

NEWINGTON CONSERVATION COMMISSION

Special Meeting

January 31, 2013

I. CALL TO ORDER

Chairman Block called the Special Meeting of the Newington Conservation Commission meeting to order at 7:00 p.m.

II. ROLL CALL

In attendance:

Philip Block, Chairman
John Igielski, Secretary
Jeffrey Zelek, Vice-Chairman
Andreas Sadil, Member
Kathleen Clark, Member (7:15 p.m.)
Alan Paskevich, Alternate sitting for the vacant position

Absent:

Philip Shapiro, Member

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

III. ACCEPTANCE OF MINUTES

Chairman Block: We have minutes for the meeting, January 22nd, and January 24th. Is anybody ready to discuss them?

Commissioner Igielski: Mr. Chairman, I just have the Special Meeting of January 22nd, here at my station when I came in, and I have not seen the January 24th meeting minutes.

Chairman Block: A motion to table the minutes then?

Commissioner Zelek: Well, we could table the 24th.

Commissioner Sadil: The 24th are not issued, the 22nd came out on e-mail I think two days ago or so. Chris sent them out, or Ms. Diaz did.

Commissioner Igielski: That was the attachment that I was unable to open, just for the record.

Commissioner Sadil moved to table the minutes from January 22, 2013. The motion was seconded by Commissioner Paskevich. The vote was unanimously in favor of the motion, with five voting YEA.

IV. PUBLIC PARTICIPATION FOR NON AGENDA ITEMS

(East speaker limited to two minutes.)

Chairman Block: Now we come to the public participation for non-agenda items. I'd like to inform the audience that from now on we are going to limit it to the two minute interval that is our normal house rule. Please, it's not speaking about this application, it's anything but. Is there anyone that would like to speak? Seeing no one, we go on.

V. OLD BUSINESS

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

Chairman Block: Attorney Boorman has the floor to talk about what we are going to be undertaking.

Attorney Boorman: Good evening as always, and I'll try to be somewhat brief, but I've handed out to you, I don't know, a six or seven or eight page packet for your review. My intention tonight is to touch base and explain what this is all about, but certainly not to foreclose addressing these kind of issues again in the future. There's a lot here, they all deal with legal questions that have been addressed to me from the Commission and I'm looking to provide the assistance that either one or more of you have asked as we have gone along in terms of where we are on particular subjects.

The first section talks about decision making and the time table. It does go through the basis for the fact that we need to conclude, this Commission needs to make its decision on this particular application by Thursday February 28, which is on the very last line of section one. So that is the high-lighted section. Between now and then whatever number of meeting that you need to do your job will be scheduled. There is staff here to provide that kind of assistance and make sure that you have what you need to do.

Number two is more heavy lifting in terms of the legal aspects of this particular matter. I received lots of questions regarding regulating activity outside of the wetlands and the upland review area, and then specifically lots of questions about wild life and plant life of regulation or situations that may occur. So what I have done, I have referenced in the first paragraph under roman numeral two that many of you have approached with questions, legal questions regarding this issue, and so I have pointed out to you that there really are two controlling Connecticut Supreme Court cases that deal with this issue. You've heard from the experts taking about a case called Avalonbay, I cite that for you in terms of that paragraph, the full name of it, dealing with the Town of Wilton. I will point out to you that there are really two Avalonbay cases. This one is the seminal case, the other one came after this one which explained it further but this is the one that set out the criteria for this issue for the review that we are talking about. The second case is called Riverbend. Again, the full name is listed for you there, and I indicated that what I am doing is I'm taking excerpts from the cases themselves and giving them to you. My intention is to use the court's language for you, so you can see what the court does with specific questions that are addressed with the type of analysis that is before you.

Starting with Avalonbay under A that's the short way to refer to it and I will continue to call it Avalonbay, the other case I will call Riverbend. I've provided emphasis in bold to those sections that I particularly want to address your attention to, from the court's decision, and you will see right from the beginning in the first paragraph, there is reference to the plaintiff's first, so the plaintiff, and this is Avalonbay, it's the first named party that's in that case, so the plaintiff's first and dispositive claim is that the trial court improperly concluded that the commission's jurisdiction extends so far as to deny an inland wetlands permit because development activity occurring outside the wetlands and upland review area could adversely affect the upland habitat of the spotted salamander, resulting in the reduction of the biodiversity in the on-site and off-site wetlands. The plaintiff went on to argue that the act was intended to protect the wetlands from physical damage or intrusion, but was not intended to protect the wildlife that might rely on the wetlands for a portion of its cycle. I think this was a theme that went through many of your discussions as we spoke about it, so this case will flush this out for you and the court tells you right at the beginning, we agree with the plaintiff, so for the broad outlines of that situation, you are getting the broad outline in terms of where the court is going to go, but the court is going to go on and explain to you why.

So, at this point I'm going to move on to page 2. I note that the pages do not have numbers on the bottom of them, I apologize for that, but on the bottom of mine I'm going to write number 2 and when I'm referring to pages I hopefully won't lose you. When you go through the packet on your own, I'm providing, I'm trying to keep it in context so when you go through it will make sense to you so you will see why the court did what it did in terms of providing definitions for wetlands and municipal inland wetlands agencies authorized to do, but tonight what I really want to concentrate on is the issue of how to deal with that situation of activity that is outside the upland as well and the wetland itself.

So about a third of the way down, and you'll see bold, and the court, again, this is all court language; It is apparent from the foregoing that local inland wetland bodies are not little environmental protection agencies. Their environmental authority is limited to the wetland and watercourse area that is subject to their jurisdiction. They have no authority to regulate any activity that is situated outside their jurisdictional limits. Although in considering an application for a permit to engage in any regulated activity a local inland wetland agency must, under the Statutes take into account the environmental impact of the proposed project, and I have doubled emphases on this, it is the impact on the regulated area that is pertinent, not the environmental impact in general. Thus the focus of many of the experts in terms of addressing you to talk about the physical impact on the wetland itself versus the general impact of the environmental issues across the board.

Commissioner Sadil So in other words, you have to prove that something outside of the wetland regulated area is influencing something inside the wetlands that we have jurisdiction in.

Attorney Boorman: I think that's a very good way to put it, and when you say something inside, it has to be a physical impact. We are going to define that even further. Take it even further, that's a good place to start.

The court then goes on to say, this court previously has concluded that a municipal inland wetlands commission may regulate activities taking place outside the wetland boundaries and outside of upland review areas if such activities are likely, and if you've got a pen handy, I'm going to likely, to have an impact or effect on the wetlands themselves, and that again is that physical characteristic. So that is the standard that this court is setting up for the first time, this is the Supreme Court of the State of Connecticut.

