

NEWINGTON CONSERVATION COMMISSION

Special Meeting

February 5, 2013

**I. CALL TO ORDER**

Chairman Block called the Special Meeting of the Newington Conservation Commission meeting to order at 7:04 p.m.

**II. ROLL CALL**

In attendance:

Philip Block, Chairman  
John Igielski, Secretary  
Jeffrey Zelek, Vice-Chairman  
Andreas Sadil, Member  
Kathleen Clark, Member  
Philip Shapiro, Member  
Alan Paskevich, Alternate sitting for the vacant position (7:45 P.M.)

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

**III. ACCEPTANCE OF THE MINUTES**

- A. Special Meeting of January 22, 2013
- B. Special Meeting of January 24, 2013
- C. Special Meeting of January 31, 2013

Chairman Block: We have now on the agenda three sets of minutes, the 31<sup>st</sup> is not available, it's coming, the 24<sup>th</sup> has been on line and handed out tonight, and the 22<sup>nd</sup> we have. Is anyone prepared to act on any of these?

Commissioner Sadil: The 22<sup>nd</sup>. I had no comments.

Commissioner Igielski: What ever the Chair chooses.

Commissioner Sadil moved to accept the minutes of the January 22, 2013 meeting. The motion was seconded by Commissioner Igielski. The vote was unanimously in favor of the motion, with seven voting YES.

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

None

**V. OLD BUSINESS**

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

Chairman Block: The first thing, is there any consensus as to whether or not we can push out meetings back to 6:30? To start at 6:30.

Commissioner Clark: I can't get here at 6:30.

Commissioner Shapiro: I might have a tough time getting here at 6:30.

Chairman Block: Okay, then we stand at 7:00 p.m.

At this point in time I note that John, Jeff and Alan, who is coming late have all submitted some comments as to the issues which they want to consider in discussing for decision on this matter. What I prefer, if there is somebody that has a workable handwriting is to try to list them on the white board. Is there anybody who would volunteer, because I am certified illegible.

Commissioner Clark: I have legible handwriting, I attest to that.

Chairman Block: Since you have volunteered, I will let you put your list of first, if you have one.

Commissioner Clark: Is that what you have in mind? I can expound on them.

Chairman Block: Does anybody else have an issue which is not incorporated in what she said?

Commissioner Sadil: I can't see number four, what is number four?

Commissioner Clark: Number four is enforcement of REMA recommendations.

Chris Greenlaw: Mr. Chair, if I will, perhaps what we should do for the benefit of the minutes, have Kathleen read into the record what she currently has on the board as far as the topics, and then as people add to the list, this way it gets recorded into the record.

Commissioner Clark: You just want these headings and then...Number One, blasting precedent; Number Two, Bachand Aquiter; Number Three, Landscaping Companies qualified green; Number Four, Enforcement of REMA recommendations.

Chairman Block: Does anyone have anything to add to that?

Commissioner Sadil: Well, it's kind of related to number four, what I wanted to discuss tonight was the, most of the REMA report, the ground water inflow plan, I mean, when I read the full report.....

Chairman Block: Would the title water budget cover that?

Commissioner Sadil: Specifically the ground water. You can put water budget as well, and there is one more, the pollutant loading, the figures, there was some difference between what the applicant had and what was REMA's recommendation.

Chairman Block: Anyone else have anything?

Commissioner Clark: You were talking about, other people sent e-mails, are we.....

Chairman Block: But we're sticking with these for the moment, if something else comes up, we have time to discuss it, but I think this gets us a good start.

Commissioner Zelek: Well, the question too, to understand how a home owners association is established and how it can be terminated. What happens when it's terminated, any conditions put on this application, do they carry forth, I don't know, what happens when a home owners association is terminated is my question, so I'll leave it at that.

I have a question regarding the admissibility of Dr. Abrams testimony and his reports based on the public comments that we heard from Allison Clark and I believe it was on January 17<sup>th</sup>, where

she stated that she had a discussion with the DEEP and that Dr. Abrams was not permitted to trap so, I believe that there was also another comment later, at a later meeting by another member of the public, I think it was Roy Zartarian in which he kind of alluded to something called the fruit of the poisoned tree.

Chairman Block: I think that can all be dealt with under the issue of credibility, as to, if you have something that can be discussed as to him or any other person who testified credibility. I don't think that goes to the subject matter directly, I'm not saying that we can't talk about it, but we should try and focus on the categories those things that are affecting the proposal itself. You know, credibility is ancillary if you will. Is there anything else?

Commissioner Clark: I do have another, but it's similar to the credibility issue and that is, again, articles brought in by the public with previous episodes and incidents involving Toll Brothers and...

Chairman Block: Their reputation. Anything else? Okay, if something does come to mind later on, we can deal with it. So, let's, hopefully we all have prepared ourselves so that we can discuss these categories at least to some degree tonight. What I would like to do is to develop a consensus as to which ones of these have to be incorporated, or referenced in our decisions in order to create a factual background for the end vote, and hopefully we will come to some sort of an understanding as to how to deal with each one, and then at the end, when we vote on the project we will have developed language applying to each one that we are going to incorporate into the decision. Now starting with the first one, is there anyone that has an issue with what we have learned about the blasting, and in what way is it a concern to the wetlands. So, let's start there.

Commissioner Clark: On January 8<sup>th</sup>, Mr. Hosley, the blasting expert stated we are setting a precedent that others will follow in regards to blasting in proximity to a wetlands. If we are setting a precedent, how can these blasting experts extrapolate as to the safety of these wetlands.

Chairman Block: All right. Comments or responses?

Commissioner Igielski: I took the precedent setting as something being good in that it sets a standard, a high standard of blasting with respect to wetlands, and based upon the presentation that he made, both his pictures that he had and his explanation, I concluded that there was not much that could be viewed as adversely affecting the wetlands with the method that would be used, the blasting plan, and to go an additional step, he talked about the number of monitoring stations that would be in place prior to the blasting so that the progress and the results of each blast could be measured to see if, as the blasting got closer to the wetlands, even though it was going to be hundreds of feet away, and that which would be affected is just the immediate vicinity of the blast, the monitoring stations would be providing information to either support or refute that.

Commissioner Clark: A question by me is, if you found during the process that you were getting negative data, then what happens. You were getting data suggesting that there could be some damage, what happens during a process like this. Consider, if they are going to monitor, they are monitoring expecting positive or negative results. If they get results that are indicating detrimental effects, do they go to Mr. Greenlaw and say, we are getting detrimental effects, we have to change our plan?

Commissioner Zelek: Just let me understand, when I hear the comment that Slayback says, he's going to be setting a precedent.....

Commissioner Clark: I think it was Mr. Hosley.

Commissioner Zelek: That means to me that this is unprecedented, which means it hasn't been done before, and they are basically using this as an experiment.

Commissioner Clark: That is how I read it.

Chairman Block: Let me add my understanding. I agree with John. I think that he was saying that the degree of scrutiny that we have asked him to apply to this proposal goes beyond anything that he could have found or experienced which again, means that we are being far more cautious than there has been an opportunity for a blaster to do in the past. The, he also, as I recall it, made it very clear that, based upon the experimental data that they had, which was relating to structural, to the manufactured structures, there is no really directly applicable data as to the shock waves going through the basalt, but that the factors that he did have were the safety degrees, the distances which greatly exceeded in this blasting plan from anything that he had known before. So he, and I asked him this question, I recall that distinctly, and it was his opinion that the shocks were not going to be enough to disrupt the bedrock basalt in the wetlands area. But beyond that the points that were raised, that we should be incorporating because they were referenced again and what we were told was the number and locations of the monitoring stations, make sure that they protect the wetlands because his concept was more to protect the neighborhood structures, so we need a couple more places to protect ours, and as Kathleen just pointed out, I don't believe that anybody has yet to set a qualitative number, i.e., the shock, the velocity, the disturbance, that is no unit of measurement that I recall, please correct me if I'm wrong, as to how much shock detected by these monitoring stations is too much. So the question is whether or not we have that information in what we have been presented with, or can we write a condition that allows for that. So at this point, I'm thinking about the location of the monitoring stations, how many there are and what is the limit that cannot be exceeded. So, Chris do we have information on those things?

Chris Greenlaw: Mr. Chairman, last week you tasked me with coming up with suggested conditions. Traditionally what happens on most applications is we wait until the night that we are voting, we discuss the application, and that's when it's usually revealed that we have suggestions of approval, as we vote to approve, and subsequently need four votes to approve. It's usually on the very last night that you get these, so you asked me last week, you said, Chris, you've been taking a couple of notes throughout this application, perhaps what you could do is come up with, start coming up with those suggested conditions of approval, and this might get you going in the right direction, start you thinking about some of the reports to reflect back to as far as you finding a fact. Blasting is one of the issues that I went back to on the reports, and as Commissioner Clark indicated you kind of looked at me immediately as far as, what if we get bad data, so I'll get another example, I gave you an example last week. I'm going to pass this out to all of you, and again, I'm passing these out tonight, and they're incomplete, it's a start. I took four of the, what I thought were the major topics, that you should discuss and start, maybe you can report back, change wording, add to, so on and so forth. As far as the blasting conditions, just to get you going, one of the things that I mentioned was, what I took away from this, is that the developer will hire a blasting consultant to administer the following; verify the location of the test blast, the seismic monitoring locations, monitor, this is the consultant, monitor, review, and then recommend changes pursuant to that test blast analysis. It should come from an expert recognized in the field, whether it's good, whether it's bad, indifferent, close and so on. C. Continually verify blast locations, size, type, etc., go into the report, look at those things that they suggested, and confirm adherence to the blast plan. Are they following the blast plan, we need an expert in the field to verify that. D. All blast inspection reports shall be submitted to the Town on a daily or weekly basis depending on that nature. So, these are just four items to start getting and thinking about the blasting. Go back into the testimony from the consultant, read through that, add to it, delete, so on and so forth, so last meeting I mentioned by thoughts on the Integrated Turf Management Plan and I have eight or nine things under that. So I'm going to

hand this out to you, and what I'm going to continually do is probably as I revise this, e-mail this to you, so as you review this application, and what we will do is, in this process here, any changes that you alternatively make will integrate to this list. So, rather than you getting this at the twelfth hour, literally, this gives you the opportunity now to go back and look at the testimony and add to it.

