of the Wetland Regulations, that defines the wetlands or water courses to include aquatic plant or animal life, and habitat of wetlands and water courses, and habitats meaning areas where environments where organisms or biological population normally observe (inaudible) Also, Section 10.1 of the regulations which says the Commission may consider for an application for which a public hearing is held of the contents evidence and testimony, and also as it applies to public hearing, the Federal rules of evidence number 702 which relates to expert witnesses which that rule identifies an expert witness as a witness who is qualified as an expert by knowledge, skill, experience, training or education, and they testify in the form of an opinion or otherwise, if the experts scientific, technical or other specialized knowledge will help the trier effect to understand the evidence or to determine a fact or issue. The testimony is based on position, facts or data, the testimony is the product of reliable principles and methods, and the expert has reliably applied the principles and methods to the facts of the case. Thanks for listening.

Chairman Block: Thank you. Anybody else from the public? Hearing none, we go on.

V. NEW BUSINESS

A. Application 2013-01, 40 Commerce Court

Chairman Block: Is the applicant ready?

Alan Bongiovanni: Yes, sir. Good evening, for the record, my name is Alan Bongiovanni, president of the Bongiovanni Group here in Newington. I'm a licensed land surveyor here in the State of Connecticut. I'm representing Progressive Insurance at their facility located at 40 Commerce Court. I have a plan here that was submitted with the application. It's an existing building located at the northeast corner of Commerce Court and Fenn Road. The existing building is in this location, Fenn Road being on the left side of the sheet, or the west side of the

property. There is a large wetland area in this location here, as well as a smaller one in this location. This site is basically developed. All we are asking to do is relocate an existing pylon from this location on Commerce Road out to the corner of the property on Fenn Road. They have been at that location for some six or eight years, and have found that most people who are trying to get to their location especially in the summer months when all of the vegetation is grown up, this is a big power right of way in front of the property, they drive right by the property and it's becoming an on-going problem and they would like to remedy the situation once and for all. There is no provision in our zoning regulations for them to have two signs, so they would be relocating the one that they have at this location, assuming that the approval is granted. So there are two things that we are asking for; one, is the for the construction and maintenance of this pylon sign within the one hundred foot regulated area, the hundred foot is actually on the other side of the street here, it's about 29 feet away from the wetlands, it's as far as we can get away from the wetlands and still be on the property and be legal with the sign. So we are asking for that location. There are no other improvements proposed on the grounds other than the construction of that sign and a little bit of brush clearing. There is no electric service required to go through any of these areas, service will be coming from the street, to service this sign underground. They are also looking at the option of a solar sign mounted on the same pedestal. So that is one thing, asking for your permission to locate the sign in the location that we are requesting, and two, the whole front of the property is also a conservation easement. When the site plan was approved for this facility several years ago, one of the conditions of approval was to grant a conservation easement to cover this whole wetland area in the front. It specifically states in that easement that if they choose to put any signs or anything like that in that area, they have to come back before this body as a governing authority for that easement, hence, that's why I'm here. We'd like your permission, one, to locate it within the regulated area, and two, permit it to go within the conservation easement.

Commissioner Zelek: You said earlier the site was already developed. You are referring to the building itself, but not, there is no development within the conservation easement?

Alan Bongiovanni: Correct. Actually, it's a big power line easement that is there. So it's not a pristine nature park, it's a strip of land that parallels Fenn Road in an industrial section of town that has a major power line through that area, so although it is preserved, it's not in its natural state.

Commissioner Zelek: So can I get a clarification, is it a right of way or it conservation easement?

Alan Bongiovanni: It's both, it's actually, for our purposes, a wet meadow. I believe that's what it was described, was classified as, but it's technically a conservation easement to the Town of Newington with this body being the authority to oversee that and there is also in that same location a Hartford Electric Light Company right of way.

Chairman Block: Now, in your application, you are saying that the disturbed area is going to be .04 acres, but in actuality, how are you taking such a large area?

Alan Bongiovanni: We're looking at the area of brush that we are going to clear in that area. We're not looking.....

Chairman Block: Okay, so you're clearing a line of sight as well.

Alan Bongiovanni: We are going to mow a line of sight, correct. It's small brush.

Chairman Block: How high is the sign going to be off the ground?

Alan Bongiovanni: I have a drawing here, eleven feet, total height. I can give you a copy of what I submitted to the Planning and Zoning Commission. That's a single pylon with about a three foot base, upper sign is eight feet, eleven feet, total height.

Chairman Block: So what you are going to be knocking down is actually saplings, for the most part?

Alan Bongiovanni: It's not even saplings. This area, because it is a power right of way, does get mowed by the power company. They just don't do it as frequently as we would like to have it. We're going to put a sign there, they may go every other year sometimes, and in the summer you know, you have weeds that grow very quickly.

Chairman Block: So, I did not see it, but in your application are you also asking for permission to go in there and mow it repeatedly in the future?

Alan Bongiovanni: Well, that is the limits of clearing and we would maintain the limits of clearing.

Chairman Block: Okay. Chris, would you like to add any explanations?

Chris Greenlaw: I just want to clarify two things for the benefit of the Commission, and that is we have an application before us that shows an existing sign that is within the buffer area and the request is to move that to, closer to Fenn Road which is also in the buffer area. Prior to that though, you have the decision to make as far as there is a permanent private conservation agreement, and it states, whereas the grantee, acting through the Conservation Commission, it goes on to, and this is recorded on the land record, it says, the following are prohibited unless express consent is obtained from the Town of Newington, through its Commission or its successor thereto within the bounds of said conservation easement: A. the construction or placing of building, road, signs, billboards or other advertising or other structures on or above the ground; B. the dumping or placing of soil and other substance or material as landfill or dumping or placing of trash, ashes, waste, rubbish, garbage, junk, or unsightly offensive materials; C. the excavation, dredging, removal of loam, peat, gravel, soil, rock or other mineral substance such, in such manner as to affect the surface. So, you first have a decision, this would be the first decision, whether you would grant the ability to allow them to install the sign, and then secondly, if it that's the first decision. The second decision would then be entertaining the site development process which is moving the sign from one area of the buffer to another which is shown with it's limits of disturbance on that map. So, they need again, just to reiterate, the following are prohibited unless express consent is obtained from the Town of Newington through it's Commission. Those are the two things for you to consider.

Commissioner Zelek: Is that an easement that was created by the prior Commission?

Chris Greenlaw: That was created.....

Alan Bongiovanni: Through the staff, there were different members on the Commission, but it was this body.

Chairman Block: Well, what's the year of it?

Chris Greenlaw: I have, I believe it is reading as December 2001. Perhaps the applicant can verify that.

Alan Bongiovanni: When the Industrial Park was done, by Mattack Land Trading, that was twenty years ago, there were different conservation easements. This piece was always part of the

manufacturing, Fenn Manufacturing. This got cut off in 2001, and then this site plan came into affect and that easement granted. It was 2001.

Chairman Block: Is there anything further?

Commissioner Sadil: I have a question. There are no utilities going to this sign, only solar power.

Alan Bongiovanni: No, that's what I was saying, it's either going to be solar, or right across the street the power is going to connect to it, underground, but not through the wetlands.

Chairman Block: Underground, that means you are going to go cutting through the road?

Alan Bongiovanni: Either that, or overhead.

Chairman Block: Overhead means another post.

Alan Bongiovanni: Yes.

Chairman Block: Commissioners, there are two ways to look at this, one of course is that they are altering the location of the sign within the wetlands, or two, are they creating any new significant harm to the wetlands up by Fenn Road. Those are I think the two questions that come to my mind.

Commissioner Zelek: I think there is a third that we're challenging the original intent of the easement to protect this area.

Chairman Block: Oh, there's no dispute about it, but within that intent, what is the provision that they would need advertising, so the question is that apparently they found it ineffectual to have advertising at the rear of Commerce Court and apparently they need it?

Commissioner Zelek: Are there other businesses in here? Are there other businesses on Commerce Court that are going to need signs too?

Alan Bongiovanni: Actually if I may Mr. Chairman, there is a directional sign, not a directional sign, but on the other side of Commerce Court there is an index sign, if you will, for all of the other businesses. This was never contemplated to be developed at the time every other lot was built and that index sign was created. So they all have their signs there. It's all in that same wetland that parallels Fenn Road.

Commissioner Zelek: So is there an alternative to use the existing index sign?

Alan Bongiovanni: It is not owned by the applicant, the sign is already built. It would be, actually the applicant did approach them, they weren't interested in accommodating my client.

Chris Greenlaw: Mr. Chair, if I can ask the applicant, across the street where the other index sign is currently located, do you know whether that is wetland and additionally is there a conservation area that it is in as well.

Alan Bongiovanni: I believe it is wetland. I couldn't confirm off the top of my head whether there is a conservation easement but I think there is. That was all, most of the development, that conservation easement at the time that the subdivision was created.

Chairman Block: It's my recollection that it's very much the same scenario, as this proposed pylon sign. There is a equivalent permission upon review of this Commission. I think the problem is very simply put, that at the time that that property was being developed and asking for the same sort of permission, it wasn't envisioned that there would be development of an adjacent parcel that wasn't owned by that owner, and you know, it's really regretful that the two property owners couldn't come together and let him add to the sign on the south side of Commerce Court and thereby avoid the need for duplication.

Alan Bongiovanni: I agree with that. I think if you looked at the sign, and the predominant tenant there, the landlord is Big Sky, one of the things that they look at in proposing to the owner of that property, they would have to rebuild the sign because it's full, it's not like they have vacant placards available. It was a very customized designed sign that took care of the needs that they had at the time, so we would have to come back to this Commission to alter the sign anyway if we went on the other side of the road.

Commissioner Igielski: Mr. Chairman, is the existing sign area for the area around it mowed to maintain line of sight? The existing sign?

Alan Bongiovanni: On the other side of the street?

Commissioner Igielski: No, your customer's?

Alan Bongiovanni: It's lawn

Commissioner Igielski: Right, so it's already mowed, so it's just a matter of taking an existing sign and putting it in another, a better location for this business and maintain a similar line of sight for that sign as it exists today.

Alan Bongiovanni: Yes.

Chairman Block: Except that they are not going to physically move the structure that is there now, they're putting a new structure on Fenn Road.

Commissioner Igielski: But they will be removing the existing and seeding over the lawn and restoring that to.....

Chairman Block: All right. Is there anything further? Thank you very much.

B. Application 2013-02, West of 655 New Britain Avenue

Adam Henry: Good evening, I'm a licensed environmental professional with GTH Environmental in Glastonbury, Connecticut. I'm here tonight representing the Olga D. Caval Family Trust who are the former owners of the 665 New Britain Avenue property which is shown on the site plan here. They are obligated by the Connecticut Department of Energy and Environmental Protection to conduct a clean-up of the property under the Connecticut Property Transfer Act. Pursuant to that, as part of an investigation of the former Caval Tool property at 665 New Britain Avenue, in the process of investigating it, we identified outfalls on the Amtrak right of way, railroad property that neighbors the former Caval Tool property to the west, and this is New Britain Avenue right here, and here is the railroad right of way. Webster Brook is further to the west. As part of the obligations of the Olga D. Caval Family Trust, they must conduct mediation at former outfalls where historically waste materials were discharged back in the fifties, sixties. As part of that process involves the excavation and removal of limited areas of soil, shallow soil along the

Amtrak right of way. The area is located within the upland review area, hence the need for an application to be reviewed by this committee. The nearest wetland area are some fringe wetlands along the Webster Brook further to the west which are separated from the project area by the Amtrak railroad line.