Let's skip down a little bit more and finish up, nothing is bold, but you are going to see in the context when you read this yourself when you have time, that there is definitional provisions that the court uses to support its thinking on all the things that they are talking about here and I don't think it's appropriate for me to do it, it will take too long and then, number two, after you read it then we can talk about it again, and if you have questions we will get into those issues further. I'm now going onto page number three which I am writing on the bottom of my page. The first full paragraph says, we note that these pivotal definitions which apply throughout the act, are narrowly drawn and limited to physical characteristics. The emphasis that I just made a little bit earlier. Skipping to the next bold section, it is apparent that the commission, commissions like this may regulate activities outside of the wetlands, watercourses and upland review areas only if those activities are likely to affect the land which comprises a wetland. So you see those physical characteristics now are being defined even more by the court to say, are likely to affect the land which comprises a wetland. Now it also goes on to say a body of water that comprises a watercourse or channel and bank of an intermittent watercourse, something that is not applicable to where we are today. The legislature did not adopt broad definitions of wetland and watercourses that would protect aspect of the wetland apart from their physical characteristics, there's that word again, such as, for example, the biodiversity of the wetlands, or wildlife species that might be wetland dependent. We conclude therefore, that the act protects the physical characteristics of wetland and watercourses and not the wildlife, including water obligate species or biodiversity. Again, subjects that came up frequently before you. The next two paragraphs are

not in bold, and both of them again will provide some of the court's logic in what they are doing here. I'm giving you their conclusions more than their logic. The logic is listed in here and I think that the emphasis to make on this point is not whether we agree or disagree with what the court's logic is, how they got there, but it is the law. It is the law that is given to you for purposes of your deliberations. Let's move to page four.

Commissioner Sadil: I have a question on page three. When you are saying, we conclude that the act protects the physical characteristics of wetlands and watercourses and not the wildlife, including wetland obligate species, or biodiversity, so you can theoretically nothing can live in there right, just have your water and your plants in there, what does wild life mean? So whatever lives in there is basically not.....

Chairman Block: Before you go on, it's thirteen after and I acknowledge the presence of Dr. Kathleen Clark, welcome.

Attorney Boorman: And I'm going to catch that right there. Kathy, you are being given by Chris a handout in terms of the real questions that have come to me and we're kind of covering those as we go through this now, and I'll be happy to talk to you more if you need to catch up a little bit after.

Commissioner Clark: Great, thanks.

Attorney Boorman: The question that you are saying is that you are addressing this very general statement that really sets up parameters in terms of what it is that an Inland Wetland Commission can look at and what they are not to look at under the circumstances of this application. So, I will tell you that, it is read broadly in that way, but as we go through, you'll see some of the more specifics are addressed so that although it says wildlife, wildlife means what you think it does if you look it up in the dictionary, wildlife means that, okay, so biodiversity means what it means too in Webster's dictionary. There are subtleties that are associated with this but that is the general rule. The general rule is the reasons that you make, for any decision that you make, should not be based on a violation of that concept. Again, I'm going to have to emphasis, these are not my words. That's why I'm using the court's words. This is not something that is subject to not following because it is the Supreme Court of the State of Connecticut that is making these rules on how to interpret the statutes that you are charged with enforcing. I hope to be more clear as we move on, because I still have some more that may address some of your more specific questions.

On page four now, and again, I'm writing four on the bottom of mine, up at the very top, thus the fact that and it references a case, the legislature did not provide municipal commissions with the authority to regulate the intentional, albeit limited taking of wildlife, including spotted salamanders, in this case, within the wetlands and watercourses suggests that the legislature did not intend to authorize such commissions to deny a permit for incidental impacts to such wildlife that result from development exclusively in the unregulated, upland area of a site. So you see where specifically where the court the court is making a distinction that we are outside wetlands, we're outside the upland review area, what can you do, how can you proceed with that and we're getting more and more information from the cases as we proceed. One final consideration, also court's interpretation of this act. Statutes are supposed to be construed if possible so that bizarre, and that's a very powerful word, courts don't usually use that word, so that's a very influential word, so that bizarre, difficult or impractical results do not occur. Now the Supreme Court is saying, if we were to interpret the act as authorizing the denial of a permit due to development in the upland areas the only consequence of which as it relates to the wetlands is the reduction in the wetland obligate species, the commission's jurisdiction would be limitless. So you see what the court is saying, you have jurisdiction, but we are not going to allow the bizarre results, courts words, not mine, of allowing your jurisdiction to be limitless. Every attempt to

develop a property with wetlands on-site or nearby off-site would require a review by the commission to determine whether the activity in the upland area might have a negative impact on a wetland obligate species. The court is saying that you clearly don't have the ability to do that as a Commission.

Next section, working towards the bottom of the page, about three quarters of the way down where it is in bold again, talks about the broad purposes of the act and then it has a quote in bold, preventing the loss of fish and other beneficial aquatic organisms, wildlife and vegetation must be evaluated however in the context of the act in its entirety. Now what this is doing, it's referring to the statutes itself that uses these terms, so the statute says, in a couple of places, it talks about fish, aquatic organisms, wildlife and vegetation but the court says, when we interpret this it doesn't mean what you think it does, it doesn't mean what people reading this through the eyes of a layperson means, we're going to tell you what it means, so the court says. The court goes on to say, We conclude that, when viewed in the context of the act as a whole, this provision evinces an intent to protect wildlife as a secondary effect of protecting the wetlands and watercourses themselves. So again, this is the logic, if you will, that the court uses to say, that wildlife are considered but they are not considered as a primary issue. The physical characteristics of the land is, and this is only a secondary characteristic.

Commissioner Paskevich: Question Attorney Boorman. So how do we relate in our decision making process for the secondary effect?

Attorney Boorman: I think it is clear to say that a secondary effect is not sufficient for purposes of a denial, or an approval as a reason.

Chairman Block: Upon itself.

Attorney Boorman: Upon itself, that's good.

Commissioner Zelek: But if you had a primary, then you could also support it with a secondary.

Attorney Boorman: Absolutely. However, the secondary in and of itself, has to be within the rules that we are outlining here.

Chairman Block: Attorney Boorman, the question as to the physical characteristics of the wetlands, to my mind, that has to be explained as being those things that have form and substance, and therefore the presence or absence of the physical vegetation itself has to be included within that, does it not?

Attorney Boorman: The designation of wetlands in the State of Connecticut is based on soil type. So we are talking about the land, we are not talking about the wildlife and we're not talking about the plants. We're talking about them as secondary effects, but they cannot be a primary reason for an action made by the Commission.

Chairman Block: So the fact that the, it is more than a mere body of water, puddle, is all a secondary characteristic.

Attorney Boorman: I don't know that I understand the question, but essentially if it is a physical characteristic of the wetland, it has to do with how a wetland is defined, it has to do with the soils. Watercourses are also included in the definition, but we're not dealing with that in this particular instance.

Commissioner Zelek: So along with Phil's line of questioning, why do these soil scientists or these biologists come in front of us and then rank the wetland like as high value or low value if those physical characteristics that Phil is referring to, which include the wildlife, if those weren't present, then everything would be a low value.