Chairman Block: Are there any further issues regarding the blasting?

Commissioner Shapiro: Relative to the blasting, is it true that the town representative is on the site when they blast? I recall something like that.

Chairman Block: It's not a town project, so there wouldn't be a clerk of the works. Aside from the consultant I don't imagine that there would be. Chris?

Chris Greenlaw: Mr. Chair, I'd have to verify as far as what is the permitting process through the Fire Marshal's office and whether they have a representative on site. That's something I can verify for you and report back to you.

Attorney Boorman: Mr. Chairman, if I may, the last Commissioner who just spoke is a Commissioner who has not been at these meetings and we would just like to confirm the fact that he is going to, or has, continued to become aware of things that he has missed, that he can actually take part in the decision making process of this. So, that is your intention? You have already started, is that correct?

Commissioner Shapiro: Oh absolutely.

Attorney Boorman: So you are coming up to date on the minutes of those previous meetings that you have missed?

Commissioner Shapiro: Yes.

Attorney Boorman: It's your intention to go through all of those minutes so that you can be up to date in terms of what is before you as an application?

Commissioner Shapiro: Correct.

Chairman Block: And Dr. Shapiro, as soon as you have reviewed all of the minutes of the meetings that you have missed, please bring it to our attention, and declare that you consider yourself to be up to date, and qualified to vote before we reach that point. Thank you. Is there anything else to deal with as to the blasting?

Commissioner Clark: My number two is somewhat related to the blasting, and that's the discovery of an aquifer that I believe was demonstrated to my satisfaction by Mr. Bachand based on findings of flowing water, and if blasting and all of the other, let's just use blasting as an example, would the blasting affect an aquifer in any way. Did any of the blasting experts consider the possible presence of an aquifer?

Chairman Block: Again, I need to point out, I was the one that originally raised concerns about the blasting, as to this project. My recollection is again correct me if I'm wrong because I'm going back a good many meetings now, is that testimony was that whatever fractures might occur in the basalt itself, were either going to be very fine and quickly sealed up by themselves, or they would be of no consequence. The blasting concerns that were raised by Mr. Hosley was really the extent of the cuts and the disposition of the shattered rock, as to how that would affect drainage.

I would expect again we will be dealing with that in much greater depth in the question of water balance. So, okay, anything further on blasting?

Chairman Block: The three things, and I added one so forgive me is in regard to conditions, monitoring stations, the maximum shock allowed and the question that is a bond for repair for the wetlands if the blasting should greatly affect the drainage pattern, which lets us deal within the water balance further. Can we go on now to number two, the question of the aquifer itself. What are your thoughts on that regard?

Commissioner Zelek: Regarding wetland number two, which we believe is a ground water fed depression, we don't have any determination as to what the source of that water is, where is it coming from, with a surface watershed we can figure out from the high points that surface water is going to flow into a perched type of a wetland. With a ground water fed depression like this, I believe we heard during the testimony that they can't tell us where the water is coming from, so I have some serious concerns that if there is activity on this site, that it disrupts the water source for that ground water fed depression. I think there was some allusion to something called a piezometer, I'm not really sure what a piezometer is, I've read it two or three times from the meeting minutes of January 13<sup>th</sup>, where it is described. I think it is a device that would help determine where the ground water sources are.....

Commissioner Sadil: That device measures the pressure head, basically, the water rising, I would assume that the water is coming up from the ground, where from the ground you can't say, but it measures the pressure, and it goes down as mostly surface water as filling the pond. If it goes in the other direction, above the p, it goes from higher pressure to lower pressure that would push the piezometer up, meaning that it was some pressure from underneath the wetland that was coming up and forcing and filling the wetland.

Commissioner Zelek: Do you recall if a piezometer would help us to determine what the aquifer was, where.....

Commissioner Sadil: That's what I wanted to get to, it's very general, it can tell you when it gets to water budget, what is surface flow, what is ground water flow. I was going to respond to that a little earlier. That would give you more indication where that water is coming from and when Mr. Bachand drew his picture, basically that would measure that. You would see if the pressure was from underneath the ground, therefore it was filling from underneath, from some aquifer, ground flow, underneath the wetland. That was my immediate report, the purpose of that.

Chairman Block: Anyone else? My understanding from the evidence that has been presented to us, starting with the very basic premise that water normally flows down hill, it's affected by gravity, is that although an artesian system of water being elevated by pressure under an impervious membrane, it another source of creating an up swell that because of the elevation of the topography no one, from my understanding, was able to point out where a hydraulic head could be generated beyond the limits of this small watershed. It's my understanding, and I can be wrong, is that the hydraulic pressure that Mr. Bachand is primarily referring to, which was admitted I believe by the applicant's engineers as well, is that whatever soil cover there is on the slopes of this basin allows water to flow down the impervious surface of the bedrock until it reaches the bottom of the depression, number two, wetlands two, and then it rises through that debris, creating the up swell in that immediate area. Nobody, despite the fact that I brought out the weeps on the various cut surfaces of Cedar Mountain testified, that I recall, that there is any real artesian activity affecting wetlands two. Bachand's testimony was that the greater slope, the larger watershed down to one, linear, creates an artesian source for the head of that stream, which is where the pipe, the broken 36 inch pipe that we saw in the photograph. But I don't know if it would be defensible on the information that we have to attribute that to feeding wetlands two

or one, I'm sorry, three or one, you know, the higher ones. So I just want to make sure that in our thinking we don't apply something to an area that is not appropriate. There is no dispute that Bachand demonstrated an artesian effect down in the basin, and I wish they had put this on the drawing on one, the linear one, so.....

Commissioner Sadil: Two points to make Mr. Chairman. I was reading the report, and I think one of the reasons was the slope of the plain, around wetland two, I got the impression that underneath that bedrock, in that basalt, the plain is sloping upward from wetland two, thus allowing ground water to come down, and then back up, into the wetland. That is the impression that I got, that basically the cut, the glacial cut as he mentioned was such that allows the water to come into the wetland from that way, from underneath the soil. The second point I would like to make is that he did take the soil samples too. He augered pretty far down, I think he confirmed that there was some sort of porosity of the soil was such that it could hold water, deep down in these wetlands that sort of confirmed that there was some ground swelling down underneath the rock, not just surface, the ground water inflow.

Chairman Block: All right, so the issue that we need to really think about ourselves is whether or not an appreciable amount of the water budget, the inflow if you will, is derived from that path of the hydraulic pressure, as against being surface water collected within the watershed area for each of the three wetland basins.

Attorney Boorman: You were referring to a report when you made your comments?

Commissioner Sadil: Yes.

Attorney Boorman: Which, just identify.....

Commissioner Sadil: Well, I was going to get to that, I'm referring to the REMA report dated January 17<sup>th</sup>, 2013. I was going to paraphrase page 25, this is getting right to the chase, on page 25 he basically summarizes and in a few pages leading up to that, where he gets into his case, about what was neglected was the ground water in flow plan, and there were some, I don't appreciate it that night, when, I didn't fully read it, but they made some last, quicky changes at the end, I remember seeing some tan areas, some blue areas, and I would have pushed harder if that was to address that at the last minute, I wasn't sure, I hadn't dug in that deep, but listening to, when we had the last meeting and Attorney Boorman told us we have to prove what can, from the upland area influence the wetland area outside the 150 foot buffer, and I think that concerns me because when you have this development now, in that upland area, that is going to starve the wetland eventually. If you interfere the water that was supposed to seep through the ground, come into the wetlands now being diverted to the street, that is in the forefront of my mind right now, is that going to starve the wetland and it's physical characteristics of the wetland and possibly kill the vegetation, the biodiversity and specifically the swamp cottonwoods. That is basically what I'm leading up to, and that concerns me, the number one concern. You are definitely changing the physical characteristics of the wetland and that's and at the last meeting where at the last minute they made some changes, they were going to watershed this and watershed that, I remember seeing the plot, I didn't get a chance to go back and study that, but that's basically what I want to talk about. I think that is paramount to me, who is right in that regard. The applicant, to me didn't really address it very well, he made some changes at the end, but that's where I'm at with that.

Chairman Block: Okay, we're going to skip around and go to your point because the concern that you are articulating goes to the question of the water budget. Simply put, given the existing watershed area, and all sources feeding into it prior to the development. Do we have information as to whether or not the proposed development is going to add to, or detract from the present

level of fluids entering into the three or two, which is the development areas? That's the question. The factors that we have identified that come to my mind are of course the impervious surfaces, and the cuts and fills and, that's the three of them. The applicant in the last manifestation which is really the only one that is before us at this point, has given us a water budget showing that there was a slight increase through the water stops and the deep cuts and in the storm water treatment systems that they are proposing that slightly increased the amount of water that is going to go into those two wetlands. Now the question that has to be raised is, are we convinced, and if not, where and why. Because I do think we all agree that a significant alteration to the water budget will clearly affect the physical characteristics of the wetlands. Is that correct?

Commissioner Clark: I agree with what you just said. My question is, did either the applicant or REMA, did either of the water budgets developed by them which sort of came to a meeting of the minds I believe, by the end, did they take into account the ground water flow proposed by Mr. Bachand?