The extent of the work consists of accessing the railroad right of way with the permission of Amtrak and under the supervision of Amtrak personnel to conduct the excavation of soils in these two areas, remove that soil for off site disposal through the 665 New Britain Avenue property, and then restoration of those areas subsequent to the remedial action. Prior to the remedial action, soil and erosion controls will be in place, silt fencing and hay bails, and subsequent to the remedial action these area will be restored and seeded, and then subsequent to the action a full remedial action report will be submitted to the DEEP in accordance with the Olga D. Caval Family Trust obligations and the remedial action will also result in a clean up of environment along the Amtrak line.

Chairman Block: The first question that comes to mind is, what are the pollutants that are being removed.

Adam Henry: The pollutants consist of mainly petroleum related compounds, including polyaeromatic type of carbons and some metal compounds, nickel, arsenic, copper, chromium.

Chairman Block: So these are the remnants of degreasing operations from there?

Adam Henry: Correct, back in the fifties and sixties the plant discharged waste water to these areas, and the discharge ceased sometime in the eighties and the current outfalls that are there, convey roof drain water from the facility.

Chairman Block: What was the method of transportation from the work site to these locations?

Adam Henry: An outfall.

Chairman Block: And have the pipes been removed or will they?

Adam Henry: No, the current pipes are used for storm water conveyance from the facilities roof drains. They used to be tied into sumps in floor drains in the facility by which waste materials were discharged. Those floor drains and sumps have since been sealed and the pipes have been cleaned, and they transport storm water.

Chairman Block: Is there any record of that with the town?

Adam Henry: Of the cleaning.....

Chairman Block: And the disconnect.

Adam Henry: Well they haven't, oh, the floor drains and sump, I don't believe that a report was submitted to the town. It was conducted under the remedial action.

Chairman Block: Well, I'd like to, yes Chris....

Chris Greenlaw: Mr. Chairman, if I can ask a question, the floor drains now, are they connected into the sanitary sewer system, or have they just been decommissioned, how does that work?

Adam Henry: There are no floor drains any longer.

Chris Greenlaw: At all?

Adam Henry: No, the main conveyance was a sump, old sump and that was sealed up, and there were floor drains that went into that sump, it was a central sump, and then conveyed the waste water out to the railroad right of way, but that's been disconnected.

Chairman Block: Are you saying that that work was reported to some other agency?

Adam Henry: It was reported to the Connecticut Department of Environmental Protection.

Chairman Block: Okay, I'd like to request that a copy of that be submitted for the files, and also an actual certification by someone with authority as to the fact that, as you are saying the floor drains and any other connections have been physically sealed or removed.

Adam Henry: The facility is no longer used for manufacturing. It is occupied by a janitorial supply company.

Chairman Block: Yeah, but if the physical structure is there or if there is a cork that can be removed or something, who knows what would happen in the future.

Commissioner Sadil: I have a question on the map. The red line here, the boundary here showing the wetland limit, the red line is at the hundred foot, between your green and the railroad tracks.....

Adam Henry: That's right, that's the limit of the upland review area from the.....

Commissioner Sadil: One hundred feet?

Adam Henry: One hundred feet.

Commissioner Sadil: And there are no culverts underneath the tracks that would have pollutants? Was there any testing on the opposite side of the tracks?

Adam Henry: There has been testing done along the tracks, but in order to delineate what we determine to be the boundaries of the impacted area there was testing done outside of those areas on the other side of the track and the pollutants were typical of background railroad contamination.

Chairman Block: Can you also annotate that to show the location of those testing, the sample points?

Adam Henry: Sure, the scale on this map would be insufficient to show them all in detail. There's about seventy samples, so we can submit, we've got a site plan showing the sample locations.

Chairman Block: The question that I'm actually getting at is that since you haven't shown the actual end of pipe, and some of these things are to some degree soluble perhaps, whether or not there is any plume that has been carried downstream in the intervening years. You're showing very discreet areas.

Adam Henry: Sure, this doesn't get into all of the investigation that has gone into developing the remedial action on the site. In fact, I was in front of this Commission I think two years ago to install monitoring wells across the brook, over here on the CL&P right of way, in an upland review

area as a, pursuant to the investigation and delineation of a ground water plume that is on the site. There's a whole network of monitoring wells that were installed both along the railroad tracks and as mentioned, on the opposite side of Webster Brook to mitigate what the impact was on ground water on this site.

Chairman Block: Okay.

Commissioner Paskewich: These monitoring wells were placed when?

Adam Henry: Over a period of time. The initial wells were put in, 2011, 2010.

Commissioner Paskewich: Oh, that recent?

Adam Henry: Yes.

Commissioner Paskewich: And how did one determine the distance that the monitoring wells were going to be finished, in other words, who determined where you were going to stop putting in the monitoring wells.

Adam Henry: When we had sufficiently delineated the plume, so we have certain wells that are non detect for pollutants, we had certain wells that show pollutants, and then we went across the brook where it was not damaged, so we installed them to the limits of.....

Commissioner Paskewich: What I don't know, and I'm not sure of, does the soil type have an influence on the movement of these chemicals, better or not?

Adam Henry: Well the discharge that occurred was forty, fifty years ago, so it's had that much time to infiltrate the soil, disburse into the ground water and travel, so what we are seeing now is a highly degraded plume. There is really no further infiltration. What's left is what is going to be there until we dig it out.

Commissioner Paskewich: Just curious, what type of soils are there?

Adam Henry: It's a, it's kind of a rich organic muck, that's under laying by a more sandier layer that is actually on top of a till that over lies the New Haven argos sandstone. The depth of the bedrock ranges from about fifteen, twelve to fifteen feet on the western extent of the site, and we found along the railroad tracks depths ranging I think about fifteen to twenty feet.

Commissioner Paskewich: To the sandstone?

Adam Henry: To the top of the rock, correct. So above that is kind of a sandwich, till, clay, fine grained sands and silt and some sandier layers.

Commissioner Paskewich: I don't know if it's your expertise or not, but is the sandstone somewhat impermeable, permeable....

Adam Henry: Oh no, not at all, it's fractured. It's definitely fractured and many of the wells that were installed were a result of pairs, so we have a monitoring well that is in the overburden material, that is screened and above the bedrock and we have monitoring wells that are drilled into the bedrock.

Commissioner Paskewich: Drilled into the bedrock.

Adam Henry: That's correct, so we can evaluate the bedrock.

Commissioner Paskewich: How much depth are we looking at for the drilled?

Adam Henry: Not really deep, these aren't the deepest rock well is probably no more that twenty-five feet or so. Just enough to get into the top of the rock.

Commissioner Paskewich: Is that a typical protocol for this process that is taking place?

Adam Henry: Oh yes, it is, the process of investigating and remediating a site under DEP's protocol is fairly I guess you call it regimented. They have guidance documents available that provide details on what is expected, the standard cares, the protocol, so that is what is essentially involved. Different sites have different characteristics, so you could do some different things on some sites.....

Commissioner Paskewich: I don't want to assume, but I'm thinking that a geotechnical person from their division or your company was part of that?

Adam Henry: Not so much, I'm a professional geologist as well as a licensed environmental professional, so from a geotechnical point of view, that expertise isn't needed for an investigation, that is more needed if you going to build something on top of the area and you wanted to look at compaction, loading, load bearing capacity, that type of thing. So that is not the type of expertise that was brought to this project.

Commissioner Paskewich: These fractures, do they run vertical, horizontal, both?

Adam Henry: They are fairly steeply dipping and they trend to the northeast, southwest which is sort of the regional trend of most fracture features in New England. They kind of follow the geography and the fractures we see aren't significantly different.

Commissioner Paskewich: So with the depth that you considered for the monitoring wells, that's part of this fracturing direction?

Adam Henry: Well, sure. There are a lot of fractures, it's not just a single fracture, so we didn't target any specific fracture set to test. There's a lot of fractures and the water travels in all of them.

Commissioner Paskewich: So what I'm thinking is that in the remediation of the soil being taken out, there will be observation or some type of.....

Adan Henry: Oh yes, absolutely. The protocol for doing this is once we get a plan together, we delineated the area, we understand how deep the contamination is, how wide it is, we'll observe the excavation of materials, collect those excavation samples around the perimeter, evaluate whether we conducted enough for remediation, and whether we meet the goals of the remedial plan and that will be documented in a remedial action report that then gets submitted to the Department of Environmental Protection.

Commissioner Paskewich: Thank you.

Chairman Block: The bedding for Amtrak in this area, I presume that's, that was excavated and a more stable material was inserted along the track right of way?

Adam Henry: Well the ballast material that we typically see along the railroad tracks is pretty much limited to the immediate vicinity of the track itself. The area where the outfalls are, where we are planning to do the remediation, there's no railroad ballast there.

Chairman Block: Yeah, but the ballast itself, how deep does that go?

Adam Henry: Oh, I don't know, I mean the ballast is pretty, we didn't do any drilling in the ballast itself.

Chairman Block: Do you have any idea typically how deep it would be?

Adam Henry: I don't know, I mean, that whole area was wetlands at some point, so they probably had to build it up and it sank, and they built it up, and it sank, so I would suspect the ballast there is probably quite thick.

Chairman Block: Would it be appropriate to extend down to the bedrock?

Adam Henry: I don't know, given the materials underneath it, the till materials that we encountered, there's not a whole lot of compaction, so I don't think they would have to excavate it and replace with ballast when they built the railroad, but...

Chairman Block: So there was a compressed native soils at some depth into a stable?

Adam Henry: It's possible, yes.

Chairman Block: So they question then is, I don't recall in here that you said how deep your excavations are going to go.

Adam Henry: They are relatively shallow, about three to four feet deep. The ground water table is relatively shallow. There is a perched ground water table that sits on top of some of these clay lenses that is encountered about three, two, three feet, and then there is deeper ground water table that is more representative of the area conditions that's more on the order of four, five feet deep, depending on where you are.

Chairman Block: So Amtrak is not concerned about lateral stability?

Adam Henry: No. No, not at all. We're far enough away, I think in the appendix in that application there's a diagram from Amtrak showing the requirements for sheet piling, for excavating along the Amtrak lines, and we're well outside of the required area.

Chairman Block: Now when you said that you did testing to what would it be, west of the CL&P area....

Adam Henry: Yeah, over here.

Chairman Block: Did you detect that the plume crossed under the railroad bed.

Adam Henry: It appears to have, in the shallow ground, well, the, there is a well pair that is on the west side of the Webster Brook, and the shallow well had some very low, parts per billion concentrations of the primary contaminant in the ground water, it's PCH, an industrial solvent. There's trace concentration in the shallow well, there is none detected in the deeper bedrock well. Our assumption is, as we have seen in the other well, that the further you get from the plume, the lower the concentrations, however, there is a dry cleaners that is in the shopping plaza, so there

could be other sources. But it is consistent with our site model that shows the plume decreasing in concentration as you go farther away.