Attorney Boorman: Well, it's not talking about, as Mr. Logan said, the ecological aspect of it, okay, so experts can come and talk in terms of that because that is part of what they do. But that is not necessarily the legal definition is what I am trying to say to you, and that is what I am providing to you as far as this packet.

Commissioner Zelek: I understand, but I'm just puzzled why they grade the wetlands.

Chairman Block: I am not arguing with Attorney Boorman, it is again, it is the legislature and the courts, if you limit it to the very hard basic of the definition that is being articulated, if you have a soil type of a certain identity, that contains a puddle of water, that is the wetlands, and according, if you apply that definition to that extreme, that's all. So the question then comes, in adding chemicals or reducing chemicals as to whether or not that would change either the water or the soil types, and that to me sounds like an absurdity, and therefore at the very minimum I have difficulty, and I go back to the case in Aaron versus Conservation Commission. I think that the physical characteristics to my mind, and again I'm only one person in this, has to include the physical objects that are within the wetland and that is the very bare minimum of education, so again, all I'm saying is that these are subjects that we are going to have to debate and we're going to have to find a way to articulate in our decision, to support our decision when the time comes.

Commissioner Paskevich: Here's a question I have to expand on the legal aspects of this. This is what we call case law?

Attorney Boorman: It is.

Commissioner Paskevich: So this is one of many case laws?

Attorney Boorman: This is a seminal case. This is the seminal case....

Commissioner Paskevich: Meaning what to me, I'm sorry.

Attorney Boorman: Meaning that this is the one that interpreted what you do in this particular situation when you have a Commission that is attempting to regulate an activity that is outside the wetlands watercourse.

Commissioner Paskevich: I guess my question is, why does DEEP give Commissioners education on the wildlife, aviatric, biotic, internally in the wetland as a functional value.

Attorney Boorman: I can't answer that. That to me is not a legal questions, that's a question in terms of whatever course you may have taken in terms of DEEP.

Commissioner Paskevich: Well, that was in terms of their certification as a Commissioner.

Attorney Boorman: But, again, what you are talking about is one specific sliver of the functions that you do, the functions that can be done. You are talking about an area that is outside of the review area.

Commissioner Paskevich: Oh, we're talking about something outside of the buffer?

Attorney Boorman: That's correct.

Commissioner Paskevich: One hundred percent?

Attorney Boorman: We're talking about, if you are going to regulate an activity that is proposed outside of the buffer, outside the wetland itself, this is the limitation of jurisdiction that you have to go into these areas. We are not talking about other areas.

Commissioner Paskevich: Let me try to break this down for myself so I can understand it. We're looking at the regulated area of the wetland which has been defined, the upland area is the development....

Attorney Boorman: The upland area is defined also.

Chairman Block: Again, I'd like to back off a little bit. This session right now is, if you will, an overview and introduction.....

Commissioner Paskevich: I understand that but....

Chairman Block: Wait a minute, we're going to get this and you also have to relate all this to the materials that we've been, that have been introduced. I appreciate having the questions now, but I also want you to understand that you are going to have a chance to go into them much further in depth and you are going to find other issues of even more complexity, God unwilling, for sessions to come, so certainly ask what you need to now, but remember, you are going to have a chance to learn and go deeper into it yourself, and then come back to it, okay? Go ahead Alan, having curtailed you.

Commissioner Paskevich: I just don't want to lose my train of thought on that area, and I've lost the definitions now of uplands and its relationship.

Attorney Boorman: What I'm going to suggest is and as I said at the very beginning, I know a lot of this is new, and I know it is a lot of material to throw at you at once, and this isn't the only time that we can talk about it. I do thoroughly recommend that you take this home with you and you review it, and when we come back next time we can address some of these questions again, but I think some of the contextual stuff and some of the definitional issues are contained in this outline that I have for you here and might provide some assistance in terms of formulating your questions.

Commissioner Paskevich: I'll review it. Thank you.

Attorney Boorman: I'm going to turn the page again and create a number five down the bottom of the next page and indicate, up at the top there is a bold section that talks in terms again interpreting the statutes that you work under and it is a phase and I point out, thus emphasizing that it is the wetlands and watercourses themselves that are of primary importance in the act. So it kind of addresses the tail end of what we are talking about.

The next section does talk about the Commission in this case relied upon and I am going to hold off on talking about that because the court essentially says, if you look in the middle of the page, the last full sentence says, we therefore reject the commission's proffered interpretation. So, I'm looking more for what I'm recommending that you take a look at more than the mistakes that the other Commission made according of this court. In the middle of the next paragraph, one, two, three four lines down, starting with the word biodiversity, the next line the court says, we disagree. That is a again talking about the Commission and what the Commission was asserting and they are saying that they disagree.

Then I am going to move onto the next page, which I am going to list as number six, With undisputed in the present case, that's the Avalonbay case, that the plaintiff proposed no activities within the wetlands, watercourses or upland review area on the site of its proposed construction. The commission's only stated concern was the loss of the spotted salamander habitat in the upland area and its consequent effect on the biodiversity of the wetlands. Because we have determined that the act does not confer jurisdiction over wildlife or the biodiversity of wetland, we conclude that the plaintiff's revised plan did not implicate any negative impact on the wetlands. So they were actually looking for a declaratory ruling, saying that what the Commission did was wrong, and I'm not so much interested in the specifics of the spotted salamander in this case, I am interested in the thought processes that go in to interpret what we have. I mean, our situation is this situation activity outside is what we are talking about.

The second case is short, I promise you it won't be as long as the Avalonbay and I really point this one out because what happens after Avalonbay, there were questions as many of you have in terms of well, what do we really do with what you did on this particular case and how this law, this very law is set up, so under Riverbend, part B on page six, it talks about, it is widely accepted that, the court says in reviewing an inland wetlands agency decision made pursuant to its regulations the reviewing court must sustain the agency's determination if an examination of the record discloses evidence that supports any one of the reasons given. I'm going to stop there for a minute. You know, my participation was somewhat limited in this but when I did give questions to the experts that were before you, my point was, we needed to create a record so that you folks can do what you need to do, regardless of what you are going to do, you are going to have to make your decision based on the record. So when we were in areas that implicated legal issues, that's when I would cultivate one of those that your experts were talking about, so that you will have that record to go back on and decide what you want to do. Riverbend tells you that you must make your decision based on information in the record. You cannot make it on information based out of the record. You can bring in your own personal knowledge, as we talked about before in the seminar that I presented to all of you a few months back, your own personal knowledge, your life experiences, that's fine, but you can't bring in things specifically as to this application that are outside the record. That part is done now. And we do have a substantial record, so I'm sure there will be plenty for you to go over.

The first bold in part under Riverbend, Section B says the evidence, however to support any such reason must be substantial. That's the first time that we are seeing that here tonight. In this case now talks about what is the level of evidence that you have to have if you are going to take an action as a Commission so the evidence to support any reason must be substantial. Then it goes on to talk about the credibility of witnesses, determination of factual issues and it talks about how it is similar to a court case how juries are instructed. The next bold states and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. Now that is a mouthful, and I'm going to help you out with that little bit in the next items that we talk about, but I want to leave this section generally saying that you can't make frivolous reasons for making a decision, whatever you do. They have to be substantiated with the record, but they also have to be substantiated on a basis of fact. That is what is on the record, and you determine what fact is, but you don't have unfettered access to think that determination, the court will look, and search the record if it has to, to determine what was the reason that you articulated for doing what you did, to determine what the facts are in your ultimate decision.