Attorney Boorman: For standards of purpose of this entire discussion, what I want to suggest to you, after this evening, is go back and check the record. Because remember what we talked about in terms of a legal standard, in order for you to talk about these specifics, you need expert testimony that is going to back up whatever your conclusion is, and I don't know what that is going to be, but you do need that expert testimony. I'm going to suggest that to verify or prove whatever concerns you have on these particular issues, one of the things that you might do before we come back the next time is to go to the record itself, which we have verbatim, point to the record, in terms of what the experts said. Then you can give credibility in terms of what the experts said, but you need to have something that the experts said in terms of this area of specificity and I'm just going to read you from the workshop that we did the other day, it's not enough to say that intensive development of an upland area will impair the characteristics of a wetland, without saying how. The expert must testify with a particular area the slightest harm that will result. In the absence of such testimony from an expert, and the fact of contrary evidence, an administrative agency may not draw an inference which undermines the contrary evidence of the expert's conclusions. So what I am saying to you is that you need to go back to the record and pull out information, significant and relevant to what you are saying to support.

Chairman Block: What Attorney Boorman is saying is that for each of us, when we are proposing what conclusion we have reached, we need to be able to cite the reference in the record to back it up.

Commissioner Clark: Can you tell me if something like this is acceptable or not, and the first question, CERT report, is the CERT report submitted as evidence?

Attorney Boorman: It is a part of the record.

Commissioner Clark: Correct, however, since that CERT report, CERT report number two was conducted, the plan has changed, somewhat drastically. Can we still consider the CERT report, since the plan has changed.

Attorney Boorman: I think you look at the CERT report and pull out those things that you might believe are appropriate and then discuss it with the group, but you can go back to any piece that you have here. The thing I would be careful about, if you take a look at what George Logan's opinions were on previous renditions of the plan was going to be, I think you can go back and pull things out of that too, but I think what I would point you to is his expert opinions were relative to the last plan that is before you. That to me would be the place that I would direct you to go in terms of looking to create a record that would support what it is that you are looking to do. Do you follow me?

Commissioner Clark: I do understand but I guess it comes to, how well can our consideration of the CERT report be talked out legally because the applicant has changed things drastically, could a court then go back and say, the CERT report isn't worth the paper that it is written on, or whatever, because it does not speak to the development that was ultimately proposed.

Attorney Boorman: I think, if you are asking the question, could you deny this application based on the CERT Report for example, I would say that you would have difficulty doing that. But if you asked me the question that could you deny this application based on one factor of many, being something that you culled from the CERT report, that's relevant to this plan, as was agreed upon by you after hearing the information, that could be part of that. I don't mean to be unclear with you, but I'm trying to tell you that, number one, I'm not here to direct you what to do, I'm just here to direct you to resources that might help you answer and address questions that you as a body need to address.

Commissioner Clark: I'm going to use just one short statement from the CERT Report on page 23, the statement was, the potential for increases in impervious areas and storm water volumes will result in long term changes to the wetlands. The scale of this development will result in hydraulic changes. That's a statement from CERT and I was using that, but because the scale of the development is not the same, does render a statement such as that as not usable.

Attorney Boorman: Just to finish our point, I would direct you to look to yourself and see what kind of credibility that has as to the application as it is now, and discuss it with your fellow Commissioners to see if that makes sense, if you could rely on something like that, based on the fact that the plan has changed.

Chairman Block: First of all, I'd like to put on the record that Commissioner Alan Paskewich has arrived and secondly, to deal with Kathleen's comment on my part, again I think if the statement is in the report, you can rely on it if you can relate it to the latest version of the project, so certainly in reference to the example you have given, that there is going to be more impervious surfaces, continues to be relevant. Whether or not from the density that was proposed when the report was written to the current density in the amended proposal, you would have to be able to say something about it, even though it's less, it is still too much or however you would like to phrase it, to bring the two issues together. I really think that is all there is to the water budget, what do we know, and whether or not its going to be more or less water feeding the wetlands to the point where it would be detrimental to the wetlands, so we need to go back through the record and draw your conclusions, and site your reasons.

Commissioner Zelek: Question, possibly for Attorney Boorman, can we consider things we don't know, so if they are unable to provide us with a mapping of the watershed of the ground water, so we don't know what areas if they are disturbed, would have a negative effect on the wetlands. So, can we say, we would perhaps like you to go back and do a study that shows us that, and map it out and tell us what areas you plan on disturbing, and how much of the water budget is it going to impact? So, right now we don't know what the areas of the watershed is.

Attorney Boorman: I would suggest to you, based on the voluminous record that you have before you, that before you made a statement that you don't know, that you would go through the entire record and be comfortable that none of the experts dealt with it. Secondly to that would be I think you have to go beyond just that and take a look at what the experts are telling you, what their conclusions were, the experts on both sides, the applicant as well as those hired through the Commission in terms of the overall question, that's what the court will do. They will look at the record and say, okay, you raised an issue, but you don't know about this and you don't know about that, but your own expert that came in and talked to you about it told you blah, blah, blah, blah, blah, so that's what I'm saying to you, in terms of looking to the record, in terms of trying to

support what you want to conclude. I think as a general rule, I would say it would be difficult to conclude anything about most of these issues unless there is something in the record that reflects from an expert that your conclusion is supported. That's what the court will do. Now there will be credibility issues that some of you have raised and that is totally up to you and a court will give you deference on that, but they won't give you deference unless you meet that substantial evidence test that we talked about last time, and that is, it's not just a mere, I don't know, you need something from the experts telling you that there is going to be a harm to the land, a harm to the physical characteristics, and what that harm is going to be, so you can't kind of just speculate. Speculate is not good enough, the word likely comes in, so all of those things that were on the handout that I gave you last time that I would ask you to look at as you are going through your deliberations to try to plug in. Then again, no conclusions need be made to anything tonight, or the next meeting. Ultimately you will make a conclusion, but I suggest you just keep gathering the evidence and when it comes time to make a decision, you make a decision then based on the information that is before you, because as Chris said, you will be having things that layer on top of each other in terms of whatever direction you go into.

Chairman Block: Again, I want to underscore that. We are not making any decisions, coming to any conclusions tonight. All we are trying to do, all I'm asking you to do tonight, is to try and hone in on the categories, the areas, which you believe are going to be worth while for us to try and present the conclusion that is going to be of vital concern to this project. Now we could have fifty of them, we could have two of them, but I don't want to, in later meetings all of a sudden start exploring something to begin with and getting caught short at the last minute. I'd like for us to merely board your conclusion and then present them together, convince each other, which ever way it might be, and come up with what our position is going to be on that particular issue. So...

Commissioner Sadil: Relative to that issue with the ground water, when we were in L101, I was sitting where George, Mr. Logan was standing when I asked him that and he said it's inconclusive. I think I asked him directly the question, what is your conclusion, and he said, well, it's inconclusive. I remember that comment he made, and earlier in the evening I think Attorney Boorman asked him directly, is there an impact, and he said yes, I think there will be an impact to the wetlands, he mentioned a time frame of nine or ten years, that's what I remember from the testimony, so I'm getting a little nervous because on one side didn't really address the issue, so there is nothing in the record on the applicant's side, but on the consultants side, which we paid, you know, it's going to get into, you put him on the record, is it conclusive? It's basically you know, it's a very nebulous thing, I asked him outright at the meeting, and it's going to get down to applicant's word versus what the consultant said. I don't have data here to say, stick my head in the ground, the topography one hundred feet down, there's not going to be the actual data to prove a point, it's just going to be two consultant's opinions, head to head.

Chairman Block: So again hopefully, you are going to cite the part of the record in which the conclusion that you think is more rational is found, and then you are going to say that on this issue you are going to vote this way because you believe that to be the more valid information. We are here to judge and it's up to us to be convinced by what we have heard as to what is our concerns and what are we going to do about it.

Attorney Boorman: And the record that you have before you is what you have before you to act on. You'll have discussions on whether it is adequate or not, but I would suggest that you do what the Chairman said, go to those sections of the record, pull those out for next time, review it for yourself, review it for us, and if it is that much of a significant issue to you, in terms of making a decision about this, then go ahead and advocate for that.

Commissioner Sadil: And I will because that alone will cause damage, the question is, how much? Now, it will have an impact, and the question is how much. When you read something like that, you don't know, that concerns me.

Attorney Boorman: The report that you are referring to though, this report was done prior to the latest rendition of the plan. That's a totally different plan we're talking about now.

Commissioner Sadil: It was adjusted, they did make adjustments, I'll have to go back and look at that.

Attorney Boorman: That's what I'm asking you to do.

Commissioner Sadil: I will.

Commissioner Paskewich: The comment and question, and I don't know what transpired before I got here, and this is both to the Chairman and Attorney Boorman because it is probably hand in hand with both sides of this, the REMA report from January 23<sup>rd</sup>, 2013, I think it's one of the most current, and I'm not going to go into the technical areas but the question that I have is, verbiage seems to be very important here, probably, potential, exacting, and in his deliverables, he mentions which items are most critical. Now when George Logan wrote this, he says, this is a critical item and then on the next page, this is a critical item, he's got it mentioned several times, not on every issue, so how do I look at this, when I read this, when he says this is a critical item.

Chairman Block: It's a value judgment that you are placing on the area that he is saying is critical, he can accept that it is critical, and then you refer to the plans, as you understand them, and see if the plans adequately respond to that criticism in the latest rendition.

Attorney Boorman: Can I just go one step further? In that presentation he listed critical items and quote unquote non-critical items. I would suggest that you read the critical items, the analysis that he gave, look at the testimony provided, and see what its conclusion was on each one of those critical items. I think generally each one of those critical items were dealt with as part with as part of his testimony before you on the evening that he made those comments, so if you go to the record, you can pull out information from the expert that is not speculative, that is his opinion relative to whatever the specific critical item was.