Chairman Block: Anything further from anyone?

Chris Greenlaw: Mr. Chairman, if I will, for the benefit of the Commission, when the Commissioners hear, Connecticut Transfer Act and a Remediation Plan, if you wouldn't mind, just spending a couple of moments, what does that mean. You were here a couple of years ago, you got approval to do some monitoring wells, you are here before us today, you're proposing to take out a couple of areas that are I don't want to use the word hot, just remediation action on the soil. What would the Commissioners expect to learn from hearing the Connecticut Transfer Act? How is the program, is it framed, pretty much the same with that title? What could they expect in the future as far as any continued monitoring, will we see you again most likely?

Adam Henry: We've been working on this site since around 2004. The initial activities were, well let me back up just to provide a little background for the Connecticut Transfer Act. The Connecticut Transfer Act is triggered when there is a property transfer when the property in question is an establishment and that is typically defined as a business or property that generated greater than a hundred kilograms of hazardous waste in one month, or a furniture stripper, auto body shop, or dry cleaner, those are the main business. So when that type of business, or qualifying factor comes into play, the Connecticut Department of Environmental Protection requires the transfer or the seller of the property to file certain certifications with the Department, certifying to the environmental conditions of the property. Under this program the certifying party, which in this case is our client, the former owner of the property, the Olga D. Cavel family trust, they certified that they investigate the site to the extent necessary and the standards and protocols of the remediation standard of the regulations, and then they would remediate the site in accordance with those regulations. So, once that filing is made, it sets into affect a chain of events that require investigation of the site within a certain period of time, and then initiation of remediation. So, we spent several years investigating the main manufacturing site itself, and determining where chemicals had been released, and what their extent of degree was. There was some on-site remedial action, involved, soil excavation in 2008, 2009, somewhere in there, there was a lot of on-site ground water monitoring, and then we determined that in order to complete the investigation and complete the remedial action, and to fulfill the requirements under the Transfer Act we had to move off site. So we spent several years negotiating with Amtrak to do the testing that was required, and then determining what the remedial action would be. Then subsequent to that remedial action there is required a period of post remediation ground water monitoring, so the wells, the existing well monitoring network, we anticipate will be utilized for that. So we don't anticipate the need to install additional monitoring well in or around that area, so I don't expect to be back before you with plans to install more wells. We have close to a dozen wells I think, across the right of way, and that will occur for a period of time, and then provided the results are acceptable, looks like the report will be submitted to the DEP and be certified by a licensed environmental professional and then that will be it.

Commissioner Paskewich: Chairman Block may have brought this up, and maybe I didn't catch it. The point source of this material, is within the building, it was within the building, or under the building.

Adam Henry: Within the building, materials, the conceptual site that we have of the materials, that the materials were released to floor drains and/or a sump and then the sump conveyed the materials via a pipe to an outfall on the railroad right of way. Now, as I mentioned previously, that sump and piping area was cleaned and then sealed with the exception of the roof drain pipes that pass through that, that continue to convey roof drain water.

Commissioner Paskewich: Pass through where?

Adam Henry: They pass through the sump, so the sump was cleaned and sealed and the connection was hard piped through, so the sump had several pipes coming into it, floor drains, from other areas, that was all sealed except for the drain that was identified as the roof drain which couldn't be sealed, so that was hard piped through, and then the sump was sealed.

Commissioner Paskewich: What is the composition of that pipe if you know?

Adam Henry: The connection or the original piping?

Commissioner Paskewich: The original.

Adam Henry: I think some of it was steel, some of it was PVC, a lot of it wasn't exposed, so we could only see what was coming into the sump, and sealed, and then PVC piping was used to.....

Commissioner Paskewich: Were any cameras used.....

Chairman Block: From the age of the building though, wouldn't some of it likely be clay?

Adam Henry: Some of the piping coming in I believe was clay, I could provide you with a report.

Chairman Block: A mish-mash.

Adam Henry: Yeah, it was a mish-mash because there had been several additions made on the building over the years, numerous additions. I mean, the original building dates back I believe to the late forties, and then it was subsequently added onto almost every decade.

Commissioner Paskewich: I guess what I'm thinking and leading to is any disconnections along the way of this change in composition and connectors, and if a camera was used to identify if there is any residual laying in the bottom of this pipe any more?

Adam Henry: We radio located it, we didn't use a camera, but we radio located the pipe to see, so we could trace it, and then we jetted, it got jetted to clean it out before it was sealed, and there wasn't, we didn't observe any evidence of breakage or penetrations, but

Chairman Block: I would like to see the sump physically removed, or at least disconnected.

Commissioner Paskewich: I concur with that.

Chairman Block: At this point in time I presume that there is no prospective use for the building?

Adam Henry: No, the building is occupied by a janitorial supply company. It has been occupied since it was sold in about circa 2008 or 09. They use it for a warehouse to distribute toilet paper, cleaning supplies, they supply public works buildings.....

Chairman Block: Well, to be quite candid, as I had asked before, I'd like to have some information on the piping, on the discharges, the source of what has happened to them and what is going to happen to them, and if the Commission wants to embellish, we may ask for them to be physically interrupted.

Adam Henry: What would be the alternative to discharging through the drain waters, the ground, just to the surface, to the site itself? I mean, that's the main reason it was kept in functioning because there wasn't a ready alternative to discharging roof drain water.

Chairman Block: If, let's put it this way, if they want to maintain it for that function, then demonstrate that there are no branches coming into it that, you know, again, I believe that your argument is that the roof drains would have flushed out anything inappropriate that is in that piping.

Adam Henry: Well sure, and it was jetted too.

Chairman Block: Again, that's the point, we don't want it to be another source of introducing new pollutants and we don't know what has been done to it or what or how it's verified that there are no branches connecting an old floor drain area that was missed or something like that. Anything further?

Chris Greenlaw: Mr. Chairman, just so the applicant understands, is there anything that you are doing now as far as the continuation of your testing, of that outfall pipe?

Adam Henry: Not at this time, no. No, really our obligation is to identify and clean up contamination that was caused by the certifying party, the prior usage, so there is no obligation or requirement to look into existing operations, such as they may be.

Chairman Block: I don't want to have a conduit that, when the outfall is cleaned up, but the inlets not known, so if you are saying that you want to leave the pipe in to carry the rain water, then prove to us that it's not going to flush anything else down into the newly restored wetlands. Anything further from the Commission? Okay, thank you very much.

Adam Henry: Thank you.

Chairman Block: Going on, let's have a five minutes recess and then we will go on to Old Business. Meeting adjourned at 7:50 p.m. Meeting resumed at 8:08 p.m.

VI. OLD BUSINESS

A. Application 2012-22 Russell Road North of Old Highway

Chairman Block: Just to quickly go over. Does anybody have anything new and startling as to the topics we have already discussed? If not, if my recollection is correct, we're ready to discuss the implications of the Home Owners Association on this project, as to what we are requiring of them. Does anybody have anything to put forward?

Commissioner Paskewich: I don't, because I don't have the expertise or legal know how regarding deeds and easements and things required of a home owners association.

Chairman Block: Again, we have two documents in front of us. One is the declaration of Newington Walk and the other is the declaration of the Conservation easement. I forgot, I didn't bring my cheat sheet. Does anyone know what item numbers they are?

Commissioner Paskewich: Here, you can peruse it.

Chairman Block: Thank you. Here it is, 91 is the condo declaration, 92 is the proposed conservation easement. I do have a bunch of changes to this, suggestions at least. If you are

prepared to go through them. On the declaration of Newington Walk, in the third paragraph on page one, this is the section which they, which gives the scope of control and it now reads to be, the portions of the subdivision containing the storm water detention basins, I wish to add to that, and other conserved lands.

In the next paragraph, that they are going to be responsible for the maintenance of certain portions of the subdivision, I say the maintenance and protection of certain portions, including the basins and the conserved lands.

Again, the function of this is that because of the highly integrated bio-swales and other structures to be created I believe it is important that the declaration make it clear that they maintain the responsibilities for those areas as well as merely the storm water detention basins. Anybody have any thoughts on that?

Commissioner Paskewich: Who is going to be responsible for that?

Chairman Block: That is going to be the Newington Walk Association, the condo association itself.

Commissioner Paskewich: Are there any penalty clauses regarding that?

Chairman Block: Yeah, if you read further into the declaration the mechanism for what is going to be happening to them, it just clearly makes it their responsibility and I believe you can recall that both the Town of Wethersfield and the Town of Newington have the ability to intervene. Now Wethersfield obviously is only going to be intervening as to the storm water system. Again, we can ask Attorney Boorman if we insert the conserve land sections that the Town of Newington would be able to exert control if there was any issue regarding abuse of those areas.

Commissioner Paskewich: So the administration of the enforcement and the penalty clauses will be subject to the town's responsibility?

Chairman Block: No, the town's oversight of the association's responsibility.

Commissioner Paskewich: Who is the oversight?

Chairman Block: The town. The town would be able to oversee what the association was doing. If they found something amiss the town would be able to go in and require it to be resolved.

Commissioner Paskewich: I guess what I'm trying to determine is who is going to find what? Who is going to find a problem? Who's the person who is going to be finding a problem?

Chairman Block: The same people who have reported every other abuse of a wetlands in the town before that. In some cases the public, in some cases town staff, some case neighbors. It's who ever wants to right a wrong.

Commissioner Paskewich: But town staff is not obligated to go up there after it's built and look at anything are they?

Chairman Block: Only to the extent that there are other structures that the Town is concerned about, or they have any other business up there. There's no forest ranger in the town of Newington.

Attorney Boorman: Or to enforce any conditions for example that might be part of an approval if this Commission goes in that direction. Just by way of background, both these documents are submitted by the developer jointly with the Town of Wethersfield to say that these are things that

the developer will agree that you should add as conditions, if you decide to approve it. Let's just start from that general proposition so they have drafted documents to provide some answers to questions that the Town of Newington may have as well as the Town of Wethersfield. It makes it more clear anyway. I won't say it's absolutely clear, because I think that is impossible, but more clear to the parties to address questions and concerns that are out there. The biggest question that came up during the public hearing phase is, seemed to be the enforcement mechanisms and the policing of it, so great strides were taken in these documents to indicate the initial responsibility for all the provisions, the enforcement provisions that you are asking about, are with the developer first, until the developer sells his lots and sets up the association. The association will be set up in accordance with, if again, you approve this condition that says that the declaration has to include these things, which would include any other conditions or changes that you want to make. So at that point, it moves from the developer to the association. The association would be responsible for the enforcement. If the association doesn't do the enforcement, there's a provision in here that indicates that the Town of Newington is next in line, to say that they can go in and enforce. There's lien provisions in there for purposes of anyone that fails to follow what they are supposed to do, there's provisions for the Town to go in and rectify situations and then lien the property to pay for it, so there are those kinds of things that we discussed in terms of the public hearing and those kind of safe guards that we discussed. After that, if the Town of Newington fails to act, then the Town of Wethersfield can act, and there is a mechanism for that. All these provide due process. Indicators would say that for example, if the Town of Newington were to act, the town staff would send a notice to the developer, if they were still in power before the association came in, or the association, so there are mechanisms to trigger different enforcements as time would go on.