Last section that is in bold and under B says evidence of general environmental impacts, mere speculation, or general concerns do not qualify as substantial evidence. That kind of sums up again in big terms what I'm trying to say, let me read it one more time, evidence of general environmental impacts, mere speculation, like it might happen, it might not happen, it's probable, it's not probable, or general concerns do not qualify as substantial evidence, all right, that is the standard that you are held to.

Now I have provided one more section for you, and that's Section C talks about yet another case, and this is not a seminal case, but a case I thought would raise some interest for you and provide

some assistance in addressing the concerns that are here, and happens to be a Toll Brothers case. Toll Brothers had another case in Bethel, Bethel Connecticut with the Inland Wetland Commission, so I started off Section C at the bottom of page six, instructive to review one more case that has implemented the relevant provisions of Avalonbay and River Bend. So this is instructive in how a court has actually take the information that I've just relayed to you and how they have plugged it in a particular situation. That application for that matter, was also outside the recognized uplands, that's why it's appropriate to take a closer look at that. It raised concerns about wild life and pollutants, migrating to the wetlands area, which goes to the Chair persons comments earlier, the Bethel Commission did give several reasons in its decision to deny the application, and the last sentence that I see above the footnote says, all were harshly addressed by the Superior Court judge. So, if you turn the page to page number seven on the bottom, let's talk a little bit about what happened there. At the top, as with its concern that the density of the development will create numerous impervious surfaces, a concern that the high density will produce children who will have no play yards is so patently outside the statutory jurisdiction of the Commission as to once again create the impression that the Commission grasped at straws to deny the application, or may have acted pretextually. The reason that I give this to you is because this kind of plugs in and brings you full circle as to what the judge is going to look to do. If your reasons aren't satisfactory you may get a result like this from a judge that says, really what you are doing is so far out from what your jurisdictional ability to review is, for example, high density, in this particular application will produce children who have no play yards, it's just the judge saying, you are way beyond what your area is.

Commissioner Zelek: So it does sound like they are grasping at straws in this case, did they have any supporting documentation like we have in ERT, was something like that done on that property and did they refer to that, or did they just kind of make things up?

Attorney Boorman: Well, that is a matter of impression. This judge thought the later, quite frankly. But there were professional, legal arguments that were made and again, this will provide some of the context but the entire case will provide all of the context for you and in terms of that, if you want to see more along those lines of what was actually produced, that has to do with the straws, and I do want to make a comment about the pretextual comment that is in there. Pretextual is the judge saying, look folks, from what I see in this case, it's not you basing it on the application before you, but it is a situation in which you are using one reason and not really telling us what your real reason is, so pretext, it's not something, again, a word that is not lightly used by the courts. You're saying to us that you are doing something for a particular reason, but we, this judge, is saying we think it's a pretext. You really had another reason for this. Again, I'll give you the big picture, we'll flesh this out as we go through, I'm not saying this has anything to do with this particular application. I'm talking about a case. That is not this case on all fours. I'm going to jump to the next full paragraph, in reviewing a Commission's decision, the Court scrutinized the reasons given by the Commission in its denial using the two part substantial evidence test, and this is significant for this case because it spells out, and makes it about as clear as I can give it to you, so that when the Court is looking at what evidence you relied on, on your decision making, there is a two part decision from the Court as to whether it's substantial. The two part substantial evidence test which the Court looks at the reasons given to determine (1) whether each reflects a finding by the Commission that the particular activity identified in the uplands is likely to cause harm to the wetlands, and (2) whether the record supports such a finding by substantial evidence. This is called the substantial evidence rule and this is what is used in any appeal that would take, based on the circumstances that we have before us. The next paragraph talks in terms that the Court indicated that a Commission must find that the proposed activities are likely, there's that word again, to affect the wetlands, not just the possibility of affect. In rendering its decision, the Court determined that the Bethel agency, only asserted that the activity had the potential of adversely affecting, not that it was likely to do so. I'm going to go a little big deeper on that, because the next section kind of helps out a little bit.

The Bethel Court effectively explains the rule established in River Bend: Although considering an application for a permit to engage in any regulated activity a local inland wetlands agency must take into account the environmental impact of the of the proposed project, it is the impact on the regulated area that is pertinent, not the environmental impact in general. The character of the evidence cannot be speculative but must be specific to the particular site. Okay, again, that's why I pushed to create that record. The impact on the wetlands must be precise and not generalized. It is not enough to say that intensive development of an upland area will impair the characteristics of a wetland without saying how. You must be specific. The expert must specify with particularity the precise harm that will result. In the absence of such testimony from an expert and in the fact of contrary evidence, an administrative agency may not draw an inference which undermines the contrary evidence or the contrary expert's conclusion. That's heavy duty stuff, that's say that you must, if it's an expert that comes forth and produces evidence for the applicant for example that A is going to happen if B happens, or whatever way you want to say that. A leads to B. If you want to say, no, that's wrong, if an expert asserts that, you must have an expert on the other side saying, no that's wrong and tell you specifically that's it's wrong, tell you the harm that will be caused to the wetland. All right, so it's a heavy burden. Now I just want to finish up I'm sure on what will be a happy note for everybody. On the bottom of page seven it walks about wildlife in particular, this Bethel Court also had a wild life issue so it says at the very bottom, it says, on the affects of activities on wildlife the Bethel Court provided, then it cites Avalonbay, has clearly established that our inlands wetlands and watercourses statutes protect only the physical characteristics of a wetland and not the wildlife which inhabits the wetland, so there was a question before about other cases in terms of, this is case law, other cases can affect that, this is not a Supreme Court case, it's a state, it's taking the rules from a Supreme Court case and applying them as the lower courts are required to do, but again, it's telling you that the emphasis is on physical characteristics of the wetland and not the wildlife which inhabits the wetland. In this case, thus even if this upland development were to cause the extermination of the box turtle, unless there was evidence that that event would adversely affect or change the physical characteristics of the wetland that event could not constitute grounds for denial of the plaintiff's application.

So again, my focus on this was to try to pick out those areas for all of you that you spoke to me individually or were raised as part of the public hearings, to pick those areas out that hopefully provide you some legal guidance in terms of your analysis as you proceed through this application. I'm going to reiterate that it is not meant to end tonight, the document is to be kind of digested and we can talk more in terms of it. If you want more information, we'll provide you more information. So with that, Mr. Chair.