Commissioner Paskewich: That's the difficulty that I am having right now. We don't have a lot of time to collect and compile and read everything that is kind of detailed. I know this is the beginning, and this is my first stake in being involved.

Attorney Boorman: We said to the other Commissioners, if this is an area that is important to you, and you haven't even identified an area, if this is important to you, then spend that time on, to cull the record and put your thoughts together and bring it to the table.

Commissioner Paskewich: Thank you, I will do that.

Chairman Block: I would like to go on, taking these out of order because I have the liberty to do so. That is, pollution loading, and there of course are the three elements as to how much of foreign substances are going to be added to the wetlands, what is their impact going to be on the physical characteristics of the wetlands, and lastly, what do you think about the level of controls, or preventive measures that are being, were being volunteered, as against those which we might tend to impose as conditions? So, you know, as to those things, my two cents is, I think what we were told is all the modern chemicals are to be considered detrimental. The salts from the road, the fertilizers, the herbicides, those I think are the general categories, and the question is, are

you, do you have any significant issues with how they expect those to be handled and caught and prevented from affecting the wetlands.

Commissioner Clark: I just want to state that number three really does address the same thing and that's that the applicant has stated that owners are not going to mow their own lawns, they are going to have a landscape company, and I guess we are not supposed to be Sherlock Holmes, but my question in general is, do you know any landscape companies that service the Hartford area that are completely green? And could fulfill the requirements that George Logan has put out for this home owners association?

Chairman Block: Well, let's back up a little bit and say have we been presented with any information that there are green techniques in the industry that are sufficient to meet the burden of convincing us that the wetlands will not be harmed.

Commissioner Clark: If green techniques exist, you still need to have a company that is acceptable and hireable and can get to Newington several days a week and apply those techniques.

Attorney Boorman: Mr. Chairman, Chris did do his preparation and he does have something that applies to the question that may be helpful.

Chairman Block: Okay, but before we get into it, again, do we agree that that is a significant concern and if so, again, lets go back into our record, you will have Chris' first draft, read it, consider whether or not it is, covers everything that you are concerned about, what the citations are in the record that say it is more than adequate, less than adequate, or whatever, and then we will bring it up next time around. It's as I said, it's one of the elements as to are we convinced that pollution loading will not be detrimental under this project.

Commissioner Sadil: Question to Mr. Greenlaw, who is certified, is there a state agency that certifies landscapers as being green? That was my first thought when you wrote that on the board. Who provides certification to be eco-friendly, or you have to have some sort of certification in the profession to be, to claim, you have to prove it. Is there such an agency in the state, is there a listing? Would they have access to companies that are certified?

Chris Greenlaw: That is something that we could certainly look into if you refer back to the notes that I have provided to you, I don't mention the green technology at all because it wasn't offered in the testimony that I remember, so reflecting on the testimony that I remember, I have cued you up with a few of the conditions from the record as far as the ITMP, the Integrated Turf Management Plan. That being both for the agronomy side, herbicides, pesticides, fertilizers, their preparation of a document to have this done by a third party. One was referenced as being Cornell University and when you read through that you will see a whole host of items as far as preparing a plan or a program, but that wasn't one of the things that I took from that, but I certainly, you as a Commission if you wanted to look into that, certainly add that to the list. Whether it is redundant or after you have the opportunity to read through that and the testimony to look through to see whether those conditions need to be supplemented.

Commissioner Sadil: Well, I do remember that I forgot the name in the report, the Cornell professor, they can make recommendations, what products to use, but Cornell University is not going to be landscaping Newington Walk. It's going to be other companies that can take on that work and are knowledgeable on that.

Chairman Block: Part of the charge that I'm putting on myself is to try and persuade you from going out into left field, and in regard to this, and I'm perfectly willing to be proven wrong on the

record, but my information is that, nobody, neither the applicant nor our experts ever said anything that I understood to mean that the bio-swales were not the best feasible technical way to collect and protect the wetlands from these pollutants and if we are going to say that you want to ban chemicals, we are going to need to find something in the record in which to say that what they have proposed to us isn't enough, isn't good enough, you are going to have to find a way to hang your hat on it, if you are going to go beyond. I will give you an example of this, basically the decisions that I have read indicate that the upland review area is supposed to be the limit of our concerns in this regard. However in this area because and I'm trying to draft language which I hope will convince you, is because the watershed is so tight, so small, so discreet, that all water sources within the watershed entering into this wetland two, has to be carefully scrutinized as to volume and content in order to ensure the viability of the wetland. So, that goes to support your concern, but we need also to be able to say something as to where we are getting the idea that the bio-swales are not going to be adequate and therefore we have the ability to expand the control beyond it. If you remember, we talked about such things as saying, no swimming pools. Let's make sure that we have a way to tie it in, nice and tight. Anything further on pollution controls?

Commissioner Paskewich: Back to Commissioner Clark's I think you were trying to, you were speaking to the landscaping companies that qualified as green, but I'm not speaking entirely to that statement about being green. I'm sure there are contractual persons out there that can be written up for products that are required or are substitutes, and in the REMA report, can I refer to that? The January 24<sup>th</sup> report again, he refers to and she refers to landscaping plan, and on page 2 of 10, he specifies through letters A,B,C,D,E,F,G and H what products may be better, I'll use that word for the interest of protecting the water through whatever bio-swales or retention areas they go through. He also speaks to the application of the product and how it should be applied, or not applied. So he is specific, organic treatments will include herbicides, no grub control, insecticides, so he is, he states it on this page that I am reading. I underlined it the other day, I just don't know where we are with this in the plan.

Chairman Block: Again, I don't want us to get ahead of ourselves. You know, you are doing it right, you are finding something in our record to hang our hat on in putting forth a position. When we get together in the next couple of weeks, each of us are going to have to articulate our concerns based upon the record, and then we are going to bounce it around as to what does that mean, how do we want to rephrase it, in our decision and in the conditions that we may or may not be adding, so again, tonight we are here to try and get a consensus, as to how to identify these issues and then to get our marching orders to start doing our homework. So don't feel upset if you aren't ready to articulate your position on something, because I'm certainly not.....

Commissioner Clark: I'm not sure if I'm interpreting Alan's question but I'll ask my own and then maybe it's the same as Alan's question. My question would be we get a statement like this from REMA, this would be a really great way to manage this landscape. And when he said, where are we with this, well, Mr. Logan has stated that this would be a great idea, but does the applicant have butts to say, yep, we'll do everything that Mr. Logan says, and have they said that, and I can't find that in any of the record, so it's the absence of something that you wish was there. We've got this great report, but we're talking about evidence that it will be implemented appropriately, and I don't see that.

Chairman Block: Let me answer this, and Attorney Boorman will tell me if I'm wrong. You've got an idea, you've gone into the record and you find where somebody says something to support the fact that your concern is valid, you've gone in the record and found that the applicant has either responded, in which case you balance whether or not you believe him more or less than the other person, and then you decide, if he hasn't answered the question, do you hold that against him and say, this concern has to be addressed, or you write a condition, or if he has addressed it then

you balance it off and say, I go this way, I go that way, in rendering my decision and/or in asking for this condition to control that issue. So it's a decision street that you go down as you search the record for the areas of concern, establish your position, why you hold that position, and then what you want to do about it. Am I on base?

Attorney Boorman: I think you are right on, and to your specific question that you are talking about that may result in you saying, if there is an approval, that you would want a condition to ensure that that particular area that you are talking about meets what your experts said can be done, and Chris can help write that approval, and I can provide assistance to be sure it is enforceable, but we as staff will look for direction from you, as to where you are as the Chairman just pointed out, when you're all done with that, we will come back to you with what we can adjust the language.

Commissioner Paskewich: To speak a little to that, the conditions that have been currently written that were passed around today, Conservation Commission Suggested Conditions, I'm just going to read one item, number seven. I think Chris had started to address some of these items, but Item 7 states, when the actual field conditions differ from those asserted by the approved plans, the Town Engineer in consultation with the Chair person may direct that certain modifications or amendments be made to accomplish the intent of this permit. He mentions more of what we are speaking to I think of the conditions, I think maybe what I'm thinking is that I really need to read this myself and go over it thoroughly before asking any more specific questions.

Chairman Block: Again Alan, that's the thing you have to take, that's a first draft of the first blush on the conditions that he is gleaning out of the record and it's anticipated that as you, each of the Commissioners read them, that you will edit them, add to them, find something of concern that he hasn't thought about, and those conditions will be massaged so that they will be ready for us when we come to our final vote.

Commissioner Zelek: On item 7, numbers 1-13, those are our standard conditions, Chris?

Chris Greenlaw: Yes.

Commissioner Paskewich: And then there are two more pages, so I haven't even read those yet.

Attorney Boorman: They were just handed out tonight. It's a device, that you can add to, subtract to as the Chairperson indicated.

Commissioner Paskewich: The reason that I brought it up is that I don't have a prioritized list to work from as the Chairman spoke to. I don't have a way to address it as you spoke to, that's what I'm saying.

Chairman Block: It will all be in the minutes.

Commissioner Clark: I'm going to ask the Sherlock Holmes question. At this point in time, am I allowed to Google, green landscaping services in Connecticut?

Attorney Boorman: Oh, I think it could be, if you wanted to do that in terms of your deliberations, I don't see that as being out of the norm of a, kind of a normal inquiry. If you are going to go and seek to write a thesis on it, I think that's a little bit different. You can use your general knowledge and the information that you came into the room with, as volunteers coming to help the town to do what they need to do, in this case an inland wetlands situation and you can bring your general in, so if you Googled something in the way of a general knowledge question issue, that's appropriate but even there, you're going to have to connect it to the record as we talk about it.