Commissioner Paskewich: What if there is denial?

Attorney Boorman: There can be denial, so for example, the Town could say, we think there is a problem with X, and the Home Owners Association, if they were there at that time, could say, we disagree. There is a provision for arbitration in there. It indicates that the parties would select a neutral party to resolve this, short of going to court, and ultimately it's the American Arbitration Association that would go forward if they couldn't find any other neutral arbitrator that was agreeable to both sides. So they kind of sewed that up saying if you can't agree on a neutral then you will go to the American Arbitration Association.

Commissioner Paskewich: It states that in the document?

Attorney Boorman: It states it in both documents.

Commissioner Paskewich: Okay, that's follow through.

Attorney Boorman: It's got follow through.

Chairman Block: Again, I'd like to request that we need to think about these things and wrap them up and be done with this, so if you haven't read the declaration of Newington Walk and the declaration of the conservation easement, please do and make sure that you're comfortable with what it calls for, that your questions are answered. We only have a couple of meetings left, before we have to vote, and I would like to have you be clear in your mind what you want to do with these things. On the declaration of the conservation easement, if you read through that, it really only incorporates the trees along Russell Road, so I propose that that also be amended to include the preservation replacement of the trees along the upland review and in the wetlands area to the extent, now this declaration only says, willfully cut or otherwise destroyed. Then down below, it only talks about destroyed, so I'm also proposing that it be extended to damaged and that the trees be repaired, you know, pruned as necessary in order to ensure that there's other

ways that the trees, the natural vegetation is being harmed, that it also falls within the purview of control. So I'm saying, it's not only physically cutting it, but any other way by which you are harming the trees. Do you follow me on that?

Commissioner Paskewich: Yes, I'd like to add in something you mentioned about pruning and someone that is certified to determine the type of pruning, not just a layman with a chain saw and a cutter, but someone who is actually certified.

Chairman Block: Well, again, this only goes to the ability of the association to take action. As to who is going to evaluate it, or immediate it, that would be one of the conditions that we would add. I don't believe, it wouldn't be appropriate for that to go into the declaration, as to who can do what. That should be a condition separate.

Commissioner Paskewich: So it's up to the Home Owners Association to....

Chairman Block: To hire the proper qualified people.

Commissioner Paskewich: Okay.

Chairman Block: So those are the comments that I had on those two documents. The, I'll throw this out just because it was mentioned to me, Kathleen was going to request something about no free roaming cats, and the question is going to be, does that go to far afield, because I don't know how we can justify going in that direction. You recall that the judicial decisions don't go to the, out that far, but does anybody have anything regarding the home owners association? No? Well we certainly have gone through this quickly enough.

So now that we concluded our initial discussion of the areas of the application which the Commission deemed appropriate to review, we need to figure out our course from here on in. Chris has generated a first draft of proposed conditions which goes out to some three or four pages and with subsections I guess must go at least fifty of them, but if this Commission decided to deny the application out of hand, there is no need to review those conditions, so we now need to decide as a Commission if we want to deny the application out of hand, which means that the applicant could reapply almost immediately responding to whatever direction we gave them, as to why we are denying it out of hand, or we could proceed to review the conditions in greater detail and then decide at a later hearing whether or not again, we are going to deny it out of hand, deny it and invite correction of whatever issues we find beyond our ability to resolve at this point in time, or to approve it with or without conditions. So gentlemen, what is your pleasure?

Attorney Boorman: I want to make it clear that I do not hear from the Chairperson that he is asking for a vote. There's no vote that is being asked for, it's more a sense of the Commission as to what direction you want to go to, so no one is asking you to commit on the record in terms of an approval or denial. Really the question at this point to you, is does it make sense to start reviewing the conditions, or would you rather take a different course. So, we're at the point where Chris has produced those conditions as he heard them that came to you over the last several meeting that we had, and the question comes up, is it your sense that you want to proceed to deal with those conditions, or do you believe that is a direction that you do not want to go in. Again, it's not a vote, it's just a sense of the Commission.

Commissioner Paskewich: Are you looking for a consensus?

Attorney Boorman: Absolute consensus, yes, and just kind of a consensus of where we are going, not in terms of any kind of vote for anything.

Commissioner Paskewich: I wasn't prepared for this, I don't know if anyone else is, it's kind of a large task to take on right now.

Chairman Block: Well, again, tonight we don't actually have to do it. We have, as I calculate three possible meeting dates to go, but it's coming down to the wire. I don't want to necessarily waste any date, I'd rather vote at the second next meeting, rather than drag it out, if we can.

Commissioner Sadil: You're saying the 26th.

Chairman Block: If we can. I'm very much concerned that if something comes up that requires us to actually gain, to review something of a complexity, I don't want that to be discovered on the 28th and then we ran out of time. So if we, we've done what we needed to do for tonight, we've gone through, we've finished our initial review of the areas of concern, if we, if you want to adjourn now and come back Thursday, and the first thing of the agenda is to vote, whoops, wrong word, to express a consensus as to going on with the conditions, we can certainly do that. But I don't want Thursday to be wasted and have to worry about, did I go through this massive documentation, get all my unanswered questions in order, get all my fears and concerns out there, and then say I need another day.

Commissioner Zelek: So I'm concerned what this process is, you might get a consensus to deny this evening, but should we come to an actual vote and approve, I think that we should be working on those conditions to make this the best possible application that it can be, to protect those wetlands.

Chairman Block: There's no dispute on that, that's very clear.

Commissioner Zelek: So there are a couple of tweaks to the conditions as they exist. I still want to give you my input as to the.....

Attorney Boorman: Can I speak for a moment? Let's be clear, we're not asking for a consensus to deny, or a consensus to approve, we're not doing that. We're asking for a consensus as to how you want to proceed. Do you want to talk about the conditions or do you not want to talk about the conditions, that's what is really being asked.

Commissioner Zelek: So my preference is, to talk about the conditions, make sure that they are fully vetted.

Chairman Block: Again, to elaborate further, we have approximately fifty different paragraphs of things that we have, that we're going to discuss adding to this decision. I don't recall ever having anything of that scope. These are all beyond our standards, they are all novel and it could very well be that after we have reviewed them all, it's just become so unmanageable that you may want to vote to say no, I just can't do this with so many conditions, deny it, let them incorporate these issues into their plans and bring it back to us.

Commissioner Zelek: This is probably more for you Peter. If they did appeal, and won on appeal, what happens to those conditions?

Attorney Boorman: So you are asking the question, that if it was denied as it exists right now, just denied it right now, what would happen to the conditions that were here? There are no conditions.

Commissioner Zelek: I'm sorry, if we approved with conditions, and they felt that the conditions were too restrictive or bizarre.....

Attorney Boorman: Yes, they have the ability to appeal the decision, and appeal specific conditions that you put into effect, that you approved, so they have the ability to appeal that, if that is what your question is. Again, I would really like to stay away, especially on the record about this issue of using of deny or approval, because that is not what we are talking about right now. We're talking about the conditions and whether you want to proceed with that, so I want to be careful and make sure that any discussion about either decision, we're not doing that right now, because you are not prepared to do that right now, unless you tell us that you are prepared, and then the next meeting would set it up to proceed along those courses. The only thing I suggest that if you do decide that you want to discuss the conditions, that you start doing in tonight. Based on what the Chairman said, there are a lot of conditions listed here. The idea is not to finish them, the idea is, I think you can go through a lot of them tonight, and give direction to Chris for the next draft which you would expect to see next Thursday. I don't know, I'm not suggesting that we stay until any great length tonight, because I know we have done that in the past, but I think we can get through quite a few in a relatively short period of time, especially some of the more standard conditions that start us off. So, if you decide that you are going to go in that direction, I would suggest you do some of them tonight.

Commissioner Paskewich: One thing I want to bring to the table, and it's not regarding the conditions, reading them, but we are missing some significant Commissioners here tonight and I feel that we need their input. I do, personally. I don't know how anyone else feels about that, but they have put a lot of energy and time into this, and.....

Chairman Block: Well, we all feel that way, but we have a quorum, we knew that they were going to be absent, and they have assured us that they are going to make every effort to try and keep current, and we are going to have a session when they will be back with us. So they will have a chance to voice their concerns and their opinions, before we vote.

Attorney Boorman: Let me say, I think in a way, it's a good thing. I mean, they can't be here because they have other commitments, but they will be kept abreast through the minutes and that when they do come back and are prepared to proceed, that nothing is written in stone. There will be opportunity for comments and discussion and change, so I don't think it's a bad thing to proceed at this point in terms of review, if that is your decision.

Commissioner Paskewich: I concur with Commissioner Zelek to proceed.....

Commissioner Sadil: Proceed with the conditions.

Chairman Block: Okay, does everybody have the copy of the draft that Chris has sent to us?

Commissioner Zelek: I've read it several times and I think I have already given you my feedback on some of the conditions.

Chris Greenlaw: Mr. Chair, would you like to take a small recess and I can make copies for anyone.

Chairman Block: Yes, please, this time let's have a five minute recess.

Meeting recess at 8:30 p.m. Resumed at 8:37 p.m.

Chairman Block: We're back on the record.

Commissioner Zelek: Before we get going, I want to ask a question about REMA. When we hired them, what was the intent of us hiring them? What were they charged with doing?

Attorney Boorman: I can address that. As part of our regulations, there is a provision that indicates that if a particular project is such that this Commission deems it necessary to get expertise that the applicant is required to pay for experts to be retained, to address the concerns of the application. So in the most global of terms, their job was to address those issues of the application as to their expertise. Not the issues related to blasting, that was a separate expert.

Commissioner Zelek: And to report back to this Commission.

Attorney Boorman: That's correct.

Commissioner Zelek: So, my recollection of the last meeting, when they came back with the revised design, was that, it sounded as though they consulted with REMA. So to me that almost appears as though that the applicant is now using REMA as their consultant, rather than REMA reporting back to this Commission.

Attorney Boorman: I can tell you what happened. The experts as a normal course in almost every application that could come before Inland Wetland that requires experts on both sides if you will, those experts do consult with each other. They don't have to. They consult with each other to maximize the information and share information quite frankly. So they can look to bring recommendations before you that will allow you to make the kind of changes that occur during this application. So they, REMA reports to this Commission, they do not report to the applicant, if that is what you are asking.

Commissioner Zelek: Well, I know that they don't report to the applicant, but they did work with them, and while they were working with them, I'm not really sure that we were engaged during that.

Chairman Block: Well, let me restate the same thing in a different way. The way I view it is that during the course of this public hearing before that, the processing of this application, this Commission came up with varying areas of concern and request for information and eventually conditions of validation of various alternatives and the applicant again, during the process, decided that they would like to try to accommodate or answer some of those issues, rather than leave them hanging, so they came back to the, our expert, and said, well, to respond to what they said here, we can perhaps do this, do you think that would satisfy them, and our expert, knowing, having insight for our perspective on it, said yeah, that's better than what you had, offer it to them. So I think that is perhaps, that is how I characterize the give and take between them.