Chairman Block: Thank you. Let me go through a proposal as to how we should proceed. I would like for each Commissioner to review all of the materials that you have accumulated and to digest them into a list of the issues which you would like to have discussed by the Commission in considering the decision. I want each of you to forward your list to Chris who will, depending on the number of them, either accumulate them or just disseminate them to each other so that when we meet next, we will all have an idea as to all the various concerns that each of you bring to the table. We are going to accumulate them, reduce them down to some common issue if we can, and then debate them, one by one. Now when you make this list, to the extent that you can, we have a list of 89 exhibits, you have various, I would like, to the extent that you can, to make reference to what ever memorandum, exhibit, testimony, that you are using in coming to the conclusion that this is an issue that needs to be resolved so that we each have an understanding as to where that issue is coming from in your mind. Each of us in turn, when we review the others will again go through our own notes and information as to this and interpretations of what we have been told or read and bring that to the table too. We'll debate them one by one, we'll resolve each one, one by one, and then when we have gone through them all, we'll come to a decision as to the whole project, and come to a vote. Now, in general, and maybe there are some variations on this, but I find that there are four choices that are most likely, we either accept

it, reject it, accept it with conditions, or deny it without prejudice because of some missing data or question that has been raised and been left unanswered, which is critical to our consideration of the project, in which case the applicant can obviously will have an opportunity to re-submit and build upon the time and energy that they and we have spent.

Commissioner Sadil: Would you review that last option again?

Chairman Block: To deny without prejudice, by the way, without prejudice has no real legal meaning, but in my case, I'm using it to say that we're not going to throw out the design that you have, just answer these questions and we can reconsider.

Commissioner Paskevich: Looking at these items, some of them relate to the public's submissions, are those part of what we should be looking at?

Chairman Block: You can look at anything on this list, and you can value it however you can justify to yourself.

Commissioner Paskevich: So we don't delete anything or not acknowledge it on this list?

Chairman Block: Let's put it this way, my own thought process is that I'm going to go through this and color high-light them as to those things that I think are really germane, those things that I think are of interest, and those things that are interesting, but not really on point, anything that I am concerned about.

Commissioner Paskevich: All right, I'm going to go back to my original question, what you discussed as upland review. There may be articles in here that don't pertain to upland review, and I don't know that.

Attorney Boorman: I think if you are asking the question about what has been submitted, and what's listed for you that Chris put together I guess what I would do is reiterate the fact that all that was submitted as part of the record. You folks decide what the record is, okay? So that if you found something that you felt was improper and not to be admitted into the record, you could reflect so, but I would suggest that you not necessarily do that. I would suggest that you do what your Chairperson has indicated and that is, you go through that record and pull out anything that is in that record that you believe is relevant to the discussion for whatever matters you want to talk about. So in that way we are not being exclusive of anything that anybody submitted, but you folks as the decision makers can cultivate that and cull out what it is that you need to address the concerns as you see them.

Chairman Block: Again, we are culling out the wheat from the chaff, if you will?

Attorney Boorman: Does that answer your question AI, I don't mean to, you look somewhat perplexed.

Commissioner Paskevich: I am perplexed and I'm probably going to be for a while, but that's okay, it's the first orientation, I accept that, I just, obviously I have questions and everything in the process that has been going on since it started, it's all new to me, public hearings, just trying to digest tonight, where I should start from, and I'll just review and go from there. Thanks.

Commissioner Clark: My question is about your item number three on the choices and that is accept but with conditions. The only conditions that again as a Commissioner I've seen are our one through twelve or thirteen and a couple of little tiny sentences after this. Obviously if we

approve with conditions it could be much more complicated than that, including and not limited to, possibly the entire document that the Home Owners Association would be expected to abide by. So where I'm going with this when would that document, when in the process would a document such as that be presented? Would it be written by us, would it be written by the applicant? Since I understand home owner associations are often monitored by an outside hired agency do they write it? That is something that is very important to me.

Chairman Block: Let me answer that. First of all, if you check our regulations, there's a lot more than thirteen to choose from, but beyond that, we have the ability to impose special conditions which go beyond those listed. The ones that are listed are merely the typical ones that we found to be very common, so yes we can extend it for specific concerns. One of the issues that we are going to be discussing in this case, with the documentation that we've been given, and the concerns that have been raised does the range of conditions that we would want to impose become so large as to be unwieldy at our end and therefore is grounds for rejection, because according to the analysis that we have just gone through, one or more of those specific conditions would have a negative impact on this wetlands because....and therefore but there are so many that it's beyond our purview to generate them. Does that give you an example?

Commissioner Clark: It does. Thank you

Chairman Block: Any other questions or concerns. Now, what do you think about the general outline, the tasks I'm asking you to undergo? Can we all do that? Go through and try to make a list of each one of the separate issues that sticks in your craw from what we've heard you know, unanswered questions. We can meet as quickly as next Tuesday if you guys are going to be ready with something to chew on, or if you need until next Thursday, and by the way, that raises another point, I presume that we have noticed the absence of Dr. Shapiro, it turns out that he has a standing obligation that prevents him from being here timely on Thursdays. He has asked me whether or not Tuesdays and Thursdays are written in stone, can we meet for example on a Wednesday. At this point I have urged him to catch up with what he has missed, but otherwise he is not going to be able to be in a position to contribute, so it's something else that we need to deal with. But again, would you be able to come up with a list over the weekend so we could at least talk about combining the issues on Tuesday, whether you need till Thursday, you need to the week after, what's your pleasure.

Commissioner Zelek: Given the amount of materials, I'm going to need at least a week.

Commissioner Sidal: Could take ten days.

Commissioner Paskevich: I concur.

Commissioner Clark: Where does ten days bring us though?

Commissioner Sidal: A week from this coming Tuesday. And that's going to be it, I want to stay here until two in the morning, discussing it, that's fine with me.

Commission: No we're not. No, no that's out of the question.

Commissioner Sidal: I understand that there is a limit, a thirty-five day limit.

Attorney Boorman: I was just going to say, remember, we finished last week, so the clock started ticking then, and that clock is ticking right now towards those thirty-five days. The only thing I suggest to you is that when you put your materials together it doesn't have to be a complete list the first time you meet. If you each go home and put two or three together for example, I'm telling

you, I think it will be difficult for us to get through all that if each of you came up with two or three and we would continue to move along.

Commissioner Clark: I'd rather do that in small bites seriously, I think ten days is way too long. I'd rather bring, we may have common information, I think we should meet as frequently as we can, because we may come up with, try to figure out the process by which we do it. If we wait ten days, we could be inundated with thirty different items I think we almost have to figure out how we are going to bring these to the table, I just think small bites are.....

Commissioner Paskevich: As long as we do it in small bites and don't have to digest the 92 here at once, that's fine with me.

Chairman Block: Well again, the 5th is obviously next Tuesday, and I concur, that is too short, the 7th is Thursday, and 12th is the following Tuesday.

Commissioner Clark: I'm out of town from the 14th through the 24th.

Chairman Block: Then at the very least it has to be the 12th to give you one shot, but.....