Chairman Block: With that, I'd like to go on to item four, again, picking and choosing priorities, the Home Owners Association, rather than the termination issue, I'd like to suggest that the question is first of all, what authority or controls are you going to deem appropriate, if any, to impose upon the Home Owners Association such as the applicant has volunteered that they are going to be responsible for all of the landscaping and maintenance. So I presume that the first position is going to be that that is better than having the individual home owner doing it. The second is going to be as has been stated, what assurances do we have that this is an infinite, that this will be there forever, because we are talking about geological time to protect the wetlands and therefore we have to be assured. We have been told I believe that the present status of the law is that, no, the applicant said first of all that the documents are going to be written so that if the Association doesn't do it, then the property owners, jointly and separately have to do it, so that is one thing that the applicant has put forward to assure us. The second is, do we have any questions as to whether or not that is adequate, and thirdly, if it's not, what is it that we want them to do that we have any way of assuring that it is accomplished. So, is there any other aspect of the obligations of the home owners association that isn't covered by that.

Commissioner Paskewich: Well, I'm not saying not covered, but what I have in front of us which I think we all have is the declaration of Newington Walk, which responds to Home Owners Association and detailed areas that they are obligated to, and this is a legal document, is it not?

Chairman Block: Well, I think that is a first draft of what they are proposing. So we are using that as a scaffold, if we will so we can see how they will meet our requirements and perhaps to make requested demands of them as something that isn't said in there that we think needs to be said. That would again be part of the conditions.

Commissioner Paskewich: They didn't have, on pages ten and eleven, the maintenance program, detention basin maintenance program and in full details according logging it, so that is one area that been addressed and this is the draft.

Attorney Boorman: And as part of the conditions for example, if you decided to go in that direction, you can adopt the fact that they presented that to you and Chris would write up a condition that would indicate that they would as part of the approval adopt that particular document, with the contents of it, plus as the Chairperson said, anything additional that you would want to put in there that would be conditional relative to an approval, if you wanted to go in that direction. So that's kind of an example of how the condition would work.

Commissioner Paskewich: Thank you.

Chairman Block: Any other issues on the Home Owners Association?

Commissioner Zelek: My initial question, what happens if this is terminated?

Chairman Block: Right now the record that we have is, Attorney Boorman will correct me if I'm wrong, is that Wethersfield brought to our attention that there were examples of Home Owners Associations that for one reason or another were not in position to accomplish some responsibilities that had clearly been placed upon them. Wethersfield came back to us and said that the language in the draft that they had worked out with Toll Brothers satisfied their concern in that regard, so that their issue of the municipality being left holding the bag was resolved to their satisfaction. We need to evaluate whether or not that does touch all of our concerns. We agree what Wethersfield told us is good enough, if it's not, then the question is, what are the conditions that we want to impose if we can come up with one as to how to ensure that the responsibilities to the wetlands will continue to be maintained. My two cents again on that issue is, simply put, as I just said, the property owners through the entire subdivision would be jointly and separately

responsible for the tasks assigned to the Home Owners Association. The question then has to be, and you know, we will discuss it further, that puts the burden on the municipality if God forbid that situation occurs. To take legal action against each one of the property owners who again are going to be voters, so this is a feasible solution, you are going to have to balance all those as to how you as rational individuals, think about it.

Attorney Boorman: Another way to look at that, because I know that you are specifically talking about termination, so I'm going to try to address that. As part of a condition, you can indicate that if the condition that you put in place as to that issue results in it's impossible to continue, then they must come back and provide adequate information to this Commission, whoever comprises it at that particular time, in perpetuity, if you will, to say that the conditions that were set out are satisfactorily met because there is a change of circumstance. In effect, they would be coming back to the Commission and saying, there is a change of circumstance, the Home Owners Association doesn't exist anymore, what us do you want us to do about this now?

Commissioner Clark: Who is we? The home owners?

Attorney Boorman: No, depending on how you set up that condition. So, documents right now are talking about the Home Owners Association, and the Chairman is talking about extending that to the individual land owners, what I would suggest to you is talk about that, and see what works, and if you wanted a condition on the first stop that said, if the Home Owners Association, whoever doesn't do what they are supposed to do, or they don't exist any more, then they must come back to this Commission to address the continuing concerns, something along those lines. If you wanted to go through to include the individual land owners, then there would be a different set of criteria that you would use in terms of that.

Chris Greenlaw: Mr. Chair, I have a question for consul, under the developer HOA to provide a copy of Integrated Turf Management Pesticide Plan to the Conservation Commission or agent, I did lean toward this, and I wanted the Town Attorney to weigh in, under G I have the, developer to convey this plan, whatever plan that is that is recommended possibly by the consultant, whether its another agronomy agency, or Cornell, or whatever, but this plan, convey this plan to the HOA, write it into the deed, via reference in the deed as to perpetuity, i.e., heirs and successors, so that's the language that I wanted to run by you so that it has teeth and it holds if that HOA did, because, getting towards you point, what happens if it is terminated. Maybe you could assist us with that.

Attorney Boorman: Yes, we can talk about that later, if we get there, and that's what you folks are looking for, we can refine what Chris has already put together to address those things and incorporate what you are looking for. That also goes to the previous question, how do you know for example, it's being done, or how do you know that the company is green, I think the question is similar to that, quite frankly, you don't. Be real about this, you don't, but you can write a condition in that says that if you fail to substantially comply with the conditions that are included here, you must come back to the Commission for further consideration. So in that instance what's going to happen, if you go for a period of time for example, and things aren't being done, and they have an obligation to come back and there is an enforcement mechanism to bring them back here to say, you're not doing what you are supposed to be doing. Again, that's based on a condition.

Commissioner Zelek: All right, so the wheels come off. They can't do it. The place is polluted, what happens? What is going to stop the pollution from entering the water supply? We're talking about a legal agreement, we're hedging our bets that people are going to follow the recommendations, they are going to do whatever the Home Owners Association says it is going to do, but, when that fails, what happens? The consequences are the wetlands are damaged.

Chairman Block: Our successors are going to be confronted with how to deal with a violation of the permit.

Attorney Boorman: To an enforcement mechanism at that time. You could say that about anything that comes before this Commission. Any project that comes here you could say that about. If they don't do what they are supposed to do, then what are we supposed to do then? The world comes crashing, you could say that about anybody that comes here, that clearly is not a standard for denial. That will not hold, because we don't know what is going to happen in the future is not a standard for denial.

Chairman Block: There has to be a rational level of concern. And again, I would hold because of the swamp cottonwoods, we have a high level of concern as to the viability of whatever we impose, but we have to be able to balance it against this particular site in a way that is clearly supported on the record. You know, we heard the references to a decision in which the court said that in reference to I think it was some frog or something, just didn't hold water. It just wasn't valid enough, and therefore they overturned the decision. We need to make sure that our reliance on the record supports the level of concern that we are expressing and the conditions and the terms of the permit that we issue.

Commissioner Clark: I'm going to speak to Wethersfield document and my concern, which I stated earlier was that the financial penalty, well, the financial bank as it were, that they placed on their homeowners was, and I'll use the word laughably small. Each owner was going to be assessed \$126.00 or something close to that for a total fund of \$5,000.00 which to me almost rendered that entire document totally useless. So my question is, we'll just use money as a jumping off point, I don't really know how a bond works, but I guess my question is, the remedy would have to be financial I would think, other than just we're going to go after them if they wreck the swamp cottonwoods, how do you work into conditions that either the home owners association by putting some kind of money in, they have to put money into the fund so that it is sitting there, so that we can fix things later, versus these home owners who no longer belong to the association, how does a financial condition be enforced.

Attorney Boorman: Well again, if you talk about this when we go through that document, take a look at the provisions of that document, and you're uncomfortable with something, including the amount of money associated with that, we can make a condition, that indicates that we want a higher level, and the only problem that I have with that is the expertise that is associated with determining what higher level would be appropriate. I don't believe it is going to be on this record, but I could be wrong about that. So, I would suggest that, if that is an issue that is significant enough to you, that you go back and do just what we said about every other one, you sit down take your time, put together your presentation, present it to the body and we can discuss it. Again, conditions are related that that if there are fail safes if something doesn't happen, then you have to come back to the Commission, then you have to do this or then you have to do that.

Commissioner Clark: Well tell me, we've spoken about a bond, I believe that did appear some where in the record. Could you tell me how that would be set up to protect the Town against them having to dig deeply into their pocket in the future to maintain quality of wetlands or repair whatever is not working?

Attorney Boorman: I would suggest to you that a bond would be a difficult thing to put into place that goes on into perpetuity because that's probably going to be seen as an unreasonable condition. So I would say it's probably not a good way to address what your particular issue is as to that, but I understand it. But a bond is something that has to have limitations on it in terms of reasonableness, in terms of what you are using it for, whether it's going to be enforceable, until I have more specifics, I wouldn't be able to give you more at this point.

Chairman Block: You know, let me respond to that a little bit, basically what I was understanding of this is that there are certain tasks that the home owners association may be required to do if a disaster occurs, in which case, they need an operating budget and reserves capable of responding to whatever that issue is, therefore one financial condition might be something to the extent that the home owners association has the ability to levy upon its member owners to establish a reserve of X dollars in anticipation of having to do this type of work. A bond, to my knowledge, is for a very finite length of time, for example, if the developer is obligated to put sidewalks in, he has to put a bond up so that at the end of the period he has gone out of business and failed, the money is there for the Town to build the sidewalks. As Attorney Boorman said, it doesn't go on in perpetuity. So we're talking about several different resources that you may want to impose upon them to make sure that they can meet the obligations contained in the conditions that we are setting. And again, as you pointed out, the example that you were given by Wethersfield didn't make sense to you, you wanted it to be significantly higher. We can discuss that when the time comes.