Commissioner Zelek: I don't know, I kind of feel that they went too far. I can see them going out to the field with Dru Associates or whoever else is representing the applicant, and taking core samples and making sure that they agree on what is going on, but to actually sit there and help them with the design, or to provide feedback, I think that goes too far. I think, to me, they are acting as a consultant at that point, for the applicant.

Chairman Block: Well, again, at this point in time, to some extent you can say that we acted as a consultant by saying we didn't like this, so we were concerned about that, and.....

Commissioner Zelek: I don't know that we ever said that, we you know, have concerns, but we never recommended any design changes.

Chairman Block: No, oh no, absolutely not.

Commissioner Zelek: Whereas they responded to.....

Attorney Boorman: But you did, all of you, make several comments during the public hearing during the presentation of things that you had concerns about, had questions about, and requested even changes about, so that reaction is a normal course that I submit to you is that what has happened here is the way that the project is designed to happen. The way that Inland Wetlands projects are supposed to go. So again, it's not like REMA designed anything. They made recommendations in talking to you that the other side could hear, and there was discussion and exchange of information which is something that was accepted by both sides.

Commissioner Zelek: Well, I just wanted to voice that concern and I'll leave it at that.

Commissioner Paskewich: Actually, since you brought that to the table, I thought of something. The soils that were taken as samples, for mineral analysis. I don't remember, because there is just so much information behind me, did Dru Associates also take samples for mineral analysis?

Chairman Block: If they did, they didn't report it to us. The samples that REMA took, we ran out of time, we never got that information.

Commissioner Paskewich: So here's, I glad you brought this up, because neither Dru or Logan provided us with mineral analysis, and they both took samples.

Chairman Block: No, no, you can't say that.

Commissioner Paskewich: They didn't?

Chairman Block: REMA took samples, but wasn't able to have it analyzed in time. Whether or not Dru took samples, we don't know.

Commissioner Paskewich: Did we ask?

Chairman Block: You would have to check the record on that, I really don't have....

Commissioner Zelek: My recollection is that they took borings but not to the extent that REMA did.

Commissioner Sadil: That's my recollection to, they were not satisfied with the work that Dru Associates had done, they wanted to enhance.....

Commissioner Zelek: The borings that REMA took, to me they were more intended to prove the water source for the wetland number two to try to determine if there was a ground water source.

Commissioner Paskewich: So it is inconclusive as to the mineral analysis, to this date.

Chairman Block: Yeah, that's why one of the conditions that I proposed last session was that soil samples be taken to establish the nutritional value of the wetlands, now, as to the requirements of the swamp cottonwoods.

Commissioner Paskewich: When?

Chairman Block: That would be before the start of construction.

Commissioner Paskewich: Do we have that in writing?

Chairman Block: That is a proposed condition that I suggested, so we have a baseline as to whether or not there are any changes down the road through the activity of the bio-swales.

Commissioner Paskewich: So you did make a proposal, but we don't have it to date, in writing, yet.

Attorney Boorman: I believe it's on Chris's list, so maybe we should go to Chris' list.

Commissioner Paskewich: Okay, let's do that.

Chairman Block: Okay, ready to start, so let's go to page one, which it items listed one through thirteen which are our standard conditions. Does anybody have any issues with any of this?

Attorney Boorman: I might just point out, because I've heard these questions before, and this might address some of the questions that are more general in nature, if you look at number four for example, Failure to comply with any condition required by the permit shall automatically revoke this permit and subject the applicant, heirs, successors and assigns to the enforcement authority of the Commission. That is one of the questions that has been asked by you folks on several occasions, in terms of what happens if they fail to comply with one of your conditions, so I just point that out to address those kind of concerns, that's a global response to that.

Commissioner Paskewich: The permit meaning, the permit and cease and desist of the project?

Chairman Block: No, the permit is permission for them to do the work, a cease and desist is an order for them to stop doing any activity on the project site.

Commissioner Paskewich: So I'm not quite clear.

Chairman Block: They are two different documents.

Commissioner Paskewich: We have both?

Chairman Block: There is a provision for both of them.

Commissioner Paskewich: Okay.

Attorney Boorman: I also point out number nine, The Agency has relied in whole or in part on information provided by the applicant, and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked. Again, another kind of global address to some of those questions that you have asked earlier.

Chairman Block: Any further issues with one through thirteen?
On page two, we have fifteen and twenty-one which are also semi-standard. Any issue with those two?

Commissioner Igielski: I notice that condition twenty-one has an a, b, and c, all in our regulations, it only has an a and b.

Chris Greenlaw: Yes, technically what we should do at this point is this shouldn't be number twenty-one, fifteen and twenty-one are actually in part of the whole conditions that we have. Technically they should be designated by a letter, and then subsequently they will all be renumbered at the end. What we've done, what I've done is that I have actually added sub-conditions to the parent condition, if you read on, as you noted, C, I've added all wetland area

buffers have been staked out by a Ct. licenses Land Surveyor. The buffer area perimeter will be pinned and placarded with a plan "record" copy submitted to the town. That's what I suggest.

Commissioner Igielski: Okay, I can agree with the context of the condition, it's just when we typically had made a motion to approve a permit application we just recite the numerical number of the standard or the typical condition, so we would just say, condition twenty-one, and therefore, subsection C would get lost, because it doesn't exist in the regulations as twenty-one C.

Chris Greenlaw: What I recommend is that we go through all of these conditions, and then subsequently you give me your comments and when we re-write it as a master list, we will incorporate those typographical, chronological, order process, but I assure you, there are probably more like that.

Chairman Block: Yeah, this is going to have to be sorted out and renumbered.

Attorney Boorman: More directly to John's point, I think that if that makes you uncomfortable, in terms of the way that you typically do it, it can be adjusted to indicate that when you read number twenty-one, say, as amended, so number twenty-one is a standard that is in your regulations, but you're amending it, in this case adding a section C to it, and you can specify on the record that you are doing that. So that would incorporate what I think your concern to be.

Commissioner Igielski: Yes, that would satisfy the concern for the record too, to include all the information that is intended.

Attorney Boorman: So maybe, if we get to that point, if you would take a note, that, and hopefully Chris will too, and I will remember too, that if we ever get to that point, that that would be something that we wanted to make sure we paid attention to, and that it was clear on the record.

Chairman Block: In C, twenty-one C, the one that John was just referring to, I'd like to suggest a re-wording to make it, all wetland areas and upland review areas have been staked out, and the upland review area will be pinned and placarded. So that, the upland review area is one of our terms of art which we should utilize instead of the more generic buffer.

Attorney Boorman: Okay, with the intent being that you are looking to stake out both the wetland boundaries as well as the upland review.

Chairman Block: Right, because those are the areas in which the developer has to be especially cognizant of where they are.

Commissioner Igielski: Does not that upland review area only be the hundred foot buffer that is referred to our regulations, and not any other buffer or upland review area dimensions that were discussed or brought up.....

Chairman Block: No, no, because this is one of the things, excuse me for interrupting, this is one of the areas in which the amendment is going to have to be clarified, and it's further down I believe in here, that in this particular application, the applicant, the Connecticut Department of Environmental Protection and us have agreed that the upland review area is to be expanded to 150 feet.

Commissioner Igielski: Again, I don't know that we can just arbitrarily change our regulations.

Chairman Block: We're not, we're not. What we are doing is acknowledging a limitation that the applicant is putting forward to us.

Commissioner Igielski: Okay.

Chris Greenlaw: Mr. Chairman, I believe that's why I used the word buffer, because per our definitions and our regulations it does refer to the upland review area as being 100 feet.

Attorney Boorman: I think the way to really resolve that is to say that you are going to put the 150 foot in there, and you are going to specify 150 foot so that it is clear that we are not talking about the definitional provision under our regulations.

Chairman Block: Okay.

Commissioner Igielski: Expand upon what I think the interest is to the members of the Commission.

Chairman Block: I do think we also have to include the fact that it's not being done pursuant to our regulations but to the applicant's agreement, because again, it's something special and unique to this application. So change that to upland review and make it 150 foot.....

Attorney Boorman: That's fine.

Chairman Block: Now we go to revised conditions, A and B. In B I suggest the inclusion of the word all, so it reads detention capacity of all proposed pond areas or bio-retention basins. They have to do them all, not just one.

Attorney Boorman: And Chris, on these, I assume from your background, these you feel are sufficient to address the construction activities, for example in Section A, that language is sufficient to address what you deem is appropriate for disturbed areas? In other words, if there is more that's there from a professional person of your qualifications, you could suggest additional if it's there, but if it's not, then it's fine as it is.

Chris Greenlaw: Well, it should be in accordance with the contract plan documents, there should be a limited disturbance on the plan that they should be following.

Attorney Boorman: You might want to incorporate that, into this.

Chairman Block: Okay, anybody else have anything?

Commissioner Sadil: In condition A they talk about the grass, but didn't we say something about the trees to be replaced and the landscaping? Is that going to be done at that time?

Chairman Block: No, this is to protect the soils during the construction activities. The addition of specimen trees, or landscaping will be done after the area has been prepared for it, so that's further down the list. This is temporary protection of the soil surfaces during construction. To go on, in C, sub A I suggest changing will to shall, it's not permissive, it's directive. Oh, by the way, if you have something, please speak up, otherwise I'm just going to keep going through so we can get through as much of this as we can. In sub B of C, and I think Chris has this further down, but I was curious as to when we should insert a minimum of four seismic monitoring stations....

Chris Greenlaw: Which one is this?

Chairman Block: This is in C, sub B, again, the question is, how much is going to be enough?

Commissioner Paskewich: Just a question, is there a standard that is applied to seismic monitoring by the industry, an agency.

Chairman Block: Apparently according to what we have been told, no. And in fact, they spoke as to how unique it is that we are asking them to monitor and protect the wetlands. They haven't done this before.

Commissioner Paskewich: Okay, so that is specific to the wetlands.

Chairman Block: Right, I don't care how many they have to protect houses on the other side of Russell Road or any place else, that's not our purview. I'm saying, how many do you need to protect, and primarily wetlands two and three.

Attorney Boorman: The experts did make recommendations on that because I remember the initial applicant's expert had a small number than our expert did.

Chairman Block: So the question is, I do think we should have a minimum, and the question is whether you think the magic number is four, six, eight, or whatever, but I want to have good baseline data from the first to have the assurances that our expert said, that the repercussions are not going to extend into the wetlands area. So I picked the magic four.

Commissioner Paskewich: How did you pick the magic number?

Chairman Block: Eeney, meeney, miney, mo. I just said, it's completely arbitrary, I just thought that, place it on the perimeter, that at least covers a reasonable arc.

Commissioner Paskewich: I'm not familiar with that type of monitoring for wetlands.

Attorney Boorman: That's because it's never been done before, this is above and beyond.

Commissioner Paskewich: I'm listening and I just can't put it together.