Attorney Boorman: I would suggest the 5th, because it gives you the weekend and lets you meet that first time and you don't have to meet for hours and I don't think you will by the way, but if you get through the list that each of you are going to bring in, and the different things that Chris is going to pull for those things, then we'll just schedule another date, but I'm more concerned that you're not feeling on the back end of this that you are going to be rushed and not be able to do what you need to do because you're ten days out on top of seven days out and now we're half way through, so I suggest that you might want to go more quickly.

Chairman Block: Remember the 28th, February 28th is the end date. So, again, I consider this to be one of the most important things on my plate, what's your pleasure.

Commissioner Clark: I vote for a day next week, Tuesday, Wednesday, Thursday is fine with me.

Commissioner Paskevich: All right, I go along with that.

Commissioner Sadil: I vote for Thursday, next week, one week from tonight.

Chairman Block: Okay, in order to try to get Phil back into the fold, what would your thoughts be on Wednesday.

Commissioner Paskevich: I don't know, I can't say for now.

Commissioner Sadil: Tuesdays and Thursdays work for me, that's why I signed up for the meetings, Tuesdays and Thursdays. That's my own personal situation.

Chairman Block: Consensus for Thursday then?

Commissioner Igielski: I would go for Tuesday.

Commissioner Clark: I would too. In fact, the weekend is when I can look at it.

Commissioner Igielski: Tuesday, our next meeting may end up being on Thursday, based on our discussion on Tuesday.

Commissioner Clark: That's right, that allows us to have two in a week if we find we need it.

Commissioner Igielski: Exactly.

Chris Greenlaw: Mr. Chair, we have Tuesday reserved right now, to remind everyone that we have CIP Committee going on, we have a bonding committee that is going to be conducting interviews in this room, so I took the first available date that we could get a room conducive to the proper audio-visual aids, that's why I took Tuesday, and we can certainly gage from Tuesday and see how much material we went through and then look at other dates and what I will do is schedule ahead from Tuesday if you accept Tuesday because I'm guaranteed that room for that night anyway, and that is B and C, or 101? I wrote it down on the top there.

Chairman Block: Tuesday is B and C. Again, a consensus, a show of hands for Tuesday? Okay, that's done then. Tuesday the 5th at 7:00 unless somebody want to be earlier.

Chris Greenlaw: Mr. Chair, I just want to make sure that all the Commissioners have the latest, greatest listing, the catalog of all the materials, there is actually 92. Please correct me if anything has fallen off the desk and you don't see it on there, but it's all the documents of record and if there is anything else please forward that to me as soon as possible.

Chairman Block: The handout that you left here at the table was 89.

Attorney Boorman: There were two lists that Chris compiled, one just came out that I got today, it was the supplemental, I assume that is the 92.

Commissioner Clark: Is that something that we printed from our e-mail, or did we, we didn't get it here tonight, it's in the e-mails.

Attorney Boorman: So you are saying that 92 is the correct, check you e-mails then, that will give you the complete list. There was one that was shorter.

Chairman Block: Again, to the extent that you can, when you are formulating the issues of concern, make use of the identifier number for the record, and to go as far as the page or quote or whatever, within that record, the more detail the better we will be able to proceed, the faster we can proceed.

Commissioner Zelek: I think we are going to have to make an effort to get the minutes approved next Tuesday night so we can refer to those. So the first thing on the agenda next time will be to accept and revise the minutes so we have that part of the record complete too.

Commissioner Igielski: Mr. Chairman, on another matter, I notice that during the Public Hearing that Mr. Greenlaw was taking copious notes and it seemed to be at times when discussion was being conducted on something that might have eventually led to a condition, so during these meetings, we could also be reviewing any prospective conditions that Mr. Greenlaw would be considering. It wouldn't have to be an all inclusive list, as of Tuesday, but we could begin to compile such a list as part of our discussion.

Chairman Block: I will ask that question of Attorney Boorman as to how appropriate that is?

Attorney Boorman: Your staff, including myself and Chris are here to serve you folks, and one thing that Chris has done for all of us, he has taken extensive copious notes because in his professional capacity he should be able to provide you with information relative to issues that you are going to have, so I think that is totally appropriate and for staff to be able to present, just as

you will, in terms of any issues that he has that he can recommend to you to discuss, so certainly Chris is prepared to do that. He has recognized to me before what a laborious task it is going to be because it is so large, but it is, for each one of you, I think Chris is prepared to do exactly what you are asking.

Commissioner Igielski: My concern was, a typical application when it comes to the evening that it would be voted on, that's when we as a Commission would see the suggested conditions and I think with the magnitude and scope of this project to look at the conditions earlier might be beneficial to everyone.

Chairman Block: Well, certainly I agree that Chris' notes probably contain a wealth of vital information, but I think it's going to probably be a little early in the process to try to come up with a list of proposed conditions across the board, because I'm not a hundred percent sure at this point in time, which part of the volume of material we've got, and the volume of issues.....

Commissioner Igielski: I'm not saying across the board, I'm saying it's the time to start rather than waiting till the last minute for the Commission to receive a list of fifty-five special conditions in addition to the forty three standard conditions, and I leave it entirely in Mr. Greenlaw's hands to use the meeting schedule we're setting up, the next one being Tuesday, to factor that in to the overall process from where he sits and his staff sits to help him in compiling all of this.

Chairman Block: Okay, fine.

Commissioner Zelek: So, we serve two functions, we're the Wetlands Commission, we're also the Conservation Commission, the Conservation Commission serves as an advisory board, so as we are formulating conditions as the wetlands commission, we may also want to put together some recommendations for TPZ, should the application be approved because there may be things that are outside of our purview that perhaps they could address.

Chairman Block: Yes, but although perhaps we can take note of those areas of interest, I do not want to have them interwoven with our deliberations as Inland Wetlands because that blending may be, make us vulnerable.

Commissioner Zelek: I agree, but I think that we need to deliver those recommendations to the TPZ in a timely manner.

Chairman Block: Absolutely. I would certainly expect as those things come up, we would take them immediately after voting on the application itself.

Commissioner Clark: This is a general question about conditions, and what we are looking for Chris to provide for us and are there any other cases, in the past, in another town that we could see how they went through the same process and provided similar conditions of similar complexity to a body like us, but earlier on so we can see how complicated can this be, and is it something again, I think Mr. Igielski's is the perfect question because I can barely even imagine getting something of that complexity that night or even in the shorter time. If there is somebody else that we can look at to see what it might look like.

Attorney Boorman: The answer is yes, there are some, there is some research that can be done to pull out conditions that were for other projects but that would be, it would just be an advisory thing, you'd have to tailor everything to this one, and I'm sure that is what you mean.

Commissioner Clark: Absolutely, and again I have, I can't even picture how.....