Commissioner Igielski: Another question along the lines of how long things last, within our regulations it talks about a permit being issued for a finite period of time, and therefore after which it would seem as though the question rises as to what happens when the property owners or the home owners association does something contrary to the conditions in the permit. Would it be better to have some of the things that we talk about as a condition of the permit, be recorded in the land records which then go on for a longer period of time than the finite length of time that a permit is valid for?

Chairman Block: It's my understanding that our permit requirements are part of the Newington land records, so they do go on. If this is an obligation imposed upon them, a permanent obligation, as far as the land records, as with any other easement or deed requirement, this goes on, that's why, it's a recorded document.

Attorney Boorman: I'm not sure I'm understanding what you are saying. If this Commission puts together conditions, those conditions stay on unless the court decides that they are unenforceable. So if you put a condition on, it goes on. So in terms of recording something in the land records, you're, the town clerk's office holds the minutes for example from your meetings, it holds your approvals, those kinds of things, so those things are in the Town Clerk's office, but in terms of the conditions themselves, that would be part and parcel of the approval that comes out, because if you are talking a condition, it only means that you have an approval, you don't put conditions on a denial, so I'm not sure I'm answering your question because I'm not sure I understand what it is.

Commissioner Igielski: Okay, let's see if I can rephrase it. The regulations say that we can issue a permit, typically is valid for five years, and the capability of the applicant requests an extension for another five, for a total period of ten years.

Chairman Block: That is to accomplishing.....

Commissioner Igielski: Accomplishing what?

Chairman Block: Accomplishing the permit.

Attorney Boorman: That doesn't mean that the permit runs out, that's different. They have so much time to complete their work.

Commissioner Igielski: But now the minutes of this meeting have an expiration date at a certain period of time they can be discarded I believe.

Attorney Boorman: No. You go to the town clerk's office, they have all the minutes of all the meetings, they're supposed to.

Commissioner Igielski: I thought there was a state retention period for....

Attorney Boorman: Not for this, but not that I'm aware of. If you want, I can take a look at that, but not that I'm aware of. There is for criminal matters and things like that, but not Commission...

Chairman Block: I myself have referred to deliberations of a municipality that date back sixty, seventy years, so....

Commissioner Igielski: I stand corrected, thank you.

Commissioner Paskewich: I just want to expand a little bit, not go into detail, listening to what everyone is saying, I think we need to rely on the town attorney to take the conditions that we are thinking of, and then put them in order of legality, and write the completed record.

Chairman Block: Oh, there is not dispute there. As soon as we.....

Commissioner Paskewich: No, I'm not saying that there is, what I'm saying is, we can go on all night as Commissioners trying to determine what's legal and what should be put into the deed and I'm not sure that's what we need to do.

Chairman Block: No, we don't. What we need to do is to identify and try and phrase the condition that we wish to put on, to establish in perpetuity or whatever, and then when we have them, they will be vetted by Attorney Boorman to make sure that the way we're stating it, and by Chris too, forgive me.....

Commissioner Paskewich: That's what we are struggling with I think, because we're not too sure who is taking the ball and running with it.

Attorney Boorman: Well, mechanically, Chris is here as he has been throughout this process, taking copious notes and he's doing it again tonight and he has already anticipated as we've asked, and I have asked him to do, as Town Attorney, to make sure that he helps guide us in a way that will address conditions and other questions that come up, and so as we go they will be amended and changed and ultimately we are talking about a vote to either approve or deny this application, whatever motion you folks end up making and if you do have a vote to approve, and it has conditions associated with that, all that will be vetted as the Chairperson has indicated so that we, him from his technical background, in terms of the specifics and me from more of a legal background, saying, you know what, courts don't like those kind of conditions, what can we do about that, so all that will be part and parcel. What we are asking you to do is, before we can get started on that, and we're anticipating some of that from what Chris has already done, is tell us what you want for your conditions, so let us know what you want to do so we can assist you in staffing you.

Commissioner Paskewich: And then what I'm thinking is that we are going to read the draft together here in a meeting?

Attorney Boorman: Oh yes, as much time as you need to be comfortable with it as long as we're done by February 28<sup>th</sup>.

Commissioner Paskewich: Thank you.

Chairman Block: The last area is the issue up there of credibility both as the experts and as Toll Brothers. That is not an issue that is going to be reflected in the actual decision or conditions. That is going to be an element that we are each going to apply to what it is they have said in the record, in and how we draft our response in order to give us the highest degree of assurance that whatever we are asking will be accomplished, as we said, into perpetuity. That Toll Brothers is not going, based upon the allegations, going to evade or whatever, their responsibilities to build this, whatever we approve, if we do, the way that we want. Again, it's the credibility of the experts, you are going to balance it, one against the other, and against your own basic knowledge and mental processes, as to who you believe and who you don't and what to do about it.

Attorney Boorman: Let me just point out, you cannot predispose of an applicant by making decisions based on articles, information that you received. The applicant is entitled to be able to come before you and receive a fair hearing before you as to what his application is and not have a pre-determined result which is a clear violation of law, saying because you are this entity, we know about you we're turning you down, we don't trust you kind of thing, that is not a basis for denial either. You must give this entity whoever appears before you at any time, an appropriate hearing based on what is presented to you as part of the application.

Chairman Block: But again, and I'm not disagreeing at all with Attorney Boorman, because in writing any condition you always want to make sure that you write it as clear and as tight as you can, so it is going to hold together, both in judicial review and in practicality, so whatever you might think of people, or how you might think something should work, we are going to craft the language of our decision to make it as clear and as tight and as valid as possible. That's the goal I would set.

Commissioner Clark: I have a question about the credibility in general. So when we state our reasons for acceptance or denial, do we speak to the credibility and say, I thought this individual was not credible because of this contradicted that, you may say that in your.....

Attorney Boorman: I would say, that is something that I would highly ask you to do if, so for example, if you were listening to two experts on a particular issue, and they were at cross purposes, when you make your decision, whatever it may be, I would ask you to put on the record so and so to this issue stated this, so and so stated that, I find it more credible for expert B because, that's the kind of record that we are looking for,

(Tape Change)

Commissioner Zelek:.....test results illegally obtained.

Attorney Boorman: It's not up to you to decide that. You take the information off the record, that's before you and you make your decision based on that, you're not a body of law enforcement, you're not a criminal agency, you're not a civil court, none of those things apply to you, that's well beyond your jurisdiction, none of that has anything to do with what is before you. What does have to do before you is credibility issues of all the experts and if in some way, shape or form you believe that credibility was addressed on that, and that would support something that I just explained to you earlier, then certainly for you, as an individual or as a Commission as a whole, we could do something along the lines of whatever this Commission decides they are going to do in terms of that. But what I'm suggesting to you, is this is a voluminous record as I've said before, I think it's the better practice to let everything into the record and then you decide what is important, you decide what is there for purposes of how you make your decision, on the confines of the other things that we have talked about, I don't think it's really here for you, unless you found something to be totally out of whack, that you would eliminate it from the record.

Commissioner Zelek: So, since we were kind of tipped off that Abrams may not have had the proper permits, are we under any obligation to bring that to an higher authority, such as the DEEP.

Attorney Boorman: You are not under any obligations, those are just allegations that were made, and if someone else wants to investigate that, the person certainly could, but no.

Commissioner Zelek: I just wanted to make sure that we weren't liable, since we did get that information.

Commissioner Block: Again, getting back to my agenda on this, we have blasting, the water budget, we have pollution controls, we have the home owners association. Those are the four major categories that I see.

Commissioner Clark: Can you repeat them?

Chairman Block: Okay, blasting, the affects of blasting, the water budget, pollution controls, or loading, and the home owners association. Are there any other general categories that you would want to discuss in coming to your decision? Again, there are subsets that fit into these four which we will go into.

Commissioner Zelek: I don't know where this one falls, but the CERT report had cited the 750 foot buffer area and they recommended a canopy of trees, we heard again about the Clemens/Calhoun studies, and being classified as vernal pools, that those are typically the best practices to follow, the discharge of water from the development within that boundary, or buffer zone, make sure that it's no more than 25 percent of the area's developed. There were a number of different studies that were presented, and to me, it's up to us to settle on one, we were told that the (inaudible) accepted on is the Clemens and Calhoun. Now the development is estimated as taking up 33 percent, which exceeds the 25 percent recommendation. Based on that I think that Sigrun had indicated that there would be an impact to the herpetological population, and based on the balance of ecology with physical characteristics there was going to be an impact, so I find this buffer area to be a great importance, because the physical characteristic of this wetland, it is a vernal pool, and there has to be some type of best practice to protect it.

Chairman Block: You have listed quite a potpourri of issues and again, those to sort them out a little bit differently, I hope saying the same thing, is, in regard to the water budget and the pollution control, is the 750 foot buffer area in that report something that exceeds the judicial review of the designated upland review area, if so why, and within that, is the Clemens report, or any other information that we've been given as to the impact within a certain distance, applicable to this particular site and if so, how? All right? Beyond that, is the affect on the on the population that you are talking about something some thing that is going to affect the wetlands in the way that we have been told the judicial review will support. Again, it's how we are going to be able to craft our explanation as to where we come up with our decision. It's weaving a tapestry, if you will of explanation for how and why we voted the way that we do, or impose the controls that we do. So, you know, for example, and I'm pulling this out of my hat, have we been given significant authority to assert that the Clemens boundary requirement is a practical requirement as against an academic one? If so, is it clear to us that the boundaries of this area, and the wetlands, the development, whatever makes, in imposing that an appropriate issue upon which to judge the development, and even further, because we have Russell Road involved, on one side and we have the connectivity to the major open space on the other end, how much of the 750 foot requirement is both practical and appropriate to impose upon them. Let's say for example, I'm not pulling this out of my hat, I don't know if it is valid or not, it's only an example. Let's say that fifty five percent of the area around this wetlands two is either extended open space well beyond

the 750 feet, or is inapplicable because of the existence of Russell Road, which has nothing to do with the developers ability to alter the situation, therefore for forty-five percent of the perimeter of the wetlands, is it appropriate to deny the application because it doesn't meet that standard? That's a hell of an issue to think out. So, in the scope of things, is that something that we would want to hang our hat on, alone in deciding on this application?