Attorney Boorman: It's above and beyond what other Commissions have done.

Commissioner Paskewich: So it's going to shake, rattle and roll the base of the wetland?

Chairman Block: No, these stations are going to prove, well again, let me go through my thought process. You have a point of detonation, you have a circular ring of expansion, of seismic waves, like a ripple in a pond, and you have it being intercepted by the area of the designated wetlands, so by the time it travels from the point of ignition, to the margin of the wetlands, what is the intercept of that arc that is going to touch the boundaries of the wetlands, and according to the location that they propose, it's going to be something like about three hundred odd feet of shoreline. How often, how much of an interval would you like to have to be able to see that you are intercepting a significant portion of that seismic wave? Put them about a hundred, hundred twenty-five feet apart, you get three or four stations. That's what I thought through. Now it could be that I'm all wet, but I just tried to be rational about it. So that's how I came up with it.

Commissioner Paskewich: Okay.

Chairman Block: Look at it yourself, check the record and see if you would like more, good. Then in the second sentence of sub B, I added, they shall monitor, review and recommend changes pursuant.

Commissioner Sadil: And that would be covered by as far as limits particle velocity, remember we talked about that, and.....

Chairman Block: That's coming up. Read on! In C, The developer's consultant will provide their blast/monitoring plan including all pertinent contact information outlining owner's representative, contact person, and I said, to whom are they supposed to report this, and it's, I presume it's to the developer, but I also wanted it to be sent to the Town, to us so we have that information, and the reason is, we want it for review prior to conducting the blast.

Chairman Block: Now for D, I don't have anything on that page, and here again in D, sub D of C rather, if you look on the third page, and it says as it relates to the industry standards, using the Suskin chart or equal, and I suggest adding as it pertains to the wetlands bedrock. Again, for all that they said about horsehair plaster, and everything else, I want them to say, this is the target frequency that we believe that they should be using to protect the wetland's bedrock. I don't care about the walls.

Item E, going back to the number of stations, is, insert the word, requesting seismic stations at these locations.

Chris Greenlaw: I just wanted to note, E denotes six stations, a minimum of six, so do we want to make it a minimum of six?

Chairman Block: Yes. But again....

Chris Greenlaw: I just want to make sure that we are on the same page.

Chairman Block: Yeah, when we have gone through this, obviously Chris again, taking the time and energy, can incorporate and straighten these out so that we're not being redundant, if you think that is a worthwhile exercise.

Chris Greenlaw: Definitely a worthwhile exercise. And I think that's why we should put a minimum of six, so that we are covered either way.

Chairman Block: Okay.

Attorney Boorman: I just want to add, under E, that language, more would be appreciated, is not appropriate language for a condition.

Chris Greenlaw: If I may Mr. Chair, I just want to remind consul that this is really a plan, it's a guide for two experts to get together so certainly if they believe there should be more, certainly I'll strike that, we want to have a minimum of six and it's inherent by design, if they get together and they deem it in order to protect the bedrock below the wetlands, they need it, so be it, so I will strike that.

Attorney Boorman: I think it's redundant, I don't think you need to say that, when you say it's a minimum of six, and you are requiring that the blasting expert prepare the blasting plan and it has to be reviewed by the Town and the Town's consultant, if more than six are required, then he is going to be able indicate that more than six are required.

Chairman Block: In F, on the third line from the bottom, said harm being defined at a minimum to be any shock or other alteration of the bedrock characteristics that, and I'm suggesting, including there is deemed capable of causing, increased porosity....again because this is a forecast.

Chris Greenlaw: Can you repeat that?

Chairman Block: Bedrock characteristics that is deemed capable of causing. Anybody have anything on that? Anything else?

G and H I did not have anything there. Anyone have anything, an issues?

In I the third line down, exceeded the parameters as originally stated, or found to be, it should be to have or to be likely, to have or to be likely to disturb the bedrock. Anybody anything else?

J, remove the word excessive and insert, consistent with that of being an aquifer. I think the issue there is that I don't believe that there is a minimum water production definition of an aquifer.

Commissioner Paskewich: Who is going to determine that?

Chairman Block: That's the issue, that's the problem. How much water is too much water, how much water is a pull from the rain, or actually being a water bearing strata?

Commissioner Paskewich: A geotechnical expert.

Chairman Block: Well, that's why it is going to the developer's consultant, you know, and again..

Commissioner Paskewich: I would like to specify a geotechnical consultant.

Chairman Block: I've lost track at this point. Chris, perhaps someone can correct me, are we anticipating that there also be the applicant's consultant on site throughout the entire blasting program as is in F? It says the blasting contractor and the applicant's consultant.....

Commissioner Paskewich: Will concur.

Chairman Block: Will concur.

Commissioner Paskewich: They don't necessarily, the geotechnical consultant does necessarily need to be on site, but he needs to be acknowledged as in place, and at the disposal.

Chairman Block: Here again, are we saying that, are we saying the consultants for the town should be on site for the entire blasting?

Commissioner Paskewich: We don't have a geotechnical consultant, do we?

Chairman Block: Yeah, we have our blasting consultant.

Commissioner Paskewich: That's not a....

Chairman Block: Mr. Hosley.

Commissioner Paskewich: I don't know if that is the same.

Chairman Block: Well, it's an expert who is there for our behalf.

Commissioner Paskewich: Is he able to determine aquifer charge, or recharge, I don't know what his expertise is. I don't have his documents stating what he is.....

Chairman Block: Again, we are talking about at this point, the drilling activity which means a four foot diameter hole going down X number of feet, the issue is simply, and again, I'm going back to what I think Jeff was getting at during the discussion, is there water coming into that hole from the bedrock area? Am I saying it correctly, Jeff?

Commissioner Zelek: Close enough.

Chairman Block: So it's not if water is found in the hole that came in from the surface, or through the soils, it's whether or not there is water coming in from the bedrock. If there is, then, under J, the idea was that they stop drilling until it is properly investigated and reviewed. Correct?

Commissioner Zelek: I think what Alan is saying, is that up to a blasting expert to determine what it is, or is that more of a geology type of question.

Commissioner Paskewich: Yes.

Chairman Block: Well that's if you are saying, is it coming from an aquifer and all those fine points. If you say, is the drilling produces water in the hole, it stops until it is evaluated. How much expertise do you want to apply to that decision.

Commissioner Zelek: I think a geologist has to tell us what have we hit. Is this....

Chairman Block: That's not when you stop work, it's after you have stopped work and you pull somebody in to explain what has happened.

Commissioner Zelek: I understand that, but is someone who is drilling a hole going to understand what we are looking for. I think that's your concern, Alan.

Commissioner Paskewich: Yes, I'm trying to qualify it.

Attorney Boorman: Maybe we can hear from Chris if you have any input on what they are talking about in terms of how that construction would work, if you know, I don't know if you know that, in terms of drilling that hole.

Chris Greenlaw: Well, I believe if we go back to the list of blasting conditions, it says that the developer will allow the town to participate in the selection of the blasting consultant. So I think, what I wrote, what I meant by that was if something like this came up, it would give us the opportunity to look at, for instance Mr. Hosley, our blasting expert, I believe by trade he is also a geologist, that was his academic training. This is something that when we participate we could ask that question, what is your background, what is your experience, what is your academia, so that we find a comfort zone. Have you run into this, if you do, what do you do, can you make recommendations and analysis such that you have a cease and desist, is he qualified then to come back with a plan, give us recommendations, give us analysis. I think that is what I am doing in A.

Chairman Block: If that is the case, then why don't in J, just end the sentence at encountered. Cross out the rest.

Attorney Boorman: You just say when any water is encountered? As soon as they drill the first hole the whole thing will settle.

Chairman Block: No, no, they are drilling the hole up on top of the mountain where their test is. There isn't supposed to be an appreciable ground water up there at all.

Attorney Boorman: Okay, now you are saying appreciable water, so what I would ask is to be clear about that. And again, I'd ask Chris to talk to us about that, I mean, if you are going to drill a hole and say, as soon as I see water they are going to stop immediately, and we're going to be

having experts coming in to tell us you can go ahead and drill again or you can't drill again based on any water what so ever?

Chairman Block: Well then you are saying ground water. Is that clear enough and acceptable?

Commissioner Zelek: Well, I think that is why we selected the term aquifer because none of us were qualified to figure this out.

Chris Greenlaw: Exactly. This J was a derivative of Commissioner Zelek's concern. That is why I wrote it specifically with the language of aquifer.

Chairman Block: That's fine, if you are comfortable with it.

Commissioner Zelek: Oh yeah.

Chairman Block: So we are just going to take out the word excessive and insert being an aquifer, and D.....

Commissioner Paskewich: I'm still not comfortable with the word consultant. I mean, it's not definable to me.

Chris Greenlaw: Is it the developer's consultant or is it.....

Chairman Block: Again, who's supposed to be doing this, I thought it was the blasting consultant. He's the one drilling the holes, he's the one looking down them.

Attorney Boorman: Well if that's the case, then you want to put the blasting consultant, forget about saying the developer's, it would be the blasting consultant which is used in previous conditions.

Chris Greenlaw: Mr. Chair, if I will, I wanted to demonstrate also, the reason that I say developer's consultant because I want to be sure that it is paid for by the developer, I want to make sure that we can participate in the selection of that developer and I want to make sure that the Town does not have to participate in any coordination efforts. What I'm doing is, other than helping in the selection of this person, I want them to do all the coordination efforts, I want them to do the payroll, I want them to do all the administrative efforts that won't task our department.

Chairman Block: Yeah, but if you look again, and I'm just saying this for consistency's sake, in E, you say per blasting contractor, applicant's consultant and the Commission's expert, in F it's the blasting contractor and applicant's consultant, but in G you just say applicant's consultant.....

Chris Greenlaw: Let's go back to E. You said per blasting contractor, applicant's consultant and the Commission's expert recommendation. It's just a recommendation, we don't have an expert, we have a recommendation, so there are only two people that we are talking about here.

Chairman Block: Yeah, but what I'm saying is that, can we use applicant's consultant, instead of developer's in J, and then it's consistent, the same person, is that what you are intending, or is this a third person?

Attorney Boorman: Just to be devil's advocate, what if the applicant sells this to a different developer? This project.

Chairman Block: It's still going to be, oh I see, well then, in E, I'm just looking for consistency, should E be, the developer's consultant, instead of applicant's?

Commissioner Zelek: Where ever we have a reference to that joint expert, can we just instead of applicant's consultant or developer's consultant, can we just say the consultant hired or appointed as (inaudible).

Attorney Boorman: Just define it in Item A, and use the same term throughout.

Chairman Block: That's all we are saying.

Attorney Boorman: And while we are referring to the blasting contractor, I think we all know who that is, and then the references to applicant's consultant, and we talk about developer's consultant.....

Chris Greenlaw: One and the same.

Attorney Boorman: Yeah, they are one and the same. So applicant is not the town, applicant is the applicant, which is the developer, so we should not be mixing those terms either, they should be unified.

Commissioner Paskewich: So how did we leave J?

Chairman Block: J is going to be clarified as to which consultant is being referred to.