Chairman Block: Let me suggest that, in my experience and in my review of other situations what we are dealing with here is going to be so unique, so novel to this development that to spend any amount of time on trying to chase down models, it would consume more time without providing that nugget of information that you are looking for. I think that bottom line is going to be that we are going to have to draft a condition that makes sense to us in this particular case. Now Chris certainly has a backlog of model conditions and understanding of this project that he is going to be able to come up with some language if we can't, because that's the way it works. We're going to tell him where we are looking for a condition. I can't at the moment recall one of the areas that came up during our hearings, but I recall that there were specific conditions, I think one of them was, for example, I think was supposition of detail on the clay stops, the water stops in the trenches, exactly how, where and whatever.

Commissioner Clark: I'm talking more about conditions that would involve what the Home Owners Association would be required to, require of its members.

Attorney Boorman: If I may, if you get that far, and you want to talk about those kind of conditions, I would suggest that the list be made, and what you want be contained in that, and that could be set as a condition and for any conditions that are set, what I want to be able to do is to review whatever conditions you have and make recommendations on the wording, along with Chris so that they effectuate exactly what it is you are looking to do in a way that passes legal muster in terms of the words that are used.

Commissioner Clark: And for that reason, that's why I was asking, what I'm looking for is for source material, is to see, did someone have a book of somebody's home owners association and what kind of rules.....

Chairman Block: Let me suggest that again, off the top of my head in regard to that example, what I would suggest is that we would impose a condition that the home owners association would come up with a schedule of herbicides and conditions under which they would use them, for the approval of this Commission. So it would be up to the home owners association to come up with what they want to do and how they want to do it, and it would have to come back to us to be determined as to whether or not that could be done without harming the wetlands.

Commissioner Clark: At what point in the process though, that would be assuming an approval was given, does that home owners association then, is that home owners association beholden to us forever?

Chairman Block: At the time that they want to apply something, they have to bring in the proposal to us ahead of time, otherwise they can't do it. It's not an approved application. Now, we do exactly the same thing for the Town of Newington with a schedule as to how they apply certain materials in the municipal wetlands. We already do it, there's a standing permit.

Chris Greenlaw: Those kind of details I think we can work out once you get to talking about that and what you determine to be your conditions. That's the kind of thing, in terms of the language that I was referring to. How we would put that together so it would be feasible. That's one way, maybe there is another way that would be satisfactory after you talk about it, so I guess what I'm saying is that to me, what would be more important is that you determine what those conditions, the area of those conditions are, and the actual wording, staff can help you deal with in terms of the enforcement. And again, just to go full circle, we've got back to the list, and the Chairman and I spoke and we thought it would be best to review all of the documents that we have and when we start reviewing those documents it will trigger those thoughts, and more pointedly, exactly what you were discussing. We had an expert that came up, so when you go through the expert's document, and he mentions, the point that you just mentioned, maybe having Cornell

University, you know, they take the soil, they look at the soil, they have agronomists, they have turf specialists and then they come back to the home owners association and they discuss with them the options, A or B, and then how do we, as a Town, know that they are putting that down. Well, there is an additional condition. One condition might have five subparts, and then as we read from this list, and we look at what the expert's recommendations are, we'll say this is already pointed out or acknowledged in one of the general notes, maybe what we will do as a condition, there are sub-components to that to ensure that that program is followed. How is it followed, how is it monitored, what is it stipulated, so some conditions might have five sub parts. But again, if we look at the material first, we look at reports, we look at the recommendations, then you can assist me and both of us will add to that list of conditions to give us some assurance that it is going to be done such that whatever supply is either mitigated or controlled or analyzed from the start. That would just be one example.

Chairman Block: Using this issue as a example, before we can get to the point of articulating a condition, we would have to again, based upon the record, be able to say that the dissemination of this, these chemicals onto the subdivision outside the upland review area, by virtue of the soils, blah, blah, blah, blah, and cited by so and so and so and so, is likely to affect the wetlands in one, two, three different ways, to it's detriment. Only then, after you have put together such a statement do I believe that you are going to be able to impose such conditions. So, you've got to get your pins in a row to be able to support the demand for any particular restriction or whatever you want to do with this, so that's why it's so important for all of us to delve into this material and our notes, what we were told and be able to draw upon that in coming up with a substantial issue.

Commissioner Zelek: So, after reviewing some of the case law, I want to ask a basic question about this application. So when it came before us, all the activities were outside of the hundred foot buffer, outside of the upland review area, so why are we looking at this application?

Attorney Boorman: If I may, that's a question that I'm sure every applicant that would have come before you with these types of facts would ask. Is it even necessary to do anything with this Commission and that's a legitimate question. I think the answer is, we believe that if you are going to do any activity that we believe might be associated, we want you to put the application in and we want you folks to be able to take a look at it and say whether, under the terms of the laws that exist, whether it does need a permit, whether it does need action by this body to take, and that ultimately is the decision. If you made the decision that there are no affects what so ever on the wetland and therefore no conditions were necessary and you don't believe that there is any reason to go any further, you can do that, and then you would have taken action indicating, giving green light to an applicant under those circumstances, they can go ahead with it, because in effect, they have provided an application, as far as the application you're indicating that there is not an issue. So you would be granting it in effect.

Commissioner Sadil: Seems like a third party verification basically, an oversight.

Attorney Boorman: That's what commissions do basically, we are an oversight.

Chairman Block: But then, and perhaps this is something to be left for another time, but I'm going to bring it up anyway, this again is novel in so far that one part of upland review area is one hundred foot, and gratuitously the DEEP said in this particular application, it's 150 feet. They added 50 feet beyond our upland review.....

Commissioner Zelek: But that was after the application was being reviewed. I'm getting back to, why was the application even submitted to.....

Chris Greenlaw: I can answer the question Mr. Chair, if I will, it's actually, our regulations are modeled after DEEP and if you look at the definitions on page four, under regulated activity, it will specifically state any operation within the use of a wetland, watercourse involving removal, deposition, materials or any obstruction, construction, alteration or pollution, and it goes on to define what those regulated activities are that fall under your purview, therefore bringing forth an application. In that definition for regulated activity, down near the bottom of that, there is a very important clause, and the clause states, the Agency may rule that any other activity located within such upland review area, or in any other non-wetland or non water course area is likely, is likely to impact or affect the wetlands or watercourses is a regulated activity. That's what brought this application in.

Commissioner Zelek: Okay, so it was prejudged to be likely.

Chairman Block: No, it was brought to us to you for us to determine whether or not it would have an impact on the wetlands, and then if it would have an impact on the upland review area, and thirdly if it would have an impact on the lands beyond the 100 foot upland review area. And by virtue of the applicant's own engineer, they are bringing storm water and/or other waters from that, beyond that upland review area into the upland review area and into the wetlands and they admitted that, so therefore that's, it's purely and simply within our jurisdiction. There's no dispute on that at this point.

Commissioner Sadil: Something in the upland could change the physical characteristics of the wetlands, goes right around to the first question of the evening.

Chairman Block: Yes.

Commissioner Sadil: I'm glad that you went through all this stuff, because it changes my frame of reference.

Attorney Boorman: I thought that might be important to you all. Give you some frame to start within and again, you're free to go in whatever direction you want, each one of you, in terms of what is important to you, and we can address, you can address that as a body and we can provide you whatever assistance we can in that analysis.