Commissioner Paskewich: Question about the decision process regarding this before I lose my train of thought on this. Priorities are blasting, water budget, pollution controls and HOA right now. Let's say next meeting we start with blasting, I'm not telling you what to start with, let's just for the sake of conversation, are we going to vote on each item as to a consensus as whether or not we think something is appropriate to move forward as a condition or change?

Chairman Block: Eventually yes, but not at the next meeting.

Commissioner Paskewich: Okay, so we are going to have to address all these issues at one entire meeting?

Chairman Block: Well, you are going to have to sort them out and we're going to, I hope come to a consensus as to what elements of each of these areas are of direct concern to the vote, and then we're going to try and come up with some sort of model paragraph to this, and then at the end we are going to vote on the each and all.

Commissioner Paskewich: Now I understand. Now I understand, we are going to draft a model paragraph regarding say, the blasting, and then we are going to come to a consensus about the paragraph and discussion.

Chairman Block: Right. The reason I do this is because I am very, very fearful that as we evolve that there is a human tendency to try and revisit something and we will consume all of our time without really getting to a bottom line. I, once we assign a period of discussion to an issue, I'd like to try to lock it in as best we can, and then that's done until we vote. If you disagree with that way of trying to attack the problem, please let me know.

Commissioner Paskewich: No, I think we need to prioritize one item at a time and then draft as you said a model to look at, to make a decision, and then move to the next item, draft a model or paragraph.

Chairman Block: Is everybody else happy with that? Okay. Now, again, for tonight, is there any other part of this project which is not incorporated in these four categories that anyone wants to put on the table?

Commissioner Clark: I just want to, you and I have had some discussions about definitions of wetlands, water courses, is it appropriate to talk about that. Does it have anything to do with where we are right now in the process?

Chairman Block: Only if you can raise the issue in regard to one of these four categories at this time. Again, what she is pointing out is valid, each of us should read both our regulations and the statutes and I'll give you one example, and I, and that is, in one of the definitions it says specifically, vegetation, which seems to be contrary to the scope of the judicial decision that was brought to our attention last session, and you know, with my own mind, I'm trying to articulate a position and an argument that throws that back in the court's face, if it does come to that. That our concerns regarding the vegetation is the physical presence of the wetlands, and therefore it is inappropriate for that to be excluded as a reason, from whatever decision we come up with.

Again, it's a wealth of information that you need to make sure you have reviewed and have available to you in raising your concerns, your arguments and making a decision. So, with that, arbitrarily, unless somebody has an objection, for our next meeting I would like to ask everybody to address the first two, which is blasting and water budget. We'll deal with the blasting first, and God willing, we get finished with it, we'll go onto the water budget, and we'll leave the other two for the next session, because I don't want to overwhelm everybody. Is everyone in agreement with that?

Commissioner Paskewich: The water budget also refers to the watershed and ground water, all those areas?

Chairman Block: Where ever the water comes from. So, what else have I forgotten, I think that covers as much as we need to go over tonight.

Commissioner Sadil: I just have one question on conditions for Mr. Greenlaw. Section C, under additional conditions, part C, excuse me, D, the developer will hire an ecological consultant to provide the following, A. monitor the obligate species during and after project completion for five years to ensure population existence, etc., now, where did the five years come from, is that industry standard?

Chris Greenlaw: I'm going to refer you again to the testimony and I was going to touch upon this a little bit earlier, and please look, the Town Attorney advised you as well to, he cautioned you, there is a lot of data, there's 92 records of data that we have, and earlier this evening, you made reference to a report on the 17<sup>th</sup>, and subsequently to the 17<sup>th</sup> we had some revisions, and you'll see again that both experts come in from both sides and again augmented that report, so what I was going to offer to you was that as late information on the 24<sup>th</sup>, I believe in there, there is a recommendation from the REMA report on the 24<sup>th</sup>. Don't quote me on that, but I think that's where you will find in there where they discuss as far as monitoring of the species in there. He mentions a piezometer in the 24<sup>th</sup> report, he describes what it is, and what I offer to you as a aid also, is that when you look back on the 24<sup>th</sup> as well, REMA Associates gave us a watershed map and he talked about the watershed budget. What I would do is that when you find these records of data, with the date on it, what I would then do is go to the testimony for that and read in there what the expert offered as explanation of those documents, that's what I've done myself, and that's where I've found that five year for instance. That's not something that I came up with, I'm pulling that right out of the record as offered.

Commissioner Sadil: Thank you. Another question, hypothetical, it's a condition, and I'm looking for feedback from the Commissioners on this, I remember that same day he had a monitoring map, I remember seeing the map, he had certain locations, he had them alphabetically labeled and what was going on in each of the locations, would it be possible do you think, at the end, it takes time for things to settle so to speak, when you are building something, would it be unreasonable and I remember how we had the phases of the project, one, two, three, four, if we had between phases one and two a holding period to take more data, to see how the wetland is absorbing the change instead of going through the whole project and then find out in five years that there is an issue. Would it be unreasonable to put a delay on the project, just to see how the data is trending as far as the water budget, the pollution loading, I throw it out to the Commissioners, there's a lot of heresay, it's my expert versus your expert.

Commissioner Paskewich: I don't know if I can speak to it or not, but I don't think we have the legal authority to ask a contractor to stop his project when he already has a permit to continue based on testing, and stop the project, that's just my thinking.

Chairman Block: We also have the issue that John raised that by statute, the project does have a finite time limit to be accomplished, so we can't....

Commissioner Sadil: Is that established by law?

Chairman Block: I believe it's part of.....

Attorney Boorman: I can cut to the quick for you, there are no partial approvals. There is not a partial approval where you can say I'm going to approve phase one and phase two, and then come back and ask me later on. You have to approve the full application.

Chairman Block: But again, what we may be able to do and what we need to think about is, if the population of the species is of significant concern to the preservation of the wetlands, then you can say that, in between one, two, three, and four, that you want a population survey that is going to demonstrate that the population has not been adversely affected beyond some limit, appropriate limit which I think again, what is the concern that you are trying to accomplish and then how can we create language.....

Commissioner Sadil: Say the spotted salamander is dead after three years after the fact, and the swamp cottonwood is extinct. I mean, I would like to take some data you know, when it's over, no amount of money is going to change that, okay, so....

Chairman Block: So as an example you might want to say to them that we want surveys of egg masses after the blasting for phase one, or two, or three and that depending upon the findings, that they have to come back to us to do something else, whatever.

Commissioner Sadil: I'm just concerned about the time element, it just doesn't.....

Attorney Boorman: I'm going to suggest to you that we can spend a lot of time talking about this when that comes up but take a look at what I gave you last time and talk specifically about wild life, you want to talk about the spotted salamanders.....

Commissioner Sadil: Well, I'll talk about water budget, let's talk about the ground water, that is a physical characteristic of the wetlands, right,

Attorney Boorman: That's fine, but moments ago you were talking about wildlife, so when we get to it, we can kind of flesh things out.....

Commissioner Sadil: Okay, lets just talk ground water, the water budget.....

Chairman Block: No, no, no, what we are actually talking about, how do we phrase or issue the imposition, and that, Attorney Boorman gave us a handout last week, and whatever issue you want to talk about, please go back to that handout, review what is there and make sure that we raise our arguments in conformance with the direction and instruction that that handout is giving us because the issue is not at this point, how we accomplish what we want to, the issue is what do we want to accomplish, and we have to couch it in those terms in order to justify whatever it is that we want to impose upon these developers.

Chris Greenlaw: Just as an example, I want to answer your first question directly. On the 24<sup>th</sup>, REMA Ecological Services, he had an overhead projection and he offered us a map that had blue squares and round circles and he talked about storm water sampling, he talked about monitoring and when you go into the testimony of the 24<sup>th</sup>, page 25, I made a little note on storm water sampling, and if I could just read it as an example, he says, this is right in the middle of the

paragraph, so to get some additional base line and then what we are doing here is we're collecting. We, whoever the we is. Okay, remember that. They collecting storm water samples of these three locations during construction and then for the five years following construction. He goes on to talk about it, I took that information, and said, this is one of the last things that he said, water budget was a topic, storm water sampling, I thought it was important that we mention this, so when I develop it for post conditions for you to consider water quality sampling program, I talk in there about the developers ecological consultant, the first thing I addressed is, the who, the we, who is going to do that, why should the town be encumbered by this, why should the taxpayers be encumbered by this, it should be the home owners association, or the developer's ecological consultant first because they are going to control the site and the phasing and this is something that they can turn over to a home owners association to continue after, but we have to get the developer on board first with an ecological consultant, an expert in their field to monitor this, so depending on the data they get, so that's how, that's the leap that I made, I went from the plan to the testimony to the conditions and that is something for you all to look at until you have a certain level of comfort for saying, you know, it's just not good enough. I want x,y,z, or maybe it's not good enough at all, but at least, laying the groundwork here, this is where I'm getting the data, this is where I'm standing behind the data, so utilize that, you find a document, go to the testimony, and then revisit these conditions.