Attorney Boorman: Chris is going to go back to Section A, and he is going to put together a term to be unified throughout, so there is no confusion.

Commissioner Paskewich: Thank you.

Chairman Block: In D small a, where animals are designated as the obligate species I'm suggesting inserting, plants and animals.

Commissioner Zelek: So in this item we are saying that the developer will hire an ecologist? So, similar to what we are doing with the blasting consultants, I'd like to see the Town agree on who that ecologist is going to be so it would ensure that we get a credible ecologist, and I'm not so sure that it should be anybody that already participated in this application.

Commissioner Paskewich: I agree.

Chairman Block: Okay, and the same thing in b, of the plants, insert plants as well.

Commissioner Zelek: So if we are going to hire consultants, with the applicant to review this, especially when he comes to those monitoring stations, I just want to throw this out, because REMA is the one that recommended those monitoring stations, I wouldn't want to see a conflict of interest where they suddenly benefit financially because now they are the ones that are doing the monitoring.

Attorney Boorman: Are you satisfied though, that the condition would indicate with the Town's consultation, so they can't hire without the Town approval? I wouldn't suggest that you specify who it is.....

Commissioner Zelek: No, I'm not saying who it is, but I'm just raising concern that they are the ones that recommended these monitoring stations, and that if we approve and need someone to monitor them, it shouldn't be them, because they have actually set themselves up to profit.

Attorney Boorman: Well, they wouldn't set themselves up to profit unless the town and developer selected them. Do you agree with that?

Commissioner Zelek: Yes.

Chairman Block: By the way, I suggest not using the word town, but saying Commission's approval.

Attorney Boorman: Are you talking about Commission approval here, or are you talking about staff approval, because I think up to this point we have been talking about staff approval.

Commissioner Sadil: The town engineer is the town staff, right?

Chairman Block: Yeah, it's not the council.

Attorney Boorman: Commission's staff.

Chris Greenlaw: Just as a point of reference, the comment that Commissioner Zelek made, you actually jumped ahead to F correct, under water quality monitoring, but I'll make that note now?

Chairman Block: No, he was in D.

Commissioner Zelek: D (a), where we are monitoring the species, because I think the monitoring included both monitoring the wild life and monitoring the ground water.

Chairman Block: Well again, I think the solution to that issue is that this same provision of town approval kicks over into E and F when the environmental, the ecological consultant goes on to do these other tasks.

Attorney Boorman: But his point is that he simply wants to be consistent throughout, so he hasn't gotten to E or F yet, so when you get to E and F, he's going to want the same thing.

Chairman Block: Right, it's the same person. The same approved person.

Attorney Boorman: So if you would just include that, I know we haven't gotten to E or F yet, but just include that same thought process there.

Chairman Block: In E, where it says Commission or Agent, or its agent. And in E sub d....

Attorney Boorman: Can we go back to E for a minute? So in E are you saying for the integrated Turf Management and Pesticide Plan you actually want that to come back to the Commission, or you want your staff to be able to address that. What's your preference?

Chairman Block: Again, to be consistent with before, it's coming back to our agent and if he finds something of issue with it, he will bring it to our attention. Isn't that the easier way of dealing with it? So it's, take out the word or.

Attorney Boorman: On E, the first paragraph, the Commission's, quite frankly one of the Commissioners indicated that they might want to direct it to the Engineer.

Chairman Block: Well that's our agent.

Attorney Boorman: But do you want to say that, do you want to specify that is is, or do you want to leave it more general.

Chairman Block: Our agent is already designated to be the Town Engineer.

Attorney Boorman: Actually, is that done?

Chairman Block: No, Craig is only for those issues which are that Chris hasn't been certified yet. Right?

Chris Greenlaw: Technically the Town Planner is your agent, and pursuant to the success of classes that have been finished, we felt as though we would re-visit that, Commissioner Igielski I believe brought this up at one time, that we should have one agent, but we haven't had that changing of the guard yet, we've been a little preoccupied with some other things.

Attorney Boorman: You can leave it agent. That's fine.

Chairman Block: I don't want to create confusion between whoever it is going to be. If we want it to go directly to Chris, let's just make it Town Engineer throughout the entire document.

Commissioner Zelek: So if it says agent in here, you've just said our agent is the Town Planner?

Chris Greenlaw: Correct.

Commissioner Zelek: Well the Town Planner hasn't been present and doesn't really know what our concerns are, like you do, so I have a concern about using agent as opposed to Town Engineer. But then again, you could resign two weeks from now and get another job.

Chairman Block: All right, the direction to Chris is to go back and where ever it refers to the Conservation Commission Agent, to insert Town Engineer, right?
In E, sub D, the Cornell document will specify the variety of turf, I suggest adding the term, and native trees. And somewhere in here, say something to the effect that a test species shall be the swamp cottonwood. Because the management, the Plant Management Turf and Pesticide plan is not only to the soils but also, in this particular instance to preserve the environment for this particular species, and anything else that goes along with it.

Chris Greenlaw: So, would you now put that in the form of a sentence.

Chairman Block: Okay, the Integrated Turf Management and Pesticide Plan will specify the variety of turfs and native trees (the swamp cottonwoods shall be used as a test specimen.)

Attorney Boorman: I'll tell you, the next time that we meet and come back with this, there is going to be an issue about the developer under Section b, and then subsequent to that, the developers consultant to utilize Cornell University's Agronomy facilities led by Professor Dr. Marty Petrovic. I don't think it's an appropriate limitation to pick one particular entity, specific entity, and tell them that's the one they have to use. I think that's going to provide some significant problems in terms of enforceability.

Chris Greenlaw: What if we were to add, or equal.

Chairman Block: Or such as.

Attorney Boorman: As long as you use something that doesn't make it so it can be interpreted to say that they have to use Cornell, because you can't do that.

Chairman Block: They are the ones that brought up that they were intending to use them.

Attorney Boorman: They did, and they probably will.

Chairman Block: But it's not limited to them.

In F, sub a, I think that five years is too short, I would suggest ten, where talking about geological effects and I don't know if, for five years after post construction, if a plume will be affecting, will demonstrate a change. So, change five to ten. Then again, if anybody wants to come up with an argument for a different time period, feel free. That's all I have at this point.

Chairman Block: Jeff, you had some.

Commissioner Zelek: Yes, go back to Item C, sub item j., where we are saying, the developer's consultant will immediately cease and desist all drilling activities when water is encountered in an aquifer, so I don't want to limit that just to drilling because they may drill and they may blast and not find anything, and then somebody takes a hammer to get out a small section of rock and suddenly they are in to something else. So, well, it didn't happen under drilling, so I think it's any time of excavation.

Chairman Block: So do you just want to cross out the word drilling?

Commissioner Zelek: So the thing is, this falls under blasting conditions, and so, to me, maybe we add another item which encompasses excavation activities.

Chris Greenlaw: Yes, that's what I was going to recommend. Keep the blasting with blasting, add your comment, as a general comment at the end as it relates to excavation.

Chairman Block: Anything else?

Chris Greenlaw: Mr. Chair, I believe Mr. Zelek, he sent me an e-mail, did you prepare a couple sentences as it pertains to a proposed condition.....

Commissioner Zelek: No, I didn't prepare wording. Those were my comments regarding some of the conditions.

Chris Greenlaw: All right.

Commissioner Paskewich: I just want to respond to F, and small d, Grab samples (method per report), what does that actually mean?

Chris Greenlaw: This is pursuant to our expert, our ecologist, Mr. Logan, that is per his report, so what I did was, I grabbed examples of the types of methodology report testing that he wanted, so if you go to, I believe it's in the 24th, the 23rd or 24th, he outlines some of the testing that he proposes, and again, he offers that as a conditional type of statement, so I've incorporated it as per his report.

Commissioner Paskewich: That's if he is part of, is he going to be part of the water quality sampling quality program?

Chairman Block: I think the solution is for Chris to incorporate whatever that language is in that report as to how the samples should be obtained. He's just making a reference to that's how this sample is, the technique of sampling was described.

Attorney Boorman: There's no reason to reference REMA, just spell out what it is that you want out of REMA's report, just put it right in there.

Chairman Block: Yeah, however the sampling should be obtained, and again, to me a water quality sampling procedure is relatively standard, within anybody else, you know, you don't take the surface film, you don't take the sediment on the bottom, you take it, you put the bottle upside down so it's air trapped, take it underneath and turn it vertical, then turn it and lift it out of the water. That's pretty standard and I presume that's what REMA was citing, so however you want to identify it.

Commissioner Paskewich: So that's a technical term, grab samples?

Chairman Block: Yeah.

Attorney Boorman: Did REMA talk about how many years the monitoring should go? Is that where you got the five, Chris?

Chris Greenlaw: Yes.

Attorney Boorman: So REMA said five. Remember, you conditions have to be reasonable, and if our expert is saying five, to double it may not be seen as reasonable. I only want to plant that seed, leave it that way tonight, but think about it in the long run.

Chairman Block: Again though, we are talking about changes not only during the development, but post development.

Commissioner Paskewich: Yes, he did put a variance in there, five I think, to nine, pre and post.

Attorney Boorman: Was it five to nine or was it five?

Commissioner Paskewich: I think it was five to nine. I don't have it in front of me, but I remember the note that I wrote in the sampling map, the monitoring station map.

Chairman Block: Well, this is our first run through, and it's 9:30. What I would really like to suggest is, please, everybody go back, sort through your notes and all the documentation, make sure that every issue that you have been concerned about has been addressed one way or the other, even if you decide to say, it hasn't been addressed, bring it back to the table, I would like to reconvene Thursday because I don't want to have any missed opportunity. Some of you have expressed the thought that you might not be able to get to it all in 36, 48 hours. If you think you can, then let's do it Thursday, if you are sure you can't, we may have another snow day weekend which I certainly expect you to do it, and we can reconvene Tuesday. What's your pleasure?

Attorney Boorman: Before you express your pleasure, ask your staff person how he is going to be able to update what he heard tonight, and when he can get that back out to the Commissioners. How much time do you need for that?

Chris Greenlaw: We should be able to accomplish this tomorrow. Get it out to you in an e-mail so you have the information.

Chairman Block: Gentlemen?

Commissioner Paskewich: I need more time myself. You can go for a consensus, and anyone can speak.

Chairman Block: Again though, you don't have to do it all next weekend, you know, we are going to have the following Tuesday as well. Can you get enough of a chunk to talk about those things on Thursday, or do you really want to carry over until the following Tuesday. Is the following Tuesday the 26th, already?

Commissioner Sadil: Yes.

Chairman Block: So that means that if you do want to wait, carry it over to the 26th, you really have to be pretty comfortable in, perhaps even coming to a vote on the conditions and the permit on that Tuesday.

Commissioner Paskewich: We saturated a lot tonight.

Commissioner Sadil: I'm thinking Tuesday, the next session for me. I have a few things that I want to look at, reading through the minutes like you told me last time, and that's going to be, I've got a few more documents to look at, it's going to be at the end of the rope at this point.