Commissioner Paskevich: Let me ask you about REMA's last comment, dissertation, I'll call it. That's all pertinent to the upland review?

Chairman Block: What part of the dissertation are you referring to?

Commissioner Paskevich: The last document that they submitted, that we reviewed.

Chairman Block: To what issue?

Commissioner Paskevich: All of it.

Attorney Boorman: Are you talking about the packet that they reviewed before the actual project was amended?

Commissioner Paskevich: No. The last meeting we had, they gave out two short packets.

Attorney Boorman: Yes, that's part of the record. Absolutely.

Commissioner Paskevich: Okay. Are those all pertinent to what we should be reviewing?

Chairman Block: That's up to you to decide.

Commissioner Paskevich: I've already reviewed them, and I've decided to use those because I didn't realize that I'm supposed to be looking at a different context now, and thank you for that.

Chairman Block: You can cite any part of these now 92 different submissions and/or your notes on what you heard at this public hearing to formulate anything that you think is of concern in deciding what to do with this application. It's totally up to us all to decide what is important and what isn't.

Commissioner Paskevich: And of course I understand, this is all part of review process and Attorney Boorman is here to help us, I don't want to use the word select, but in a manner it is, what's pertinent to the law.

Chairman Block: To analyze. Our understanding as to how it fits within the requirements of the law.

Commissioner Paskevich: Right. I agree.

Commissioner Igielski: It seems to me that the review process is made much more complex because of the applicant receiving feedback and making changes throughout the public hearing process. So when we look at the information, we need to be careful of where in time the information falls. We need to look at that which is most current to be a factual, when it changes something that preceded it.

Attorney Boorman: If I can build on that for a second, and I'll give you an example, I thought that is where Alan was going the first time, when the original packet came with a previous rendition of the project before it was so dramatically changed, REMA gave you a packet that had a conclusion associated with it which I addressed to Mr. Logan in great detail and got on the record by design at that point, to reflect reasons for his conclusion, that was only like three lines long. I think your point is well taken, because the information that was provided there, in time, is not the same plan any more, so spending a whole lot of time taking a look at the old plan I would say would not be productive to you in terms of making a decision on the plan that is actually before you. I'll just add one other thing, one of the requirements of the Commission to do is to make recommendations as this process goes along to any plan that comes before you, so the law actually looks for whether the Commission made suggestions, made recommendations towards making the plan better, shifting it so that it is better in terms of a project in terms of your regulations, which you did. That's clearly part of the record, so all that is not anything that is a negative towards anyone, not towards the Commission, not towards the applicant, not towards anyone, that's part of the process that's required, and I thought that was done very well, so I'm very comfortable with that.

Chairman Block: You know, a very clear example of that is the amphibian tunnel, we spent a fair amount of time on those issues, and you know, they are all water under the bridge now, except for the issue whether or not this last iteration of the plan, this last version is able to resolve all the issues of the salamanders being able to navigate their environment. Again, if you care to bring up that issue, we again have to relate it to the physical characteristics of the wetlands now. So, it's a tangled web we weave when first we practice to approve. So, any other issues of discussion for tonight?

Commissioner Sadil: One, off on another topic. Is there going to be another meeting for other business, other applications that are pending? It's been like two months since, the holidays, and people....

Chris Greenlaw: Yes, Mr. Chair, we have our regularly scheduled meeting on the 19th and I believe we have two items on the docket for that evening, and just to confirm, Commissioner Clark is going to be gone that week, correct, so what we are looking to do, the Chairman and I were working today, to go over dates, that's why we were pushing to meet early in anticipation of trying to get all the Commissioners at these meetings for these deliberations. So that week will be right now our regularly scheduled meeting with two applications, New Business and this Old Business, we're trying to orchestrate the meetings, before and after.

Chairman Block: So hopefully, we will not be deliberating on this application at that meeting. Circumstances may change, I hope it doesn't. Anything further?

Commissioner Sadil: So where are we meeting next Tuesday?

Chris Greenlaw: B and C which was the room we were in last Thursday.

VI. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Gary Bolles, 28 Burdon Lane: Ladies and gentlemen, could you, maybe the Chair could answer this question. How many Commissioners are on this Commission?

Chairman Block: There's seven positions.

Gary Bolles: There are seven positions, okay.

Chairman Block: And at the moment, there are actually three vacant, one of which is filled by our alternate Alan Paskevich. So there are two votes missing.

Gary Bolles: So there are seven Commissioners?

Chairman Block: I'm sorry, it's one Commissioner missing and an alternate is vacant, I apologize.

Gary Bolles: So normally there are nine Commissioners appointed by the Town Council?

Attorney Boorman: No, that's not correct. There are seven Commissioners and then there are alternates to those Commissioners. The alternates sit when the regulars can't be here.

Gary Bolles: Okay, thank you for answering that.

Commissioner Igielski: If I may, I believe there are seven positions but only six are occupied by an appointee, there's three alternate positions, only one of those alternate positions is occupied by an appointee.

Chairman Block: That fits better with my understanding, yes.

Commissioner Igielski: And since there is a full Commissioner position vacant, the alternate gets to participate at every meeting that he attends.

Commissioner Paskevich: Thank you. I'm enjoying it thoroughly.

Carol Anest, Democratic Town Committee Chair: All the full positions have been filled. The last one was filled at the Town Council meeting, so there are now two Republicans on the Commission, Neil Forte is the other appointee, and that was voted on by the Town Council. Right now there is only one open alternate position which will be filled in February.

Chairman Block: When will he be notified of his.....

Carol Anest: He was notified and if you look at the Commission list on line, his name is on there.

Attorney Boorman: Chris can address that in terms of making sure.....

Carol Anest: Yes, but they were voted on at the last Council meeting on the 22nd.

Chairman Block: Okay, thank you for clarifying it.

Commissioner Paskevich: What date in February?

Carol Anest: Some time in February the new alternate will be put on?

Commissioner Paskevich: So he will be participating in this process that we are going through?

Carol Anest: No, probably not. Not is this, I would tell him not to, he doesn't have enough information.

Chairman Block: I think it would be inhumane to ask him to try to familiarize himself with all this. Anything further?

VII. COMMUNICATIONS AND REPORTS

None.

Attorney Boorman: I'd just like to reiterate what was said the last time, please limit your conversations about this particular application to when you come here, staff is always available to you if you need to talk to myself or Chris about issues, you're free to contact us, but the general rule is that communications should be done here. Secondly, please don't make any decisions yourself until you have gone through the full review process. You're asked to keep an open mind, listen to everything, listen to each other, and when the time comes as to when those communications cease, when we're done, then we can move towards the actual decision making process. Other than that, if you have questions, please feel free to call me if something comes up.

VIII. ADJOURNMENT

Commissioner Sidal moved to adjourn the meeting. The motion was seconded by Commissioner Paskevich. The meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Norine Addis,
Temporary Recording Secretary