To answer your question on the definitions I just want to remind everyone that we do have the definitions in our own regulations, it's modeled after the State of Connecticut and definitions start on page 3 and go through page 6, and additionally this is crafted after the legislature as far as the section on definitions is 22A-38, for instance, 16 talks specifically about water courses and that's something you can look up as well.

Commissioner Zelek: So as a condition, if they are going to be monitoring, and the applicant's ecologist is going to be reporting back, can there be a condition that the ecologist is selected by the Town since there are credibility issues with the current ecologist?

Chairman Block: It would be subject to our approval.

Commissioner Zelek: So as a condition, we can put in that the selection of an ecologist is subject to our approval.

Chairman Block: I would think so.

Attorney Boorman: I would suggest that you could probably go in that direction, and again, we will review everything once we get the conditions in, and will make comments about anything that we think has an issue, but I would think you can go in that direction.

Commissioner Clark: Mr. Greenlaw, I just have a question off the top of your head, Mr. Logan suggested some phasing similar to some planning of the blasting, etc., based on life cycles of the wildlife, I believe, trying to avoid the breeding season, has anyone put that together with the time frame prescribed by the approval and their time limit to complete the project.

Chris Greenlaw: That's not something I would do, not being an expert, I wouldn't write the condition, but what I would do is, you as a Commission write the condition that you get an ecological consultant, well versed in that, so that he can prescribe the time of year, the mitigation controls, the exclusionary boundaries so on and so forth that curb the migration of paths, to work in certain areas outside of breeding times, and that's why we want the developer to hire a consultant, or make the developer hire a consultant, pending perhaps your recommendations, but that's why we want an expert, to cull out those things, and develop a plan.

Attorney Boorman: So in other words, what he just said would be a condition. The condition would be to hire an ecological expert to provide the timing aspect that you are dealing with if you decide to go in that direction.

Chairman Block: And to reduce it still further, the condition would be simply, no blasting during breeding seasons and that the applicant would have to present to us a schedule as to when they do want to blast, so it could be approved by our expert, and approved.

Commissioner Zelek: And further that condition that they would provide us with the results of those studies for review.

Chairman Block: Well, except that it wouldn't be a study to begin with because it would be related to, but again a separate condition which Alan had suggested we could create that after a blasting session that there would be a further review as to the change in population by egg mass or some other means, as to an impact upon the population of whatever species we are talking about, to ensure that the population has not been affected to the extent that the wetlands are going to be physically altered.

Chris Greenlaw: Actually Mr. Chair, if I will, if you read additional conditions, D, those are all very good ideas. I have a few of those in there so if you want to familiarize yourselves, I think you will see in there something, provide regular reports and methods for proposals and mitigate stressors in protecting animals. You can read down through these yourselves. I do have coordinate time of phase construction with migration and breeding period, monitor replacement of exclusions devices and barriers, so.....

Attorney Boorman: He's done a very thorough job to get it started, so he's done a good job.

Chairman Block: You know, I haven't even looked at this, we just got them tonight, again, I appreciate us want to go forward with this process, but again we need to get our pins in a row and have the background for raising our arguments, our concerns, and our suggestions, in hand before we really start to delve deeply into any one of these, so with that, and it being a little after nine, is there anything else on the agenda under Old Business? Commissioners, okay, we are all set for tonight? Chris, I think we need to pick the next date. People, I'd like to keep the pedal to the metal, because the more we get done sooner, the more time we have to deal with the nitty-gritty at the end. We only have what, 23 days left, so is there anyone who can't make next Tuesday?

Commissioner Paskewich: Thursday, February 14<sup>th</sup> ?

Commissioner Clark: I cannot come then, I'm gone from February 14<sup>th</sup>.....

Chairman Block: No, this Thursday.

Chris Greenlaw: We don't have this Thursday, Mr. Chair. The next available date that we have open is, in this room, Thursday, February 14<sup>th</sup>, after that would be, to augment the regularly scheduled meeting, February 19, and have this meeting as part of our regularly scheduled meeting, so we have reserved, looking forward at room availability with all the things going on in the town, Thursday, February 14<sup>th</sup> in B and C here, we have that reserved, we have Tuesday, February 19<sup>th</sup>, in L101 and we have the 21<sup>st</sup>, 26<sup>th</sup> and 28<sup>th</sup> reserved at this time.

Chairman Block: Just because I apparently missed the boat on something, there is no way to get a room for the 7<sup>th</sup>?

Attorney Boorman: You're saying that there are no rooms available in town hall anywhere?

Chris Greenlaw: Well, the primary rooms that would give us audio and visual aids L101, it's conducive to having an audience, this room here, we're completing too with town council now that they are down in L101.

Chairman Block: What about the one at the other end where we used to meet?

Attorney Boorman: That's transformed into something else now. I would say, if there is an agreement that Thursday is available to everyone, then Chris can get back to everyone by e-mail, the only thing you will have to do is post your special meeting, you've got the.....

Commissioner Clark: I can make the seventh.

Peter Arburr: I think what you might want to consider is if you get your meeting schedule what you are going to, you know, set it in stone and what you are going to discuss and have the routine, because right now.....

Chairman Block: We did that, we picked the two categories.....

Peter Arburr: No, what I'm saying is, you can spend a week, one meeting on two items, another meeting on two items, something comes up, you should have the program laid out, right up until the end, what you are going to do, or have some time open or something in case something comes up, instead of trying to program one meeting ahead what you are going to do. You should try to put the sequence together from tonight until the 24<sup>th</sup>.

Chairman Block: Well, I think in that regard, what I would suggest unless the Commission has some other thought, is that I've put together with Chris, a schedule for deliberations that go into this, and lay it out as a model and we'll see how close we can match it.

Attorney Boorman: Chris was just telling me that he thinks that he has a pretty good inventory with the staff as to availability for Thursday night, and he doesn't think there is going to be a room big enough to hold everybody here. What I would suggest is that if you want to try to do Thursday, first thing tomorrow Chris will check out what facilities are available, e-mail everybody immediately if there is, he will book it and set the special meeting requirements and if it's not, he'll let you know that too.

Chairman Block: And then we will delay that on to next Tuesday. Okay, is that an agreeable plan of action?

Commissioner Shapiro: Thursday is not good for me, I won't be here.

Chairman Block: I hate to waste a night if we can avoid it. Chris, anywhere you can put us.

Attorney Boorman: The only issue is, you have to have room for the public.

Chairman Block: I'm leaving it so that Chris will try and find us a room, if so, we'll all be e-mailed, will meet there on Thursday at 7:00 and we're going to deal with the first two issues the best that we can, and the following meeting will go onto the second and third or the third and the fourth depending on how much we have progressed.

Attorney Boorman: If Chris can't book something for Thursday, do you want to set something up for Tuesday, that's my question. You can make Tuesday? So we're talking if you can't book something for Thursday, definitely something for Tuesday.

Chairman Block: Well, let me go through, every Tuesday and Thursday from here out. That's what we do.

Chris Greenlaw: Our primary rooms, L101, B & C, auditorium, that's what we did. I looked ahead and took every Tuesday and Thursday.

Attorney Boorman: You can also talk to the Town manager and tell him that we need this as a priority and see what you can do.

Chris Greenlaw: The council will be down there next Tuesday.

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

Gail Bredreko, 21 Isabelle Terrace: I know this isn't on the agenda, but I just want to mention something about decision making process that I've employed in places where I have worked. In terms of where there are decisions, where there are many different issues involved in coming to a final conclusion, regardless of what the final decision has to be, or what subject it involves. Often times issues are voted on separately and in isolation many times an issue by itself does not have a significant impact. So there are agencies or bodies or whatever that will have a list of issues, vote on them separately and put them aside and perhaps the outcome of that particular decision or the vote on that particular issue again, does not seem to have much of an impact, so it is voted on separately and put aside. However there is a word called synergy where at the end, the aggregate of little impact, of individual issues can have a very different impact or affect on a cumulative basis rather than on an individual stand alone basis. So one of the key items of decision making is to make sure that committees don't lose sight of the fact that individual issues, by themselves can be harmless but in aggregate can cause an awful lot of problems. Thank you.

Chairman Block: Thank you.

John Bachand, 56 Maple Hill Avenue: Just a question in general about the whole process of being a wetlands agency. When decisions are made and when approvals are granted with conditions and those conditions have testing as a big part of those conditions, I'm just curious as to what happens when the testing comes back with values that are say, way off the charts. Obviously you are testing for, to see what the impact would be, but I've never read anything in the regulations about this, so I'm just curious if a test comes back so far off the charts that, let's say there was irreversible damage....

Attorney Boorman: You can't talk about this application.

John Bachand: I'm not talking about the application, I'm just talking in general, I stated that or the record. But testing approvals are the standard here, approvals with conditions so if conditions require a test and the test came back very negative what is the mechanism then? Does the project stop? I'm just curious, and I don't know if you will answer my question now.

Chairman Block: I will answer it to the extent that as I stated during the meeting.....

Attorney Boorman: You can't comment on the application.

Chairman Block: I'm not.

Attorney Boorman: I'm just going to ask you, let him make his comment and let's move on to the next person. It's a problem with the record.

John Bachand: I understand that, and that's why I was trying to be very careful when I stated that it was a general question, so I don't know if you will ever get a chance to address that or not, but I think there is a big hole there.

Chairman Block: Thank you. Anyone else?

**VII. COMMUNICATIONS AND REPORTS**

None

**VIII. ADJOURNMENT**

Commissioner Sadil moved to adjourn the meeting. The motion was seconded by Commissioner Clark. The meeting was adjourned at 9:17 p.m.

Respectfully submitted,

Norine Addis,  
Temporary Recording Secretary