Chris Greenlaw: The thing I want to add Mr. Chair is that you know, I stated this last week, this is a living document. I may even add other things that come to mind as I go through my notes, and it's you as Commissioners to add, subtract, recommend, so on and so forth, so I'll update this and you may get another update prior to the weekend as well.

Commissioner Sadil: So I'm going for the 26th, what's your feeling?

Commissioner Zelek: I've already missed Valentine's Day, so once a week is enough.

Commissioner Igielski: The 21st is fine with me, but if others need until the 26th.

Attorney Boorman: The only thing I want to reiterate is that you have to make a decision on the 28th, no later than that. So as long as you are comfortable with that notion, indicating where you are, that sounds to me like you'll be meeting on the 28th. So next week you will have Tuesday and then you will anticipate the 28th also?

Commissioner Sadil: That's fine with me.

Commissioner Igielski: The 26th?

Chairman Block: The 26th it is then.

Commissioner Zelek: Just one second before you go on, just so I'm clear and maybe the other Commissioners, I'm not sure if they caught, so you said something about prepared to vote on the 26th, I just want to make sure that if we come to the meeting on the 26th, you expect us to be prepared enough to vote, or

Chairman Block: Let me put it this way. If we go through the second draft and we go through whatever is brought to the table that night, it is possible, and I want everybody to be prepared to go to a vote that night. Unless there is something significant to be done, that we need that additional time.....

Commissioner Zelek: So I'm concerned, we have two Commissioners that are not here to hear that message. So, I thinking we should almost set the date for a vote for the 28th. Give everybody adequate time to prepare themselves.

Commissioner Paskewich: I agree.

Chairman Block: Well, again, there is certainly no expectation and if the other Commissioners haven't caught up, and aren't prepared to go on, at that point in time, that's a very good reason to carry it over to the 28th alone. But, quite candidly, I charged both of them with keeping current with what is going on now, and you know, to come back to the Commission running.

Commissioner Paskewich: I know one of them is attending fourteen hour conferences, so realistically, keeping up is not realistic.

Attorney Boorman: Well I think what I'm hearing again, just to make it clear, there is no force of a vote on Tuesday, if you're not ready to vote on Tuesday, then you don't vote on Tuesday. But you do have to vote by Thursday, one way or another. So that's all.....

Chairman Block: I don't want anyone to come in at the end of the night on Tuesday, and say, gee, I want to hear from something substantial that's going to, you know, Thursday comes along and say, I'm really not comfortable voting because I don't know this, or we haven't resolved that. I don't want to have that. I want you all to be comfortable and ready to state your positions without any hesitation.

Oh, one other thing, we have to give our reasons when we cast our vote, so please draft your thoughts, put them down on paper, try and articulate them, try and make it clear and concise, as to why you are voting and why you are doing or saying whatever it is you're saying.

Commissioner Paskewich: Yes or no?

Chairman Block: You have to give the reasons why it's yes or no.

Commissioner Paskewich: Even yes.

Chairman Block: Let's put it this way, you don't know, you don't know if your yes is going to be based upon a condition that they are going to object to.

Commissioner Paskewich: This is new to me, that's all.

Chairman Block: Attorney Boorman, am I wrong.

Attorney Boorman: Certainly if you deny this application, you must put on the record what your reasons are. There's no ifs, ands, and buts about that. If you grant it, I suggest that it is a good policy for you to go on the record to indicate your reasons for granting also. If you deny, you must have the reasons.

Commissioner Zelek: So you suggesting writing down, coming prepared with documentation. Do you expect us to submit that into the record?

Chairman Block: No, just to be able to refer to it, and if that is the version that is accepted by the group, or supported by others, that Chris has it, instead of depending upon the only the record, the recording, and quite honestly, if you think about it ahead of time, I'm, I usually find that I articulate it better, rather than just wing it. A little bit of fore thought can go a long way. I certainly think, for my sake, there are things in these conditions which others have said, and I certainly

agree, are rather convoluted and difficult and in retrospect I have debated whether or not it is reasonable to expect them to be dealt with the conditions as against being incorporated into the base plan, which is our normal expectation. So, has this proposal evolved so quickly and so far as to require a need for the applicant to catch up with himself? And to give us a, if you will, a final plan, rather than having up to ten numbers of conditions.

Commissioner Paskewich: How do we go about determining that?

Chairman Block: You think.

Commissioner Paskewich: We're going to have a vote to that?

Chairman Block: No, you're going to have to couch your own thought processes as to how you come up with your decision as to how to vote.

Commissioner Zelek: So I think some of us have a question if, we found that this was difficult to approve, and we denied it, what the alternatives were for the applicant, because you know, I think there should have been more time for them to make the changes, rather than us trying to articulate them into conditions. So, I want to understand, what happens with the applicant if we deny?

Attorney Boorman: If you deny, the applicant has, makes up their own mind what they want to do. They can take an appeal on the denial, and go to Superior Court and indicate that the denial was not appropriate, and make their arguments; they also could take your denial and take a look at what the reasons were for the denial, and say to themselves, well, we are going to make another application; we can make another application, try to address some of those reasons, and come back to you, but that is not dictated by this Commission, that is dictated by the applicant to choose their own course of action.

Commissioner Zelek: I just wanted to make sure that that opportunity was still open to them.

Attorney Boorman: It would be an opportunity that would be open to them.

Chairman Block: Again, getting back to the need to articulate our reasoning, if this Commission wanted to say that we are very pleased with the applicant's development and so on, but that so many changes have occurred so fast, and that the amount of details required for us to permit is just excessive, and therefore we are denying it purely because we need to have a finalized version of the plan presented to us, then perhaps the courts would say, no, you know, go give them a proper finished plan.

Commissioner Zelek: Well, personally if I was going to say that I was going to deny, I would say, one of the reasons being that there is too much, too late in the game, too many changes late in the game, but that wouldn't be the only reason. I would cite all the reasons that we have discussed.

Chairman Block: And again, that is why, think about it, take your notes, write it out in advance so that we can be sure to touch upon all those concerns because we have to build a solid basis for our action.

Commissioner Zelek: Because, I'm struggling, I'll tell you, personally struggling for that one nugget that says, okay, I'm denying because of this one primary reason, but taken as a whole, with so many different variables and so much concern for so many different reasons, you know,

as a compilation, I think that's more of a reason to deny, again, I'm not just going to cite like one primary reason, there will be multiples, if we do it.

Attorney Boorman: I would just suggest that when you are preparing, as the Chairman has asked you to do, for your rationale, that you couch it in terms of what is on your record, and remember, anything that has to do with an expert opinion, you need to be able to go back to the record, reflects the record, while you are there to accept or reject, in terms of that because expert testimony must be met with expert testimony in order to be sustainable. You can't just have a feeling to say, this expert said this, and therefore I don't feel, you have to find expert testimony that is going to prove your point. The other thing to remember, we talked about the test that evolved into a substantial evidence test. It can't be a hunch, it can't be just, this is the way I feel, again, it has to be a significant address towards the concern that was addressed by the experts. So it's not an easy load to bear.

Chairman Block: Again, building on that, I asked before, please cite date, person, page if you can, for each of these references, because if we're going to have, and I certainly think it is not inappropriate, if we are going to have a decision based upon a multitude, if you will, of smaller issues rather than one big, hang your hat, we're not going to have time, on the 28th, to say, oh gee, I don't have that site, and it's not going to be reflected in the record. If we are going to do the vote on the 28th, I want each of us to be able to say, I am voting this way on this issue because Joe Blow on such and such a date, page so and so, said this, and somebody else on page whatever said that, and therefore I find that this issue is not resolved, or is not adequate, or something like that. Chapter and verse, please.

Commissioner Paskewich: Here's my question, how many applicants have come before this Commission where the Commission had to respond in this manner?

Chairman Block: None.

Commissioner Paskewich: Then why are we doing it?

Attorney Boorman: Let me give you a different answer to that. Every application that comes before you, you should be doing exactly what we talked about. Every application that comes before you, you should give them the reasons for your decision. So, this is the first time that I have been to your Commission, so I don't know what you have done in the past, but you are required under every application that comes before you to give your reasons for your decision. That, reasons for acceptance and reasons for denial. So, that should be the answer to your question.

Chairman Block: Let me just explain. We have given reasons for our decision, it's been available in our deliberations. But because of the magnitude and the history of this particular development, and the likelihood that it may result in legal deliberations, this is going a step further to make sure that we create as ironclad a record as we can, and that's why I'm asking you to go that extra step.

Chris Greenlaw: Mr. Chair, if I will, it is the regulation 11.3, the Agency shall state upon the record the reasons and basis for its decision, and we have done it before.

Chairman Block: We've really never had a need, we've never had a record of this magnitude, we've never had deliberations that went on like this, so that is why I'm saying, please try your darndest to get chapter and verse. Anything further?

Chris Greenlaw: Just a point in the record, I want to verify that this Thursday the 21st, we are going to cancel that meeting administratively from our office per your direction, and then as a point of record, the next meeting will be Tuesday, the 26th of February 7:00 p.m. in Room B and C upstairs in Town hall.

VII. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS
(Each speaker limited to 2 minutes)

Gail Bedrako, 21 Isabelle Terr: As a home owner I just want to comment on requirements placed on home owners or our representatives in the town. I've been educated by attending these meetings where repeatedly it has been cautioned that if conditions are attached to any application, the conditions must be reasonable. Reasonable at first, that not only are they doable, but they're acceptable, implementable, affordable and enforceable. I assume that in this town for a home owners association any directed regulations, conditions or by-laws must also be viewed through the reasonableness lens for perspective and the reasonableness has to be from the

perspective of the property owner and tax payer who is governed under the home owners association, and also how restrictive the conditions are, and how a challenge by a property owner against an HOA or a developer or an originating Commission would hold up in court. Thank you.

Chairman Block: Anyone else?

VIII. COMMUNICATIONS AND REPORTS

Chairman Block: Chris, we have some correspondence?

Chris Greenlaw: Yes, seeing that we didn't have a meeting in January for our regularly scheduled meeting. A little bit of mail for you that you can look through?

Chairman Block: And there's an agent's activity isn't there.

Chris Greenlaw: Yes there is, there has been an agent's activity. This was conducted on December 18th, it was for a Michael Ray of 56 Ivy Lane, coincidentally this is the brother of John Ray, Commissioner's might remember that there was another activity conducted by this individual's brother, not to be confused by, this is 56 Ivy Lane, Newington, Connecticut and our agent has reported to us that there was an activity of which it was in the upland review in which he approved with conditions thirteen of our standard, and the activity involved taking trees down in the upland review and he added an extra condition that all stump grinding shall be removed from the regulated area, wetland plus upland review such that it will be taken off the site, but the actual statement is that, all stump grinding shall be removed from the regulated area, and that was approved by our agent at that address for the removal of trees. Again, all Commissioners, these agent approvals are done in accordance with the regulations, they're on file, they have a regular application number and if you so desire, if you want to come in, review the application, the plans, please visit the engineering office and I would be happy to go over the application with you.

IX. ADJOURNMENT

Commissioner Sadil moved to adjourn the meeting. The motion was seconded by Commissioner Paskewich. The meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Norine Addis, Temporary Recording Secretary

